



THIRD PART

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

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

A Government representative of Myanmar indicated that, in their determination to eliminate forced labour and to continue Myanmar's cooperation with the ILO, the authorities in his country had taken significant actions in response to the conclusions and the aide-mémoire of the very High-Level Team (vHLT) which had visited Myanmar in February. The vHLT had been received by the Prime Minister of the Government of the Union of Myanmar on behalf of the State Peace and Development Council (SPDC) on 22 February 2005. The Prime Minister, in his letter of 10 March 2005 to the vHLT, had reiterated Myanmar's commitment to the elimination of the vestiges of forced labour in close cooperation with the ILO.

Turning to the case of U. Shwe Mahn, he recalled that U. Shwe Mahn had originally been sentenced to death for high treason, a sentence which had later been commuted to life imprisonment and then again reduced to five years' imprisonment. Hardly any nation would release someone who had committed such a serious crime. But the Myanmar authorities had released him, as requested by the Governing Body, to show the Myanmar authorities' willingness to further build confidence and as a sign of positive cooperation with the ILO. As such, this was a major concession on the part of the Myanmar Government. A focal point in the armed forces for dealing with Convention No. 29, headed by Deputy Adjutant-General Colonel Khin Soe and assisted by seven General Staff Officers Grade-1, had been established on 1 March 2005. Colonel Khin Soe and two members of the focal point had met with the ILO Liaison Officer a.i. on 12 May at the Department of Labour at the latter's request. There could be further meetings between them as and when necessary.

Indeed, the Minister for Labour had already informed the Director-General of the ILO of the aforementioned actions and had given such assurances by his letter dated 21 May 2005. He had also emphasized Myanmar's readiness to consider a new approach for the elimination of forced labour and to begin discussions at an appropriate time and level to be determined between the two sides. The Government of Myanmar had fully cooperated with the ILO Liaison Officer a.i. in dealing with the complaints related to requisitions of labour. All 50 cases in 2004 and further eight cases in 2005 reported by the ILO Liaison Officer a.i. had been disposed of.

Turning to three cases of complaints for exacting forced labour which were mentioned in the report of the Liaison Officer a.i. of June 2005 (Document No. C.App./D.6), the speaker noted that this document reported that there had been no further developments regarding the Toungup and Hinthada cases and that in the Aunglan case, the complainants had withdrawn the case under duress. Actually, in the Toungup case, actions had been taken against those responsible and the case had already been closed. In the Hinthada instance, the complaints against the head of the Village Peace and Development Council (VPDC) had been rejected by the Township Court as there was no evidence of forced labour. Then the head of VPDC, in his personal capacity, had lodged charges against the complainants for false complaints and defamation against him. The complainants had been found guilty and were fined accordingly. They had since been released after settling the fine. As for the Aunglan case, the Field Observation Team (FOT) had filed a report that Nga-pyin village road had been reconstructed annually by the villagers on a voluntary basis and there had been no forced labour nor forced cash contribution. In fact, U Win Lwin, the person who had died accidentally when a mound of laterite had collapsed on him, was the major beneficiary of the road since he was the sole owner of a motor vehicle in the village. His relatives had been deceived by a third person that had told them that they could receive financial compensation. Later on, they had withdrawn the complaint with their full consent. There had been no undue pressure from the authorities to force them to withdraw the case. In recent times, the authorities had encountered an increasing number of false complaints. They were ready to discuss with the ILO at an appropriate time and level to find a solution to this problem.

The ILO Liaison Officer a.i. had been accorded the same freedom of movement accorded to diplomats and UN personnel within the established procedures. The Liaison Officer a.i. had mentioned in his report that he was able to freely undertake travel in line with the previously established practice, and that he could visit parts of Mon State and southern Kayin State from 18 to 20 May at a very short notice. The above-mentioned actions of the Myanmar Government clearly testified to its political will and the commitment to eliminate forced labour in the country and its willingness to continue its cooperation with the ILO.

The speaker protested against the participation in the Committee by Mr. Maung Maung, who in his Government's view was a civil servant turned traitor, a criminal, a fugitive from justice and a terrorist. Myanmar had been put under constant pressure on the issue of forced labour by the ILO based on false, distorted and exaggerated information provided by him. He concluded by stating that his Government was firmly committed to the eradication of forced labour in the country.

The Worker members stated that once again the situation in Burma/Myanmar had worsened. Forced labour continued to rage with even greater brutality and the Government demonstrated its bad faith, as established by numerous sources, to mention only two, which would not raise any doubt: the report of the Committee of Experts and documents Nos. 6 and 7 prepared by the Office concerning recent developments.

The Committee of Experts had once again examined the follow-up given to the following recommendations of the Commission of Inquiry of 1998: (1) a legislative recommendation to modify the basic laws of 1907 and 1908, so as to bring them into conformity with Convention No. 29 by abolishing any possibility of requisitioning labour; (2) an administrative recommendation to ensure that, in practice, no forced labour could be imposed by the army, nor by other authorities; and (3) a judicial recommendation to apply effective criminal sanctions in cases of forced labour.

The report of the Committee of Experts was implacable: the laws were still not amended or modified in spite of 30 years of promises. The Orders left the laws unchanged and proved to be inefficient. At the very least, they had to be accompanied by concrete measures which would ensure that, in practice, no labour could be imposed. To that effect, the Committee of Experts recommended four types of action: (1) that specific and concrete instructions be issued to the civilian and military authorities. However, if they were in fact issued, they did not provide for or indicate the various forms of prohibited labour; (2) that publicity was given to the Orders. However, although they had been translated into all dialects, apparently they had not been distributed or displayed in ethnic areas, where the prevalence of forced labour appeared to be the highest; (3) the need to budget adequate means to hire free wage labour for public activities which were based on forced labour. In its latest report, the Government provided no information on this subject; and (4) that monitoring machinery be established. The Committee of Experts observed that the Convention 29 Implementation Committee, as well as field observation teams, lacked credibility. The allegations of forced labour were examined by the very same authorities that imposed the forced labour – the administration and the army – and were therefore systematically rejected. The cases brought before the courts were systematically rejected and declared not receivable. For the first time, the complaints were brought before the courts, but none of the six complaints lodged in 2004 had been declared receivable. Even worse, following their contacts with the ILO Liaison Officer a.i., certain victims had been arrested or imprisoned for alleged defamation.

The observation of the Committee of Experts was to a large extent corroborated by the recent information provided by the Liaison Officer a.i. and the ICFTU, as well as by the specifics concerning the places, the factual dates and the names of implicated army officers. Thus, the ICFTU already had numerous incidents of forced labour and recruitment recounted by the victims to be included in its next report: other documents provided by the NGO mentioned other cases of exactions suffered by civilians and ethnic minorities. The political context had deteriorated. The Government had changed faces but not policy. The permanent representative of the Government in Geneva could not continue to carry out his functions and Aung San Suu Kyi was still strictly assigned to her residence where she was virtually held incommunicado.

The total lack of cooperation with the ILO had been demonstrated on several occasions: the vHLT had not been received at the appropriate level and the Liaison Officer a.i. did not dispose of the initially accepted freedom of movement. Certainly, two or three positive facts could be noted: the liberation of U. Shwe Mahn, who nevertheless remained convicted of terrorism and high treason; the fact that the Supreme Court had declared that the contacts with the ILO had not constituted an offence; several proceedings instituted against several guilty persons – civilians – and not military ones, who were mainly responsible for forced labour.

After reviewing the case of Myanmar once again, the conclusion stayed clear; the sentiment was that, unfortunately, forced labour was “far from being a practice on the way to extinction”, that the Government was not at all disposed to eliminate forced labour in the country and that moreover, henceforth, proceedings would be instituted against those complainants who submitted a complaint based on motives found to be groundless.

The Worker members protested against the accusations brought by the Government against the persons who strove for freedom of association and freedom of speech – a familiar method in the history of infamous governments.

The Worker members quoted from the 2004 Conference Committee conclusion that “the Governing Body at its next session should be ready to draw the appropriate conclusions, including reactivation and review of the measures and action taken including those regarding foreign direct investment, called for in the resolution of the International Labour Conference of 2000, unless there was a clear change in the situation in the meantime”.

The Worker members observed that the Governing Body had discussed Burma and Convention No. 29 in November 2004 and March 2005, and, given the absence of any significant change, drew the appropriate conclusions. If anything, the situation had deteriorated both politically and in regard to the Government’s cooperation with the ILO.

The Worker members pointed out that the development of a new Constitution lacked credibility inside the country and within the international community, as the National League for Democracy (NLD) was still barred from participating and its leader remained under house arrest. They understood that there had been no access to her for many months and there were growing concerns about her health.

A number of ethnic areas such as Shan State and Arakan State had experienced new suppression, arrests and turmoil. The International Confederation of Free Trade Unions (ICFTU) had documented an increase in forced labour in these areas. The discussion was not about the degree to which the Government was cooperating with the ILO, but about what the ILO could do on behalf of victims of forced labour. They said that the ineffectiveness of actions over many years had condemned many people to fundamental human rights abuses.

Quoting the Director-General’s document, the worker members pointed out that a broad majority of Governing Body members were of the opinion that the reactivation of the measures to be taken under article 33 of the ILO Constitution in accordance with the 2000 Conference resolution would be fully justified. The vHLT was obliged to abort its mission after only two days having failed to secure meetings at the highest level.

The Governing Body of March 2005 attempted to ascertain what few positive developments had taken place and they accepted that some were not unimportant. However, forced labour was still being exacted with absolute impunity, not a single military official having been prosecuted. In addition, most of the concrete steps outlined in the aide-memoire of the vHLT had not been implemented. The ILO’s patience had almost run out. The March Governing Body agreed to a reactivation of the measures under article 33 and this was acted on by the Director-General in April. The reactivation was carried out in a ‘soft’ manner in the hope of positive developments with regard to the strengthening of the ILO presence among others.

But, even given the belated release of U. Shwe Mahn and his apparent good health, he still remained guilty of high treason for simply providing information on forced labour to the ILO and his association with the Federation of Trade Unions-Burma (FTUB). This could not be allowed to stand. Furthermore, there had been more negative developments over the past few weeks: the strengthening of the ILO presence was being hampered by visa refusal for an additional staff member and of the Liaison Officer a.i. freedom of movement was severely restricted. He now had to submit an itinerary 14 days in advance.

Finally, and most insidious of all, the Liaison Officer a.i. had been informed that “false complaints of forced labour were placing a great drain on government resources and undermining the dignity of the State ... and that legal action would be taken against complainants or their representatives who lodged false complaints”. The ILO had directed the Liaison Officer a.i. to suspend contacts in view of the seriousness of this development.

Referring to the report of the Liaison Officer a.i. it appeared that not a single case of forced labour that he had brought to the attention of the authorities since March 2005 had been found to be valid. Those who had provided the information to the Liaison Officer a.i. were now liable to prosecution under the new policy. They sought assurances that this would not happen.

The Worker members found it ominous that the notion of voluntary labour had crept back into the response of the Implementation Committee to explain away the allegations.

The Worker members were of the opinion that the Government had quite deliberately set out to undermine the ILO presence and neutralize the ability of the Liaison Officer a.i. to receive complaints or even talk to people.

In view of the foregoing, the Worker members presented a number of proposals. The constituents should give particular attention to ensuring that no direct foreign investment, imports or exports, grants, loans or credits should be made to state or military-owned enterprises, including those operated by international private equity funds, would contribute directly or indirectly to the perpetuation or extension of forced or compulsory labour. Several States and organizations had already taken steps along these lines. Secondly, the Worker members proposed that the constituents should report regularly on the above-mentioned issue in time for the November Governing Body to allow the situation to be assessed and a plan of action to be undertaken by the ILO.

The Worker members called on the Conference Committee to request the Director-General to invite all international organizations referred to in the 2000 resolution to reconsider any cooperation with the Government and to assess and report on any forms of material and financial assistance extended to the country which could affect directly or indirectly the practice of forced labour. The request applied to international and regional financial institutions, multilateral development agencies, and international lending agencies.

The Worker members also proposed that the Director-General be invited to renew the ILO’s request to the ECOSOC that it place on the agenda of its July 2006 session, an item concerning Myanmar’s consistent failure to implement the recommendations contained in the report of the ILO Commission of Inquiry.

The Worker members further proposed that the Committee share the view of the vHLT and the Governing Body with regard to the necessity to further strengthen the Liaison Office, insisting on the importance of its field capacity, and that the Liaison Office concentrate on reinforcing policy dialogue with national authorities, including members of the State Peace and Development Council (SPDC) and the military at all levels, taking advantage of the authorities’ commitment to “constructive cooperation with the ILO”, as expressed in the Minister of Labour’s letter of 21 May 2005.

Finally, the Worker members proposed that ILO monitoring activities on forced labour be further developed, especially with respect to ethnic areas. The Worker members called on the Government to guarantee the complete freedom of movement of the Liaison Officer a.i. and issue visas without further delay for additional staff. They demanded that the Government completely exonerate those convicted of high treason because of their contact with the ILO and the FTUB, as well as an end to the new policy of prosecuting those considered to be providing false information regarding forced labour to the ILO.

The ILO’s credibility was at stake and it must continue to compel the Government to live up to its obligations under Convention No. 29, as well as to demonstrate to all those affected by forced labour that the international community, led by the ILO, actively supported their expectations for a better life.

The Employer members shared the concerns of the Worker members in relation to this long-standing and troublesome case. They observed that the Conference Committee’s mandate to examine the measures taken to implement the Commission of Inquiry’s recommendations and to apply Convention No. 29 by Myanmar was straight forward. As a fundamental matter, there was a gross failure by the Government of Myanmar to meet the international obligations that it had voluntarily undertaken 50 years ago to eliminate forced labour.

The Employer members considered that the fact that the Government’s failure to implement Convention No. 29 was so obvious, rendered incomprehensible its failure to remedy the situation. The legal authority for the exaction of forced labour continued to be in place, as the Village Act and the Towns Act continued to confer broad authority on local authorities to requisition labour in violation of Convention No. 29. Noting that the Government representative had spoken of constraints in this respect, the Employer members observed that the only constraint they could identify was a lack of political will. Besides failing to revoke the Village and Towns Acts, no other concrete action had been taken to immediately bring to an end the exaction of forced labour in practice, in particular by the military, as called for by the Commission of Inquiry and the Committee of Experts. In paragraph 6 of its observation, which highlighted the heart of the matter, the Committee of Experts had identified four areas in which action should be taken by the Government to achieve this outcome, namely issuing specific and concrete instructions to civilian and military authorities to end the

practice of forced labour, ensuring that the prohibition of forced labour be given wide publicity, providing budgeting of adequate means for the replacement of forced labour and ensuring the enforcement of the prohibition of forced labour. As the Government had never said that it could not put a stop to forced labour, it was obvious to the Employer members that it simply lacked the will to do so.

The Employer members observed that in contrast to previous years, when the Government used to take some small steps just before the Conference, the situation this year involved a regression in the Government's attitude and backsliding from the previous state. Following a discussion at the November 2004 Governing Body, a vHLT had arrived in Yangon only to find out that it would be unable to meet with the highest authorities in Myanmar even though the Government had been aware of the vHLT's terms of reference. Moreover, the Conference Committee had now been informed that the ILO Liaison a.i. Officer had limited freedom of movement. The fact that the Governing Body had decided to transmit the 2000 resolution adopted by the Conference under article 33 of the ILO Constitution, to the ILO member States and international organizations for appropriate action, indicated that it had lost its "wait-and-see" attitude and was losing patience.

The Employer members considered that the begrudging attitude of the Government to the release of prisoners and its minimalist proposal for a "new approach" hardly inspired any confidence. In their view, the bottom line was not the "process" but the achievement of substantive outcomes in the elimination of forced labour. It was now time for concrete action. Anything else was a travesty of international justice and the rights of forced labourers in Myanmar. The Employer members concluded by inviting the Myanmar Government to do the right thing by effectively eliminating forced labour.

The Government member of Luxembourg, speaking on behalf of the Member States of the European Union, as well as Bulgaria and Romania as countries in the accession process; Turkey and Croatia as candidate countries; Albania, the former Yugoslav Republic of Macedonia, Bosnia and Herzegovina and Serbia and Montenegro as countries of the Stabilisation and Association Agreement and potential candidate countries; Norway as a member of the European Free Trade Association (EFTA) and of the European Economic Area; and Switzerland and Liechtenstein as members of EFTA, observed that no convincing steps had been taken by the authorities in Burma/Myanmar as a follow-up to the aide-mémoire of the vHLT who had visited the country in February 2005 as well as the letter of the Director-General of the ILO. This ran against the request made by the March 2005 session of the Governing Body for the Burma/Myanmar authorities to take urgent and well-defined steps to eradicate forced labour, and the European Union's request for these steps to be implemented "well before the June 2005 International Labour Conference". The European Union shared the Committee of Experts' grave concern at the lack of implementation by the authorities in Burma/Myanmar of the 1998 recommendations of the Commission of Inquiry suggesting that legislation be brought into line with Convention No. 29, that the local authorities, especially the military, no longer impose forced or compulsory labour, and that those imposing forced labour be brought to justice. Although these recommendations were made seven years ago and were still valid, no significant and sustained action had been taken for their implementation.

Although the European Union continued to believe in the value of the Joint Plan of Action, designed to eradicate forced labour, they shared the concerns of the vHLT with regard to its future as recent actions by the Burma/Myanmar authorities had called into question their commitment to this Plan of Action. The authorities' persistent policy of unnecessary delay indicated a lack of will which was further reflected in the fact that the authorities had still not created an environment in which victims of forced labour could be assured that they would not suffer retaliation for their cooperation with the ILO. In this respect, the European Union called for assurances from the Burma/Myanmar authorities at the highest level that no action would be taken against any person who lodged a complaint on forced labour.

The European Union and the other delegations noted that in spite of the Burma/Myanmar authorities' repeated assurances of good intentions, in practice forced labour continued to be exacted on a very broad scale in many parts of the country, in particular by the military, and sometimes in circumstances of severe cruelty and brutality as had been noted by the Committee of Experts. While changes could not occur overnight, the ILO had been considering this issue for nine years, the Commission of Inquiry had provided a set of recommendations, High and very High-Level Teams had visited the country, and an aide-mémoire containing concrete steps to facilitate the effective eradication of forced labour had been presented to the authorities, and even a Joint Plan of Action had been elaborated. A period of nine years seemed to be more than adequate for the Burma/Myanmar authorities to have brought their practices into line with the ILO recommendations. De-

spite this, the measures taken had been insignificant to address effectively the continuous practice of forced labour in the country.

Although the European Union and the other delegations welcomed the release of U. Shwe Mahn, they also considered that neither he nor the other two persons should have been charged in the first place, simply for having contacts with the ILO, and that the charges against all three persons involved should be lifted altogether. Moreover, although they welcomed the fact that the Liaison Officer a.i. had been able to meet with the Foreign Minister and had been promised "interaction" with the military focal point, they considered that convincing evidence of a substantive change in political will, approach and corresponding action by the authorities was still lacking. They continued to believe that the ILO should have access to the authorities at the highest level on a regular basis.

The European Union had therefore come to the following conclusions. First, the European Union asked for measures under article 33 of the ILO Constitution to be revisited with a view to their reinforcement, considering that a wait-and-see approach was no longer acceptable when forced labour was continuing, and in some cases leading even to the death of those involved. Second, the European Union demanded that the authorities in Burma/Myanmar take immediate and concrete steps to eradicate forced labour, as outlined in the report of the Commission of Inquiry in 1998 and in the aide-mémoire of the vHLT in February 2005, and further asked for an explicit reference in the proposed draft Constitution banning the practice of forced labour, in line with Myanmar's commitments to the ILO. Third, the European Union strongly supported maintaining and reinforcing the ILO's presence in Burma/Myanmar to achieve this goal. The implementation of a facilitator mechanism, as outlined in the Joint Plan of Action would be a step in the right direction.

The Government member of the United States pointed out that once again, the reports before the Conference Committee presented a mixed picture of developments concerning the Government of Myanmar's observance of Convention No. 29. The Government representative indicated that in February 2005, the authorities had informed the ILO Liaison Officer a.i. that a township court had convicted and sentenced four local officials under section 374 of the Penal Code in three separate trials. Though the Government of the United States could not confirm that the officials were serving their sentences, this was the first time that a complaint had been lodged under this section of the Penal Code. She recalled that one of the Commission of Inquiry's recommendations was that penalties under this section be strictly enforced. Three trials in one court did not constitute strict enforcement in a country where forced labour was as widespread as it was in Myanmar, but she indicated that the Government of the United States did not discount this development. And, although U. Shwe Mahn should never have been imprisoned, his release in April and the meeting of the Liaison Officer a.i. with the army focal point for forced labour in May were steps in the right direction.

But these steps were overshadowed by the many other indications that the Government's stated commitment to eliminate forced labour was mere rhetoric. The vHLT had not been received at the appropriate level in Rangoon and had to cut short its visit. The Government had not approved the ILO's request to send another official to Myanmar to assist the Liaison Officer a.i. The Convention 29 Implementation Committee's response to the numerous complaints of forced labour submitted to it by the Liaison Officer a.i. had been inadequate, and in April, the Government had informed the Liaison Officer a.i. that legal action would be taken against so-called "false complaints", a development that struck at the heart of the Plan of Action to which the Government had once said it was committed. None of the three recommendations of the Commission of Inquiry had been carried out. Moreover, all the available evidence indicated that the use of forced labour, particularly by the army, continued unabated and was sometimes accompanied by acts of extreme violence.

Finally, the Government representative stated that under these circumstances, the Minister of Labour's offer to the Director-General to consider a new approach for the elimination of forced labour appeared to be little more than a delaying tactic. She considered that the authorities had had an opportunity to discuss a new approach when the vHLT visited Rangoon in February, but had declined to do so. The Government needed to demonstrate by its deeds that its commitment to the Plan of Action was genuine and that it was prepared to create the conditions under which the Plan could be implemented. It should comply fully with the suggestions made by the vHLT in its aide-mémoire. The time was long past when the ILO could be satisfied with discussions of a new approach for the elimination of forced labour in the absence of evidence that the Government was prepared to carry them out. The Government representative therefore repeated her strong plea to demand action instead of promises for the sake of Myanmar's workers and workers everywhere.

The Worker member of Singapore expressed regret at the fact that the issue of forced labour in Myanmar had been under discussion for 11 years without much progress, which demonstrated the Government's contempt for the ILO supervisory mechanism. The feeble explanations given each time in order to obfuscate and divert attention from the real issues had generated growing frustration. The Conference Committee should no longer maintain a "wait-and-see" attitude while Burmese people were being forced into bondage and tortured if they refused to do so and while children were being forced into the army. The Conference Committee should not forget that each of the complaints of forced labour received by the Liaison Officer a.i. and the thousands of documented complaints by the ICFTU, FTUB and other human rights organizations represented human lives which had been subjected to the cruelest form of deprivation, i.e., of one's freedom to decide whether or not to work.

The speaker emphasized that, according to the Liaison Officer a.i., the worst forms of this cruel treatment had taken place against the ethnic minorities primarily in the remote border areas where there was heavy military presence. The Asia Forum for Human Rights and Development (Forum-Asia) had reported the continued persistence of forced labour, extortions and exactions concerning the Rohingya Muslims in the Northern Rakhine State. They were forced to do sentry duty and erect gates and bamboo fences around the hamlets of Maungdaw purportedly to protect the villagers, but they had to provide their own construction materials, such as bamboo and wooden poles and were also required to maintain the gate and fences. Two hundred fifty Rohingya Muslim villagers in Maungdaw were forced to build a model village with houses for those resettled from other parts of Burma. In the words of one Rohingya villager from the Gaw Yah Khar Li Village Tract in Maungdaw Township, "we are living like slaves inside our own country. We have no rights there. They can confiscate our land any time. They can use us as labour whenever they want". The speaker deplored this situation and emphasized that the Burmese Government should be made to stop this.

The speaker further noted with grave concern the intimidation and harassment conducted against those who complained of forced labour including through the applicable legal processes, noting that the ability to complain without fear of persecution was absolutely essential to preserve the integrity of the system. Three forced labour complaints had been rejected by the courts purportedly because of lack of evidence. The speaker found it appalling that two of the three dismissed complainants had been prosecuted for defamation and imprisoned for six months. She further took note of the grave concerns raised by the Liaison Officer a.i. in his report with regard to his meeting with the Director-General of the Department of Labour on 26 April 2005 during which the latter had again stressed that legal action would be taken against those who lodged false complaints. Furthermore, on 9 March 2004, three persons had been convicted of high treason including on the basis of contacts with the ILO Liaison Officer a.i. Although the Court had decided that such contacts were legal, it nevertheless seemed to imply that the ILO was some kind of an illegal or clandestine body for which a special ruling was necessary. This undermined the very basis for having a Liaison Office. In addition to this, there had not been a single conviction under section 374 of the Penal Code, despite numerous complaints of forced labour. Moreover, specific complaints brought to the attention of the Convention 29 Implementation Committee had been systematically denied. Finally, the Liaison Officer a.i. had indicated in his report that two individuals had been arrested after returning to their village following a visit to him in Yangon to lodge a complaint. This demonstrated the systematic failure to investigate forced labour cases and raised serious doubts about the credibility of the system. The speaker concluded by urging the Government to stop the persecution of minorities through the use of forced labour, the forced recruitment of child soldiers and the harassment against those filing complaints of forced labour. She called for a strengthening of the ILO's presence in Myanmar and supported the suggestion of the Liaison Officer a.i. to second an ILO official to Yangon.

The Government member of Australia expressed strong support for the role played by both the vHLT and the ILO Liaison Officer a.i. in Yangon, in assisting the Myanmar authorities to observe Convention No. 29, and further supported the Office's expansion to provide greater technical cooperation, calling upon the Myanmar Government to take the simple step of granting a visa allowing an additional ILO staff member to join the Liaison Office. Noting that the elimination of forced labour practices throughout the country should be given high priority based on the firm commitment of the Government, the speaker deeply regretted the circumstances which prevented the vHLT from successfully completing its mandate and again called upon Myanmar to cooperate fully with the ILO so as to demonstrate its commitment to eliminating forced labour. Critical to this would be urgent action on all the four points set out in the vHLT's aide-mémoire of 23 February 2005. The speaker further commended the decision to release U. Shwe

Mahn but also expressed disappointment at the fact that he continued to be impugned. Noting the Government's willingness to consider a new approach to the elimination of forced labour, he urged it to move quickly to engage the ILO at a senior level to ensure that this commitment was translated into concrete action. He noted that despite commitments made, the Conference Committee still awaited real results and should therefore recommend to the Governing Body to closely consider progress in the Government's new approach at its meeting in November 2005.

He further noted the establishment of a focal point on forced labour in the military to address the serious problems of requisition of labour by the Tatmadaw, and urged the Myanmar Government to ensure its full and effective cooperation. A critical first step in this respect would be to establish clear protocols for cooperation with the Liaison Officer a.i. and this could only be achieved through regular and open contacts. He further called on the Government of Myanmar to take genuine steps to ensure that Myanmar citizens could cooperate with the ILO with full confidence that they would not face retribution for doing so. The principle of unfettered access to the Liaison Officer a.i. and any facilitator was central to cooperation between the ILO and Myanmar and was a key requirement for the future implementation of the Plan of Action.

The Government representative concluded by emphasizing his country's deep concern over the situation in Myanmar. The Government had failed to address the troubling issues raised in the ILO and other international fora regarding forced labour and had failed to meet its international obligations in this respect. His country remained particularly concerned about the lack of concrete progress made toward political reform and national reconciliation in Myanmar, and the continued detention of political prisoners including Aung San Suu Kyi.

The Worker member of Italy pointed out that the military Government representative failed to address fundamental problems such as a highly centralized decision making structure, severe restrictions on private commercial activity, disproportionate military spending (49.9 per cent of public expenditure) to create the largest army in Southeast Asia. The country ranked 142 in the corruption ranking of 145 countries. Myanmar was the leading producer of methamphetamine and second producer of opium. The garment and textile industry was the conduit for money-laundering and clandestine export of narcotics. Business could not be carried out without the involvement of the junta under a 1989 law. The monopoly of economic production was in the hands of the Union of Myanmar Economic Holdings and its branch, Myanmar Economic Corporation. European Union foreign direct investment represented 30.37 per cent of total FDI, mostly in the oil and gas sector, the major funding instrument of the military regime. The EU's share of garment imports from Myanmar was about 66 per cent. Five ASEAN countries had invested some US\$3.9 billion as of March 2004, representing 51.08 per cent of total FDI.

The speaker said that 15 years of constructive engagement and threats of political sanctions had failed to bring about even a single democratic reform aimed at ending forced labour. The fact that discussion on violations of Convention No. 29 were still ongoing demonstrated the Government's uncompromising attitude. Only coordinated international action could bring effective change. It was time for ILO constituents, international financial institutions, including the ADB, the Greater Mekong Subregion and the related Trade and Investment Flagship Programme to take effective measures. But international organizations and NGOs which had any dealings with the junta should also reconsider their cooperation. Governments, employers and workers should review their relations with Myanmar and take suitable steps, including recourse to the International Court of Justice, to fight against the continuation or extension of forced labour. The speaker appealed to them to ensure that no foreign direct or indirect investment, imports or exports, grants, loans or credits that could lead to the continuation or extension of forced labour be made to the regime. She also appealed to governments and the European Union to implement Article XX of the GATT, which referred to measures relating to the protection of human health and products of prison labour. Finally, she appealed to governments and enterprises to contribute to the changes necessary to bring democratic development and a stable economy.

The Government member of Canada expressed his country's grave concern at the lack of improvement in Burma's situation which remained extremely serious. He thanked the vHLT, the ILO Liaison Officer a.i. and the Office for their efforts in trying to engage the Burmese authorities and regretted the lack of cooperation by the authorities who prevented the vHLT from successfully completing its mission. The speaker welcomed the release of U. Shwe Mahn and noted that the Labour Minister's letter of 21 May 2005 to the ILO Director-General had indicated that Burma was ready to consider a new approach for the elimination of forced labour. Nevertheless, the absence of any significant improvement, and in particular the authorities' failure to imple-

ment the measures recommended by the Commission of Inquiry and the aide-mémoire of the vHLT, was deeply disappointing. His country had watched with growing unease the unfavourable developments that had been unfolding in Burma and had made clear on many occasions that Aung San Suu Kyi and other leaders of the democratic movement should be liberated immediately and unconditionally while noting that the current National Convention process lacked any credibility. His country remained concerned about human rights violations, which were being perpetrated throughout the country, particularly in situations of conflict, including in addition to forced labour, extra-judicial executions, torture, rape, internal displacement and destruction of villages and livelihoods.

He concluded by calling on the Burmese authorities: (1) to take immediate and effective measures to eliminate forced labour as outlined in the report of the Commission of Inquiry of 1998 and in the aide-mémoire of the vHLT of February 2005; (2) to facilitate the addition of an ILO staff member to the Liaison Office; (3) to reinstate the freedom of movement necessary for the Liaison Officer a.i. to effectively fulfil his mandate; (4) to permit the establishment of a facilitator mechanism and ensure that no action be taken against any person who made a complaint concerning forced labour; (5) to undertake a dialogue with the ILO at the highest level to develop a new approach for the elimination of forced labour. The speaker finally indicated that in the absence of concrete results in the eradication of forced labour, his country supported strengthening the implementation of the measures enumerated in the 2000 resolution of the Conference.

The Worker member of the Netherland drew the Committee's attention to the role of the OECD Guidelines for Multinational Enterprises in the context of the implementation of the 2000 resolution of the Conference and the reporting thereon. The 2004 decision of the OECD Investment Committee to limit the scope of application of the Guidelines to FDI and FDI-related trade had considerably restricted the use of the Guidelines for this purpose. This was a fact even in countries such as the Netherlands where the Government had previously suggested that trade unions should address all economic relations of enterprises under the OECD Guidelines. As the ILO was stepping up its efforts to ensure implementation of the 2000 resolution, it was important also to review the role of these Guidelines. The speaker recalled that the National Contact Points set up by OECD member States had the task of promoting better awareness of the OECD Guidelines. In the context of Burma, this could mean giving more publicity to the reviewed economic relations of a given government with Burma. The Contact Points should also draw attention to the fact that, under the Guidelines, enterprises should make a contribution to the elimination of forced labour and should respect established government policies, for instance, as in the case of the Netherlands, a policy of discouragement of economic relations. The National Contact Points should seek the support of employers' organizations for such an awareness-raising campaign, while the trade unions should play a role in such an effort at the enterprise, national and international levels, including through the European Works Councils. The Trade Union Advisory Committee of the OECD had held two workshops in 2005 to draw the attention of European Works Councils to the OECD Guidelines. In cases of FDI and FDI-related trade, where enterprises refused to take the action demanded by the 2000 Conference Resolution and the OECD Guidelines, trade unions would continue to bring complaints to the National Contact Points. In the past, several such complaints had led to changes in the behaviour of companies. Where cases were outside the scope of the OECD Guidelines, the Government should open an alternative way for addressing them. In the Netherlands, efforts were being made to address the continued timber import from Burma by Dutch enterprises. Following appeals by the Netherlands Burma Center, some firms had agreed to stop their imports, while four enterprises had not, i.e. Worldwood, Bruijnzeel, Boogaardt, and Van der Stadt.

The Government member of Indonesia, speaking on behalf of the Government members of the Association of South-East Asian Nations (ASEAN) countries, expressed appreciation to the ILO for its continuing support and cooperation with the Government of Myanmar in its effort to eliminate the practice of forced labour in the country. The ASEAN countries acknowledged the importance of the ILO presence in Myanmar and the role played by the Liaison Officer a.i. in assisting the Myanmar authorities in the observance of Convention No. 29. The commitment of the Government of Myanmar to observe the Convention and to eliminate the practice of forced labour in the country was welcomed. The positive developments as contained in the letter dated 21 May 2005 from the Minister of Labour of Myanmar to the Director-General were noted with interest, in particular the Government's readiness to consider a new approach in addressing the issue, the freedom of movement extended to the Liaison Officer a.i., the release of U. Shwe Mahn, in response to the aide-mémoire presented by the vHLT and the conclusions adopted by the Governing Body in March 2005, as well as the recent meeting of the Liaison Officer a.i. with the Min-

istry of Labour and the Army focal point, in compliance with ILO's request. It was important to continue the process of dialogue and co-operation rather than to adopt alternative measures. In this regard, the Government of Myanmar had expressed its willingness to continue to cooperate with the ILO. The ASEAN countries therefore called on the Myanmar Government and the ILO to continue their dialogue, while the Conference Committee should continue to play a constructive role in this matter.

The Government member of New Zealand recalled that her country had repeatedly called for immediate action by the Government of Myanmar to cease the deplorable practice of forced labour, to empower the victims of forced labour, and to set in place clear and tangible measures to punish perpetrators. However, she observed with deep concern and frustration that once more there had been little tangible improvement. She deeply regretted that the patience of the international community continued to be tried, that the small concessions made by the Government had not gone far enough, and most significantly, that these direct violations of the human rights of Myanmar's people continued to go unaddressed by their Government.

Concerning cooperation with the ILO, particularly through the resident presence in Yangon, which was an essential element of the Government of Myanmar's response to this serious situation, she remained concerned that the Liaison Officer a.i. had not regained the full range of freedom of movement granted to him previously and did not understand why it had not been possible for the Government to remove administrative barriers to the strengthening of the Liaison office. She looked forward to a credible explanation and corrective action in this regard. The international community required concrete evidence of the commitment of the Government of Myanmar to end forced labour. She took note of the meeting of the Liaison Officer a.i. with the military focal point and looked forward to more such meetings so that identifiable progress could be achieved. She also noted with interest the release of U. Shwe Mahn and trusted he would not suffer further harassment for carrying out his legitimate peaceful political activities.

The Government representative expressed concern, however, at the report of intimidation of those coming forward to the Liaison Officer a.i. with complaints of forced labour. She wished to express her country's support for the Plan of Action and noted that its implementation would depend on the establishment of the necessary political environment whereby complaints could be received by the Facilitator without fear of retribution. The fact that such conditions did not yet exist, and that the ILO Office had as a consequence been placed in an extremely difficult situation as outlined in the Report of the Director-General, should be of deep concern to the Conference Committee. She also noted that her country looked forward with interest to learning details of the "new approach" mentioned by the Government in their letter to the Director-General of 21 May 2005 and urged that this approach be based on the policy of zero tolerance to the use of forced labour and an immediate end to the culture of impunity.

She concluded by observing that although the ILO, through special sittings of the Conference Committee and discussions at the Governing Body, had registered time and again its deep concerns at the situation in Myanmar, the Government of Myanmar did not seem to have registered fully the seriousness of these concerns or share them. The time for concrete and credible action was well and truly overdue.

The Worker member of Japan stated that despite the promises of the Government, forced labour was being widely practised in Myanmar, as pointed out by the Committee of Experts. Political and financial support given by some countries to the Government of Burma through the Asian Development Bank (ADB) projects was one reason for the survival of the military regime and forced labour in Burma. Foreign investment in Burma had increased since the 2000 Conference resolution on Myanmar, with one-third of it being concentrated in the oil and gas sector. The ADB was involved in supporting the military regime through its Program of Economic Cooperation in the Greater Mekong Subregion (GMS Program) launched in 1992. In November 2001, the 10th Greater Mekong Sub-Region Ministerial Conference adopted a strategic framework for an integrated and prosperous Mekong subregion, identifying flagship programmes in areas such as transport and economic corridors, telecommunications and energy interchanges, and cross-border trade and investment. These programmes played an important role in encouraging ASEAN countries and multinational companies to invest in the energy sector in Burma. ADB had provided US\$887 million in these projects, which included the Mawlamyine deep-sea port project and the Mawlamyine road section project in Burma. It was very regrettable that such financial and political support assisted the military regime to survive and thus forced labour continued to exist. Not only all ILO Members but also the ADB was responsible to eradicate forced labour in Burma. The speaker urged governments and employers to cease giving any advantages to the military regime of Burma.

The Government member of India noted that since the March 2005 session of the Governing Body the Liaison Officer a.i. had been able to visit certain parts of Mon State and southern Kayin State and had met with the Minister for Labour. He further took note of the assurances of continuing cooperation with the ILO provided by the Government of Myanmar and the new approach for the elimination of forced labour mentioned by the Minister of Labour in his letter dated 21 May 2005 to the ILO Director-General. The speaker noted that his country viewed these new developments positively and considered that the Government of Myanmar needed to be encouraged in its efforts to eliminate forced labour. He expressed the hope that the discussion before the Conference Committee would be constructive in helping the Government of Myanmar to move in the direction of further cooperation with the ILO.

The Worker member of the Republic of Korea raised the issue of the Shwe Natural Gas Project in Arakan State, in which Daewoo International and the Korea Gas Corporation were involved. Great concern had been expressed about these projects and their possible serious effect on local people, both in Arakan and Chin States, particularly with the increase in deployment of the armed forces under the pretext of guarding the pipeline. Forced relocation, forced labour, summary executions, torture and other human rights violations were claimed to have taken place, in relation to Unlocal and Total corporations. These claims seemed to be well founded, according to Nyi Nyi Lwin, who participated in the workshop on "What are the problems in the Shwe Natural Gas Project?", held in Seoul. Local fishermen entering the Shwe field were deprived of their ships and tortured. In addition, local inhabitants were drafted forcibly to cut down forests to build the Daewoo International Project Office. He requested the Government to ensure that measures would be taken to prevent the cases of Total and Unlocal being repeated. He called for the postponement of the extraction of the Shwe natural gas field until the time when the people of Western Burma could participate directly in decisions about the use of their resources and related infrastructure development without fearing persecution, including forced labour. He also called on the Government to provide more detailed information on the Shwe Natural Gas Project and to monitor it more closely. Finally, he also urged the Government of the Republic of Korea to suspend the Project and provide information to the Committee, taking all necessary measures in line with the Conference resolution of 2000 on the Shwe Natural Gas Project calling on constituents, the UN and other multilateral agencies to review relations with Myanmar and cease any relations that might aid the military junta to abet forced labour.

The Government member of Belarus declared that his country followed with attention developments in the situation of Myanmar, as appeared in the documents presented by the ILO and the information provided by the Government representative of Myanmar. Belarus took note of the progress which had taken place in the short period of time since the Governing Body's session of March 2005. He took note of positive dynamic, which demonstrated that a constructive dialogue with the authorities was taking place. Numerous facts attested to it: the extension of the dialogue between the ILO representative and the authorities and the confirmation of his freedom of movement in the country; the liberation of U. Shwe Mahn; the follow-up given to 56 complaints concerning forced labour, out of 58 in total; and the continuing progress in various directions provided for in the Plan of Action. The Government of Myanmar demonstrated by its deeds its engagement to fight sincerely the problem of forced labour in the country, the phenomenon which, according to the document "Alliance against forced labour in the world", today concerned more than 12 million individuals in all corners of the world. The speaker pointed out that progress in this domain would only be possible through constructive dialogue and cooperation with the ILO. The eradication of forced labour needed time and history had taught that when complex problems, especially social ones, were solved by force, the innocent population was the first to suffer and, in the end, the objectives were not reached.

The Worker member of Pakistan recalled that the issue of forced labour in Myanmar had been under discussion in the ILO since 1964 and that there was now urgency in making progress in eliminating this practice in the country. Forced labour was a violation of fundamental human rights and dignity, as emphasized by the 2005 Global Report under the Declaration of Fundamental Principles and Rights at Work. The Government of Myanmar had not yet amended the provisions of the Towns Act and the Village Act, which allowed for the exaction of forced labour, as requested by the Commission of Inquiry. The Government's argument that amendments could not be made due to the absence of a legislative body was devoid of truth, as it in fact recently had made legislative changes in other areas. He also urged the Government to implement all other recommendations of the Commission of Inquiry and the vHLT.

The Government member of the Russian Federation stated that the Russian Federation, like other participants in this discussion, was unconditionally devoted to the goal of eradicating forced labour in Myanmar. Energetic efforts undertaken by the Office to that end deserved to be commended. In fact, there had been recently some positive developments, such as the release of the third person originally convicted of high treason. Many members of the Committee had not considered these developments sufficient. The most effective way to achieve progress in this case was to continue dialogue with the Myanmar authorities, to preserve and develop the existing mechanisms of cooperation between the ILO and the Government of this country.

An observer representing the World Organization Against Torture stated that her organization was alarmed by the continued use of forced labour against hundreds of thousands of people in Myanmar, often associated with torture and other types of physical and psychological abuse. The Committee of Experts had been stressing its concern about the use of forced labour in Myanmar and the existence of legislation in contradiction with Convention No. 29 since 1964. However, no substantive measures had been taken by the Government to ban forced labour. As was noted by the ILO Director-General in his 2005 Global Report, still today there existed no political will in Myanmar to take strong measures against military and local authorities that benefited economically from forced labour.

The speaker emphasized that forced labour was always cruel, inhuman and degrading and as such it could be considered as an act of torture. In Myanmar, it was often accompanied by other forms of torture, including enforced displacement, rape, as well as food and health care deprivation or other ill-treatment resulting in death. Where resistance to forced labour was raised, further ill-treatment, detentions and extra-judicial executions followed. Furthermore, forced labour frequently entailed sexual exploitation, child labour, human minesweeping, the extortion and forced eviction of civilians, and extremely harsh labour conditions. Recent reports from the field spoke of government officers who had forced civilians to risk their lives by performing sentry duties, and a military commander who had beaten a civilian to death in Shan State for refusing to provide his vehicle for forced labour. Forum-Asia had provided evidence of renewed use of forced labour in the Northern Arakan State in construction work, harvesting, portering and other duties for the military. The enforced enrolment of children in the army, with the threat of imprisonment, was also a common practice throughout the country. She recalled that torture in Myanmar was by no means restricted to its direct association with forced labour and was often exerted upon pro-democracy activists, monks, or women in the form of sexual abuse.

She concluded by urging that all necessary measures be taken in order to ensure the compliance by Myanmar with the absolute interdiction of forced labour and other human rights abuses associated with it, and that concrete and energetic measures would be taken by the International Labour Conference to ensure the full implementation of Convention No. 29 and of the provisions of the June 2000 resolution.

The Government member of Japan said that it was clear from the discussion so far that many members were far from satisfied with the situation of forced labour in Myanmar. The question that therefore faced this Committee was whether to pursue punitive options or to further impress upon the Government of Myanmar the need to engage in dialogue and cooperation with the ILO. After long and agonizing consideration, his delegation had decided that the best way forward was to further encourage the Myanmar authorities to engage in dialogue with the international community. A number of positive steps had been noticed in this case, including the release of U. Shwe Mahn, who, in his view, could not be guilty of treason for having had contacts with the ILO, and the establishment of a focal point in the military for dealings with the ILO. Undoubtedly these positive steps needed to be further elaborated.

All positive steps that had been taken in Myanmar were due to the pursuance of dialogue between the international community and Myanmar. This should not be underestimated or undermined. The ILO was, and would be, an important contact in the country. As an outcome, it was important to ensure an improvement in the situation in the country, not just a demonstration of political will.

At the same time, excuses could not be made for the Myanmar Government. It was regrettable that improvement only occurred under pressure from the international community. His Government was not advocating a continuation of a "wait-and-see" attitude. To the contrary, he urged the Myanmar Government to take the concrete steps of facilitating contacts between the focal point in the armed forces on Convention No. 29 and the ILO at the appropriate high level, and ensuring full freedom of movement for the Liaison Officer a.i. He also called for Members to use every multilateral and bilateral meeting at which Myanmar was present to remind the Government of its obli-

gations. The situation should be further examined at the subsequent Governing Body session.

The Worker member of Germany recalled that the Governing Body had for years been dealing with the case of forced labour in Myanmar – an endless tragedy in which hundreds of thousands of people were subject to compulsory labour in road building and other infrastructure projects and services for the military, abduction of children by military forces, and, most recently, prosecution for having had contacts with the ILO. For years the Government of Myanmar had issued assurances that it was eliminating forced labour and cooperating with the ILO. Yet, she wondered why, if this were the case, instances of forced labour continued to be reported, no action had been documented by the Government in response to such complaints, no legal action had been taken against authorities that had used forced labour, the Liaison Officer a.i. was denied freedom of movement in the country, the vHLT had not been able to complete its mission, and the ILO had been disparaged at a press conference held by the authorities in Yangon. Patience was at an end in this case, and the credibility of the ILO and its Members was at stake. The ILO had already outlined a possible framework of action in its resolution of the International Labour Conference in 2000, and it was time to take such measures in collaboration with other international organizations.

The Government member of Cuba said that the question of the application of Convention No. 29 by the Government of Myanmar had been closely followed by her delegation since the adoption of the Conference resolution in 2000. Since that date, some joint action had been taken by the ILO and the Government of Myanmar – action which, according to the report, had yielded positive results. The presence of the ILO Liaison Officer a.i., who had been granted the same status as diplomats and United Nations personnel, had been an important factor in furthering dialogue and cooperation.

The speaker took note of the recent meeting between the Minister for Labour and the ILO Liaison Officer a.i., as well as the meeting held between the ILO Liaison Officer a.i. and the army focal point, both of which provided a good example of the Government's willingness to enter into dialogue and cooperation. She indicated that she considered in a positive light the letter dated 21 May 2005 from the Minister for Labour to the ILO Director-General. In considering the possibility of continued constructive dialogue and cooperation with the Government of Myanmar, her Government felt that coercive measures relating to trade and international investment were not suitable mechanisms for achieving progress in any country and, on the contrary, such measures created even greater difficulties for the people one wanted to protect.

Finally, the speaker encouraged the Government of Myanmar and the ILO to find, within the framework of a mutual commitment to constructive cooperation, solutions to the complex problems under discussion.

The Government member of the Republic of Korea said that his delegation had carefully considered the recent developments reported by the representative of the Government of Myanmar. His delegation had perceived the establishment of a focal point in the armed forces, the subsequent meetings between the focal point and the ILO Liaison Officer a.i., and the release of U. Shwe Mahn as positive developments. The ILO needed to maintain a solid presence and active engagement in Myanmar. At the same time, he associated himself with the concerns expressed by other delegations regarding the current situation in Myanmar and requested that the country demonstrate its political will to eliminate forced labour, with immediate and concrete actions. He urged the Myanmar Government to make clear at the highest level its intention to eliminate forced labour.

The Government member of China stated that the instances of progress which had been cited by the Government representative of Myanmar fully demonstrated its commitment to eradicating forced labour. These positive steps had been the result of cooperation and dialogue between the ILO and Myanmar. This dialogue and cooperation should be encouraged and confrontation should be avoided. Her delegation agreed with the statement made by the Government member of Indonesia who had spoken on behalf of ASEAN. She hoped the ILO and the Government of Myanmar would strengthen their cooperation.

A representative of the International Confederation of Free Trade Unions (ICFTU), speaking with the authorization of the Officers of the Committee observed that, since the last special sitting at the 2004 Conference, the political and social situation of the Burmese people had worsened. After the internal coup which had destituted General Kyn Nyunt and most of the military intelligence, the repressive situation all over the country had worsened dramatically, particularly in ethnic areas and along the borders, where there was an increase of violence from the army. The Nobel Peace Prize winner Aung San Suu Kyi remained under house arrest and totally incommunicado; U. Shwe Mahn, though finally released at the request of the

ILO, was still accused of high treason by the Minister of Labour in his recent letter to the Director-General of the ILO.

During the last few months, there had been evidence of hundreds of cases of forced labour, not only in the border areas, where the army used forced labourers as porters and minesweepers, but throughout the country. He pointed to one case where the chairperson of the State Peace and Development Council (SPDC) of Myawaddi township in Karen State gave instructions obliging six villages and more than 2,000 people to implement the summer rice cultivation. Forced labour was also used in the construction of the India-Burma border trade road in Chin State. The army also used the labour of prisoners for road construction.

Moreover, during the last Governing Body session in March, the junta had organized a press conference in Yangon where the ILO was accused of exerting one-sided pressure on Myanmar by siding with expatriate destructionists, and during which the exaction of forced labour in Myanmar was presented as a cultural tradition of this country.

The speaker was very concerned by the number of persons who had come to the Liaison Officer a.i. to report on cases of forced labour that had been subsequently arrested and detained, and the fact that the vast majority of cases raised by the Liaison Officer a.i. had been declared false. The Committee should therefore take immediate steps to develop a mechanism enabling the victims of forced labour to seek and obtain redress, with full guarantees of security against reprisals, thus contributing to the fight against impunity. The speaker also urged both the Governments and the Employers to follow up the decisions of last November's Governing Body session, as regards the foreign direct investments in all their forms, in order to stop immediately any private investment and any other economic dealings with the regime, which might contribute to its stability and perpetuate forced labour. Moreover, the ILO's field capacity should be strengthened, in order to attain full freedom of movement and access to the people outside Yangon. The speaker urged the Committee to take the necessary measures which would allow the ILO, its constituents and other international organizations to force the junta to respect the fundamental human right not to be subjected to forced labour.

The Worker member of Australia stated that this case was a matter of political will – the choice to stand up for a people oppressed and abused by forced labour in a nation without democratic rights or a rule of law that met any test of judicial fairness. She referred to the report of Earth Rights International, which contained further disturbing information on prisoner porters, forced farming, sexual slavery, food theft and harassment of local leaders and villages, which seemed unbelievable in the twenty-first century.

The speaker emphasized that the Myanmar regime was well-known to the Governments, Employers and Workers of this Committee. This regime had tested their diplomacy to the limits and now mocked the Committee: not only had it enslaved its citizens in forced labour, but it held its democratic leader imprisoned. Despite this, its representative presented another set of excuses for some of the worst crimes against humanity and another set of false promises. While U. Shwe Mahn had been released, though he was guilty of no crime except standing up for his people's rights, another union organizer, with the Burmese Seaman's Union, Moe Naung, had been murdered for doing his job, and there was information of at least one more case of a trade unionist's murder.

Though the Workers and the Employers in this Committee stood together on this matter, the Governments' support was needed. The speaker urged the Governments to scale up their efforts to end trade and foreign direct investment, and called on the international financial institutions, including regional banks, to withdraw loans, grants and banking services from Myanmar, in order to make further economic and diplomatic relationships with this regime conditional on both the end of forced labour, and more broadly, on genuine democratic process.

The speaker thanked the Governments of the European Union, United States, Canada, New Zealand, India, Japan, the Republic of Korea and Australia for their commitment, but expressed the hope to see all the Governments in the Asia-Pacific region take a stand on the side of humanity and human rights, and to take the strongest possible stand against this regime. This would be especially important in 2006 when ASEAN and other governments would begin negotiations on a potentially significant trading bloc. Trade was not acceptable with a nation guilty of some of the worst violations of human and worker rights. In this regard she expressed her disappointment with the statement of the Indonesian Government, since the Indonesian Parliament had recently issued a resolution urging the Government to boycott the ASEAN meeting if military-ruled Myanmar took the rotating chair; the resolution also stated that the struggle of the people of Myanmar to improve the democratic process in the country should be supported also by South-East Asian companies, including those from Indonesia.

While the speaker was aware of concerns expressed by the Governments of Singapore, Malaysia and the Philippines on this matter, she urged these Governments to take a stronger stand and called on the majority in the Committee to take the strongest possible measures under article 33 of the ILO Constitution.

The Government member of Ukraine stated that his delegation aligned itself with the statement made by the Government member of Luxembourg, who had spoken on behalf of the European Union.

The Government member of the Libyan Arab Jamahiriya emphasized that the important matter under discussion should be examined in the light of the application of the Convention. The Government of Myanmar must take into account the observations made and take all necessary measures to implement the ILO resolutions.

The Government representative of Myanmar recalled that in his previous interventions at the Governing Body, he had expressed his fear that the discussion of this case would become politicized by some nations. He regretted that these fears had come true. Many speakers had touched on political matters which were not related to Convention No. 29. He strongly objected to this.

The Employer members expressed their disappointment with the closing statement of the Government representative of Myanmar. They had expected him to indicate what Myanmar would do as a positive response to the discussion of this case. Instead, he had simply confirmed their view that there was no political will to solve the problem. The matter that had been discussed was a correct legal policy question, which the vast majority of interventions had addressed. The issues at hand were relatively simple. The Employers were looking for an indication that Myanmar would amend or revoke the Village and Towns Acts, and widely publicize the prohibition of forced labour. Yet, the Government had not addressed these issues, which was extremely disappointing.

The Worker members recalled that this Committee had a long tradition of objectively reviewing the facts. The facts in this case were clear: there was no evidence that practices of forced labour in Myanmar were diminishing. Forced labour continued to be exacted on the population by the military rulers of the country. The picture set forth in documents D.6 and D.7 was not positive, as it indicated that co-operation with the ILO was restrained. The lack of response by the Government to this case called the authority of this Committee into question. The facts of this case could not be ignored for political or economic reasons.

The Worker members also said that they were extremely disappointed with the statements made by the representative of the Government of Myanmar regarding a situation that was, to all intents and purposes, clear. It would therefore be counter-productive to continue waiting, since the Government would take no concrete measures. Like the Employer members and most of the Governments, the Worker members asked the Government to take action without delay. They also requested that their concrete proposals be considered in the conclusions. Their proposals, which were not punitive measures, aimed to direct the economy and the labour situation in Myanmar towards the observance of ILO standards. It was therefore appropriate to reactivate the measures taken under article 33 of the Constitution.

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

and its worst forms – including forced labour for the army and forced recruitment of child soldiers – continued.

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

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

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

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

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

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

Myanmar (ratification: 1955)

1. The Committee notes the Government's report and the comments by the International Confederation of Free Trade Unions (ICFTU) contained in communications dated 14 June, 31 August, 1 September, 7 October and 10 November 2004. These comments, which are accompanied by many documents reporting the persistence of the use of forced labour in Myanmar, have been forwarded to the Government for any comments which it wishes to make in this respect. The Committee also notes the documents submitted to the Governing Body at its 289th and 291st Sessions (March and November 2004) on developments concerning the question of the observance by the Government of Myanmar of Convention No. 29, as well as the discussions in the Governing Body during these sessions and in the Conference Committee on the Application of Standards in June 2004.

2. Once again this year, the Committee is examining the measures adopted by the Government to give effect to the recommendations of the Commission of Inquiry appointed by the Governing Body in March 1997 following a complaint submitted in June 1996 under article 26 of the Constitution. In the report that it published in July 1998, the Commission of Inquiry concluded that the Convention was violated in national law and in practice in a widespread and systematic manner, and it adopted the following recommendations:

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

Amendment of the legislation, paragraph 539(a) of the report of the Commission of Inquiry

Brief history

3. The Committee has previously set out the history of this situation in detail in earlier observations. In brief, the Committee recalls that, in its report, the Commission of Inquiry urged the Government to take the necessary steps to ensure that the Towns Act, 1907, and the Village Act, 1908, which confer broad powers upon the local authorities to requisition labour, in violation of the Convention, were without further delay brought into conformity with the Convention. In summary, under particular sections of these acts, non-voluntary work or services may be exacted from any person residing in a village tract or in a town ward, and failure to comply with a requisition made under the legislation is punishable with penal sanctions. The Commission of Inquiry found that these Acts therefore provide for the exaction of "forced or compulsory labour" within the definition of Article 2, paragraph 1, of the Convention.

4. In its observation in 2001, the Committee noted that although the Village Act and the Towns Act still needed to be amended, an "Order directing not to exercise powers under certain provisions of the Towns Act, 1907, and the Village Act, 1908", Order No. 1/99, as modified by an "Order Supplementing Order No. 1/99", dated 27 October 2000, could provide a statutory basis for ensuring compliance with the Convention in practice, if bona fide effect was given by the local authorities and by civilian and military officers empowered to requisition or assist with requisition, under the Acts. In effect, the Order provides for the possibility of requisitioning labour in exceptional circumstances, where such work or service is important and of direct interest for the community and in the event of an emergency posing an imminent danger to the general public and the community, and in circumstances where it is impossible to obtain voluntary labour by the offer of the usual rates of wages. It also provides for the possibility of issuing directives which may set aside the restrictions on powers of requisitioning. In this respect, the Committee indicated that a bona fide application of this Order involved the adoption of the measures indicated by both the Commission of Inquiry in paragraph 539(b) of its report and by the Committee of Experts in its previous comments (regarding specific instructions and the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour).

5. The Committee observes that, as set out in the paragraphs below, the measures requested have not been adopted or have only been adopted partially and that the exaction of forced labour persists on a broad scale. It appears that the orders have not been effective and that

it has therefore become more imperative to take action without delay for the amendment or repeal of the Towns and Village Acts with a view to the elimination of the legislative basis for the exaction of forced labour and the incompatibility of these texts with the Convention. The Committee notes that, in his intervention in the Conference Committee on the Application of Standards in June 2004, the Government representative of Myanmar stated that, with regard to the "amendment of the Village Act and the Towns Act (...) his Government had been exploring ways and means to modify certain of their provisions" and had consulted with various parties in this respect. Recalling that the Commission of Inquiry recommended that these amendments should be done without further delay and completed at the very latest by 1 May 1999, the Committee of Experts hopes that the Government will finally take the necessary measures to amend in the very near future the provisions in question of the Towns Act, 1907, and the Village Act, 1908, as it has been promising to do for over 30 years.

Measures to bring an end to the exaction of forced labour in practice (paragraph 539(b) of the report of the Commission of Inquiry) and available information on existing practices

6. The Committee recalls that, in its recommendations, the Commission of Inquiry emphasized that, besides amending the legislation, concrete action needed to be taken immediately to bring to an end the exaction of forced labour in practice, in particular by the military. In its previous observations, the Committee of Experts identified four areas in which measures should be taken by the Government to achieve this outcome: issuing specific and concrete instructions to the civilian and military authorities; ensuring that the prohibition of forced labour is given wide publicity; providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and ensuring the enforcement of the prohibition of forced labour.

7. Specific and concrete instructions. In its previous observations, the Committee drew the Government's attention to the fact that, in the absence of specific and concrete instructions enabling the civilian and military authorities to identify the various forms and manners of exaction of forced labour, it would be difficult to bring an end to forced labour in practice. The Committee observed that, although "explanations", "instructions" and "directives" had been given at offices of the Peace and Development Councils at various levels and the offices of the General Administration Department, the Department of Justice and the police forces and township courts, and despite the guidance provided by the field observation teams during their visits in the country, the Government had supplied no details on the contents of the explanations, instructions, directives or guidance, nor had it provided the text of any instruction or directive containing details of the tasks for which the requisitioning of labour is prohibited or the manner in which the same tasks are to be performed without resorting to forced labour.

8. The Committee notes that, in its latest report, the Government states that it has made every effort to ensure the prohibition of the use of forced labour under Order No. 1/99 and its Supplementing Order. The Government also provides three documents intended to support its contentions (Instructions No. 1/2004, dated 19 August 2004, of the Department of General Administration, in Burmese; the Directive issued by the Supreme Court to all states and divisional judges, all district judges and all township judges, by letter dated 2 November 2000 and letter No. 1002(3)/202/G4 "to prevent illicit summon on the requisition of forced labour", signed by the director-general of the police force, which had already been provided to the ILO). The Committee observes that none of these documents would enable the authorities concerned to identify practices which constitute forced labour.

9. The Committee also notes from the Government's last report, and the intervention of the Government representative in the Conference Committee on the Application of Standards in June 2004, the reference to the holding of information workshops on the implementation of Convention No. 29 in various regions of the country during the course of 2004. The Committee considers that such workshops do not appear to have had the desired effect and that, until effective measures have been taken to enable the civilian and military authorities to identify the various forms and manners of exaction of forced labour that should be prohibited, it will not be possible to bring an end to forced labour in practice.

10. In conclusion on this point, the information provided by the Government shows once again that clear and effectively conveyed instructions are still required to indicate to all the representatives of the authorities, including the members of the armed forces, the kinds of practices that constitute forced labour and for which the requisitioning

of labour is prohibited, and the manner in which the same tasks are henceforth to be performed. In a previous observation, the Committee enumerated a number of tasks and practices which are closely related with the exaction of forced labour, namely:

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

11. *Publicity given to orders.* The Committee noted previously, from the information provided by the Government, that measures continued to be taken in order to make the prohibition of forced labour contained in Order No. 1/99 and its Supplementing Order widely known by all the authorities concerned and the general public. It noted that these measures included conveying information through bulletins and pamphlets, distributing copies of orders translated into ethnic languages, and the work of field observation teams.

12. In its last report, the Government reaffirms that copies of Order No. 1/99 and its Supplementing Order have been widely distributed throughout the country. The Committee understands, from the information provided by the Government, which appears to be confirmed by the Liaison Officer a.i., that the translation of the Orders into the four Chin dialects has been completed. In this respect, the Committee notes that, according to the Liaison Officer a.i., "although all the translations have been completed, he has yet to see these translations posted in any ethnic area that he has visited, or to meet anyone in these areas who has seen these translations, and he is therefore yet to be convinced that they have been widely distributed by the authorities" (document GB.289/8, submitted to the 289th Session of the Governing Body in March 2004, paragraph 10).

13. The Committee hopes that the Government will provide copies of the instructions issued to the armed forces and information on the meetings, workshops and seminars organized for the dissemination of these instructions in the armed forces. It once again hopes that measures will be taken to ensure that the texts, duly translated, are distributed and displayed in ethnic areas, which are those where the prevalence of forced labour practices appear to be the highest.

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

15. In its previous observations, the Committee pursued the matter and sought to obtain concrete evidence that adequate means are budgeted to hire voluntary paid labour. The Government in response has reiterated its previous statements according to which there is always a budget allotment for each and every project, with allocations which include the cost of material and labour. The Committee observed, however, that in practice forced labour continued to be imposed in many parts of the country, in particular in those areas with a heavy presence of the army, and that the budgetary allocations that may exist were not adequate to make recourse to forced labour unnecessary. The Government has not provided any information on this subject in its latest report. The Committee once again asks that adequate means be budgeted for the civilian and the military authorities to allow them to carry out their tasks without using forced labour and that the next report indicate the measures taken in this regard.

16. *Monitoring machinery.* With regard to the measures taken by the Government to ensure the enforcement of the prohibition of forced labour, the Committee notes the information provided by the Government representative to the Conference Committee on the Application of Standards in June 2004. It notes that these measures include the establishment of seven field observation teams empowered to carry out investigations into allegations of the use of forced labour, the findings of which are submitted to the Convention 29 Implementation Commit-

tee. With regard to the activities of the Implementation Committee, the Committee of Experts notes, according to the information contained in the document submitted to the Governing Body in November 2004 (GB.291/5/2, paragraph 13), that "recent experience of the Liaison Officer a.i. has shown that specific complaints of forced labour brought to the attention of the Convention 29 Implementation Committee are systematically denied, and cases brought directly before the courts are rejected. The picture which emerges is of a response by the authorities to complaints of forced labour that is lacking in credibility. This is all the more concerning given the types of cases involved. While a number of the allegations which have been raised with the authorities are extremely serious cases involving the army often in remote areas, others relate to comparatively minor cases of forced labour imposed by local officials in central Myanmar. Action on these latter cases should be more straightforward because of both the location and nature of the offences involved. The fact that the authorities have not taken steps to deal with these latter cases must raise serious doubts as to the possibility of making significant progress in those areas under the control of the army, where all the indications are that the forced labour situation is far more serious in both form and extent".

17. The Committee also notes that, in the view of the Liaison Officer a.i., "the mechanism put in place by the authorities for addressing forced labour allegations, that of sending an ad hoc team composed of senior government officials to the region to conduct an investigation, is not well suited to dealing with the increasing numbers of cases" (GB.291/5/1, paragraph 12). The Liaison Officer a.i. indicates that allegations of forced labour tend to be investigated internally by the General Administration Department. Cases concerning the army (that is, cases of forced recruitment, or forced labour allegedly imposed by the army) are referred by the Convention 29 Implementation Committee to the representative of the Ministry of Defence. These cases are also investigated internally by the army. The Committee of Experts notes that, "of the 38 cases referred to the Convention 29 Implementation Committee, responses have been received in 18 cases. In all these cases, the allegation that forced labour was involved was rejected. In the six cases where individuals complained directly to the court, three cases were rejected on the grounds that there was no prima facie evidence of forced labour (...)".

18. The Committee observes, as does the Liaison Officer a.i., that the assessments made by the field observation teams and the Convention 29 Implementation Committee appear to lack credibility, particularly as the ILO continues to receive trustworthy evidence that this practice continues to be widespread. The Committee once again expresses the hope that the Government will take the necessary measures to develop a credible, fair and more effective procedure for investigating allegations of forced labour, in particular those involving the army, and that it will cooperate more closely in future with the Liaison Officer.

Information available on actual practice

19. The Committee notes that the Liaison Officer a.i.'s general evaluation of the forced labour situation, on the basis of all the information available to him is that "although there have been some improvements since the Commission of Inquiry, the practice remains widespread throughout the country, and is particularly serious in border areas where there is a large presence of the army" (report of the Liaison Officer a.i., document GB.291/5/1, paragraph 9). The Committee further notes that at the time of his report (22 October 2004), the Liaison Officer a.i. had received a total of 72 complaints in 2004, and that interventions had been made with the authorities on 38 cases. Of these 38 cases, 18 concerned various forms of forced labour (other than forced recruitment); 13 concerned forced recruitment of minors into the armed forces; one case concerned alleged harassment of a complainant; and six were direct complaints by individuals to Myanmar courts under section 374 of the Penal Code, copies of which had been communicated to the Liaison Officer a.i. by the complainants.

Recent information

20. In communications dated 14 June, 31 August, 1 September and 7 October 2004, the ICFTU forwarded many documents to the ILO bearing witness to the persistence of the systematic use of forced labour by the military authorities on a very broad scale. The cases of forced labour described in these documents occurred in many areas of Myanmar (the States of Chin, Kachin, Kayin, Mon, Rakhine and Shan and the Ayeyarwady, Magway, Bago, Sagaing, Tenasserim and Yangon Divisions) during the period between September 2003 and September 2004, and are supported by precise information referring to the locations and dates of the reported facts and the army units and the names of the officers involved.

21. The documents provided include a report by the Federation of Trade Unions of Burma (FTUB) of over 100 pages in length entitled "Forced labour in Burma (Myanmar): Forced labour after 2003 Inter-

national Labour Conference". This report contains dozens of testimonies by victims of forced labour for the military. The witnesses were mostly used as porters (of arms, munitions, wood, supplies, etc.), on construction or maintenance sites of roads or bridges, or exploited in labour camps and paddy fields controlled by the army. The experiences of the witnesses included:

- being requisitioned as a consequence of a military order directed to village heads in rural areas to provide villagers for unpaid labour for portering, working on construction sites and the maintenance of military camps (many provided copies of labour requisition orders);
- being forced to participate in military training programmes, doing sentry duty or acting as guides;
- being forced by military chiefs to comply with a system of enforced labour rotation whereby each family in a village must provide a certain number of family members each day, under the menace of reprisals or a fine. The requisitioned workers have to equip themselves with their own tools and provide the food necessary for their own subsistence for the duration of their work, which is mostly unknown.

In addition, witnesses report that the types of ill-treatment suffered include:

- being deprived of food;
- being systematically beaten when they collapsed through exhaustion or sought permission to rest;
- in the most serious cases, reporting that porters incapable of walking due to a wound or extreme fatigue were purely and simply assassinated;
- mutilations and violent deaths occurring during mine-clearing operations, with the persons equipped only with rakes.

The military are also said to commit other acts of violence, including: murders, rapes, torture, pillage, the intentional burning of habitations, the destruction of plantations and consumer goods, forced expropriations and expulsions, as well as confiscating and extorting money and goods under the pretext of various types of taxation.

22. The ICFTU also forwarded a document prepared by the Asian Legal Resource Centre, an NGO with general consultative status with the United Nations Economic and Social Council, and which is based in Hong Kong, reporting two cases of forced labour imposed upon civilians by the authorities. The document illustrates the manner in which the authorities endeavour to turn against those who refuse to comply with requisition orders. The first case concerns two inhabitants of Henzada (old name for Hinthada) Township, Ayeyarwady Division, who in July 2003 refused to perform sentry duty at the Buddhist monastery of Oatpone village. They were sentenced respectively to one month and six months of imprisonment under the Penal Code for intentional failure to furnish assistance to a public servant in the execution of his public duty (section 187) and the threat of injury to any public servant (section 189). They filed a case under section 374 of the Penal Code (penalizing the imposition of unlawful compulsory labour), but both complainants were dismissed by the Henzada Township Court. The authorities filed a counter-complaint for defamation (sections 499 and 500 of the Penal Code) and the two complainants were both subsequently sentenced to six months' imprisonment on 7 October 2004. The second case concerns an inhabitant of Kawmhu Township, Yangon Division, who in April 2004 brought a complaint against the local authorities under section 374 of the Penal Code, and who had previously been threatened with legal action for failing to comply with instructions to work on a road in the neighbourhood. The local authorities then organized other villagers to depose that no one had been coerced to undertake the road construction and that the work in question had been carried out voluntarily. The ICFTU expresses the fear that the case may be decided against the complainant, in the same way as in the first case.

23. The other documents provided by the ICFTU include:

- three other reports by the FTUB, entitled: "State-induced violence and poverty in Burma", dated June 2004; "Impact of US sanctions on the textile and garment industry in Burma" and "All-round impact of promotion of tourism on the entire community of Ngwe Saung area in Ayeyarwady Division, Burma", both dated 2004, and the testimony of a child soldier, dated 2 January 2004;
- articles by various press agencies and human rights defence organizations reporting dozens of cases of forced labour, including the use of around 250 villagers from the Muslim minority in Rohingya in Maungdaw Township, Arakan State, to build houses for 130 families of Buddhist settlers from the centre of the country, and the requisitioning of 500 other villagers in June 2004 to build a bridge under the orders of the NaSaKa (border security forces). These articles refer to other cases of the exploitation of ethnic

minorities by the authorities, such as the forced labour exacted from Naga villagers for the construction of tourist accommodation for the Naga New Year celebrations in Layshee (Sagaing Division) and the exploitation for the purposes of tourism of certain Salons (also called Mokens), forced to perform traditional dances (Tenasserim Division). Other cases reported include the abduction of civilians for use as human shields during a military operation carried out against the armed groups in southern Mon State and northern Tenasserim Division during the period December 2003-January 2004 and the rape of women villagers in southern Ye Township (Mon State) during the same period;

- the authentic translation of the ruling in Criminal Regular Trial No. 111/2003 of the Yangon Northern District Court of 28 November 2003 sentencing nine persons to death for high treason, based on evidence for the charges which included alleged contacts between a number of them and the ILO and having received or communicated information relating to the activities of the Organization;
- the authentic translation of the ruling of the Supreme Court in the same case, reducing the sentences of the accused to transportation for life for five of them and, for the four others, to three years' imprisonment with rigorous labour (case No. 457/2003, Nay Win, Shwe Mann, Naing Tun and others v. Union of Myanmar). The ILO subsequently received, on 21 October 2004, the authentic translation of the ruling issued on 14 October 2004 by the Supreme Court on the application for special appeal in the same case. The sentences of the four accused who had been convicted on appeal to three years' imprisonment with rigorous labour were reduced to two years' imprisonment with rigorous labour, while that of Shwe Mann, convicted on appeal to transportation for life, was reduced to five years' imprisonment with rigorous labour. Moreover, the Supreme Court found that references to contacts with the ILO contained in the ruling of the Yangon Northern District Court should be deleted from the judgement, as the Supreme Court indicated that "communication and cooperation with the ILO does not amount to an offence under the existing laws of Myanmar";
- the second preliminary report of the Ad Hoc Commission on the Depayin Massacre, dated May 2004; and
- two documents prepared by the Federation of Trade Unions Kawthoolei (FTUK) reporting dozens of other cases of forced labour, including two interviews with victims of forced labour dated 19 June 2004.

24. The Committee notes the new allegations of the forced recruitment of children by the armed forces contained in the documents supplied by the ICFTU and the report on the activities of the Liaison Officer a.i. submitted to the Governing Body in November 2004 (document GB.291/5/1). Among the cases brought to the attention of the Liaison Officer a.i., is one of a young person of 15 years of age who, according to the allegations, was recruited into the army and then escaped, before being arrested and convicted by a court martial to four years' imprisonment for desertion.

25. The Committee recalls in this respect that it previously requested the Government to provide information on any investigation that may have been undertaken to ascertain that in practice no person under 18 is recruited into the armed forces and that it hoped that the Government, with the assistance of the ILO, would make every effort to carry out a thorough assessment of the extent of this practice and would take the necessary action to put an end to it.

26. With regard to programmes of military training and service, the Government indicates in its last report that it has established a Committee for Prevention against Recruitment of Minors, headed by the Secretary (2) of the State Peace and Development Council. While noting this information, the Committee observes, from a reading of the many documents in the file, that the recruitment of children to serve in army units is still current and that certain young persons have been convicted by military courts to sentences of imprisonment for desertion. The Committee urges the Government to bring an end to these practices and to enter into full and complete collaboration with the Liaison Officer a.i. in dealing with complaints that are brought to his attention, and to ensure that young persons who are victims of such abuses cannot in future be convicted by military courts.

27. In conclusion on this subject, the Committee notes that forced and compulsory labour continues to be prevalent in many areas of the country, and particularly in the border areas inhabited by ethnic minorities, in which there is a strong military presence. It notes with concern the many documents brought to its attention by the ICFTU and the cases followed by the Liaison Officer a.i., that demonstrate forcefully that the exaction of forced labour is far from disappearing in practice. It notes the Government's statement concerning its determination to eliminate forced labour in the country; however, the Committee considers that this determination has not so far led to the

achievement of the expected results. The Committee trusts that the Government, in keeping with its expressed intention, will significantly increase its efforts to bring a definitive end to forced labour, and urges the Government to pursue its cooperation with the ILO for this purpose. The Committee hopes that the Government will reply in detail concerning all the cases of forced labour reported by the ICFTU.

Imposition of the penalties established by the Penal Code in cases of the illegal exaction of forced or compulsory labour

28. The Committee recalls that in its report the Commission of Inquiry urged the Government to take the necessary measures to ensure that the penalties established under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, in conformity with Article 25 of the Convention. In the view of the Commission of Inquiry, this would require thorough investigation, prosecution and adequate punishment of those found guilty.

29. The Committee notes from the report submitted by the Liaison Officer a.i. to the Governing Body in November 2004 (document GB.291/5/1, paragraph 13 and Appendix II) that, for the first time, cases have been brought to the courts of Myanmar under section 374 of the Penal Code concerning the illegal exaction of forced labour. However, it notes that none of the six cases brought during the course of 2004 led to the initiation of proceedings, nor even to recognition of a situation of forced labour. In three cases, the courts rejected the cases on the grounds that there was no prima facie evidence of forced labour. Further, in two of the three cases which have been completed, the complainants were even sentenced to six months' imprisonment for defamation and these persons had already been imprisoned for refusing to carry out the forced labour. The three other cases were still ongoing at the time of the report (22 October 2004). Furthermore, the Liaison Officer a.i. indicates in his report that "two individuals were arrested after returning to their village following a visit to him in Yangon. During the visit, one of the individuals provided details on a direct complaint he had made to a court under section 374 of the Penal Code, concerning forced labour in Kawhmu Township (Yangon Division)" (document GB.291/5/1, paragraph 17).

30. The Committee notes that, although for the first time cases have been brought under section 374 of the Penal Code by individuals claiming to be victims of the exaction of forced labour, none of these cases has yet been found receivable. It notes that the fact that certain victims have been arrested after contacting the Liaison Officer a.i., or convicted to a sentence of imprisonment for defamation after bringing a case under section 374 of the Penal Code, creates a climate of fear which is likely to dissuade victims from turning to the courts. It hopes that the Government will make every effort to ensure that the victims of forced labour are in practice able to avail themselves of the provisions of section 374 of the Penal Code without risking prosecution for defamation and that they can freely contact the Liaison Officer a.i.

without running the risk of being arrested or interrogated by the police forces. It hopes that the Government will provide information in its next report on the progress achieved in this field.

Joint Plan of Action

31. In its last observation, the Committee noted with interest that a Joint Plan of Action for the Elimination of Forced Labour Practices in Myanmar had been agreed upon on 27 May 2003 between the ILO and the Government. Although the Joint Plan of Action was welcomed by the Conference Committee on the Application of Standards during the discussion at the 91st Session of the International Labour Conference, the Conference Committee also observed that its debate was taking place in the context of recent events, and the resulting climate of uncertainty and fear, which "called seriously into question the will and ability of the authorities to make significant progress in the elimination of forced labour". The Committee of Experts notes that the situation has scarcely improved since then, particularly in the view of the fact that three persons have been convicted for high treason on grounds which include contacts with the ILO. Although the Supreme Court ruling on a special appeal commuted the death sentence which had been imposed on these persons in November 2003 by a court in Myanmar to sentences of imprisonment of two and five years and acknowledged the legality of contacts with the ILO, the Committee notes that the Workers' group, the Employers' group and many Government members of the Governing Body expressed regret at the continued detention of the persons concerned and called for their immediate release or pardon. The situation of these persons is a matter of great concern to the Committee. The Committee regrets that, under these conditions, the Joint Plan of Action cannot be implemented as envisaged. It notes the decision of the Governing Body to field a very high-level mission to evaluate the attitude of the authorities and assess their determination to continue their cooperation with the ILO (GB.291/5, Conclusions).

Concluding comments

32. The Committee notes once again with grave concern, that the recommendations of the Commission of Inquiry have still not been implemented: the provisions of the Towns Act, 1907, and the Village Act, 1908, allowing requisition of labour in violation of the Convention, have not been repealed; forced labour continues to be exacted in many areas of the country, in circumstances of severe cruelty and brutality; and no person responsible for the exaction of forced labour has been prosecuted or convicted under the relevant provisions of the Penal Code. The Committee expresses its strongest condemnation and urges the Government to demonstrate its expressed determination to eliminate forced labour and to take the necessary measures to ensure compliance with the Convention.

Document D.6

C. Report of the Director-General

I. Brief summary of developments since June 2004

1. In the conclusions it adopted last year at the close of the special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), the Committee on the Application of Standards, *inter alia*, noted that the measures taken by the Government had not brought about significant progress in actual practice and forced labour continued to be exacted in many parts of the country. It further noted its grave concern at the convictions of three persons for high treason, including on grounds of contacts with the ILO, and agreed with the Governing Body that this situation clearly was not one in which the Plan of Action could be credibly implemented. The Committee also noted with appreciation the continued cooperation extended to the Liaison Officer by the Government and the freedom of movement that he enjoyed. As regards the increasing numbers of individual complaints of forced labour being received by the Liaison Officer, this demonstrated the usefulness of the ILO presence. The Committee had to note with concern, however, that the response so far was inadequate and this cast serious doubt on the willingness of the authorities to take the concrete steps necessary to ensure the elimination of forced labour in practice. The following brief overview of the main developments since its last session should be of interest to the Committee.
2. At its 291st Session (November 2004), the Governing Body had before it two reports from the Liaison Officer *a.i.*, on his activities and a report from the Director-General.¹ The Governing Body was gravely concerned by developments in the situation and the continued impunity of those who exact forced labour. While the recent judgement of the Supreme Court in the high treason case did answer the fundamental question of the legality of contacts with the ILO, the Governing Body regretted the continued detention of the persons concerned when their guilt had not been established, and called for their immediate release. While a broad majority were of the opinion that the reactivation of the measures to be taken under article 33 and in accordance with the Conference resolution of 2000 would be fully justified, it was nevertheless felt that the sudden replacement of the previous interlocutors of the Organization following changes among the Myanmar leadership justified an evaluation of the current attitude of the authorities and their determination to effectively address the continuing practice of forced labour. The Director-General was therefore requested to field a “very high-level team” to make such a determination, and report the results to the next session of the Governing Body so that it would then be able to determine the necessary consequences on the basis of full knowledge either as regards further action by the Organization under article 33, or for the implementation of the joint Plan of Action. In addition, the Office was requested to provide further information for the next session on the actions taken on the basis of the 2000 resolution.
3. Accordingly, the Director-General constituted a very High-Level Team (vHLT) comprising Sir Ninian Stephen (former Governor-General of Australia); Ms. Ruth Dreifuss (former President of the Swiss Confederation); and Mr. Eui-yong Chung (former Chairperson of the Governing Body, Member of the National Assembly of the Republic of

¹ Docs. GB.291/5/1, GB.291/5/1(Add.) and GB.291/5/2.

Korea, and Chairperson of the Foreign Relations Committee of the Uri Party). The vHLT arrived in Myanmar on 21 February. On 23 February, having failed to secure the necessary meetings at the highest level in order to complete its mandate, and having had discussions and making its views known to the Minister for Labour and the Prime Minister, the vHLT decided to depart the country. It handed over to the Minister for Foreign Affairs a statement to this effect, attached to which was an informal aide-mémoire setting out the main concrete steps on which it believed progress should be made. It insisted that despite its early departure, the door was still open for further developments.

4. The 292nd Session (March 2005) of the Governing Body had before it three reports: (i) a report on further action taken pursuant to the 2000 resolution of the International Labour Conference; (ii) a report from the Liaison Officer a.i., on his activities together with an addendum setting out the latest developments; and (iii) the report of the very High-Level Team.² In its consensus conclusions, the Governing Body noted that the most largely shared sentiment was one of condemnation over the failure of the highest authorities to take advantage of the unique opportunity that the visit of the vHLT represented to resume a credible dialogue on the issues of concern, and also the feelings of grave concern over the general situation that this revealed. Although there were indications from the Prime Minister and comments from the Myanmar Ambassador alleging that the necessary political will existed, the credibility of this message and the usefulness of the ILO's present approach was cast into grave doubt by other indications, including the attitude towards the vHLT. Although some concrete developments appeared to go in the right direction, in particular the prosecutions and punishment of authorities responsible for having recourse to forced labour as well as the establishment of a focal point in the army, in the circumstances the overall assessment fell far short of the Governing Body's expectations. The Governing Body noted the growing feeling that the "wait-and-see" attitude that prevailed among members since 2001 appeared to have lost its *raison d'être* and could not continue. It therefore unanimously agreed to transmit its conclusions to all those to whom the 2000 resolution was addressed – including relevant agencies – with a view to them taking the appropriate action. At the same time, it noted that the ILO was not closing the door to a resumption of positive dialogue with the Myanmar authorities and that any concrete developments should be taken objectively into account by members when deciding on the action they would take. Progress with regard to the strengthening of the ILO presence as well as the other items covered by the vHLT's aide-mémoire, including the immediate release of U Shwe Mahn, should be a concrete test in this regard.

II. Latest developments since March 2005

5. In accordance with the conclusions of the Governing Body in March 2005, the Director-General wrote on 21 April to the governments of member States of the ILO, to international organizations, and to the United Nations Economic and Social Council (ECOSOC), drawing their attention to these conclusions. These letters are reproduced in Appendix I. At the same time, the Director-General wrote to the Minister for Labour of Myanmar. This letter, and the reply from the Minister, are reproduced in Appendices II and III, respectively.
6. In parallel with the discussions between the Liaison Officer a.i., and the authorities in Yangon (reported in detail in Part B below), relevant discussions also took place between the Office and the Permanent Representative of Myanmar in Geneva. Certain developments and comments made in Yangon, in particular by the Director-General of the

² Docs. GB.292/7/1, GB.292/7/2, GB.292/7/2(Add.) and GB.292/7/3, respectively.

Department of Labour in his meeting with the Liaison Officer a.i., on 26 April,³ touched on matters which were fundamental to the effectiveness of the ILO presence and gave rise to serious concerns on the part of the Office. These concerns were made known to the Myanmar authorities, and the Office highlighted the need, in view of the nature of the issues involved, for clarification at the earliest occasion and at the appropriate level. The vHLT office made it clear in this regard that, as suggested on the occasion of the vHLT's visit, it was ready to carry out a joint in-depth review of the Plan of Action, including in particular the facilitator mechanism, in the light of recent experiences, and that it would be important for the authorities to indicate their readiness to conduct such a review at the earliest opportunity and at the appropriate level. It underlined the fact that, pending such a review, it was inherent to the very *raison d'être* of the ILO presence, and to its status, that it was able to have any contacts for any purpose consistent with its mandate, including with alleged victims of forced labour or their representatives, and that no action should be taken against those concerned. It also underlined that the International Labour Conference should receive appropriate assurances on this vital point. At the same time, relevant instructions were given to the Liaison Officer a.i., in particular as regards the implications for continued processing of specific allegations of forced labour pending the necessary assurances.

7. A subsequent reply from the Minister for Labour to the Director-General's letter of 21 April, as well as a meeting between the Minister for Labour and the Liaison Officer a.i., while still containing a number of concerning elements, appears at the same time to indicate a willingness to have the necessary discussions at the required level in order to address these matters.

³ See para. 12 of the report of the Liaison Officer a.i.

Appendix I

(a) Letter dated 21 April from the Director-General to the member States of the ILO

Dear Sir,

I have the honour to draw your attention to the agreed conclusions reached by the Governing Body of the ILO at its 292nd Session (March 2005) concerning the question of the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), which are attached.

These conclusions have to be considered in the framework of the resolution concerning this question adopted by the International Labour Conference at its 88th Session (June 2000), and to the letter addressed to your Government in this regard on 8 December 2000. I have attached both herewith for ease of reference.

Under operative paragraph 1(b) of this resolution, the Organization's constituents are called upon to undertake a review of their relations with Myanmar and to report back at appropriate intervals to the ILO Governing Body. The Governing Body's abovementioned conclusions convey the growing feeling that the "wait-and-see" attitude which has prevailed among most Members since 2001 "appears to have lost its *raison d'être* and cannot continue".

At the same time, the conclusions make it clear that Members, in carrying out the review they are called upon to make, and reaching their conclusions, are expected to take objectively into account any development that may take place in Myanmar from now on as regards the four points raised by the very High-Level Team's aide-mémoire (GB.292/7/3, Appendix III(b), also attached).

The Office for its part is to report on any developments to the Committee on the Application of Standards of the International Labour Conference in June. A full report on action taken by the Organization's constituents will be prepared for the November session of the Governing Body. These reports will include any relevant information you may wish to provide.

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

Yours faithfully,

(Signed) Juan Somavia

(b) Letter dated 21 April from the Director-General to international organizations⁴

Dear Sir,

You will recall that in my letter dated 8 December 2000 I transmitted to you for appropriate action the resolution adopted by the International Labour Conference at its 88th Session (June 2000) concerning the question of the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29). A copy of this resolution is attached for easy reference.

In the framework of that resolution, the Governing Body of the ILO reviewed the situation at its 292nd Session (March 2005) and agreed conclusions, which are attached.

The Office for its part is to report on any developments to the Committee on the Application of Standards of the International Labour Conference in June. A full report on action taken by the Organization's constituents will be prepared for the November session of the Governing Body. These reports will include any relevant information you may wish to provide.

Yours sincerely,

(Signed) Juan Somavia

⁴ Sent to all international organizations to which the 2000 resolution was addressed, and also sent to ECOSOC, *mutatis mutandis*.

Appendix II

Letter dated 21 April from the Director-General to the Myanmar Minister for Labour

Dear Minister,

As you are aware, the Governing Body at its March session agreed conclusions concerning the observance by your country of the Forced Labour Convention, 1930 (No. 29), which are attached herewith.

As provided for in these conclusions, I have now apprised the Organization's constituents and relevant international organizations of these conclusions. Copies of sample letters are attached. In this framework, it is of the greatest importance that the Myanmar authorities provide a clear indication of their willingness to give positive consideration to the outstanding issues. These include the strengthening of the ILO's presence as well as the other items covered by the vHLT's aide-mémoire, as well as the immediate release of Shwe Mahn – which could then be reported to the International Labour Conference in June.

It is therefore urgent that you could pursue the necessary consultations in Yangon with the Liaison Officer a.i., it being understood that parallel consultations can take place in Geneva as appropriate.

Yours sincerely,

(Signed) Juan Somavia

Appendix III

Letter dated 21 May from the Myanmar Minister for Labour to the Director-General

Excellency,

I am pleased to inform you that the Government of the Union of Myanmar gives due consideration to the items covered by aide-mémoire of vHLT. The developments on these issues have already been mentioned in the “Memorandum on Myanmar’s Compliance of ILO Convention 29 and Her cooperation with ILO” issued by the Ministry of Labour. I would like to inform you on further developments.

In recent days, discussions and exchange of views on matters concerning the elimination of forced labour in Myanmar took place in parallel both in Yangon and Geneva.

Upon the request of the ILO Liaison Officer a.i., I myself met with the ILO Liaison Officer a.i. on May 9, 2005 at the Minister’s Office. The Government’s position on elimination of forced labour and other related matters were made known to the ILO Liaison Officer a.i. and discussions were conducted in a very frank manner.

Myanmar Government took into serious consideration on the persistent requests by the Governing Body to release Shwe Mann, who committed a crime of high treason. He has already been released from the prison on 18 May 2005.

The Army Focal Team Leader Colonel Khin Soe and two members of his team met with the ILO Liaison Officer a.i. on May 12, 2005 at the Department of Labour. The meeting was in compliance to a request by the ILO Liaison Officer a.i.

Concerning the freedom of movement of the ILO Liaison Officer a.i., it has been clearly stated in the terms of Understanding for the appointment of an ILO Liaison Officer that the freedom of movement accorded to diplomats and UN personnel with the established procedures will be extended to the ILO Liaison Officer. Recently, the Myanmar authorities allowed the ILO Liaison Officer a.i. to travel to Kayin State at an extremely short notice.

In a spirit of cooperation with the ILO, Myanmar is ready to consider a new approach for the elimination of forced labour to be discussed at an appropriate time and level to be determined between the two sides.

I would like to assure you that Myanmar looks forward to constructive cooperation with the International Labour Organization based on mutual trust and interest.

Yours sincerely,

(Signed) U Thaung

D. Report of the Liaison Officer a.i.

I. Activities of the Liaison Officer a.i. since March 2005

1. The Liaison Officer a.i., had a number of meetings with the authorities. On 9 May he met with the Minister for Labour. He met with the Director-General of the Department of Labour on 8 and 26 April, and 12 and 17 May. He also had meetings with officials from the Department of General Administration (Ministry of Home Affairs) and the Ministry of Foreign Affairs. On 12 May he met for the first time with Col. Khin Soe (the Vice-Adjutant General) who was designated on 1 March as the army focal point with the ILO.
2. In addition to these meetings with the authorities, the Liaison Officer a.i., also met in Yangon and in Bangkok with members of the diplomatic community, representatives of United Nations agencies, and representatives of non-governmental organizations.
3. From 18 to 20 May, the Liaison Officer a.i., visited parts of Mon State and southern Kayin State.⁵ This trip was conducted independently of the authorities. In line with the previously established practice, he informed the authorities shortly before his departure of his plans. Some of the places that he visited were restricted areas, but where there were no significant security concerns. He was able to freely visit all areas that he wished to.⁶

II. Developments on the concrete steps identified by the very High-Level Team (vHLT) and the Governing Body

4. *The release of U Shwe Mahn.* U Shwe Mahn, one of three persons originally convicted of high treason including on grounds of contact with the ILO, was released from prison on 29 April.⁷ The Liaison Officer a.i., has been able to confirm that U Shwe Mahn is well and has returned home to his family. The Minister for Labour indicated to the Liaison Officer a.i., in their meeting on 9 May that although U Shwe Mahn was a convicted terrorist against whom there was conclusive evidence, the authorities had nevertheless set him free on the request of the ILO. This was a positive gesture to demonstrate the commitment of the Myanmar side to continuing its cooperation with the ILO.
5. *The strengthening of the ILO presence.* As indicated to the Governing Body in March,⁸ it was decided that in the first instance this step would take the form of the secondment of an ILO official to Yangon to assist the interim Liaison Officer. The necessary approvals from the authorities have been pending since 24 January. In the meeting on 9 May, the Minister for Labour indicated that this matter was still under review by the higher authorities. If the

⁵ He travelled by road from Yangon to Mawlamyine (Moulmein), the capital of Mon State, and from there to Kyain-seikgyi town in southern Kayin State.

⁶ He was informed, however, that this arrangement was to be seen as an exception, and it was underlined that in general he would be expected, like all diplomats and UN officials, to apply for permission for travel 14 days in advance. See para. 6 below.

⁷ The other two persons had been released on 4 January. See GB.292/7/2, para. 7.

⁸ Doc. GB.292/7/2, para. 3.

ILO presence was found to be of mutual benefit, a positive response could be given on this point. If not, the viability of the ILO presence could be called into question.

6. *A renewed commitment to the freedom of movement of the Liaison Officer a.i.* As reported above, the Liaison Officer a.i., was able to freely undertake travel in line with the previously established practice. At the same time, however, the Minister for Labour indicated to the Liaison Officer in their meeting that the ILO could not be excepted from the general requirement that all diplomats and UN international staff apply for travel authorization by submitting a detailed itinerary to the Protocol Department 14 days in advance. In his meeting with the Liaison Officer a.i., on 17 May, the Director-General of the Department of Labour reaffirmed that the authorities regarded this trip as an exception and that it should not be seen as establishing a precedent.
7. *Credible solutions to the forced labour cases in Toungup and Hinthada.* No further developments have taken place in this regard, and the authorities have declined to discuss this matter further.
8. *The appointment of a high-level focal point in the army.* As reported to the Governing Body in March,⁹ this important step was taken on 1 March, with the appointment of a team of eight senior military officers, headed by the Vice-Adjutant General. The Liaison Officer a.i., had a meeting with the Vice-Adjutant General on 12 May, and was able to brief him on his work and hear about the mandate and activities of the focal point. Following these discussions, the Liaison Officer a.i., requested a further meeting before the International Labour Conference during which some specific issues could be raised. A meeting was scheduled to take place on 26 May, but the Liaison Officer a.i., was subsequently informed that the Vice-Adjutant General had been called away from Yangon to deal with an urgent matter.
9. *The issuance of a public order to army units not to requisition labour.* The authorities indicated that, as stated in their “Memorandum” of March 2005,¹⁰ a number of (secret) orders were issued by the Ministry of Defence and the army at various levels instructing all members of the armed forces to abide by the orders prohibiting forced labour. The Liaison Officer a.i., has suggested to the authorities that if this is the case, then a relatively straightforward first step could be to declassify these orders.
10. *Reconfirmation of the commitment of the authorities to the joint Plan of Action.* The Liaison Officer a.i., has raised this matter in various discussions with the authorities. The authorities pointed out that it was the ILO that had decided to suspend the implementation of the joint Plan of Action. However, there were indications, including from the Minister for Labour, that it could be possible to have detailed discussions on this matter at the appropriate level.

III. Developments on specific allegations

11. Since the finalization of his report to the March session of the Governing Body, on 18 February, the Liaison Officer a.i., has made interventions on a further five cases reported to him:

⁹ Doc. GB.292/7/2(Add.), para. 3.

¹⁰ *ibid.*

- *Intervention dated 2 March.* According to the allegation, labour was requisitioned by the authorities in Aunglan township (Magway Division) in November and December 2004 for the construction of a local road, and one villager was killed in an accident while being forced to quarry rocks as part of this project. This allegation was made to the ILO by a close relative of the individual who was killed, with the support of an additional 15 villagers who indicated that they were also forced to contribute labour for the project. In total, one person from each of the 280 households in the village was ordered by the local authorities to do the work. Any family who failed to contribute labour was fined. The family of the worker killed did not receive any support or compensation from the authorities. (Further details on the follow-up to this case are provided below.)
- *Intervention dated 10 March.* According to the allegation, hundreds of local people were requisitioned by the authorities in Katha township (Sagaing Division) in 2004 and again in 2005 for the construction of a local road. This allegation was made to the ILO by an individual from the area who had to participate in this project. Those who were forced to participate received no payment, and had to supply their own tools and rations. Compulsory cash contributions were also collected to cover the cost of materials for the construction of bridges. Any household that could not contribute a worker had to pay a fine.
- *Intervention dated 11 March.* This intervention concerned the alleged forced recruitment of a minor into the army. According to the information received, in November 2004 a meeting was held between an army officer and village leaders in Thongwa township (Yangon Division) at which a 17-year-old boy was selected by the elders (along with several other boys) and ordered to accompany the officer to a recruitment centre, where he was recruited against his will.
- *Interventions dated 21 April.* These interventions, addressed to the newly-appointed army focal point, concerned two cases of forced recruitment into the army. In both cases, documentary evidence of the date of birth was provided, indicating that the boys were aged 14 and 16 at the time of recruitment.

12. In a development of sufficient seriousness to be immediately brought to the attention of headquarters, the Liaison Officer a.i., was informed during his meeting with the Director-General of the Department of Labour on 26 April that false complaints of forced labour were placing a great drain on Government resources and undermined the dignity of the State, and that it was therefore necessary to “take measures as a deterrent against false complaints being lodged”. It was indicated that legal action would now be taken, under certain specified sections of the Penal Code,¹¹ against complainants or their representatives who lodged “false complaints”. Preparations were under way to do so in certain recent cases. In the light of this, the Liaison Officer a.i., was instructed by ILO headquarters to temporarily suspend dealing with new allegations of forced labour, while clarifications were sought from the Myanmar authorities. In his meeting with the Minister for Labour on 9 May, the Liaison Officer a.i., was informed that the authorities had evidence that false complaints of forced labour were being systematically made to the ILO by politically-motivated individuals. The Minister had referred such cases to the competent authorities for legal action to be taken, although he could not say whether such action would be taken or not. He gave assurances that the authorities had no intention to punish complainants.

¹¹ The sections of the Penal Code were identified as: 182b (giving false information with intent to cause a public servant to use his lawful power to the injury or annoyance of any person), 420 (cheating and dishonesty), 468 (forgery for the purpose of cheating) and 499 (defamation).

13. In letters dated 15 March, 18 April, 4 May, 9 May and 18 May, the Convention 29 Implementation Committee responded to a number of the forced labour cases raised by the Liaison Officer a.i.:

- As regards the allegation of forced labour for road construction in Ramree township (Rakhine State),¹² it was indicated that funds allocated to the project had been systematically disbursed to workers, and that no forced labour was used. However, the township Chairman and the Deputy Superintendent of Police were reprimanded for “shortcomings in complying with Order Supplementing Order 1/99”.
- As regards the allegation of forced labour cultivating land previously confiscated by an army battalion in Putao township (Kachin State),¹³ it was found that the allegation was untrue, and furthermore that any rice purchased by the battalion from farmers was paid for at more than reasonable rates.
- As regards the allegation of forced labour imposed by the army for road construction in Thandaung township (Kayin State), during which a 15-year-old boy stepped on a landmine and lost his leg, it was found that the incident had taken place, but that the villagers were contributing their labour of their own free will when the boy stepped on an insurgent-laid mine.
- As regards the allegation of forced labour for the construction of a road in Katha township (Sagaing Division),¹⁴ it was found that no forced labour or compulsory contributions were demanded, and that the road in question was constructed voluntarily by the local people on their own arrangement.
- As regards three allegations of forced recruitment of children into the armed forces,¹⁵ in two cases it was found that the individuals were over the age of 18 and had been voluntarily recruited. The findings as regards age were inconsistent with documentary evidence of date of birth, copies of which were provided to the authorities in each case. In the third case, it was indicated that the individual had gone absent without leave and been declared a deserter. No response was given concerning the evidence presented that he was only 14 at the time of recruitment.

¹² See doc. GB.291/5/1, para. 14.

¹³ See doc. GB.292/7/2, para. 14.

¹⁴ See para. 11 above.

¹⁵ See para. 11 above (intervention dated 11 Mar.); doc. GB.292/7/2, para. 13 (intervention dated 15 Feb.); and doc. GB.291/5/1, para. 14 (intervention dated 13 Sep.).

14. *The allegation of forced labour in Aunglan township.* As regards the allegation of forced labour for the construction of a road in Aunglan township (Magway Division), during which one villager was killed, the authorities indicated that investigations had found the allegation to be false as no forced labour had been used and the individual had been killed while willingly contributing his labour.¹⁶ Legal action would be taken against “unscrupulous third parties” who had persuaded the family to make this false complaint. The Liaison Officer a.i., then received a letter from the brother of the deceased, withdrawing the complaint.¹⁷ The Liaison Officer a.i., also received other information according to which pressure was put on the local people to deny that there had been forced labour, and that the family of the deceased was intimidated by the field observation team and signed the letter withdrawing the complaint under duress.

¹⁶ See para. 11 above. The initial response was provided in a letter dated 18 April from the Convention 29 Implementation Committee. In the letter, it was indicated that a field observation team had been dispatched to investigate, and it had been found that no forced labour, compulsory contributions or fines were imposed, and that the individual who had died had been contributing labour willingly at the time. Further clarification was provided by the Director-General of the Department of Labour in his meeting with the Liaison Officer a.i., on 26 April. It was indicated that because of the seriousness of the allegation a second field observation team had been dispatched to the area from 5 to 7 April. This investigation had confirmed that no forced labour had occurred, although 7 family members of the deceased had continued to insist that there had been forced labour. Once these persons had been investigated further, however, it had been found that they had made a false complaint because of their grief, because of a certain grudge against the local authorities, and because some “unscrupulous third parties” had taken advantage of the situation.

¹⁷ This letter was dated 7 April, the same day that the second field observation team completed its investigation.



Document D.7

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

Report of the Liaison Officer a.i.

I. Background

1. At its special sitting in June 2004, the Committee on the Application of Standards of the International Labour Conference had before it, inter alia, three documents setting out the developments over the previous year.¹ At the end of its discussion, the Committee adopted the following conclusions:

After taking note of the information provided by the Government representative, the Committee noted with deep concern the observation of the Committee of Experts which examined the measures taken by the Government to give effect to the recommendations of the Commission of Inquiry. The Committee of Experts had noted in its observation that the three main recommendations of the Commission of Inquiry were still to be implemented. In spite of the Government's assurances of its good intentions, the measures taken had not brought about significant progress in actual practice and forced labour continued to be exacted in many parts of the country. No person responsible for imposing forced labour had ever been prosecuted or sentenced under the relevant provision of the Penal Code. In view of the slowness of progress, the Committee of Experts had expressed the hope that the process of dialogue and cooperation which had developed between the ILO and the Government could offer a real chance of bringing about more rapid and concrete progress, in particular through the implementation of the Plan of Action.

In this regard the Committee had to note its grave concern at the fact that three persons had been convicted of high treason, including on grounds of contacts with the ILO. The Committee was further deeply concerned that, although on appeal the Supreme Court had commuted the death sentences, it had failed to bring clarity on this crucial point, despite the

¹ ILC, 92nd Session (Geneva, 2004), Committee on the Application of Standards, documents C.App./D.5, C.App./D.5(Add.) and C.App./D.5(Add.2). Relevant sections concerning developments in the elimination of forced labour following the 289th Session (March 2004) of the Governing Body are reproduced in Appendix III.

earlier assurances of the Government that contacts with the ILO could not be considered illegal in Myanmar. The Committee also expressed its concern at the freedom of association issues raised by the Supreme Court's findings. It joined the Governing Body in endorsing the recommendations put forward by the informal facilitator as regards the grounds for convicting the three persons and the need to release them. It agreed that this situation clearly was not one in which the Plan of Action could be credibly implemented.

The Committee had also taken note of the information provided by the Liaison Officer ad interim on his activities. It noted with appreciation the continued cooperation extended to the Liaison Officer by the Government and the freedom of movement that he enjoyed. It considered the fact that individuals were lodging complaints concerning forced labour with the Liaison Officer in increasing numbers, demonstrating the usefulness of the ILO presence. However, the Committee had to note with concern that the response to the individual allegations so far raised was inadequate and that to date not a single one of these allegations had been verified by the authorities nor had anyone so far been prosecuted for illegally imposing forced labour. This cast serious doubt on the willingness of the authorities to take the concrete steps necessary to ensure the elimination of forced labour in practice.

In that respect, reference was made to the fact that certain forms of forced labour referred to by the Commission of Inquiry, such as work on infrastructure projects, using forced labour, forced recruitment of children and even the use of persons as minesweepers were still in use. The dissemination of information in relevant languages also left much to be desired.

The Committee took due note of the assurances provided by the Government representative that a further review by the Supreme Court would take place which would, inter alia, clarify the question of the legality of contacts with the ILO. The Committee was of the opinion that the Government now had a final opportunity to give practical effect to these assurances and to the recommendations of the informal facilitator. It noted that the Governing Body at its next session should be ready to draw the appropriate conclusions, including reactivation and review of the measures and action taken including those regarding foreign direct investment, called for in the resolution of the International Labour Conference of 2000, unless there was a clear change in the situation in the meantime.

Finally, the Committee recalled that the Government would have to supply a detailed report for examination by the Committee of Experts at its next session on all the steps taken to ensure compliance with the Convention in law and in practice.

2. Mr. Richard Horsey continued to act as interim ILO Liaison Officer.

II. Activities of the Liaison Officer a.i.

3. The Liaison Officer a.i. had a number of meetings with the authorities in which he gave his advice on the forced labour situation and on the steps which in his view were needed to achieve the elimination of the practice, and in which he discussed specific complaints he had received and his concerns relating to these. He met with the Convention 29 Implementation Committee on 3 September. He also had a series of meetings with the Director-General of the Department of Labour on 1 July, 24 August, 6 September and 1 October, as well as meetings with the Director-General of the Department of General Administration (Home Affairs) on 8, 17 and 30 September and 22 October. In addition, he met with the Director-General of the International Organizations and Economic Department of the Ministry of Foreign Affairs on 8 September. Despite a number of requests, the Liaison Officer a.i. has not so far been able to meet with the Minister for Labour. Since 18 September the Minister has been assigned the additional portfolio of Minister at the Prime Minister's Office, requiring him to be absent from Yangon for

extended periods. On 19 October, the Prime Minister was replaced in a significant reshuffle within the ruling State Peace and Development Council (SPDC).²

4. In addition to these meetings with the authorities, the Liaison Officer a.i. also met with members of the diplomatic community, as well as with representatives of United Nations agencies, the International Committee of the Red Cross, and international non-governmental organizations in Yangon and Bangkok. He also had the opportunity to have discussions with a number of ethnic-nationality political parties.
5. From 28 to 29 July the Liaison Officer a.i. accompanied, in an observer capacity, a field observation team to Kawhmu in Yangon Division.³ The team's activities consisted of holding an information workshop on forced labour, attended by around 100 local and regional officials. From 13 to 17 September the Liaison Officer a.i. visited Toungup township in Rakhine State, together with the Informal Facilitator, Mr. Léon de Riedmatten. The authorities chose not to participate in this visit, and it was therefore conducted independently.

III. Developments in the high treason case

6. On 4 August the defence lawyer in the case lodged a further "special appeal" to the Supreme Court on behalf of eight of the nine persons in the case, including the three with an ILO connection.⁴
7. On 23 September the Supreme Court accepted the case for special appeal. The Special Appellate Bench of the Supreme Court issued its judgement on 14 October. The judgement was transmitted to the ILO by the authorities the same day, and an official translation was received on 20 October. The salient points of the judgement, based on an examination of both texts, are as follows:⁵
 - With regard to the question of contacts with the ILO, the Court stated that since Myanmar was a member of the United Nations and other international organizations such as the ILO, and was cooperating with them, any person was free to communicate or cooperate with such organizations. Therefore, communication or cooperation with the ILO does not amount to an offence under the existing laws of Myanmar. Upon reviewing the original court judgement, the Court ordered that the text concerning contacts with the ILO, which was irrelevant to the case, be deleted from the original judgement.
 - The convictions of Nai Min Kyi and U Aye Myint under section 123 of the Penal Code (encouraging, harbouring or comforting persons guilty of high treason) were upheld on the grounds that they had sent incorrect information about Myanmar to

² The new Prime Minister is Lt. Gen. Soe Win, formerly Secretary-1 of the SPDC. Lt. Gen. Thein Sein was promoted from Secretary-2 to replace Lt. Gen. Soe Win as Secretary-1.

³ This is a township where a number of complaints concerning forced labour have been lodged with the court (see paras. 15 and 17 below).

⁴ The ninth person, together with three of the others, had also appealed through the officer-in-charge of the prison. The Special Appellate Bench of the Supreme Court considered both appeals concurrently.

⁵ The full text of the judgement can be made available by the Office.

illegal organizations abroad, but their sentences were reduced from three years' imprisonment with hard labour to two years' imprisonment with hard labour.⁶

- The conviction of U Shwe Mahn for high treason was altered to section 123 of the Penal Code (encouraging, harbouring or comforting persons guilty of high treason) on the grounds that he abetted other appellants who had committed high treason and that he had communicated with individuals in Thailand (namely, Maung Maung and Zarni Thwe) who were members of illegal organizations opposing the Myanmar government. His sentence was reduced from life imprisonment to five years' imprisonment with hard labour.⁷

8. On 18 October Mr. Kari Tapiola wrote on behalf of the Director-General of the ILO to the Myanmar Minister for Labour. This letter is reproduced in Appendix I.

IV. Developments in the forced labour situation

Overview

9. On the basis of all the information available to him, the Liaison Officer a.i.'s general evaluation of the forced labour situation continues to be, as presented previously to the Governing Body,⁸ that although there have been some improvements since the Commission of Inquiry, the practice remains widespread throughout the country, and is particularly serious in border areas where there is a large presence of the army.
10. The Liaison Officer a.i. continues to receive significant numbers of complaints directly from individuals alleging they have been subjected to forced labour, or from representatives of such persons. Often these individuals are in fact complaining on behalf of a larger group of persons or community subjected to forced labour. There have now been a total of 72 such complaints in 2004, and interventions have been made with the authorities on 38 of these cases.⁹ Of these 38 cases, 18 concerned various forms of forced labour (other than forced recruitment), 13 concerned forced recruitment of minors into the armed forces, one case concerned alleged harassment of a complainant and six were direct complaints by individuals to Myanmar courts under section 374 of the Penal Code, copies

⁶ The decision of the Supreme Court in the first appeal that the pre-trial detention period was to be deducted from the prison terms still stands.

⁷ The Court also ruled that the pre-trial detention period was to be deducted from the prison term. Of the other six persons in the case, none of whom had an ILO connection, four had their convictions for high treason upheld and remain sentenced to life imprisonment. The two other persons had their sentences under section 123 of the Penal Code reduced from three to two years' imprisonment.

⁸ See GB.286/6 (Mar. 2003), para. 7; GB.288/5 (Nov. 2003), para. 8; and GB.289/8 (Mar. 2004), para. 10.

⁹ Of the remaining 34 cases, 18 were considered to be outside the mandate of the Liaison Officer, in eight cases of forced recruitment interventions had already been made by another agency, one case concerned an allegation already raised with the authorities in 2003, six cases were pending and one complaint directly to the court under section 374 of the Penal Code, copied to the Liaison Officer, was subsequently withdrawn.

of which had been communicated to the Liaison Officer by the complainants. (A list of all these cases is provided in Appendix II.)

- 11.** In cases of alleged forced recruitment of minors, the Liaison Officer a.i. has written to the Convention 29 Implementation Committee with the details of the allegation, requesting that the Committee take urgent action to verify this information in order that, if it is confirmed, the individuals in question can be returned to the care of their parents and an investigation carried out into the circumstances of their recruitment so that any person found to have acted illegally can be prosecuted. In other cases of alleged forced labour, the Liaison Officer a.i. has written to the Convention 29 Implementation Committee providing details of the allegation and recommending that, in line with the Committee's procedures, a field observation team (FOT) be sent to the area in question to investigate the allegation, and expressing his readiness to accompany this FOT in an observer capacity. In cases of direct complaints to a court under section 374 of the Penal Code, he has written to the Convention 29 Implementation Committee indicating that he has been made aware of the complaint, that he would remain in contact with the complainant during the complaint procedure, and requesting the Committee to keep him informed of any developments.
- 12.** In the view of the Liaison Officer a.i., the mechanism put in place by the authorities for addressing forced labour allegations, that of sending an ad hoc team composed of senior Government officials to the region to conduct an investigation, is not well-suited to dealing with the increasing numbers of cases.¹⁰ Indeed, as the number of allegations has increased, they have tended to be investigated internally by the General Administration Department; the Liaison Officer a.i. has not been invited to observe any such investigations, nor is he aware of any safeguards to avoid potential conflicts of interest. Cases concerning the army (that is, cases of forced recruitment, or cases of forced labour allegedly imposed by the army) have been referred by the Committee to the representative of the Ministry of Defence. These cases are investigated internally by the army, with only a short response on the findings being reported by the Committee, despite requests from the Liaison Officer a.i. for detailed written reports of all investigations. The role of FOTs has been limited largely to conducting information-dissemination workshops.¹¹ The Liaison Officer a.i. believes that such activities can play an important role in raising awareness of the prohibition of forced labour among local officials, but only in a context where action is being taken against those who violate this prohibition.
- 13.** To date, of the 38 cases referred to the Convention 29 Implementation Committee, responses have been received in 18 cases.¹² In all these cases, the allegation that forced labour was involved was rejected. In the six cases where individuals complained directly to the court, three cases were rejected on the grounds that there was no prima facie evidence of forced labour, and in three cases the trials are still ongoing. More disturbingly, in two of

¹⁰ The former Liaison Officer had already expressed certain concerns relating to the FOT mechanism in a letter to the authorities dated 16 November 2003 (see GB.288/5/1, para. 2). While many of the specific concerns were subsequently addressed, the more fundamental step of reviewing the composition of such teams was not taken.

¹¹ FOTs have visited a number of areas, mostly to hold information-dissemination workshops, but also on certain occasions to investigate allegations of forced labour. These areas include, in July, Kawhmu in Yangon Division (accompanied by the Liaison Officer a.i. in an observer capacity), Myeik in Tanintharyi Division and Pyapon in Ayeyawaddy Division and, in August, northern Rakhine State and Kayin State.

¹² Verbal responses have also been received in a further four cases (written responses are pending). The remaining cases on which responses have not been received mostly concern the army.

the cases that were rejected, the complainants were prosecuted for defamation and imprisoned for six months each.¹³

Details of cases

14. Details of 23 cases on which interventions were made in 2004 have already been presented to the Governing Body and the Committee on the Application of Standards of the International Labour Conference.¹⁴ Details on new cases are provided below:

- *Intervention dated 28 May.* According to the allegation, a 13-year-old boy was detained by two men while walking in Yangon, and taken against his will to an army recruitment centre where he was forced to enlist under the threat of being imprisoned if he refused. Subsequently, he took an opportunity to run away and return to his family. He was advised by his family to turn himself in and seek a formal discharge because of his young age, rather than risk being treated as a deserter. However, after taking this advice and turning himself in to his battalion, he was sentenced to six months' imprisonment, after which he was ordered to continue his military service.¹⁵ Supporting documentary information was provided, including, inter alia, the judgement of the court martial, as well as the boy's birth certificate, student card and family list. The Liaison Officer a.i. urged the Implementation Committee to take the necessary steps to verify this information, in order that if it was confirmed a review of the boy's conviction could take place with a view to ensuring his release from prison and his formal discharge from the army, as well as the prosecution of any officials found to have acted illegally.
- *Intervention dated 6 July.* The intervention concerned four allegations of forced labour that were received from individuals from different villages in Bago township (in Bago Division). In the first case, it was alleged that villagers were being requisitioned by the local authorities to construct a road embankment. In the second case, it was alleged that for the past year villagers had been required by the authorities to provide ten persons at all times, on a rotation basis, for sentry duty. In the third case, villagers from the same village were being requisitioned by the local authorities to clear 500 acres of land for the establishment of a teak plantation. In each of these cases, every household in the village had been given a quota of work to complete, and were threatened with arrest if they did not do so. In the fourth case, it was alleged that the township authorities requisitioned villagers from a number of villages in the area to work on the construction of barracks and other buildings for four new artillery battalions. A total of 30,000 bamboo poles also had to be provided by the villagers for the construction. To cover other construction costs, villagers also had to provide compulsory cash contributions in addition to their labour. Vehicles and their drivers were also requisitioned for transporting materials.
- *Intervention dated 8 July.* According to an allegation received from a number of alleged victims, labour had been requisitioned for at least three years by Military Operations Command No. 5 based in Toungup (Rakhine State), for the cultivation of its farm land. According to the information provided, the land in question had been

¹³ See paras. 16 and 21 below.

¹⁴ See doc. C.App./D.5 (ILC, 2004), paras. 9-17 (reproduced in Appendix III) and doc. GB.289/8, paras. 15, 16 and 18.

¹⁵ The Liaison Officer a.i. subsequently learned that the individual was sent back to his battalion from military detention on 23 September.

previously confiscated from farmers for the establishment of this military command, after which farmers were required to continue cultivating the land on behalf of the military, using their own cattle and tools.

- *Intervention dated 9 July.* According to an allegation from an alleged victim in Hinthada township (Ayeyawaddy Division), the township authorities had given instructions to the local authorities to provide round-the-clock sentries to guard an unoccupied monastery. Since then, more than one year ago, the local authorities had been requisitioning three to four villagers on a rotation basis to perform this duty.¹⁶
- *Intervention dated 23 July.* According to an allegation from persons living in Maungdaw township (Rakhine State), labour was being requisitioned by the authorities on a large scale from several villages in the northern part of the township for the construction of a number of bridges. Muslim villagers were particularly affected, but Rakhine Buddhist villagers were also being requisitioned. In addition to labour, the villagers were also required to provide gravel for the construction. Approximately 45 persons per village had to work on these projects each day. The allegation pointed out that the timing of the work at the end of the planting season meant that the impact on individuals was particularly great, as this was the most critical time for work in their own fields or, in the case of landless labourers, the time when they were able to earn the most from casual agricultural labour.
- *Intervention dated 13 September.* According to the allegation, a 14-year-old boy was detained while walking in Yangon and forced to enlist under threat of imprisonment. After completing basic military training, the boy was assigned to a battalion and a few months later suffered a gunshot wound at the front line as well as a serious bout of malaria. He was not permitted to leave the army and after treatment he was returned to his unit. Feeling he had no other options, he went absent without leave. Supporting documentary information was provided, including a copy of the boy's family list which established his identity and age. The Liaison Officer a.i. urged the Implementation Committee to take the necessary steps to verify this information, in order that if it was confirmed the boy could be given a formal discharge from the army and assurances that no action would be taken against him; an urgent investigation should then be carried out into the circumstances of his recruitment so that any person found to have acted illegally could be prosecuted.
- *Intervention dated 12 October.* According to an allegation from persons living in Ramree township (Rakhine State), labour was being requisitioned by the authorities from 40 villages in the area for the repair of a road. The villagers had been forced to work on the repair of this road every year for several years; the most recent incident began in July and was ongoing at the time the complaint was made in early October. The timing of this latest incident placed a particular burden on villagers as it was the peak agricultural period. Vehicle owners also had their vehicles requisitioned for the project, without compensation. Villagers were threatened by the police that action would be taken against them if they did not provide their labour. One student had been prosecuted by the local authorities during a previous incident in March for allegedly refusing to work on the project.

15. The Liaison Officer a.i. was also informed by individuals of four additional complaints they had made directly to Myanmar courts under section 374 of the Penal Code (which concerns the illegal imposition of forced labour). There have now been a total of six complaints of this kind. The details of the four new cases are as follows. One case

¹⁶ This case has also been the subject of a direct complaint to the courts under section 374 of the Penal Code (see para. 16 below).

concerned an individual who claimed that he had been requisitioned for a road construction project in Kawhmu township (Yangon Division); this project had also been the subject of the two previous complaints of this kind. All three trials were still ongoing at the time that this report was finalized.

16. The three other new cases concerned individuals who claimed that they had been requisitioned for sentry duty in Hinthada township (Ayeyawaddy Division).¹⁷ Two of the individuals refused to do this work, and as a result were prosecuted and sentenced by the township court to prison terms of several months. After their release from prison at the end of their sentences, the two individuals lodged complaints under section 374 of the Penal Code against the official who had requisitioned them for the work. Included with the complaints were the original trial documents which, the complainants argued, established beyond doubt that the demand for them to do the sentry work constituted forced labour. According to court documents provided to the Liaison Officer a.i., the township court (presided over by the same judge that had originally sentenced the individuals for refusing to do the work) dismissed the case following a police investigation, on the grounds that there were no indications that coercion or forced labour was involved. This finding was seemingly contradicted by the earlier decision of the same court to sentence the two individuals to prison terms for failing to carry out the work. The complainants subsequently tried, unsuccessfully, to lodge the complaint with a higher court. Furthermore, the official accused of requisitioning the labour then lodged a counter-suit against the two individuals for defamation; this case was accepted by the court and the two individuals were subsequently found guilty (again, by the same judge) and given six-month prison terms on 7 October. The third individual who lodged a complaint concerning this alleged forced labour incident submitted in support of his complaint a written summons from the local authorities indicating that he had a final opportunity to provide labour or face legal action. The township court also rejected this case on the grounds that there was no prima facie evidence of forced labour.

Action by the authorities against complainants

17. The Liaison Officer a.i. has received information according to which two individuals were arrested after returning to their village following a visit to him in Yangon. During the visit, one of the individuals provided details on a direct complaint he had made to a court under section 374 of the Penal Code, concerning forced labour in Kawhmu township (Yangon Division). According to the information, which was received from one of these individuals, the two were arrested by the police at their respective homes the evening they returned, and interrogated, inter alia, about their visit to the ILO. They were held in the police lock-up overnight and released the following afternoon. The two persons also submitted a complaint on this matter directly to the Minister for Home Affairs. In a letter dated 7 July, the Liaison Officer a.i. urged the Convention 29 Implementation Committee to ensure that this incident was fully investigated as a matter of urgency and that he was kept informed of the results. He underlined that it would clearly be a matter of great concern if contacts with the Office of the ILO Liaison Officer could give rise to such action on the part of the police, all the more so in the light of the recent high treason case and of the repeated assurances given at all levels and on various occasions by the authorities. It might also cast serious doubt on the possibility to effectively implement the Formal Understanding on the Facilitator, which contained a specific provision that no action should be taken against complainants. In addition, he pointed out that this matter could also reflect badly on the complaint procedure under section 374 of the Penal Code given that this was one of the

¹⁷ All three cases concerned sentry duty at an unoccupied monastery (see also para. 14 above).

first such complaints ever to be lodged and as such would no doubt be followed with particular interest. No response has been received from the authorities.¹⁸

- 18.** The Liaison Officer a.i. was also informed of another incident of this kind. According to this information, three persons from Toungup township (Rakhine State) were detained and interrogated by the local authorities on suspicion of having provided information to the ILO concerning an incident of forced labour in the area which was the subject of an intervention by the Liaison Officer a.i.¹⁹ At the end of their interrogation, the three persons were allegedly required to sign their names on blank sheets of paper, and were warned that they would shortly be arrested and interrogated further. On 19 August the Liaison Officer a.i. wrote to the Convention 29 Implementation Committee expressing similar concerns as in the previous case.²⁰ He indicated that, because of these concerns, and the possibility that further action might be taken against these persons, he had invited the informal facilitator, Mr. Léon de Riedmatten, to join him on a visit to the area. He also urged the Committee to participate in this visit, in order that the realities of the situation could be fully and credibly assessed. However, no member of the authorities was available.
- 19.** Accordingly, the Liaison Officer a.i. and Mr. Léon de Riedmatten visited Toungup township from 13 to 17 September. During the visit, they were able to have detailed discussions with local people, including the three persons against whom action had allegedly been taken, as well as with members of the local authorities. They were also able to visit the location where the alleged forced labour had taken place. As a result of these visits and discussions, they are of the view that the essential facts of the situation are not in doubt, and that the allegations concerning both the original forced labour incidents and the action taken against the three individuals were accurate. The seriousness of the forced labour incidents was reinforced, both in terms of their scale and the harshness of the conditions, as was the fact that these incidents had occurred on the orders of the army. In addition, events which occurred in the area during their visit gave rise to further concerns over the safety of the persons met during the visit. On their return to Yangon on 17 September, the Liaison Officer a.i. and Mr. Léon de Riedmatten met with the Secretary of the Convention 29 Implementation Committee²¹ to give details on the outcome of the visit and to express their serious concerns.
- 20.** When after one month no response had been received from the authorities, the Liaison Officer wrote to the Convention 29 Implementation Committee on 22 October underlining the seriousness of this case and restating the recommendations of the informal facilitator. These were that the authorities should: (i) take the necessary steps to ensure that there is no retaliation against the three persons suspected of having provided information to the ILO on this case, or any other individual met during the visit; (ii) ensure that the villagers in this area are not subject to forced labour in the future; and (iii) ensure that compulsory contributions in cash or in kind are not required from villagers for projects of this nature. The letter also underlined that, in addition to these recommendations of the informal facilitator concerning the future, it was imperative that there be a thorough investigation of

¹⁸ However, following the initial incident the complainant has faced no further problems.

¹⁹ See doc. C.App./D.5. (ILC, 2004), para. 11 (reproduced in Appendix III).

²⁰ See para. 17 above.

²¹ That is, U Myat Ko, Director-General of the General Administration Department.

the forced labour incidents which had taken place, in order that those responsible could be held accountable.²²

21. The Liaison Officer a.i. is also deeply concerned at the fact that two individuals who made complaints to a court were subsequently found guilty of defamation and imprisoned.²³ This is all the more concerning as these two individuals had already served prison sentences for refusing to perform forced labour. On 8 October the Liaison Officer a.i. wrote to the Convention 29 Implementation Committee expressing his concerns and recommending: (a) that he be able to urgently meet with the two persons, preferably at his office rather than in a place of detention; and (b) that, in view of the prima facie evidence that forced labour had occurred, an urgent investigation be conducted into the events in Hinthada and in particular into the conduct of the township court in these two cases, as well as a third related case,²⁴ in order that the apparent contradictions in the court's actions could be credibly resolved. At the time this report was finalized, the Liaison Officer a.i. had not received a response to the concerns he had expressed. However, information had been received from the authorities according to which the two individuals had been released. Any further details will be reported to the Governing Body.

Responses received from the authorities

22. In letters to the Liaison Officer a.i. dated 30 July and 9, 27 and 31 August, the authorities presented their findings on a number of allegations of forced labour that he had raised.
- As regards the allegation of forced labour for road-widening projects in Chin State,²⁵ the authorities indicated that the projects had been carried out by the Public Works Department using machinery. No members of the public had been involved, although in one case members of local community organizations had happily contributed labour and, in another case where a retaining wall had to be built, local churchgoers participated happily in the work and contributed money voluntarily for the project. These findings contradicted the assertions of the local people engaged in these projects that the Liaison Officer a.i. had spoken to, and the photographs that he had submitted showing local people engaged in the work.
 - As regards the allegation of forced labour in Naukmee village in Bogale township (Ayeyawaddy Division) for road projects,²⁶ the authorities indicated that the work had been organized by local leaders, for community benefit. In a response to the authorities dated 30 September, the Liaison Officer a.i. pointed out that the information provided appeared to indicate that forced labour in the sense of Convention No. 29 had occurred since the nature and scale of the work would put it beyond the scope of the exception in the Convention concerning minor communal service.

²² The Liaison Officer a.i. has received information from the area according to which no further action has been taken against the three persons suspected of having provided information to the ILO in this case.

²³ See para. 16 above.

²⁴ See para. 16 above.

²⁵ See doc. C.App./D.5 (ILC, 2004), para. 16 (reproduced in Appendix III).

²⁶ *ibid.*, para. 10 (reproduced in Appendix III).

- As regards the allegation of forced labour for guard duty and land clearing in Pantanaw township (Ayeyawaddy Division),²⁷ the authorities indicated that the work in question had been organized and agreed by the local community in order to obtain funds for community projects, and did not therefore constitute forced labour.
- As regards the two allegations of forced labour in Bogale township (Ayeyawaddy Division),²⁸ the authorities indicated that in the first case the work was organized by community elders with the willing participation of villagers. In the second case, the authorities found that village chairmen had agreed to provide the township chairman with funds for the project, and that when the villagers were informed of this decision, they had freely donated the necessary funds. However, since it was found that the funds were not sufficient for the project (constructing government offices), they were instead used for a school and to provide a new zinc roof for the township office of the Union Solidarity and Development Association (USDA).²⁹
- As regards the allegation of forced labour in Maungdaw township (Rakhine State),³⁰ the authorities indicated that a field observation team had investigated the matter and found that a budget had been allocated for the project under the control of the NaSaKa border security force, who subcontracted the work to a private contractor. Workers were paid and there was no forced labour.

23. In a further letter to the Liaison Officer a.i. dated 31 August, the authorities presented their findings on four allegations of forced recruitment that he had raised.³¹ It was confirmed that the four individuals were serving in army battalions as alleged. The authorities indicated that, according to the records kept at the time of recruitment, all four individuals had been over the age of 18 when recruited. Furthermore, two of the individuals had been interviewed and had expressed a wish to continue military service; the third individual had subsequently gone absent without leave, and the fourth was serving a sentence in a military prison for desertion. In a response to the authorities dated 30 September, the Liaison Officer a.i. pointed out that the ages of the four individuals recorded at recruitment were contradicted by documentary evidence (including birth registration documents, student cards, household lists and identity papers) that was provided to the authorities with the original allegations. This situation inevitably raised doubts as to whether the recruitment had been genuinely voluntary, particularly given the young age at which the individuals were alleged to have been recruited. In the case of the fourth individual, who had now been sent from military prison back to his battalion, no information had been provided as to whether his recruitment was found to have been voluntary. An urgent investigation should therefore be conducted into all these cases and appropriate action taken.

24. On 3 September the Liaison Officer a.i. met with the Convention 29 Implementation Committee. He was briefed on the work of the Committee, including information dissemination activities in various parts of the country, as well as the action it had taken to investigate specific allegations of forced labour that he had transmitted. As regards the forced recruitment of children, the Committee noted that, in addition to setting up in January a High-level Committee for the Prevention of the Recruitment of Child Soldiers, it

²⁷ *ibid.*, para. 12 (reproduced in Appendix III).

²⁸ *ibid.*, paras. 13 and 14 (reproduced in Appendix III).

²⁹ The USDA is a government-sponsored mass organization.

³⁰ See para. 14 above.

³¹ *ibid.*, para. 17 (reproduced in Appendix III) and para. 14 above.

was working in consultation with UNICEF on ways to address the issue.³² The Committee underlined that the authorities were doing all that they could to implement their part of the joint Plan of Action on forced labour, even if the ILO was not prepared to go ahead with the Plan at this time. In the Committee's view, this demonstrated the strong political will of the authorities to eliminating forced labour. The Liaison Officer a.i. recalled that a key concern of the ILO was the three persons convicted of high treason, which had been discussed in detail at the previous meeting. He recalled that it was vital for there to be judicial clarity on the question of the legality of contacts with the ILO, and that it was important that this be translated into concrete steps in the case of the three individuals. As regards developments on the elimination of forced labour, the large number of individual complaints that he had received and transmitted to the authorities was extremely significant. These cases provided an opportunity to the authorities to give a concrete demonstration of their stated political will to eliminate forced labour. In contrast, a lack of credible action in these cases would tend to give the impression that the authorities were not serious in addressing this problem. In this regard, he was concerned that all the responses that he had received so far stated that the allegations had been found to be untrue. None of the cases of direct complaints by individuals to the courts had so far been found in the complainants' favour. To date, no official in Myanmar had been found guilty of imposing forced labour, even though it was recognized that the practice continued. Even more concerning was the fact that in some cases action had been taken by the authorities against complainants. The Liaison Officer a.i. urged the Committee to investigate these cases as a matter of priority. He noted that the current state of affairs would inevitably cast doubt on the credibility of the Committee and its work, and on the political will of the authorities to seriously address the problem.

Yangon, 22 October 2004.

³² This included developing an action plan to address child recruitment, and the establishment of a Directorate for Military Strength to enforce recruitment procedures. The Committee for the Prevention of the Recruitment of Child Soldiers has so far met three times. At its last meeting on 5 October, Lt. Gen. Thein Sein (its Chairman), in comments reported in the state press, noted that in Myanmar "there are laws, rules, orders and directives that protect the rights of the children. Forced labour is also prohibited as Myanmar people are noble-minded". He went on to add that "groups with negative views ... are also making false statements on narcotic drugs, human trafficking and forced labour with the intention of tarnishing the dignity of the State among international communities" (*New light of Myanmar*, 6 Oct. 2004).

Appendix I

Letter dated 18 October from Mr. Tapiola to the Myanmar Minister for Labour

Dear Minister,

On behalf of the Director-General who is now absent from Geneva, I wish to thank the authorities for the copy of the new Supreme Court judgment in the High Treason case. At first sight, it appears to contain elements of interest regarding the rights of Myanmar citizens to freely communicate with the ILO.

We shall study carefully the judgement as soon as a full official translation is available, in the light of the discussions at the International Labour Conference and the Informal Facilitator's report. We shall examine the specific grounds on which the sentences still maintain the continued imprisonment of the three persons concerned although for a shorter period. In the meanwhile, I do wish to express that their early release remains a possibility and should be given urgent consideration.

At the same time, I must express serious concern about certain other developments which have been reported to the Convention 29 Implementation Committee. It is my hope that these matters can be speedily clarified, as they will have to be reported and are liable to affect the Governing Body debate.

This is also why I trust that you can have an early opportunity to have a discussion with the ILO Liaison Officer ad interim.

Yours sincerely,

(Signed) Kari Tapiola.

Appendix II

Cases on which interventions have been made (2004)

Case type	Location	Intervened	Response	Details of response from the authorities
Forced recruitment	Hlaingthaya township, Yangon Division	26/01/2004	23/02/2004	The child in question was released from army back to the care of his parents on 5/2/2004, but recruitment was found to have been voluntary.
Forced labour	Twante township, Yangon Division	28/01/2004	05/05/2004	Implementation Committee found the allegation to be unfounded, but the district chairman was removed from his post for "being a burden to the people".
Forced recruitment	Hlaingthaya township, Yangon Division	29/01/2004	17/02/2004	The child in question was released from army back to the care of his parents on 5/2/2004, but recruitment was found to have been voluntary.
Forced labour	Thandaung township, Kayin State	24/02/2004	None to date	
Forced recruitment	Twante township, Yangon Division	11/03/2004	26/05/2004	Found to have been voluntarily recruited when over the age of 18.
Forced labour	Bogale township, Ayeyawaddy Division	12/03/2004	09/08/2004	Work found to have been jointly organized by community elders and local authorities. Response ambiguous as to whether this could have nevertheless involved forced labour.
Forced recruitment	Insein township, Yangon Division	18/03/2004	26/05/2004	Individual not found to be serving in the battalion mentioned in the allegation.
Forced recruitment	North Okkalapa township, Yangon Division	18/03/2004	26/05/2004	Found to have been over the age of 18 when recruited and currently imprisoned for desertion. No indication given as to whether the recruitment was found to have been voluntary.
Forced recruitment	Thakehta township, Yangon Division	18/03/2004	26/05/2004	Found to have been voluntarily recruited when over the age of 18.
Forced labour	Toungup township, Rakhine State	07/04/2004	None to date	
Forced labour	Toungup township, Rakhine State	07/04/2004	None to date	
Forced recruitment	Khayan township, Yangon Division	08/04/2004	None to date	
Forced labour	Bogale township, Ayeyawaddy Division	09/04/2004	31/08/2004	Found to have been community development work carried out collectively by the villagers.
Forced labour	Bogale township, Ayeyawaddy Division	09/04/2004	31/08/2004	It was found that no forced labour was involved in the project, and that voluntary cash donations had been received but had been insufficient for the project, so the funds had been used for construction of a school building and roof of the USDA office.
Forced labour	Pantanaw township, Ayeyawaddy Division	09/04/2004	27/08/2004	Work found to have been carried out willingly by villagers after the majority had agreed to do this work for free in return for a donation of funds to village community projects.
Forced recruitment	Hlaingthaya township, Yangon Division	23/04/2004	26/05/2004	Found to have been voluntarily recruited when over the age of 18.
Forced labour	Monywa township, Sagaing Division	29/04/2004	None to date	(Verbal response indicated that the allegation was unfounded.)
Forced recruitment	Hlaingthaya township, Yangon Division	30/04/2004	31/08/2004	Found to have been recruited when over the age of 18, and to have been absent without leave since 4 June 2004.

Case type	Location	Intervened	Response	Details of response from the authorities
Forced recruitment	Thingangyun township, Yangon Division	30/04/2004	31/08/2004	Found to have been voluntarily recruited when over the age of 18.
Forced recruitment	Twante township, Yangon Division	30/04/2004	31/08/2004	Found to have been voluntarily recruited when over the age of 18.
Section 374 complaint ¹	Kawhmu township, Yangon Division	04/05/2004	sub judge	
Forced labour	Falam district, Chin State	20/05/2004	30/07/2004	No forced labour found to have been involved.
Section 374 complaint ¹	Kawhmu township, Yangon Division	26/05/2004	sub judge	
Forced recruitment	Shwepyitha township, Yangon Division	28/05/2004	31/08/2004	Found to have been recruited when over the age of 18. No indication given as to whether the recruitment was found to have been voluntary. Arrested for desertion and given six-month sentence in a military prison. Returned to his battalion on 23 September.
Forced labour	Bago township, Bago Division	06/07/2004	None to date	(Verbal response indicated that the allegation was unfounded.)
Forced labour	Bago township, Bago Division	06/07/2004	None to date	(Verbal response indicated that the allegation was unfounded.)
Forced labour	Bago township, Bago Division	06/07/2004	None to date	(Verbal response indicated that the allegation was unfounded.)
Forced labour	Bago township, Bago Division	06/07/2004	None to date	
Other ²	Kawhmu township, Yangon Division	07/07/2004	None to date	
Forced labour	Toungup township, Rakhine State	08/07/2004	None to date	
Forced labour	Hinthada township, Ayeyawaddy Division	09/07/2004	None to date	
Section 374 complaint ¹	Hinthada township, Ayeyawaddy Division	22/07/2004	—	Case rejected by court on the grounds that there was no prima facie evidence of forced labour. Complainant subsequently sentenced to 6-month prison term for defamation on 7/10/2004.
Forced labour	Maungdaw township, Rakhine State	23/07/2004	31/08/2004	Official investigation (by FOT) found that the allegations of forced labour on the bridge projects were not true.
Section 374 complaint ¹	Hinthada township, Ayeyawaddy Division	06/08/2004	—	Case rejected by court on the grounds that there was no prima facie evidence of forced labour. Complainant subsequently sentenced to 6-month prison term for defamation on 7/10/2004.
Section 374 complaint ¹	Kawhmu township, Yangon Division	09/08/2004	sub judge	
Forced recruitment	Kyimindine township, Yangon Division	13/09/2004	None to date	
Section 374 complaint ¹	Hinthada township, Ayeyawaddy Division	01/10/2004	—	Case rejected by court on the grounds that there was no prima facie evidence of forced labour.
Forced labour	Ramree township, Rakhine State	12/10/2004	None to date	

¹ In this table, "374 complaint" refers to a direct complaint to a Myanmar court under section 374 of the Penal Code concerning the illegal imposition of forced labour. ² This was a case of alleged harassment and arrest by the police following the visit of two persons to the ILO in connection with an allegation of forced labour.

Appendix III

Extract from document C.App./D.5, Committee on the Application of Standards, ILC, 92nd Session (June 2004) ¹

[...]

Activities of the Liaison Officer a.i.

5. On 9 April the Liaison Officer a.i. met with the Minister for Labour in order to discuss the outcome of the Governing Body debate and the steps which could be envisaged to give effect to the Governing Body's conclusions. The Liaison Officer a.i. had further meetings with the Minister on 7 and 24 May, together with the informal facilitator Mr. de Riedmatten.

6. In a meeting on 29 April with the Director-General of the Myanmar Department of Labour, the Liaison Officer a.i. had the opportunity to discuss matters relating to the practical elimination of forced labour. A meeting on 5 May with the Convention 29 Implementation Committee provided the opportunity to have more detailed discussions in this regard, as set out in paragraphs 18-20 below. In a subsequent meeting on 18 May with the Director-General of the Department of Labour, the Liaison Officer a.i. was able to reiterate some of the comments and concerns that he had expressed in the meeting with the Convention 29 Implementation Committee.

7. In addition to these meetings with the authorities, the Liaison Officer a.i. also had the opportunity to have discussions with the diplomatic community in Yangon and Bangkok, as well as with representatives of United Nations agencies, international non-governmental organizations and the International Committee of the Red Cross.

8. From 10 to 15 May, the Liaison Officer a.i. travelled to Chin State.² This trip was conducted independently of the authorities. The Liaison Officer a.i. was able to travel to all areas that he wished without any restrictions or escort, and was able to meet freely with a range of persons, as well as with members of the Chin State Peace and Development Council including its Secretary.

Developments on specific allegations

9. Since the finalization of his report to the 289th Session of the Governing Body in March, the Liaison Officer a.i. has received a considerable number of additional complaints, mostly from alleged victims or their representatives, concerning incidents of forced labour. This brings the total number of complaints received so far in 2004 to 40. The Liaison Officer a.i. has now transmitted 21 of these cases to the Convention 29 Implementation Committee for investigation and action.³ In two further cases, the individuals who presented allegations to the Liaison Officer a.i. had also lodged direct complaints with a Myanmar court under section 374 of the Penal Code. This is the

¹ See ILC, 92nd Session (Geneva, 2004), *Provisional Record* No. 24, Part 3, section D, *Latest developments since the 289th Session of the Governing Body (Mar. 2004)*.

² He travelled from Mandalay to Chin State via Kalembo, returning to Mandalay via Gangaw. In Chin State he visited the townships of Tiddim, Falam and Hakha.

³ Of the remaining cases, five were rejected on the grounds that they were not sufficiently precise or credible for action to be taken, five cases were judged not to fall within the mandate of the Liaison Officer, seven cases of forced recruitment had already been the subject of interventions by another agency, and two cases were sub judice as the complainants had made direct complaints to a court under section 374 of the Penal Code (see below).

first time that a complaint has been lodged under this section of the Penal Code.⁴ In these cases, the Liaison Officer a.i. wrote to the Convention 29 Implementation Committee informing it that he had received copies of the complaints and underlining that, particularly as these were the first complaints of this kind and as such could be expected to generate considerable interest, it was important for the credibility of the process that they be handled in a fully transparent manner. He indicated that he would remain in contact with the complainants throughout the case and asked that he be kept informed of developments.

10. On 12 March the Liaison Officer a.i. transmitted to the Convention 29 Implementation Committee an allegation of forced labour that he had received from an individual from Naukme village in Bogale township (Ayeyawaddy Division). This individual alleged that they had very recently been forced by the local authorities to participate in the upgrading of a village access road along with hundreds of other villagers from several villages in the area. The individual also alleged that forced labour had been imposed for a number of other projects in the recent past.

11. On 7 April the Liaison Officer a.i. transmitted to the Convention 29 Implementation Committee an allegation of forced labour that he had received from a number of individuals from Toungup township (Rakhine State). These individuals alleged that an army battalion had very recently forced them and around 800 other villagers from several villages in the area to work under difficult conditions on the construction of embankments as part of a land reclamation project. The Liaison Officer a.i. also received a separate allegation containing similar information concerning the same project.

12. On 9 April the Liaison Officer a.i. transmitted to the Convention 29 Implementation Committee three further allegations of forced labour that he had received. The first of these allegations was made by three individuals from Pantanaw township (Ayeyawaddy Division). These individuals alleged that villagers from one village tract in the area were currently being forced by the local authorities to carry out guard duty at a local official's house and at a nearby fish-breeding project being implemented by the local authorities. They also had to work clearing land for a football field.

13. The second allegation transmitted to the Committee on 9 April was made by an individual from Magu village tract in Bogale township (Ayeyawaddy Division). According to this allegation, two villagers were required by the local authorities at all times for general duties at the village tract office. Villagers carried out this duty on a rotation basis, and anyone who failed to be present was subject to a fine. Villagers were also forced to participate in other projects, such as constructing embankments and widening the access road. Copies of two orders from the local authorities requisitioning such labour were provided.

14. The third allegation transmitted to the Committee on 9 April was made by an individual from Ama village tract in Bogale township (Ayeyawaddy Division). According to this allegation, one person from each household had been forced by the local authorities for the previous three weeks to participate in the construction of 13 government offices as part of a project to upgrade Ama to a sub-township.

15. On 29 April the Liaison Officer a.i. transmitted to the Convention 29 Implementation Committee an allegation of forced labour that he had received from an individual from Monywa township (Sagaing Division). According to this allegation, villagers from five villages were being forced to work on the resurfacing with rocks of a five-mile section of road. In addition to the labour the villagers had to provide the rock chippings, which entailed financial costs.

16. On 20 May the Liaison Officer a.i. transmitted to the Convention 29 Implementation Committee a case of forced labour that had come to his attention during his recent visit to Chin State, including photographs he had taken showing the nature and scope of the work. The Liaison Officer a.i. had found that work was under way at the time of his visit to Tiddim and Falam towns to widen the main road passing through these towns. The households along these roads were required to carry out this work, which included considerable excavation of the steep hill into which the road

⁴ Section 374 of the Penal Code makes forced labour a criminal offence, in the following terms: "Whoever unlawfully compels any person to labour against the will of that person shall [be] punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both".

was cut, as well as the construction of a high retaining wall and surfacing of the newly widened section with rock.

17. In letters dated 11 and 18 March, and 8, 23 and 30 April, the Liaison Officer a.i. transmitted to the Convention 29 Implementation Committee nine detailed allegations concerning forced recruitment into the army. Information concerning the alleged circumstances of the recruitment, together with copies of identification documents of the boys, was provided to the Committee. Seven of these allegations concerned the forcible recruitment of boys between the ages of 13 and 16. The Liaison Officer a.i. requested the Committee to ensure that urgent action was taken to verify these allegations in order that, if they were confirmed, these children could be returned to the care of their families as soon as possible and an urgent investigation then carried out into the circumstances of their recruitment so that any person found to have acted illegally could be prosecuted. Of the remaining two cases, one concerned a 15-year-old boy who it was alleged was forcibly recruited into the army, but then ran away after two months and resumed his education. He was subsequently arrested and sentenced by court martial to four years' imprisonment for desertion. The Liaison Officer a.i. requested the Committee to ensure that an urgent investigation was carried out in order that, if the information was confirmed, the court martial verdict would be reviewed and the individual released as appropriate. The other case concerned a 13-year-old boy who it was alleged was recruited into the military against his will. A few months later, after completing basic training and being posted to a battalion, he was allowed a home visit and subsequently did not return to his battalion. He was therefore now facing the possibility of being arrested and court-martialled for desertion. The Liaison Officer a.i. requested the Committee to ensure that urgent action was taken to verify this information in order that, if it was confirmed, the individual could be given a formal discharge from the military and assurances that no action would be taken against him. In both of these cases, the Liaison Officer a.i. also requested the Committee, if the information was confirmed, to ensure that investigations were carried out into the circumstances of recruitment so that any person found to have acted illegally could be prosecuted.

18. *Meeting with the Convention 29 Implementation Committee.* On 5 May the Liaison Officer a.i. met with the Implementation Committee and was briefed on the recent work of the Committee and the action taken in light of the various allegations, as detailed below. The Liaison Officer a.i. thanked the Committee for the information on its work and for the cooperation that he had received. The Liaison Officer a.i. noted the increasing number of allegations he was receiving from individuals, as well as the first complaint under section 374 of the Penal Code. This demonstrated not only a degree of confidence in the ILO, but also showed that complainants had a degree of confidence that the authorities would take action in cases of forced labour. It was important that the Committee continue to take concrete and credible action in response to allegations. In this regard, the Liaison Officer a.i. noted that most of the allegations transmitted in the last few months were still under investigation, and he was still awaiting written reports on those investigations that had been completed. So far, none of the allegations that had been brought to the attention of the Committee had been found by the Committee to be correct, and the Committee had not found any cases of forced labour through its field observation teams.⁵ The Liaison Officer a.i. was aware that in some cases forced labour practices had been stopped and administrative action had been taken against local officials as a result of allegations that he had transmitted. However, if the official position of the Committee continued to be that the allegations were unfounded, this would inevitably cast doubt on the credibility of the Committee and its work, particularly given the increasing number of allegations. These comments and concerns were reiterated by the Liaison Officer a.i. in a letter to the Committee following the meeting, and in subsequent meetings with the Minister for Labour and the Director-General of the Department of Labour.

19. *Detailed responses to allegations.* During the Implementation Committee meeting, the representative of the Ministry of Defence provided information on action that had been taken with regard to allegations concerning the military. He indicated that the allegation of forced labour in Thandaung township (Kayin State) transmitted by the Liaison Officer a.i. after his visit to the area⁶

⁵ No new visits by field observation teams had taken place since the last meeting with the Committee on 29 January. However, in a letter dated 26 May the Director-General of the Department of Labour (who serves as Joint Secretary of the Implementation Committee) indicated that he had held a two-day workshop for 120 participants, including a number of senior officials, on "Raising awareness of ILO Convention 29" in Myeik township, Tanintharyi Division.

⁶ This allegation was transmitted to the Committee on 24 February. See GB.289/8, para. 18.

was still under investigation. As regards the nine allegations of forced recruitment, investigations had been completed in four cases. In three cases, the information transmitted by the Liaison Officer a.i. had been confirmed. However, no information was provided on any action that had been taken to return these boys to their families or to investigate the circumstances of their recruitment. In the fourth case, the investigation had found that the information was incorrect as no person fitting the description in the allegation had been located in the battalion mentioned. The other five cases were still under investigation. The representative of the Ministry of Defence then gave some details on the recruitment procedure used by the military. He underlined that all soldiers were recruited voluntarily and had to be over the age of 18. In 2003, 75 recruits had been rejected as they had been found to be under age. If information was subsequently received that recruitment procedures had been violated and a recruit had not been voluntarily recruited or was under age, the case was investigated and the recruit discharged as appropriate. As a result of such investigations, there had been 68 discharges in 2002, and 12 discharges in 2003. Officials found to have violated recruitment procedures had action taken against them. There had been 17 such cases in 2002 and five in 2003.

- (a) The Committee then provided information on action that had been taken on allegations concerning local authorities. As regards the allegation of forced labour in Twante township (Yangon Division),⁷ the Committee indicated that this allegation was unfounded, but that the district chairman had nevertheless been removed from his post for “being a burden to the people”. This was confirmed in a letter from the Director-General of the Department of General Administration received that day. The remaining allegations were still under investigation.
- (b) On 26 May the Liaison Officer a.i. received information from the Ministry of Defence, transmitted in a letter from the Department of Labour. According to this information, investigations had been carried out into five allegations of forced recruitment transmitted by the Liaison Officer a.i. In one case, it was found that the person was not serving in the battalion alleged, and in the other four cases the information in the allegations was confirmed, except as regards the dates of birth of the persons concerned, which in all cases were such that the persons would have been 18 or over at the time of recruitment.⁸ In three cases the information indicated that after interviewing the persons and confirming that they were voluntary recruits it had been learned that their parents “had been persuaded to make false allegations”. In the fourth case it was indicated that the person was serving a sentence for desertion. The Liaison Officer a.i. notes that he saw original identification documents (such as birth certificates and family registration lists) showing the age of the individuals in all these cases, and that copies of these were transmitted to the authorities together with the allegations. The evidence received thus contradicts the assertions of the authorities.

⁷ This allegation was transmitted to the Committee on 28 January. See GB.289/8, para. 15.

⁸ There were also some slight discrepancies in the dates of recruitment. Four of the five cases were those that the representative of the Ministry of Defence had provided information on in the Implementation Committee, although there were further discrepancies between his statement and the letter concerning the ages of the persons concerned.



FIFTH ITEM ON THE AGENDA

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

Addendum

1. Since the finalization of document GB.291/5/1 additional developments have taken place which may be of interest to the Governing Body.
2. In letters from the Convention 29 Implementation Committee dated 25 October, the Liaison Officer a.i. received some further responses to allegations that he had raised with the Committee. As regards the allegation that forced labour was used for the construction of a road in Monywa township,¹ it was indicated that this had been arranged by the local authorities at the request of the Buddhist abbot, that villagers had participated willingly, and that no forced labour was involved. As regards the allegations of forced labour on three projects in Bago township,² in one case it was found that no forced labour or compulsory contributions had been involved. In the second case, which concerned alleged sentry duty, it was found that the duty had not constituted forced labour as it had merely taken the form of an instruction to villagers to exercise vigilance while going about their normal activities. In the third case, which concerned work at a government teak plantation, it was found that villagers were not satisfied with the wages they were receiving and had stopped work. No forced labour had been imposed.
3. In addition, the Liaison Officer a.i. was able to have a meeting with the Convention 29 Implementation Committee on 4 November, in which some additional information was provided. The Committee indicated that the Myanmar authorities were still strongly in favour of the implementation of the Plan of Action, which in their view demonstrated the continued commitment to cooperating with the ILO. The Director-General of the Supreme Court then gave some clarifications concerning the case in Hinthada township.³ According to the information provided, the two individuals who had been convicted and imprisoned

¹ See doc. C.App./D.5 (ILC, 2004), para. 15 (reproduced in GB.291/5/1, Appendix III).

² See GB.291/5/1, para. 14.

³ See GB.291/5/1, paras. 14 and 17.

for defamation had now been released on payment of a fine. He added that if they were not satisfied with the conviction, they could apply to the court for a revision. The Liaison Officer a.i. pointed out that it would be understandable if the individuals were reluctant to do so, having been twice imprisoned by the court in attempting to assert their rights, and he reiterated his request that the competent authorities initiate a full investigation of this case. The representative of the Ministry of Defence gave a verbal update on investigations of forced labour allegations that concerned the army. As regards the allegation of forced labour in Thandaung township,⁴ the concerned authorities had indicated that workers were paid at prevailing rates and had willingly performed the work. As regards an allegation of forced labour for the construction of army facilities in Bago township,⁵ it was found that the villagers had been paid and fed and had taken part willingly, being very happy to have this employment. As regards the serious incident of forced labour in Toungup township,⁶ it was found that preliminary work on the project had been carried out by the personnel of the battalions concerned, but these units did not have sufficient manpower for the construction of earth dams. Therefore, 1,400 villagers from five nearby villages had been assigned this work in February and March 2004, as had been stated in the allegation. This project could potentially reclaim nearly 1,000 acres of land, and it was found that due to this the villagers had participated willingly, and had given their signatures to attest to this. These responses have not so far been communicated formally in writing to the Liaison Officer a.i., and the comments of the new Minister for Labour (reported below) suggest that the matter may still be open.

4. On 5 November it was announced that the Myanmar Ministers for Labour and Home Affairs “had been permitted to retire”. The Minister for Science and Technology, U Thaug, was appointed concurrently as Minister for Labour. A regional military commander, Maj-Gen Maung Oo, was appointed Minister for Home Affairs.
5. The Liaison Officer a.i. had a meeting with the new Minister for Labour, U Thaug, on 10 November. The Minister reiterated the commitment of his Government to cooperating with the ILO on the elimination of forced labour and indicated that the rules, regulations and laws concerning forced labour would be strictly enforced. The Liaison Officer a.i. underlined the significance in particular of the Toungup case, and the fact that the response given in the meeting with the Convention 29 Implementation Committee was not credible. The Minister undertook to look into this case further. He gave assurances that if it was true, then it would be regarded as a very serious matter and action would certainly be taken against those responsible.

Yangon, 11 November 2004.

⁴ See GB.289/8, para. 18.

⁵ See GB.291/5/1, para. 14.

⁶ See GB.291/5/1, paras. 18-20.



FIFTH ITEM ON THE AGENDA

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

Report of the Director-General

I. Background to the present report

1. In the conclusions adopted following the discussion at its special sitting in June 2004, the Committee on the Application of Standards of the International Labour Conference noted, inter alia, that “the Governing Body at its next session should be ready to draw the appropriate conclusions, including reactivation and review of the measures and action taken including those regarding foreign direct investment, called for in the resolution of the International Labour Conference of 2000, unless there was a clear change in the situation in the meantime”.
2. The following report is aimed at assisting the Governing Body to review the situation in the light of all relevant developments since the measures were first activated at the end of 2000, and draw the appropriate conclusions.

II. Brief history of developments

**Developments leading up to the 2000 resolution
of the International Labour Conference**

3. Following a complaint in June 1996 under article 26 of the Constitution, a Commission of Inquiry was established in 1997 to examine the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29). The authorities did not permit the Commission of Inquiry to visit Myanmar, and the Commission therefore had to take testimony in neighbouring countries from refugees and others who had recently left Myanmar. In its report issued in July 1998, the Commission of Inquiry found that the Convention had been violated in law, as well as in actual practice in a widespread and systematic manner. It recommended that the relevant legislative texts be brought into line with the Convention, that in actual practice no more forced labour be imposed by the

authorities, in particular the military, and that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced labour be strictly enforced.

4. The main response of the Government limited itself to issuing an order (Order 1/99 of May 1999) temporarily suspending the power to requisition labour under the Village and Towns Acts. This was however only a partial measure and without real effect. In view of the Government's failure to take the necessary action to implement the recommendations of the Commission of Inquiry, the International Labour Conference adopted at its 87th Session (June 1999) a resolution on the widespread use of forced labour in Myanmar.¹ Subsequently, at its 88th Session (June 2000) the International Labour Conference adopted a resolution under article 33 of the Constitution on measures to secure the compliance of Myanmar with the recommendations of the Commission of Inquiry. This resolution approved the following measures, which took effect on 30 November 2000:

- (a) to decide that the question of the implementation of the Commission of Inquiry's recommendations and of the application of Convention No. 29 by Myanmar should be discussed at future sessions of the International Labour Conference, at a sitting of the Committee on the Application of Standards specially set aside for the purpose, so long as this Member has not been shown to have fulfilled its obligations;
- (b) to recommend to the Organization's constituents as a whole – governments, employers and workers – that they: (i) review, in the light of the conclusions of the Commission of Inquiry, the relations that they may have with the member State concerned and take appropriate measures to ensure that the said Member cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour referred to by the Commission of Inquiry, and to contribute as far as possible to the implementation of its recommendations; and (ii) report back in due course and at appropriate intervals to the Governing Body;
- (c) as regards international organizations, to invite the Director-General: (i) to inform the international organizations referred to in article 12, paragraph 1, of the Constitution of the Member's failure to comply; (ii) to call on the relevant bodies of these organizations to reconsider, within their terms of reference and in the light of the conclusions of the Commission of Inquiry, any cooperation they may be engaged in with the Member concerned and, if appropriate, to cease as soon as possible any activity that could have the effect of directly or indirectly abetting the practice of forced or compulsory labour;
- (d) regarding the United Nations specifically, to invite the Director-General to request the Economic and Social Council (ECOSOC) to place an item on the agenda of its July 2001 session concerning the failure of Myanmar to implement the recommendations contained in the report of the Commission of Inquiry and seeking the adoption of recommendations directed by ECOSOC or by the General Assembly, or by both, to governments and to other specialized agencies and including requests similar to those proposed in paragraphs (b) and (c) above;

¹ This resolution, inter alia, prevented the Government of Myanmar from receiving any technical cooperation or assistance from the ILO, other than direct assistance to implement immediately the recommendations of the Commission of Inquiry, or receiving any invitation to attend meetings, symposia and seminars organized by the ILO, except such meetings that have the sole purpose of securing immediate and full compliance with the said recommendations, until such time as it had implemented the recommendations of the Commission of Inquiry. The only meetings the Government is invited to are the International Labour Conference and the specific sessions of the Governing Body where the issue of Myanmar is discussed

- (e) to invite the Director-General to submit to the Governing Body, in the appropriate manner and at suitable intervals, a periodic report on the outcome of the measures set out in paragraphs (c) and (d) above, and to inform the international organizations concerned of any developments in the implementation by Myanmar of the recommendations of the Commission of Inquiry.
5. In parallel to these developments, there had been an exchange of correspondence between the Director-General and the Myanmar authorities,² which led to two ILO technical cooperation missions visiting Yangon, in May and October 2000, to provide assistance to the authorities for the immediate implementation of the recommendations of the Commission of Inquiry.³ These missions resulted in the adoption of an additional order supplementing Order 1/99, which prohibited forced labour in more clear terms, covering all authorities including the army.

Developments following the adoption of the 2000 resolution

6. In accordance with the 2000 resolution, the Director-General wrote to member States in December 2000, and through them to employers' and workers' organizations, bringing their attention to the relevant paragraph of the resolution and requesting that they inform him of any action taken or envisaged in this regard. In accordance with the resolution, the Director-General also wrote to international organizations, as well as setting in motion the procedures necessary to have the matter placed on the agenda of the July 2001 session of the United Nations Economic and Social Council (ECOSOC).
7. The initial responses received by the Director-General were summarized in an interim report to the March 2001 session of the Governing Body.⁴ The replies from the Organization's constituents indicated that in general they had adopted what was then described as a "wait-and-see" approach, in the light of the ongoing dialogue which was taking place between the ILO and the Myanmar authorities and which seemed to have the potential of achieving positive results. This approach appeared to receive some additional justification when agreement was reached on the visit to Myanmar in September and October 2001 of a High-level Team (HLT) appointed by the ILO to assess in full independence and freedom of movement the realities of the forced labour situation. This in turn led to the appointment of an ILO Liaison Officer in Myanmar in May 2002, and in May 2003 to agreement on a joint Plan of Action to address forced labour, including in particular the establishment of a Facilitator mechanism to address specific complaints regarding forced labour. Both of these steps were key recommendations of the HLT.
8. However, the momentum in the process of dialogue and cooperation slowed in part due to uncertainties following the crackdown on the National League for Democracy (NLD) around the time of the completion of the draft Plan. It did not prove possible to go ahead with the implementation of the joint Plan of Action, and there were increasingly calls to return to the application of the measures adopted under the 2000 resolution.⁵ The hopes

² See ILC, 88th Session, 2000, *Provisional Record* No. 4, Annex II.

³ For the reports of these missions, see ILC, 88th Session, 2000, *Provisional Record* No. 8 and GB.279/6/1 (November 2000).

⁴ GB.280/6 (March 2001).

⁵ These calls were made in the debates in the Governing Body at its 286th Session (March 2003), 288th Session (November 2003) and 289th Session (March 2004), and were reflected in the

of proceeding with the Plan were further damaged in March 2004 by the discovery of a court case in which three people were convicted of high treason including on the basis of contacts and cooperation with the ILO.

9. The fact that no formal request has been made for updated information on action taken under the 2000 resolution does not, however, mean that no further action was taken directly or indirectly on the basis of this resolution. It is difficult to have a comprehensive picture of developments, but the Office is aware of some subsequent actions, a number of which have been widely publicized. *United States*:⁶ In addition to sanctions already imposed on Myanmar in recent years, on 28 July 2003 the United States Congress enacted the “Burmese Freedom and Democracy Act”. Section 2 on findings specifically cites the Director-General’s call for all ILO constituents to review their relations with the regime to ensure they do not directly or indirectly contribute to forced labour.⁷ *European Union*: Since 1997, the Council of the EU has been denying Myanmar access to generalized tariff preferences since it has not been proven that the practice of forced labour has been brought to an end. It has also renewed, on a biannual basis, its Common Position on Myanmar first adopted in 1996 in which it deplores the practice of forced labour. The European Parliament also adopted several resolutions condemning, inter alia, the use of forced labour, the latest dated 16 September 2004. *International organizations*: As regards international organizations other than the EU, the main developments relate to ECOSOC⁸ and the OECD.⁹ *Non-state entities* : It is more difficult to assess action taken by non-state entities and as regards disinvestment. The Office has however collected some information in this regard. International and national workers’ organizations, together with NGOs and

conclusions adopted at those sessions. Similar calls were also made in the Committee on the Application of Standards at the 92nd Session (June 2004) of the International Labour Conference.

⁶ Some other member States are known to have taken measures against Myanmar, but the ILO is not aware of a link with the 2000 resolution.

⁷ The Act provides, inter alia, for a one-year ban on imports from Myanmar (section 3). It also contains a reporting obligation on trade sanctions covering bilateral and multilateral measures undertaken by the United States and other governments and the extent to which they were effective in improving conditions in the country. On 10 July 2004, the import restrictions were renewed for an additional year. The US House of Representatives and Senate subsequently adopted, on 13 and 21 September respectively, a joint bipartisan resolution urging the United Nations Security Council to take action on the situation in Myanmar. The House of Representatives resolution explicitly refers to the use of forced labour. See also, as regards the impact of the Act, “Developments in Burma” (House of Representatives, Committee on International Relations, Joint Hearings, 25 March 2004, Serial No. 108-123).

⁸ After consideration of an item entitled: “Measures to be taken for the implementation by Myanmar of the recommendations of the ILO Commission of Inquiry on forced labour”, ECOSOC adopted without discussion on 25 July 2001 a resolution (2001/20) in this regard. In its resolution, ECOSOC took note of the ILC 2000 resolution as well as the developments which took place in 2001 within the ILC. ECOSOC also requested the Secretary-General to keep it informed of further developments. At its following substantive session in October 2002, ECOSOC was orally informed of developments and since then, no further discussion has taken place.

⁹ In 2001 the OECD’s Trade Union Advisory Committee raised the issue of forced labour in Myanmar and tabled a letter which noted the adoption of the ILC 2000 resolution and asked the Committee on International Investment and Multinational Enterprises to explain the OECD guidelines and discuss how they could be used to contribute to the elimination of forced labour in Myanmar. The response from the Committee indicated that primary responsibility was accorded to national contact points in addressing such inquiries. Subsequently, a number of national contact points took multinational activity in Myanmar into consideration and some issued recommendations to companies in this regard (see OECD Guidelines for Multinational Enterprises: 2002 report by the chair of the annual meeting of the National Contact Points).

networks, have been organizing boycott and disinvestment campaigns targeting companies doing business in Myanmar, using in particular the ILC 2000 resolution. This has undoubtedly had an impact on the climate for foreign investment in Myanmar, and a number of companies have withdrawn from the country as a result of these campaigns.

III. Overview of the current situation

Developments in the high treason case

10. As regards the first concern expressed by the Governing Body in its March conclusions, the new judgement makes clear that contacts with the ILO as an international organization of which Myanmar is a Member are legal. As pointed out to the Minister for Labour by the Office as soon as the first judgement came to the Director-General's attention, such clarification was essential from the viewpoint of the continued presence of the ILO in the country. It should be noted, however, that despite the recommendation of the informal facilitator for the release of the three individuals, the conviction of the three individuals has been maintained on grounds that seem to have shifted, and they have to serve a (reduced) prison sentence. The second concern of the Governing Body, relating to freedom of association ramifications, is unfortunately not remedied by the new judgement.

Situation in actual practice

11. The situation of forced labour in Myanmar, as described in detail in the recent reports of the Liaison Officer a.i., remains of grave concern. While there is general agreement that some improvements in the situation have occurred in central parts of Myanmar, forced labour continues to be imposed in all the various forms identified by the Commission of Inquiry, in particular in remote areas under the authority of the army, of which the Liaison Officer a.i. had first-hand evidence.

Situation in law

12. It seems clear that whatever the deficiencies of the Orders prohibiting forced labour, the problem of the continued prevalence of forced labour is not due to the form and content of these Orders. Nor is the problem primarily related to lack of knowledge of the Orders, as they have been widely (if unevenly) disseminated, and the remarkable fact is that the population seems more and more ready to use this legal remedy. Rather, the problem is one of effectively implementing the prohibition contained in the Orders. So far, no one has been punished under section 374 of the Penal Code for imposing forced labour. Recent disturbing developments indicate that, on the contrary, people can be punished as a result of lodging complaints regarding forced labour. This tends to give further support to the HLT's findings concerning the existing legal avenues and the need to look for alternative channels such as the Facilitator.

Follow-up to allegations

13. The recent experience of the Liaison Officer a.i. has shown that specific complaints of forced labour brought to the attention of the Convention 29 Implementation Committee are systematically denied, and cases brought directly before the courts are rejected. The picture which emerges is of a response by the authorities to complaints of forced labour that is lacking in credibility. This is all the more concerning given the types of cases involved. While a number of the allegations which have been raised with the authorities are

extremely serious cases involving the army in often remote areas, others relate to comparatively minor cases of forced labour imposed by local officials in central Myanmar. Action on these latter cases should be more straightforward because of both the location and nature of the offences involved. The fact that the authorities have not taken steps to deal with these latter cases must raise serious doubts as to the possibility of making significant progress in those areas under the control of the army, where all the indications are that the forced labour situation is far more serious in both form and extent. Two of the cases reported by the Liaison Officer a.i. shed a particularly clear light on this situation.

14. The first case concerns the situation in Hinthada township.¹⁰ This case involved three separate complaints from individuals to the court under section 374 of the Penal Code, all concerning the same incident of forced labour. The township in question is close to Yangon, and the incident appears at first sight to have involved a relatively minor case of forced labour imposed by local officials.¹¹ This case should therefore have been relatively straightforward to resolve. The reason that the case is such a serious one is due to the failure of the authorities to deal in a credible way with the complaint. This has resulted in a situation where not only were two individuals imprisoned for refusing to perform forced labour, but when this situation came to light through a subsequent complaint to the court on their part, the court failed to respond credibly to the complaint,¹² and furthermore found the two persons guilty of defamation and imprisoned them for a second time (although they have now been released).
15. The second case concerns an incident of forced labour in Toungup township, a remote part of the country.¹³ This is an extremely important case, as it contains a number of elements which highlight both the serious nature of the forced labour problem, and the difficult steps needed to effectively address this problem. First, the work was required for an economic project (a land reclamation scheme) initiated by the army, and the orders to requisition villagers came from the army. Second, the case is serious because of the large numbers of villagers involved and the harsh conditions under which they were forced to work, and because of the harassment subsequently faced by the complainants. Third, a joint visit to the region by the Liaison Officer a.i. and the informal facilitator was able to confirm the essential facts of the situation. Solving cases such as this requires a capacity and willingness on the part of the central authorities to enforce the law with respect to the army. The attitude that they will adopt in this case will be a significant test of their continued commitment.

IV. Options available to the Governing Body

16. The framework given by the Committee on the Application of Standards¹⁴ was mainly concerned with the high treason case, on which there have been important developments. However, there is a widespread feeling, strengthened by the situation described above, that

¹⁰ See GB.291/5/1, paras. 16 and 20.

¹¹ That is, sentry duty at an (unoccupied) monastery.

¹² The complainants subsequently tried to lodge the case with a higher court, without success.

¹³ The case in question involved the requisitioning of several hundred villagers by the village-level authorities, under orders from the army. These villagers, including old women, had to work for several days at a time under very harsh conditions in a mangrove swamp, building an earth dam as part of an army land-reclamation project. See GB.291/5/1, paras. 18-20.

¹⁴ See paragraph 1 above.

it is difficult to maintain a “wait-and-see” approach. It seems therefore appropriate to place the problem in a broader perspective. This requires assessing recent developments in the light of the assumptions which the Governing Body has consistently been guided by, which are based on the HLT’s analysis of the situation and whose continued relevance is confirmed by the above developments.

17. As the HLT noted, forced labour is deeply rooted in the historical, political and military situation of the country. The fact that Myanmar has a large army which adopts a self-reliance strategy for its forces in the field is a major current obstacle to the elimination of the practice. Nevertheless, the HLT was of the opinion that forced labour could be eliminated if there was a real commitment from the authorities to do so, and that this in turn could bring about a change in the attitude of the international community. The HLT felt that this commitment could in particular express itself through the various steps which it recommended, that is, a permanent presence of the ILO and a form of Ombudsman mechanism to help overcome the lack of institutional remedies for victims, one of the main obstacles that the HLT identified.
18. Indeed, the fact that agreement was reached on the appointment of a Liaison Officer in Myanmar as well as on the Facilitator mechanism was an indication of a certain commitment by the authorities. The question which must now be asked, taking in particular into account the treatment of allegations, is whether this commitment continues. Some relevant indications were also given by the Minister for Home Affairs when he stated in a meeting with the informal facilitator in September that instructions had recently been given to the regional commanders by the senior leadership, including Senior General Than Shwe himself, to stop using forced labour. It remains to be seen, however, what could be the impact of the recent leadership changes in relation to the commitment of the authorities on the forced labour issue. If there is a continued commitment on the part of the authorities to eliminating forced labour, then the lack of progress on individual cases must in any case raise doubts about the institutional ability to implement such a commitment, in particular vis-à-vis the army. An important test in this regard will be the action taken with respect to the Toungup case. This case reinforces the need for a renewed examination of the root causes of the problem and of the role of the army.
19. The seriousness of the current situation as reflected in the report of the Liaison Officer a.i. cannot be in any doubt. The question before the Governing Body is what type of action is best suited to bringing a verifiable improvement in that situation. It seems useful to review as objectively as possible the various options that one may think of, it being understood that they may be mutually exclusive.
20. One option would be to now move ahead with the implementation of the Plan of Action. There was a general feeling before the high treason case came to light, in the more positive general context which prevailed at the beginning of the year, that it would be useful and desirable to go ahead with the Plan. This would certainly not have been possible without clarity being brought to the question of the legality of contacts with the ILO. It could now be argued that the positive developments in the high treason case in this regard have removed the main obstacle to the implementation of the Plan of Action. Indeed, it is very clear with regard to the main element of the Plan, the Facilitator, that there is a real demand for such a mechanism among the population in all parts of the country. It is also clear that the ILO’s concern that there be appropriate guarantees protecting complainants from retaliation was also valid. The fact that there have been cases of retaliation against people who complained to the Liaison Officer a.i., and that there have been no credible outcomes when victims have complained directly to the courts, demonstrates the need for the kind of institutional guarantees that the Facilitator mechanism contains. The recent case in Toungup in which the informal facilitator generously accepted to be involved, demonstrated very clearly both the great potential value of the mechanism, but also its limitations. While the Facilitator mechanism is vital in giving an avenue of legal remedy

for victims, with appropriate guarantees, it cannot directly address the root causes of the problem, in particular with regard to the army. In serious cases such as in Toungup, where an informal solution is impossible and may not in any case be appropriate, the willingness and capacity on the part of the authorities to take the necessary action, in particular as regards the army, is a *sine qua non*. Should this willingness be clearly confirmed, then the ILO could examine with the authorities how the Organization could help them to translate that willingness into practice and address the root causes of the problem even more directly and on a broader basis than the existing Plan of Action.

- 21.** A second option would be for the Governing Body to reactivate consideration by governments and other relevant entities of the action that they have been called upon to take under the 2000 resolution. This has been repeatedly raised in the Governing Body. The Governing Body could thus decide to instruct the Director-General to write to the constituents as a signal that they should draw the appropriate consequences of the fact that the momentum which had been gained and which justified the “wait-and-see” approach has stopped. This could take the form of a request, following up on his letter of December 2000, for details on subsequent action taken with regard to the resolution. The Director-General would report to the Governing Body on the responses received.
- 22.** One important point to consider would be the impact this move may have on the continued ILO presence and, reciprocally, what could be the impact of a continued ILO presence on the attitude of the constituents towards reactivating their consideration of the action to be taken on the basis of the resolution. The experience gained so far from this presence has been invaluable, in particular the possibility to have first-hand information on the realities of forced labour which was not previously available. It has allowed for a degree of greater mutual understanding and confidence between the ILO and the Myanmar authorities. Support for such a presence has come from many quarters, and there have also been calls to expand it. While a reactivation of the measures might not necessarily have automatic consequences for the presence, it would undoubtedly have an impact on the context in which the Liaison Officer can meaningfully discharge his functions, which presumes engagement and cooperation with the authorities. If, for instance, a situation was created where the ILO presence functioned in a way which was of more benefit to the authorities than to the victims of forced labour, this might have consequences for the possibility of continuing a meaningful presence.
- 23.** It must be recognized at the same time that important elements of information for deciding on the appropriate course of action to choose may still be missing. This relates to the continued willingness of the authorities at different levels, and particularly at the highest level, not only to maintain cooperation with the ILO, but to take the action necessary to solve the serious problems identified in this report. This is particularly relevant given the recent changes in the senior leadership of Myanmar. As indicated above, the authorities’ reaction to the Toungup case will provide an important first indication, but which may need to be complemented by a first-hand assessment at the highest level. If evidence of such a commitment is forthcoming, then discussions will be needed to identify ways to translate it into concrete steps to remedy the root causes of the forced labour problem. Again it will be crucial to assess from the highest levels of authority, particularly the army, their readiness and determination to take these steps.

Geneva, 3 November 2004.



SEVENTH ITEM ON THE AGENDA

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

**Further action taken pursuant to the resolution
of the International Labour Conference
regarding forced labour in Myanmar**

1. The resolution adopted in 2000 under article 33 of the Constitution by the International Labour Conference called on the Organization's constituents to "review, in the light of the conclusions of the Commission of Inquiry, the relations that they may have with [Myanmar] and take appropriate measures to ensure that [Myanmar] cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour referred to by the Commission of Inquiry, and to contribute as far as possible to the implementation of its recommendations". A similar call was made to international organizations. The resolution invited the Director-General to report to the Governing Body on the outcome of the measures undertaken by the member States and international organizations.
2. The initial responses received by the Director-General from the constituents and international organizations were summarized in an interim report to the March 2001 session of the Governing Body.¹ Later that year negotiations between the Office and the Government of Myanmar led into the visit of the High-level Team and subsequent negotiations for, first, the understanding on a liaison officer and then the different elements of a joint Plan of Action. The Office has continued to monitor developments without, however, specifically approaching the constituents and international organizations.
3. In his report concerning Myanmar to the November 2004 session of the Governing Body,² the Director-General noted that, although no formal request had been made to the

¹ GB.280/6.

² GB.291/5/2.

constituents for updated information on action taken under the 2000 resolution, this did not mean that no further action had been taken directly or indirectly on the basis of the resolution. While it was difficult to have a comprehensive picture, the Director-General indicated some subsequent actions of which the Office was aware. In the conclusions on this item at its November 2004 session, the Governing Body requested the Office to provide further information for its March 2005 session on the actions taken on the basis of the 2000 resolution, to complement that already provided. The Office therefore requested the assistance of all field offices in obtaining information on action taken by governments or non-state entities, including employers' and workers' organizations and bodies at all levels, and by NGOs and civil society actors more generally.

4. The present paper reflects responses to that request, along with other information obtained concerning action referring specifically to either the 2000 International Labour Conference resolution or the problem of forced labour in Myanmar. However, it cannot be exhaustive. Moreover, it does not cover a variety of actions taken by governments, trade unions, business or intergovernmental or non-governmental organizations in relation to Myanmar which do not ostensibly fall within the remit of the 2000 resolution.
5. As intimated in November, certain governments have acted individually as well as through international organizations to which they belong. In the United States, in accordance with the 2003 Burmese Freedom and Democracy Act, import restrictions have been renewed annually (most recently in July 2004); assets of members of that Government's regime in the United States have been frozen and their travel banned; the award of funds by international financial institutions to which the United States belongs is opposed; and there is regular reporting by the State Department on the effect of trade sanctions on the country. Specific reference is made in the legislation to forced labour and the ILO. There is also information as to legislative or administrative measures taken by some individual states of the United States (California, Massachusetts, New York, Vermont) concerning particular business disinvestment.
6. The Government of Japan has withheld new economic cooperation with Myanmar, except for humanitarian assistance impacting directly on poor living conditions. Following the events of May 2003, it suspended all economic cooperation for several months. The Government of Australia is reported to have deferred its recurring human rights training programme and frozen certain agricultural assistance. The United Kingdom has called on UK companies to review investments in Myanmar; and it has frozen certain assets. Canada imposed in 2003 tighter restrictions on visas and travel and on exports to Myanmar. In October 2003, Switzerland extended the measures first taken in October 2000, by tightening its arms embargo and extending financial and travel restrictions.
7. Among workers' organizations, the International Confederation of Free Trade Unions (ICFTU) has led an active campaign with Global Union Federations and many national workers' organizations to promote the implementation of the 2000 International Labour Conference resolution. Since 2001, it has targeted the withdrawal of multinational companies from Myanmar. This has been done by contacting them directly, citing the 2000 International Labour Conference resolution, and publishing an updated list of those doing business there. The ICFTU has, together with the European Trade Union Confederation, presented arguments to institutions of the European Union, to international financial institutions, and to countries in the Asia-Pacific region and elsewhere. Trade unions in several countries have campaigned for individual companies to cease activities in Myanmar, or for individual governments to adopt sanctions similar to those described above.
8. As regards measures taken by employers' organizations in relation to follow-up to the 2000 resolution or concerning forced labour in Myanmar, no specific information is

available. In respect of multinational businesses, as mentioned in the November 2004 paper to the Governing Body, the campaigns run by trade unions as well as by various non-governmental organizations (for instance Burma Campaign, Actions Birmanie, Clean Clothes Campaign, Earth Rights International), have in some cases referred directly to the resolution. One such campaign, endorsed recently by the Prime Minister of the United Kingdom, has focused on tourism. As one object of a trade union-led campaign, the only major long haul airline service to Yangon (Lauda Air) has been singled out.

9. Where disinvestment action by individual companies has followed, this has often been as the result of a broader campaign in the context of human rights issues and corporate social responsibility. In one reported case (the American Apparel and Footwear Association), a 2003 call for a ban on imports of textiles, apparel and footwear from Myanmar cited the ILO resolution as one of its justifications. In another, the Triumph International garment manufacturer announced in January 2002 the closure of its manufacturing site in Myanmar, following a campaign which had drawn attention to forced labour in the country. In December 2004, an oil company (Unocal) is reported to have reached agreement to settle a human rights lawsuit in California (United States), in which forced labour in the construction of the Yadana pipeline was alleged. The company was said to have agreed to compensate 14 Burmese villagers.
10. In the United Nations, further to the information provided in November 2004, the Special Rapporteur on Myanmar referred in August 2004 to the special sitting of the Committee on the Application of Standards of the 2004 International Labour Conference, noting that agreement on implementation of the joint Plan of Action was not yet possible. More recently, the General Assembly adopted a resolution,³ noting the conclusions of the 2004 International Labour Conference Application Committee and asking the Government of Myanmar, among other things, to take immediate action to implement the recommendations of the Commission of Inquiry concerning Convention No. 29.
11. Action taken in the OECD context was included in the November paper. Among the international financial institutions, neither the Asian Development Bank nor the World Bank has provided any new lending to Myanmar since 1987. Most recent news from ASEAN is that in May 2004, labour ministers noted with satisfaction the pledge made by Myanmar for continued cooperation with the ILO in their efforts to abolish forced labour practices. They expressed their optimism as to the removal of obstacles to implementation of the joint Plan of Action.
12. On the other hand, in the European Union, as well as the measures indicated in November to deny Myanmar access to generalized tariff preferences and renew the Common Position on Myanmar deploring the practice of forced labour, reference is made by the European Council in this context to the failure of the Myanmar authorities “to take action to eradicate the use of forced labour in accordance with the recommendations of the International Labour Organization’s High-level Team Report of 2001”. The aim has been to tighten the measures already taken by, for instance, extending the scope of the visa ban and asset freeze; maintaining the arms embargo; and adding a prohibition on making financial loans or credits available to, and acquiring or extend participation in, listed Myanmar state-owned enterprises.
13. The European Parliament has adopted several resolutions condemning the lack of democratic process, human rights abuses in general and the use of forced labour in particular, the latest dated 16 September 2004. Resolutions adopted in 2002 and 2003 expressly refer to the ILO in terms of urging the Government of Myanmar to authorize the

Geneva, 18 February 2005.

³ A/RES/59/263, 23 Dec. 2004.

opening of an ILO Liaison Office (11 April 2002) and giving access to the ILO without limit to areas of the country where the use of forced labour was reported (13 March 2003).



SEVENTH ITEM ON THE AGENDA

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

1. Following discussion of the item at its 291st Session (November 2004), the Governing Body adopted the following conclusions:

The Governing Body, having heard the explanations provided by the Permanent Representative of Myanmar, Ambassador Mya Than, proceeded to examine in detail the information and analysis provided in the documents which was supplemented during the debate, notably on the part of the Workers. It seems overall that the Governing Body remains gravely concerned by developments in the situation and the continued impunity of those who exact forced labour. More particularly, as regards the high treason judgement discussed at the previous session, as well as by the Committee on the Application of Standards of the International Labour Conference, the Workers' group, the Employers' group and many Governments, while recognizing that the judgement by the Supreme Court did answer the fundamental question of the legality of the contacts with the ILO, expressed regret at the continued detention of the persons concerned when their guilt had not been established, and called for their immediate release or pardon. In the circumstances, the Workers' group, the Employers' group, and a number of Governments were of the opinion that reactivation of the measures to be taken under article 33 and in accordance with the Conference resolution of 2000 would be fully justified. Furthermore, the Workers' group insisted that the strength of the ILO presence, whose importance and contribution were recognized and welcomed by the whole of the Governing Body, should be reinforced for the eradication of the problem.

At the end of the debate, a number of speakers did however consider that the problems identified in the reports as well as the sudden replacement of the previous interlocutors of the Organization following the changes which had occurred among the leadership of the Myanmar Government justified an evaluation of the current attitude of the authorities and their determination to effectively address the continuing practice of forced labour. The attitude that they will adopt, which does not yet seem clearly defined, about the very alarming cases identified in the documents before the Governing Body, constitutes a real test of this determination.

This is why the Governing Body requests the Director-General to field a very high-level mission to evaluate the attitude of the authorities and assess their determination to continue

their cooperation with the ILO, the modalities of which must make it possible to address the root causes of the problems described in the reports. The Director-General will have to ensure that the conditions of such a mission and the credentials of those charged with conducting it, as well as the position of its interlocutors at the highest political level, are such that it is able to meet these objectives and ensure the intervention has the required visibility. The Director-General will report on the results of this mission to the next session of the Governing Body. The Governing Body will then be able to determine the necessary consequences on the basis of full knowledge either as regards further action by the Organization under article 33, including as regards foreign direct investment, or for the implementation of the Plan of Action. In addition, the Office has been requested to provide further information for the next session on the actions taken on the basis of the 2000 resolution, to complement that provided in the report of the Director-General.

2. Mr. Richard Horsey continued to act as interim ILO Liaison Officer. The present report summarizes his activities since November 2004. Information concerning the visit of the very high-level team to Yangon as well as the information requested by the Governing Body on actions taken on the basis of the 2000 resolution will be reported separately.¹
3. As regards the question of strengthening the office of the Liaison Officer, it was decided that in the first instance this would take the form of a secondment of an ILO official to Yangon to assist the interim Liaison Officer. This was conveyed to the authorities in Yangon on 24 January, but at the time this report was finalized the necessary approvals were still pending.

II. Activities of the Liaison Officer a.i.

4. The Liaison Officer a.i. had a number of meetings with the authorities, both to discuss the general forced labour situation and specific complaints that he had received and communicated to the authorities.² On 11 February 2005 he met with the Deputy Minister for Labour. He also had a series of meetings with the Director-General of the Department of Labour on 14 December, 20 January, 8 and 9 February, as well as meetings with the Director-General and Deputy Director-General of the Department of General Administration (Home Affairs) on 16 December, 26 January and 17 February.
5. In addition to these meetings with the authorities, the Liaison Officer a.i. also met with members of the diplomatic community and with representatives of United Nations agencies, the International Committee of the Red Cross, international non-governmental organizations and the international business community. He also met with representatives of the National League for Democracy.
6. From 13 to 20 January, the Liaison Officer a.i. visited northern Sagaing Division, in the remote north-west of the country.³ He took advantage of a government-organized trip to a new year festival in order to join a charter flight to the area (there is no regular access by air to the region). This festival brought together Naga villagers from a wide geographical area and therefore also represented a good opportunity to gain an overview of the situation in the area. On 16 January, following the festival, the Liaison Officer a.i. planned to travel south by river and road and visit a number of towns and villages en route. This onward travel was to be conducted independently of the authorities. However, he was informed

¹ See GB.292/7/3 and GB.292/7/1, respectively.

² In some cases, these meetings were also concerned with the modalities for the visit of the very high-level team.

³ He travelled from Yangon to Hkamti by plane, then on to Lahe (where the Naga festival was held) by road. On his return, he travelled from Lahe to Hkamti by road, then from Hkamti to Tamanthi, Homalin, Mingin and Monywa by boat. He returned from Mandalay to Yangon by plane.

that his travel by road was not permitted and that he could only proceed by boat. This had the effect of considerably limiting the places that he was able to visit. Such a restriction was not in conformity with the understanding on the freedom of movement of the Liaison Officer a.i..

III. Developments in the high treason case

7. On 3 January 2005, two of the persons whose convictions had an ILO connection, Nai Min Kyi and U Aye Myint, were released from prison as part of a wider release of more than 5,000 prisoners coinciding with Myanmar's Independence Day.⁴ The Liaison Officer a.i. has had the opportunity to meet with both of these individuals and can report that they are both fine. The third person whose conviction had an ILO connection, U Shwe Mahn, remains in prison.

IV. Developments in the forced labour situation

Overview

8. On the basis of all the information available to him, the Liaison Officer a.i.'s general evaluation of the forced labour situation continues to be, as presented previously to the Governing Body,⁵ that although there have been some improvements since the Commission of Inquiry, the practice remains widespread throughout the country, and is particularly serious in border areas where there is a large presence of the army. One significant recent development which should be noted, however, is the prison sentences handed down to four local officials for imposing forced labour, and a number of other prosecutions initiated by the authorities concerning specific cases raised by the Liaison Officer a.i.⁶ In his view, these developments can contribute significantly to changing the climate of impunity surrounding officials who continue to impose forced labour, and thus to reducing the prevalence of the practice. It is vital, however, that similar steps are also taken with regard to the military, which continues to be responsible for the majority of forced labour. If the recent trend continues, and is extended to the army, it can represent the beginnings of a credible response to the problem.
9. The Liaison Officer a.i. is continuing to receive complaints from individuals alleging they have been subjected to forced labour, or from representatives of such persons. Often these individuals are in fact complaining on behalf of a larger group of persons or a community subjected to forced labour. In 2004, there were a total of 80 such complaints, and interventions were made with the authorities on 46 of these cases.⁷ Of these 46 cases, 26

⁴ One other person in the case, whose conviction did not have an ILO connection, was also released at the same time.

⁵ See GB.286/6 (Mar. 2003), para. 7; GB.288/5 (Nov. 2003), para. 8; GB.289/8 (Mar. 2004), para. 10; and GB.291/5/1 (Nov. 2004), para. 9.

⁶ See para. 14 below.

⁷ Of the remaining 34 cases, 20 were considered to be outside the mandate of the Liaison Officer, in nine cases of forced recruitment interventions had already been made by another agency, one case concerned an allegation already raised with the authorities in 2003, three cases were pending and one complaint directly to the court under section 374 of the Penal Code, copied to the Liaison Officer, was subsequently withdrawn.

concerned various forms of forced labour (other than forced recruitment), 13 concerned forced recruitment of minors into the armed forces,⁸ one case concerned alleged harassment of a complainant (who has now successfully prosecuted local officials for imposing forced labour) and six were direct complaints by individuals to Myanmar courts under section 374 of the Penal Code, copies of which had been communicated to the Liaison Officer a.i. by the complainants. So far in 2005, the Liaison Officer a.i. has received a further 14 cases, and interventions have so far been made on six of these cases, as detailed below (a list of all these cases is appended).

- 10.** In cases of alleged forced recruitment of minors, the Liaison Officer a.i. has written to the Convention 29 Implementation Committee with the details of the allegation, requesting that the Committee take urgent action to verify this information in order that, if it is confirmed, the individual in question can be returned to the care of their parents and an investigation carried out into the circumstances of their recruitment so that any person found to have acted illegally can be prosecuted. In other cases of alleged forced labour, the Liaison Officer a.i. has written to the Convention 29 Implementation Committee providing details of the allegation and recommending that, in line with the Committee's procedures, a field observation team (FOT) be sent to the area in question to investigate the allegation, and expressing his readiness to accompany this FOT in an observer capacity.
- 11.** Of the 46 cases transmitted to the Convention 29 Implementation Committee in 2004, responses have been received in 36 cases.⁹ In five cases, the authorities have upheld the allegations (partly or in full) and have initiated criminal prosecutions against the officials involved. In 25 cases, the allegation that forced labour was involved was rejected. In the six cases where individuals complained directly to the court, three cases went to trial and resulted in the officials concerned being sentenced to prison terms. (As reported previously, the other three cases were rejected on the grounds that there was no prima facie evidence of forced labour.)
- 12.** As indicated in an earlier report,¹⁰ the Liaison Officer a.i. considers that the mechanism put in place by the authorities for addressing forced labour allegations, that of sending an ad-hoc team composed of senior government officials to the region to conduct an investigation, is not well-suited to dealing with the increasing numbers of cases. As the number of allegations has increased, they have tended to be investigated internally by the General Administration Department or the Ministry of Defence. He has always underlined, however, that the credibility of the investigation mechanism would be ultimately judged by its results. It is therefore encouraging that, notwithstanding the abovementioned concerns, this mechanism has begun to produce results in the form of prosecutions of officials implicated in the imposition of forced labour, as detailed below.

⁸ As regards this question, on 4 Feb. the *New Light of Myanmar* reported, in a front-page item headlined "Myanmar still facing unjust accusations of child soldiers as only slanders and falsehoods reach UN" that the Committee for Prevention of Recruitment of Minors for Armed Forces, established in Jan. 2004, had met the previous day. The Chairman of the Committee, Lt. Gen Thein Sein, was reported as stating in his opening remarks that "conspirators are framing the Tatmadaw for the alleged forced recruitment of juvenile soldiers for the front lines and trying to raise the matter at the United Nations for the global body to take action against Myanmar. Thus, the Committee will have to pay attention to refuting the matter".

⁹ Verbal responses have also been received in a further two cases.

¹⁰ See GB.291/5/1 (Nov. 2004), para. 12.

Details of cases

13. Details of 33 cases on which interventions were made in 2004 have already been presented to the Governing Body and the Committee on the Application of Standards of the International Labour Conference.¹¹ Details on new cases in December 2004 and in 2005 on which the Liaison Officer a.i. made interventions are provided below:

- *Intervention dated 7 December 2004.* The intervention concerned four allegations of forced labour that were received from individuals from different townships in Sagaing Division. In the first case, it was alleged that Tamu district Forestry Department had ordered the heads of two village tracts to provide villagers to work on a teak plantation project. One person from each household in the villages concerned was requisitioned to carry out this work (a total of more than 200 people), and anyone who refused was fined. In the second case, according to the information received from a number of alleged victims, several hundred villagers in Kalewa township were forced to do work on the road from Kalewa to Mawlaik, and several people who did not participate were detained and fined. In the third case, it was alleged that a number of people in Tamu town were ordered by a police officer to perform all-night sentry duty for several consecutive nights. Any person who was unable to perform this duty was required to hire a substitute at their own expense. In the fourth case, it was alleged that several hundred villagers from a number of villages in Homalin township were requisitioned by the township chairman, through their village heads, to work on the repair of a number of bridges on the road from Homalin to Hkamti. Villagers received no payment and had to provide their own food. Any person who failed to take part was liable to a fine.
- *Intervention dated 8 December.* According to the allegation made by three individuals from the area, people from a number of villages in Toungup township (Rakhine State) were required to collect large quantities of firewood for the army's Military Operations Command No. 5, for use in brick kilns it was operating as an income-generation project.¹² No compensation was provided, and any household that could not collect its quota had to pay a fine.
- *Intervention dated 9 December.* According to the allegation from a number of individuals concerned, labour was being requisitioned on a large scale from many villages in Kyaikto township (Mon State) to clear land for a new road through the township. In addition to labour, villagers had to provide the necessary tools, and arrange their own transport to the work site (which in many cases meant walking for several hours in the dark to and from the work site). Villagers who were unable to perform these duties were liable to a fine.
- *Intervention dated 10 December.* According to the allegation from individuals concerned, the township chairman and police chief of Tabayin township (Sagaing Division) requisitioned residents of the town to repair an irrigation canal and plant trees along the approach road to the town. These instructions were given in the evening by loudspeaker. Anyone who failed to take part was fined.
- *Intervention dated 22 December.* According to the allegation, the army's Infantry Battalion 46 was confiscating land from villagers in Putao township (Kachin State), and then forcing these villagers to continue cultivating the land on behalf of the battalion, for which they would receive only a limited proportion of the final crop.

¹¹ See C.App./D.5 (ILC, 2004), paras. 9-17; GB.289/8, paras. 15, 16 and 18; and GB.291/5/1, paras. 14-16.

¹² This is the third allegation that has been received concerning this particular army unit. See below, as well as GB.291/5/1, para. 14 and C.App./D.5. (ILC, 2004), para. 11.

This allegation was made by 20 individuals concerned, on behalf of 102 affected persons.

- *Intervention dated 2 February 2005.* According to the allegation, a village-tract chairman in Myaing township (Magway Division) forced villagers to dig 350 three-foot-deep pits along the sides of a new road project in preparation for the planting of trees. This work had to be completed on the day the order was given. Any family that was unable to provide a worker was fined.
- *Intervention dated 3 February.* According to the allegation, a number of villagers in Thandaung township (Kayin State) were forced by soldiers of Light Infantry Battalion 439 to do repair work on the road from Bawgaligy to Busakee. While carrying out this work, one 15-year-old boy stepped on a landmine and lost his leg.
- *Intervention dated 4 February.* According to the allegation, the police and village-tract authorities in Mawlamyinegyun township (Ayeyawaddy Division) forced villagers to cultivate police land as part of an income-generation project for police staff welfare funds. This practice has been ongoing since 2000. Villagers are also required to provide their own tools and bring their own food, as well as contribute cash to the police funds.
- *Intervention dated 15 February.* This intervention concerned two alleged cases of forced recruitment of children into the army. In the first case it was alleged that a boy now aged 15 had been kidnapped off the street in Yangon by an army sergeant in 2002 at the age of 12 and had been recruited against his will into the army. After undergoing basic military training he was assigned to an army battalion and sent on a number of military operations during which he contracted malaria. The second case concerned a boy from Yangon who was allegedly recruited against his will in January 2005 at the age of 15. According to the allegation, he was currently undergoing basic military training.
- *Intervention dated 18 February.* According to the allegation, extensive forced labour was being used by the army in Pyinmana and Lewe townships (Mandalay Division) for the construction of camps and facilities for army Battalions 603, 604, 605 and an air defence battalion. At least 14 villages in the area had to provide 200 workers each, on a daily basis, for this work. In addition to labour, each village had to provide roofing and construction materials and transport for the project.

Responses received from the authorities

14. In letters to the Liaison Officer a.i. dated 1 and 17 February, the authorities presented their findings on a number of allegations of forced labour that he had raised.

- As regards three complaints of forced labour lodged directly with the township court in Kawhmu (Yangon Division),¹³ the authorities indicated that the three separate trials had now concluded and the accused local officials had been found guilty under section 374 of the Myanmar Penal Code.¹⁴ Three of these officials had been sentenced to eight-month prison terms, and a fourth, who was found guilty on two separate counts, was sentenced to a 16-month prison term.

¹³ See C.App./D.5 (ILC, 2004), para. 9.

¹⁴ Section 374 of the Penal Code concerns the illegal imposition of forced labour and provides for a prison term which may extend to one year, or a fine, or both.

- As regards the allegation of forced labour imposed by the army for a land reclamation project in Toungup township (Rakhine State),¹⁵ the authorities indicated that an investigation had found that some village-tract officials were guilty of imposing forced labour, extortion and abuse of power, and (legal) action was being taken against them. No indication was given of any findings regarding the army unit (Military Operations Command No. 5) implicated in the allegation.
- As regards the allegation of forced labour on a teak plantation in Tamu (Sagaing Division),¹⁶ it was indicated that sufficient funds had been allocated to the project, and that a Forestry Department official had temporarily misappropriated these funds, which were subsequently disbursed to the workers. The official concerned would be prosecuted for misappropriation of funds. The response was unclear as to whether the workers had been initially forced to work on the project, or had been freely hired and then not paid.
- As regards the allegation of forced labour for the road from Kalewa to Mawlaik (Sagaing Division),¹⁷ it was found that the village-tract chairman had requisitioned 120 villagers for this work on three occasions. He had also fined seven people for failing to do the work. This was a violation of Order No. 1/99, and he was being prosecuted.
- As regards the allegation of forced labour imposed by the police for sentry duty in Tamu town,¹⁸ an investigation found no basis to the claims, and no further action would be taken.
- As regards the allegation of forced labour for the repair of bridges on the road from Homalin to Hkamti (Sagaing Division),¹⁹ it was found that these projects were the responsibility of the Public Works Department. This department had hired a private contractor to carry out the work. Villagers had been freely hired to work on these projects, but had agreed to donate their wages towards the cost of a new roof for the local school. No further action would be taken.
- As regards the allegation of forced labour imposed by the army in Toungup township (Rakhine State) for the collection of firewood,²⁰ an investigation had found that Military Operations Command No. 5 had arranged to purchase the wood through the village-tract chairman. Instead of hiring woodcutters to do this, however, the chairman had forced the villagers to do so. Therefore, (legal) action was being taken against him.
- As regards the allegation of forced labour for a road construction project in Kyaikto township (Mon State),²¹ it was indicated that the villagers had participated willingly in this project and that a considerable amount of money had been disbursed to them in labour charges. It was therefore concluded that the allegation was not true. The Liaison Officer a.i. has confirmed from another source that, following an on-the-spot

¹⁵ See C.App./D.5 (ILC, 2004), para. 11.

¹⁶ See para. 13 above.

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ *ibid.*

investigation by the authorities (during which the villagers reportedly confirmed to the investigators that they had been forced to work on the project), a significant amount of money was distributed to the villages concerned by way of compensation.

Yangon, 18 February 2005.

Appendix

Cases on which interventions have been made (2004-05)

Case type	Location	Intervened	Response	Details of response from the authorities
Forced recruitment	Hlaingthaya township, Yangon Division	26/01/2004	23/02/2004	The child in question was released from the army back to the care of his parents on 5/2/2004, but recruitment was found to have been voluntary.
Forced labour	Twante township, Yangon Division	28/01/2004	05/05/2004	The Convention 29 Implementation Committee found the allegation to be unfounded but the district chairman was removed from his post for "being a burden to the people".
Forced recruitment	Hlaingthaya township, Yangon Division	29/01/2004	17/02/2004	The child in question was released from the army back to the care of his parents on 5/2/2004, but recruitment was found to have been voluntary.
Forced labour	Thandaung township, Kayin State	24/02/2004	None to date	[Verbal response from the Convention 29 Implementation Committee, according to which work was voluntary and paid at prevailing rates.]
Forced recruitment	Twante township, Yangon Division	11/03/2004	26/05/2004	Found to have been voluntarily recruited when over the age of 18.
Forced labour	Bogale township, Ayeyawaddy Division	12/03/2004	09/08/2004	Work found to have been jointly organized by community elders and local authorities. Response ambiguous as to whether this could have nevertheless involved forced labour.
Forced recruitment	Insein township, Yangon Division	18/03/2004	26/05/2004	Individual not found to be serving in the battalion mentioned in the allegation.
Forced recruitment	North Okkalapa township, Yangon Division	18/03/2004	26/05/2004	Found to have been over the age of 18 when recruited and currently imprisoned for desertion. No indication given as to whether the recruitment was found to have been voluntary.
Forced recruitment	Thakehta township, Yangon Division	18/03/2004	26/05/2004	Found to have been voluntarily recruited when over the age of 18.
Forced labour	Toungup township, Rakhine State	07/04/2004	17/02/2005	[See following.]
Forced labour	Toungup township, Rakhine State	07/04/2004	17/02/2005	Found that local officials had requisitioned labour and money from villagers and abused their powers. Instruction had been given to take action against these officials. No indication of findings regarding the army unit implicated in the allegation.
Forced recruitment	Khayan township, Yangon Division	08/04/2004	None to date	

Case type	Location	Intervened	Response	Details of response from the authorities
Forced labour	Bogale township, Ayeyawaddy Division	09/04/2004	31/08/2004	Found to have been community development work carried out collectively by the villagers.
Forced labour	Bogale township, Ayeyawaddy Division	09/04/2004	31/08/2004	It was found that no forced labour was involved in the project, and that voluntary cash donations had been received but had been insufficient for the project, so the funds had been used for construction of a school building and roof of the USDA office.
Forced labour	Pantanaw township, Ayeyawaddy Division	09/04/2004	27/08/2004	Work found to have been carried out willingly by villagers after the majority had agreed to do this work for free in return for a donation of funds to village community projects.
Forced recruitment	Hlaingthaya township, Yangon Division	23/04/2004	26/05/2004	Found to have been voluntarily recruited when over the age of 18.
Forced labour	Monywa township, Sagaing Division	29/04/2004	25/10/2004	Found that at the request of the Buddhist Abbot, the authorities arranged the upgrading of the road, and villagers took part willingly in providing their labour to produce rock chippings for the project. No forced labour found to have been involved.
Forced recruitment	Hlaingthaya township, Yangon Division	30/04/2004	31/08/2004	Found to have been recruited when over the age of 18, and to have been absent without leave since 4 June 2004.
Forced recruitment	Thingangyun township, Yangon Division	30/04/2004	31/08/2004	Found to have been voluntarily recruited when over the age of 18.
Forced recruitment	Twante township, Yangon Division	30/04/2004	31/08/2004	Found to have been voluntarily recruited when over the age of 18.
§374 complaint	Kawhmu township, Yangon Division	04/05/2004	01/02/2005	Two accused sentenced to 16-month and eight-month prison terms, respectively.
Forced labour	Falam district, Chin State	20/05/2004	30/07/2004	No forced labour found to have been involved.
§374 complaint	Kawhmu township, Yangon Division	26/05/2004	01/02/2005	Two accused sentenced to 16-month and eight-month prison terms, respectively.
Forced recruitment	Shwepyitha township, Yangon Division	28/05/2004	31/08/2004	Found to have been recruited when over the age of 18. No indication given as to whether the recruitment was found to have been voluntary. Arrested for desertion and given 6-month sentence in a military prison. Returned to his battalion on 23 September.
Forced labour	Bago township, Bago Division	06/07/2004	25/10/2004	No forced labour or compulsory contributions found to have been imposed for the project.
Forced labour	Bago township, Bago Division	06/07/2004	25/10/2004	Sentry duty had been requested of villagers for a long time, but only during the day, and only required being watchful when going about normal household work. It did not therefore constitute forced labour, and there were no compulsory contributions.

Case type	Location	Intervened	Response	Details of response from the authorities
Forced labour	Bago township, Bago Division	06/07/2004	25/10/2004	Workers were paid on government teak plantation, but were not satisfied with the wages and stopped work. No forced labour or compulsory contributions were found to have been involved.
Forced labour	Bago township, Bago Division	06/07/2004	None to date	[Verbal response in the Implementation Committee according to which villagers had been paid and fed and worked willingly.]
Other	Kawhmu township, Yangon Division	07/07/2004	None to date	[Alleged harassment of a complainant, who has now successfully brought a prosecution against local officials for imposing forced labour.]
Forced labour	Toungup township, Rakhine State	08/07/2004	None to date	
Forced labour	Hinthada township, Ayeyawaddy Division	09/07/2004	None to date	
§374 complaint	Hinthada township, Ayeyawaddy Division	22/07/2004	31/08/2004	Case rejected by court on the grounds that there was no prima facie evidence of forced labour. Complainant then found guilty of defamation and imprisoned for six months, but subsequently released.
Forced labour	Maungdaw township, Rakhine State	23/07/2004	31/08/2004	Official investigation (by FOT) found that the allegations of forced labour on the bridge projects were not true.
§374 complaint	Hinthada township, Ayeyawaddy Division	06/08/2004	31/08/2004	Case rejected by court on the grounds that there was no prima facie evidence of forced labour. Complainant then found guilty of defamation and imprisoned for 6 months, but subsequently released.
§374 complaint	Kawhmu township, Yangon Division	09/08/2004	01/02/2005	Accused sentenced to an 8-month prison term.
Forced recruitment	Kyimindine township, Yangon Division	13/09/2004	None to date	
§374 complaint	Hinthada township, Ayeyawaddy Division	01/10/2004	–	Case rejected by court on the grounds that there was no prima facie evidence of forced labour.
Forced labour	Ramree township, Rakhine State	12/10/2004	None to date	
Forced labour	Tamu township, Sagaing Division	07/12/2004	17/02/2005	It was found that a Forestry Department official temporarily misappropriated pay for workers, who were later paid. He would be prosecuted for misappropriation. Response unclear as to whether workers were forced, or hired but then not paid.
Forced labour	Kalewa township, Sagaing Division	07/12/2004	17/02/2005	Local official found to have requisitioned 120 people on three occasions, and fined seven people for failing to work. This was a violation of Order No. 1/99 and the official would be prosecuted.
Forced labour	Tamu township, Sagaing Division	07/12/2004	17/02/2005	It was found that the allegation was unfounded and no further action would be taken.
Forced labour	Homalin townshin, Sagarai	07/12/2004	17/02/2005	Project found to have been the responsibility of the Public Works Department, who had hired a private

Case type	Location	Intervened	Response	Details of response from the authorities
	Division			contractor. Workers were hired voluntarily and had agreed that their pay be donated for a new roof for the school. No further action would be taken.
Forced labour	Toungup township, Rakhine State	08/12/2004	17/02/2005	It was found that the army unit concerned had paid a local official to provide firewood. This official had not hired woodcutters but had instead forced villagers to cut the wood. Accordingly, action was being taken against the official.
Forced labour	Kyaikto township, Mon State	09/12/2004	17/02/2005	It was found that villagers had participated willingly in the project, and over 2.7 million kyat in labour fees had been disbursed to the workers in 22 villages. No forced labour found to have been involved.
Forced labour	Tabayin township, Sagaing Division	10/12/2004	None to date	
Forced labour	Putao township, Kachin State	22/12/2004	None to date	
Forced labour	Myaing township, Magway Division	02/02/2005	None to date	
Forced labour	Thandaung township, Kayin State	03/02/2005	None to date	
Forced labour	Mawlamyinegyun township, Ayeyawaddy Division	04/02/2005	None to date	
Forced recruitment	Insein township, Yangon Division	15/02/2005	None to date	
Forced recruitment	Hlaingthaya township, Yangon Division	15/02/2005	None to date	
Forced labour	Yamethin district, Mandalay Division	18/02/2005	None to date	



SEVENTH ITEM ON THE AGENDA

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

Report of the Liaison Officer a.i.

Addendum

1. Since the finalization of document GB.292/7/2, a number of additional developments have taken place which may be of interest to the Governing Body.

Developments following the visit of the vHLT

2. The Myanmar Prime Minister, Lt. Gen. Soe Win, wrote to Sir Ninian Stephen on 10 March. This letter is reproduced in the appendix.
3. In a meeting with the Liaison Officer a.i. on 11 March, the Director-General of the Department of Labour reinforced the fact that there had been close cooperation between the Government of Myanmar and the Liaison Officer a.i. on individual cases, which had resulted in a number of prosecutions. He also indicated that the Office of the Commander-in-Chief (army), had ordered the creation of a focal point in the army to facilitate cooperation with the ILO on cases concerning the military. The focal point was to be the Vice-Adjutant General, Col. Khin Soe, assisted by seven grade-1 staff officers.¹ These elements were contained in a 56-page “Memorandum on Myanmar’s compliance of ILO Convention 29 and her cooperation with ILO” which he provided to the Liaison Officer a.i. at the end of the meeting.² The Memorandum also contained a detailed account of the history of relations between the ILO and Myanmar and the views of the authorities on the various developments that had taken place. These latter details formed the basis of a

¹ It was indicated that this order from the Office of Vice-Senior General Maung Aye was transmitted in letter ref. 865/18-ka/003 dated 1 March 2005. Grade-1 staff officers normally have the rank of lieutenant colonel.

² Copies of this Memorandum can be made available by the Office.

Government press conference held on 15 March concerning “the arbitrary pressure put on Myanmar by ILO”, which was reported at length in the state press the following day.³

Developments concerning allegations raised by the Liaison Officer a.i.

4. In letters to the Liaison Officer a.i., dated 21 February and 7, 9 and 11 March, the authorities provided further details as regards action taken on cases of forced labour that he had raised:

- As regards the allegation of forced labour on a teak plantation in Tamu (Sagaing Division), on which the authorities had already instituted proceedings against a Forestry Department official,⁴ it was indicated that on 18 February the court had found the official guilty under section 409 of the Penal Code (misappropriation of funds) and sentenced him to a two-year prison term.
- As regards the allegation of forced labour for the road from Kalewa to Mawlaik (Sagaing Division), on which the authorities had also instituted separate proceedings against a local official,⁵ it was indicated that also on 18 February the court had found this official guilty under section 374 of the Penal Code (illegal requisition of labour) and sentenced him to an eight-month prison term.
- As regards the allegation of forced labour imposed by the army for a land reclamation project in Toungup township (Rakhine State), on which the authorities had already stated that action was being taken against civilian officials found to have been involved,⁶ it was indicated that two local officials had been found guilty and sentenced to six-month prison terms by the township court on 28 February. No information was provided regarding any action against the army unit implicated in the allegation.
- As regards the allegation of forced labour imposed by the same army unit in Toungup township (Rakhine State) for the collection of firewood, on which the authorities had already stated that action was being taken against local officials found to have been responsible,⁷ it was indicated that two local officials had been found guilty in a separate case and also sentenced to six-month prison terms on 28 February. Again, no information was provided regarding any action against the army unit implicated in the allegation.
- As regards the allegation of forced labour imposed by the police and local authorities in Mawlamyinegyun township (Ayeyawady Division) for the cultivation of police land,⁸ it was indicated that although the investigation found the incident did not

³ See *New Light of Myanmar*, 16 March 2005, “Big nations of west bloc use ILO as political forum to put pressure on Myanmar in order to install their puppet government in power”, pp. 6, 7, 10, 11, 13, 14, 15 and 16. (Copies of the article are on file and can be made available by the Office.)

⁴ See GB.292/7/2, paras. 13 and 14.

⁵ *ibid.*

⁶ See GB.292/7/2, para. 14.

⁷ See GB.292/7/2, paras. 13 and 14.

⁸ See GB.292/7/2, para. 13.

amount to forced labour, three police officers and two local officials were responsible for certain wrongdoings, and administrative action was being taken against them.

5. With regard to his intervention dated 15 February concerning the alleged forced recruitment of a boy in January 2005,⁹ the Liaison Officer a.i. can report that the boy was released on 28 February and is back in the care of his family.
6. On 14 March, the Liaison Officer a.i. wrote to Col. Khin Soe, the newly-designated focal point in the army, requesting a meeting. He also transmitted to Col. Khin Soe two allegations of forced recruitment of minors that he had just received. He can report that the two children concerned were released back into the care of their families the following day.

Yangon, 16 March 2005.

⁹ See GB.292/7/2, paras. 13 and 14.

Appendix

Letter dated 10 March from the Myanmar Prime Minister to Sir Ninian Stephen

Dear Sir Ninian,

I have the honour of writing to you in reference to the visit of the very High-Level Team (vHLT) that you headed to Myanmar during the fourth week of February of this year.

I was given the duty of receiving the vHLT as the leadership was engaged with the National Convention that had been recently reconvened. As you may be aware the Convention is the first and most crucial step of the seven point Road Map for a transition to democracy in Myanmar. The success or failure of the National Convention will determine the future of my country. I cannot but stress the importance that we attach to the process.

I appreciated the opportunity of meeting with your goodself and the eminent members of the team. In the course of the meeting I explained to you the socio-economic situation and the progress that country had achieved. I also took the opportunity to underline the process of cooperation between Myanmar and the ILO on the issue of forced labour. We have stated on several occasions in the past that we are committed to the elimination of the vestiges of forced labour in close cooperation with ILO. I wish to reassure you that we are against forced labor and are committed to this principle.

Myanmar has cooperated with the United Nations and its Specialized Agencies in the past and will continue to do so also in the future. In like manner Myanmar intends to continue its cooperation with the ILO.

As regards the aide memoire presented to the Honourable Minister for Foreign Affairs by the vHLT, we are willing to give it careful consideration.

I avail myself of this opportunity to convey to you, Sir Ninian, the assurances of my highest consideration.

I remain,

Yours sincerely,

(Signed) Lt. Gen. Soe Win

cc: Her Excellency Mme Ruth Dreifuss, member of the vHLT
The Honourable Eui-yong Chung, member of the vHLT
His Excellency Mr. Juan Somavia, Director-General of the Office of the ILO



SEVENTH ITEM ON THE AGENDA

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

Report of the very High-Level Team

**I. Establishment and mandate of
the very High-Level Team**

1. In the conclusions it adopted after the discussions at its 291st Session (November 2004), the Governing Body, inter alia, requested the Director-General to field a very high-level mission to Myanmar, in the following terms:

... At the end of the debate, a number of speakers did however consider that the problems identified in the reports as well as the sudden replacement of the previous interlocutors of the Organization following the changes which had occurred among the leadership of the Myanmar Government justified an evaluation of the current attitude of the authorities and their determination to effectively address the continuing practice of forced labour. The attitude that they will adopt, which does not yet seem clearly defined, about the very alarming cases identified in the documents before the Governing Body, constitutes a real test of this determination.

This is why the Governing Body requests the Director-General to field a very high-level mission to evaluate the attitude of the authorities and assess their determination to continue their cooperation with the ILO, the modalities of which must make it possible to address the root causes of the problems described in the reports. The Director-General will have to ensure that the conditions of such a mission and the credentials of those charged with conducting it, as well as the position of its interlocutors at the highest political level, are such that it is able to meet these objectives and ensure the intervention has the required visibility. The Director-General will report on the results of this mission to the next session of the Governing Body. The Governing Body will then be able to determine the necessary consequences on the basis of full knowledge either as regards further action by the Organization under article 33, including as regards foreign direct investment, or for the implementation of the Plan of Action. ...

2. Accordingly, the Director-General constituted a very High-Level Team (vHLT) to fulfil the mandate defined in these conclusions, as follows:

- The Right Honourable Sir Ninian Stephen, former Governor-General of Australia, who chaired the previous High-Level Team in 2001;
 - Her Excellency Madame Ruth Dreifuss, former President of the Swiss Confederation;
 - The Honourable Eui-yong Chung, former Chairperson of the Governing Body of the ILO, Member of the National Assembly of the Republic of Korea and Chairperson of the Foreign Relations Committee of the Uri Party.
3. The composition of the vHLT and the dates when it was ready to visit Myanmar (21-25 February 2005) were communicated to the Myanmar authorities by the Director-General. All precautions were taken to ensure that the modalities for the visit would be such that the vHLT would be able to successfully complete its mandate, and it was on the understanding that the Myanmar authorities had understood and agreed with this essential point that the vHLT agreed to finalize its arrangements. Full details of the relevant exchange of correspondence and discussions are provided in Appendix I.

II. Programme of meetings

4. The members of the vHLT and their support staff met in Bangkok on 20 and 21 February 2005 for pre-departure discussions.¹ They then proceeded to Yangon on the evening of 21 February.
5. On arrival at the airport in Yangon, the vHLT was provided by the Deputy Minister for Labour with a programme of meetings that had been arranged for it by the authorities. This programme (reproduced in Appendix II) no longer included a meeting with State Peace and Development Council (SPDC) Secretary-1, the explanation being that he was busy with the National Convention, although the vHLT was informed verbally that it could expect a meeting with the Prime Minister the next day.² The vHLT's expectation was that this programme would be discussed and finalized as a matter of priority in the meetings it would have the following day.
6. The following morning (22 February) the vHLT met with the Minister for Labour. Sir Ninian Stephen first presented an overview of the background to the visit and the mandate of the team. Mr. Chung, as former Chairperson of the Governing Body, was then able to explain the critical importance of the visit in the light of the previous debates in the Governing Body on this issue. He underlined the positive gesture towards maintaining the ongoing dialogue with the authorities that the decision to appoint the vHLT represented on the part of the Governing Body, as well as the potential risks if this gesture was not

¹ The support staff were as follows: Mr. Francis Maupain (Special Adviser to the ILO Director-General), who acted as the vHLT's Executive Secretary, together with Mr. Richard Horsey (ILO Liaison Officer a.i. in Yangon) and Mr. Léon de Riedmatten (who for several years has been the informal facilitator between the ILO and the authorities). The ILO Executive Director for Standards and Fundamental Principles and Rights at Work, Mr. Kari Tapiola, was in Bangkok on other matters, and was also able to participate in these pre-departure discussions.

² Myanmar is ruled by a military council, the SPDC, and all policy is decided at this level (rather than by ministers) in particular by its two senior leaders, Senior General Than Shwe (SPDC Chairman, Commander-in-Chief of the armed forces, and Minister for Defence) and Vice-Senior General Maung Aye (SPDC Vice-Chairman and Army Commander). The Prime Minister is the fourth-ranking member of the SPDC, with authority over civilian/government matters, but not military matters. This was not the case for the former Prime Minister, who before his removal had been involved in the ILO process and who had authority to some extent over the military.

responded to as expected with a meeting at the highest political level. Madame Dreifuss then elaborated on the concrete points (subsequently provided to the Minister for Foreign Affairs – see below) which would need to be addressed by the vHLT, provided a meeting at the highest level was granted, as well as some explanations of how these points were relevant in the vHLT's view to the resolution of the issue. The Minister for his part explained that the agreement by the authorities to receive the vHLT should be seen as a positive indication of their commitment. He indicated that contribution of labour was an age-old tradition in Myanmar, and that misunderstandings over forced labour often arose because of this. He also asserted that certain groups were giving false information to the media, to the ILO and to the United Nations concerning such matters. He nevertheless recognized that certain incidents of forced labour could arise when village heads exceeded their authority. He underlined that all cases of forced labour, including in his view those raised by the Liaison Officer a.i., occurred at this level. When he received information in this regard an investigation was conducted and those responsible prosecuted as appropriate. He noted that most of the cases raised by the Liaison Officer a.i. had now been disposed of. As regards a meeting with the senior leadership of the SPDC, the Minister indicated that Senior General Than Shwe was very busy with the National Convention and that Vice-Senior General Maung Aye was not in the capital. The vHLT reiterated the critical need for such a meeting, which it had already made clear prior to commencing its visit, and the extremely difficult position that it would be in should assurances in this regard not be given.

7. That afternoon, the vHLT had the opportunity to meet with the Prime Minister. The Prime Minister began by giving a very detailed presentation on the socio-economic and political situation in the country and the progress that had been made in this regard over the last 15 years. He then noted that on matters raised by the ILO there had also been progress in his view. The people of Myanmar were allowed a great degree of freedom and had a strong community spirit, which also extended to their participation in construction of roads and other projects. This gave rise to certain misunderstandings and allegations. So too did the negative views of certain small groups inside and outside the country. Nevertheless, he realized that these age-old practices could not necessarily be transposed to the modern age. It was also possible that some village heads abused their authority, and legal action was taken in such cases. The members of the vHLT then gave an overview similar to that which they had presented to the Minister for Labour that morning. They also again underlined the need for a meeting with the senior leadership. Disturbing reports indicated that the army was responsible for some very serious cases of forced labour, and it was necessary to have discussions with those having authority over the military. This was why their mandate called so explicitly for such a senior-level meeting. The Prime Minister took note of all these points, but did not give any specific responses either to the question of a senior-level meeting, or as regards the concrete steps outlined by the vHLT.
8. The following morning (23 February), having received no further indications regarding a meeting with the senior leadership, the vHLT decided that there was no point in continuing with the remaining meetings at the technical level and therefore cut short its visit. An unfortunate consequence of this was that the other contacts which the vHLT had planned to have also had to be cancelled. The vHLT requested another meeting with the Minister for Labour to explain the position, but he had already departed Yangon. It decided therefore to keep its meeting with the Minister for Foreign Affairs that morning, and to take advantage of that opportunity to explain to him, and through him to the highest authorities, the reasons for its decision, without going into any technical discussions. At the end of that meeting, having given the necessary clarifications, it handed over the prepared statement that it would issue that afternoon on departing the country. Attached to this statement the vHLT provided an informal aide-memoire setting out the main concrete steps on which it believed progress should be made. The vHLT also insisted that despite its early departure the door was still open for further developments. The Minister responded to these points but was not in a position to provide any of the reassurances sought. As

regards the Plan of Action, he was ready to facilitate discussions between the ILO and the Ministry of Labour, whose competence it was. He also gave assurances that if at any time the Liaison Officer a.i. had issues that he wished to raise, his Directors-General were available for discussions.

9. At the request of the vHLT, the Liaison Officer a.i., who remained in Yangon, held a briefing for the diplomatic community and the press that afternoon concerning its early departure, at which the statement and aide-memoire were distributed. These are reproduced in Appendix III.

III. Conclusions

10. Although the vHLT regrettably had to cut short its visit to Yangon it is nevertheless in a position to contribute some significant clarifications to the Governing Body's consideration of the issue.
11. The main achievements of this visit may indeed be the fact that on the one hand it has allowed information to pass to the top level of the hierarchy and on the other hand has allowed the vHLT to pass back to the Governing Body a direct and independent assessment of the attitude of the authorities based on its experience over two days.
12. First, the decision of the vHLT to cut short its meetings at the technical level in the absence of any concrete commitments to have a meeting at the highest political level has undoubtedly managed to reach the senior leadership, despite the general reluctance on the part of the technical level to pass on negative news to that level. It is thus reasonable to think that even without having seen the vHLT, the senior leadership are now at least aware of the concrete points which according to the ILO require urgent attention if there is to be credible progress towards eradication of forced labour.
13. Second, beyond the assurance that the authorities are fully committed to the eradication of forced labour and that the ILO should take the word of the Ministry of Labour and of the Prime Minister as a fully reliable and sufficient expression of the commitment of the SPDC, the vHLT was disturbed by some eloquent silences or omissions:
 - No direct reference was made to the implementation of the Plan of Action, except by the Minister for Foreign Affairs, although he then pointed out that this matter fell within the competence of the Ministry of Labour. Nothing was said about the Facilitator mechanism despite repeated reference to it by the vHLT itself.
 - Behind the resurgence of the traditional theme about the lack of understanding on the part of the international community for the cultural dimension of practices which had nothing to do with forced labour, and the emphasis on the fact that the only real cases of forced labour were now credibly taken care of for the first time through criminal proceedings against village heads under section 374 of the Penal Code, the vHLT felt there was an implicit message that the Plan of Action may now have become unnecessary.
 - There was no direct answer to the repeated plea made by the vHLT about the need to address cases involving the military, which was the justification for its insistence to have access to the top level of leadership and which was the object of specific proposals attached to the statement communicated to the Minister for Foreign Affairs (that is, issuance of an executive instruction to all military units, and the establishment of a focal point within the army).

14. These are fundamental questions to which a credible answer can come only from the highest authorities, as it is only at this level that the Government and military chains of command are integrated. There is still time before the discussion in the Governing Body for the authorities to correct any misinterpretation which may have occurred because of the circumstances within which the mission took place (which was the main reason cited at the start of the mission for the difficulty of finalizing the programme as the vHLT wished). This is why the vHLT was careful to leave a door open in the statement they issued upon departure, and to give a chance to the authorities to show in the few weeks to come that they are indeed interested in having a meaningful and bona fide dialogue on these issues.

15. It is obviously not for the vHLT to make any suggestions as regards the course of action which the Governing Body may wish to take depending on what may happen between now and its discussion. All that it wishes to say to both parties as an independent team is its conviction as a result of this visit that a bona fide and meaningful dialogue at the required level of decision-making could bring positive results. In the view of the vHLT this has been borne out by the remarkable achievements which have been made possible by the ILO presence, which certainly needs to be further strengthened, and to which the vHLT wishes to pay tribute in concluding this report.

Bangkok, 25 February 2005.

(Signed) Ninian Stephen,

Ruth Dreifuss,

Eui-yong Chung.

Appendix I

Exchange of correspondence and discussions on the modalities for the vHLT's visit

1. In a letter dated 12 January 2005 to the Myanmar Minister for Labour, the Director-General informed the Myanmar authorities of the composition of the vHLT and the dates when it was ready to visit Myanmar (21-25 February), and underlined the need for appropriate modalities for the efficient discharge of its mandate to be agreed upon. The reply from the Minister for Labour dated 24 January welcomed the visit of the vHLT and the proposed dates, but gave rise to uncertainties as regards the modalities for the visit. For this reason and to ensure that all precautions had been taken to avoid potential misunderstandings, the Director-General wrote again to the Minister for Labour on 4 February and at the same time discussions were initiated in Yangon between the ILO Liaison Officer a.i. and the Myanmar authorities on the detailed modalities for the visit. Copies of the relevant correspondence are provided herewith.
2. The exchange of letters between the Director-General and the Minister for Labour and the discussions that the Liaison Officer a.i. had with the Ministry of Labour did not result in a clear indication that a meeting between the vHLT and the senior leadership of the State Peace and Development Council (SPDC) would be possible. Informal indications were given in these meetings, however, which suggested that the authorities understood the critical need for a meeting with the senior SPDC leadership in order for the vHLT to successfully discharge its mandate, and that the possibility for such a meeting remained open. The draft programme proposed by the authorities prior to the arrival of the vHLT included a meeting with Secretary-1 of the SPDC, but did not make mention of a meeting with the senior leadership.
3. Given the short time remaining before the proposed visit, the Liaison Officer a.i. wrote to the Minister for Labour on 10 February, confirming that the various meetings proposed at the technical level, as well as with SPDC Secretary-1, were considered by the vHLT to be important and valuable, but that a meeting with the senior leadership – namely, Senior General Than Shwe or Vice-Senior General Maung Aye – was seen by the vHLT as critical to its mandate. The letter also noted that unless clear indications were urgently received concerning the possibility of such a meeting, the vHLT might have to draw the conclusion that it was not possible to fulfil its mandate on the basis of the proposed programme.
4. The Liaison Officer a.i. reiterated these points in a meeting with the Deputy Minister for Labour on 11 February, and he warned that if the vHLT was not able to receive some assurances in this regard, it might have to make the difficult decision not to proceed with its visit. The Deputy Minister replied that there was a strong likelihood that the Prime Minister would meet with the vHLT, but that he was not in a position at that stage to give similar assurances as regards the meeting with the senior leadership. He did however explain that this was not because such a meeting was being ruled out, but rather because certain internal and external constraints made it difficult to give a firm commitment to such a meeting in advance.
5. In the circumstances, and in view of the time constraints, the International Labour Office agreed with the members of the vHLT that it should inform the Myanmar authorities that they were prepared to have the necessary formalities and arrangements for their visit completed, but only on the understanding that a satisfactory programme would be finalized as soon as possible on the vHLT's arrival in Yangon. It was on this understanding that visas were being requested. The Liaison Officer a.i. sent a *note verbale* to the authorities on 15 February to this effect (also reproduced herewith). At the same time, he passed a verbal message to the authorities that if the vHLT's understanding was incorrect, it was extremely important that it should be informed of this prior to commencing its mission in order to avoid a potentially more embarrassing situation.

(a) Letter dated 12 January 2005 from the Director-General to the Myanmar Minister for Labour

Dear Minister,

As you are aware, the Governing Body of the ILO at its last session in November 2004 adopted important conclusions concerning the situation of Myanmar, the full text of which is attached for ease of reference.

I have the honour to advise you that, as I was requested by the Governing Body, I have now constituted a very High-Level Team to fulfil the mandate defined in these conclusions, and whose objective is to a large extent to follow up on a previous HLT which successfully visited Myanmar in 2001 and was received by His Excellency Senior General Than Shwe and his colleagues of the State Peace and Development Council (SPDC).

The composition of this very High-Level Team is designed to ensure the highest possible degree of integrity, continuity and credibility in the discharge of the above mandate. It is as follows:

- The Right Honourable Sir Ninian Stephen, KG, AK, GCMG, GCVO, KBE, PC, former Governor-General of Australia, who chaired the former HLT in 2001;
- Her Excellency Madame Ruth Dreifuss, former President of the Swiss Confederation;
- The Honourable Eui-yong Chung, former Chairperson of the Governing Body of the ILO, Member of the National Assembly of the Republic of Korea and Chairperson of the Foreign Relations Committee of the Uri Party.

The very High-Level Team will be ready to visit Myanmar during the week of 21-25 February 2005 it being understood that appropriate modalities for the efficient discharge of its mandate will have been agreed well ahead between the Myanmar authorities and the ILO.

I am glad to inform you in that respect that my colleagues stand ready both in Yangon and in Geneva to undertake the necessary consultations for that purpose at the earliest convenience of the Myanmar authorities.

I trust that in view of the extreme importance of this visit for the future cooperation between Myanmar and the ILO and indeed with the international community at large, you will no doubt wish to bring the contents of this letter to Senior General Than Shwe's personal attention.

Yours sincerely,

(Signed) Juan Somavia.

**(b) Letter dated 24 January 2005 from the Myanmar
Minister for Labour to the Director-General**

Excellency,

I would like to acknowledge the receipt of your letter dated 12 January 2005 concerning the visit of the ILO very High-Level Team to be headed by the Right Honourable Sir Ninian Stephen, former Governor-General of Australia.

I am pleased to inform you that we welcome the visit of the very High-Level Team during the week of 21-25 February. It will be a busiest time for all of us because the National Convention will be in session at the time. Despite this situation, we assure you for all possible arrangement for the activities of very High-Level Team. It is my pleasure to inform you that the Chief Justice, Attorney-General and the ministers from the ministries concerned will be available to have separate meetings for constructive dialogue.

Freedom of contact will be granted with the exception of the meeting with the persons who are under detention or have been put under restraint according to the existing law.

The members of the very High-Level Team will be granted the privileges accorded to the personnel from the UN organizations as in the case of previous ILO missions to Myanmar.

I am looking forward to the fruitful cooperation between Myanmar and ILO.

Yours sincerely,

(Signed) U Thaung.

(c) Letter dated 4 February 2005 from the Director-General to the Myanmar Minister for Labour

Dear Minister,

Thank you for your letter dated 24 January 2005 in reply to my letter of 12 January 2005 concerning the visit of a very High-Level Team.

I note that the dates for the visit are acceptable to the authorities despite some inconvenience it may create and I wish to thank you for that.

As regards other modalities, I would first like to remind you that the recognition of the freedom of contacts which is mentioned in your letter is essential to enable each mission to discharge its specific mandate. The nature of such contacts of course varies with the specific object of the mission. In the present case, the mandate given by the Governing Body does not call for the same type of contacts as the previous one. However, it must be clear that it is ultimately for the members of the very High-Level Team to determine what contacts may be relevant to the effective discharge of the mandate entrusted to them by the Governing Body, and to approach the authorities for that purpose as appropriate. The contents of your letter seem to fully allow for this.

The most critical aspect of the modalities now is to agree on a programme which enables the very high-level mission to discharge the mandate of the Governing Body. While of course discussions at the technical level such as those indicated in your letter are necessary and welcome, the said mandate implies that the very High-Level Team will meet the senior leadership. It is with that understanding that the members of the very High-Level Team have accepted to participate. The Office is ready to discuss urgently a programme that meets this requirement.

Yours sincerely,

(Signed) Juan Somavia.

**(d) Note verbale dated 15 February 2005 from
the Office of the Liaison Officer to the
Minister for Labour**

The Office of the ILO Liaison Officer presents its compliments to the Minister for Labour of Myanmar and has the honour to convey to His Excellency the following information.

The Office of the ILO Liaison Officer has been instructed by ILO headquarters in Geneva to inform His Excellency the Minister for Labour, and through him the State Peace and Development Council, that following consultations with the members of the very High-Level Team and on the basis of the indications provided through the Liaison Officer as regards the tentative programme of their visit and the prospects for a meeting at the highest level, they have agreed to have the necessary formalities and arrangements for their visit completed. These steps are being taken, however, on the understanding that the tentative programme will be adjusted, complemented and finalized as appropriate as soon as possible upon their arrival in Yangon.

It is on this understanding that the necessary visas are being urgently requested, in the case of Sir Ninian Stephen and His Excellency Eui-yong Chung through the Myanmar embassies in their respective countries, and through the Permanent Mission of Myanmar in Geneva for Her Excellency Madame Ruth Dreifuss and for Mr. Francis Maupain, who is to accompany the vHLT as its Executive Secretary.

The Office of the ILO Liaison Officer avails itself of this opportunity to renew to the Minister for Labour of Myanmar the assurances of its highest consideration.

Appendix II

Programme of meetings arranged by the authorities and provided to the vHLT on its arrival in Yangon

[Note that this was not the programme of meetings that actually took place, as explained in the main text of this report.]

Monday, 21 February

18:45 Arrival at Yangon International Airport
(H.E. Deputy Minister for Labour will meet the team at the airport)

Tuesday, 22 February

10:00 Call on H.E. U Thaung (Minister for Science and Technology and Labour)

16:00 Call on H.E. Maj. Gen. Maung Oo (Minister for Home Affairs)

19:30 Dinner to be hosted by H.E. the Minister for Labour

Wednesday, 23 February

11:30 Call on H.E. U Nyan Win (Minister for Foreign Affairs)

15:00 Call on H.E. U Aung Toe (Chief Justice)

Thursday, 24 February

10:00 Meeting with Implementation Committee

p.m. —

Friday, 25 February

a.m. —

p.m. —

19:45 Departure from Yangon
(H.E. the Deputy Minister for Labour will see the team off at the airport)

Appendix III

(a) Statement by the ILO very High-Level Team at the close of its visit to Myanmar

The mandate which had been entrusted to the vHLT by the Governing Body of the ILO at its 291st Session (November 2004) was to evaluate the attitude of the Myanmar authorities at the highest level to the elimination of forced labour and assess their determination to continue their cooperation with the ILO in this regard. Its composition had been established accordingly. The Myanmar authorities were fully aware of these terms of reference before the mission departed for Yangon. However, the mission was informed on its arrival that for various reasons linked to the National Convention the programme did not include the meetings that would have enabled it to successfully complete its mandate as it understood it.

Under the circumstances, and after having discussions and making its views known to the Minister for Labour and to the Prime Minister, the mission decided that there would be no point at this stage to have more in-depth discussions at the technical level on the concrete steps outlined in those meetings which in the mission's view could contribute to alleviating recent concerns expressed in the Governing Body.

The vHLT will submit its report to the next session of the ILO Governing Body in March.

Yangon, 23 February 2005.

(Signed) Sir Ninian Stephen
on behalf of the vHLT.

(b) Aide-memoire

Additional concrete steps considered by the mission to be important for the effective eradication of forced labour

- Issuing a public executive instruction from the competent SPDC level to give effect to the provision in Order Supplementing Order 1/99 that the Ministry of Defence should issue further directives to all units under its command not to requisition forced labour, and giving adequate publicity to same.
- Reconfirmation of the commitment of the authorities to the terms of the joint Plan of Action on forced labour, including identification of the Facilitator, together with the appointment of a high-level focal point in the army to deal with allegations that concern the army.
- Renewing the commitment of the authorities to the freedom of movement of the ILO Liaison Officer.
- Taking additional measures that could build confidence vis-à-vis the people of Myanmar as regards the possibilities to lodge complaints regarding forced labour. Such measures should include extending the amnesty which was granted to the two persons in the high-treason case to the third person whose conviction had an ILO dimension, as well as credible solutions to the serious forced labour cases identified by the ILO Governing Body in November 2004.

292nd Session of the Governing Body of the International Labour Office (March 2005)

SEVENTH ITEM ON THE AGENDA

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

Conclusions

1. The easiest and most pleasant part of my task is to convey on our joint behalf our sincere gratitude to the members of the very High-Level Team (vHLT) for having accepted a very difficult assignment and for their dedication in discharging it scrupulously both in letter and spirit. Now comes a much more painful and difficult task, and I am indebted to my colleagues the Officers for having given me their support and advice.
2. In drawing the conclusions of the present debate it is important to recall the conclusions reached by the Governing Body at its previous session, which set the parameters for our present consideration of the matter. Following recent leadership changes, the main preoccupation of the Governing Body in establishing the vHLT was to have an objective basis to evaluate the attitude and the real will of the authorities at the highest level, and their determination to continue their effective cooperation on the outstanding issues; this evaluation would then enable the Governing Body to draw the appropriate consequences in full knowledge of the facts, including as regards action under article 33.
3. In that framework, after hearing the message from the Ambassador, Mr. Nyunt Maung Shein, we have had a broad debate.
4. The most largely shared sentiment was one of condemnation over the failure of the highest authorities to take advantage of the unique opportunity that the visit of the vHLT represented to resume a credible dialogue on the issues of concern, and also the feelings of grave concern over the general situation that this reveals.
5. Indeed, the Prime Minister's indications to the Members of the vHLT as well as the comments of the Ambassador allege that the necessary political will exists. However, the attitude towards the vHLT, along with the press conference held in Yangon on 15 March and even some of the remarks made this morning by the Ambassador of Myanmar, casts into grave doubt the credibility of this message and the usefulness of the ILO approach.
6. Apart from the assurances and indications, there are the facts. Some of them seem to a number of us to go in the right direction, in particular the prosecutions and punishment of authorities responsible for having recourse to forced labour and the establishment of a focal point in the army on the initiative of the Vice-Senior General.
7. But in the circumstances the overall assessment falls far short of our expectations. And this is the reason why, according to the Workers' proposal, joined by certain Governments, the Governing Body has no other choice but to ask the Office to take a certain number of formal steps to strengthen the measures under the resolution of June 2000, but also at the same time to strengthen the Liaison Office.

- 8.** Other Government members and the Employers, while sharing the same sense of condemnation of the actions of the authorities, were in view of the closeness of the International Labour Conference starting 31 May inclined to test, for the last time, the true will of the authorities to cooperate with the ILO, before resuming the examination of these measures and taking a decision on them. Other Governments limited themselves to calling for an urgent restarting of an effective and meaningful dialogue, without reference to specific measures.
- 9.** In the treatment of this particularly difficult case, the solidarity of all the groups has always given strength to the position of the ILO. It is the view of my colleagues and myself that this strength should be maintained. Three considerations may help us.

 - First, the question is not strictly speaking for us to adopt new measures under article 33. These measures have already been taken under the resolution adopted by the Conference in 2000, which is binding on the Governing Body and the other organs of the ILO as long as it has not been modified. These measures clearly remain in force with regard to all constituents and others to whom the resolution is addressed.
 - The next question is whether it is time for members to resume their consideration of the action which they have been and still are called upon to take under the resolution of June 2000. This question arises because most of them have suspended their action since the beginning of 2001 as a result of the progress which seemed to be under way at the time, and which resulted in certain concrete developments in particular through the ILO presence. At this stage, and on the basis of the information at our disposal, the growing feeling is that the “wait-and-see” attitude that prevailed among most members, following the initiation of meaningful dialogue since 2001, appears to have lost its *raison d’être* and cannot continue.
 - A third consideration is that under the resolution the ILO cannot prejudge the action which each individual member may find it appropriate to take as a result of their review; the only thing which is expected from all of them is to report at suitable intervals to explain what they have done and why.
- 10.** At the same time it is clear that the ILO is not closing the door to the resumption of a positive dialogue with the Myanmar authorities in line with the views wisely expressed by the vHLT and a large number of those who took the floor during the debate; it is clear in particular that the existence of such dialogue and the concrete results it could produce should be taken objectively into account by members when deciding the outcome of their review. The extent to which progress will be achieved with regard to the strengthening of the ILO presence as well as the other items covered by the vHLT’s aide-mémoire, including the immediate release of Shwe Mahn, should be a concrete test in this regard.
- 11.** In the light of these considerations, the conclusions that myself and my colleagues think the Governing Body could unanimously agree on taking is to transmit to all those to whom the 2000 resolution was addressed – including relevant agencies – the results of our deliberations reflected in the present conclusions, with a view to them taking the appropriate action resulting from the above considerations.
- 12.** The Officers of the Governing Body are mandated to closely follow any developments. These developments will be the subject of a document before the Committee on the Application of Standards of the International Labour Conference in June.

