



PART THREE

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

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

Contents

	<i>Page</i>
A. Record of the discussion in the Committee on the Application of Standards	3
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	11
Document D.5	16
C. Brief summary of developments since June 2006.....	16
D. Latest developments since March 2007	17
Document D.6	19
E. Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29).....	19
1. Document GB.297/8/1	19
2. Document GB.297/8/2	32
3. Document GB.298/5/1	42
4. Document GB.298/5/1(Add.).....	50
5. Document GB.298/5/1(Add.2).....	52
6. Document GB.298/5/2	54
7. Conclusions on item GB.298/5	58

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

A **Government representative of Myanmar** noted that many positive developments had taken place since the last examination of this issue, thanks to the firm commitment of the Government and the steadfast cooperation and patience of the ILO. A Supplementary Understanding establishing a complaint mechanism for victims of forced labour was concluded on 26 February 2007 and came into force immediately. Wide publicity was given to it through a press release issued by the Permanent Representative of Myanmar in Geneva, clarifications provided by the Director-General of the Department of Labour to foreign journalists in Myanmar and, finally, a web site on labour matters, including the Supplementary Understanding, launched by the Ministry of Labour on 3 April 2007.

Noting that justice delayed is justice denied, the Government representative emphasized that the cases involving forced labour which had been transmitted by the Liaison Officer to the Working Group headed by the Deputy Minister of Labour, were immediately investigated and this had resulted in their quick resolution. A majority of ILO member States had recognized that Myanmar was effectively implementing the Supplementary Understanding. The existence of the complaint mechanism was well known to the public, as evidenced by the receipt of complaints from many parts of the country. The Government was confident that this mechanism would become an effective tool in the joint effort to eradicate the practice of forced labour. In addition, the authorities had taken prompt legal action against those who had committed forced labour and these actions were published in the national newspapers, thus enhancing the credibility of the mechanism.

However, even though only nine cases involving forced labour had been received within three months of the implementation of the Supplementary Understanding, it was regrettable that there had been various attempts to increase the number of complaints, taking advantage of a clause in the Supplementary Understanding prohibiting any action being taken against complainants or their representatives due to the complaint. The Government considered that these attempts might undermine the smooth functioning of the mechanism for the bona fide victims.

Pursuant to the 298th Session of the Governing Body during which the importance of the continuous effective functioning of the complaint mechanism and the need for adequate staff resources were underlined, the Government recognized that the continued functioning of the mechanism was in the interest of the victims of forced labour and, therefore, the Deputy Ministry of Labour received the ILO Liaison Officer a.i. on 8 April 2007 and assured him that full cooperation would be extended in dealing with future complaints. There had been no disagreement between the two sides on the necessary appropriate steps to be taken to enable the Liaison Officer or his successor to discharge effectively the additional work and responsibilities. As the mechanism had been in place for only three months, the necessary adjustments could be made to the staff capacity in a reasonable time and after due consultation, as stipulated in paragraph 8 of the Supplementary Understanding. Finally, the Government of Myanmar would take into consideration the request of the Governing Body to extend the necessary cooperation and facilities.

The Government representative reiterated his Government's position regarding the participation of the members of the Free Trade Union of Burma (FTUB) which the Ministry of Home Affairs of Myanmar had declared as terrorists in its Notification No. 3/2005 and Declaration No. 1/2006 issued on 28 August 2005 and 12 April 2006, respectively. This participation would in no way contribute to the worthy efforts and intensified cooperation be-

tween Myanmar and the ILO so as to eliminate the practice of forced labour, but simply complicate the matter.

As Mr Richard Horsey had decided to end his assignment as ILO Liaison Officer a.i., Myanmar had positively responded to the appointment of Mr Stephen Marshall to this post. The Government would extend to him the facilities and courtesies that had been extended to his predecessor whose essential role in the effort to eliminate forced labour practices was recognized.

Finally, the Government representative emphasized that the conclusion of the Supplementary Understanding and the resulting establishment of a complaint mechanism were the most significant developments in the history of cooperation between Myanmar and the ILO. This achievement testified to a genuine spirit of cooperation from both sides, which was essential for the mechanism to continue to function effectively. The Government representative assured the Committee that every effort would be made to enable the mechanism to function effectively and stated that his Government looked forward to receiving the same spirit of cooperation and accommodation from the ILO and its Members.

The Employer members recalled that the discussion aimed at examining, in line with the 2000 resolution of the International Labour Conference, the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29) on the basis of the report of the Committee of Experts and in particular, the implementation of the Commission of Inquiry recommendations. They recalled that regular discussion of this case went back over 25 years without any real progress having been made despite a variety of commitments and promises by the Government. Even taking into account recent developments, no real commitment had been made by the Government to meet its international obligations under Convention No. 29, both in law and in practice and to put an end to the intolerable climate of impunity. As made clear by the Committee of Experts in its latest observation, the Government had not even come close to implementing the measures recommended by the Commission of Inquiry, i.e. that legislative texts, in particular the Village Act and the Towns Act, be brought into conformity with the Convention, that the authorities cease to impose forced or compulsory labour in practice and that the sanctions provided for imposing forced or compulsory labour be strictly applied. The Committee of Experts had also noted with concern the lack of information provided by the Government on almost all the issues raised in its observation. Such information would constitute a clear and unequivocal sign of willingness to cooperate genuinely with the supervisory bodies.

The Employer members expressed regret that not much appeared to have changed regarding the need to amend legislative texts, which the Government had long been promising to do, without any compelling reasons given for not doing so. The Employer members reminded the Government that the only sustainable solution to this matter, in the absence of a clear political will to amend the Village Act and the Towns Act, was to repeal them and that immediate action should be taken in this direction.

The Government had not supplied any copies of precise and clear letters and instructions to the civilian and military authorities indicating that forced labour had been declared unlawful in Myanmar. Nor had the Government taken any action with regard to the need to give wide publicity among the population to the prohibition of forced labour. The Employer members concurred with the Committee of Experts that a starting point for the eradication of forced labour was to give very clear and concrete instructions to the authorities of the kinds of practices that constitute forced labour and to engage in a wide publicity

campaign so that this information could be disseminated among the entire population. They once again stressed the importance of having recourse to a wide publicity operation by using mass media such as newspapers and broadcasting. The Employer members also expressed concern at the lack of transparency and cooperation by the Government in providing information to the Committee on the budgeting of adequate means, so that paid labour could replace forced or unpaid labour. It was absolutely necessary to demonstrate serious and genuine commitment by making the budgetary allocations.

The Employer members noted some possibly encouraging developments, i.e. the release of Aye Myint and the ending of the prosecutions in Aunglan, and the signing of the Supplementary Understanding establishing a mechanism to facilitate the free investigation of complaints of forced labour with protection extended to complainants. However, as there had been so many false promises in the past, they maintained their substantial scepticism and doubts, despite their clear desire to see in this mechanism an effective means to identify and suppress forced labour and make offenders subject to prosecution. They acknowledged that the mechanism had come into force immediately and that only three months had passed since its implementation with some positive results. They called on the Government to ensure that all necessary steps would be taken in the very near future to give additional visibility to the Supplementary Understanding and the functioning of the mechanism.

For this mechanism to work in the long term and given the increased workload imposed on the Liaison Officer, the issue of allocation of resources played a key role. It was absolutely necessary that the Office quickly assign suitable international staff to assist the Liaison Officer and that the Government extend the necessary cooperation and facilities to that end.

In conclusion, the Employer members emphasized that the Supplementary Understanding was not the end of the process as the Government seemed to see it, and called upon the Government to follow up on it by repealing the Village and the Towns Acts, ensuring that the prohibition of forced labour was given wide publicity and providing the necessary funds for the eradication of forced labour.

The Worker members pointed out that it would be worth designating a day of the International Labour Conference as "World Day for Democracy in Burma", as this issue had been a Conference agenda item for so long without the situation having undergone any significant change. This year again the Committee of Experts had repeated the recommendations made by the Commission of Inquiry in 1997, viz. the need to amend national legislation, particularly the Village and Towns Acts, the need for forced labour practices to cease, particularly by the military, and that the sanctions foreseen be applied effectively. The Government of Myanmar should in this respect especially give instructions to the civil and military authorities; publicize the ban on forced labour; provide for funds to remunerate work which was presently forced labour; and have the ban respected. The Committee of Experts had once again provided an inventory of the evolving situation or rather of the promises made and not kept. In order to fight discouragement, the Committee of Experts could consider including in its report more information on facts reported in trade union releases and particularly the elements of the discussion at the special sessions of the Conference. In this way, it might avoid the continual silence and refusals by the Government to supply information on orders which were supposed to be given to the military, purported awareness raising among the population, or information on budget allocations supposedly earmarked for the payment of work.

He noted in fact that each step forward was offset by a step backward. Therefore, although welcoming the signing of the Supplementary Understanding of February

2007 on a complaint mechanism, as well as the work carried out in often extremely difficult circumstances by the Liaison Officer a.i., one should not overestimate the impact of such a mechanism, which could not mask the fact that there had been no progress in the implementation of the recommendations and measures to be taken. The reply given by the Ambassador of Myanmar in no way constituted a satisfactory reply to the resolution of 2000 which called for amendments to the law, the giving of instructions to the civil and military authorities, the organization of a publicity campaign on the prohibition of forced labour, budgetary arrangements to remunerate current forced labour, and for the application of sanctions. Consequently, the mechanism was only an instrument, not a measure for the elimination of forced labour, as evidenced by the 23 complaints received since the signing of the Supplementary Understanding. The situation therefore remained very serious as would be demonstrated by many other interventions from the Worker members.

Another spokesperson for the Worker members recalled that this case had been subject to reports by the Committee of Experts for over 25 years and had been of critical concern to the labour movement in his country, the United States, where the AFL-CIO supported legislation passed in July 2003 prohibiting United States trade relations with the Burmese military junta regime. Based on the report of the Committee of Experts and the response of the Government, including its reference again to an independent and democratic trade union organization, the FTUB, being a terrorist organization, these economic measures were more than justified. However, concerns were raised by recent information indicating that United States' multinational enterprises were doing business in Burma under the guise of local corporate operations, in possible contravention of the 2003 legislation.

The Worker members expressed regret at the fact that nine years after the recommendations of the Commission of Inquiry, the case continued to be one of profound and fundamental non-compliance as shown by the Committee of Experts' report and the Government's response. Although the Governing Body had decided in March 2007 to defer the question of an advisory opinion by the International Court of Justice (ICJ) until the necessary time, it was also stated in paragraph 6 of document GB.298/5/2 that an issue that could be referred to the ICJ was whether the required cooperation and actual progress in the implementation of the recommendations of the Commission of Inquiry met the relevant threshold. This threshold had, in their opinion, hardly been met, let alone approached.

With regard to the Supplementary Understanding signed between the ILO and the Government in February 2007, the Worker members recognized and welcomed the premise in the agreement to prohibit judicial and retaliatory action against complainants and enhance the capacity of the Liaison Officer. However, it was totally misplaced to conclude that this measure by itself meant that the Commission of Inquiry's recommendations had been met. The Supplementary Understanding's limited content had been adopted on a 12-month trial basis only. The most fundamental limitation was that, even under the best of circumstances, it was essentially based on complainants coming forward thus exposing themselves to the risks of the regime's justice system. The instrument, by itself, only scratched the surface of a non-compliance problem that was structural, chronic and omnipresent. As indicated by the democratic and independent Federation of Trade Unions Kawthoolei (FTUK) to the ITUC Burma Conference which took place in Kathmandu in April 2007, the new ILO reporting mechanism for victims of forced labour was unlikely to work because villagers could not get to Rangoon to report abuses even if they were willing to risk the inevitable punishment by the State Peace and Development Council (SPDC) if they did speak out. Karen State villagers could not travel easily to Rangoon because

many of them faced movement restrictions by the SPDC, were too poor to afford travelling costs and were struggling to farm enough food to survive. With regard to the State of North Arakan, identified by the ILO as one of the regions with the greatest prevalence of forced labour, the Rohingya ethnic group could not exercise freedom to travel and Rangoon was totally off limits, thus preventing complaints coming to the ILO office for all intents and purposes. Moreover, there were thousands upon thousands of Burmese victims of forced labour who had sought refuge and asylum in Bangladesh, Malaysia or Thailand with no evident or effective means and safeguards to bring forward complaints pursuant to the Supplementary Understanding. Finally, reports by the FTUK, the FTUB and the Arakan Project, relying on accurate interviews with courageous eyewitnesses, indicated widespread and unchecked practices of forced labour in Karen State, Northern Arakan State and other regions of the country as recently as late 2006 until May 2007. Such work included cultivation of biofuels, rubber trees and summer rice paddies, construction of military facilities, roads and bridges, sentry duty and portering, just to name some examples.

In conclusion, the Worker members emphasized that without serious commitment to broad investigation and enforcement powers, including, but not limited to, an ILO Liaison Office with an expanded capacity to conduct nationwide inspection that did not depend entirely on the courage, volition and personal wherewithal of individual complainants, Burma would surely maintain its unconscionable distance from what the Governing Body had called the relevant threshold.

The Government member of Germany, speaking on behalf of the European Union, the candidate countries: Turkey, Croatia and The former Yugoslav Republic of Macedonia; the countries of the Stabilization and Association process and potential candidates: Albania, Bosnia and Herzegovina, Montenegro, Serbia; the European Free Trade Association (EFTA) countries: Iceland and Norway; and members of the European Economic Area, as well as Ukraine, the Republic of Moldova and Switzerland, which aligned themselves with the declaration, welcomed the signature in February 2007 of the Supplementary Understanding on the establishment of a credible and effective complaint mechanism to enable victims of forced labour to seek redress, as well as the fact that in a period of three months a total of 23 complaints had already been received by the Liaison Officer a.i. The European Union expressed its strong support for the Liaison Officer in his request for additional staff in order to deal adequately with the increasing number of complaints as stated in paragraph 8 of the Supplementary Understanding. Although it was too early to make a final assessment, positive signs were acknowledged with regard to the implementation of the complaint mechanism. However, the Burma/Myanmar authorities were strongly encouraged to show good faith and sincerity in fully implementing the Supplementary Understanding in the future so as to make it an actual step towards the ultimate aim of ending forced labour in Burma/Myanmar. This was crucial to accomplishing substantial and permanent improvement in the human rights situation in Burma/Myanmar. It was also hoped that the ASEAN countries would support the Burma/Myanmar authorities' efforts to implement fully the Understanding and thus contribute to the ending of forced labour. The European Union fully supported the conclusions of the Governing Body adopted in March 2007, approving the option of seeking an advisory opinion by the International Court of Justice but deferring this legal option for the time being. It would continue to monitor closely the human rights situation in Burma/Myanmar, in particular the actual progress in the implementation of the Supplementary Understanding.

The Government member of the Philippines acknowledged the importance of the ILO presence in Myanmar and thanked the ILO Liaison Officer a.i., Mr Horsey, for his efforts to assist the authorities in complying with Convention No. 29. Stating that his Government was firmly opposed to the practice of forced labour, he encouraged the Government of Myanmar to exert all efforts to comply with the Convention and eradicate forced labour practices throughout the country.

He welcomed the conclusion, in February of this year, of the Supplementary Understanding between the ILO and the Government of Myanmar, which established the mechanism for handling complaints of forced labour. He also noted the latest developments in Myanmar since March 2007, particularly the progress in the handling of complaints as reported by the ILO Liaison Officer. Such positive developments underscored the importance of dialogue and cooperation between all parties concerned; in this regard, the Governing Body's decision to defer the seeking of an advisory opinion by the International Court of Justice was a welcome one. He concluded by expressing full support for Mr Stephen Marshall's appointment to the ILO Liaison Office in Yangon.

The Government member of the United States thanked the Office for its summary of developments since June 2006, and its update of developments since the Governing Body last considered this issue in March 2007.

She noted with interest that the complaint mechanism established under the Supplementary Understanding had been put into practice, and expressed encouragement with the fact that, according to the latest reports, the Liaison Officer a.i. had received 23 complaints. She observed nonetheless that, as relatively few cases had reached a conclusion that the Liaison Officer was able to confirm, it was clearly premature to judge whether the mechanism was producing real and meaningful results.

The process of eliminating forced labour required continuing effort. It required continued, unrestrained access by complainants to the Liaison Officer, proof that complainants were not being subjected to harassment or punishment for their complaints, proof that those who impose forced labour were punished, and proof that the punishments were commensurate with the seriousness of the acts committed. Strengthening the staff of the Liaison Office to deal with the increased workload was also necessary. In this regard, she noted with concern that at the time the Office's report was finalized, the ILO's request for suitable international staff to assist the Liaison Officer had not been acted upon. Hopefully the practices of delay and deception seen too often in the past were not being repeated; the authorities should act expeditiously to facilitate the ILO Liaison Office's staff expansion, in keeping with the commitments made in the Supplementary Understanding.

The developments reviewed within the scope of the Supplementary Understanding were still small and preliminary steps, and the complete elimination of forced labour in Myanmar remained a distant goal. She stated that the steps the authorities needed to take had been specified by the Commission of Inquiry nearly a decade ago and must be implemented; additionally, it was necessary to recognize that the goal of ending forced labour was inextricably bound to progress in allowing the country's people their democratic rights – including freedom for Aung San Suu Kyi and other civil society leaders.

She asserted that the members of the ILO also possessed certain responsibilities, and that the United States, for its part, had taken action by extending for yet another year stiff economic and travel sanctions against the regime. She concluded by thanking the Liaison Officer a.i., Mr Richard Horsey, for his dedicated work to eliminate forced labour over the last five years and welcomed his successor to the Yangon Liaison Office, Mr Stephen Marshall.

The Government member of Japan expressed support for the Supplementary Understanding, which reflected the tireless efforts of both the ILO and the Government of Myanmar to arrive at an agreement. He commended these efforts and took note of the fact that the mechanism established by the Supplementary Understanding was working well. Recalling the predicaments and frustrations of previous years, he stated that the Supplementary Understanding had given rise to new expectations and hopes for better cooperation between the ILO and the Government.

He expressed gratitude for the ILO Liaison Officer a.i. Mr Richard Horsey's service over the past five years and welcomed Mr Stephen Marshall's appointment to the Liaison Office in Yangon. Taking due note of the increased workload the Liaison Office would be expected to assume, he urged the Government to accept the ILO's request to strengthen that office's staff resources.

The conclusion of the Supplementary Understanding was only a beginning, he remarked. The Understanding's true significance hinged upon its successful implementation; the Government was strongly urged to ensure that this would be realized. He stated that the next year would prove critical as a test period and emphasized the importance of keeping a vigilant eye on the manner in which the Government implemented the commitments it had assumed, as well as the extent to which victims of forced labour could, through the services of the ILO Liaison Office, channel complaints and seek remedies free from the threat of retaliatory action.

He noted the positive comments made by the Government, in particular the favourable indications it had expressed with regard to the strengthening of staff resources in the ILO Liaison Office. He concluded by stressing the importance of the spirit of cooperation, without which the elimination of forced labour could not effectively be realized, and offered the assistance of his Government in this regard.

The Government member of Australia thanked the Office for its efforts in engaging with the Government of Myanmar and expressed his appreciation for Mr Horsey's service over the years. He also welcomed the appointment of Mr Marshall as the new Liaison Officer and trusted that all cooperation would be extended to him by Myanmar.

He welcomed the Liaison Officer's most recent assessment, which demonstrated that the complaint mechanism was functioning. It was encouraging to note that several complaints from across the country had been received, and that action had been taken by the authorities in some of these cases. At the same time, he noted with concern that the Liaison Officer had assessed that nine of the cases reported involved situations of forced labour, underscoring once again the persistence of the forced labour problem in Myanmar.

Stressing the importance of the Government's full cooperation with and assistance to the ILO, he welcomed the assurances made by the Deputy Minister of Labour on 8 April 2007 that Myanmar would continue to extend full cooperation in dealing with future complaints. Support was also expressed for the ILO's request for additional staff to its Liaison Office, given the increasing number of complaints received.

He emphasized that the success of the mechanism would largely depend on the confidence that ordinary people – those subject to forced labour – had in it; this confidence would be the result of the actions, including successful prosecutions, taken against those officials responsible for forced labour, regardless of their rank. He called on the Government to fulfil its commitment to give adequate publicity to the Supplementary Understanding in the appropriate languages. He expressed encouragement over the functioning of the mechanism but stressed that this was but part of a broader obligation on Myanmar's part to eradicate the use of forced labour throughout the country, noting that the ultimate goal would only be

achievable if the Government fully implemented the recommendations of the Commission of Inquiry. He strongly urged it to do so.

The Government member of India stated that since the Governing Body's last session in March 2007, Myanmar had taken further steps to cooperate with the ILO Liaison Office in Yangon – in accordance with the recommendations of the Report of the Committee on the Application of Standards – by establishing a mechanism to eradicate the practice of forced labour. Nine complaints of forced labour were currently being investigated by the authorities.

Noting further that the Government had agreed to the replacement of the present ILO Liaison Officer by another ILO official, he considered that the Government should be commended for the cooperation it had extended in addressing the practice of forced labour. The ILO was also to be commended for its efforts to assist Myanmar. Recalling that India had been, and continues to remain strongly opposed to forced labour, which was expressly prohibited under its Constitution, he reiterated his Government's support for the developments in eradicating this problem through the joint endeavours of the ILO and the Government of Myanmar.

The Government member of New Zealand thanked the Office for its update on Myanmar's observance of Convention No. 29 and expressed her appreciation for the work undertaken by Mr Horsey. She expressed encouragement over the progress reported, in particular the fact that all concerned parties had expressed initial satisfaction with the start-up phase of the new complaint mechanism – the widespread geographical use of which appeared to be a good indication of national coverage. She congratulated the concerned parties on these results and looked forward to deeper cooperation in the months and years to come, to eliminate forced labour in Myanmar. She encouraged the Government to accept the ILO's request to strengthen staff resources in its Liaison Office, and extended her congratulations to Mr Marshall on his appointment to the Liaison Officer position.

The Government member of Canada thanked the Office for its efforts in addressing the problems of forced labour in Myanmar, commending in particular the work of Mr Horsey. He observed that this week witnessed the 17th anniversary of Myanmar's last democratic elections, which were won in a landslide by Nobel laureate Aung San Suu Kyi's National League for Democracy. Adding that Aung San Suu Kyi remained under house arrest, he maintained that the Government consistently violated the most fundamental human rights of its people, as demonstrated most recently in the May arrest of activists – including noted labour activist Su Su Nway – calling for Suu Kyi's release.

He clarified that speaking of these rights violations was necessary to provide important context to the forced labour issue, towards the elimination of which the recent Supplementary Understanding constituted an important first step. Trusting that the Government would, under the terms of the Understanding, allow the Liaison Office to increase its staff, he expressed encouragement that complaints were being received and investigated, and that successful prosecutions and punishments had followed. As confidence in the new complaint mechanism developed through practice and publicity, the agreement should be extended indefinitely.

These developments notwithstanding, he stressed that the context of continuing violations remarked upon earlier did little to inspire confidence; he urged the ILO to maintain its vigorous efforts while calling upon the Government of Myanmar to move forward and implement the recommendations of the Commission of Inquiry.

The Government member of the Russian Federation affirmed that forced labour was unacceptable, wherever it occurred, and that it should be eliminated in Myanmar

promptly and fully. Doing so, he stated, would require the Government's active involvement. In this regard, his Government welcomed the conclusion of the Supplementary Understanding between Myanmar and the ILO, which gave the Liaison Office additional powers to consider complaints of forced labour.

Noting that by all indications the mechanism established was working, he expressed gratitude for the important work undertaken by Mr Horsey. He also commended the fact that in the time since the previous International Labour Conference, Myanmar had ceased prosecutions and released several persons accused of propagating false information on forced labour. As regards the question of seeking an opinion from the International Court of Justice (ICJ), he expressed serious doubts as to the desirability of such a measure. Though an interpretation from the ICJ might be appropriate where there was a divergence of opinion regarding the substance of Convention No. 29, no such divergence existed in the present case, as the Government had admitted to problems in implementing the requirements of the Convention. He therefore considered that his Government could not endorse the seeking of an opinion of a binding nature. In any event, the conclusion of the Supplementary Understanding had rendered the question of an advisory opinion from the ICJ irrelevant.

The Worker member of Singapore noted that the signing of the Supplementary Understanding came about after more serious options had been considered, such as referring the matter to the International Court of Justice. The Understanding was meant to address one very important aspect of the 1997 Commission of Inquiry's recommendations, and the fact that it would not be possible to eradicate forced labour without a complaint mechanism.

The speaker made two observations. First, the number of 23 complaints appeared to be very small compared to the number of forced labour cases reported. Those wishing to make complaints were faced with serious difficulties as they were not always aware that they could do so, and could not easily travel to lodge complaints even if they were aware of such possibility. The ILO Liaison Office was also seriously understaffed and the Government had not responded positively to requests for further resources. Secondly, the small number of 23 complaints gave a very misleading impression of the forced labour situation in the country. The reality was that forced labour continued to be perpetrated with impunity. The speaker referred to cases quoted in the Committee of Experts' report and communications received from the International Trade Union Confederation (ITUC) in 2005 and 2006. The overall picture was grim: forced labour was being used in nearly every state and division of the country, in "development projects", construction or maintenance of infrastructure and in army camps. There was arbitrary use of child labour, including conscription of child soldiers, sexual slavery, human minesweeping and confiscation of land, crops, livestock and money. Since the signing of the Understanding, the Federation of Trade Unions of Burma had recorded 3,405 cases of forced labour in several states and divisions. In Arakan State there was systematic discrimination against ethnic minority communities. Villagers were even forced to provide materials for construction works. Other cases reported recruitment for portering, sentry duty in military camps and use as human shields. There was widespread use of forced labour in remote areas near the border with Bangladesh. There were also new emerging patterns of forced labour taxation related to the implementation of government development projects. Grazing land had also been seized. Up to May 2007, there were reports in northern Karen State of forced labour as part of efforts by the military to strengthen its grip on the area.

In all, she said, it was clear that forced labour was not abating in Myanmar but becoming systematic and widespread. She called on the ILO not to fail in its efforts.

Success in the eradication of forced labour in Myanmar should not be measured by the number of complaints received by the Liaison Office.

An observer representing the International Trade Union Confederation (ITUC) spoke of the case of U Saw Tun Nwe, who had been taken away for questioning by the military in February 1997 and reported dead by the BBC Burma service two days later as a result of injuries received while in detention. These injuries were the result of severe beatings and forced labour. The victim, who was 73 years old, was part of a group of 21 people selected for forced labour duties. All were arrested in their homes, interrogated and put into forced labour. Another one of the 23 also died of injuries received while in detention. The first victim, U Saw Tun Nwe, was also the father of the speaker, who felt himself fortunate not to have suffered the same fate. Ten years later, forced labour violations were still taking place in the country. The FTUB, the FTUC, the RGWU and Mon human rights organizations had compiled a joint report on forced labour in 2007, and he appealed to the ILO to forward the appropriate questions to the International Court of Justice so that action could be taken.

The Worker member of France reported on the action taken by the international movement of trade unions to implement the resolution adopted in 2000 by the Conference in the framework of article 33 of the ILO Constitution. The International Trade Union Conference, which was held in Nepal in April 2007, had stipulated specific action intended to implement the ILO decisions concerning Myanmar. Thus, in its final statement, that Conference had expressed its concern in view of the increase in investments in the oil and gas industries and mining activities, the illegal export of timber and the fact that a significant part of the Burmese economy was dominated by enterprises controlled by or associated with the military.

The International Trade Union Conference had decided to focus its campaigns on multinationals operating in the country, in particular large infrastructure projects, such as the Salween dam, financed by the Asian Development Bank, that was also part of the implementation of the resolution of 2000; such as the large-scale investments in the exploitation of oil, minerals and forestry, or gas, particularly the project run by a large French multinational. These investors had to recognize that, in the context of their economic activities in the country, they were benefiting from the infrastructure, particularly the roads, security and services provided by the State possibly through the use of forced labour. The enterprises had to cease their complicity in using these different infrastructures. Furthermore, the increase in exports coming from Burma as a result of the operation of these multinationals directly contributed to the wealth of the regime and the army, the latter being the main perpetrator of forced labour. In many countries, workers and citizens had joined forces and called on their governments to ensure that multinationals implemented the guiding principles established by the OECD on multinationals. At the request of the trade unions, the national focal points in France and the Netherlands issued recommendations aimed at multinational enterprises in their countries, resulting, with respect to the Netherlands, in a change towards a policy discouraging economic links with Burma. In this respect, the limited scope of the common position adopted by the European Union was regrettable. This might be explained by the fact that European multinationals continued to invest and operate in Burma.

The speaker emphasized that the actions undertaken by workers with a view to implementing the decisions taken by the ILO within the framework of article 33 of its Constitution would remain limited as long as the actions of diplomats and the activities of multinationals did not comply with the relevant obligations, namely to recon-

sider the economic relations they maintain with the Burmese regime and report on them to the ILO.

The Worker member of the Republic of Korea raised the issue of foreign direct investment in Myanmar and the enhanced use of forced labour that it would entail. He mentioned names of certain foreign companies involved.

The Chairperson intervened and reminded the speaker that companies should not be explicitly named.

The Worker members pointed out that the names of the multinationals involved were relevant to the discussion.

The Employer members recalled that the Committee was only discussing Myanmar's obligations under Convention No. 29. Naming companies indiscriminately suggested that they were collaborating in forced labour practices.

The Worker members reminded the Committee that the 2000 International Labour Conference resolution required action by constituents regarding effective compliance with the Commission of Inquiry's recommendations and again submitted that the Worker member of the Republic of Korea's intervention was relevant.

The Worker member of the Republic of Korea, continuing his intervention, claimed that during gas exploration work, numerous reports had been submitted regarding the use of forced labour. A planned 2,380 km pipeline from the Arakan offshore area to Kunming in China would increase human rights abuses including forced labour along the pipeline, as had a previous project. This project, the Yadana pipeline, built between Myanmar and Thailand, had resulted in unprecedented amounts of forced labour and relocation. He called for companies and states involved to carry out an impact assessment on human rights before proceeding with construction of the pipeline. Governments had a responsibility under article 33 of the ILO Constitution to apply the measures recommended in the 2000 resolution.

The Worker member of Japan reported that trade and investment in Myanmar had recorded sharp increases. According to the OECD, in 2005, Myanmar received aid worth US\$145 million, up by 17 per cent from the previous year. Until recently, the Government of Japan had been one of the leading donors, but had now in principle suspended aid. The United States had imposed a total ban in 2003.

However, governments had a responsibility to monitor whether aid, even of a humanitarian nature, actually brought benefits to those in need. There were reports that the Programme of Economic Cooperation in the Mekong Delta, supported by the Asian Development Bank, had caused severe effects on Myanmar, especially forced relocations and loss of farm land. New donors were also emerging in the countries that shared borders with Myanmar which had interests in energy resources, border security and transport facilities. The recent trends in terms of official development demonstrated that adherence to the resolution adopted by the 88th International Labour Conference in 2000 calling upon constituents to review their relations with Myanmar, was not being adhered to in the way intended. She urged the governments concerned to respect and apply this document, at the same time, she called on trade unions to remain vigilant regarding the behaviour of governments in their relations with Burma, especially as concerned official development aid.

The Government member of Belarus stated that his Government considered constructive dialogue and cooperation as the best way forward in the elimination of forced labour. The Government of Myanmar and the ILO were making progress in their efforts and there was reason to suppose that the Supplementary Understanding would become effective and provide objective information on the situation of forced labour. He noted that of the 23 complaints made only nine were justified, and welcomed the Myanmar Government's statement regarding

effective cooperation. He also welcomed the appointment of the new Liaison Officer and hoped that forced labour would be removed from the agenda during his tenure.

The Government member of China thanked the Office for its efforts with regard to the forced labour situation in Myanmar and welcomed the appointment of the new Liaison Officer. Since the signing of the Supplementary Understanding, Myanmar had made efforts and taken measures to implement the agreement. The complaint mechanism was functioning and the Chinese Government hoped that the process would have the support of the Committee. China saw dialogue and cooperation as an effective and workable approach to enable member States to eradicate forced labour, and the Government of Myanmar had reiterated its commitment to continued cooperation with the ILO to eliminate forced labour. He hoped that the Government would closely cooperate with the ILO to ensure the effective functioning of the complaint mechanism.

The Government member of Cuba, after having stated that he rejected all forms and expressions of forced labour in any part of the world and supported any measure that would be adopted to eliminate it, said that his delegation firmly believed that dialogue and cooperation constituted the appropriate means to solve this problem, rather than the application of coercive measures which, instead of helping to solve the problem, could provoke a new cycle of confrontation to the detriment of the well-being of the people they were meant to protect. He said that his Government appreciated the efforts made by both the Government of Myanmar and the ILO, which had succeeded in creating a mechanism designed to receive and examine the complaints submitted with regard to issues related to forced labour, a mechanism which was currently functioning.

The Government member of the Republic of Korea supported the Supplementary Understanding between the Government of Myanmar and the ILO on a mechanism to deal with complaints of forced labour. He reported that his Government had investigated the allegations made by the Worker member of the Republic of Korea against a Korean enterprise and had concluded that the company had never committed human rights violations or been responsible for wage arrears with respect to Myanmar workers. The company had actually opened an information channel with other foreign companies to prevent human rights infringements.

The Worker member of Germany regretted that workers in Burma did not have the right to establish organizations of their own choosing and that, due to the tolerated practice of forced labour, which was to some extent even promoted by the State, there was no possibility of enforcing trade union rights. She could not see that the Government was doing even the least to elucidate the accusation of alleged high treason against the Secretary of the FTUB, Maung Maung. It appeared that the FTUB Secretary-General was prosecuted because of his trade union activities. She further stated that his trade union activities were considered terrorist activities, as indicated in a recently published article, stating that the Burmese culture was influenced by the international community, which was influenced by the "terrorist organization" FTUB. It stated further that the FTUB reported to the ITUC, which in turn reported to the ILO. She stressed that this was not only libellous with respect to the FTUB and the ITUC, but also with respect to the ILO and its constituents. The regime had also not released Myo Aung Thant, sentenced to 20 years' imprisonment after a secret trial for alleged high treason. On 1 May of this year, six colleagues were arrested after participating in a Labour Day event. Two more trade union coordinators were arrested by military police on their way back from the Thai border, where they had drawn attention to the events of 1 May.

She urged the Burmese Government to release Thurein Aung, Kyaw Kyaw, Wai Lin a.k.a. Wai Aung, Nyi Nyi Zaw, Kyaw Min a.k.a. Wann and Myo Min, whom she named on behalf of all detained colleagues. She issued the same request for Nobel Peace Prize laureate and winner of the free elections in 1990, Aung San Suu Kyi, still kept under house arrest. She asked how much patience people in Burma must exercise until universal human rights would apply to them, how much patience the ILO must exercise until the Burmese military regime implemented Convention No. 87 and forced labour was a thing of the past?

The Government representative indicated that he had listened very carefully to the statements made by the members of the Committee and had noticed that the establishment of the complaint mechanism under the Supplementary Understanding had given rise to mixed reactions. He regretted the scepticism expressed by certain members with regard to the effectiveness of the mechanism in eradicating the practice of forced labour and emphasized his Government's commitment to ensuring that this mechanism would become an effective tool not only for receiving complaints but also punishing those who committed forced labour. If action was taken promptly by the Government to have the complaints settled, the mechanism could act as a strong deterrent. He therefore appealed to the members of the Committee to continue the cooperation with the Government of Myanmar and allow for assistance to be given to it in its endeavours to eradicate the practice of forced labour.

The Worker members expressed frustration at the lack of progress on this case and emphasized the gravity of the issue which gave rise to this special sitting which takes place every year with the objective of seeking, indeed demanding, progress in the implementation of the 2000 resolution and Convention No. 29 in law and in practice. The discussion had shown that forced labour, which was a fundamental violation of human rights, remained an extensive, systematic and nationwide problem. The civilian and military authorities had a duty not to practise forced labour and specific action was required to address this practice especially where it was carried out by the army in border States.

The current complaint mechanism pursuant to the Supplementary Understanding was an important instrument but the Liaison Office needed to be strengthened substantially. Moreover, the complaint mechanism would have minimum effect unless and until there were demonstrable guarantees facilitating full access to it, with protection for the victims who submitted complaints, and until there were substantive changes in the law and the justice process to ensure that those responsible for exacting forced labour were subject to sanction, so as to end the widespread situation of impunity. The Committee of Experts had noted in its 2007 report the concrete and practical steps needed to eradicate forced labour, including the permanent revocation of the policy of prosecuting persons who lodged complaints; the total repeal of the Village and the Towns Acts; the provision of concrete and verifiable information about specific and concrete instructions to civilian and military personnel to eliminate forced labour practices; mass communications to the entire population on the imperative to eliminate forced labour as well as information on the use of the complaints mechanism; and finally, the provision of verifiable evidence about the measures taken to provide an adequate budget allocation for the replacement of forced or unpaid labour.

In conclusion, the Worker members reiterated their view that the possibility of submitting a request to the International Court of Justice for an advisory opinion as to whether the cooperation by the Government of Myanmar and the actual progress made in the implementation of the recommendations of the Commission of Inquiry met the relevant threshold, should remain an option.

The Employer members noted that the Government clearly needed to implement the recommendations of the Commission of Inquiry immediately, and that seven years after the resolution of the International Labour Conference, the Supplementary Understanding was at best a small step which in and of itself would certainly not eradicate forced labour in the country. It was therefore essential that the Village and the Towns Acts be repealed, wide publicity be given to the prohibition of forced labour, and the necessary environment be created so that forced labour be converted to paid labour. No indication was provided during the discussion that the Government intended or was considering such actions. However, until all this was done, the Government would not even come close to meeting its international obligations.

Conclusions

The Committee examined the observations of the Committee of Experts and the report from the ILO Liaison Officer a.i. in Yangon which included the latest developments in the implementation of the complaint mechanism on forced labour that was established on 26 February 2007. The Committee noted the decisions of the Governing Body of March 2007. It also listened to the statement of the Government representative. The Committee expressed its profound concern at the forced labour situation in Myanmar, as reflected in the observation of the Committee of Experts. It concluded that none of the recommendations of the Commission of Inquiry had yet been implemented, and the imposition of forced labour continued to be widespread, particularly by the army to which specific instructions should be issued. The situation in Kayin (Karen) State and northern Rakhine (Arakan) State was particularly serious. The Committee strongly urged the Government to take all the necessary measures to give effect to the recommendations of the Commission of Inquiry. The Committee took due note of the fact that the complaint mechanism on forced labour continued to function, and that the authorities were investigating the cases referred to them by the Liaison Officer and taking action against those officials found to have illegally imposed forced labour. It was observed, however, that in a number of cases the action taken had been limited to administrative measures rather than the required criminal penalties. It was also observed that the mechanism had to be assessed against the ultimate goal of eliminating forced labour, and it remained to be seen what the impact would be, particularly in the border areas. The Committee underlined the need for the Liaison Officer to have sufficient staff resources available to him as provided for in the Supplementary Understanding and requested by the Governing Body in March 2007. It noted with concern that the Government had not yet agreed to the appointment of an international staff member to assist the Liaison Officer, even though the workload continued to increase, and urged that the necessary cooperation and facilities be given without delay. The Committee requested the Myanmar authorities to give full cooperation to the ILO and extend to the new Liaison Officer all the facilities necessary under the agreement and appropriate under usual diplomatic practice. The Government of Myanmar was requested to provide full information to the Committee of Experts in time for its session later this year, including concrete and verifiable evidence of action taken towards the implementation of the Commission of Inquiry's recommendations. Finally, the Committee welcomed the appointment of Mr Stephen Marshall as the new ILO Liaison Officer in Yangon and expressed its deepest appreciation for the work carried out by the outgoing ILO Liaison Officer a.i., Mr Richard Horsey.

The Worker members pointed out that their consent for the conclusions on this case was based on their understanding that the need for concrete and verifiable measures was absolutely essential. With specific reference to

the conclusions of the Governing Body of March 2007, an advisory opinion of the International Court of Justice might be considered.

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

MYANMAR (ratification: 1955)

I. Historical background

1. The Committee, as it noted in its previous observation, has been commenting on this extremely serious case since its first observation more than 30 years ago. The grave situation in Myanmar has also been the subject of overwhelming criticism and condemnation in the Conference Committee on the Application of Standards of the International Labour Conference on ten occasions between 1992 and 2006, in the International Labour Conference at its 88th Session in June 2000 and again at its 95th Session in 2006, and in the Governing Body, by governments and social partners alike. The history is set out in detail in the previous observations of this Committee in more recent years, particularly since 1999.

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

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

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

3. 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.

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

II. Developments since the Committee's last observation

5. The Committee notes the documents submitted to the Governing Body at its 295th and 297th Sessions (March and November 2006) on developments concerning the question of the observance by the Government of Myanmar of Convention No. 29, as well as the discussions and conclusions of the Governing Body during these sessions, and of those of the Conference Committee on the Application of Standards and the Conference Selection Committee during the 95th Session of the International Labour Conference in June 2006.

6. The Committee also notes the Government's report, received in communications on 29 September and 23 October 2006, and the comments by the then International Confederation of Free Trade Unions (ICFTU) (now the International Trade Union Confederation (ITUC)), contained in a communication, dated 31 August 2006 and received on 5 September 2006, which was accompanied by a number of attached reports that document the persistence in 2006 of the use of forced labour in Myanmar. In summarizing the material forwarded, the ICFTU reports that in 2006:

... the overall picture continues to be very grim. This report includes evidence of government-imposed forced labour in nearly every State and Division of the country, ranging from forced portering, forced labour in "development projects", construction or maintenance of infrastructure or army camps, forced patrolling and sentry duty, clearing or beautification of designated areas, child labour including the forced conscription of child soldiers, sexual slavery, human minesweeping, and confiscation of land, crops, cattle and/or money.

The communication of the ICFTU was forwarded to the Government by letter dated 31 August 2006 together with the indication that, in accordance with established practice, the communication of the ICFTU would be brought to the attention of the Committee together with any comments that the Government would wish to make in response. **The Government has not responded in its report to this very troubling information, and the Committee requests the Government to do so in its next report.**

7. In its previous observation, the Committee noted comments from the ICFTU contained in a communication dated 31 August 2005 received on 12 September 2005, which was accompanied by some 1,100 pages of documents from many sources, reporting on the persistence in 2005 of the use of forced labour in Myanmar. The Committee requested the Government to respond to this information in its report submitted in 2006. **The Committee notes that the latest report received from the Government does not contain a response as requested, and the Committee therefore once again asks the Government, in its next report, to respond to this earlier information, in addition to the communication referred to above from the ICFTU in 2006.**

III. Addressing the recommendations of the Commission of Inquiry

8. As noted above, the Committee has in its previous observation set out the matters that the Government needs to address as a consequence of the Commission of Inquiry and its findings and recommendations. The Committee observes that these matters remain unaddressed, and that it is therefore bound to repeat them in detail.

(1) *Ensuring the enforcement of the prohibition of forced labour – monitoring and complaints machinery*

9. The Committee has previously noted that measures taken by the Government to ensure the enforcement of the prohibition of forced labour included the establishment of seven field observation teams empowered to carry out investigations into allegations of the use of forced labour, the findings of which were submitted to an organ called the Convention No. 29 Implementation Committee. It also previously noted that on 1 March 2005, the Office of the Commander-in-Chief (army) established a "focal point" in the army headed by a Deputy Adjutant-General and assisted by seven grade 1 staff officers, which the Government indicated to the Liaison Officer a.i. was intended "to facilitate cooperation with the ILO on cases of forced

labour concerning the military” (GB.292/7/2(Add.), paragraph 3). In its previous observation the Committee, noting reports of the Liaison Officer a.i. and other information, noted with extreme concern that the assessments made by these organs appeared to lack independence and credibility.

10. In its previous observation the Committee also noted with concern that, according to a report submitted for discussion to the 294th Session of the Governing Body in November 2005 (GB.294/6/2), “recent developments have seriously undermined the ability of the Liaison Officer a.i. to perform his functions” (paragraph 7), and that, while he had continued to receive complaints from victims or their representatives concerning ongoing forced labour or forced recruitment, he was unable to refer these cases to the competent authorities as he did in the past, in part because of the Government’s policy of prosecuting victims for allegedly false complaints of forced labour (paragraph 8).

11. The Committee notes the following matters:

- that, according to a report on recent activities of the Liaison Officer a.i., submitted “for debate and guidance” to the 295th Session of the Governing Body in March 2006, the Liaison Officer a.i. wrote on 7 December 2005 to the designated army focal point for the ILO to request a meeting, and that no response was received to this request (GB.295/7, paragraph 8);
- that in November 2005 the Government, through the Minister for Labour in Yangon and the Permanent Representative in Geneva, rejected the proposal of the International Labour Office (“Office”) for a complaint mechanism involving a facilitator (GB.295/7, paragraph 15), and that it has since reaffirmed its rejection of that proposal;
- that the Office subsequently developed two alternative options: one, known as Option-I, entails a proposal to build up the capacity of the Office of the ILO Liaison Officer a.i. and provide sufficient legal guarantees to credibly address the complaints received and sufficient resources and personnel to meet its additional responsibilities (GB.297/8/1, paragraph 16 and Appendix III). The second option, known as Option-II, is a proposal for a “Joint Panel” mechanism, which would involve a panel composed of two members with required credentials appointed by the two sides, and a third person appointed by an unimpeachable institution to arbitrate in cases of possible disagreement, and which would confidentially address complaints submitted by alleged victims and make a prima facie determination of the validity of the complaint;
- that the Government rejected the proposal of the Office for a Joint Panel mechanism, the so-called Option-II, during discussions between representatives of the Office and the Minister for Labour in Yangon in March 2006 (GB.295/7, paragraph 22), and it reaffirmed its rejection in the Conference Committee on the Application of Standards in June 2006;
- that the Government representative announced in the Special Sitting of the Conference Committee in June 2006, the willingness of the Government to put into place, “on an experimental basis”, a six-month moratorium on the continued implementation of its policy of prosecuting complainants who lodge “false allegations” of forced labour. In addition, that during the period of the moratorium the Government would cooperate with the Office in working out a mechanism under the so-called Option-I, the proposal for a system built upon the framework of the existing Office of the Liaison Officer a.i.;
- that the Conference Committee in its conclusions of June 2006 indicated that the proposal of a moratorium was “late and limited”, and that “words had to

be urgently confirmed and completed by deeds”, including by the cessation of prosecutions currently under way, and that the government authorities needed to immediately enter into discussions with the ILO, with a view to establishing as soon as possible a credible mechanism for dealing with complaints of forced labour;

- that the Conference Selection Committee, to which the Conference referred the matter for a separate examination, indicated that a real test of cooperation from the Government would entail, among other things, steps taken: to immediately enter into discussions with the ILO, with a view to establishing as soon as possible a credible mechanism for dealing with complaints of forced labour. Further, with regard to its moratorium on prosecutions of complainants, the Government should provide further details on how the moratorium would be applied so as to make it clear that anyone lodging a complaint during the moratorium would have immunity from any subsequent action being taken against them; and to demonstrate such that the moratorium would be considered strictly binding (GB.297/8/1, Appendix I);
- that developments subsequently occurred in three prominent cases of government prosecutions: the release of Su Su Nway on 6 June 2006; the release on 8 July 2006 of Aye Myint from prison after his sentence was conditionally suspended; and the acquittal on 20 September 2006 of the three persons in Aunglan Township (Magway Division) of charges of making false complaints of forced labour, following withdrawal of the case by the authorities. As noted in the report on developments submitted by the Office to the Governing Body “for debate and guidance” during its 297th Session in November 2006 (GB.297/8/1, paragraph 5), the Liaison Officer a.i. reported that to his knowledge these developments resolved all the outstanding cases of prosecution or imprisonment of persons having an ILO connection (GB.297/8/1, paragraph 5);
- that, during discussions in Yangon in October 2006 between the Minister for Labour and a specially designated working group, on the one hand, and representatives of the International Labour Office, it became clear that the Government was not prepared to accept so-called Option-I, the proposal by the Office for a complaint mechanism that involved strengthening the Office of the ILO Liaison Officer a.i. with adequate resources and staffing. Further, that contrary to previous expressions of willingness to consider Option-I, and notwithstanding a compromise proposal offered by the Office during the discussions in October, the Government signalled that it was willing to accept little more than a continuation of the present functioning of the Office of the ILO Liaison Officer a.i., as that mechanism was originally conceived and structured.

12. *The Committee fully concurs with the views expressed by the Governing Body, as well as by the Conference Committee on the Application of Standards and the Conference Selection Committee, that it is imperative that the Government institute an effective complaint mechanism, such as any of the three already proposed by the Office, as a channel for the treatment of complaints that both protects the victims and leads to the prosecution, punishment and imposition of sanctions against those responsible for the exaction of forced labour, so as to ensure compliance with Article 25 of the Convention. This further requires that the Government permanently revoke its policy of prosecuting persons who complain that they are victims of forced labour, a policy which, in its implementation, defeats the very purpose of a complaint mechanism which depends for its effectiveness, in part, on the ability of victims of*

forced labour to lodge complaints without fear of reprisals, and that, instead, it take increased action to prosecute perpetrators of forced labour. The Committee on these issues also requests the Government to cooperate more closely and in good faith with both the Liaison Officer a.i. and the Office. The Committee considers that, in doing so, the Government will also thereby be demonstrating its readiness to seriously address the further matters necessitated by the recommendations of the Commission of Inquiry as set out in further detail below.

(2) *Need to amend the relevant legislative texts, in particular the Village Act and the Towns Act, in order to bring them into line with the Convention*

13. This remains the position of the Committee. At the same time, the Committee has noted 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, and it has accepted that these provisions could provide a statutory basis for ensuring compliance with the Convention in practice. However, the Committee has made clear that this would require bona fide effect to be given to the Orders by the local authorities and by civilian and military officers empowered to requisition or assist with requisition under the Acts.

14. The Committee has indicated that the latter would necessitate two things:

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

(3) *Issuing specific and concrete instructions to the civilian and military authorities*

15. On this topic the Committee in its previous comment noted references to a series of texts, instructions and letters made by the Government in its report of that year. It acknowledged that these communications appeared to be in part a response to previous Committee requests that instructions be transmitted to authorities in the military indicating that forced labour has been declared unlawful in Myanmar. However, the Committee noted that it had been given minimal and in most instances no information as to the content of the communications. It considered this to be a matter of real concern as the Committee had previously expressed that clear and effectively conveyed instructions were required to indicate the kinds of practices that constitute forced labour and for which the requisitioning of labour is prohibited, as well as the manner in which the same tasks could be performed without use of forced labour. The Committee has previously enumerated a number of tasks and practices that need to be specifically identified in this regard, and it does so once again:

- 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; and
- 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.

16. In its previous observation the Committee considered that the starting point for the eradication of forced labour was to give very clear and concrete instructions to the authorities of the kinds of practices that constitute forced labour. It observed that the lack of information, except for the content of a single communication, suggested that this did not appear to have been done. It did not appear to the Committee to be a difficult exercise to construct the content of written instructions that would take account of these concerns and include all the above elements.

17. Having regard to the Government’s expression of preparedness to continue cooperation with the ILO, the Committee suggested that the elaboration of such instructions could be the topic of such cooperation, and that this might, for example, be done through the Liaison Officer a.i. or some other similar ILO liaison. The Committee asked that in its next report the Government supply information about the measures it had taken on this point, and that it also supply copies of the precise texts of the letters and instructions to which it has referred and in addition a translated version of each.

18. The Committee notes that in its latest report the Government has not supplied any of the information requested, nor has it otherwise addressed the concerns of the Committee on this point. The Committee notes that, from the report of the proceedings recorded in the 95th Session of the Conference in June 2006, and from the Conference Committee on the Application of Standards, the Government representative briefly replied to the concerns the Committee had raised; and that, with regard to the issuance of instructions to the civilian and military authorities:

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

The Committee once again requests that in its next report the Government supply information about the measures it has taken on this point, and that it supply copies of the precise texts of the letters and instructions to which it has previously referred, including a translated version of each.

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

19. On this topic, the Committee noted in its previous observation that the Government in its report had made reference to a series of letters, briefings and awareness-raising workshops, which it stated represented efforts by the authorities to publicize the prohibitions on forced labour. The Committee acknowledged that, accepting the information supplied by the Government at face value, efforts appeared to have been made by the Government to transmit information about the fact that forced labour has been declared unlawful in Myanmar. However, as with the communications referred to earlier, the Committee had been given no information as to the content of these activities. This again was a matter of real concern, as the Committee considered it had no confidence that the briefings and workshops had been effective in conveying the information. As previously expressed, these workshops and briefings needed to clearly and effectively convey instructions about the kinds of practices that constitute forced labour and for which the requisitioning of labour is prohibited, as well as the manner in which the same tasks could be performed without use of forced labour. The

Committee considered that, if trouble had been taken to undertake activities, then again it did not appear to be a difficult exercise to construct the content of the briefings and workshops to take account of these concerns.

20. The Committee again suggested that the construction of such communications to address its concerns, thereby avoiding the need for it to continue repeating this point, could be a topic pursued in the framework of cooperation with the ILO. ***In addition, having regard to the fact that the Liaison Officer a.i. had had an opportunity to attend one of these events in the past, the Committee requests that the Liaison Officer a.i. be informed in advance when briefings or workshops were to be held and to give him an opportunity to attend such events if he was able.*** The Committee considers that such access would demonstrate in a real way the commitment of the Government to the overall objective of the elimination of forced labour in Myanmar.

21. The Committee notes that, in its latest report, the Government has not supplied the information requested or otherwise addressed the concerns of the Committee on this point. The Committee notes the remark by the Government representative in the Conference Committee in June 2006 which stated:

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

The Committee again requests that the Government in its next report supply information which describes the content of the communications in the briefings, workshops and seminars on the prohibition of forced labour it has previously referred to, as well as translated copies of any material or documents used in connection with such briefings or workshops. In addition, the Committee requests once again that the Government supply information about measures it has taken to ensure that the Liaison Officer a.i. will be informed in advance when such activities are to be conducted, in order that he or she be given an opportunity to attend if able to.

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

22. In its recommendations, the Commission of Inquiry emphasized the need to budget for adequate means to hire paid wage labour for the public activities which are today based on forced and unpaid labour. In its previous observations, the Committee pursued this matter and sought to obtain concrete evidence that adequate means are budgeted to hire voluntary paid labour. The Government has addressed this concern with repeated statements that there is always a budget allotment for each and every project and with allocations that include the cost of material and labour. The Committee has previously observed, however, that in practice forced labour continues 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 are apparently not adequate to make recourse to forced labour unnecessary.

23. The Committee recalls that in its previous report, the Government stated that it had issued instructions to the various ministries to provide an estimate of the labour costs of their respective projects. The Committee in its previous observation noted a reference in the Government's report to "a budget allotment" set up by the Myanmar police force for the payment of wages of workers "called upon to contribute labour on an ad-hoc basis". While noting these matters, the Committee asked the Government in its next report to provide detailed information about the measures taken to budget for adequate means

for the replacement of forced or unpaid labour, considering that this information would demonstrate in a real way the commitment of the Government to the overall objective of the elimination of forced labour in Myanmar.

24. The Committee notes that in its latest report the Government has not supplied the requested information on this point. It notes that in the Conference Committee in June 2006, the representative of the Government stated that: "With regard to providing an adequate budget for the replacement of forced or unpaid labour, he informed the Committee that the allocation of adequate funds had been made in the state budget. The Government would provide the Committee of Experts in due course with the relevant information on the allocation of this budget." ***The Committee therefore repeats its request that the Government, in its next report, provide detailed information about the measures taken to budget for adequate means for the replacement of forced or unpaid labour.***

IV. Final remarks

25. In addition to the communication dated 31 August 2006 and attached reports received from the ICFTU, to which the Committee has previously referred, the Committee notes the evaluation by the Liaison Officer a.i. of the forced labour situation from the section of the report under the heading, "Latest developments since March 2006", of the Conference Committee at the 95th Session of the Conference in June 2006:

The Liaison Officer a.i. continues to receive allegations of forced labour. Although not in a position to verify the details himself, he is particularly concerned about persistent and detailed accounts – from sources both within Myanmar and across the border in Thailand – of forced labour being exacted by the army over the last few months in the context of military operations in northern Kayin (Karen) State. In addition to villagers being forced to accompany army columns as porters (along with convicts from prisons), owners of bullock carts were reportedly forced to transport food and other supplies to front-line troops. (C.App./D.5, paragraph 10.)

26. The Committee also notes the discussions and conclusions concerning Myanmar of the Governing Body at its 297th Session in November 2006. In its conclusions, the Governing Body indicated that great frustration had been expressed that the authorities had not been able to agree on a mechanism to deal with forced labour complaints within the framework set out in the Conference conclusions; that they had missed a critical opportunity (during the October 2006 discussions) to demonstrate a real commitment to cooperating with the ILO to resolve the problem of forced labour; and that at the same time there was widespread and profound concern that the practice of forced labour in Myanmar was continuing. The Governing Body concluded, among other things, that the Myanmar authorities should, as a matter of utmost urgency and in good faith, conclude with the Office an agreement on a credible mechanism to deal with complaints of forced labour, on the specific basis of the compromise text proposed by the ILO in October 2006, and also that, irrespective of the status of the Government's moratorium on the prosecution of complainants, any further move to prosecute complainants would open the way to international legal steps on the basis of article 37.1 of the ILO Constitution, in accordance with the conclusions of the Conference Selection Committee in June 2006. The Governing Body indicated that a specific item would be placed on the agenda of its March 2007 session, in order to allow legal options to be considered, including the possibility of requesting an advisory opinion of the International Court of Justice on specific legal questions, and that the Governing Body in March 2007 would revisit the question of placing a specific item on the agenda of the

2007 session of the Conference, in order to allow it to review what further action may be taken.

27. The Committee fully concurs with the views expressed by the Governing Body, and it also trusts that the implementation of the very explicit practical requests

made by this Committee to the Government will demonstrate the true commitment of the Government to rectify the violations of the Convention identified by the Commission of Inquiry and resolve this long-running problem of forced labour to which there does exist a solution.

Document D.5

C. Brief summary of developments since June 2006

1. Following the 95th Session (2006) of the International Labour Conference, the Office resumed discussions with the Myanmar authorities in Geneva and Yangon on the text of a Supplementary Understanding establishing a complaint mechanism for victims of forced labour in Myanmar. In the course of these discussions, the Office proposed a draft text which, although agreement had not been reached on some important elements, could serve as a basis for more formal discussions. It was on this basis that a mission travelled to Yangon in October 2006. After detailed discussions in Yangon it became clear that no agreement would be reached, and before its departure the mission provided the authorities with a final compromise text that in its view went as far as possible to bridge the remaining gaps.
2. At its 297th Session (November 2006) the Governing Body had before it a report on developments, including the details of the mission's discussions in Yangon (GB.297/8/1). It also had before it a document setting out the legal aspects arising from the Conference (GB.297/8/2).
3. In its conclusions, the Governing Body noted that the Workers, Employers and the majority of Governments had expressed their great frustration that the Myanmar authorities had not been able to agree on a mechanism to deal with complaints of forced labour within the framework set out in the Conference conclusions. The Myanmar authorities should, as a matter of utmost urgency and in good faith, conclude such an agreement, on the specific basis of the final compromise text proposed by the ILO mission. Following the Conference conclusions in June 2006, a specific item would be placed on the agenda of the March 2007 session of the Governing Body to enable it to move on legal options, including, as appropriate, involving the International Court of Justice. The Office was therefore requested to make necessary preparations for the Governing Body to request an advisory opinion of the International Court of Justice on specific legal question(s). As regards the question of making available a record of the relevant documentation of the ILO related to the issue of forced labour in Myanmar to the Prosecutor of the International Criminal Court, it was noted that these documents were public and the Director-General would therefore be able to transmit them. In addition, the Director-General could ensure that developments were appropriately brought to the attention of the United Nations Security Council when it considered the situation in Myanmar.
4. At its 298th Session (March 2007), the Governing Body had before it: (i) documents providing the details of the negotiation and final agreement on 26 February 2007 of a Supplementary Understanding between the ILO and Myanmar which established a mechanism to enable victims of forced labour to seek redress, as well as details of other activities carried out by the Office (GB.298/5/1, GB.298/5/1(Add.1)); (ii) a report from the Liaison Officer a.i. on the initial functioning of the mechanism (GB.298/5/1(Add.2)); and (iii) a document setting out preparations made by the Office as regards the question of requesting an advisory opinion of the International Court of Justice (GB.298/5/2).
5. The Governing Body welcomed the signing of the Supplementary Understanding. It also welcomed as part of a progressive building of confidence the fact that the implementation of the mechanism had begun, and that action had been taken by the authorities in those cases that involved forced labour. The Governing Body underlined the importance of the

mechanism continuing to function effectively in the context of a very serious forced labour situation. In this regard, as foreseen in the Supplementary Understanding, it was vital that the Liaison Officer a.i. had the necessary staff resources to adequately discharge the responsibilities. The Governing Body requested the Office to move quickly to assign suitable international staff to assist the Liaison Officer a.i., and requested the Government of Myanmar to extend the necessary cooperation and facilities. The Governing Body decided to defer the question of an advisory opinion by the International Court of Justice, on the understanding that the necessary question or questions would continue to be studied and prepared by the Office, in consultation with the constituents and using the necessary legal expertise, to be available at any time that might be necessary.

D. Latest developments since March 2007

6. The following update on the functioning of the complaint mechanism should be of interest to the Committee. As of 23 May 2007, some three months after the establishment of the mechanism, the Liaison Officer a.i. had received a total of 23 complaints. These complaints have come from many different parts of the country.¹ The Liaison Officer has made a preliminary assessment of each of these 23 cases. In eight cases, he was of the view that they involved a situation of forced labour, and accordingly transmitted them to the authorities (i.e. the Working Group) for investigation and appropriate action. In five cases, he is awaiting additional information that would allow him to complete his assessment. He has rejected ten cases, either because he did not consider that they involved forced labour (eight cases),² or because the complainants were reluctant to agree to their complaints being transmitted to the authorities for investigation (two cases).
7. Of the eight cases that the Liaison Officer a.i. transmitted to the Working Group, the responses in two cases have already been reported to the Governing Body (see GB.298/5/1(Add.2), paragraphs 3–4). In three cases, all of which were transmitted to the Working Group in the seven days prior to the finalization of this document, responses are pending. The responses to the other three cases were as follows.
8. In the first case, the Working Group informed the Liaison Officer a.i. that an investigation team headed by the Director-General of the Department of Labour had visited the area and concluded that the work was of a minor communal nature, implemented by community elders in consultation with the villagers. A second investigation carried out by the Director-General of the Central Inland Freight Handling Committee had reached the same conclusion. It was found that the complaint had arisen because the complainant had been treated rudely by a village official and due to improper collection of financial contributions for the project. Accordingly, administrative action would be taken against some village officials. The Liaison Officer a.i. is now seeking the views of the complainant on the outcome.
9. The second case concerned the recruitment of a minor into the armed forces. As provided for in the Supplementary Understanding, this complaint was transmitted by the Working Group to the Office of the Adjutant General for investigation and necessary action. The Working Group informed the Liaison Officer a.i. that the investigation had confirmed that

¹ The breakdown is as follows: six complaints from Yangon Division; five from Ayeyawady Division; four from Magway Division; three from Kayin State; two from Bago Division; and one complaint each from Chin, Kachin and Rakhine States.

² The majority of these cases concerned labour issues other than forced labour, such as disputes with employers over dismissal, pensions or workers' welfare issues.

the individual was under the age of 18, and that he had been discharged from the army and returned to the care of the family. The Adjutant General was instituting a Court of Inquiry to take action against the person or persons responsible for the recruitment. The Liaison Officer a.i. has been able to confirm that the individual has been safely returned to the care of his family.

- 10.** In the third case, the Working Group informed the Liaison Officer a.i. that an investigation team headed by the Director-General of the Central Trade Disputes Committee had visited the area and concluded that the work in question had been organized by the local authorities in agreement with community elders on a self-reliance basis. Contrary to what had been alleged, vehicle owners had been paid for the use of their vehicles on the project, and there was no significant evidence of forced labour, as no punishment, fines or threats had been made against anyone for failing to cooperate. The complainant had been dissatisfied with the actions of a particular individual and this individual had been replaced. Satisfied with this outcome, the complainant had withdrawn the complaint. The Liaison Officer a.i. has received a letter in the name of the complainant stating that he had now been paid for his work and was withdrawing the complaint. The Liaison Officer a.i. is now seeking confirmation from the complainant of the letter's authenticity and the circumstances under which it was written.
- 11.** The Liaison Officer a.i. met with the Deputy Minister for Labour on 8 April. The Deputy Minister was of the view that a certain success had been achieved through the establishment of the mechanism, and he gave his assurances that he would continue to extend full cooperation in dealing with future complaints. The Liaison Officer a.i. raised the question of assigning suitable international staff to assist him, contained in the conclusions of the Governing Body. He noted that it was crucial, as the number of complaints increased, that he had the capacity to deal with these in an efficient manner, which was already becoming difficult. It was also important to ensure that there was always someone available at his office to receive complaints during periods when he was travelling. The Deputy Minister indicated that he had already discussed this matter with the Minister for Labour, and it was the Minister's view that it should be discussed once the workload had increased. The Deputy Minister indicated, however, that he would revert to the Minister and do his best to resolve the matter before the Conference.
- 12.** The Liaison Officer a.i. wrote to the Deputy Minister on 25 April to follow up on this question, indicating that in order to respond to the increased workload in a timely manner, as an interim solution, the ILO had identified an official currently based in its Regional Office in Bangkok who would be available to travel to Yangon for a limited period on mission status. The Deputy Minister replied the following day that additional time should be given for consideration of this matter. After a further meeting on 11 May between the Liaison Officer a.i. and the Director-General of the Department of Labour, the Deputy Minister gave a second response on 19 May, emphasizing that the authorities did not disagree with the appointment of additional staff, but that it required inter-ministerial agreement and a number of administrative procedures. At the time this report was finalized, there had been no further developments.
- 13.** After more than five years based in Yangon for the ILO, and in view of the fact that the complaint mechanism has now been established and is functioning, Mr Richard Horsey has decided to end his assignment as ILO Liaison Officer a.i. as of 4 June 2007. The Director-General has appointed Mr Stephen Marshall to replace Mr Horsey, effective 1 July 2007.



FOR DEBATE AND GUIDANCE**Document D.6****E. Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)****I. Background**

1. In addition to the annual discussion of Myanmar's observance of the Forced Labour Convention, 1930 (No. 29), in a Special Sitting of the Committee on the Application of Standards,¹ the 95th Session of the International Labour Conference (June 2006) had on its agenda an item entitled: "Review of further action that could be taken by the ILO in accordance with its Constitution in order to: (i) effectively secure Myanmar's compliance with the recommendations of the Commission of Inquiry; and (ii) ensure that no action is taken against complainants or their representatives".² The Conference decided to refer this item to the Selection Committee, which examined the matter and submitted a report of its deliberations to the plenary. The conclusions contained in that report, as approved by the Conference, are reproduced in Appendix I.
2. As provided for in these conclusions, the Office has proceeded with the preparatory work necessary to enable the Governing Body to decide on the appropriate way forward as regards the question that could be submitted to the International Court of Justice. The elements for consideration in this regard will be provided in document GB.297/8/2. The conclusions also suggested that the Office provide "information about other remedies that may exist under international criminal law for action against perpetrators of forced labour". Relevant information on the possible options in this regard will also be provided in that second document.
3. Also, as provided for in these conclusions, the relevant documentation from the 95th Session of the International Labour Conference was brought to the attention of ECOSOC, which discussed the matter on 26 July 2006 under item 14b of its agenda.

¹ The conclusions adopted by the Special Sitting of the Committee on the Application of Standards are reproduced in Appendix II.

² ILC, 95th Session (Geneva, 2006), *Provisional Record* No. 3-2 (& Corr.).

II. Developments following the International Labour Conference

4. Following his return to Yangon from the International Labour Conference, the Liaison Officer a.i. met with the Deputy Minister for Labour on 27 June 2006. He briefed the Deputy Minister on the discussions that had taken place at the Conference. He underlined the importance of releasing Aye Myint and resolving the ongoing prosecutions in Aunglan, in order to create a climate in which it would be possible to discuss in good faith the establishment of a credible mechanism to address future complaints of forced labour.
5. On 8 July 2006, Aye Myint was released from prison after his sentence was conditionally suspended (under section 401 of the Code of Criminal Procedure). On 20 September 2006, the three persons in Aunglan township were acquitted of making false complaints of forced labour, following the withdrawal of the case by the authorities (under section 248 of the Code of Criminal Procedure). To the knowledge of the Liaison Officer a.i., this resolves all the outstanding cases of prosecution or imprisonment of persons having an ILO connection.
6. As regards the question of the mechanism, in addition to his meeting with the Deputy Minister on 27 June, the Liaison Officer a.i. met with the Director-General of the Department of Labour on 25 July, 17 August, 22 September and 9 October. Parallel discussions were held between ILO headquarters and the Permanent Representative of Myanmar in Geneva on 11 July, 21 August, 14 September and 29 September. In addition to underlining the importance of resolving the Aunglan case, these discussions focused on the specific modalities necessary for any complaint mechanism involving the Liaison Officer to be credible and effective. The discussions were complemented by an exchange of informal notes which set out what the Office considered to be the key parameters for such a mechanism. This was followed on 29 September by the formal submission to the authorities of a draft Understanding based on these parameters, which would supplement the existing Understanding on the appointment of a Liaison Officer signed on 19 May 2002. The text of this draft supplementary Understanding, as submitted to the authorities through the Myanmar Permanent Representative in Geneva and the Liaison Officer a.i. in Yangon, is reproduced in Appendix III.
7. The idea behind this supplementary Understanding was to formalize a de facto situation where, in the course of his activities, the Liaison Officer was receiving complaints of forced labour. The supplementary Understanding would provide the guarantees which were necessary to enable the Liaison Officer to make a preliminary assessment of the complaints he received, before transmitting those that appeared genuinely to involve forced labour to the authorities for investigation, action and reporting. Such guarantees would have to ensure that the Liaison Officer's role in receiving and transmitting complaints would not open the way to retaliatory action against the complainants, which had occurred in the past and which had led the Office in April 2005 to instruct the Liaison Officer to suspend the processing of complaints.
8. While the initial reaction of the Myanmar authorities to this draft supplementary Understanding indicated that there were divergent views on some important points, it was nevertheless made clear by the Office on a number of occasions that this text should be the basis for formal discussions. With the active support of the Myanmar Permanent Representative, it was decided that a mission would take place to Yangon for that purpose as early as possible, in order to try to reach agreement before the deadline of 31 October provided for in the conclusions of the Conference.

III. Mission to Yangon

9. It was decided that the mission would initially consist of Mr. Francis Maupain, Special Adviser to the ILO Director-General, together with Mr. Richard Horsey, the interim Liaison Officer. It was envisaged that, provided sufficient progress could be made, a second phase would then take place with the participation of Executive Director Mr. Kari Tapiola to finalize the supplementary Understanding.
10. The mission arrived in Yangon on the evening of 19 October. It had the opportunity on the morning of 20 October 2006 to have preliminary discussions with the Minister for Labour. The mission recognized the positive developments which had occurred and which had allowed this visit to take place. The ILO Director-General had always considered it important to pursue dialogue under all circumstances and the mission hoped that the positive climate in which the visit was taking place could be translated into a positive outcome which could be a vindication of this approach. The mission also recalled that the Office had been requested by the Conference to provide additional information on international judicial options, which would be annexed to the Governing Body report; this should not be interpreted as a threat, but as a matter of fact.
11. The Minister replied that indeed the authorities had addressed many of the concerns of the International Labour Conference, including releasing Aye Myint and resolving the Aunglan case, and were ready to have a mechanism to deal with complaints of forced labour. However, he said there were strong legal obstacles to granting the Liaison Officer freedom of movement and contacts in this connection, as it would seem to confer on him quasi-investigative powers contrary to the provisions of the 1898 Code of Criminal Procedure. The mission recalled that this was one of the key elements essential to the credibility of the mechanism, and the mandate that the Office had received from the Conference was clear in this respect. The mission underlined that there was no question of the Liaison Officer having any investigative powers. Rather, he would provide a channel through which victims could lodge complaints, and would filter out those that appeared spurious or unrelated to forced labour. Following this preliminary assessment, the Liaison Officer would transmit those complaints that appeared genuinely to involve forced labour to the authorities. The mission also recalled that the legal concerns raised by the Minister had never been raised in the past, either in 2001 when the High-level Team had been granted such freedoms, or in 2003 during negotiations on the “Facilitator” mechanism, which would have provided for the same freedoms. The Minister commented on the unusual conditions in which agreement had been reached on those prior occasions under the previous Prime Minister and Labour Minister. He requested the mission to discuss the matter in detail with the Working Group that the authorities had established to deal with this matter, in order to find a compromise solution that could meet the concerns of both sides.
12. The mission had detailed discussions on 20 and 21 October with this Working Group.³ These discussions did take as a basis the text of the draft supplementary Understanding. Apart from a number of mainly drafting comments or minor points of substance,⁴ three key divergences emerged.

³ The Working Group comprised the Deputy Minister for Labour (as Chair), together with the Deputy Attorney-General, the Director-General of the Office of the Chief Justice, the Director-General of the Department of Labour, the Director-General of the General Administration Department (Home Affairs) and the Deputy Director-General of the International Organizations and Economic Department (Foreign Affairs).

⁴ The other substantive issue concerned the handling of complaints involving the army. While the Working Group at first seemed ready to accept a different form of words referring to the fact that

13. The first concerned the conditions under which the Liaison Officer would carry out his preliminary assessment of a complaint. It was clear from the outset that the Myanmar side was very reluctant to accept the concept that the Liaison Officer would carry out a preliminary assessment of forced labour complaints on an independent and confidential basis, and that for this purpose he needed to have free, confidential and timely access to complainants. They repeatedly insisted that this preliminary assessment should be conducted jointly with the authorities. The mission recalled that at an earlier stage the ILO had indeed proposed a joint examination of complaints in the form of a “Joint Panel”, but this had been rejected by the authorities as it implied the need for an independent third party to arbitrate in cases of disagreement between the two sides. This is why the ILO had tried to find a solution which was simple and which built on what already existed – that is, the existing 2002 Understanding and the fact that the Liaison Officer was in practice receiving complaints of forced labour in the course of his activities. In view of the problems that had arisen in the past with the handling of complaints, it was important to elaborate in a supplementary Understanding a mechanism based on the idea that there would be two successive and independent steps, whereby the Liaison Officer would first make a preliminary assessment of a complaint, on an independent basis, before transmitting it to the authorities to conduct the necessary investigations and take the appropriate action, with a report being provided to the Liaison Officer. It was therefore very important for the credibility of the mechanism that its modalities were consistent with this general approach.
14. After detailed discussions, the two sides reached what appeared to be a balanced solution in the framework of paragraph 7 of the draft supplementary Understanding, which would have been amended to read along the following lines:

[U3.] In accordance with his/her role of assisting the authorities to eradicate forced labour, it shall be the task of the Liaison Officer and or any person that he/she may appoint for that purpose to examine the complaint objectively and confidentially, in the light of any relevant information provided or that he/she may obtain through direct and confidential contact with the complainant(s), their representative(s) and any other relevant person(s), with a view to making a preliminary assessment as to whether the complaint involves a situation of forced labour.

[U7.] The facilities and support extended to the Liaison Officer under the March 2002 Understanding and the present Understanding shall include timely freedom to travel for the purpose of establishing the contacts referred to in paragraph 3. While the designated representative of the relevant Working Group may accompany the Liaison Officer, assist him/her at his/her request or otherwise be present in the area he/she is visiting [in particular for security reasons], their presence should in no way hinder the performance of his/her functions, nor should the authorities seek to identify or approach the persons he/she has met until such time as he/she has completed his/her task under paragraph 3.

However, it subsequently appeared during the discussion of the next point of divergence (see below) that the Myanmar side was raising renewed questions over one key element in this compromise, by insisting that their own examination of a complaint should take place in parallel with the preliminary assessment that would be made by the Liaison Officer,⁵

such complaints would be channelled through the existing army focal point for investigation by the military, the Working Group later took the position that any specific reference to the army should be omitted. Apart from this issue, a number of other amendments were discussed, none of which were of major importance to the substance, and some of which improved the clarity.

⁵ They had also earlier insisted that for the sake of transparency that the details of all complaints should be shared immediately with the authorities. A practical solution seemed to have been found to this issue, by providing that the Liaison Officer would establish a register of complaints which could be freely shared with the authorities without jeopardizing the confidentiality of the complaints or their source.

thus reopening the fundamental approach reflected in the last sentence of paragraph [U7.] quoted above.

15. The second key divergence related to the duration of the trial period, which the draft Understanding had tentatively set at 18 months. The Myanmar side insisted on having a much shorter period of six months, which they considered to be quite sufficient. The mission pointed out that the Governing Body would necessarily be involved in the evaluation of the mechanism, and taking into account the intervals between Governing Body sessions, a six-month trial period would imply that the Governing Body would have to come to a decision on the effectiveness of the mechanism on the first occasion it considered the matter. This was difficult to imagine in practice, and implied that an 18-month period would be more reasonable. The mission, however, was ready to consider a compromise whereby the trial period could be shortened by mutual agreement but would in no case be less than six months nor more than 18 months. However, no conclusion was reached on this matter, as another issue unexpectedly became of decisive importance.
16. This third key divergence, which came to be of central importance in the discussions, concerned the staff resources available to the Liaison Officer to enable him to perform his additional functions under the supplementary Understanding. This matter was dealt with in paragraph 8 of the draft text. Already during the discussion of other paragraphs, and in particular paragraph 3 (which refers to the fact that the Liaison Officer may be assisted or substituted by another person), the Myanmar side made it clear that they had strong objections. In the discussion of paragraph 8, they seemed at first ready to consider an alternative proposal submitted by the mission. This proposal made it clearer that agreement was only needed on the principle that the strength of the office should be adequate to meet its additional responsibilities, and that this in no way prejudged the extent and timing of any strengthening. The mission also pointed out in this respect that the present situation, where due to his ability to speak Burmese the Liaison Officer could in most cases have direct dialogue with complainants, could not be taken for granted. It may be necessary for the present Liaison Officer to have interpretation in some cases, and in all likelihood any successor would need to be accompanied by a non-national interpreter.
17. Unexpectedly, however, the Myanmar side was not ready on the second day to enter into any discussion of the alternative wording proposed by the mission and insisted that the entire paragraph 8 be omitted. The mission then recalled the terms of the letter sent by Mr. Tapiola to the Permanent Representative of Myanmar on 15 September 2006, which made it clear that this solution already represented a compromise formula worked out between the two sides in initial informal discussions, within the framework of the clear mandate contained in the conclusions adopted by the Conference. The mission therefore indicated that it was not in a position to agree to the removal of this important point from the text.
18. At that stage, it was considered that there was no point considering other, more specific, drafting issues or minor points of substance. However, the mission insisted on the importance of having another meeting with the Minister for Labour in order to explain the seriousness of the situation and to request that he bring the matter to the attention of the higher authorities. The Minister gave the mission an opportunity to explain in detail the nature of the impasse. The mission indicated that good progress appeared to have been made on the first day of discussions, and tentative agreement seemed to have been reached on some of the key elements. However, the discussions had now reached an impasse over the question of staff strength. The mission found this difficult to understand, since it appeared from the discussions that the Myanmar side was ready to accept in principle the possibility of the staff available to the Liaison Officer being increased in order to cope with the workload. It was therefore difficult to see why this important point could not be reflected in the supplementary Understanding itself. The mission noted that if no further progress could be made, it would have no alternative than to report the situation to the

Governing Body, with all the consequences that could entail. The Minister then noted that he had his own instructions, but that he would bring the matter to the attention of the Cabinet; this might, however, take a few days.

19. Following this meeting, the mission transmitted to the Minister a revised text which incorporated the progress made so far and proposed some further changes which in its view went as far as possible to bridge the remaining gaps, in particular as regards paragraph 8, on which it made the following proposal:

[U8.] It is further recognized that the staff allocated to the Liaison Officer or his/her successor should be adequate in number, qualifications and status to enable the Liaison Officer to effectively discharge the additional responsibilities resulting from the present Understanding, and the two sides agree to the necessary adjustments being made in a timely manner in response to the workload.

20. On 23 October, the mission was informed that the Minister had not yet been able to obtain new instructions and was unlikely to receive any in the next few days. The mission therefore saw no need to wait longer in Yangon, and Mr. Maupain thus departed on 24 October. He was seen off by the Director-General of the Department of Labour, who stressed that the final text proposed by the mission was being given careful consideration, and that Mr. Horsey, who remained in Yangon, would be informed of their reaction in due course.

Geneva, 24 October 2006.

Submitted for debate and guidance.

Appendix I

Conclusions of the Selection Committee on the additional agenda item concerning Myanmar, as adopted by the 95th Session of the International Labour Conference, June 2006

The Committee, after listening to Ambassador Nyunt Maung Shein on behalf of the Government of Myanmar, has carefully reviewed the situation on the basis of *Provisional Record* No. 2 entitled: “Review of further action that could be taken by the ILO in accordance with its Constitution in order to: (i) effectively secure Myanmar’s compliance with the recommendations of the Commission of Inquiry; and (ii) ensure that no action is taken against complainants or their representatives”. It also had before it the conclusions adopted by the Committee on the Application of Standards on 3 June.

There was general agreement that the 2000 resolution provided a balanced framework on which to build, although a certain number of countries reiterated their general opposition to sanctions. A number of salient points emerged as regards the promotion of enhanced awareness and implementation of the 2000 resolution, and subsequent Governing Body decisions, which included the following steps, it being understood that they have to be carefully read in the context of the detailed record of the debate:

- The ILO has the possibility to seek an advisory opinion from the International Court of Justice which would, as the Workers stated, require the formulation of a specific legal question relating to the Forced Labour Convention, 1930 (No. 29). This is without prejudice to the fact that member States have the possibility to themselves institute contentious proceedings before the International Court of Justice on their own initiative. It was made clear that such action was complementary to, and not a substitute for, other action to be taken by the ILO itself.
- The application of the measures could be enhanced by providing more precise indications as regards the kinds of concrete steps by member States which might be more effective, and which would be most relevant to the sectors and types of enterprise in which forced labour appears to be currently employed. Such indications and guidance could be elaborated through examples of concrete actions taken to date.
- There could be more active involvement of employers’ and workers’ organizations, including at the national level, in the implementation of the measures.
- An enhanced reporting mechanism could also be developed, on the basis of a user-friendly questionnaire addressed to members.
- Multi-stakeholder conferences could be convened in order to exchange ideas of best practice in the implementation of the 2000 resolution.
- Steps should be considered with a view to fostering greater awareness and a consistent attitude on the issue among other international organizations, within their specific fields of competence, in particular ECOSOC.

In addition, it was suggested that the Office should provide information about other remedies that may exist under international criminal law for action against perpetrators of forced labour.

It was also suggested that appropriate and effective use should be made of public diplomacy in support of the ILO’s efforts.

* * *

The Committee shared all the very grave concerns expressed in the conclusions of the Committee on the Application of Standards as to the continued widespread use of forced labour by the Myanmar authorities, as well as their failure to implement the recommendations of the Commission of Inquiry. The unprecedented gravity of the forced labour situation in Myanmar was reflected in the Commission of Inquiry's report and, despite limited progress in a number of areas, there was every reason to believe that widespread and very serious abuses persisted. In some parts of Myanmar, villagers were liable to be detained for arbitrary periods by the army and forced to carry supplies during military operations, in terrible conditions and subject to brutal treatment. Across the country, local authorities continued to force the population to carry out local infrastructure work. It was unacceptable to the ILO that a member State not only tolerated such practices, but was itself responsible for them. This was a violation of the commitment to a shared humanity that a civilized world demanded.

The Committee underlined that progress could be made only if the Government of Myanmar really committed itself to ending forced labour – a step that was indispensable for the modernization and development of the country – and resumed genuine cooperation with the ILO. A number of speakers noted that, even though the recent steps taken by Myanmar once again came very late and did not go far enough, the path of cooperation should continue to be further explored, taking into account Myanmar's expressed willingness to do so and the fact that they had given some concrete effect to their commitment to a moratorium on prosecutions by releasing Su Su Nwe from detention. The Committee made it clear that any such cooperation needed to rapidly produce tangible and verifiable action from Myanmar towards the implementation of the recommendations of the Commission of Inquiry. The first test of this would be Myanmar's willingness to address the following points:

1. The Government must give credibility to its stated moratorium on prosecutions, by providing further details on how this moratorium would be applied, extending it to cover prosecutions currently under way (in Aunglan) and releasing any person still in detention (in particular Aye Myint). This should be done as soon as possible but in any event no later than by the end of July 2006. It must also be clear that anyone lodging a complaint during the moratorium should have immunity from any action being taken against them subsequently for doing so.
2. The moratorium would be considered strictly binding. It was understood that if the moratorium was breached, or if it came to an end without agreement on a satisfactory mechanism as envisaged under points 3 and 4 below, then the situation would immediately be brought to the attention of the membership, to review any steps that it may be appropriate to take, including international legal steps on the basis of article 37.1 of the ILO Constitution.
3. The authorities now need to immediately enter into discussions with the ILO with a view to agreeing by the end of October 2006 on the establishment of a credible mechanism for dealing with complaints of forced labour, which would include all necessary guarantees for the permanent protection of complainants or their representatives. This would also require that the ILO Liaison Office had the necessary resources and personnel.
4. Any mutually agreeable solution which would be reached on that basis should receive clearance at the highest level on both sides (i.e. through the Officers of the Governing Body in the case of the ILO).

It would be for the Governing Body to examine in November 2006 whether these points had been met, it being understood that the Office should in the meantime undertake all the preparatory work that may be necessary to allow for immediate decisions to be taken. Then, in the light of the developments or lack thereof, the Governing Body would have full delegated authority to decide on the most appropriate course of action, including as appropriate on the basis of the abovementioned proposals for the enhanced application

of the measures. It was also understood that the Governing Body should make all the necessary arrangements so that the Conference at its 2007 session is able to review what further action may then be required, including the possibility of the establishment of a special Committee of the Conference.

In the meantime, as contemplated by the Committee on the Application of Standards, all the deliberations of this Committee, together with the report of the Special Sitting of the Committee on the Application of Standards, should be brought to the attention of ECOSOC in time for its July 2006 session.

Appendix II

Conclusions of the Special Sitting of the Committee on the Application of Standards of the ILC, June 2006

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

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

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

The Committee underlined that it was now eight years since the Commission of Inquiry had issued its report and recommendations. While a few interventions claimed that Myanmar was making some moves in the right direction, however slowly, none of these recommendations had so far been implemented by Myanmar. Indeed, instead of progress in the elimination of forced labour and action against those responsible, people were liable to be prosecuted and imprisoned for complaining about forced labour, with the result that victims were being doubly victimized. The policy of prosecuting complainants was incompatible with Articles 23 and 25 of Convention No. 29, and Myanmar could not claim to be committed to the elimination of forced labour or to cooperation with the ILO while it continued to pursue such a policy.

In this context, the Committee noted the comments of the Ambassador of Myanmar that his Government was willing to consider Option-I but rejected Option-II. He stated that the Myanmar authorities were ready to put a six-month moratorium on prosecutions of complainants. The Committee underlined, however, that although this may sound positive, it was late and limited. Words had to be urgently confirmed and completed by deeds in all relevant matters, in particular the acquittal and release of persons who had already been prosecuted (in particular, Su Su Nwe and Aye Myint) and the cessation of prosecutions currently under way. Such action was particularly important as the Conference was to discuss further action to be taken by the ILO, and other organizations including ECOSOC, and that the decisions of the Conference should be based on credible information and commitments confirmed at the highest levels as to the Government's intentions. The authorities now need to immediately enter into discussions with the ILO, with a view to establishing as soon as possible a credible mechanism for dealing with complaints of forced labour.

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

Appendix III

Text of a “draft supplementary Understanding” submitted to the Myanmar authorities on 29 September

In the framework of the Conclusions adopted by the 95th Session of the International Labour Conference (Geneva, June 2006) in order to give full credibility to their commitment to effectively eradicate forced labour the Government of the Union of Myanmar and the International Labour Organization have agreed to adopt the present Understanding relating to the role of the Liaison Officer with respect to forced labour complaints channelled through his/her Office which supplements the “Understanding between the Government of the Union of Myanmar and the International Labour Office concerning the Appointment of an ILO Liaison Officer in Myanmar” (Geneva, 19 March 2002) as follows.

Object

1. In line with the recommendations of the High-level Team (Report, GB.282/4, 282nd Session, Geneva, November 2001, paragraph 80) to the effect that victims of forced labour should be able to seek redress without fear of further victimization, the object of the present Understanding is to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant provisions of the Penal Code and the Code of Criminal Procedure.
- I. Treatment of complaints of forced labour
 2. In accordance with the objective of the appointment of a Liaison Officer, the functions assigned, and the facilities extended to him/her under the March 2002 Understanding, any person or their representative(s) bona fide residing in Myanmar shall have full freedom to submit to the Liaison Officer allegations that the person has been subject to forced labour together with any relevant supporting information.
 3. In accordance with his/her role of assisting the authorities to eradicate forced labour, it shall be the task of the Liaison Officer and or any person that he/she may appoint for that purpose to examine objectively and confidentially if the complaint, in the light of any relevant information provided or that he/she may obtain through direct contact with the complainant(s), their representative(s) and any other relevant person(s), represents a prima facie case of forced labour.
 4. The Liaison Officer will then communicate to the Working Group those complaints which he/she considers to represent such a prima facie case, together with his/her reasoned opinion, in order for these cases to be expeditiously investigated by the most competent authority (including as appropriate the army). In minor cases the Liaison Officer may also provide suggestions on ways in which the case could be settled directly among those concerned.
 5. The Liaison Officer shall at all times during and after the treatment of the case have free and confidential access to the complainant(s), their representative(s) and any other relevant person(s). The Liaison Officer shall be informed by the authorities of any action taken pursuant to the complaint with its motivation. In the event that penal action is taken he/she will have full freedom to attend any relevant court proceedings personally or through a representative.

6. The Liaison Officer will report through the ILO Director-General to the Governing Body at each of its sessions on the number and type of complaints received and treated under the above provisions as well as their outcome. He/she will provide at the end of the trial period his/her evaluation as to whether the scheme has been able to fulfil its objective, any obstacle experienced, and what possible improvements or other consequences could be drawn from the experience, including its termination. These interim and final reports will be communicated in advance to the authorities for any comments they would like to make.

II. Guarantees and facilities to be accorded to the Office in the discharge of the above responsibilities

7. The facilities and support extended to the Liaison Officer under the March 2002 Understanding and the present Understanding shall include freedom to travel for the purpose of having timely, unhindered and confidential contact with the complainant(s), their representative(s) and any other relevant person(s).
8. These facilities shall be extended not only to the Liaison Officer and any successor, but also to any person who will subsequently be appointed by the ILO, after appropriate consultations with the authorities, to assist or enable him/her to effectively discharge the functions provided for under the present Understanding or as appropriate discharge them on his/her behalf. Subject to any consultations as may be appropriate the authorities shall expeditiously grant such persons necessary visas and extend to them in addition to the facilities provided for under the present Understanding the privileges and immunities corresponding to those granted to diplomatic staff of equivalent rank in accordance with usual practice.
9. No action shall be taken against any complainant(s), their representative(s) or any other relevant person(s) involved in a complaint, at any time either during the implementation of the arrangements in the present Understanding or after its expiration, whether or not the complaint is upheld.

III. Time frame and trial period

10. The arrangements in the present Understanding shall be implemented on a trial basis over a period of 18 months.
11. It will then either be consolidated subject to any modification that may appear appropriate and acceptable to both parties or terminated in the light of the evaluation referred to in Part I.
12. During the trial period, in the event that either party fails demonstrably to fulfil its obligations under the March 2002 Understanding or the present Understanding the other party may terminate the mechanism by giving one month's notice in writing.

IV. Miscellaneous

13. The Government of Myanmar and the ILO shall give adequate publicity to the present Understanding, in the appropriate languages.

Geneva, 29 September 2006.



FOR DEBATE AND GUIDANCE

EIGHTH ITEM ON THE AGENDA

**Developments concerning the question
of the observance by the Government
of Myanmar of the Forced Labour
Convention, 1930 (No. 29)****Legal aspects arising out of the
95th Session of the International
Labour Conference****I. Introduction**

1. The 95th Session of the International Labour Conference (Geneva, 2006) had on its agenda an item entitled: “Review of further action that could be taken by the ILO in accordance with its Constitution in order to: (i) effectively secure Myanmar’s compliance with the recommendations of the Commission of Inquiry; and (ii) ensure that no action is taken against complainants or their representatives”. The conclusions reached by the Conference in the context of article 33 of the ILO Constitution included provision for the Governing Body to examine whether or not a set of specific points had been met by the Government.¹ These conclusions and those reached earlier by the Conference were taken with a view to having full effect given to the recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29). As described in document GB.297/8/1, the pending issues in relation to the application of Convention No. 29 by Myanmar essentially deal with the need to release from prison and end ongoing prosecutions against certain persons who had lodged complaints with the ILO in the past, and the establishment of a credible mechanism, with the necessary guarantees and an ILO presence of requisite strength, for addressing complaints of forced labour.
2. The discussion at this session of the Governing Body could give preliminary consideration to the question of enabling the Conference at its 2007 session to examine what further action may be required in addition to a review in the Committee on the Application of Standards.

¹ Appendix to *Provisional Record* No. 3-2 (& Corr.), Second Report of the Selection Committee, International Labour Conference, 95th Session (Geneva, 2006), and in particular p. 12.

3. The Conference further asked the Office to provide legal information in relation to two aspects: matters that could be brought before the International Court of Justice, mentioning article 37(1) of the ILO Constitution (Part II below), and “remedies that may exist under international criminal law for action against perpetrators of forced labour” (Part III below).² In light of the complexities of certain aspects of these issues, the current document addresses these topics only in tentative terms.

II. Referral to the International Court of Justice

4. Under article 37(1) of the ILO Constitution, any question or dispute relating to the interpretation of the Constitution or a Convention “shall be referred for decision” to the International Court of Justice (the Court or the ICJ). As a specialized agency of the United Nations, the Organization is authorized to request advisory opinions of the Court on “legal questions arising within the scope of its activities”.³ On that basis two main avenues involving the ICJ were sketched out and are reviewed in detail below.⁴

A. Concerning a request by the Organization for an advisory opinion of the International Court of Justice

5. *Framing a question.* A request for an advisory opinion by the Organization would entail submission of an exact statement of the question upon which an opinion is required, accompanied by all documents likely to throw light upon the question. The Court may give an advisory opinion on any such question under article 65(1) of its Statute. The jurisprudence of the Court suggests that the careful framing of a question or questions is critical for the success of the endeavour. For this reason, the Office suggests that the Governing Body examine this issue in two stages, the current one to review possible elements that could be brought before the Court and the vetting, at a later session, of the precise question(s) in relation to which the Organization would, if the situation then so justifies, request an advisory opinion of the Court.

² In addition, remedies in the nature of compensation and other forms of reparations provided to victims have been recognized by the Committee of Experts on the Application of Conventions and Recommendations as a part of a State’s obligations to ensure the effectiveness of ILO Conventions, particularly those guaranteeing basic rights. The Committee has urged governments to use and strengthen remedies as well as sanctions in applying their obligations, including in relation to Conventions that do not contain specific provisions in this regard. Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 86th Session, 1998, General Report, paras. 183-186. Compensation mechanisms could be established within Myanmar or, with the Government’s agreement, in an arrangement involving the international community. For instance, in some such arrangements involving other countries, under which individuals received compensation, contributions to schemes were made by private companies which had benefited from the exaction of forced labour during the Second World War.

³ See article 96(2) of the UN Charter and article IX, para. 2, of the UN-ILO Agreement.

⁴ The option under article 37(2) of the Constitution, which provides for establishment of a tribunal for the expeditious determination of any dispute or question relating to the interpretation of a Convention, was also included in the background document for the Conference discussion (*Provisional Record* No. 2, International Labour Conference, 95th Session (Geneva, 2006), para. 24, but was not retained in the conclusions.

6. *Factual context.* The request for an advisory opinion would be posed taking into account Myanmar's conduct in relation to its obligations under the Constitution and under the Forced Labour Convention, 1930 (No. 29). In this regard, the extensive record of official documentation of the ILO and of the United Nations relating to Myanmar's actions would be especially relevant to submit to the Court in relation to the legal question.⁵ Of particular note would be the context of the Government's own involvement and responsibility for forced labour practices, as well as the control and operation of the prosecutorial and judicial systems in Myanmar.⁶
7. *Possible elements of a question or questions.* A range of possible elements could be considered in relation to the type of request to be presented to the Court in a request for an advisory opinion. The choice will depend in part on the steps, if any, taken by Myanmar in relation to giving full effect to the recommendations of the Commission of Inquiry.
- (1) In light of the Government's practice and assertion of its right, in a context of persisting exaction of forced labour, of prosecuting persons on allegations of lodging or seeking to lodge false complaints of forced labour, one request for the Court's opinion could focus on the compatibility of such a position with the obligations of a Member under the Forced Labour Convention, 1930 (No. 29), and in particular its articles 1 and 25.⁷ A request of this nature could give particular attention to a State party's obligations to interpret and apply the Convention in good faith and in the light of its object and purpose.
 - (2) In light of the Government's failure to give full effect to the recommendations of the Commission of Inquiry, in particular relating to the establishment of a mechanism, with adequate guarantees, to ensure thorough investigation, prosecution and adequate punishment of those found guilty of exacting forced or compulsory labour, a question could focus on the compatibility of such a situation with the obligations of a Member under the ILO Constitution.

⁵ It would be important to present, in particular, the Report of the Commission of Inquiry, 1998 (*Forced labour in Myanmar (Burma), Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)*, Geneva, 2 July 1998), and the subsequent observations of the Committee of Experts on the Application of Conventions and Recommendations and conclusions of the Committee on the Application of Standards of the International Labour Conference. In addition, the documentation could include the reports of the ILO Liaison Officer and statements of the Government of Myanmar to the Director-General and the ILO as reported to the Governing Body and International Labour Conference, along with the conclusions reached by the Conference. See also, for instance, *Situation of human rights in Myanmar*, UNGA Res. 60/233 (23 March 2006) and UNGA Doc. A/61/369 (21 Sep. 2006), Note by the Secretary-General, *Situation of human rights in Myanmar*.

⁶ See in particular, UNGA Res. 60/233 (*ibid.*), and UNGA Doc. A/60/221 (12 Aug. 2005), Note by the Secretary-General, *Situation of human rights in Myanmar*, Recommendations of the Special Rapporteur contained in paras. 106 (prosecution in accordance with international standards) and 111 (independence of the judiciary), and UNGA A/Res./52/137 of 12 Dec. 1997, para. 8.

⁷ Under article 1, each Member ratifying the Convention "undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period ...". Article 25 provides that the illegal exaction of forced or compulsory labour shall be punishable as a penal offence and that member States parties shall ensure that the penalties imposed by law are really adequate and strictly enforced.

- (3) A possible further request might seek to clarify, in terms of a specific question formulated following further research, any other legal consequences that may be inferred from the situation in terms of general international law.

8. *Procedure governing requests for advisory opinions.*⁸ Based upon ILO practice in relation to seeking advisory opinions from the Permanent Court of International Justice at the time of the League of Nations, the Office would forward to the ICJ the specific legal question as approved by the ILO Governing Body acting pursuant to the authorization of the Conference at its 95th Session. The Registrar of the Court would then provide notice of the request for an advisory opinion to all States entitled to appear before the Court (in practice all Members of the United Nations).⁹ These States as well as international organizations likely to be able to furnish information on the question are then notified that the Court is prepared to receive, within a fixed time limit, written statements or to hear, at a public sitting, oral statements relating to the question (Statute, article 66). States and organizations which have presented written or oral statements may comment on the statements made by other States or organizations. Based on the practice of the Court, it is estimated that around eight or nine months would elapse between the submission of a request and the rendering of the advisory opinion, unless a request, which would need to be well-founded, for an urgent opinion was granted.

B. Concerning a request for a binding ruling by the International Court of Justice under article 37(1) of the Constitution

9. As noted above, article 37(1) of the Constitution provides for “referral for decision” of any “question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members”.¹⁰ Article 36(1) of the Statute of the Court vests it with jurisdiction over “all cases which the parties refer to it and all matters specifically provided for ... in treaties or conventions in force” – a provision which encompasses the ILO Constitution and Convention No. 29. Reading the Statute of the Court together with the ILO Constitution suggests that article 37(1) of the ILO Constitution constitutes what is termed a “compromissory clause”. Thought could also be given to whether the Court could interpret article 37(1) as providing a basis for an advisory opinion on a question of interpretation to be considered as binding on the ILO and on the States parties to the Convention involved. This would mean that any ruling by the Court on the issue or issues

⁸ The procedure applicable to requests for advisory opinions is set out in articles 65 to 68 of the Statute of the International Court of Justice.

⁹ All Members of the United Nations are parties to the Statute of the International Court of Justice. United Nations Charter, article 93(1).

¹⁰ The French text, which is equally authoritative, provides that: “Toutes questions ou difficultés relatives à l’interprétation ... seront soumises à l’appréciation de la Cour”.

posed would have binding force as between the parties to a particular case.¹¹ The Court's judgement can be enforceable through the United Nations Security Council.¹²

10. *Role of Members and procedure.* In accordance with article 37(1), action can be taken before the Court in relation to the interpretation of the Constitution by any ILO Member, and in relation to interpretation of Convention No. 29 as between any of the States parties to that instrument.
11. Of course, any State invoking the jurisdiction of the Court under article 37(1) of the ILO Constitution would have to satisfy the requirements of the Statute of the International Court of Justice in relation to contentious cases (Statute of the Court, articles 34 to 64). Other parties to the Convention in question are notified by the Registrar of the Court, and each of these States has the right to intervene in the proceedings (Statute, article 63).
12. A review of the contentious cases already pending on the docket of the Court suggests that it would be unlikely for a party to obtain a binding ruling in less than two years from the time of filing. If the Court considers that circumstances so require, it has the power to indicate any provisional measures which ought to be taken to preserve the respective rights of either party (Statute, article 41).
13. *Role of the Organization.* Since a State party to a treaty would be bringing a matter before the Court on its own, or alongside other States which are also parties to the treaty, no decision of the Conference or of the Governing Body is required. However, the Office could, with a view to the protection of the interests of the Organization and at the request of a Member, provide legal assistance in the framing of the issues in line with what is suggested above, and in the identification of relevant documentation (the basis of the case being basically the same as for an advisory opinion). In addition, under the ICJ rules, the Court may request the ILO as a public international organization to provide information relevant to the case. It would also be possible for the ILO to submit information on its own initiative to the Court (Statute, article 34).

III. Information concerning international criminal law in relation to forced labour

14. In the conclusions adopted by the 95th International Labour Conference in 2006, it was suggested that the Office should provide information about criminal remedies that may exist under international law for action against perpetrators of forced labour in the context of Myanmar.
15. States parties to the Forced Labour Convention, 1930 (No. 29) have an obligation under its article 25 to ensure adequate criminal enforcement at domestic level against the illegal exaction of forced labour or compulsory labour. In the absence of such enforcement in Myanmar – and indeed the threat of and actual prosecution by the State of those who seek to provide information of violations – alternate means for bringing perpetrators of forced

¹¹ Statute of the International Court of Justice, article 59. Under article 63 of this Statute, the construction of a Convention would be equally binding on any party to it which had intervened in the proceedings. A judgement may also declare the *erga omnes* character of certain norms, meaning that all States have a legal interest in their protection.

¹² If any State party to a case “fails to perform the obligations incumbent upon it under a judgement rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgement” (United Nations Charter, article 94(2)).

labour to justice may be considered. As outlined below, these involve the possible use of international criminal law mechanisms and the potential exercise of national criminal jurisdiction as recognized under international law.

16. As a general matter, a court will order a remedy or impose a penalty only when it can exercise its jurisdiction in relation to the person, the time frame and the subject matter involved. Whether at international or the national level, before imposing a criminal remedy/penalty, a court exercising criminal jurisdiction would assure itself that:
 - (a) it has jurisdiction over the person accused;
 - (b) the prosecution has demonstrated in fact, against a high standard of proof, that the accused has, in the relevant time period, committed acts which correspond to the elements of a specified crime;
 - (c) procedural safeguards to protect a person accused of a crime have been respected; and
 - (d) the type of penalty to be imposed falls within the scope of the court's jurisdiction under the applicable law.
17. Since the Commission of Inquiry presented its report in 1998, important developments have occurred in relation to international criminal law and enforcement. Certain aspects remain in evolution and do not lend themselves to definitive statements at this juncture. The text which follows should be read in this light.

A. International Criminal Court

18. On 1 July 2002, the Rome Statute of the International Criminal Court (ICC) entered into force, thus establishing a new international institution. In a manner that is complementary to national criminal jurisdictions, the ICC can exercise jurisdiction over persons for the most serious crimes of concern to the international community as a whole, as referred to in the Statute (see Rome Statute, Preamble and article 1). In this way, individual perpetrators, including military and government officials within the jurisdiction of the ICC, may be held personally accountable for their actions, through criminal prosecution and, as applicable, the imposition of penal and other sanctions. The legal and political hurdles to successful prosecution should be fully taken into account, however.
19. *Jurisdiction.* The ICC has jurisdiction with respect to a specified set of crimes, committed after the entry into force of the Statute, on the territory or by a national of a State for which the Rome Statute has entered into force (Rome Statute, articles 5, 11 and 12). A State which is not a party to the Statute may, nonetheless, accept the Court's jurisdiction with respect to the crime in question (Rome Statute, article 12(3); Rule of Procedure, Rule 44). (Myanmar is not among the 102 States for which the Rome Statute was in force as at 1 November 2006.)
20. Of the specified crimes over which the ICC has jurisdiction under article 5 of its Statute, "crimes against humanity" appear most relevant in relation to the exaction of forced or compulsory labour in Myanmar. This type of crime, to which the Commission of Inquiry alluded,¹³ is further defined in article 7 of the Statute of the ICC,¹⁴ as explained below.

¹³ Report of the Commission of Inquiry, paras. 204 and 538.

¹⁴ For purposes of the Rome Statute, "crime against humanity" includes any of a series of specified "acts when committed as part of a widespread or systematic attack directed against any civilian

When exercised, ICC jurisdiction applies equally to all persons without any distinction based on official capacity.

21. *Activation of the ICC's jurisdiction.* Where one or more crimes within the jurisdiction of the ICC appear(s) to have been committed, it may exercise its jurisdiction:
- (a) upon referral to the Prosecutor by a State Party; or
 - (b) upon referral to the Prosecutor by the United Nations Security Council acting under Chapter VII of the United Nations Charter;¹⁵ or
 - (c) when the Prosecutor has, following authorization of the Pre-Trial Chamber, initiated an investigation *proprio motu* (on his or her own motion) on the basis of information received by means of a communication from any source (Rome Statute, articles 13, 14 and 15).
22. While there are important procedural differences among the three avenues, in all instances the Prosecutor must first evaluate the information made available to him or her (see Rome Statute, article 53(1)). The Prosecutor will not initiate an investigation of any situation involving acts in the territory of a non-State party without that State's consent, unless the acts involve a national of a State party, or the referral has come from the United Nations Security Council.¹⁶
23. *Record relevant to elements of a crime under the Rome Statute in the context of forced labour practices in Myanmar.* It is not up to the ILO to initiate prosecutions under the Rome Statute. In the Prosecutor's own evaluation of information, however, reference to findings reached within the ILO would be relevant points of departure. In its special sitting on the situation in Myanmar in June 2006, the ILC found that "forced labour continued to be widespread, particularly by the army. This was underlined by current reports of extensive forced labour being used in the context of increased military activity".¹⁷ Similarly, at its most recent session, the Committee of Experts on the Application of Conventions and Recommendations noted reports of instances of forced labour, including forced portering by the military, "human minesweeping", and patrolling and sentry duty.¹⁸ These statements are consistent with earlier findings of the Commission of Inquiry.¹⁹ Such descriptions indicate that individuals have been deprived of their liberty and subjected by

population, with knowledge of the attack: ... 7(1)(c) enslavement; ... (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; ... (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health." (article 7(1)). The term "attack directed against any civilian population" means "a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack" (article 7(2)(a)).

¹⁵ See S./RES/1593(2005) referring to the situation in Darfur since 1 July 2002 to the ICC Prosecutor.

¹⁶ On 29 September 2006, the Security Council considered, in a closed meeting, an item entitled "The situation in Myanmar". United Nations Security Council, Doc. S/PV.5526 (Resumed).

¹⁷ *Provisional Record* No. 24, Part Three, International Labour Conference, 95th Session (Geneva, 2006).

¹⁸ CEACR: Individual observation concerning the Forced Labour Convention, 1930 (No. 29) Myanmar, 2006, paras. 6, 21 and 25.

¹⁹ Report of the Commission of Inquiry, 1998, op. cit., in particular paras. 528-538.

the authorities to the exercise of powers attaching to the right of ownership over a person, which could involve the exaction of forced labour under slavery-like conditions or in circumstances of enslavement²⁰ or severe deprivation of physical liberty in violation of fundamental principles of international law.²¹ There may also be indications pointing to the commission of other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.²²

24. The pattern established over time, including by the Commission of Inquiry,²³ suggests a systematic course of conduct in the nature of a crime against humanity, since such acts have been committed multiple times, by military authorities or under military control, against the civilian population of Myanmar. The continuing lack of adequate compliance by Myanmar with certain of the recommendations of the Commission of Inquiry, together with the prosecution of individuals for lodging allegedly false complaints of forced labour, may point to a state policy to commit, and permit the commission of, such acts.²⁴
25. If investigations were to be initiated under the Rome Statute (i.e. with the consent of Myanmar, or where a national of a State party to the Rome Statute is involved, or upon referral by the United Nations Security Council), it must be stressed that the crimes alleged would need to be proven with reference to acts committed by a particular individual or individuals, who would be entitled to mount a defence. The Rome Statute contains numerous procedural requirements and safeguards, including general principles of criminal law (see especially articles 22-33 and 66-67) and evidentiary standards.
26. *Remedies/penalties.* Upon conviction of a crime referred to in the Rome Statute, an individual may be subject to specified remedies. The ICC may impose imprisonment for a specific term of up to 30 years or, when justified by the extreme gravity of the crime and the individual circumstances, imprisonment for life. In addition, the ICC may order the (payment of) a fine, and a forfeiture of proceeds, property or assets derived directly or indirectly from the crime may be ordered (Rome Statute, article 77). The Rome Statute also provides for measures to provide reparations, including restitution, compensation and rehabilitation, to victims or on their behalf (articles 75, 93(1) and 109). While such measures are not necessarily part of the criminal procedures described in this document, they concern related remedies to provide redress for harm done to victims which would complement any criminal penalties imposed.²⁵

²⁰ “Enslavement” is specifically referred to in the Rome Statute – see article 7(c). See also the reference to enslavement in the Commission of Inquiry report, para. 543.

²¹ Rome Statute, article 7(e).

²² Rome Statute, article 7(k).

²³ See report of the Commission of Inquiry (1998) and subsequent observations of the Committee of Experts and of the Committee on the Application of Standards, reviewing, inter alia, reports of the ILO Liaison Officer and statements of the Government of Myanmar made to the ILO.

²⁴ The elements of crime, incorporated by reference into the Rome Statute (article 9), explain that the wording “attack directed against a civilian population” is understood to mean a course of conduct involving the multiple commission of acts referred to in article 7(1) of the Statute against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack. The acts need not constitute a military attack. See United Nations doc. ICC/ASP/1/3, para. 3 under article 7 elements.

²⁵ See, in general, UNGA Res. 60/147 (16 Dec. 2005), Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of International Human Rights Law and Serious Violations of International Humanitarian Law.

B. Exercise by a State of its national criminal jurisdiction to prosecute those responsible for crimes committed outside its jurisdiction

27. Article 25 of Convention No. 29 provides that, “the illegal exaction of forced or compulsory labour shall be punishable as a penal offence ...”. This implies that such acts, committed in the territory of any State for which this Convention is in force, would constitute a crime in national law. (Convention No. 29 has been ratified by 170 member States.)
28. Under general international law, States may punish foreign nationals in accordance with their domestic law and international jurisdictional principles for particular crimes that are regarded as the most serious by the international community (no matter where the crime was committed, or what the nationality of the accused or of the victim). This principle is well accepted in the case of piracy and has become increasingly recognized in relation to crimes against humanity, which include enslavement and other potentially relevant elements (see paragraphs 24-25 above).
29. Any State which obtains custody of persons suspected of responsibility for crimes of this type may choose to exercise its criminal jurisdiction within the limits permitted under international law, in accordance with internationally recognized procedural guarantees and subject to its own domestic legal system. The penalties/remedies which would apply in case of a judgement in relation to particular crimes would be defined by the domestic legal system.²⁶
30. At the same time, the national court would need to review any claims of immunity from jurisdiction that government officials accused would likely make. In any event, the State having custody may wish to offer Myanmar the opportunity to itself act upon the charges concerned, under conditions of full prosecutorial and judicial independence.

C. Establishment of an ad hoc tribunal

31. Another avenue which might be pursued would be the establishment, by the international community and in agreement with the State concerned, of an ad hoc tribunal for purposes of prosecuting individuals, including government officials, for acts involving forced or compulsory labour as described above. Like the ICC, such arrangements usually involve non-recognition of immunity for anyone against whom an indictment is brought. A recent example is the Special Court for Sierra Leone, before which acts of forced labour in the nature of enslavement have been included in the indictment of Charles Taylor as an element of the count of crimes against humanity. This Court was established by an Agreement between the United Nations and Sierra Leone, pursuant to Security Council Resolution 1315 (2000).²⁷

²⁶ The effect given to international law in domestic legal systems varies.

²⁷ See www.sc-sl.org. Case No. SCL-03-I, The Prosecutor against Charles Gharkay Taylor, Indictment, Count 12.

32. The Governing Body may wish to discuss the issues raised in this document, together with document GB.297/8/1, as a basis for taking any steps it may deem appropriate and for providing further guidance to the Office.

Geneva, 6 November 2006.

Submitted for debate and guidance.

**FOR DEBATE AND GUIDANCE**

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)****I. Background**

1. Following discussion of the item at its 297th Session (November 2006), the Governing Body adopted the following conclusions:

The Governing Body considered all the information before it, including the comments of the Permanent Representative of Myanmar, in the framework of the conclusions adopted by the International Labour Conference in June 2006. In this regard, regret was expressed by the Workers' group and some Governments that not all options contemplated by the Conference had been followed up. It was recalled in this context that the Conference conclusions, *inter alia*, provided that "in the light of the developments or lack thereof, the Governing Body would have full delegated authority to decide on the most appropriate course of action, including as appropriate on the basis of the ... proposals for the enhanced application of the measures".

It was acknowledged that the Myanmar authorities had released Aye Myint and ended the prosecutions in Aunglan. The Permanent Representative furthermore gave assurances in his opening comments that the moratorium on prosecution of complainants would remain in place.

However, the Workers, Employers and the majority of Governments, expressed great frustration that the Myanmar authorities had not been able to agree on a mechanism to deal with complaints of forced labour within the framework set out in the Conference conclusions. The authorities had therefore missed a critical opportunity to demonstrate a real commitment to cooperating with the ILO to resolve the forced labour problem, which once again raised serious questions as to whether any such commitment existed. There was widespread and profound concern that, at the same time, the practice of forced labour continued to be prevalent in Myanmar.

The general conclusions were that:

- The Myanmar authorities should, as a matter of utmost urgency and in good faith, conclude with the Office an agreement on a mechanism to deal with complaints of forced labour, on the specific basis of the final compromise text proposed by the ILO mission.
- Irrespective of the status of the moratorium on prosecutions of complainants, it must be clearly understood that any move to prosecute complainants would be a violation of

Convention No. 29 and would open the way to the consequences contemplated in paragraph 2 of the Conference conclusions.

- Following the Conference conclusions in June 2006, a specific item would be placed on the agenda of the March 2007 session of the Governing Body, to enable it to move on legal options, including, as appropriate, involving the International Court of Justice. The Office should therefore make necessary preparations for the Governing Body to request an advisory opinion of the International Court of Justice on specific legal question(s), without prejudice to the possibility that a member State could take action on its own initiative.
- As regards the question of making available a record of the relevant documentation of the ILO related to the issue of forced labour in Myanmar to the Prosecutor of the International Criminal Court for any action that may be considered appropriate, it is noted that these documents are public and the Director-General would therefore be able to transmit them.
- In addition, the Director-General could ensure that these developments are appropriately brought to the attention of the United Nations Security Council when it considers the situation in Myanmar, which is now on its formal agenda.
- As provided for in the Conference conclusions, the Governing Body in March will revisit the question of placing a specific item on the agenda of the 2007 session of the International Labour Conference to allow it to review what further action may then be required, including the possibility of the establishment of a special committee of the Conference.
- The other options contained in the Conference conclusions should also be appropriately followed up by the Office.

2. Mr Richard Horsey continued to act as interim ILO Liaison Officer. The present report summarizes his activities since November 2006 as well as the discussions that have taken place between ILO headquarters and the Permanent Representative of Myanmar in Geneva on the text of a Supplementary Understanding.
3. The preparatory work on legal options requested by the Governing Body at its 297th Session is dealt with in a separate document before the Governing Body (see GB.298/5/2).¹
4. As regards the request by the Governing Body that developments be appropriately brought to the attention of the United Nations Security Council, the Director-General wrote on 24 November 2006 to the United Nations Secretary-General transmitting the relevant documentation and requesting that this be brought to the attention of the Security Council. The Secretary-General transmitted the Director-General's letter and the related documentation to the President of the Security Council, who in turn transmitted it to the members of the Security Council on 15 December 2006.

II. Agreement on a Supplementary Understanding

5. On his return to Yangon, after attending the 297th Session of the Governing Body, the Liaison Officer a.i. met on 4 December 2006 with the Director-General of the Department of Labour, and on 18 December with the newly-appointed Deputy Minister for Labour,

¹ As regards the question of making ILO documentation available to the Prosecutor of the International Criminal Court, following the 297th Session of the Governing Body, the Office compiled a list of the public documents of the ILO related to the issue of forced labour in Myanmar that might be of relevance to the Prosecutor, and contacts were initiated in order to brief him on developments in the ILO and bring this documentation to his attention.

Major-General Aung Kyi,² in order to brief them on the Governing Body's discussions and in particular on the urgent need to reach an agreement on a mechanism to deal with complaints of forced labour. The Deputy Minister indicated a willingness to revisit the outstanding issues, and possible modalities for a new round of negotiations were discussed. The Liaison Officer a.i. was subsequently informed that the Permanent Representative of Myanmar in Geneva, Ambassador Nyunt Maung Shein, would be authorized to conduct these negotiations with ILO headquarters.

6. A series of contacts and discussions between ILO headquarters and Ambassador Nyunt Maung Shein, commencing in the first week of January 2007, as well as parallel contacts between the Liaison Officer a.i. and the authorities in Yangon, led to agreement in principle on the text of a Supplementary Understanding on 15 February. The agreed text retained the essential elements of the final compromise proposal made by the ILO mission to Yangon in October 2006. After obtaining approval at the highest level on both sides (the Officers of the Governing Body and the Cabinet, respectively), as requested by the International Labour Conference in 2006,³ the Supplementary Understanding was signed on 26 February 2007 by Executive Director Mr Kari Tapiola and Ambassador Nyunt Maung Shein. The mechanism that it establishes to deal with complaints of forced labour came into force immediately. The text of the Supplementary Understanding and the minutes agreed upon at the same time are attached to this report.
7. The Supplementary Understanding makes provision for the Government of Myanmar and the ILO to give adequate publicity to its contents. The ILO issued a press release on 26 February announcing the development, which was widely reported internationally, including by media in Myanmar languages catering to a domestic audience. A press release was also issued on the same day by the Permanent Mission of Myanmar in Geneva. In addition, in order to increase awareness of the ILO's work on forced labour in Myanmar, the Liaison Officer a.i. has established an English language web site,⁴ and development of a Burmese language version is under way. Further steps will be taken to give additional publicity in Myanmar to the Supplementary Understanding, as necessary.
8. The Supplementary Understanding provides that "the Liaison Officer will report through the ILO Director-General to the Governing Body at each of its sessions on the number and type of complaints received and treated under [the mechanism] as well as their outcome". The Liaison Officer a.i. has already received a number of complaints, which he is in the process of assessing, and his first report to the Governing Body pursuant to the Supplementary Understanding will be presented in an addendum to the present document that will be issued in time for the Governing Body's discussion of the item.⁵
9. As noted in the Supplementary Understanding, its implementation gives rise to additional work and responsibilities for the Liaison Officer a.i. that will entail supplementary expenditure beyond what has been currently foreseen. The number and nature of the complaints already received suggest that the increase in capacity foreseen in the

² Major-General Aung Kyi was appointed to the position of Deputy Minister for Labour in late November 2006, replacing Brigadier-General Win Sein.

³ See ILC, 95th Session (Geneva, 2006), *Provisional Record* No. 3-2 (&Corr.), p. 12, operative para. 4.

⁴ The URL for this web site is: <http://www.ilo.org/public/english/region/asro/yangon/>.

⁵ In this regard it is relevant to note that, shortly before the Supplementary Understanding was signed, a detailed allegation concerning forced labour was brought to the attention of the Liaison Officer a.i. and that some positive steps have already been taken by the authorities towards the resolution of that case.

Supplementary Understanding is indeed no longer speculative. The need for outside funding had already been contemplated in the past with respect to similar arrangements under the Plan of Action, and the Office will be actively discussing funding requirements with potential donors.

Geneva, 7 March 2007.

Appendix

Supplementary Understanding

In the framework of the Conclusions adopted by the 95th Session of the International Labour Conference (Geneva, June 2006) in order to give full credibility to their commitment to effectively eradicate forced labour, the Government of the Union of Myanmar and the International Labour Organization have agreed to adopt the present Understanding relating to the role of the Liaison Officer with respect to forced labour complaints channelled through him/her, which supplements the "Understanding between the Government of the Union of Myanmar and the International Labour Office concerning the Appointment of an ILO Liaison Officer in Myanmar" (Geneva, 19 March 2002) as follows.

Object

1. In line with the recommendations of the High-Level Team (Report, GB.282/4, 282nd Session, Geneva, November 2001, para.80) to the effect that victims of forced labour should be able to seek redress in full confidence that no retaliatory action will be taken against them, the object of the present Understanding is to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation and in accordance with the Forced Labour Convention No.29 (1930). This Understanding is without prejudice to other steps to accommodate the requests of the competent supervisory bodies of the ILO.

I. Treatment of complaints of forced labour

2. In accordance with the objective of the appointment of a Liaison Officer, the functions assigned, and the facilities extended to him/her under the March 2002 Understanding, any person or their representative(s) bona fide residing in Myanmar shall have full freedom to submit to the Liaison Officer allegations that the person has been subject to forced labour together with any relevant supporting information.

3. In accordance with his/her role of assisting the authorities to eradicate forced labour, it shall be the task of the Liaison Officer and/or any person that he/she may appoint for that purpose to examine the complaint objectively and confidentially, in the light of any relevant information provided or that he/she may obtain through direct and confidential contact with the complainant(s), their representative(s) and any other relevant person(s), with a view to making a preliminary assessment as to whether the complaint involves a situation of forced labour.

4. The Liaison Officer will then communicate to the relevant Working Group established by the Government of the Union of Myanmar those complaints which he/she considers to involve such a situation of forced labour, together with his/her reasoned opinion, in order for these cases to be expeditiously investigated by the most competent

civilian or military authority concerned as appropriate. In minor cases the Liaison Officer may at the same time provide suggestions on ways in which the case could be settled directly among those concerned.

5. The Liaison Officer shall at all times during and after the treatment of the case have free and confidential access to the complainant(s), their representative(s) and any other relevant person(s) to verify that no retaliatory action has been taken. The Liaison Officer shall be informed by the authorities of any action taken against the perpetrator(s) with its motivation. In the event that penal action is taken he/she will have full freedom to attend any relevant court sittings personally or through a representative, in accordance with law.

6. The Liaison Officer will report through the ILO Director-General to the Governing Body at each of its sessions on the number and type of complaints received and treated under the above provisions as well as their outcome. He/she will provide at the end of the trial period his/her evaluation as to whether the scheme has been able to fulfill its objective, any obstacle experienced, and what possible improvements or other consequences could be drawn from the experience, including its termination. These interim and final reports will be communicated in advance to the authorities for any comments they would like to make.

II. Guarantees and facilities to be accorded to the Office in the discharge of the above responsibilities

7. The facilities and support extended to the Liaison Officer under the March 2002 Understanding and the present Understanding shall include timely freedom to travel for the purpose of establishing the contacts referred to in paragraph 3. While the designated representative of the Working Group may accompany the Liaison Officer, assist him/her at his/her request or otherwise be present in the area he/she is visiting in particular for security reasons, this presence should in no way hinder the performance of his/her functions, nor should the authorities seek to identify or approach the persons he/she has met until such time as he/she has completed his/her task under paragraph 3.

8. The two sides recognize that appropriate steps are to be taken to enable the Liaison Officer or his/her successor to effectively discharge the additional work and responsibilities arising out of this Understanding. The necessary adjustments will be made to the staff capacity available to him/her in a reasonable time, to meet the workload after due consultation.

9. Complaints submitted under the present Understanding shall not be a ground for any form of judicial or retaliatory action against complainant(s), their representative(s) or any other relevant person(s) involved in a complaint, at any time either during the implementation of the arrangements in the present Understanding or after its expiration, whether or not the complaint is upheld.

KT
15/2/07

15/2/07

III. Time frame and trial period

10. The arrangements in the present Understanding shall be implemented on a trial basis over a period of 12 months that may be extended by mutual agreement.

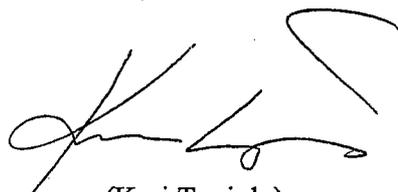
11. It will then, subject to any modification that may appear appropriate and acceptable to both parties, either be consolidated or terminated in the light of the evaluation referred to in part I.

12. During the trial period, in the event that either party fails demonstrably to fulfill its obligations under the March 2002 Understanding or the present Understanding, the other party may terminate the mechanism by giving one month's notice in writing.

IV. Miscellaneous

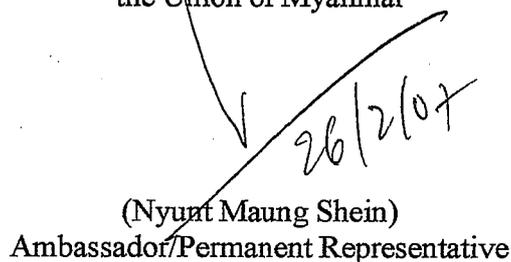
13. The Government of the Union of Myanmar and the International Labour Organization shall give adequate publicity to the present Understanding in the appropriate languages.

For the International Labour Organization



(Kari Tapiola)
Executive Director

For the Government of
the Union of Myanmar



(Nyunt Maung Shein)
Ambassador/Permanent Representative

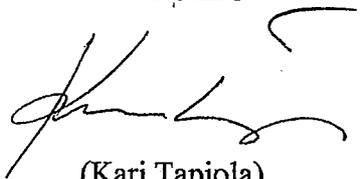
Minutes of the Meeting

The text, attached hereto, reflects the agreement between the Government of the Union of Myanmar and the International Labour Organization on a Supplementary Understanding relating to the role of the Liaison Officer with respect to forced labour complaints channelled through him/her, which supplements the "Understanding between the Government of the Union of Myanmar and the International Labour Office concerning the Appointment of an ILO Liaison Officer in Myanmar" (Geneva, 19 March 2002).

It is understood that:

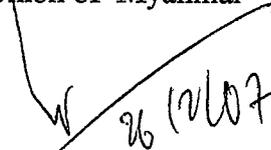
1. In connection with operative paragraph 1, last sentence, the Understanding cannot effect constitutional obligations under ratified Conventions, including reporting obligations under article 22 of the Constitution, and thus cannot prejudge the responsibilities that the competent supervisory bodies (Committee of Experts and the Committee on the Application of Conventions and Recommendations of the ILC) are called upon to discharge in that connection;
2. In connection with operative paragraph 4, the ILO agrees that in line with the whole purpose of the mechanism, and the specific concern reflected in this paragraph with respect to the subsequent investigation of the complaint by the Myanmar side, the assessment of the Liaison Officer should be carried out expeditiously;
3. The original of this Understanding has been written and signed in English. If this Understanding is translated into a language other than English, the English version shall govern and prevail;
4. This Understanding shall enter into force upon its signature by the authorized representatives of the parties.

For the ILO



(Kari Tapiola)
Executive Director
Standards and Fundamental Principles
and Rights at Work
International Labour Office
Geneva

For the Union of Myanmar



(Nyunt Maung Shein)
Ambassador
Permanent Representative
Permanent Mission of
the Union of Myanmar
to the United Nations and other
International Organizations
in Geneva

Geneva, 26 February 2007

KT
26/2/07

26/2/07



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*****Other activities following the 2006 Conference decision**

1. In the conclusions adopted at its 297th Session (November 2006), the Governing Body inter alia requested that “the other options contained in the Conference conclusions should also be appropriately followed up by the Office”. These options were set out in the Conclusions of the Selection Committee, as adopted by the International Labour Conference in June 2006.¹ The present document contains a brief update on other developments in this regard than those covered by documents GB.298/5/1 and GB.298/5/2.
2. As regards the “appropriate and effective use of public diplomacy”, the Office has participated in a number of conferences and other events concerning the situation in Myanmar. These include a meeting July 2006 in Turin organized by CISL; two meetings on housing, land and property rights in August and November 2006 in Chiang Mai; the Wilton Park meeting on Myanmar in November 2006 in the United Kingdom; a side event at the ITUC-founding Congress in November 2006 in Vienna; a meeting on IDPs in December 2006 in Bangkok; and a meeting on human rights and health in border regions in January 2007 in Bangkok. The Office will also participate in an ITUC solidarity conference in April 2007 in Kathmandu.
3. The Liaison Officer has been in regular touch in Yangon and in Bangkok with diplomatic missions, the United Nations system, and non-governmental organizations to brief them on the situation. The Liaison Officer and headquarters representatives in Geneva have attended several regional meetings of governments, both at the time of the Governing Body session in November 2006 and on other occasions, to update them on developments. Regular discussions have taken place with interested government representatives in Geneva. There has been considerable media interest in the situation, and all efforts have been made to brief the media and respond to questions. As reported in

¹ See ILC, 95th Session (Geneva, 2006), *Provisional Record* No. 3-2 (and Corr.).

document GB.298/5/1, the Liaison Officer has also established a web site, in order to increase awareness of the ILO's work on forced labour in Myanmar (<http://www.ilo.org/public/English/region/asro/yangon/>).

4. As regards the application of the measures under article 33 of the ILO Constitution, the Office has previously provided to the Governing Body an update on responses that it had received to the Director-General's letter of 21 April 2005.² The Office has continued to receive information from member States, which it will make available for the discussion in the Committee on the Application of Standards of the International Labour Conference in June 2007.
5. As regards engagement with other international organizations, the Office has maintained close contacts with relevant organizations, in particular the Office of the United Nations High Commissioner for Human Rights and the United Nations Department of Political Affairs, as well as the United Nations Humanitarian and Resident Coordinator for Myanmar, and kept them closely briefed on developments. Information has also been exchanged with the UN Special Rapporteur on Myanmar. Developments in ECOSOC were already reported to the Governing Body in November 2006. The relevant documentation was made available to the July 2006 session of the ECOSOC, where a discussion took place.

Geneva, 15 March 2007.

² See documents GB.294/6/1 and GB.294/6/1(Add.).



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

**The functioning of the complaint
mechanism established under the
“Supplementary Understanding”**

1. As reported in GB.298/5/1, a Supplementary Understanding was signed between the ILO and the Government of Myanmar on 26 February 2007. The mechanism that it established to deal with complaints of forced labour came into force immediately. This document will provide a brief update to the Governing Body on the initial functioning of the mechanism (it being recalled, however, that the complaints themselves are dealt with on a confidential basis).
2. At the time this document was finalized, a little less than four weeks after the establishment of the mechanism, the Liaison Officer a.i. had received a total of four complaints. He has rejected one of these complaints on the grounds that it was unrelated to forced labour. After carrying out preliminary assessments of two of the remaining cases, he was of the view that they involved a situation of forced labour, and accordingly transmitted them to the authorities (that is, the Working Group established for this purpose) for investigation and appropriate action. As regards the fourth case, the Liaison Officer a.i. is awaiting further information that would enable him to make a preliminary assessment.
3. In the first of the two cases that were transmitted to the Working Group, an investigation team headed by the Director-General of the Department of Labour has visited the area and completed its investigation. The Working Group has informed the Liaison Officer a.i. that the investigation confirmed that forced labour had been imposed as alleged by the complainant, that prosecutions against three persons responsible for this under section 374 of the Penal Code have been initiated in the township court, and that administrative action has been taken against some other responsible officials. The Liaison Officer a.i. understands that the imposition of forced labour in the village concerned has now ceased. The Liaison Officer a.i. will remain in close contact with the authorities and with the complainant to follow the progress of this case.

4. The second case transmitted to the Working Group concerned the recruitment of a minor into the armed forces. As provided for in the Supplementary Understanding, this complaint was transmitted by the Working Group to the “most competent authority” (in this case, the Office of the Adjutant General) for investigation and necessary action. The Liaison Officer a.i. has been informed by the Working Group that the person in question has been withdrawn from military training, that he has been returned to the care of his family, and that the Office of the Adjutant General will take action against those responsible. The Liaison Officer a.i. has also been informed by the family of the safe return of their son.
5. The Liaison Officer a.i. has had an opportunity to travel within Myanmar following the agreement on the Supplementary Understanding. He visited Mandalay from 22 to 23 March, a trip that was conducted independently of the authorities.¹
6. To date, no major issues have arisen, and the general view of the Liaison Officer a.i. is that the implementation of the mechanism is proceeding smoothly.

Geneva, 26 March 2007.

¹ In line with previous practice and, as provided for in the Supplementary Understanding, he informed the authorities of his plans a few days prior to his departure.

**FOR DECISION**

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)**Preparations for the Governing Body to request an advisory opinion of the International Court of Justice**

1. The present document traces its origins to conclusions reached earlier by the International Labour Conference and the Governing Body. At its 95th Session (June 2006), the International Labour Conference adopted the report of the Selection Committee, which had concluded that “the ILO has the possibility to seek an advisory opinion from the International Court of Justice which would ... require the formulation of a specific legal question relating to the Forced Labour Convention, 1930 (No. 29)”.¹ At its November 2006 session, the Governing Body examined elements that could be brought before the Court for this purpose.²
2. After examining a document prepared by the Office, which set out such elements and other relevant considerations in relation to developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), the Governing Body, at its 297th Session (November 2006), concluded in part:

Following the Conference conclusions in June 2006, a specific item would be placed on the agenda of the March 2007 session of the Governing Body, to enable it to move on legal options, including, as appropriate, involving the International Court of Justice. The Office should therefore make necessary preparations for the Governing Body to request an advisory

¹ Second Report of the Selection Committee on the additional agenda item: Review of further action that could be taken by the ILO in accordance with its Constitution in order to: (i) effectively secure Myanmar’s compliance with the recommendations of the Commission of Inquiry; and (ii) ensure that no action is taken against complainants or their representatives, International Labour Conference, 95th Session (31 May–15 June 2006), *Provisional Record* No. 3-2, June 2006, p. 11, adopted by the Conference at its sitting of 16 June 2006.

² See GB.297/8/2 (Nov. 2006), paras 3–13.

opinion of the International Court of Justice on specific legal question(s), without prejudice to the possibility that a member State could take action on its own initiative.³

3. To respond to the request of the Conference and the Governing Body, the Office has prepared a possible “exact statement of the question upon which an opinion is required”⁴ as set out in the appendix. It focuses on the legal issue concerning the obligations of Myanmar relating to Convention No. 29 which arose after the Commission of Inquiry made its recommendations, i.e. the claim by the Myanmar authorities of their right to prosecute individuals who lodge allegedly false complaints of forced labour. As the Governing Body may recall, this claim and the actual action taken by the authorities was the reason why the Liaison Officer had to be instructed not to entertain further complaints. In light of the signature on 26 February 2007 of a Supplementary Understanding between the International Labour Office and the Government of Myanmar (see GB.298/5/1), there would seem to be no reason to submit a request for an advisory opinion on this question at the moment. Thus the Governing Body may wish to keep suspended a referral of this question to the International Court of Justice.
4. At a later date, taking into account the implementation of the Supplementary Understanding, the Governing Body would be able to consider whether or not it would be necessary to submit a relevant question concerning the interpretation of Convention No. 29 to the Court. Such a question could be submitted, together with all relevant documentation, to the Court pursuant to article 65 of its Statute, Article IX of the Agreement between the United Nations and the International Labour Organization, and article 37(1) of the ILO Constitution.
5. However, apart from a question relating to the interpretation of the Convention, there are other questions that the Governing Body may wish to consider in the event that an advisory opinion is sought from the International Court of Justice. The first would concern the interpretation of the ILO Constitution. To the extent that the Governing Body decides to refer *any* question of interpretation to the International Court of Justice, it would be logical to submit the complementary question as to whether such interpretation sought in the form of an advisory opinion could or should be recognized as binding for all Members under article 37(1) of the Constitution. This question, which has for some time posed a theoretical issue, would immediately become of great practical significance should the Governing Body decide to submit a request for an advisory opinion to the Court.
6. The second question, to which reference was made during previous discussions, could relate to the more general obligations that Members may have under the Constitution and other relevant rules of international law.⁵ For example, should the Governing Body, in the light of the experience of the implementation of the Supplementary Understanding, come to the conclusion that the required cooperation and actual progress in implementation of the recommendations of the Commission of Inquiry do not meet the relevant threshold, it

³ GB.297/PV (Nov. 2006).

⁴ Article 65 of the Statute of the International Court of Justice provides:

“1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.”

⁵ See Vienna Convention on the Law of Treaties, 1961, especially Article 31.

may become necessary to examine whether and in what terms such a question would be formulated.

7. *The Governing Body, acting under the authorization of the International Labour Conference, is therefore invited to:*

- (a) examine the statement of the question, as set out in the appendix, upon which an advisory opinion of the International Court of Justice is required, bearing in mind that the Governing Body may wish to defer submission of the request and to modify it at a later session in light of further developments; and***
- (b) request the Director-General to bring further developments which are relevant to this issue to the attention of the Governing Body.***

Geneva, 7 March 2007.

Point for decision: Paragraph 7.

Appendix

*Question to be submitted, at a time determined by the Governing Body, to the International Court of Justice on behalf of the International Labour Organization with a request for an advisory opinion*⁶

Taking into account the relevant information,⁷ and in the context of the object and purpose of the ILO Constitution⁸ and of the Forced Labour Convention, 1930 (No. 29),⁹ and the undertakings by Myanmar to give effect to their provisions in good faith:

- (1) Do the requirements of the Forced Labour Convention, 1930 (No. 29), imply that complaints of forced or compulsory labour can be made: (i) without any sort of intimidation of persons who complain or seek to make such complaints, and (ii) in conditions such that complainants may have sufficient confidence that their complaints will be objectively examined by the national authorities with a view to the prosecution of, and the imposition of adequate and strictly enforced penalties on, those who exact forced or compulsory labour?
- (2) If the answer to either part of the first question is in the affirmative, and taking into account the national legal regime governing the prosecutorial and judicial system for handling complaints of forced or compulsory labour, is the public assertion by the Government of a right to prosecute persons for making false allegations of forced or compulsory labour compatible with the requirements of the Forced Labour Convention, 1930 (No. 29)?

⁶ As noted in paragraph 5 of this document, an additional question or questions could be posed by the Governing Body for submission of a request for an advisory opinion, should it deem this appropriate in the light of further developments.

⁷ In particular:

- (a) Articles 92 and 93(1) of the United Nations Charter, and articles 36, 38, 41, 63 and 65 of the Statute of the International Court of Justice;
- (b) Article IX, paras 2–3, of the Agreement between the United Nations and the International Labour Organization;
- (c) the findings and recommendations of the Commission of Inquiry established to examine the observance by Myanmar of its obligations in respect of the Forced Labour Convention, 1930 (No. 29), the observations of the Committee of Experts on the Application of Conventions and Recommendations, the reports of the Committee on the Application of Standards of the International Labour Conference and other relevant conclusions, resolutions and reports adopted by the International Labour Conference;
- (d) other relevant UN Declarations, including the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UN resolutions and other relevant UN documents; and
- (e) the relevant circumstances noted by the Governing Body at the time it decides to request an advisory opinion of the International Court of Justice.

⁸ In particular, articles 1, 22, 29–33, and 37(1) of the ILO Constitution, and the Declaration of Philadelphia annexed thereto.

⁹ In particular, its articles 1 and 25.

Conclusions on item GB.298/5: Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)

The Governing Body considered all the information before it, including the comments and information provided by the Permanent Representative of Myanmar. It welcomed the signing of the Supplementary Understanding between the ILO and the Government of Myanmar establishing a mechanism to enable victims of forced labour to seek redress. It also welcomed as part of a progressive building of confidence the fact that the implementation of the mechanism had begun, and that action had been taken by the authorities in those cases that involved forced labour.

The Governing Body underlined the importance of the mechanism continuing to function effectively in the context of a very serious forced labour situation. In this regard, as foreseen in the Supplementary Understanding, it was vital that the Liaison Officer had the necessary staff resources to adequately discharge the responsibilities. The Governing Body requested the Office to move quickly to assign suitable international staff to assist the Liaison Officer, and requested the Government of Myanmar to extend the necessary cooperation and facilities.

The Governing Body decided to defer the question of an advisory opinion by the International Court of Justice on the understanding that the necessary question or questions would continue to be studied and prepared by the Office, in consultation with the constituents and using the necessary legal expertise, to be available at any time that might be necessary.

