from having access to the premises of the Venezuelan International Aviation Corporation (VIASA). This State Corporation, the complainant adds, employs 2,800 persons who are members of one or other of five unions, including the OSPV.

168. OSPV states that it is made up of 222 pilots and is affiliated to the Venezuelan Federation of Professional Air Pilots' Unions and to the Spanish-American Association of Pilots. It explains the facts as follows: VIASA had programmed flights for 9, 10 and 11 July 1986, but on the 9th the captain of one aircraft noted that his second-in-command did not hold a certificate of basic training in hangar technique (there is a statutory requirement that this must be obtained afresh every 12 months); two officers responsible for the supervision of the whole air fleet cancelled the flight with the agreement of the deputy chief pilot, who sent the crew members home because their flight was called off for technical reasons. The complainant explains that the same situation arose for the following flights, which were consequently cancelled by the employer.

169. OSPV continues as follows: on 10 and 11 July the situation remained unchanged, but on the 12th, captains of aircraft learned - on the strength of a telegram sent by the Ministry of Transport and Communications to the VIASA Director of Operations on the previous day - that they were relieved of any liability because, in the Ministry's view, failure to possess the certificate in question did not constitute violation of air safety standards. According to the complainant, the telegram had not been immediately sent on to the crews; the pilots, however, obeyed their orders as soon as these were received and - although they did not share the Ministry's view - operations were resumed.

170. OSPV explains further that, during the same period, VIASA asked the Ministry of Labour to suspend the members of the Union's executive committee and, on 16 July 1986, the said Ministry ordered their suspension without giving any justification. OSPV states that in fact VIASA had asked the labour inspector, at 12 noon on 11 July, to declare that the stoppage of its normal operations was unlawful and the inspector made this declaration at 3 p.m. on the same day. OSPV points out that it appealed against the two decisions on 17 July but the Ministry gave negative decisions. On 18 July 1986, OSPV informed the Ministry of Labour in writing that it was the Corporation VIASA which had cancelled the flights programmed for the following days. The complainant accordingly considers that the members of its executive committee were wrongfully suspended. It points out that the suspension affected their contractual and their union rights: they could not perform their professional functions as pilots or their union functions as laid down in the Union's regulations and in the collective agreement; discussions on renewal of the agreement were held up; the individuals concerned were obliged to hand over their employment cards and badges; they lost professional and technical skill by being prevented from flying and also incurred loss of earnings, etc.

B. The Government's reply

171. In its replies dated 24 April and 6 May 1986, the Government first stresses the importance attached in Venezuelan legislation to the protection of trade union rights. It adds that the question of the suspension of several union officers of the VIASA Corporation was before the courts at the time of writing and that VIASA had also appealed to a higher judicial instance.

172. Going into greater detail, the Government explains that the procedure laid down in the Labour Code and regulations issued thereunder had been applied: VIASA had requested that the above-mentioned events be considered as constituting grounds for dismissal and the members of the Union's executive committee were therefore summoned in accordance with administrative procedure so as to be heard and to state their defence. They had been enabled to do this in the presence of the competent labour inspector, who had made the impugned decision. In accordance with law, the said decision put an end to the administrative procedure - in other words, the Ministry of Labour had nothing more to do with the matter, despite what the complainant might say on the point.

173. The Government states that the persons concerned were, on the other hand, able to appeal for annulment of the administrative decision made by the labour inspectorate by applying to the first instance of the Administrative Disputes Authority; they had done this and in a first decision dated 29 January 1987, the said Authority ruled in favour of the Ministry of Labour.

174. In a later communication dated 23 October 1987, the Government adds that the Administrative Disputes Authority subsequently took an interlocutory decision to terminate the dismissal proceedings and to order reinstatement of the persons affected thereby. It also states that, although the Disputes Authority had not given a final ruling on the matter, the VIASA Corporation decided to accept the interlocutory order and to reinstate the members of the OSPV executive committee; the committee members had accordingly been able to resume their work and exercise their trade union rights to the full. The Government points out that relations between the Corporation and the Union are now normal and that collective bargaining - particularly in respect of improvements in aircraft pilots' salaries and new clauses on protection of freedom of association - is currently under way. The Government hopes the negotiations will bear fruit in the near future. In its communication of 11 February 1988, the Government supplies the text of the ruling handed down by the Disputes Authority which orders the definitive reinstatement of the dismissed trade union leaders.

C. The Committee's conclusions

175. This case relates to an alleged act of anti-union discrimination against the members of the executive committee of a pilots' union (OSVP) as part of a labour dispute within the Venezuelan International Aviation Corporation. In the view of the complainant, the suspension of the said committee members was unlawful because the cessation of activity by the aircraft pilots, which was at the root of the dispute, was due to technical reasons and had in fact, been ordered by the employer Corporation itself. In the Government's view, on the other hand, the action taken by the labour inspector was justified by an unlawful stoppage for which the aircraft pilots were to blame.

176. The Committee recalls also that, as it has pointed out in previous cases, the dismissal or suspension of an employee, depriving him of his status as a trade union officer, is liable to affect the union's freedom of action and the worker's right to choose their representatives freely and may even encourage interference on the employer's part [See 147th Report, Case No. 677 (Sudan), para. 222.].

177. In the present case, the Committee notes that, according to the Government, the labour dispute at the root of the matter, which induced the VIASA Corporation to suspend the members of the OSPV's executive committee, is now in the course of being settled. It notes further that, as the result of a judicial decision, the trade union officers affected by anti-union discrimination have been reinstated in their jobs.

178. Accordingly, given the information now at its disposal, the Committee considers that there is no point in continuing examination of this case.

The Committee's recommendations

179. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee recalls the importance it attaches to the principle that a worker or a trade union officer should not suffer prejudice by reason of his legitimate exercise of trade union activities.

(b) The Committee notes that the suspended trade union officers have been reinstated in their jobs and considers that there is no point in continuing the examination of this case.

Case No. 1393

COMPLAINT AGAINST THE GOVERNMENT OF THE DOMINICAN REPUBLIC PRESENTED BY THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS

180. The complaint is contained in a communication from the International Confederation of Free Trade Unions (ICFTU) dated 25 February 1987. The ICFTU sent additional information in a letter dated 9 March 1987. The Government replied by letter of 3 December 1987.

181. The Dominican Republic has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

182. In its letters of 25 February and 9 March 1987 the International Confederation of Free Trade Unions (ICFTU) alleges that on 11 February 1987 groups of armed persons linked with the Government attacked the headquarters of the Sacks and Ropes Factory Union during a meeting being held by the Union to elect new officers; it also alleges that the Union's leaders were dismissed from their employment and threatened with death.

183. The ICFTU adds that on 2 March 1987, while collective bargaining was in process, police forces violently displaced striking workers who belonged to the Union of Employees of the "Santo Domingo South" Hotel; that 270 workers were arbitrarily dismissed as well as the General Secretary and the Organising Secretary of the Union; and that a member of the Committee of the "Hotel Hispaniola" Employees' Union was also dismissed, merely because he had expressed his solidarity with the strikers.

B. The Government's reply

184. In its letter of 3 December 1987, the Government states that the Office of the Secretary of State for Labour had mediated in the dispute which had arisen in the Sacks and Rope Factory and that the undertaking - which had not been able to make the payments due from it because of the economic situation - reinstated the dismissed workers in accordance with the suggestion made by the Office of the Secretary of State.

185. As regards the collective dispute in the "Santo Domingo South" and "Hispaniola" Hotels, the Government appends a letter from the unions of employees of the two hotels, addressed to the Secretary of State for Labour and thanking the authorities for the mediation which had led to full settlement of the dispute (reinstatement of the dismissed employees except for two who had been fired for unsatisfactory performance of their work and who had in any case the right to appeal to the courts). In the same letter the unions stressed their satisfaction with the compromise agreement reached with the two hotels.

C. The Committee's conclusions

186. The Committee observes that the present case relates principally to the dismissal of workers and trade union officers in connection with collective disputes. It notes with interest that, following mediation by the Office of the Secretary of State for Labour, reinstatement of the dismissed workers was secured and the various disputes accordingly settled. However, the Committee wishes to emphasise that on previous occasions, when considering complaints of anti-union discrimination in the Dominican Republic, it has pointed out to the Government that legislation permitting an employer to dismiss a worker on condition that he pays the statutory compensation laid down for cases of unjustified dismissal, when the real reason for the dismissal is the worker's trade union membership or his trade union activity does not provide sufficient protection against acts of anti-union discrimination within the meaning of Convention No. 98. The Committee would again recall this principle, and draws this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

187. Lastly, the Committee observes that the Government has not replied specifically to the allegations regarding the violent disruption of the meeting of the Sacks and Ropes Factory Union and the similar action taken against the striking members of the union of employees of the "San Domingo South" Hotel. As the disputes in question have been settled, the Committee would merely refer to the principle laid down in Article 3 of Convention No. 87, according to which the public authorities must refrain from any interference which would restrict the right of workers' organisations to organise their activities or impede the lawful exercise of that right.

The Committee's recommendations

188. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) Since the existing legislation does not provide sufficient protection against dismissals based on trade union membership or activity, the Committee requests the Government to take measures so as to ensure that the legislation guarantees such protection. It draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this aspect of the case.

(b) The Committee draws the Government's attention to the principle contained in Article 3 of Convention No. 87, according to which the public authorities should refrain from any interference which would restrict the right of workers' organisations to organise their activities.

Case No. 1400

COMPLAINT AGAINST THE GOVERNMENT OF ECUADOR PRESENTED BY THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU)

189. The Committee on Freedom of Association examined this case at its November 1987 meeting and presented an interim report to the Governing Body [see 253rd Report, paragraphs 343 to 356], which was approved at its 238th Session (November 1987).

190. The Government sent additional information on the outstanding allegations in a communication dated 17 December 1987.

191. Ecuador has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

192. After the last examination of the case one allegation remained outstanding: the arrest of Julio Chang, Secretary-General of the Ecuadorian Confederation of Free Trade Union Organisations (CEOSL), and other trade unionists, on the grounds of having called, together with other trade union confederations, a nation-wide strike on 25 March 1987 in protest against the excessive increase in fuel prices and transport costs.

193. At its November 1987 meeting, the Governing Body approved the following recommendation:

The Committee requests the Government to provide it with specific information on the alleged arrest of Julio Chang and other trade unionists on 25 March 1987 and on the actual grounds for these arrests and to state whether legal proceedings have been instigated against them.

B. The Government's reply

194. In its communication dated 17 December 1987, the Government sends additional comments on this case, in which it informs the Committee of the arrest of trade union officer Julio Chang and other trade unionists, who were sentenced to two days' imprisonment and who were released as soon as they had served the sentence handed down by the trial judge.

195. The Government encloses with its communication a copy of the judgement containing the verdict of guilty dated 25 March 1987, which states that, according to publications in the various mass media during the period 23 to 25 March, Julio Chang Crespo, César Augusto Valverde Flores, César Nevil Quintero Aguirre, Armilo Quiñónez Sánchez, Efraín Robelly Cruz and Jorge Machare Sánchez publicly declared that the Government of the Republic presided over by Engineer León Febres-Cordero is an enemy of the workers and that the natural disaster which occurred in the north-east of the country was used as a pretext to enact economic measures directed against the people. The judgement states further that, considering that these assertions were rejected by editorials in the daily newspapers Hoy, Extra and Universo, and in view of the facts outlined above, it deems that the aforementioned persons "disseminated false information and rumours concerning the order currently prevailing in Ecuadorian society".

196. The judgement which the Government encloses with its communication states further that "to declare that the President of the Republic has used the natural disaster as a pretext offends the national honour, all the more so since as a result of the natural disaster, which has inflicted damage on certain sectors of the population, they have received international assistance and attention". In view of these factors, the judgement sentenced Julio Chang Crespo, César Augusto Valverde Flores, César Nevil Quintero Aguirre, Armilo Quiñónez Sánchez, Efraín Robelly Cruz and Jorge Machare Sánchez to two days' imprisonment in accordance with section 606(13) of the Penal Code, to be served in the Social Rehabilitation Centre.

C. The Committee's conclusions

197. The Committee notes the detailed information provided by the Government concerning this case, in particular that Julio Chang Crespo, the trade union officer who is the subject of this complaint, and other trade unionists have been released after serving a sentence of two days' imprisonment handed down by the trial judge for disseminating false information and rumours concerning the order currently prevailing in Ecuadorian society and for offending national honour. The sentence accords with the provisions of section 606(13) of the Ecuadorian Penal Code.

198. The Committee would nevertheless recall the principle that the full exercise of trade union rights calls for a free flow of information, opinions and ideas and to this end workers, employers and their organisations should enjoy freedom of opinion and expression at their meetings, in their publications and in the course of other trade union activities. However, the Committee recalls in general terms that in expressing their opinions trade union organisations should respect the limits of propriety and refrain from the use of insulting language. [See 217th Report, Case No. 963 (Grenada), para. 538 and 244th Report, Case No. 1309 (Chile), para. 336(f).]

The Committee's recommendation

199. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:

> The Committee notes that Julio Chang Crespo and the other trade unionists who are the subject of this complaint have been released after being sentenced to two days' imprisonment. The Committee further considers that the matter does not call for further examination.

Case No. 1418

COMPLAINT AGAINST THE GOVERNMENT OF DENMARK PRESENTED BY THE DANISH SEAMEN'S UNION

200. By a communication dated 10 July 1987, the Danish Seamen's Union presented a complaint of violations of collective bargaining rights against the Government of Denmark. The Government communicated its reply in a letter dated 2 November 1987.

201. Denmark has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

202. In its communication of 10 July 1987, the Danish Seamen's Union alleges that the Public Conciliator, through his Draft Settlement dated 11 February 1987 (of which a copy is supplied) intervened to impose on and renew the collective agreements between organisations and individual undertakings grouped together under the Danish Employers' Confederation on the one hand, and the Seamen's Union on the other hand, contrary to Conventions Nos. 87 and 98.

203. The complainant union explains that the Public Conciliator is the head of the three-person Conciliation Board, a government institution, and is appointed by the Minister of Labour along with the two other conciliators, for the country as a whole, for three years at a time in pursuance of the Conciliation in Industrial Disputes Act of 1934, as amended. He has the discretion, under section 12 of this Act, to join together "as an entity" various draft agreements or settlements. This "entity" would then be put to the combined union membership of the various trades involved and the employers for a vote as to its acceptance.

204. The complainant (which is not affiliated to the Danish Federation of Trade Unions, LO) explains that it commenced negotiations with its bargaining counterpart, the Danish Shipowners' Association (which is affiliated to the Danish Employers' Confederation), in January 1987 for the collective agreement that was due to expire on 1 March 1987. At the same time, for the metal sector, after negotiations, minutes of the conclusion of their collective bargaining were signed (on 15 and 16 January 1987) by the Employers' Association of the Metalworking Trades (affiliated to the Danish Employers' Confederation) and the Danish Metalworkers' Union (affiliated to the LO). From the minutes it appears that no further claims were outstanding for the metal sector, and the Metalworkers' Union recommended that its members return an affirmative vote. Likewise, between 16 January and 11 February 1987, similar minutes were signed for the private labour market sector by the Danish Employers' Federation and the LO.

205. The complainant states that in early February 1987 it was summoned by the Public Conciliator under section 3(2) of the Conciliation in Industrial Disputes Act to participate in negotiations concerning the union's agreement with the Shipowners' Association. On 11 February the Public Conciliator, in pursuance of section 4(3) of that Act, presented a Draft Settlement containing the minutes of 15 and 16 January concerning the metal sector and similar minutes signed between organisations under the Danish Employers' Confederation and

the LO. In spite of the Seamen's Union's objections, the Public Conciliator also determined that this 11 February Draft Settlement was to be regarded "as an entity" with the negotiated agreements reached for the rest of the private sector.

206. The complainant emphasises that this linking together into one Draft Settlement meant that the Seamen's Union had in reality no influence on the adoption or rejection of the agreement because the LO has more than 700,000 voting members, whereas the Seamen's Union musters some 5,000 seamen, of whom - for technical reasons - only 1,000 are regarded as voting members. The overall Draft Settlement was adopted by some 170,000 votes for, with some 150,000 against. Amongst the members of the Seamen's Union itself the draft was rejected by 982 votes against 6.

207. According to the Seamen's Union, it submitted the Public Conciliator's Draft Settlement to the Ombudsman of the Danish Parliament, who announced - on 19 February 1987 - that reasons of principle prevented him from voicing an opinion on the provisions of the Conciliation in Industrial Disputes Act to the extent that such provisions had been brought before the Industrial Court.

208. The Seamen's Union also brought an action against the Public Conciliator in the Industrial Court, whose judgement of 9 April 1987 held that the Public Conciliator's presentation of the Draft Settlement was consistent with the provisions of the Conciliation in Industrial Disputes Act.

209. The complainant points out that, although the Danish Metalworkers' Union and other workers' organisations have not presented a complaint about the treatment of their negotiated agreements by the Public Conciliator, in its opinion, he had no proper cause to intervene with Draft Settlements for these organisations because agreement had already been reached voluntarily between the parties.

210. Lastly, the complainant stresses that the Public Conciliator had no reason whatsoever for deciding that Draft Settlements for organisations under the Danish Employers' Confederation and the LO (where agreement had in any case already been reached) were to be regarded "as an entity" with the Draft Settlement for the Seamen's Union/Danish Shipowners' Association. It points out that at no time was it substantiated that government intervention was necessary. In addition, it considers that the Draft Settlement from the Public Conciliator, which lays down agreements of four years' duration - whereas two-year agreements are customary in Denmark - has by far exceeded the reasonable period in which renewals of agreements might otherwise be imposed on trade unions.

211. In conclusion, the complainant alleges that this government intervention in effect deprived the Seamen's Union not only of the possibility of freely negotiating the renewal of its agreement (including possible rejection of the proposal for renewal and, as a

last resort, calling and implementing a strike with a view to obtaining a better negotiation result), but also of any timely strike action. It states that the Public Conciliator intervened in the collective bargaining - by presenting an overall Draft Settlement 18 days prior to 1 March 1987, i.e. the date of notice for the agreement between the Shipowners' Association and the Seamen's Union, when no strikes or lock-outs had been called - at a time when it was quite unnecessary. In this connection, the Union points out that - notwithstanding any notice of termination - collective agreements continue to run until a strike or lock-out has been called, the earliest time for which is 14 days after such notice has been given.

B. The Government's reply

212. In its communication of 2 November 1987, the Government explains the homogeneous development of the whole organised labour market in Denmark as a result of the renegotiation cycle of collective agreements in the spring of every second year, usually as from 1 March or 1 April (depending on the sector involved). It states that one of the advantages of this system is that it is easier for undertakings to plan production and work because major differences from one occupational field to another are avoided. In order to obtain such parallel results in the labour market, the parties traditionally try to co-ordinate the renewal of collective agreements renewable at 1 March and these new agreements serve as the model for the agreements due for renewal on 1 April.

213. The Government stresses that the Public Conciliation Board was set up to assist the parties in connection with the renewal of collective agreements, and that the only function of the Public Conciliator is to contribute to the conclusion of agreements between the parties; in some cases this is ensured by a Draft Settlement proposed by him which is then subjected to a ballot among both the workers and employers concerned. According to the Government, in his activities the Public Conciliator cannot be bound by government instructions or political authorities.

214. According to the Government, the fact that virtually all collective agreements are renegotiated at the same time means that a global solution should be found in connection with the collective bargaining situation. Otherwise, there would be a risk that where agreement has been reached on the renewal of collective agreements in nearly all fields of the labour market, but where disagreement concerning renewals persists in a few minor sectors, there could be industrial disputes and notices of sympathetic action across the labour market, even in those sectors where agreement had been reached. In order to prevent such a situation, states the Government, the Conciliation Act contains the so-called "linking" clause. This means that the Public Conciliator may decide that a Draft Settlement shall relate to several collective agreements, which are then

subjected to a ballot as a whole. According to the Government, such Draft Settlements covering a number of collective agreements are quite common in Denmark, for example, the 1 March renewal concluded between organisations which are members of the LO or the Danish Employers' Confederation, the collective agreements in agriculture, and the collective agreements covering academic staff in public employment.

215. The Government states that in the spring of 1987, the employers and workers in the metal industry had, at a comparatively early stage, reached agreement concerning the basis for renewal of their collective agreement, and subsequently other parties involved in negotiations reached agreement for the renewal of their respective sectoral agreements on terms more or less the same as those agreed upon in the metal industry. One common feature of all these renewal negotiations was that the parties' agreements should form part of a Draft Settlement which the parties expected the Public Conciliator to propose in order to solve the problems in those sectors where the collective agreements were renewable as of 1 March. The purpose of this understanding was to obtain a general solution to the bargaining situation, in particular to avoid a situation where the results obtained in one sector might be considerably poorer than those obtained in another.

216. According to the Government, when the Public Conciliator put forward his Draft Settlement on 11 February 1987 he had, as understood by the parties to the Settlement, included in it those agreements which had been concluded without the assistance of the Public Conciliator. It points out that the agreements renewed with the assistance of the Public Conciliator contained terms corresponding to those obtained without the assistance of the Public Conciliator. This led to a challenge of the contents of the Draft Settlement before the Industrial Court on the ground that such a Draft Settlement should not have included the terms achieved without the assistance of the Public Conciliator. The Government states, however, that on 9 April 1987 the Industrial Court held [a copy of the judgement is supplied] that the Public Conciliator had not overstepped his powers, and emphasised that the negotiation results obtained without the assistance of the Public Conciliator "had not manifested themselves in agreements concluded", i.e. the terms written into the minutes would only lead to collective agreements if similar results were to arise from the negotiations being carried on in the rest of the labour market. If this should not happen - against the expectations - work stoppages could take place in those sectors, and the Government points out that notices of industrial disputes were in fact exchanged by the parties in these fields even after the terms in question had been voluntarily agreed upon. The Industrial Court consequently found that the Public Conciliator was entitled to include these negotiation results in his 11 February Draft Settlement in an attempt to obtain a global solution for all the sectors in question.

217. In conclusion, the Government emphasises that the rules laid down in the Conciliation in Industrial Disputes Act - including the linking provision which reflects the solidarity principle within the

trade union movement - are based on the wishes and proposals of the social partners - a tradition which dates back to the start of the century. The Act thus safeguards the interests of the social partners and not the interests of the State. The linking provision, states the Government, has become absolutely necessary for the exercise of free collective bargaining in a manner acceptable to the majority.

C. The Committee's conclusions

218. The Committee notes that the facts of this case are not in dispute: both the complainant and the Government explain that on 11 February 1987 the Public Conciliator exercised his discretion to propose a Draft Settlement to renew for four years all the agreements due to expire on 1 March 1987 in the private sector fields under the Danish Employers' Confederation and the Danish Federation of Trade Unions, which specifically include those agreements made between the Employers' Confederation and the Danish Seamen's Union.

219. Both sides likewise agree that on 9 April 1987 the Industrial Court held that the Public Conciliator had not overstepped his power by including in that Draft Settlement certain terms which had been freely negotiated by other parties.

220. What the complainant criticises is that this government intervention in the free collective bargaining that was going on for the seamen's sector was not necessary and that this imposition of an agreement reached voluntarily in the metal industry on the entire private sector is excessive, and too long.

221. The Government considers, on the other hand, that the linking of a Draft Settlement for the seamen's sector to agreements for the private sector as a whole (through the "linking" provision in section 12 of the Conciliation in Industrial Disputes Act) was necessary as part of the global approach to collective bargaining in Denmark. It cites examples to show that this linking of several sectoral agreements in one settlement is not unusual. The Government also points out that such coverage usually works to the advantage of all the workers' organisations involved by raising poor bargaining results to a higher level. In fact, the Government emphasises that, in the present case, the other private sector unions not only expected, but expressly included in the minutes summarising their negotiations (in particular in the metal sector) that their results be incorporated into the Draft Settlement which the Public Conciliator was expected to present, on threat of industrial action.

222. The Committee observes that this is the second occasion in recent years that it has been called on to examine the Danish Government's intervention in the private sector collective bargaining process. Although the legislation at issue in the earlier case [see 243rd Report, Case No. 1338, paras. 209 to 247, approved by the

Governing Body in March 1986, followed up in the 1987 Observation on Denmark's observance of Convention No. 98 made by the Committee of Experts on the Application of Conventions and Recommendations] is not that called into question here, the Committee notes that it is bound to refer the Government to the same fundamental principles, namely that a basic aspect of freedom of association is the right of workers' organisations to negotiate wages and conditions of employment freely with employers and their organisations, and that any restriction on the free fixing of wage rates should be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period; such restrictions should be accompanied by adequate safeguards to protect the living standards of the workers.

223. The Committee must therefore decide whether the Government's intervention of 11 February 1987 was justified in the light of these four criteria. First, the Committee observes that the method used was not, on the facts, exceptional. The Public Conciliator's de officio discretion under the Conciliation in Industrial Disputes Act to summon the parties already engaged in bargaining to negotiations and his discretion to link various sectoral agreements in one Draft Settlement document have existed for many years and have, according to the Government, been used often. The relevant provisions of the Act in question read as follows:

Section 3

(1) When there is reason to fear a stoppage of work or one has already occurred, and when the conciliator concerned with the matter attaches social importance to the effects and scale of the dispute, he may, if the negotiations between the parties have been carried out under the provisions agreed between them and have been declared by one of the sides as concluded without result, either on his own initiative or at the request of one of the parties, call on the disputing parties to negotiate. The conciliator may also on his own initiative or at the request of one of the parties at an earlier stage provide his assistance for the establishment of fresh agreements, even though the negotiations conducted by the parties have not been declared concluded without result. [...]

(2) The parties shall be bound to comply with a summons from the conciliator. [...]

Section 12

(1) The conciliator is empowered to decide in Draft Settlements providing for a general solution of a conflict submitted by him that these Draft Settlements shall be considered in part or in full as an entity, regardless of how the trades involved in the conflict are organised (as independent local unions, national unions or employer organisations, or grouped as members of an amalgamation of local unions, national unions or employer organisations). In any such linking of Draft

Settlements covering several trades, however, organisations consisting of supervisors, etc., shall not be included. [...]

(3) In the event that the Conciliator shall have decided that several Draft Settlements shall be regarded as an entity, the decision whether the Draft Settlements so linked have been adopted or rejected by the relevant organisations shall be made by comparing the results of the various trades included.

224. Secondly, the Committee notes that the proposal of the Draft Settlement on 11 February was presented when, as the complainant points out, the time-limits for the calling of industrial action had not been reached. The Committee particularly notes in this connection that neither the Government nor the complainant supply information as to whether the seamen's bargaining was blocked or having difficulties. The Public Conciliator's imposition of the Draft Settlement at that time on the sector concerned was, therefore, in the Committee's opinion, premature.

225. Thirdly, the Committee observes that the legislation does contain certain protective clauses, since a linked Draft Settlement must be put to a vote of the parties concerned. However, The Committee would stress in this connection that the Seamen's Union itself voted overwhelmingly against (982 votes against, 6 for) the Draft Settlement. The Committee would therefore recall, as it has in previous cases, that the extension of an agreement to an entire sector of activity contrary to the views of the organisation representing most of the workers in a category covered by the extended agreement is liable to limit the right of free collective bargaining of that majority organisation and that this system makes it possible to extend agreements containing provisions which might result in a worsening of conditions of work of the category of workers concerned. [See, inter alia, 217th Report, Case No. 1087 (Portugal), para. 223, and 250th Report, Case No. 1364 (France), para. 136.]

226. Lastly, the Committee observes that no justification has been put forward by the Government to explain why the Draft Settlement of 11 February 1987 renewed the terms and conditions of employment for the private sector as a whole for four years, when the usual period covered by collective agreements was two years. In the Committee's opinion, the imposition of such a long time before negotiations can recommence exceeds the reasonable period referred to in the above-mentioned principle on collective bargaining. This aspect of the present case particularly disturbs the Committee since it notes that the other recent case concerning Denmark (referred to earlier) criticised a March 1985 Danish Act on the renewal and extension of collective agreements which rendered impossible collective bargaining for a two-year period. The Committee recognises, however, that the Draft Settlement covering four years was approved by the majority in the private sector by 170,000 votes for, with 150,000 votes against.

The Committee's recommendations

227. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee considers that the de officio intervention by the Public Conciliator to impose a Draft Settlement on the entire private sector, when one category in that sector was proceeding with bargaining towards its own agreement, infringed the principle of free collective bargaining with a view to the regulation of terms and conditions of employment by means of collective agreements, contained in Article 4 of Convention No. 98.

(b) The Committee considers that this renewal of collective agreement for a four-year period not only goes beyond a reasonable period, but also runs counter to the traditions of collective bargaining in Denmark which have usually led to two-yearly agreements.

(c) The Committee draws this case to the attention of the Committee of Experts on the Application of Conventions and Recommendations in the context of Convention No. 98, ratified by Denmark.

Case No. 1427

COMPLAINT AGAINST THE GOVERNMENT OF BRAZIL PRESENTED BY THE WORLD CONFEDERATION OF ORGANISATIONS OF THE TEACHING PROFESSION

228. The complaint is contained in a communication of the World Confederation of Organisations of the Teaching Profession (WCOTP) dated 15 October 1987. The WCOTP sent further information in a communication dated 3 November 1987. The Government sent its observations in a communication dated 25 January 1988.

229. Brazil has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but it has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

230. The WCOTP alleges in its communication of 15 October 1987 that 50 lecturers have been dismissed from the University of Santa

Ursula in Rio de Janeiro. While some of these lecturers were allegedly dismissed for administrative reasons, in other cases the dismissals were quite obviously on political (trade union) grounds, since they concerned lecturers who were organising a strike. One of the persons dismissed was the first Vice-President of the National Association of Higher Education Teachers (ANDES), Professor Sydney Solis, head of the local branch of ANDES at the University. He was subsequently reinstated by decision of a local court which ruled that his dismissal was an infringement of the trade union legislation.

231. In its communication of 3 November 1987, the WCOTP cites the following lecturers as having been dismissed on political grounds: Francisco Caminha, Teresa Martins, Ernesto Paganelli, Gil Goes, Fabio Lemos, Jandira Barreto, Ari Barreto, Mario Rocha and Luis Edmundo (reinstated by order of a local court).

B. The Government's reply

232. The Government states in its communication of 25 January 1988 that, at the request of the trade union operating in the University of Santa Ursula, a round table was held on 6 June 1987 at which the trade union protested against the non-payment of certain wage benefits provided for in the collective agreement applying to the University. This was confirmed by the University itself, which stated that its financial situation was such that it was quite incapable of meeting the said payments but undertook to look into the demands of the professional category concerned. Although the University is still experiencing financial difficulties, the payment of salaries including increments is currently up to date, though the lecturers' pay is still slightly in arrears.

233. The Government adds that the dismissals were the outcome of this situation and affected about 50 auxiliary members of the administrative staff. The Government notes further that since June 1987 the Regional Labour Delegation has not received any request to take action and that a permanent dialogue continues to exist between the trade union and the University.

C. The Committee's conclusions

234. The Committee notes that the versions of the alleged dismissals given by the complainant and by the Government differ. The complainant organisation maintains that ten of the lecturers at the University of Santa Ursula were dismissed not for administrative reasons, as claimed, but on politico-trade union grounds, and specifically because they were organising a strike; two of them were subsequently reinstated. According to the Government, the dismissals,

which affected some 50 people, were the result of the University's financial difficulties.

235. Given the differing versions of the complainant and of the Government, the Committee wishes to recall the principle laid down in the Workers' Representatives Recommendation, 1971 (No. 143), regarding the protection of workers' representatives and the facilities to be afforded to them, namely that the specific protective measures might include "recognition of a priority to be given to workers' representatives with regard to their retention in employment in case of reduction of the workforce". In this connection, the Committee observes that the only dismissed lecturer whom the complainant specifically describes as a trade union leader (Sydney Solis) was reinstated by court decision.

236. In these circumstances, and in the absence of any more detailed information regarding either the complainant's allegation or the Government's response, the Committee can only express the wish that the continuing dialogue between the ANDES trade union and the University of Santa Ursula will lead to the reinstatement of the workers dismissed for their trade union activities.

The Committee's recommendation

237. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:

> The Committee requests the Government to take steps so that the continuing dialogue between the ANDES trade union and the University of Santa Ursula will lead to the reinstatement of the workers dismissed for their trade union activities.

CASES IN WHICH THE COMMITTEE REQUESTS TO BE KEPT INFORMED OF DEVELOPMENTS

Case No. 1376

COMPLAINTS AGAINST THE GOVERNMENT OF COLOMBIA PRESENTED BY
- THE UNION OF WORKERS OF THE NATIONAL COFFEE TRADE FEDERATION OF COLOMBIA (SINTRAFEC)
- THE WORLD FEDERATION OF TRADE UNIONS (WFTU)

238. The Committee on Freedom of Association last examined this case at its meeting of November 1987 [see 253rd Report of the

Committee on Freedom of Association, paras. 328 to 342, approved by the Governing Body at its 238th Session (November 1987).]. Since then, the Government has sent new observations in communications dated 4, 9 and 16 December 1987 and 21 and 26 January 1988.

239. Colombia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

240. This case concerns the death or disappearance of numerous trade unionists. At its meeting of November 1987, the Committee deeply deplored the death or disappearance of the trade unionists referred to in the complaints and requested the Government to keep it informed of any developments in the judicial investigations, particularly those relating to the deaths of trade unionists Carlos Betancourt Bedoya, Bernardino García, Jairo Blandón, Jesús Francisco Guzmán, Fernando Bahamón Molina, Euclides Garzón and Narciso Mosquera. The Committee hoped to receive the information which the Government stated it would send regarding the death of trade unionists Esteban Hernández and Raúl Higuita and the death threats allegedly received by trade unionists Fernando Pérez and Asdrúbal Jiménez Vaca. The Committee also noted the information provided by the Government to the effect that the investigations into the disappearance of trade unionists Gildardo Ortiz Cardozo and Gentil Plazas had been temporarily closed with a view to gathering evidence.

B. The Government's reply

241. In its communication dated 4 December 1987, the Government states that the Ministry of Labour and Social Security has intensified its labour activities in view of the disruption of public order occurring in the Uraba region. In particular, on 10 September 1987, a standing committee consisting of representatives of the political parties, the trade unions, the church, and civic and government bodies was set up with the aim of carrying out a permanent assessment of the social situation in order to achieve complete normalisation in the region. The basic purpose of this committee is to analyse the situation and draw up measures to guarantee peaceful coexistence. There are also plans to set up a special labour office with headquarters in Apartadó, to start work in January 1988, in order to reinforce the activities of the Ministry in the area; in addition, in accordance with the powers conferred by Act No. 30 of 1987, labour circuit courts will be set up, to begin working in January 1988.

242. The Government states further in its communication that the deaths which occurred in this area are being investigated in full independence by the judges of the Republic, and that the Ministry of Labour therefore has no access to the investigation files. Lastly, the Government states once again that it will continue to send information as soon as it is received and that it will co-operate fully in elucidating the events which occurred in this region, in which, affirms the Government, the public order has been disrupted, and the Government therefore considers that it is not a specific labour situation such as would concern the Committee on Freedom of Association.

243. In its communication dated 9 December 1987, the Government provides the following information: as regards the death of Francisco Esteban Hernández Doria, the 16th judge of the Criminal Court of Apartadó (Antioquia) stated that the death of the trade unionist Hernández Doria occurred on the morning of 4 July 1987 and not 1 July or 1 April, and that the investigation No. 414, was being conducted by his office. The summary of the investigation is now being examined by the Departmental Police Inspectorate of Riogrande with a view to identifying the guilty party or parties.

244. As regards the death of Narciso Mosquera, the 13th judge of the Criminal Court of Medellín (Antioquia) stated that his office is carrying out the preliminary investigations into this death, but has not yet been able to identify the guilty party or parties, although the investigation is proceeding normally.

245. As regards the death threats allegedly made against Fernando Pérez and Asdrúbal Jiménez Vaca, the Government observes that the latter have brought no formal charges concerning the alleged threats; this was confirmed by the Commander of the Tenth Brigade of the army, which has its headquarters in Corepa (Antioquia). The Government adds that the trade union organisations make rash accusations based on hypothetical events, without availing themselves of the procedures granted by law for these purposes.

246. In its communication of 16 December 1987, the Government states that, as regards the deaths of Francisco Guzmán, Bernardino García and Jairo Blandón, the municipal Criminal Judge of Piedecuesta has begun the preliminary investigations in her inquiry into the identity of those responsible for the deaths without there being any positive identification to date; the Judicial Police will, however, continue their inquiries and any progress will be communicated to the ILO.

247. In its communication of 21 January 1988, the Government states that after many inquiries Mr. Luis Angel Parra Medina has been charged with the murder of the trade unionist Fernando Bahamón Molina. It supplies a copy of the official letter No. 002366 of 30 October 1987, signed by the Regional Prosecutor of Caquetá which indicates the developments in the inquiries which resulted in the authorities identifying the author of the crime.

248. In its communication of 26 January 1988, the Government states that the 14th Criminal Investigating Judge of Barrancabormeja (Santander) is continuing the investigations into the death, on 15 July 1987, of Euclides Garzón, but it has not been possible to date, to identify the guilty parties. The Government adds that, as regards the alleged death of Raúl Higuita, the 47th Criminal Investigating Judge of Apartadó stated that Mr. Higuita is not dead and is working on the "El Chispero" farm according to José Oliverio Molina, Secretary of SINTRABANANO; last year he was simply suffering a few wounds, which is why he was cited before the Courts' Offices with a request for more information. According to the Government, there is no basis for this part of the complaint, since Mr. Higuita has not lost his life and the wounds from which he was suffering are being investigated by the criminal courts. Finally, the Government states that, in its analysis of the facts, it is indispensable for the Committee to take account of the fact that the victims, their families and the organisations to which they belong often do not co-operate with the authorities and this greatly hampers the administration of final justice.

C. The Committee's conclusions

249. The Committee wishes to express once again its profound concern at the large number of trade unionists who have been killed or have disappeared in the Uraba region. The Committee wishes to recall once more that a climate of violence leading to the murder or disappearance of trade union leaders constitutes a serious obstacle to the exercise of trade union rights; such acts warrant strict measures by the authorities.

250. In this case, the Committee notes the efforts undertaken by the Government to seek solutions to the situation affecting the region. The Committee observes in particular that, according to the new information provided by the Government, judicial investigations are being carried out into the deaths of Francisco Esteban Hernández and Narciso Mosquera. In addition, it takes due note of the fact that the trade unionist Raúl Higuita is alive, but has been wounded, a fact which is being looked into by the judicial authorities.

251. The Committee takes note of the information supplied by the Government on the judicial inquiries being pursued in an effort to identify those responsible for the death of the trade unionists Francisco Guzmán, Bernardino García and Jairo Blandón which for the moment have not led to any positive identification. The Committee also notes that, according to information supplied by the Government, Mr. Luis Angel Perra Medina has been charged for the murder of the trade unionist Fernando Bahamón Molina.

252. At the same time, the Committee notes the information sent by the Government to the effect that the trade unionists Fernando

Pérez and Asdrúbal Jiménez Vaca did not bring formal charges before the ordinary courts for the death threats which they allegedly received. In this respect, the Committee wishes to recall in general terms that trade union rights can only be exercised in an atmosphere which is free of violence, coercion or threats of any kind against trade unionists and that it is for the Government to guarantee respect of this principle.

253. As regards the judicial investigations into the deaths of the trade unionists Carlos Betancourt Bedoya, Euclides Garzón and Narciso Mosquera and the disappearance of Gildardo Ortiz Cardozo and Gentil Plazas, the Committee requests the Government to keep it informed of developments in all of the judicial proceedings relating to the death or disappearance of trade unionists referred to in this complaint and once again expresses the hope that it will be possible, in the near future, to identify and punish the guilty parties.

The Committee's recommendation

254. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendation:

> The Committee deeply deplores the death or disappearance of a large number of trade unionists and recalls that a climate of violence leading to the murder or disappearance of trade unionists warrants severe measures by the authorities in order to identify and punish the guilty parties. The Committee requests the Government to keep it informed of developments in the current judicial investigations.

Case No. 1415

COMPLAINT AGAINST THE GOVERNMENT OF AUSTRALIA PRESENTED BY THE CUSTOMS OFFICERS ASSOCIATION OF AUSTRALIA

255. In communications dated 28 May, 16 and 30 June 1987, the Customs Officers Association of Australia (COAA) presented allegations of violations of trade union rights in Australia. The COAA supplied further information in support of its complaint on 27 July and 30 October 1987. The Government supplied its observations in a communication dated 25 January 1988.

256. Australia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949

(No. 98); it has not ratified the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainant's allegations

257. In its communication of 28 May 1987, the COAA explains that on 19 December 1986 the Conciliation and Arbitration Commission refused to allow an amendment to the COAA's registration under the Conciliation and Arbitration Act, 1904, so as to enable it to continue to represent customs officers. The Commission recommended that the customs officers join the Administrative and Clerical Officers Association (ACOA).

258. The complainant claims to represent 1,350 workers, being one-third of Australia's customs officers and half of those who have chosen to be members of a workers' organisation. It points out that it has not proceeded with an appeal to the High Court against the Commission's decision because the ruling was taken in virtue of the Commission's discretionary power under the Act and because the lack of domestic law specifically relating to ILO Conventions Nos. 87 and 98 rules out a higher review of the law. In any case, states the COAA, the employer (the Australian Customs Service (ACS)) continued to recognise it as representative of customs officers, as it had done since the COAA was founded in 1914.

259. However, according to the COAA, on 25 May 1987 the Comptroller General of Australian Customs, the head of the ACS, advised it and all staff that, in view of the December 1986 decision, it would henceforth: terminate the current consultative arrangements with the COAA on industrial matters; terminate privileges of workplace facilities for COAA officials (including time off for meetings, membership and recruitment activities, distribution of literature, use of telephones, photocopying and typing resources, etc.); refuse entry to COAA officials to work areas on Association activities; maintain the existing decision excluding COAA officials from access to training courses; and terminate arrangements for COAA representatives on staffing and other similar committees.

260. The COAA states that these changes deny customs officers freedom of association and forces them, if they wish to dialogue with the employer, to join an organisation which has no community of interest with them and their profession. The changes are also causing hostility between customs officers and other government employees involved in the administration of customs services.

261. In its communications of 16 and 30 June 1987, the COAA relies on a similar situation which involved the Northern Territory Public Service Commission and the corresponding employees' association in 1984. Following the Freedom of Association Committee's recommendations, the Australian Federal Government upheld the

provisions of the relevant ratified Convention and directed the employer to allow the association involved to represent those employees who wished to join it.

262. In its communication of 27 July 1987, the COAA stresses that, since the December ruling, it is outside the formal framework of conciliation and arbitration (except for the registration it retains to represent 200 navigational aid/lighthouse officers); its only means of negotiating employment conditions for customs officers is through collective bargaining, but the ACS has refused to bargain. From an attachment to the COAA's communication it appears that the COAA had raised the possibility of negotiations with the Public Service Board and received the following reply:

> The Board does not believe it is appropriate to negotiate with one union about matters when it is another union's right to have those provided for by awards of the Conciliation and Arbitration Commission. Accordingly the Board is not prepared to negotiate with your Association independently on pay and conditions matters for Customs Officers classifications which could be the subject of award coverage. Nor as a matter of policy does it accept that staff occupying the same employment classifications might have basic conditions which are different depending on the union to which they belong. This would be the basis on which we would approach any discussions with you and deal with representations from you about matters affecting your members in the workplace.

263. Moreover, adds the complainant, in a press release handed out in May 1987 announcing the ACS's change in policy towards COAA, it states that the ACS can only discuss industrial issues with unions having legitimate coverage of customs officers, namely the ACOA. But, according to the complainant, COAA members are loath to relinquish their current membership so as to join the ACOA because of ideological and philosophical differences between the two organisations (e.g. the COAA is not politically aligned whereas the ACOA is; the COAA has spoken out on law enforcement and community protection issues whereas the ACOA has argued against its ideas). The COAA states that because of the unique role of customs officers in the public service, such workers do not wish to be locked into a broad-based industrial structure whereby they could be used as a powerful tool during industrial disputes; the COAA offers those workers independent autonomy but the ACOA does not. Lastly, the COAA mentions that a further dissuasion from joining the ACOA is the fact that its dues are 25 per cent higher than COAA dues, and that the ACOA makes no concession for low-income members whereas the COAA has special arrangements to assist them (i.e. 5 per cent of its members of low income have their fees paid from existing Association funds and therefore do not appear on payroll deduction statistics).

264. According to the COAA, faced with no conciliation and arbitration coverage, and no collective bargaining, it tried nevertheless to have the currently existing awards applied to customs officers (the two awards are: the General Conditions of Service Award

for Public Servants and the Customs Officers Award). However, the ACS and the Public Service Board refused to negotiate any further application of them to COAA members. The employer in fact went further than simple refusal to recognise any representations by the COAA: it used the media extensively to advise that the COAA no longer represents customs officers and this led to a withdrawal of support by bodies which had purchased advertising space in the COAA's monthly journal. The complainant states that it has consequently been forced to reduce the journal's publication to every other month. More importantly, continues the COAA, after the adverse publicity, about 100 of its members resigned (they have apparently not joined the ACOA).

265. The complainant states that it has applied again to the Conciliation and Arbitration Commission for registration to cover customs officers and has asked the Administrative Appeals Tribunal for a determination of the lawfulness of the ACS's decision to disallow any COAA representations. In addition, the complainant has written to the Prime Minister and other relevant ministers for support. Although sceptical that the Commission will allow registration of the COAA to cover customs officers, it is actively seeking amalgamations with other unions sharing the COAA's interests and attitudes to law enforcement. It stresses that there can be no suggestion of a proliferation of unions covering the same class of employee, namely customs officers: the COAA has been representing such officers for 73 years (although the classification "customs officer" was only created in November 1983 when there was a restructuring of the customs service). It is only asking for its present registration to extend to customs officers as had previously been the case. If this is refused it only wants to be able to represent its own members for collective bargaining purposes.

266. In its letter of 30 October 1987, the COAA alleges that the ACS, other unions and the government authorities concerned are deliberately avoiding consultations with it in an effort to frustrate any solution to this complaint before the Governing Body Committee on Freedom of Association.

B. The Government's reply

267. In its letter of 25 January 1988, the Government firstly explains the Australian federal industrial relations system which provides conciliation and arbitration for the prevention and settlement of industrial disputes through the Conciliation and Arbitration Commission and to which access is gained by the voluntary registration of employers' and employees' organisations. It points out that the COAA is registered under this system and thus is subject to the same rights and obligations as any registered organisation, namely: the requirement that organisations have rules specifying, by reference to their work, the persons who are eligible for membership in that organisation and apply to the Industrial Registrar for

permission to change these rules; the right to object to other organisations being registered with coverage of those workers coming within the objecting organisation's "eligibility for membership" rule; the right to object to other organisations amending their membership rules to obtain such coverage; the right to have such objections heard by the Industrial Registrar and to appeal to the Commission.

268. This membership rule is important, states the Government, because a registered employees' organisation is able to make demands on employers in relation to all persons who are eligible to be members of the organisation concerned, whether or not such persons are in fact members. The Commission deals with such claims by conciliation or arbitration and may make binding awards in relation to them. Where an award is made, the organisation has an enforceable right of entry under the Conciliation and Arbitration Act to an employer's premises to ensure that the award is being observed. The Commission may not, however, exercise jurisdiction over a matter if it involves employees who are not eligible for membership of the registered organisation party to that matter.

269. The Government states that, under rule 5 of the registered rules of the COAA, membership of that union is open to the following persons:

> Any person engaged permanently or temporarily in the Fourth Division of the Trade and Customs Department and in the Department of Health, and any of the following persons: (a) member of a lighthouse station or on the store staff, lighthouse branch; (b) member, including the radio-telegraphist, of the crew of the lighthouse vessels; (c) master or member of the crew of the launch, marine branch; (d) inspector of seamen; (e) as assistant, dairy export, lighthouse inspector ... all of the Commonwealth Public Service, upon payment of the prescribed contributions and dues, shall be entitled to become members of the Association.

270. The Government describes the restructuring of customs activities in Australia in November 1983 which led to the abolition of some, and creation of new classifications of customs officers. This restructuring was followed on, in July 1984, by the abolition of the divisional structure in the public service; the COAA as is seen from its membership rule had covered Fourth Division public servants, whereas Third Division officers were predominantly covered by the ACOA. It adds that those Commonwealth public servants engaged in customs activities (over 5,000 throughout Australia) and employed by the ACS have the following responsibilities:

- community protection (because the ACS is the front line of defence against illegal imports and exports and controls the movement of people, goods, ships and aircraft into and out of Australia);

- industry assistance and development (because it implements many of the Government's measures such as tariffs, quotas, subsidies);

- revenue collection (because it collects customs and excise revenues for the Commonwealth Government);

- control at the customs barrier on behalf of other government departments and agencies, particularly in the areas of quarantine, fauna protection and immigration.

It states that, following a number of competing claims by relevant federally registered unions (the COAA, the Administrative and Clerical Officers Association, the Australian Public Service Association, the Federated Clerks Union of Australia) relating to employees in the new classifications (called customs officers and assistant customs officers), the Full Bench of the Commission found it necessary to decide whether they came within the "eligibility for membership" rules of the unions concerned. The matter came before the Commission in the Customs Case (a copy of which, dated 19 December 1986, is supplied) and the Full Bench decided, inter alia, that the COAA did not cover the new positions. The Government states that this was the second refusal of the COAA, because already in March 1984 (decision confirmed in July 1984) the COAA had lost an application to vary its membership rule. The Government adds that subsequently (in July 1985) the Administrative and Clerical Officers Association was successful in securing an award from the Commission covering the new classifications in the ACS.

271. Following the distribution of information circulars to ACS staff about the Full Bench decision of 19 December 1986, the Comptroller-General wrote on 21 May 1987 to the Secretary of the COAA setting out management's position in relation to industrial dealings with COAA officials. A staff circular was issued in similar terms on 25 May 1987, namely those reflected in paragraph 259 above. The ACS has since then been dealing with other federally registered unions (particularly the Administrative and Clerical Officers Association) over industrial matters affecting ACS staff who are eligible for membership of the unions concerned.

272. The Government explains that the question of the COAA's access to premises of the ACS and consultation with management was further considered and clarified in proceedings before the Commission in 1987 when a dispute arose between the COAA and the ACS over those issues. The Administrative and Clerical Offices Association and the Australian Public Service Association intervened. In a decision of 2 October 1987 (a copy of which is supplied), the Commission recommended that certain arrangements agreed to between the ACS and the COAA be implemented. These were that the COAA would be permitted access to persons employed as "Clerical Assistants, Grades 1-4", on the basis that such persons were in fact eligible for membership of the COAA. An existing award (No. 8 of 1926) applying to the COAA covers such grades. Final agreement has not yet been reached between the COAA and the ACS on the implementing of these arrangements. The Administrative

and Clerical Officers Association has appealed against the decision, but the appeal has not been heard.

273. According to the Government, the COAA has applied again to the Industrial Registrar for consent to alter its "eligibility for membership" rule so that it may enrol persons in the new classifications of customs officers and assistant customs officers. The application, dated August 1987, attracted some objections, and technical objections were heard on 27 November 1987. No decision has yet been given.

274. As regards the complainant's description of the 19 December 1986 ruling refusing it coverage of customs officers, the Government points out that the COAA has not lost its registration and that its registered "eligibility for membership" rule is unchanged. The Government repeats that the structure of the ACS has changed and that all staff associations were consulted before the change occurred. This means that there is no change in the COAA's ability to represent its "industrial" members who are employees of the ACS within the COAA's membership rule, both before the Commission or in dealings with the management of the ACS, i.e. the limited class of lighthouse guards and other persons covered by Award No. 8 of 1926. However, there is also now a second type of member of the union - "non-industrial" members - who no longer comes within the COAA's membership rule but who have not left the union; they are free to remain members if they so wish.

275. According to the Government, contrary to the complainant's assertion, the Conciliation and Arbitration Act does provide for a system of appeals. It explains that acts or decisions by the Industrial Registrar may be appealed to a Presidential Member of the Commission (who has judicial status) or to a Full Bench of the Commission; an order made by a single member of the Commission may be appealed to a Full Bench; there is no further appeal on the merits from a decision of a Full Bench but, under the Australian Constitution, errors of law (including determinations of the scope of an "eligibility for membership" rule) may be reviewed by the High Court of Australia by way of a prerogative writ. The Government believes that this system of appeals provides for a fair review of decisions made by the independent office holders and tribunals under the Act. It also points out that, the Commission having found that the COAA's rules do not cover the new classifications, it is open under the Act for the union to seek to alter its rules to gain such coverage, an action which has - as is pointed out above - been undertaken.

276. As regards the alleged refusal of the ACS to engage in collective bargaining either directly with the complainant or before the Commission, the Government denies this and states that the employer is prepared to deal industrially with any union in relation to employees who come within the rules of the union and who are members of that union. Moreover, following the Commission's decision of 2 October 1987, the COAA's right to cover a limited class of

employees of the ACS has been confirmed and the ACS is fully prepared to deal industrially with the COAA in relation to its members who come within that class. The Government adds that the ACS is also continuing to engage in normal industrial dealings with the other staff associations which represent ACS employees who come within their registered "eligibility for membership" rules. The particular group of employees at the heart of the COAA's complaint (customs officers and assistant customs officers) have been held to come within the coverage of the Administrative and Clerical Officers Association; that union has secured an award covering those classes of employees.

277. On the question of access to ACS premises by union officials, the Government repeats that, under the Act, organisations have an enforceable right of entry to employers' premises to ensure the observance of awards to which the organisations are party; therefore, the COAA has this right in relation to the limited class of persons covered by the relevant award (No. 8 of 1926). The Government's policy is to facilitate access by union officials to members or persons eligible to be members; none the less, provision of such access in the case of the ACS must be balanced against the need to avoid disruption of work and the maintenance of customs security. The Government adds that, in the light of the clarification of the COAA's membership in the 2 October 1987 decision, the ACS will permit access by COAA officials to "industrial" members at the workplace during working hours on the same basis as for officials of other staff associations. This entails the following: prior notice of entry is necessary in normal circumstances; means for satisfying (if necessary) ACS managers that persons concerned are members; no disruption of operations; in normal circumstances, any meetings of members should occur during work breaks or outside normal working hours. The Government states that union representatives also have access to notice-boards and may distribute literature to members.

278. In the case of the COAA's "non-industrial" members, states the Government, different considerations apply. The ACS recognises that, although these persons cannot be represented industrially by the COAA, they continue to have an interest in its affairs. Accordingly, access to such employees (including the distribution of literature to them) and the use of notice-boards are available. The ACS considers however that, although certain ACS facilities (e.g. reasonable use of photocopiers, telephones) should be available for union purposes in relation to industrial members, the same justification does not apply to "non-industrial" members. The position will, of course, be reconsidered when the outcome is known of the COAA's fresh application to the Industrial Registrar for consent to the alteration of its rules to cover the new classifications.

279. As regards the alleged refusal to consult with the COAA, the Government does not believe that it has contravened ILO Conventions in this matter. It states that, as events have occurred, there have been appropriate communications between the COAA and the ACS, as well as other relevant representatives of the Government (i.e. the Public

Service Board and, following its abolition, the Department of Industrial Relations).

280. The Government denies the allegation that the ACS is forcing any of its employees to join the Administrative and Clerical Officers Association. It notes that this claim is in any case inconsistent with the assertion that the ACS is preventing unionisation of the staff of the ACS. On this latter point, the Government denies any prevention of unionisation in the ACS. It states that the fundamental difficulty faced by the COAA is that, under its existing rules, it is unable to admit as members employees in certain classifications in the ACS. The ACS has informed its employees of this position and indicated the consequences in terms of the industrial dealings between management and staff associations. There has not been any attempt to prevent staff from joining a union of their choice which has the right to represent them industrially. The Government also points out that the payroll deduction facility for union membership fees has been maintained for all staff associations, including the COAA.

C. The Committee's conclusions

281. The Committee observes that this complaint involves alleged interference in the COAA which - as a result of a restructuring within the Australian Customs Service - finds itself no longer able to represent in industrial relations matters those ACS employees now classified as customs officers and assistant customs officers. (The position of the COAA as regards those ACS employees covered by a 1926 Award - referred to as "industrial" members of the union - is not at all at issue.)

282. The Committee notes that those employees in the new classifications can (and apparently do) remain "non-industrial" members of the complainant union, and the Government continues to allow the COAA access to them, including distribution of literature, use of notice-boards and check-off arrangements. In addition, under the legislation in force, the employees involved can profit from the negotiations/awards won by the ACOA, which has the right to represent them industrially even if they are not members of the ACOA. It therefore appears to the Committee that the workers involved are not forced to relinquish union membership of their choice.

283. The Committee also notes that it is not the COAA's existence which is questioned, but rather that the legal position (as reflected in the Commission's Full Bench decision of 19 December 1986) favours a rival union, the ACOA. On this point the Committee would stress, as it has in past cases, that it is inappropriate for it to examine the merits of conflicts between unions concerning their respective areas of competence. [See, for example, 25th Report, Case No. 152 (UK/Northern Rhodesia), para. 216.] In the present case the Committee would particularly refrain from entering into any debate as to the

coverage of customs officers since the complainant union itself, in wishing to enjoy the advantages which voluntary registration under the Conciliation and Arbitration Act gives it, has accepted a certain degree of regulation, such as the role of the Industrial Registrar and the Commission in the amendment of "eligibility for membership" rules.

284. As regards the ancillary allegations, namely that as a result of the decision on coverage of customs officers the complainant union has been denied various facilities and consultation rights which it had previously enjoyed and has even suffered financially (loss of advertising in its journal, loss of members), the Committee notes the information supplied by the Government. It observes that a Commission decision of 2 October 1987 concerning the very issue of rights of entry and consultation confirmed as "sensible and practical" the arrangements agreed on between the COAA and the ACS which enable that union to have access to a certain classification of employees in addition to its "industrial" members. When considered together with the information activities also permitted at the workplace in relation to the COAA's "non-industrial" members, the Committee is of the opinion that the current situation is not in breach of the freedom of association Conventions ratified by Australia.

285. The Committee would recall that the earlier Australian case to which the complainant makes reference (Case No. 1241, 234th Report, paras. 329 to 342, approved by the Governing Body in May 1984) involved a different situation, namely that of a union pending its application for registration under the Conciliation and Arbitration Act in which all facilities were denied until it obtained registration.

286. The Committee notes in conclusion that the complainant union has used - albeit unsuccessfully - the various procedures available to it to try to regain coverage of customs officers and that hearings on a fresh COAA application to alter its "eligibility for membership" rule were heard in November 1987. The Committee requests the Government to inform it of the outcome of this application, especially as regards its consequences, if any, on the current facilities' arrangements available to both "industrial" and "non-industrial" members of the COAA and its officers.

The Committee's recommendations

287. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) The Committee considers that it is inappropriate for it to examine the merits of conflicts between two unions concerning their respective areas of competence.

(b) It is of the opinion that there has been no breach of the freedom of association Conventions ratified by Australia by the current facilities' arrangements made available to the complainant union.

(c) It requests the Government to inform it of any change in these facilities occasioned by the outcome of the complainant union's fresh application for coverage of the customs employees involved in this complaint.

CASES IN WHICH THE COMMITTEE HAS REACHED INTERIM CONCLUSIONS

Case No. 1309

COMPLAINTS AGAINST THE GOVERNMENT OF CHILE PRESENTED BY - THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS (ICFTU) - THE WORLD CONFEDERATION OF LABOUR (WCL) - THE WORLD FEDERATION OF TRADE UNIONS (WFTU) AND OTHER TRADE UNION ORGANISATIONS

288. The Committee has examined this case on several occasions, most recently at its November 1987 meeting, when it presented an interim report to the Governing Body. [See the 253rd Report, paras. 257-301, approved by the Governing Body at its 238th Session (November 1987).]

289. Subsequently, the ILO received the following communications from the complainants: National Grouping of Workers (CNT): 29 October and 24 November 1987; World Federation of Trade Unions (WFTU): 3 November and 3 December 1987; International Confederation of Free Trade Unions (ICFTU): 4 and 26 November 1987 and 10 and 29 January and 4 February 1988; World Confederation of Labour (WCL): 4 December 1987; and International Federation of Plantation, Agricultural and Allied Workers (IFPAAW): 9 December 1987. The Government transmitted observations in communications of 26 October, 11 and 23 November 1987, and 7 and 14 January and 2 and 11 February 1988.

290. Chile has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

291. During the most recent examination of the case, several allegations presented by the WCOTP, the ICFTU, the IFPAAW and several national confederations remained pending.

292. In a communication of 31 October 1986 the WCOTP referred to the arrest of Beatriz Brikmann Scheihing on 24 September 1986.

293. In its communication of 19 February 1987, the WCOTP reported that on 16 February 1987 Luis Muñoz, a trade union leader of the Teachers' College of Chile in Valparaíso, received an anonymous telephone call informing him that unless he and Andrés Reyes of the AGECH, Hugo Guzmán, leader of the Teachers' Trade Union of Viña del Mar, María Isabel Torres, leader of the Fifth District Teachers' College, Sergio Narváez and Florencio Valenzuela, President of the Workers in Commerce Trade Union, left the country before the month of March, action would be taken against them and their families; he interpreted this as a threat to their lives.

294. In its communication of 26 March 1987, the ICFTU alleged that on 25 March 1987 a peaceful national mobilisation of workers convened by the National Grouping of Workers (CNT) to request an increase in wages, an end to the massive dismissal of teachers, an end to the privatisation of nationalised enterprises, and the respect of human and trade union rights, was violently broken up by police forces; among the injured were Manuel Bustos, the then Vice-President of the CNT, and Rodolfo Seguel, President of the CNT, who was later arrested along with Manuel Rodríguez and Luis Suárez, leaders of the same organisation.

295. In its communication of 9 June 1987, the Unity Confederation of Chilean Workers (CUT) furnished new information concerning the complaints presented by the ICFTU, WCL, WFTU, and WCOTP, concerning the murder of José Carrasco Tapia, a trade union leader of the Metropolitan Journalists' Council, on 10 September 1986; the arrest and ill-treatment of Rodolfo Seguel, President of the National Grouping of Workers (CNT), of Jorge Pavez, President of the Professional Association of Teachers of Chile (AGECH) and Guillermo Azula, national leader of the AGECH, on 24 March 1987, during a peaceful demonstration for the reinstatement of 8,000 teachers dismissed in 1987; the imprisonment in the Santiago Penitentiary of the following miners: Domingo Alvial Mondaca, Adrían Cabrera R., José Delgado Z., Pedro Lobos P., Dagoberto López R., Ricardo Mondaca G., Mario Santibáñez, Emilio Vargas M., Raúl Vásquez I., Domingo Araya C., Armando Irrazábal C., Sergio Jeria I., Juan Jorguera I., Erasmo Mayolinca Ch., Marcos Sala B., Leonardo Torres G. and Yuri Vargas A., for participating in protest days calling for the respect of labour rights and denouncing tragic accidents in coal mines; appeals for relief filed by the leaders of the Federation of Trade Unions of Self-Employed and Part-Time Workers before the Court of Appeals on 23 July 1986, to denounce the assault against Angel Arriagada Arriagada,

a leader of the Federation, on 16 April 1986, and the search of the trade union office and the home of trade union leader Alejandro Olivares Pérez on 1 May 1986; the attempted homicide of Juan Espinoza, a national trade union leader of the Confederation of Maritime Workers (CONGEMAR), when his house was set on fire while and he and his family were sleeping, in January 1987; the refusal to allow several CUT trade union leaders to enter the country; the arrest of former trade union leaders Luis Guzmán, who is being illegally detained at the Santiago Penitentiary for having entered the country without the Government's prior authorisation in early 1984, and Mireya Baltra, a former national trade union leader of the CUT, who was illegally arrested in Puerto Aysén for having entered the country on 13 May 1987; the arrest and disappearance of Sergio Ruíz Lazo, a former textile trade union leader, following his return to Chile in 1985. The Government also continues to refuse to allow many trade unionists to enter the country, including: Rolando Calderón Aranguiz, former General Secretary of the CUT, and Hernán del Canto Riquelme, Luis Meneses Aranda, Mario Navarro Castro, Bernardo Vargas Fernández, all former CUT national leaders.

296. In its communication of 25 August 1987, the National Confederation of Federations and Trade Unions of Chilean Textile and Allied Workers (CONTEXTIL) described the difficulties encountered by the workers in the Baby Colloky enterprise in signing a new collective agreement, and the enterprise's refusal to recognise the workers' representatives, as well as the unfair practices undertaken by the enterprise in transferring machinery and personnel from another of its plants in order to replace the workers who were legally on strike.

297. In its communication of August 1987, the National Confederation of Trade Unions, Federations and Associations of Chilean Workers in the Private Sector (CEPCH) denounced certain legal provisions (article 19, paragraph 19, article 23, paragraph 1, and article 54 of the Constitution of 1980, Act No. 18603 concerning political parties, section 210 of the Penal Code, and section 221 and section 223, paragraph 3, of the Labour Code), which make the holding of trade union office incompatible with affiliation in a political party, and require elected trade union leaders to sign an affidavit concerning any political affiliation.

298. In its communication of 30 September 1987, the IFPAAW alleged that Eugenio Eduardo León Gajardo, President of the National Confederation of Chilean Peasants (CNC), was informed by the Provincial Labour Inspectorate of Santiago that he was not eligible to serve as President of the CNC, despite his constitutional election at the Confederation's most recent congress, on the grounds that he had been arrested and subsequently charged under the National Security Act with participating in the mobilisation of workers as a trade union leader.

299. In its communication of 9 October 1987, the ICFTU referred to the arrest and assault at the hands of security forces of dozens of workers and trade unionists, after the authorities refused to

authorise a national day of protest called by the CNT for 7 October 1987, and denounced numerous threats to the lives of CNT leaders, and in particular against its President, Manuel Bustos, as well as the Ministry of the Interior's judicial summons of CNT leaders Manuel Bustos, Arturo Martínez and Moisés Labraña, and their subsequent imprisonment in the Santiago Penitentiary, following their interrogation by a judge of the Supreme Court on 20 October 1987.

300. At its 238th Session in November 1987, the Governing Body approved, among others, the following recommendations of the Committee:

(a) as regards the proceedings against Beatriz Brikmann Scheihing for breach of Act No. 17798 on arms control, the Committee requests the Government to keep it informed of developments in these proceedings and the outcome of the case;

(b) the Committee urges the Government to send its observations on the allegations to which no replies have yet been received.

B. New allegations

301. In its communication of 29 October 1987, the National Grouping of Workers (CNT) alleges that on 8 October 1987 the Government of Chile, acting through the Ministry of the Interior, filed suit against Manuel Bustos, President of the National Trade Union Co-ordinating Body (CNS) and the National Grouping of Workers (CNT), and Vice-President of the Confederation of Textile and Clothing Workers (CONTEVECH); against Arturo Martínez, General Secretary of the National Grouping of Workers (CNT), Vice-President of the National Trade Union Co-ordinating Centre (CNS) and President of the National Graphics Confederation (CONAGRA); and against Moisés Labraña, member of the National Executive Council and dispute officer of the CNT and Vice-President of the National Miners' Confederation, for breach of the State Security Act in connection with the call for a general strike on 7 October 1987. The Government charged the trade union leaders with inciting riots, provoking disturbances and calling for work stoppages, which led the Preliminary Hearings Officer of the Court of Appeals of Santiago to indict them and order their arrest. Their attorneys' request for release on bail was denied.

302. The CNT communication adds that the CNT, in agreement with its Council of Confederations, Associations and National Trade Unions (CONFASIN), called a general strike for 7 October 1987, primarily to request a solution to the vital problems affecting workers, which continue to worsen owing to the economic and social policies of the military regime. These demands, although repeatedly presented to the Government, received no reply; the workers therefore were compelled to resort to a strike in the forms of absenteeism, temporary work stoppages, tardiness, early departure and slow-downs.

303. The CNT communication also states that trade union leader Manuel Bustos has received death threats by phone and in writing, before and after the above-mentioned general strike; he filed a request for protection which was granted by the courts of law. Despite this request, the threats have continued in such forms as telephone calls to the CNT and to certain media, and threats sent to his trade union office and to his attorneys. Mr. Bustos' current place of confinement (the Santiago Penitentiary) does not offer any security as regards his physical integrity; for this reason he has requested that he be transferred to the penitentiary's annex, but to no avail. The communication concludes by requesting the ILO to demand that the Government immediately release trade union leaders Bustos, Martinéz and Labraña, who have acted only in fulfilment of their trade union responsibilities; the communication encloses a handwritten letter sent from the penitentiary by the above-mentioned trade unionists, which reiterates the allegations presented by the CNT in its communication.

304. In its communication of 4 December 1987, the World Confederation of Labour (WCL) associates itself with the complaint presented by the CNT on 29 October 1987.

305. In another communication dated 24 November 1987, the CNT states that, upon the appeal of the trade union leaders, the Court of Alzada upheld the first instance conviction of the above-mentioned CNT trade union leaders, but modified the legal grounds for the conviction. As a result, Messrs. Bustos, Martínez and Labraña face charges of inciting and inducing a strike and paralysing trade, production and public services.

306. In its communication of 3 November the World Federation of Trade Unions (WFTU) expresses its concern and denounces the imprisonment of CNT trade union leaders Manuel Bustos, Arturo Martínez and Moisés Labraña, for calling the general strike of 7 October 1987. In another communication of 3 December 1987, the WFTU expresses its concern over the Chilean Government's decision to strip Mrs. Carmen Pinto, President of the External Affairs Committee of the CUT, of her Chilean citizenship.

307. Likewise, the ICFTU communication of 4 November 1987 denounces the imprisonment of the CNT trade union leaders with common criminals, and the continued death threats against Manuel Bustos; one of these threats came from a terrorist group known as ACHA, announcing his execution on 7 November. The communication adds that the Government refuses to transfer the trade union leaders and prevents them from receiving foreign visitors.

308. In another communication of 26 November 1987, the ICFTU denounces new repressive measures which the Government has taken against Chilean trade union leaders, referring in particular to the case of Carmen Pinto, a former trade union leader of the CUT in Concepción, who currently resides in Paris; on 24 November 1987 the authorities of the Chilean Embassy in France refused to renew her

passport, arguing that, pursuant to the legislation of 1980, Mrs. Pinto was no longer a Chilean citizen, without explaining the reasons for this in writing. The ICFTU communication adds that there are other unresolved cases of trade union leaders who have been arbitrarily stripped of their citizenship, citing the case of trade unionist Luis Meneses, a current official of the ORIT.

309. In another communication of 10 January 1988, the ICFTU reports that on 24 December 1987 the Chilean Government published a list containing the names of 54 exiled Chilean citizens, authorising them to return to the country. This list included the name of trade unionist Luis Meneses, regional officer of the ORIT, who had been arbitrarily stripped of his citizenship by virtue of Decree No. 191-23-2-77, signed by the President of the Republic; his citizenship has not yet been restored. The communication states that the Government refuses to give him his passport, and has only authorised him to visit the country on a temporary basis under special visa.

310. In its communication of 9 December 1987, the International Federation of Plantation, Agricultural and Allied Workers (IFPAAW) states that the Labour Directorate has withdrawn its objections to Mr. Eugenio León Gajardo's accepting the presidency of the National Confederation of Chilean Peasants, and thanks the ILO for its efforts in this connection.

311. In its communication of 29 January 1988, the ICFTU states that Manuel Bustos and Arturo Martínez, trade union leaders of the CNT, were sentenced on 25 January to 541 days' imprisonment for breach of a section of the State Security Act which prohibits calling for a national paralysation of work. Moisés Labraña, Vice-President of the CNT, was sentenced to 61 days' imprisonment. The communication also states that on 29 January, at 6.30 in the morning, police forces entered the residence of Manuel Bustos for the purpose of arresting him. According to the police, Mr. Bustos was to be taken to the Public Prosecutor's Office; the ICFTU adds that it does not appear that this incident is related to the ruling handed down by the examining magistrate in the case.

312. In a communication of 4 February 1988, the ICFTU expresses its gratitude for the ILO's intervention and states that Messrs. Bustos, Martínez and Labraña were released on the same day that they were detained, on 29 January 1988.

C. The Government's reply

313. In its communication of 26 October 1987, the Government refers to the CUT communication of 9 June 1987 and states that the self-styled "Unity Confederation of Chilean Workers" does not have legal or de facto existence in Chile, and that its presumed leaders have not been elected by the Chilean workers whom they claim to

represent; moreover, it does not have a domicile in the country nor a trade union base. As regards José Carrasco Tapia, the editor of a weekly publication, he was found dead on a public road on 9 September 1986; the Court of Appeals of Santiago appointed a senior magistrate to investigate the cause of his death, identify the authors of the crime, and punish them, but no progress has been made to date. There is no information available concerning the presumed trade union activities of the deceased.

314. As regards Messrs. Jorge Pavez and Guillermo Azula, who were allegedly arrested in March 1987, the Government reports that Mr. Pavez was arrested on 12 March 1987, along with five other persons, for attempting to prevent the flow and traffic of persons and vehicles on a public thoroughfare; he was released immediately thereafter by the police, after having been summoned by the Local Police Court, which is entrusted with examining misdemeanors and levying small fines for traffic violations. As regards Mr. Azula, there are no records of his arrest and he is currently free. Nor are there any records whatsoever of the alleged ill-treatment of these persons.

315. As regards Domingo Alvial Mundaca, he is on trial in the First Court of Santiago on charges of illegal possession of explosives and detonators and the performance of terrorists acts. As regards Adrián Cabrera R., José Delgado Z., Pedro Lobos P., Dagoberto López R., Ricardo Mondaca G., Mario Santibáñez, Emilio Vargas M., Raúl Vásquez I., Domingo Araya C., Armando Irarrázabal C., Sergio Jeria I., Juan Jorquera I., Erasmo Mayolinca Ch., Marcos Sala B., Leonardo Torres G. and Yuri Vargas A., presumed miners who are allegedly being held at the Santiago Penitentiary for having participated in a protest day, there are no records to support these nebulous and unfounded accusations: the Santiago Penitentiary is a correctional facility which houses delinquents who have been condemned by criminal courts to terms of imprisonment, and not persons who have allegedly invoked labour rights.

316. As regards the alleged search of the office of the Self-Employed and Part-Time Workers' Trade Union Federation on 1 May 1986, as well as that of the home of Alejandro Olivares Pérez, there are no records or information concerning these alleged illegal searches; in any event, if they took place, it was not at the orders of any government authority.

317. As regards the alleged assault on Angel Arriagada Arriagada, which is reported to have occurred in somewhat vague circumstances on 16 April 1986, the Government can provide no information. In any event, the person concerned has the right to request that the Criminal Judge open an investigation, sanction the guilty parties and require the payment of damages. To the Government's knowledge, no criminal suit has been filed in this matter.

318. As regards Juan Espinoza and the allegation that some one attempted to set fire to his house in January 1987, while he and his family were sleeping, the Government has no information whatsoever.

The alleged crime would fall under the provisions of the Criminal Code. Mr. Espinoza is free to file charges in the corresponding Criminal Court. Serious penalties are prescribed for the crime of arson; the Government is unaware of any suit or criminal charges filed in this connection.

319. As regards Luis Guzmán, he is being tried by the Third Public Prosecutor of Santiago in Case No. 513/84 for crimes punishable under Act No. 17798 of 1982 on the control of arms and explosives; other charges punishable under the Criminal Code of which he is accused include the forgery of public documents and entering the country surreptitiously at other than a legal border crossing. Thus, charges that he has been illegally imprisoned are unfounded, since his detention was ordered by the courts in the light of the crimes with which he is charged.

320. As regards Sergio Ruiz Lazo, he was authorised to enter the country on 4 June 1987. He has not been, and is not now, under arrest. Border police records do not contain any information concerning the illegal entry of these persons into the country, since they crossed the border at unauthorised locations. As regards Mireya Baltra Moreno, she is in the country and enjoys complete freedom. As regards Rolando Calderón Aránguiz, a former Minister of Agriculture, Hernán del Canto Riquelme, a former Minister of the Interior, and Mario Navarro Castro, their names appear on a list of persons who are barred from entering the country. The Government is currently reviewing the circumstances of all persons who are barred from entering the country with a view to lifting this restriction.

321. In another communication of 11 November 1987, the Government furnishes information concerning several allegations in this case, in particular concerning the alleged detention of persons which is claimed to have taken place on 7 October 1987, as well as the alleged threats received by Manuel Bustos, and the court summons of Manuel Bustos, Arturo Martínez and Moisés Labraña in connection with their liability for injury to private individuals and damage to public and private property resulting from a day of social protest which they instigated. The Government's communication states in this connection that it is not true that security forces carried out dozens of arrests or assaulted workers on 7 October 1987. According to the Government, Manuel Bustos, together with Messrs. Martínez and Labraña instigated and called a day of social protest with the objective of completely paralysing all activities in the country, under the pretext that the Government had not favoured their requests to put an end to the sale of state enterprises to national and foreign entities; to find a solution to the debt of families which had purchased housing through long-term mortgages with monthly payments; to repeal the current budgeting system; to organise collective bargaining by branch of activity; to enact legislation requiring employers to pay a minimum wage equivalent to $20,000, which would represent an increase of 100 per cent; to adjust wages; to pay bonuses for national holidays; to readjust pensions, etc.

322. The Government's communication goes on to describe in detail how it is seeking to comply with many of the demands presented by workers. The Government adds that Messrs. Bustos, Martínez and Labraña considered that the Government had not responded favourably to their exorbitant and unfounded requests; they joined forces with a group of leaders of opposition political parties and with student organisations, in calling for a day of social protest on 7 October 1987, which was designed to paralyse all activities throughout the country by disrupting the public order through public demonstrations in the streets, this action led to the blocking of traffic, disorder on public thoroughfares, attacks on uniformed police, the death of three persons, numerous injuries, and substantial damage to private and public property, as well as violent demonstrations, which significantly perturbed the country's public order and tranquility. One of the means used to paralyse activities was to prevent workers from gaining access to their places of work by means of numerous assaults on city buses and other means of public transportation, preventing them from keeping to their schedules and itineraries. The outcome of this action was reported by the trade union leaders of the National Confederation of Land Transport Workers of Chile (CONATRACH); specifically, 42 passenger vehicles were completely destroyed, 600 buses and mini-buses suffered considerable damage and were withdrawn from service pending repairs, and 1,500 drivers of these vehicles have been temporarily laid off. In addition to the death of three persons, one of them a two-year old child, two policemen were seriously injured.

323. The Government's communication adds that it is not true that the authorities denied permission for the 7 October day of protest; rather, the persons instigating and convening the day of protest failed to request authorisation pursuant to police regulations and standard practice throughout the world, in spite of the fact that the decision to call this day of protest had been taken on 19 August 1987. On the basis of these facts, which led to public concern and significant damage, as well as the death of innocent persons and assaults on uniformed police, the authorities issued a judicial summons alleging the breach of sections 4, subsection (a) and 6, subsection (a), (c) and (i), of Act No. 12927 concerning national security, which has been in effect since 1958. The Court of Appeals of Santiago appointed an examining magistrate to investigate these crimes under case 42-87; on 21 October, Manuel Bustos, Arturo Martínez and Moisés Labraña were indicted in accordance with the Code of Criminal Procedures for breach of Act No. 12927 concerning national security, and for disrupting national activities. On 21 October the examining magistrate ordered the preventive arrest of these persons, pending the completion of his investigation.

324. As regards the allegations of threats to the life of Manuel Bustos by unidentified persons, the Government's communication reports that Mr. Bustos has stated that he has received threats against his physical integrity through recordings transmitted by telephone to his home, and through unsigned letters and leaflets; in this connection, he filed a request for protection on 16 October, which was granted by

the First Chamber of the Court of Appeals of Santiago; the Court also provided for uniformed police to ensure round-the-clock protection at his home, place of employment and trade union office, for a period of 30 days. Following his preventive detention, Mr. Bustos's attorneys presented a second request for protection in connection with threats Mr. Bustos allegedly received while in gaol, and requested that he be transferred from the prison in which he was housed, to another known as "anexo Capuchinos", which has more ammenities and would supposedly provide greater security. The appeal was rejected on 23 October, on the grounds that it was contrary to law. In its communication the Government states that it will send information concerning the investigations as these are released by the judge, since according to the Code of Criminal Procedures, the investigation phase is subject to secrecy. The Government adds that it sought to protect the safety of the above-mentioned trade union leaders by transferring them to the "annexo Capuchinos" on 4 November, in accordance with the request presented by their attorneys.

325. In another communication of 23 November 1987, the Government reiterates the statements made by its representative on 12 November 1987 before the 238th Session of the Governing Body, to the effect that the examining magistrate in the judicial proceedings granted release on bail to Manuel Bustos, Moisés Labraña and Arturo Martínez, leaders of the National Grouping of Workers.

326. As regards the proceedings against Arturo Martínez, Moisés Labraña and Manuel Bustos for breach of section 11, paragraph 2 of Act No. 12927 of 1958 on national security, the Government, in its communication of 14 January 1988, adds that the examining judge provisionally released these persons on 12 November 1987, as reported in previous communications; it further states that the case is in plenary proceedings, and that the defendants have been notified of the charges formulated by the examining judge. The communication adds that the persons under indictment are duly counselled and represented by qualified and experienced attorneys, and that new information, as it arises, will be forwarded to the Committee on Freedom of Association.

327. In its communication of 11 November 1987, the Government refers to a complaint presented by the National Confederation of Trade Unions, Federations and Associations of Chilean Workers in the Private Sector (CEPCH) concerning the provisions of Act No. 18603 on the organisation of political parties, pursuant to which elected trade union leaders must sign an affidavit concerning their affiliation, if any, to political parties. In this connection, the Government states that the purpose of this affidavit is to enable the Electoral Services Office to instruct the political party concerned to rescind the elected trade union official's affiliation in the party; the purpose is not to prevent the trade union leader from having a doctrinary opinion concerning the Government's policies, but to enable him to devote all of his energies to trade union activities and the interests of the workers he represents. The Act is also intended to prevent political parties from using trade unions to reach their own

objectives, without allowing the members and supporters of trade unions to disagree with party doctrine. Simultaneous roles as trade union leader and political militant would deprive the trade union movement of the independence it needs to act in defense of the legitimate economic and occupational interests of its members. In any event, according to the Government, it must be recalled that the trade union leader may in all freedom maintain, conserve and exercise all political rights, except for membership in a political party while he holds trade union office. Lastly, the communication notes that, without prejudice to what is stated concerning this aspect of the complaint, the national Government felt it necessary to issue a written statement to the Labour Administration as regards the question of maintaining the requirements concerning affiliation in political parties; on 30 October 1987 it instructed the Labour Administration to eliminate this requirement.

328. As regards the allegations presented by the National Confederation of Textile and Allied Workers' Federations and Trade Unions of Chile (CONTEXTIL) concerning the problems encountered by the workers in the Baby Colloky enterprise, the Government's communication of 11 November 1987 states that the workers of the "Sociedad Comercial e Industrial Colloky, Ltda." enterprise, organised for the purpose of bargaining, presented to management a draft collective agreement dated 20 June 1987. The workers appointed as negotiators began to enjoy time off and protection against dismissal five days prior to the date on which the draft was submitted. On 2 July 1987 the enterprise replied to the draft presented by the workers, and sent a copy of the reply to the respective Labour Inspectorate. The workers' Bargaining Committee objected to the employer's observations to the Labour Inspectorate. Ultimately, the parties failed to reach an agreement, and it was thus that on Friday, 31 July 1987, and in the presence of labour inspectors acting as witnesses, the workers' union voted in the majority to strike, informing the enterprise that the strike would begin on Monday, 3 August 1987, at 16.00 hours. Pursuant to the terms of section 341 of the Labour Code, strikes which have been called must begin on the third working day following the decision to strike. In accordance with this legal provision, the trade union should have called the strike for Tuesday, 4 August 1987. However, the workers illegally decided to go on strike one day prior to the time established by law, leaving their jobs suddenly, unjustifiably and without the enterprise's permission, since the working day ends at 18.00 hours. As a result of this sudden walk-out, the enterprise suffered serious economic losses.

329. The Government's communication adds that on Monday, 3 August 1987, the enterprise requested that a notary public personally certify that the workers had walked off the job. In a note dated 6 August 1987, the enterprise informed the Labour Inspectorate that the workers had left their posts prior to the end of the working day, thus exposing themselves to a termination of the employment contract pursuant to the terms of section 156, clause 4 of the Labour Code, which provides that the contract of employment shall be terminated when: "workers abandon their posts, which is understood to mean: the

sudden and unjustified abandonment by the worker of the worksite during working hours, without the permission of the employer or his agent". On 19 August 1987, the enterprise requested before the Fourth Labour Court of Santiago that the workers who had abandoned their posts suddenly and without justification be deprived of their labour rights; on 30 October 1987, following a more careful study of the situation, and following the Court's recommendations for conciliation, the enterprise reached an agreement with its workers, thus putting an end to the legal proceedings. The employer reinstated three workers and agreed to pay them back-pay. Subsequently, 12 workers counselled by their attorney, reached an agreement with the enterprise concerning the termination of their employment, an end to the judicial proceedings, and the payment of the indemnities and allowances specified in the judicial settlement. The Government has no further information to communicate in this matter.

330. The Government sent a communication dated 7 January 1988 in which it states that it has authorised trade union leader and ORIT official Luis Meneses Aranda to return to the country.

331. In another communication dated 14 January 1988, the Government furnishes additional observations concerning some of the allegations in this case, and in particular, in connection with the legal proceedings against Beatriz Brikmann Scheihing, which have been before the Court of First Instance since 4 June 1987; her attorney requested her release on bail, which was granted by the Public Prosecutor of Valdivia, and subsequently upheld by the Collegial Court of Santiago. Mrs. Brikmann was released on 23 September 1987 and requested authorisation to leave the country and travel to the Federal Republic of Germany where she is currently residing. The Government states that it is unaware of any trade union office which Mrs. Brikmann may have held, or for that matter, of any involvement whatsoever in trade union matters.

332. As regards the alleged threats to the lives of trade union leaders of the AGECH, of the Fifth District Teachers' College, of the Teachers' Trade Union of Viña del Mar, and of the Workers in Commerce Trade Union, of 6 February 1987, concerning José Luis Muñoz, Andrés Reyes, Hugo Guzmán, María Isabel Torres, Sergio Narváez and Florencio Valenzuela, the Government states that these threats were allegedly made by means of telephone calls, and that official investigations have not succeeded in identifying the persons responsible or establishing the extent to which they pose a real danger. The Government's communication adds that it is very difficult to identify persons who make accusations or threats anonymously by telephone or from a public telephone; it further notes that Chilean legislation establishes a special judicial recourse, the so-called "Request for Protection"; when the seriousness and authenticity of the facts are proven, the Court of Appeals orders police protection for a specified period.

333. As regards the ICFTU communication of 26 March 1987 concerning allegations that police forces intervened in a national

mobilisation of workers convened by the National Grouping of Workers (CNT) on 25 March 1987, in which several leaders of that organisation were wounded or detained, the Government's communication states that Rodolfo Seguel and Manuel Rodríguez were detained for one hour by uniformed police for attempting to prevent the free flow of traffic; they were immediately released and were not summoned by the court. Manuel Bustos was not detained, and there are no records that Luis Suárez was arrested by uniformed police. The communication adds that this case concerns simple skirmishes with the police in downtown Santiago, in which the police sought to counter the above-mentioned efforts to tie up traffic. It is not true that there was a national mobilisation as alleged by the complainants, nor that persons were injured as a result.

334. The Government's communication of 14 January 1988 refers also to the IFPAAW complaint regarding Eugenio León Gajardo's ineligibility to hold trade union office in the National Confederation of Chilean Peasants (CNC). The Government states that the Labour Office issued resolution No. 1541 on 21 August 1987, declaring Mr. León Gajardo ineligible to hold office in the CNC on the grounds that he was not legally qualified to hold trade union office. On the basis of new information received in this matter, the Labour Office issued resolution No. 1810 on 3 November 1987 which rescinded resolution No. 1541 and left Mr. León Gajardo free to hold office in the CNC. He is currently presiding over this trade union organisation and carrying out his trade union activities in absolute freedom.

335. As regards the ICFTU complaint contained in a communication of 26 November 1987 concerning the refusal to renew passports and to allow Luis Meneses and Carmen Pinto to enter the country, the Government's communication confirming a previous communication of 7 January 1988 indicates that official circular No. 3665 of 23 December 1987, issued by the Department of the Interior, authorised Luis Meneses to enter the country definitively and permanently; consequently, Mr. Meneses may enter the country whenever he wishes to do so since restrictions in this connection have been lifted. As regards the situation of Carmen Pinto, the Government's communication states that official circular No. 4920, dated 27 July 1984, of the Department of the Interior authorised her to enter the country definitively. The communication reports that the International Police Department reported that Carmen Pinto entered Chile on 13 July 1985, under Chilean passport number 4084 in her name, issued by the Consulate of Chile in France, and that she left the country with the same passport on 5 September 1985. As regards the allegation that the Chilean embassy in France refused to renew her passport on 24 November 1987, the staff of the Consulate General of Chile in Paris have reported that they have no records that this person requested an appointment on the date indicated in the ICFTU communication. Nevertheless, the Government's communication goes on to say that instructions have been issued to the effect that should Mrs. Carmen Pinto again visit the Chilean Consulate General in Paris, she be personally attended by the Consul and any misunderstandings clarified. Lastly, it should be recalled once more that the

prohibitions which barred these persons from entering the country were in no way related to trade union activities which they may have carried out in the past in Chile. Moreover, the Government rejects the false charges that it is adopting "new methods of repression against Chilean trade union leaders". The Government's communication states that by granting entry to the country and terminating exile, it shows its intention to return as soon as possible to the broadest institutional normalcy, so that all Chileans may choose their own destiny, in peace and free from foreign interference.

336. In a communication dated 2 February 1988, the Government states that Luis Meneses Aranda, if he has not acquired another nationality, must request travel documents from the government of the country where he is residing. The Chilean consular authorities have been instructed to grant him a temporary visa for 90 days so that he may visit the country and personally handle his temporary or permanent residence, whichever is the case, and regularise his situation.

337. In a further communication of 11 February 1988, the Government states that Messrs. Bustos, Martinez and Labraña have been released and have brought an appeal to modify the sentences handed down against them. The appeal will be heard by a higher court during the last week of February 1988.

D. The Committee's conclusions

338. The allegations which remained pending following the most recent examination of the case in November 1987, concerned the trial of Beatriz Brikmann; the threats to the lives of trade union leaders of the AGECH, the Teachers' Trade Union of Viña del Mar, and of the Workers in Commerce Trade Union; the intervention by police forces in a national mobilisation of workers convened by the National Grouping of Workers (CNT) which led to the injury and arrest of leaders of that organisation; the difficulties encountered by workers in the Baby Colloky enterprise in signing a collective agreement and the enterprise's refusal to recognise the workers' representatives; the legal provisions which make the holding of trade union office incompatible with affiliation in a political party; the ineligibility of the president of the National Confederation of Chilean Peasants (CNC) to hold the office to which he was elected; the assault and arrest at the hands of security forces of dozens of workers and trade unionists during a national day of protest called by the CNT in October 1987, and continued threats against the lives of CNT president, Manuel Bustos, as well as the judicial summons of CNT leaders Manuel Bustos, Arturo Martínez and Moisés Labraña and their subsequent imprisonment. Since then, the Committee has received new allegations concerning the authorities' refusal to renew the passport of Carmen Pinto, and the situation of trade unionist Luis Meneses, who was stripped of his Chilean citizenship and has been authorised to enter the country only on a temporary basis, and the sentence handed

down as regards CNT trade union leaders Manuel Bustos, Arturo Martínez and Moisés Labraña.

339. As regards the WCOTP complaints concerning telephone threats to the lives of trade union leaders of the Teachers' College of Chile in Valparaiso, the AGECH, the Teachers' Trade Union of Viña del Mar, and the Workers in Commerce Trade Union, as well as the complaints filed by the CNT and the ICFTU concerning continued threats to the lives of trade union leader Manuel Bustos, the Committee takes note of the information furnished by the Government concerning the corresponding investigations and the request for protection provided for by legislation when the authenticity and seriousness of the threat is demonstrated; in view of the numerous allegations of this nature which have been received since this case was opened, the Committee wishes to point out that a trade union movement in which trade union leaders are able to represent fully the interests of workers, in freedom and independence, cannot develop where trade unionists are threatened and live in fear; it urges the Government to undertake judicial investigations with a view to putting an end to these acts of intimidation which sow uncertainty in trade union ranks.

340. As regards the death of José Carrasco Tapia, a trade union leader of the Metropolitan Journalists' Council, and the attempted murder of Juan Espinoza, a national trade union leader of the Confederation of Maritime Workers (CONGEMAR) and his family, the Committee notes that in the case of Mr. Carrasco Tapia the Government states that the matter is being investigated, although the guilty parties have not yet been identified; and that in the case of Mr. Espinoza and his family, no charges were filed in connection with the attempted arson of his home, while he and his family slept; the Committee recalls that murder and other violent acts affecting trade unionists are serious matters which require the authorities to adopt severe measures with a view to re-establishing a normal situation.

341. As regards the various complaints concerning the arrest of trade unionists, presented by the CUT, ICFTU, WFTU and CNT, concerning trade union leaders Rodolfo Seguel (CNT), Manuel Rodríguez, Jorge Pavez (AGECH) and Guillermo Azula (AGECH), of 24 March 1987, for having participated in a peaceful demonstration to demand the reinstatement of 8,000 teachers dismissed during the course of 1987, the Committee takes note of the information furnished by the Government to the effect that these persons were arrested for obstructing the passage of vehicles and persons on a public thoroughfare, and that they were released following a summons by the Local Police Court, a court which imposes small fines for traffic violations, with the exception of Mr. Azula, in regards to whom there are no records of arrest and who is currently at liberty. As regards the arrest of a number of miners and their confinement in the Santiago Penitentiary for participating in days of protest in support of the right to work, the Committee takes note of the information furnished by the Government to the effect that, with the exception of Domingo Alvial Mundaca, who is on trial for the illegal possession of explosives and detonators and for engaging in terrorist acts, the

other miners mentioned by the complainant organisation are not currently under arrest. As regards the detention of former CUT trade union leaders Luis Guzmán and Mireya Baltra, who are allegedly being detained illegally in the Santiago Penitentiary, as well as that of Sergio Luis Lazo, who is alleged to have subsequently disappeared, the Committee takes note of the information furnished by the Government to the effect that Luis Guzmán is being tried for the crimes specified in the Act on the control of arms and explosives, for forgery of public instruments, and for entering the country illegally, and is not being detained illegally, but that his confinement has been ordered by the courts; likewise, the Committee takes note of the fact that Sergio Luiz Lazo was authorised to enter the country on 4 June 1987, and that he has not been, and is not currently being, detained; and that Mireya Baltra is in the country and enjoys complete freedom.

342. As regards the complaint of several trade union organisations concerning the arrest and subsequent imprisonment of trade union leaders Manuel Bustos, Arturo Martínez and Moisés Labraña, on charges of incitement to strike and paralyse trade, production, and public services on 7 October 1987, the Committee takes note of the information supplied by the Government concerning the proceedings against the above-mentioned trade union leaders. The Committee expresses its concern that Manuel Bustos and Arturo Martínez have been sentenced to 541 days' imprisonment, and Moisés Labraña to 61 days' imprisonment for breach of the State Security Act, and wishes to emphasise that the arrest and sentencing of workers' representatives for activities related to the defence of workers' interests are contrary to the principle of free exercise of trade union rights. It notes in this connection that Messrs. Bustos, Martínez and Labraña are free and have appealed against these sentences.

343. The Committee must also express its concern with respect to the continuing numerous complaints received since this case was opened, in connection with the arrest and/or imprisonment of trade unionists, although it wishes to state that it has taken note of the fact that certain arrests for which complaints have been field (in particular, the arrest of Luis Guzmán and Domingo Alvial Mundaca) fall beyond the scope of the freedom of association and, therefore, the competence of this Committee. In this connection, the Committee wishes to recall that although trade union responsibilities do not confer the right to transgress legal provisions with impunity, such legal provisions should not undermine basic guarantees as regards freedom of association, nor sanction activities which, in accordance with generally accepted principles, should be considered as legitimate trade union activities.

344. As regards the raid on the headquarters of the Federation of Self-Employed and Part-Time Workers' Trade Union, and the home of trade union leader Alejandro Olivares Pérez on 1 May 1986, the Committee takes note of the information supplied by the Government to the effect that there is no record or knowledge of these alleged illegal searches, and that in any event, they were not ordered by government authorities.

345. As regards the refusal to allow Rolando Calderón Aránguiz, Hernán del Canto Riquelme and Mario Navarro to enter the country, the Committee takes note of the information supplied by the Government to the effect that the names of these persons appear on a list of persons who are not authorised to enter the country, but that the Government is currently reviewing the situation of all persons affected by this prohibition, with a view to lifting this restriction.

346. As regards the ICFTU communication of 26 November 1987 concerning the refusal to renew the passport of Carmen Pinto and to allow access to the country to trade unionist Luis Meneses Aranda, the Committee takes note of the information furnished by the Government to the effect that there is no record that Mrs. Pinto ever requested the renewal of her passport on the date indicated in the ICFTU communication, at the Consulate General of Chile in Paris, and that the Government has issued instructions that, should Carmen Pinto again visit the Chilean Consulate General in Paris, she be personally attended by the Consul and any misunderstandings clarified. As regards the case of Luis Meneses Aranda, the Committee takes note of the fact that official circular No. 3665 of 23 December 1987 authorises him to enter the country on a 90-day visa so as to be able to personally deal with the question of his temporary or permanent residence and to regularise his situation. In this connection, the Committee wishes to recall the principle that the confinement or exile of trade unionists, even when based on a state of national crisis, should be provided with the necessary safeguards to prevent that these measures be used to curtail the free exercise of trade union rights.

347. As regards the complaint presented by the CEPCH concerning legal provisions which establish and regulate the incompatibility between trade union office and affiliation in a political party, and the requirement that elected trade union leaders sign an affidavit concerning any political affiliation, the Committee takes note of the information supplied by the Government to the effect that such provisions are designed to prevent the same person from holding simultaneous roles as a trade union leader and militant in a political party, a condition which would deprive the trade union movement of the independence it needs to act in the defence of the interests of workers, and that in any event, trade union leaders maintain and may exercise all of their political rights; likewise, the Committee notes that the requirement that elected trade union officials sign an affidavit concerning their affiliation, if any, in a political party, was rescinded by the Government on 30 October 1987. Nevertheless, the Committee wishes to recall the principle that legislation which prohibits certain persons from holding trade union office on the basis of political opinions or affiliations is contrary to the right of trade unionists to elect their representatives in full freedom [see 202nd Report, Case No. 911 (Malaysia), para. 139].

348. As regards the IFPAAW communication concerning Eugenio León Gajardo's ineligibility to hold office in the CNC, the Committee notes that his ineligibility has been rescinded following the examination of new evidence, by means of resolution No. 1810 of 3 November 1987, and

that Mr. León Gajardo is currently presiding over the CNC, the office to which he was elected.

349. As regards the allegations presented by the National Confederation of Textile and Allied Workers' Federations and Trade Unions of Chile (CONTEXTIL) concerning the problems encountered by the workers of the Baby Colloky enterprise in signing a collective agreement, and certain unfair labour practices carried out by the enterprise, the Committee takes note of the information furnished by the Government to the effect that workers in the Baby Colloky enterprise went on strike one day before the expiration of the period specified by legislation, which caused the enterprise economic hardship and constituted grounds for the termination of employment contracts. The Committee notes that on 30 November 1987 the enterprise reached a settlement in court with the workers, and in accordance with conciliation guide-lines laid down by the court in an effort to resolve the matter, the enterprise reinstated three workers with back-pay, and terminated the employment contracts of 12 workers by mutual agreement, upon payment of the indemnities established by the court.

The Committee's recommendations

350. In the light of its foregoing interim conclusions, the Committee invites the Governing Body to approve the following recommendations:

(a) Once again, the Committee expresses its concern over the continuing number of complaints presented since this case was opened, which reflects the difficulties encountered by the trade union movement and its leaders.

(b) As regards the dispute involving workers in the Baby Colloky enterprise, in view of the fact that the parties have reached an agreement in keeping with the conciliation guide-lines set down by the court, the Committee considers that this aspect of the case does not call for further examination.

(c) As regards Eduardo León Gajardo's disqualification from holding the office to which he was elected by the CNC, and his subsequent qualification, the Committee considers that this aspect of the case does not call for further examination.

(d) In the light of the number of complaints concerning threats to the lives of trade unionists, the Committee urges the Government to undertake judicial investigations with a view to determining once and for all who is responsible for these threats, and to determine the seriousness of the threats and intention of the parties involved in each case, and to provide the necessary protection as soon as these threats are reported, with a view to

ensuring that trade union activities may take place normally in a climate free of fear and intimidation.

(e) As regards the death of José Carrasco Tapia, trade union leader of the Metropolitan Journalists' Council, the Committee requests the Government to supply information on developments in the judicial investigations in this case; as regards the attempt to burn alive Mr. Espinoza, trade union leader of CONGEMAR, and his family, the Committee urges the Government to take appropriate measures to punish the authors of these alleged violent acts, which breed fear and uncertainty throughout the labour movement.

(f) As regards the many allegations concerning the detention of trade unionists and, in particular the detention of Manuel Bustos, Arturo Martínez and Moisés Labraña, the Committee expresses its great concern at the sentencing of these three CNT trade union leaders, and requests the Government to supply information on the legal situation, and in particular on the outcome of the appeal filed by these trade unionists.

(g) In connection with the various allegations that trade unionists have been prevented from entering the country, the Committee urges the Government to rescind, as soon as possible, the bans against Rolando Calderón Aránguiz, Hernán del Canto Riquelme and Mario Navarro and to inform it in this regard; it also requests the Government to keep it informed of the situation of Mr. Meneses Aranda, particularly as regards the restoration of his Chilean nationality.

(h) As regards the raid on the headquarters of the Federation of Self-Employed and Part-Time Workers' Trade Unions and the home of trade union leader Alejandro Olivares Pérez, the Committee urges the Government to undertake investigations with a view to identifying the persons responsible for these actions and to inform the Committee of the results of these inquiries.

(i) As regards legal provisions which establish incompatibility between trade union office and affiliation in a political party, the Committee requests the Government to amend the legislation to bring it into line with general principles of freedom of association and, in particular, to repeal those legislative provisions which restrict the workers' right to elect their representatives freely by making the holding of trade union office incompatible with membership in a political party.