(10) On application to the commissioner by a party to the dispute within seven days after it receives an arbitration award, the commissioner may review the arbitration award on the ground that,

(a) the decision or award of the arbitration board is inconsistent with the principles expressed or implied in subsections (1), (2) and (3), or

(b) a party to the arbitration has been or is likely to be denied a fair hearing.

(11) On receipt of an application pursuant to subsection (10), the commissioner may order that the arbitration award not be implemented in whole or in part pending his review of the arbitration award.

(12) The commissioner shall review the award and render his decision within 30 days after receipt of an application under subsection (10) or within such longer period as the parties to the arbitration award agree.

(13) Where the commissioner considers that the arbitration award does not comply with subsections (1), (2) and (3) or that subsection (10)(b) applies, the commissioner shall notify the parties to the arbitration and the arbitration board in writing of his decision, and notwithstanding any other enactment, law or agreement to the contrary, the commissioner may direct the arbitration board to reconsider and redetermine either its award generally or in respect of a specific matter, and may give specific directions to the arbitration board and the parties, which in his opinion are necessary or appropriate to achieve compliance with subsections (1), (2) and (3) or to afford a fair hearing.

(14) In giving a direction under subsection (13) the commissioner shall inform the arbitration board and the parties of his reasons for giving such direction.

(15) No appeal lies from a decision of the commissioner made under this section.

Intervention by legislature or
by Lieutenant Governor in Council

137.97 (1) Where a dispute arises, the commissioner shall, where so directed by,

(a) resolution of the Legislative Assembly, or

(b) order of the Lieutenant Governor in Council,

resolve the dispute by exercising his powers under this section.

(2) The power of the Lieutenant Governor in Council to give a direction under subsection (1) applies where the Legislative Assembly is not in session and the Lieutenant Governor in Council considers that the dispute poses a threat to the economy of the Province, or to the health, safety or welfare of its residents or to the provision of educational services in the Province.

(3) Where a direction is given under subsection (1), the commissioner shall, for the purpose of resolving the dispute,

(a) where a strike or lock-out is occurring or occurs with respect to the dispute, give notice to the parties that their strike or lock-out is to cease and their operations and employment are to be resumed, or where no strike or lock-out has occurred, make such orders as are necessary and appropriate to prohibit a strike or lock-out; and

(b) exercise or cause to be exercised such of the following powers as the commissioner considers necessary to the resolution of the dispute:

(i) direct the chairman to appoint a mediation officer under this Part;

(ii) appoint a fact finder under this Part;

(iii) refer the matter to a public interest inquiry board;

(iv) order without the consent of the parties that the dispute be settled by arbitration under this Part and direct the method of arbitration to be used;

(v) appoint a special mediator under this Part.

(4) Where arbitration has been ordered under subsection (3) and the employer is a public sector employer, the arbitration board shall comply with the arbitration requirements of this Part applicable to public sector employers.

(5) Where the commissioner gives a notice under subsection (3)(a), then, within 48 hours after the giving of the notice,

(a) the employer shall resume the operations of his undertaking, plant, industry or business;

(b) the employer shall call back to work those of his employees who are locked out;

(c) the employer shall not declare, authorise, acquiesce in or engage in a lock-out of employees;

(d) every employee shall resume the duties of his employment with his employer in accordance with the terms and conditions of the

collective agreement last in force between his employer and trade union before the giving of the notice; and

(e) neither a trade union nor any person on its behalf nor any employee of the employer on whose behalf the trade union is entitled to bargain, shall declare, authorise, acquiesce in or engage in a strike or picketing of the operations of the undertaking, plant, industry or business of the employer.

(6) On the giving of a notice by the commissioner under subsection (3)(a),

(a) every person who is authorised on behalf of the trade union to bargain collectively with the employer for a collective agreement shall immediately inform the employees on whose behalf he is authorised to bargain of their obligations under subsection (5), and that

(i) a notice, declaration, authorisation or direction to go on strike, declared, authorised or given to them before or after the time the order is made, is suspended, and

(ii) any strike and picketing is prohibited, and

(b) every employer, trade union or employee affected by an order, direction or designation made under this Act with respect to the dispute shall comply with the order, direction or designation.

(7) No employer or person acting on behalf of the employer shall

(a) refuse to permit or authorise or direct another person to refuse to permit an employee to resume the duties of his ordinary employment as required by this Part, or

(b) suspend, discharge or in any manner discipline or authorise or direct another person to suspend, discharge or in any manner discipline such an employee

by reason of his having been on strike, but nothing in this section affects the right of the employer to suspend, transfer, lay off, discharge or discipline an employee for just and reasonable cause in accordance with a collective agreement referred to in subsection (5)(d).

(8) For the purposes of this Act, failure or refusal by an employee, without reasonable excuse, to continue or to resume the duties of his employment as required by or under this section shall be deemed to be just and reasonable cause for disciplinary action.

(9) Where under this section the commissioner has been directed to resolve a dispute, the minister shall, as soon as practicable, lay before the Legislative Assembly a copy of the collective agreement arrived at or determined pursuant to

(a) section 137.94(9),

(b) section 137.95, or

(c) sections 137.98 and 137.99.

(10) Where a copy of a collective agreement is laid before the Legislative Assembly as required by subsection (9), the Legislative Assembly may by resolution

(a) approve and confirm the collective agreement, or

(b) disallow the collective agreement,

and where the Legislative Assembly disallows the collective agreement, it ceases to have effect on the day it is disallowed.

(11) Subsection (10) does not apply where the dispute is resolved by mutual agreement made by the parties.

Special mediator

137.98 (1) Where the commissioner has been directed under section 137.97 to resolve a dispute, the commissioner may appoint a special mediator to assist the parties in settling the terms and conditions of a collective agreement or a renewal of a collective agreement, as the case may be.

(2) Where a special mediator has been appointed by the commissioner, the commissioner may specify terms of reference for the special mediator and may change the terms of reference.

(3) The commissioner may terminate the appointment of a special mediator.

(4) The special mediator shall keep the commissioner informed as to the progress of the mediation.

(5) The special mediator, in carrying out his duties under this Act, has the protection, privileges and powers of a commissioner under sections 12, 15 and 16 of the Inquiry Act.

(6) The special mediator shall be reimbursed for reasonable and actual travelling and out-of-pocket expenses incurred by him and may be paid remuneration the minister determines.

Term and report of the special mediator

137.99 (1) The special mediator shall, within the time specified in his appointment where no collective agreement has been entered into

or renewed by the parties, submit his report to the commissioner and the parties in the form of a collective agreement between the parties.

(2) The special mediator may request and the commissioner may approve one extension of the time specified in the appointment.

(3) On the submission of the report under subsection (1), it shall be deemed to be a collective agreement between the parties except to the extent to which the parties agree to vary its terms.

(4) Where a party subject to the report of a special mediator is a public sector employer, the report of the special mediator under subsection (1) shall be subject to a review by the commissioner pursuant to section 137.96 (10) and section 137.96 applies.

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

Case No. 1408

COMPLAINT AGAINST THE GOVERNMENT OF VENEZUELA PRESENTED BY THE INDEPENDENT UNION OF EMPLOYEES OF THE CENTRAL BANK OF VENEZUELA

196. The complaint of the Independent Union of Employees of the Central Bank of Venezuela, alleging violations of freedom of association by the Government of Venezuela, was presented in a letter dated 1 June 1987. The Government replied to it in communications dated 26 October 1987 and 25 February 1988.

197. Venezuela 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

198. The complainant explains that on 20 November 1985 the employees of the Central Bank of Venezuela held a general meeting so as to set up a trade union called "the Independent Union of Employees of the Central Bank of Venezuela"; they drafted rules and elected officers in accordance with current Venezuelan legislation. On 3 December 1985 they applied to the Ministry of Labour for the

granting of legal personality to their union, adding that under section 185 of the Labour Code the Ministry had two months in which to effect the registration or address to the applicants such observations as might be deemed necessary.

199. However, the complainant states, in the present case six months passed without receipt of any reply - which, it says, is a breach of Articles 7 and 8 of Convention No. 87 according to which the acquisition of legal personality by workers' organisations shall not be made subject to requirements of such a nature as to inhibit the application of the Convention and that the law of the land shall not impair, nor be so applied as to impair, the guarantees provided for in the Convention.

200. The complainant denounces the overly obliging attitude of the Ministry of Labour towards the Bank's management which is preventing registration of the union and making use of delaying manoeuvres such as bringing the matter before the public prosecutor's office, whereas that office is not competent to decide such questions.

201. The complainant demands the immediate registration of the union in conformity with national legislation and the Venezuelan Constitution, which expressly protect the right to associate and respect for Conventions Nos. 87 and 98, ratified by Venezuela.

202. Furthermore, the complainant appends to its complaint a letter dated 19 May 1986, which it sent at that time to the employees of all the banks in the country to appeal for the solidarity of other bank employees in the defence of the right of the Central Bank's employees to organise and to bargain collectively. In this appeal, the complainant enumerates the occupational demands of the recently established union, namely: doubling of the grant made when an employee retires on pension; maintenance of the requirement of only one year's seniority for the right to receive housing benefits; abolition of the discrimination existing between salaried employees and wage earners as regards medical benefits; reduction of the unjust workload imposed on the security watchmen, who have to perform police functions outside the immediate area of the Central Bank; and a more proper and equitable distribution of the duties of all the Bank's employees, based on their responsibilities, their seniority, their efforts and the honesty with which they carry out their work.

B. The Government's reply

203. In its first reply dated 26 October 1987, the Government does not deny that the Minister of Labour has refrained from granting legal personality to the union, but explains that employees of the Central Bank are civil servants and it is not for the Ministry of Labour, but for the Central Personnel Office, to register a union of

civil servants, in accordance with the regulations covering public servants' unions.

204. Going into more detail, the Government states that on 3 June 1986 the Ministry of Labour sent back its documents to the union which had proposed to establish itself, considering that in accordance with the Labour Code such a union could not be inscribed in the Register of Trade Unions, since it was composed of civil servants who are subject to the Administrative Careers Act.

205. The Government also explains that previously the Ministry of Labour had been competent to register unions of civil servants and that on 13 November 1973 it had indeed inscribed in the Register of Trade Unions the Union of Public Officials of the Central Bank of Venezuela; however, the registration of civil servants' unions was now within the competence of the Central Personnel Office.

206. The Government adds that in any case the complainant has the right to appeal to the courts and that it did indeed make an application to the Administrative Disputes Authority on 14 October 1986; this application was held to be receivable by the said Authority on 5 May 1987. According to the Government, the relevant proceedings are continuing.

207. Furthermore, the Government states that trade unions existing within the Central Bank of Venezuela, particularly the Union of Public Officials of the Central Bank (registered in 1973), act freely. It adds that the founding members of the Independent Union of Employees of the Central Bank are also members of the Executive Committee of the Union of Public Officials of the Central Bank, and that the union which it is proposed to set up is intended to recruit as members the same type of personnel as already belongs to the Union of Public Officials.

208. In a later reply dated 25 February 1988, the Government adds that in 1974, the Attorney-General had issued a resolution stating that employees of the Central Bank of Venezuela were civil servants as they were employed in the public service. It specifies that Decree No. 1378 of 15 January 1982, issued under the Administrative Careers Act, establishes the competence of the Central Personnel Office to register public servants' unions; furthermore, under section 219 of this Decree, it is provided that the Ministry of Labour must refer any documents concerning the registration of these unions to the Office in question. The Government also points out that the appeal to quash the ministerial resolution on this case (resolution of 3 June 1986, in which the Ministry of Labour stated it was not competent to deal with the matter and returned the documents to the trade union attempting to set itself up) is pending.

C. The Committee's conclusions

209. In the opinion of the Committee, the question whether one or another authority is entitled to grant legal personality to a trade union should not infringe the right of workers without distinction whatsoever, including civil servants, to form organisations of their own choosing without previous authorisation, as provided in Article 2 of Convention No. 87. Nor should the existence of a trade union of public servants in the Central Bank prevent the employees of that establishment from setting up another union for the defence of their interests if they so desire.

210. A quite different problem arises when considering which would be the most representative workers' organisation thus entitled to negotiate with the management over the conditions of work of the salaried and wage-earning employees of the Central Bank of Venezuela. In this connection, the Committee recalls that the decision as to which union is the most representative must always be made according to objective, precise and predetermined criteria, so as to preclude any possibility of partiality or abuse.

211. Moreover, the existence of a recognised trade union in the Central Bank of Venezuela should not have the result of depriving another union - perhaps not recognised as being the most representative - of the essential means of defending the occupational interests of its members and of the right to organise its administration and activities and to formulate its programme, as laid down in Convention No. 87.

212. In the present case, the Committee regrets the long time taken by the authorities in examining the matter, since the request for legal personality was made by the complainant, the Independent Union of Employees of the Central Bank of Venezuela, to the authorities in December 1985, more than two years ago. The Committee requests the Government to take the necessary measures to accelerate the consideration of the question of the granting of legal personality to the union in question.

The Committee's recommendations

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

(a) The Committee requests the Government to take the necessary measures to speed up the consideration of the question of the granting of legal personality to the Independent Union of Employees of the Central Bank of Venezuela.

(b) The Committee requests the Government to keep it informed of the action taken to give effect to its recommendations.

Case No. 1437

COMPLAINT AGAINST THE GOVERNMENT OF THE UNITED STATES OF AMERICA PRESENTED BY THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANISATIONS

214. The American Federation of Labor and Congress of Industrial Organisations (AFL-CIO) presented a complaint of violations of trade union rights against the Government of the United States of America in a communication dated 19 February 1988. It submitted additional information in support of its complaint in a letter dated 9 March 1988. The Government supplied its observations in a communication of 27 April 1988.

215. The United States has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. The complainant's allegations

216. In its communication of 19 February 1988, the AFL-CIO refers to the conduct of the German-based multinational enterprise, BASF, in the United States. The current conflict involves BASF's action at its location in Geismar, Louisiana where workers have for many years been represented by Local 4-620 of the AFL-CIO affiliated Oil, Chemical and Atomic Workers' International Union (OCAW). However, according to the AFL-CIO, this is only one example of a pattern of anti-union conduct with victims at other locations.

217. The AFL-CIO states that in 1984, an Administrative Law Judge of the National Labor Relations Board (NLRB) credited the testimony of an employee at the company's site at Wyandotte, Michigan regarding the anti-union policy of BASF. It quotes from the NLRB document (the full text of which is enclosed):

> On or about 25 May 1983, International Representative Larry Startin attended a third step grievance meeting at the Wyandotte site. While there, Startin asked Respondent's (BASF) Manager of Human Resources, Charles Caldwell, why Respondent was going after the Union as hard as they were. Caldwell answered that it was

not anything personal but they had orders from Germany (Company world-wide headquarters) to get rid of all the unions in the United States. He went on to say they had already done it in two plants and Wyandotte was just next in line.

218. The complainant highlights some of the elements of the company's anti-union campaign: (a) attempts to destroy the union through changes in classifications or status of positions or through subcontracting of work to remove workers from the bargaining unit or replace them with non-bargaining unit employees who are without trade union representation; (b) discrimination against union leaders and activists; (c) the unilateral decision of the company at several locations not to honour provisions in collective bargaining agreements and clear past practice which provide for the payment of employees for reasonable time for union work, including activities related to the preparation and processing of grievances, a common practice in the United States which had previously been upheld by the NLRB and the courts. On this question of BASF's illegal and unilateral refusal to honour contract provisions and past practice on paid time off for union work, the AFL-CIO states that the company has persisted in challenging this practice in the NLRB and in the courts in spite of unfavourable decisions. For example, BASF, continued the appeals process up to the 6th Circuit Court of Appeals after having lost on this same issue in both the 2nd and 5th Circuit Courts.

219. According to the complainant, this case illustrates the inadequacy of United States labor legislation in safeguarding the principles of freedom of association in certain situations, such as when a company is determined to destroy a union which represents its employees or to frustrate an attempt by workers in an unorganised plant to join a union. The combination of all of the delays in the system and the weak sanctions imposed on lawbreakers can, as in this instance, result in violations of the fundamental rights of workers to form and preserve their trade unions and engage in collective bargaining.

220. The AFL-CIO states that much has been lost by BASF employees in the United States and by the unions which represent them. However, the struggle continues at BASF's location at Geismar, Louisiana where, in spite of having lived through a four-year lock-out, the workers continue to fight for their rights, their union and an acceptable collective agreement.

221. One of the complainant's numerous attachments is the latest charge filed with the NLRB on 2 February 1988 to try to obtain good faith bargaining which, it states, proves the reasonableness of the union and its sincere desire for a decent collective bargaining agreement. From this document it appears that negotiations were held on six occasions starting 13 August 1987, with the company's final offer - proposed in a parking lot on 22 September - being discussed for the first time on 13 October 1987, and implemented unilaterally by BASF on 27 October for a three-year period. In the document it is alleged that the company refused to show up for a scheduled meeting

and refused to meet at mutually acceptable times and places, although it also appears that there had been several informal meetings both before and after the lockout linked to this matter which occurred in June 1984. The document shows that apart from the union's frustration at the company's refusal or delay in supplying information on certain structural changes in the plant and lack of courtesy, the principal deadlocks in the bargaining meetings involved the company's drug screening programme and the use of permanent subcontractors to exclude recalling locked out employees. Further unsuccessful negotiating sessions were held on 18 November and 8 December 1987 and 19 January 1988.

222. The document cites recent NLRB decisions deciding as unlawful the permanent replacement of locked out employees. It alleges that BASF's subcontracting was based on anti-union discrimination because those locked out employees (particularly the 110 maintenance workers) have little opportunity to join or maintain membership in the bargaining unit; it stresses that the company has no economic reason for subcontracting as statistics are available proving that work by members of the bargaining unit was less costly. The document also points out that the vast majority of the union's negotiating committee and leadership throughout the period of this labour dispute are from the maintenance department.

223. The complainant supplies copies of four other NLRB cases concerning against BASF locations (Rensselaer, N.Y. and the International Chemical Workers' Union (ICWU) Local 227; Jamesburg, N.J. and ICWU Local 846; Wyandotte, Michigan and OCAW Local 7-627; Geismar, Louisiana and OCAW Local 4-620) in which the employer was variously found guilty of certain unfair labour practices, including refusing to bargain, discrimination through the unlawful reduction in hours of union officials, unilaterally discontinuing the practice of paying union officials for time lost when on union business, discontinuing the union's use of the office, telephone and copying machine. The complainant also encloses copies of the 5th Circuit Court of Appeal judgement of 2 September 1986 ordering BASF's Geismar location to comply with the earlier NLRB order to cease certain unfair labour practices against its employees' exclusive bargaining representative, the OCAW Local 4-620. Another enforcement order has been sought from the 6th Circuit Court of Appeal to force the employer to abide by the decision affecting the Wyandotte location and OCAW Local 7-627; there has not yet been a ruling on this matter.

224. On 9 March 1988, the complainant supplied a copy of the sworn affidavit of the OCAW's international representative, Mr. Ernest Rouselle, to be used in the unfair labour practices case filed with the NLRB on 2 February 1988.

B. The Government's reply

225. In a communication of 27 April 1988 the Government supplies details on each of the four NLRB cases concerning BASF Company locations in the United States referred to by the complainant. It points out that BASF complied with the NLRB's orders and the cases were all definitively closed: Rensslaer on 30 April 1987, Jamesburg on 4 April 1986, Wyandotte on 27 May 1987 after the NLRB withdrew its enforcement petition and Geismar on 16 December 1986.

226. As regards the AFL-CIO's allegations that BASF's unfair labour practices are part of an anti-union campaign ordered by company headquarters in Germany and inadequately protected against by the United States labor laws, the Government stresses that, in the Wyandotte case cited by the AFL-CIO, the Court did not find that BASF had an anti-union policy. In fact, after hearing the testimony cited above the judge went on to note that when the witness subsequently contacted another company official about the statement, the second official denied that the company had an anti-union policy; in discussing this evidence, the judge observed:

> This is probably a matter of semantics. A company has a legal right to "think" whatever it wants about unions but it has no right to engage in unfair labor practices to undercut the union's support among its employees or engage in any unfair labor practices. I am deciding this case with that philosophy in mind. A company does not violate the Act if it wants to get rid of the union but only if it does something illegal to get rid of the union.

227. As for the allegation that BASF attempted to change classifications or to subcontract work with the goal of removing workers from the bargaining unit or replacing them with non-bargaining unit employees without union representation, the Government notes that in the only case adjudicated to conclusion involving the issue of classification (the Wyandotte case), the judge and the NLRB found in favour of BASF on that issue. It states that the AFL-CIO has provided no other evidence to support its allegation. To the extent that the pending case in Louisiana may raise the issue, it is the position of the United States not to comment upon active proceedings.

228. With respect to the allegation that BASF discriminated against union activitists, the Government notes that none of the cases cited by the AFL-CIO that has been adjudicated to conclusion appears to raise the issue. It claims that the AFL-CIO has provided no other evidence to support its allegation. To the extent that the pending case in Louisiana may raise the issue, it is the position of the United States not to comment upon active proceedings.

229. As regards the allegation that BASF refused to honour provisions in collective agreements and past practices that provide for the payment of employees for reasonable time for union business,

the Government observes that in the three cases involving paid union time mentioned by the AFL-CIO, BASF was found to have violated the National Labor Relations Act (NLRA) by failing to bargain over the issue. The NLRB awarded relief to the complaining parties, and BASF complied with the Board's orders. Additionally, in the separate federal court action in which BASF sought to have the payments for union time declared unlawful, the district court and the Court of Appeal concluded that the collective bargaining agreement provisions did not violate the legislation. With respect to the related charge that BASF litigated the paid union time issue in bad faith by trying to have such clauses in the collective agreement declared unlawful, the Government notes that while each of the cases cited by the AFL-CIO involved the same general issue, there were differences of detail. Furthermore, a legal ruling of a United States Court of Appeal is binding upon the United States district courts within its jurisdiction but not upon other courts of appeal or district courts. Finally, states the Government, United States law provides a remedy for frivolous litigation: under Rule 11 of the Federal Rules of Civil Procedure, a court may impose appropriate sanctions.

230. Lastly, the Government explains that the NLRA creates a comprehensive scheme for administrative adjudication of unfair labour practice cases and judicial enforcement of NLRB orders. In the cases cited by the AFL-CIO, the parties were able to present evidence and legal arguments in support of their positions. On some issues, the unions prevailed; on others, BASF prevailed. Where BASF was found to have violated the NLRA, meaningful sanctions designed to correct the violations (including cease and desist orders and back pay awards) were imposed and in each case, BASF complied with the Board's orders. In addition, according to the Government, considering the extent of the procedural safeguards in the adjudication process and the complexity of the issues presented, the time within which the NLRB and the courts resolved these cases was not unreasonable. It thus concludes that the AFL-CIO's complaint fails to provide any specific information to support its contention that United States labor laws are inadequate to safeguard the principles of freedom of association.

C. The Committee's conclusions

231. The Committee observes that there are basically two sets of allegations in this case: the first centres on various unfair labour practices by the German-based multinational, BASF, in four United States locations - most recently at Geismar, Louisiana - which the complainant considers show that employers's general anti-union policy; and secondly the inadequacy of United States labor legislation, viz. the National Labor Relations Act to protect against such violations of the workers' fundamental trade union rights.

232. The Committee notes the Government's statements denying delays in the legislative procedures or weaknesses in sanctions

imposed on lawbreakers, as well as its explanation that, while each of the cases cited by the complainant found BASF in violation of the NLRA on some points, the judgements at the same time found in favour of the employer on others, and particularly regarding the testimony as to BASF's anti-union policy, the judge did not find that such a policy existed.

233. Before turning to the substance of the allegations, the Committee would point out with concern that this is the third recent complaint lodged - by different complainants - against the United States on the grounds of anti-union tactics and unfair labour practices by multinationals or large enterprises, in particular through abuse of the legislative provisions on recognition of collective bargaining agents and on procedures leading to conclusion of collective agreements. The Committee recalls that in Case No. 1401 [253rd Report, paras. 42 to 58, approved in November 1987] the charges against Norsk Hydro Aluminium Inc. had been dismissed by the Administrative Law Judge of the National Labor Relations Board and the Committee considered that the case did not call for further examination. Nevertheless, it stated its opinion that "by, for example, exploiting a series of possibly avoidable delays and misunderstandings, and by prolonging unduly the negotiations for a collective agreement, the company's attitude was not conducive to any kind of final agreement being reached following the negotiations". Likewise, in Case No. 1416 [254th Report, paras. 58 to 86, approved in March 1988] the Committee conceded that the case did not call for further examination in the light of the lack of evidence to support certain allegations, the NLRB's respect for due process and the fact that the complainant only represented a small minority of the workers employed by the new caterer. The Committee observed, however, that it remained open to the union involved to campaign and petition for coverage of the other food service workers on UN premises if it so wished.

234. In the present case, the Committee considers that the allegation relating to inadequacy of the pertinent legislation and its sanctions has not been proved. As pointed out in the Government's reply, the NLRA provides a series of procedural safeguards for the filing and hearing of unfair labour practice charges which, in the four cases cited by complainant, in fact led to verdicts against BASF on most of the vital issues. The complainant did not present any information to show that BASF has not complied with the NLRB's orders to cease and desist from certain violations of the Act. The Committee realises that fresh charges were filed on 2 February 1988 concerning the disruption of bargaining in late 1987 - which led to the unilateral imposition by the Company's Geismar location of a three-year collective agreement - but notes that the charges relate only to the recent bargaining and not to non-compliance with earlier sanctions. The very fact that the complainant's affiliates continue to use - and win with - the NLRB procedures indicates to the Committee that the system is not entirely without the confidence of the workers' organisations involved.

235. As regards the specific criticism of BASF's actions at Geismar, the Committee notes that the use of subcontracters as a means of weakening or eliminating the union is linked to the general allegation of discrimination against union leaders and activitists since BASF has singled out for subcontracting the one department from which the union's leaders and negotiating team come. In the Committee's opinion, given that this measure was apparently not linked to economic necessity, this might give rise to a violation of the principle that no one should be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities [see Digest of Decisions and Principles, 1985, para. 538]. The Committee considers that subcontracting accompanied by the dismissal of union leaders can constitute an act of anti-union discrimination, just as dismissal, compulsory retirement, downgrading, transfers or blacklisting. The Committee requests the Government to ensure that the national machinery will hear this grievance speedily and impartially.

236. As for the allegations that BASF has not honoured collective agreement provisions and established past practice on paid time-off for union business, the Committee notes that, despite many challenges by BASF before the courts, the United States judiciary has consistently (as the complainant and the Government point out) held that such clauses and practices should be respected, and has ordered BASF to do so. These verdicts are in line with the ILO standards concerning the granting of reasonable facilities to workers' representatives, such as time off for union business without loss of pay, access to all workplaces in the undertaking, access to management, notice board and distribution facilities and the use of other material facilities to enable them to exercise their functions promptly and efficiently [see the Workers' Representatives Recommendation 1971 (No. 143), Part IV].

The Committee's recommendations

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

(a) The Committee considers that subcontracting accompanied by dismissals of union leaders can constitute a violation of the principle that no one should be prejudiced in his employment on grounds of union membership or activities. The Committee requests the Government to ensure that the national machinery will hear the union's grievance on this issue against BASF (at its Geismar location) speedily and impartially.

(b) In the Committee's opinion, the national courts' decisions obliging BASF to honour collective agreement provisions and past practice on paid time off for union business are in line with the ILO standards on the subject.

(c) The Committee considers that the other aspects of this case do not call for further examination.

(d) The Committee requests the Government to keep it informed of developments in the unfair labour practice charges against BASF, Geismar, filed by the complainant's affiliate with the NLRB on 2 February 1988.

V. CASES IN WHICH THE COMMITTEE HAS REACHED INTERIM CONCLUSIONS

Cases Nos. 1168 and 1273

COMPLAINTS AGAINST THE GOVERNMENT OF EL SALVADOR PRESENTED BY - THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS - THE WORLD FEDERATION OF TRADE UNIONS AND OTHER TRADE UNION ORGANISATIONS

238. The Committee had already examined Case No. 1168 at its meetings in May 1983, May 1984, February-March 1986 and May 1987 [see 226th, 234th, 243rd and 251st Reports of the Committee] and Case No. 1273 at its meetings in November 1984, February-March 1986 and May 1987 [see 236th, 243rd and 251st Reports of the Committee].

239. At its meeting in November 1987, the Committee pointed out that the Government had stated in a communication that it would shortly be transmitting its observations on these cases (Nos. 1168 and 1273) [see 253rd Report, para. 8]. Since then new allegations have been received from the International Confederation of Free Trade Unions (ICFTU) dated 14 July 1987, the United Trade Union Federation of El Salvador (FUSS) dated 11 April 1988 and the World Federation of Trade Unions (WFTU) dated 27 April 1988. The Government sent certain observations on 2 September 1987 concerning the allegations made by ICFTU.

240. As the Committee had not received any information from the Government since then on a large number of pending allegations, at its meeting in February-March 1988 it drew the attention of the Government to the fact that, according to the procedure established in paragraph 17 of its 127th Report, approved by the Governing Body, it would present at its next meeting a report on the substance of the cases in question even if the information and observations requested from the Government had not been received in time. Consequently, the Committee appealed to the Government to transmit its observations as a matter of urgency [see 254th Report, para. 13]. Up to the present date, no new information has been received from the Government.

241. El Salvador 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 cases

242. At its latest examination of the substance of Cases Nos. 1168 and 1273 [May 1987 (251st Report)] certain questions remained pending before the Committee. The Committee had in particular requested that (Case No. 1168):

- a judicial inquiry should be undertaken into the disappearance of the trade union leaders Elsy Márquez and José Sánchez Gallegos;

- further information should be provided on the arrest of some trade union members who were being held in custody and/or tried, indicating in particular the specific charges brought against them. The Government had reported that these persons were not in any of the detention centres in the country, but that it would ascertain whether they had been held at some stage in police security centres.

The Committee also requested that (Case No. 1273):

- a judicial inquiry be instituted into the alleged murder of the trade unionists Francisco Méndez and Marco Antonio Orantes (the Government had reported that the former had disappeared but that no state security body knew anything about his disappearance);

- it should be informed of the progress in the trial concerning the murder of the trade union leader José Arístides Mejía;

- it should be sent additional information on the arrest of Adalberto Martínez (23 June 1986), a member of the ANDA Workers' Union; Andrés Miranda (27 June 1986), a member of the FUSS, and Gregorio Aguillón Ventura (1 February 1986), who had been arrested by the rural police (policía de hacienda) and allegedly placed at the disposal of a military court, accused of political and related offences, as well as José Antonio Rodríguez (18 August 1986), a member of the Building Workers' Trade Union, arrested by armed men in civilian clothing while he was on his way to the Construction Company "Bruno Tonza" where he worked. It requested indications as to the specific reasons for these arrests and whether the persons concerned had already been released;

- observations should be transmitted on the raid of the ANDES premises on 20 April 1986 by members of the armed forces, who

confiscated documents and part of the files of the organisation, including the list of members;

- observations should be sent on the dismissal of six trade union leaders in the telecommunications sector as a result of the strike called on 15 April 1986.

B. New allegations

243. In a communication dated 14 July 1987 the ICFTU denounces the fact that on 8 July 1987 during a mass meeting organised by the Workers' Union of the Social Security Institute, which was on strike for socio-economic demands, the strikers were violently repressed by military forces stationed inside the Institute building. The communication adds that the military fired against the demonstrators, injuring a number of people more or less severely, and that the Social Security Institute subsequently continued to be occupied by military forces (Case No. 1273).

244. The United Trade Union Federation of El Salvador (FUSS), in a communication of 11 April 1988, alleges that on 10 April at 2.00 a.m. the house of Mrs. Marta Castaneda, a member of the Coffee Union (SICAFE) and leader of the Women's Committee of that union, was blown up. The building, at number 21, Colonia Lamatepec, Pasaje F, Zona D, in the town of Santa Ana, was completely destroyed, together with all that was in it. The communication from the FUSS states that five minutes after the attack against the trade unionist Castaneda and her son, who were fortunately not in the building, a unit of the Second Infantry Brigade of the same town, accompanied by the rural police, appeared on the scene. On 7 and 8 April, the Colonia was surrounded and searched by members of the Second Infantry Brigade who kept it sealed off until 2.00 p.m. on 8 April when the trade unionist Castaneda was allowed to leave. Finally, the communication denounces the persecution of the trade unionist Marta Alicia Sigüenza, a member of the general executive committee of SICAFE, who has been unable to come to her place of work, the San Ignacio Co-operative, and has been forced to hide for fear of being killed by the government forces (Case No. 1273).

245. In a communication of 27 April 1988, the WFTU alleges the persecution of members of the Union of Salvadorian Telecommunications Workers (ASTTEL), in particular its General Secretary, Mr. Raphael Sanchez, who was dismissed, and the current General Secretary, Mr. Humberto Centeno, who was arrested and beaten. It also alleges the detention and torture of Mr. Centeno's two sons as a means of pressuring the Union, and the death at the hands of death squads of the unionists Victor Manuel Hérnandez Vasquez, Medardo Ceferino Ayala and José Herbert Guardado.

C. The Government's reply

246. On 2 September 1987 the Government sent its observations concerning the incidents that had occurred at the Salvadorian Social Security Institute and been denounced by ICFTU, stating that on the morning of 8 July 1987 a group of trade union members were demonstrating in front of the administrative offices of the Institute. Acting on higher orders, members of the national police were guarding the building and 85 per cent of the staff who were working at the time. The Government's communication states that the demonstrators entered by force, breaking through the safety cordon and, in spite of the repeated appeals of the officials to remain calm and reasonable, threw themselves on the police, attacking them with clubs in which nails were embedded and shoving them, injuring several of them as a result. After these violent actions on the part of the demonstrators, shots were heard and the security forces spread out to seek cover and ascertain where the shots came from. Two members of the police, as well as two national television journalists, were wounded by bullets. The communication adds that the Government condemns this type of action, whose planning had been denounced on various occasions as forming part of the politico-military strategy of the FMLN-FDR to bring about a confrontation between these unions and the authorities in order to destabilise the democratic process and tarnish the image of the Government in national and international public opinion.

D. The Committee's conclusions

247. Before examining the substance of the cases, the Committee considers it necessary to recall the views that it expressed in its First Report [para. 31] and which it has had occasion to repeat in various circumstances: the purpose of the whole procedure set up in the ILO for the examination of allegations of violations of freedom of association is to promote respect for trade union rights in law and in fact. As the procedure protects governments against unreasonable accusations, governments on their side should formulate, so as to allow objective examination, detailed replies to the allegations brought against them. The Committee wishes to stress that, in all the cases presented to it since it was first set up, it has always considered that the replies from governments against whom complaints are made should not be limited to general observations.

248. The Committee deeply regrets that the Government has not sent all the information requested by the Committee on these cases and that, in view of the time that has elapsed, it has had to consider them without having access to all the information necessary for a thorough examination.

249. The Committee notes that the pending allegations concern the disappearance of the trade union leaders Elsy Márquez and José Sánchez Gallegos; the detention and/or proceedings against certain trade union members, in particular Raúl Baires, Francisco Gómez Calles, José Vidal Cortez, Luis Adalberto Díaz, Héctor Fernández, Héctor Hernández, Jorge Hernández, Carlos Bonilla Ortiz, Silvestre Ortiz, Maximiliano Montoya Pineda, Raúl Alfaro Pleitez, Roberto Portillo, Antonio Quintanilla and wife, Santos Cerrano, Auricio Alejandro Valenzuela, René Pompillo Vásquez, Manuel de la Paz Villalta and José Alfredo Cruz Vivas (Case No. 1168).

250. The Committee also notes that there are allegations still pending concerning the alleged murder of the trade unionists Francisco Méndez and Marco Antonio Orantes; the progress of the trial relating to the murder of the trade union leader José Arístides Mejía; further details on the detention of Adalberto Martínez (23 June 1986) a member of the ANDA trade union, Andrés Miranda (27 June 1986) a member of the FUSS, Gregorio Aguillón Ventura (1 February 1986) who is believed to have been detained by the rural police and to have been placed at the disposal of a military court, accused of political and related crimes, and José Antonio Rodríguez (18 August 1986) a member of the Union of Workers of the Building Industry. Other allegations pending relate to the raid on the premises of ANDES by armed forces on 29 April 1986, when part of the files and documents of the organisation were seized together with the membership list, and to the dismissal of six trade union leaders in the telecommunications sector as a result of the strike called on 15 April 1986 (Case No. 1273).

251. The Committee wishes to express its deep concern at the gravity and persistence of the allegations presented which relate to the disappearance, murder, detention and intimidation of a large number of trade unionists in El Salvador. Similarly it deplores the lack of additional information on the alleged violations of the fundamental human rights and freedom of association of the persons concerned. While bearing in mind Article 8 of Convention No. 87 according to which workers and employers and their respective organisations, like other persons or organised collectivities, must respect the law of the land, on condition that the said law does not impair the guarantees provided for in the Convention, the Committee wishes to underline the principle it has expressed on numerous occasions that a free trade union movement cannot develop in a system which does not guarantee fundamental rights, and especially the right of workers who are members of a union to meet on union premises, the right to free expression of opinion whether verbally or in writing, and the right of workers who are union members to be protected, in case of detention, by the guarantees of due legal process, which should be initiated as soon as possible. Similarly, the Committee would recall that a climate of violence such as that surrounding the murder or disappearance of trade union leaders is a serious obstacle to the exercise of trade union rights; such acts require stringent measures to be taken by the authorities. As regards the search of trade union premises, the resolution on trade union rights and their relation to civil liberties, adopted by the International Labour

Conference at its 54th Session (1970), states that the right to effective protection of trade union property is a fundamental civil liberty essential for the normal exercise of trade union rights.

252. With respect to the denunciation made by ICFTU concerning the incidents that occurred on 8 July 1987 during a mass meeting organised by the Workers' Union of the Social Security Institute, the Committee takes note of the Government's information to the effect that it condemns this type of action and that the action in question is, in its opinion, part of the politico-military plans of an organisation bent on destabilising the Government. The Committee notes that the complainant's allegations and the comments of the Government give a contradictory version of events. It would recall that, in the past, when unrest broke out leading to loss of life and/or serious injuries, it had pointed out that the instigation of independent judicial inquiries by the government concerned is a particularly effective method for elucidating all the facts, determining responsibilities, punishing the guilty parties and preventing the repetition of such acts.

253. Lastly, the Committee notes that the Government has not supplied its observations on the allegation made by the FUSS on 11 April 1988 concerning the bomb attack against the trade union leader Marta Castaneda and her son, or on the alleged persecution of the trade unionist Marta Alicia Sigüenza.

The Committee's recommendations

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

(a) The Committee must once again deeply regret that the Government has not sent all the information requested on the pending allegations.

(b) The Committee once again requests the Government to set up a judicial inquiry into the disappearance of Elsy Márquez and José Sánchez Gallegos, and expresses the hope that it will be possible to throw light on the fate of these trade union leaders in the near future (Case No. 1168).

(c) With regard to the detention and/or proceedings against the trade unionists Raúl Baires, Francisco Gómez Calles, José Vidal Cortez, Luis Adalberto Díaz, Héctor Fernández, Héctor Hernández, Jorge Hernández, Carlos Bonilla Ortiz, Silvestre Ortiz, Maximiliano Montoya Pineda, Raúl Alfaro Pleitez, Roberto Portillo, Antonio Quintanilla, Santos Serrano, Auricio Alejandro Valenzuela, René Pompillo Vazquez, Manuel de la Paz Villalta and José Alfredo Cruz Vivas (Case No. 1168), the Committee requests the Government to

provide additional information on their arrest, explaining the specific charges against them, the status of the proceedings and whether they are being held in custody at present or not (Case No. 1168).

(d) The Committee requests the Government to supply additional information on the alleged murder of the trade unionists Francisco Méndez and Marco Antonio Orantes, and to carry out a judicial inquiry into this matter. The Committee also requests information on the progress of the trial concerning the murder of the trade union leader José Arístides Mejía (Case No. 1273).

(e) The Committee requests the Government to provide additional information on the arrests of Adalberto Martínez (23 June 1986), Andrés Miranda (27 June 1986), Gregorio Aguillón Ventura (1 February 1986), and José Antonio Rodríguez (18 August 1986); as well as on the raid on the premises of ANDES and confiscation of its documents by armed forces on 29 April 1986, and the dismissal of six union leaders in the telecommunications sector as the result of a strike called on 15 April 1986.

(f) With regard to the incidents that occurred on 8 July 1987 between military and police forces and workers of the Social Security Institute, the Committee deeply deplores violent acts of this kind and urges the Government to instigate an independent judicial inquiry with a view to determining responsibilities, punishing the guilty parties and preventing the repetition of such acts, and also to keep the Committee informed of any steps taken to open a judicial investigation.

(g) Lastly, the Committee requests the Government to send its observations on the allegations made by the complainants on 11 and 27 April 1988.

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)
- THE NATIONAL GROUPING OF WORKERS (CNT)
AND OTHER TRADE UNION ORGANISATIONS

255. The Committee has examined this case on various occasions, most recently at its February 1988 meeting, when it presented an interim report to the Governing Body. [See the 254th Report, paragraphs 288-350, approved by the Governing Body at its 239th Session (February-March 1988).]

256. Subsequently, the ILO received the following communications from the complainants: COPESA (Consorcio Periodístico de Chile, SA) Workers' Trade Union No. 1, of 22 January 1988; National Confederation of Federations and Trade Unions of Workers in the Food, Restaurant, Hotel and Allied Trades (CTGACH), of 5 April and 4 May 1988; International Confederation of Free Trade Unions (ICFTU), of 13 and 26 April 1988; Workers' Democratic Confederation, of 13 April 1988 and the National Confederation of Federations and Trade Unions of Chilean Textile and Allied Workers (CONTEXTIL), of 26 April 1988. The Government transmitted its observations in communications of 8 March, 7 April and 2 May 1988.

257. 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

258. At its 239th Session in February-March 1988, the Governing Body approved the Committee's recommendations relating to the numerous complaints of detention of trade unionists (specifically Manuel Bustos, Arturo Martínez and Moisés Labraña) and requested the Government to keep it informed of developments as regards their legal position; to the refusal to allow several trade unionists (Rolando Calderón Aránguiz, Hernán del Canto Riquelme and Mario Navarro) to enter the country, and requested the Government to keep it informed of the situation of Luis Meneses Aranda, particularly as regards the restoration of his Chilean nationality; and to 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.

B. New allegations

259. In its communication of 22 January 1988 the COPESA (Consorcio Periodístico de Chile, SA) Workers' Trade Union No. 1 reports that on 26 May 1987 the Consorcio Periodístico de Chile, SA entered into a collective labour agreement with the COPESA Workers' Trade Union No. 1. The agreement was for a period of two years (from 1 May 1987 until 30 April 1989), and provided that the workers' remuneration in force until 31 March 1988 would be adjusted from 1 April 1988 by a percentage equal to 95 per cent of the change in the consumer price index (a rise in the cost of living) for October, November and December 1987 and January, February and March 1988.

260. The undertaking reached an agreement on the rescheduling of debts and loans at preferential rates of interest with the creditor

banks, headed by the Banco del Estado de Chile (a State bank) which signed an agreement with the undertaking for the rescheduling and payment of its debts, as is shown by the officially registered document executed on 5 August 1987. In spite of this agreement COPESA demanded that the members of the trade union forgo the wage increase payable as from 1 April 1988, on penalty of dismissal. The complainant states that the undertaking's arbitrary demand that the workers withdraw their claim to the remuneration to which they are entitled on the grounds that it is not subject to compensation for inflation (which in 1987 was at the rate of 21.5 per cent) infringes statutory provisions contained in the Labour Code and in international agreements. The workers refused to accept this demand of the undertaking, which on 20 January proceeded to dismiss 15 per cent of the members of each of the three trade unions existing in COPESA. The Workers' Trade Union No. 1 reacted to this softening up process by insisting on compliance with the collective agreement, which led to the dismissal of 25 more of its members on 9 February 1988 and the announcement that a further 50 would be dismissed. The dismissals that took place after 20 January affected only workers in Trade Union No. 1, since, in view of the attitude adopted by the undertaking, Trade Unions Nos. 2 and 3 agreed to renounce the wage adjustment that was payable as from 1 April 1988. The communication goes on to say that the members of Trade Union No. 1 are production workers whose salaries are the lowest in the undertaking and that the effect of the wage increase on the total payroll entails only a very slight outlay for the undertaking, but that the undertaking is determined not to adjust the wages of the members of Trade Union No. 1 to compensate them for the rise in the cost of living.

261. The communication concludes by stating that as a result of the dismissals, the production staff have to work overtime without the proper rest periods and that their annual leave has been suspended; this shows how arbitrary the dismissals are. It is paradoxical that, while dismissing staff so as to put pressure on the workers and to avoid complying with the agreed wage adjustments, the undertaking has taken on fresh staff at a cost very similiar to the wages of the dismissed staff - most of the new engagements being of administrative staff with closer ties with the management of the undertaking.

262. In a communication dated 5 April 1988 the National Confederation of Federations and Trade Unions of Workers in the Food, Restaurant, Hotel and Allied Trades (CTGACH) denounces the overt pressure brought to bear by the employers through the management of each establishment to discourage unionisation in this sector. According to the complainant, as soon as workers show any sign of planning to organise themselves selective dismissals are made; the most active workers are summoned to the enterprise's administrative offices, and if the situation continues mass dismissals are ordered. This practice is especially common in small establishments employing up to 20 workers, where the employer habitually uses informers to prevent the workers from organising themselves and making subsequent demands for higher wages. The complainant adds that when workers go ahead with their decision to organise themselves, the employers dismiss

all the persons concerned, or all the workers who in their opinion are the ringleaders. Collective agreements are used as a delaying tactic when workers plan to organise, but at the end of it all the workers very rarely still have their jobs. The complainant cites as examples the Savory, Bali Hai and Vegetariano establishments, adding that the workers who are not dismissed eventually give up in the face of the persecution to which they are subjected - jobs switched, longer hours, pay docked, etc. The complainant further alleges that undertakings in which there are established trade unions take advantage of the law to carry out mass dismissals, as occurred at the Hotel Carrera (where in 1985 100 workers were dismissed) the Hotel Sheraton (70 workers) the Copasin food store (100 workers), the Dos en Uno food store (200 workers) in 1986 at the end of the collective bargaining process. The current legislation is also used to dissolve trade unions. In 1985 alone, for example, trade unions were dissolved in the Violeta Peebles foodstuffs industry, the Hotel Claridge in Santiago, the Waldorf restaurant, the Hotel Isabel Riquelme-Chillan, the Conin company, the Prosit soda fountain and the Autogrill restaurant. The communication cites the typical example of the Rincón Alemán in the town of Los Angeles where the trade union was dissolved while the workers were engaged in collective bargaining and were protected by trade union immunity.

263. The CTGACH states that notwithstanding the many obstacles in this sector the workers organise and maintain trade unions in many undertakings, with the result that the employers' strategy has now switched to that of summoning non-unionised workers to the personnel manager's office where they are warned that they are better off as they are and are offered individual contracts instead of the benefits of the collective agreement; the employers then tackle the unionised workers who are made to sign the said individual contracts under threat of dismissal.

264. The complainant further adds that another method of breaking up trade unions in this sector is to contract work out: the employer contracts the services of outside undertakings (many of which are set up by their own executive) to take over the work of various sections and then dismiss the workers who were employed in them. There are several examples of this, such as the Marriot Chile undertaking where only 30 per cent of the staff are said to belong to the undertaking while the remaining 70 per cent work for various subcontractors, and the Hotel Carrera which has started turning over its various departments to subcontractors who currently employ nearly 50 per cent of the staff. This practice, the complainant alleges, makes all workers fear for their jobs and puts a stop to any form of organisation.

265. The CTGACH communication affirms that the employers in this sector have begun to persecute and dismiss trade union leaders systematically, sometimes on unfounded "grounds of dismissal". It cites the following examples:

- Three years ago the leader of the Culinary Arts Trade Union, Luis Humberto Benítez (now the CTGACH youth officer) was unjustifiably dismissed by his employer, the Club de la Unión in Santiago. Although he took all the appropriate legal measures and won his case on every occasion, the undertaking refuses to reinstate him in his employment.

- Over the last two years the trade union leader in the Copasín undertaking, Angel Catalán (the Secretary-General of the CTGACH), has been contesting his dismissal in court, but there is so far no possibility of his being reinstated.

- Four years ago Arsenio Angulo, President of the trade union in the Autogrill restaurant, was dismissed; to date his case has not been settled.

- Juan Montalbán, chairman of the Sindicato Interempresas de Santiago (Santiago Inter-Enterprise Trade Union) was dismissed two months ago and his employer refuses to reinstate him; in this case it must be said that the labour inspectorate has not been as efficient as it should have been.

These are the most notorious cases. Moreover, in the provinces, where all kinds of pressure are brought to bear by employers, many trade union leaders are giving up their union posts and not taking their cases to court because it is impossible to obtain any effective or prompt action.

266. The complainant's communication also refers to the inter-enterprise trade unions, whose members often work in small establishments with a single owner who in many cases changes the firm's company registration for the sole purpose of avoiding the formation of trade union. These trade unions have repeatedly denounced the absence of collective agreements, failure to pay the minimum legal wage, and imposition of working days of up to 18 hours without any overtime pay; when a worker complains, there are immediate reprisals and the worker has to overcome a host of bureaucratic obstacles to get paid. When a complaint is filed with the labour inspectorate the employer denies any connection with the worker, who then has to take his case to the labour courts. In these circumstances, the worker usually leaves his job without taking any steps to enforce his rights, because he cannot afford the cost of all the legal formalities of hiring lawyers, etc.

267. In a further communication dated 4 May 1988, the CTGACH sends additional information on the refusal to grant May Day, which happened to fall on a Sunday, by the Hotel Carrera; on attacks against trade union leaders; on the case of Humberto Benítez who has not been reinstated although his court case was successful; on trade union leader Juan Montalbán Lopez (Chairman of the Provincial Restaurant Union) who was ordered by the Labour Inspectorate to present himself at his workplace for reinstatement and, not having accepted the working conditions imposed by his employer, who is

chairman of the group of soda fountain and restaurant owners, was violently treated by her son and now is without work. The CTGACH raises other cases of dismissals after concluding collective agreements:

(a) Francisco de Aguirre Hotel-Serena: negotiations finished on 10 April after ten days' strike with an undertaking from the company not to engage in reprisals; however, to date five dismissals have occurred all based on "operational requirements of the company".

(b) Evercrisp Food Products Company: for over three years the workers have been trying to organise, with the company dismissing the most committed workers whenever it discovered their intentions; on 26 April four workers were dismissed for "operational requirements of the company".

(c) Central de Restaurant Company: one of its executives is an ex-union leader and whenever even the slightest action is attempted, he calls the workers to the company's central offices where they are threatened and, if there is a hint that they are unionised, dismissed. In each of the company's casinos there are informants who use information on past events to bring charges against possible organisers.

(d) "2 in 1" Company: since the last negotiations, persecution of the union and its members has become common practice. A parallel organisation has been set up inside, all workers have been forced to sign individual contracts which are then registered with the Labour Inspectorate as collective ones in violation of the law, and today, when despite all this the workers have formed a union to bargain collectively in conformity with the law, the company has started selective dismissals and to pressure the workers into signing voluntary increases so as to obstruct the bargaining.

268. In a communication of 13 April 1988 the ICFTU denounces the dismissal by the Chilean authorities of 17 trade union leaders and more than 100 workers from the state railways. The trade unions in the state railways had petitioned the Government for various social and economic improvements and, having failed to obtain any reply, called a strike. The ICFTU adds that among the dismissed trade union leaders were Miguel Muñoz and José Criado of the Comando Nacional de Trabajadores (National Grouping of Workers). In a further communication dated 26 April 1988, the ICFTU states that faced with the agreement of the railway workers' unions to go on a warning strike on 7 April 1988 in support of calls against the privatisation of the undertaking, government and management authorities replied by dismissing 17 union leaders and 83 unionised workers. This company measure obliged the unions to commence an unlimited strike on 12 April 1988. The dismissed union leaders are:

- Jose Criado	President (Fed. Nacional Trabaj. Ferroviarios)
- Germán Díaz	Secretary (Fed. Nacional Trabaj. Ferroviarios)
- Miguel Muñoz	Secretary General (Fed. Nacional Trabaj. Ferroviarios)
- Ceferino Barra	President (Sindicato Número 1)
- Juan Díaz	Secretary (Sindicato Número 1)
- Rafael Rivera	Treasurer (Sindicato Número 1)
- José Ortega	Director (Sindicato Número 1 de Santiago)
- Guillermo Munizaga	Director (Sindicato Número 1 de Santiago)
- Hugo Salinas	Treasurer (Sindicato Número 1 de Bernardo)
- René Vilches	Director (Sindicato Número 1 de Bernardo)
- Oscar Cabello	Director (Sindicato Número 1 de Bernardo)
- Tito Ramírez	Secretary (Sindicato Número 4 de Santiago)
- Juan Contreras	President (Sindicato Número 5 de Tracción)
- José Morales	Secretary (Sindicato Número 5 de Tracción)
- Orlando Gahona	Treasurer (Sindicato Número 5 de Tracción)
- Iván Orellana	Director (Sindicato Número 5 de Tracción)
- Luis Pradenas	Director (Sindicato Número 5 de Tracción)

269. In a communication of 13 April 1988 the Central Democrática de Trabajadores (Workers' Democratic Confederation) denounces the dismissals of trade union leaders and workers from the Chilean state railways, ordered by the Director of that undertaking, and adds that the dismissals are on the increase because they are supported by the Ministry of Transport and the Minister of Labour - which is a violation of trade union immunity and of the right to work.

270. In a communication of 26 April 1988, CONTEXTIL refers to problems facing workers of the Trade Union of the Curtiembre Interamericana Company and its own national executive council in the collective bargaining which has just come to an end with the Company. It states that for many years the workers of the Company have been seeking solutions to their wages, social and labour problems always finding, through collective bargaining, understanding of its problems by the Company. On 15 February 1988, 40 workers presented their claims in a collective agreement in accordance with the law, but the Company refused to receive it forcing the negotiating committee to turn to the labour bodies so that a labour inspector would officially present the draft agreement to the Company. From this moment on the employer engaged in a series of unfair labour practices against the workers involved in the draft, such as changes of places of work with salary drops, the dismissal of the Company's secretary, Mrs. Estela Miranda, being blamed as being behind the presentation of the draft and her arrest by unknown persons who threatened her for her participation in the lawful strike which, at that date, was 30 days' old. The Company was still refusing to find a solution to the labour dispute, hiding behind the labour legislation contrary to the interests of the workers.

C. The Government's replies

271. In its communication of 8 March 1988 the Government comments that it is surprised at the way standard procedure is abused in order to accuse a member State, often irresponsibly and solely for the purpose of having the Government condemned. The Government's communication maintains that many alleged violations of freedom of association are not violations at all, and at most amount to non-compliance with, or infractions of the ordinary penal law, that the normal courts are competent to handle and judge. The Government expresses concern because, it claims, the complaint attempts to represent as the sole representatives of the Chilean trade union movement a small group of persons whose names constantly and repeatedly appear in complaints to international organisations. The Government states that on 31 December 1986 there were in Chile 11,215 trade union officials leading 386,987 workers belonging to 5,391 trade unions, 131 federations and 31 national confederations, and it is hard to see how the 11,215 leaders of the Chilean trade union movement can be said to be encountering difficulties when at most only a dozen are cited in the complaints made to international organisations. It might be argued that they are leaders of powerful trade unions that are very representative of the trade union movement; but the best known of them, Manuel Bustos, was elected by 391 votes in his trade union, which has 900 members. The Committee regularly receives complaints against police action that is taken to maintain order and to enforce respect for the freedom of movement of pedestrians and vehicles. The complainants consider that public demonstrations can bring about better working conditions and resolve economic and social policy issues. But the Government states that it cannot regard as legitimate public demonstrations involving the stoning of public transport vehicles, the setting up of barricades, the incitement of parents not to send their children to school, the injuring of members of the police force, the violent death of children and innocent persons, and substantial damage to public and private property. The Government cannot call such "demonstrations" legitimate, especially when their purpose is to destabilise the Government by making the country ungovernable.

272. The Government refers to the ban on various trade unionists from entering the country and states that Rolando Calderón A. and Hernán del Canto R. are in exile because they sought refuge in an embassy in 1973. Both held political posts as Ministers of State in the Allende Government and both, along with Mario Navarro, are barred from entering the country. The Government is constantly reviewing the list of persons in exile in with a view to their return. The exile of the persons named has nothing to do with any supposed trade union activities but only with activities engaging their political responsibility. As regards Luis Meneses Aranda, the communication states that on 23 December 1987 he was authorised to enter the country and was granted a temporary visa for 90 days so that once in the country he could arrange for his temporary or permanent residence and regularise his situation as regards the loss of his Chilean

nationality. When Chilean nationality has been lost it may be reacquired by law, in accordance with article 11 of the Political Constitution.

273. Lastly, the Government refers to the raid on the headquarters of the Federation of Self-Employed and Part-Time Workers' Trade Unions and on the home of trade union leader Alejandro Olivares Pérez; it states that there is no record either with the police or in the courts of any such occurrence and that the persons allegedly affected have not lodged any complaint or appealed to the law courts.

274. In its communication of 7 April 1988 the Government provides information on the legal position of the trade union leaders Manuel Bustos, Arturo Martínez and Moisés Labraña, stating that the appeal instigated by the defendants' lawyers was heard by the Second Chamber of the Santiago Court of Appeal, where the pleas of the parties' lawyers were heard and a settlement was reached. On 21 March 1988 the Second Chamber of the Santiago Court of Appeal found for the appellants, quashed the verdict of the Court of First Instance appealed against, and acquitted Messrs. Bustos, Martínez and Labraña of the offences referred to in section 11 of the State Security Act. These persons are still at liberty and are enjoying all their trade union rights.

D. The Committee's conclusions

275. With regard to the comments made by the Government in its communication of 8 March 1988 on the alleged abuse of the supervisory procedures, and in particular the complaints of violations of freedom of association submitted to the Committee, in order to obtain condemnation of the Government, and on the representative character within the trade union movement of persons whose names frequently appear in such complaints, the Committee wishes to recall that, since it was formed, it has always stressed that the function of the International Labour Organisation as regards freedom of association and protection of the individual consists in promoting the effective application of the general principles of freedom of association, which is one of the principal guarantees of peace and social justice. Its function consists in guaranteeing and promoting freedom of associaton of workers and employers, not in bringing accusations against governments or condemning them. In carrying out its task, the Committee has always been particularly careful to apply the procedure developed over the years and to avoid exceeding its terms of reference. To avoid misunderstanding or misinterpretation, the Committee has thought it necessary to recall that its functions are limited to examining the complaints submitted to it; it is not called upon to formulate general conclusions on the trade union situation in particular countries on the basis of vague generalisations, but to assess the merit of the specific allegations made.

276. As for the ban on the re-entry into Chile of Rolando Calderón Aránguiz, Hernán del Canto Riquelme and Mario Navarro, the Committee notes the Government's repeated statements that the list of persons in exile is constantly being revised so as to allow their return. The Committee also notes the Government's claim that their exile has nothing to do with any supposed trade union activities but only with activities engaging their political responsibility. In this respect the Committee wishes to recall that the forced exile of trade unionists is contrary to human rights and is a serious matter as it deprives them of the possibility of working in their own country; moreover, it is a violation of freedom of association, as trade union organisations are weakened by being deprived of their leaders. Furthermore, the Committee wishes to recall, in view of the close relationship between freedom of association and basic human rights, that the ban on entry into the country imposed on certain trade unionists is contrary to the provisions of international instruments on this subject. Thus article 12(4) of the International Convenant on Civil and Political Rights states that "no one shall be arbitrarily deprived of the right to enter his own country", and article 13(2) of the Universal Declaration of Human Rights that "everyone has the right to leave any country, including his own, and to return to his country."

277. As regards the situation of the trade unionist Luis Meneses Aranda, the Committee notes the Government's statement that he was granted a temporary 90-day visa on 23 December 1987 so as to be able to regularise his situation as regards reacquisition of his Chilean nationality. The Committee hopes that, in accordance with the legislation, Chilean nationality will be restored to the trade unionist Meneses Aranda shortly.

278. As regards the raid on the headquarters of the Federation of Self-Employed and Part-Time Workers' Trade Unions and on the home of trade union leader Alejandro Olivares Pérez on 1 May 1986, the Committee notes the Government's observation that the persons allegedly affected have not submitted any complaint or filed any lawsuit and that the police have no record of any such occurrence.

279. As regards the legal situation of the trade union leaders Manuel Bustos, Arturo Martínez and Moisés Labraña, the Committee notes with interest the information supplied by the Government to the effect that the Second Chamber of the Santiago Court of Appeal upheld the appeal instigated by the defence counsel of Messrs. Bustos, Martínez and Labraña, quashed the verdict of the Court of First Instance condemning them, and acquitted these trade union leaders.

280. Lastly, the Committee observes that the Government has not sent its observations on certain allegations submitted in this case, namely: on the communication of the COPESA Workers' Trade Union No. 1 relating to the dismissal of members of that trade union who resisted pressure brought by the undertaking to make them give up a wage increase due as compensation for the rise in the cost of living which had been agreed on in a collective agreement made with the undertaking; on the complaint submitted by the CTGACH regarding the pressure

brought to bear by the employers on workers in this industry to prevent them from forming an organisation; on the mass dismissals after the conclusion of collective agreements; on the dissolution of trade unions in this sector; on the pressure brought to bear by employers to force workers to sign individual contracts instead of enjoying the benefits of collective agreements and on the use of subcontracting as a means of avoiding unionisation; on the dismissal of trade union leaders and the situation in inter-enterprise trade unions; on the complaint submitted by the ICFTU and the Workers' Democratic Confederation relating to the dismissal of 17 trade union leaders (including Miguel Muñoz and José Criado of the National Grouping of Workers (CNT)) and more than 100 workers of the state railways for having petitioned the Government on socio-economic demands and for having called a strike when no reply was made to their petition; on CONTEXTIL's allegations of difficulties facing workers in the Union of the Curtiembre Interamericana Company in concluding a collective agreement with the Company and the latter's unfair labour practices against workers involved in the negotiating committee for the draft collective agreement.

The Committee's recommendations

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

(a) In connection with the ban on re-entering the country imposed on various trade union leaders, and specifically Rolando Calderón Aránguiz, Hernán del Canto Riquelme and Mario Navarro, the Committee again urges the Government to rescind this ban and to keep it informed of developments in this situation.

(b) As regards the situation of the trade unionist Luis Meneses Aranda, the Committee expresses the firm hope that his Chilean nationality will be restored to him shortly in accordance with the law, and requests the Government to keep it informed of developments in this respect.

(c) As regards the raid on the headquarters of the Federation of Self-Employed and Part-Time Workers' Trade Unions and on the home of trade union leader Alejandro Olivares Pérez, the Committee notes that, according to the Government, there is no record of any such occurrences nor complaint made in connection with these alleged events.

(d) As regards the legal situation of the trade union leaders Manuel Bustos, Arturo Martínez and Moisés Labraña, the Committee notes with interest the verdict of not guilty rendered by the Santiago Court of Appeal and expresses the hope that these trade union

leaders will continue in the future the normal exercise of their trade union rights.

(e) Finally, the Committee invites the Government to send its observations on the allegations to which no reply has been given.

Case No. 1337

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

282. The Committee has examined this case on three previous occasions - in May 1986, May 1987 and November 1987 (see 244th Report, paras. 337-356, 251st Report, paras. 373-398, and 253rd Report, paras. 302-327), when it submitted interim reports to the Governing Body. Since then the WCOTP has sent new allegations in a communication of 16 December 1987 and the Government has sent a partial reply, dated 29 January 1988, to the allegations submitted in this case.

283. Nepal has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

A. Previous examination of the case

284. In its previous examinations of this case, the Committee noted that the WCOTP alleged the following: (1) refusal, since early 1980, by the authorities to register the Nepal National Teachers' Association (NNTA); (2) refusal by the Minister of Education to enter into negotiations with the NNTA, whereas two new government-controlled teachers' unions had been set up; (3) repressive actions by the authorities, including the death of six district officers of the NNTA, detention for over two years of eight NNTA leaders, interference in the NNTA second national conference by the police and mass arrests of demonstrating teachers. The complainant organisation supplied a list of 61 named teachers allegedly dismissed because of their trade union activities and a list of 35 named teachers allegedly transferred for such activities.

285. In its communication of 25 May 1987, the Government stated that the complaint lodged by the Nepal National Teachers' Association was baseless and malicious and that its allegations were intended to malign the Government. The Government explained in general terms the importance of youth in the building of the nation and the importance

of teachers, who were responsible for inculcating discipline and providing knowledge. The Government had therefore tried to raise the morale and spirit of teachers in Nepal, and had recently constituted an ad hoc committee to draft a constitution to form a teachers' association for the promotion of teaching and academic work, career development and protection of the rights and interests of the teachers, within the parameters of the constitution and the law of the land. The Government stated that the committee was chaired by a member of Parliament and included a wide range of representatives from both the primary- and secondary-level teachers of the country.

286. According to the Government the ad hoc committee had drafted the constitutions of the Nepal National Primary Teachers' Association and the Nepal National Secondary Teachers' Association, both of which had received the Government's assent. Central-level ad hoc committees had been constituted to set up the primary- and secondary-level teachers' associations as envisaged in the newly drafted constitutions, and the problems of the teachers had therefore been solved. Lastly, the Government stated that no teacher had been imprisoned on the grounds of his or her educational or academic pursuits.

287. In a subsequent communication dated 30 July 1987, the WCOTP alleged that the police hindered the activities of its Asian Regional Representative while he was in Kathmandu, and prevented the holding of its affiliate's third national conference, scheduled for 25-27 June 1987, at which 185 NNTA delegates were expected. In addition, the WCOTP cited a newspaper report of the Minister of Education's statement in Parliament to the effect that any organisation other than the newly formed Nepal Primary Teachers' Association and the Nepal Secondary Teachers' Association would be illegal under section 6 of the Act of the year 2018 BS of the Nepalese calendar, which prohibits the creation of associations parallel to already registered ones. This same report quoted the Minister as threatening "strong action" against those planning a conference on 25-27 June and indulging in activities banned by law.

288. Furthermore, the WCOTP Regional Representative sent to Kathmandu to attend the NNTA's third national conference was placed under police surveillance, including the tapping of his hotel telephone, from the moment of his arrival. On 24 June the police prevented him from visiting the NNTA's office. Officials of the UNDP advised him that the authorities would not be responsible for his safety if he remained in the country. Two NNTA representatives who went to the Regional Representative's hotel were arrested upon their arrival. On 27 June the co-ordinator and three other principal officers of the "Central Ad Hoc Committee" established by the Government to set up the two government-controlled associations attempted to visit the Regional Representative but were prevented by the police. They appealed by telephone from the hotel to a number of ministers and government officials but were unable to obtain authority to speak to the WCOTP representative.

289. The WCOTP stated that the ban on contact with international organisations was a flagrant violation of freedom of association.

290. The WCOTP supplied a list of 72 arrested teachers. According to the WCOTP, the first arrests of teachers in connection with a national conference began as delegates from outlying areas were preparing to leave their homes a week before the conference. Teachers were seized, confined to cells where there was no room to lie down and refused food. On 25 June 1987, in the vicinity of the NNTA office, there were, it stated, arrests of teachers, students, parents and passers-by.

291. On the evening of 25 June, the WCOTP stated, an attempt by the police to enter the NNTA office was frustrated by a gathering of local people. During that day the premises on which the conference was to be held were surrounded by police and all access prohibited. The conference, however, did take place on 27 June at an undisclosed location and was, according to the WCOTP, peaceful and attended by members of Parliament, representatives of parents, students, professional associations and the press, and it elected a national executive committee.

292. In the light of the information at its disposal at its November 1987 meeting, the Committee submitted the following interim recommendations to the Governing Body for approval:

(a) The Committee expresses its profound regret that the Government has supplied only a general denial of the allegations in this case in spite of many requests for its specific observations and that the Committee has therefore been obliged to examine the case in the absence of specific and detailed information.

(b) The Committee requests the Government to set up a judicial inquiry to investigate the alleged deaths of teacher trade unionists at the hands of the police and to inform it of the charges brought against the eight named trade union leaders of the Nepal National Teachers' Association.

(c) The Committee requests the Government to supply, as rapidly and in as detailed a manner as possible, its observations on the complainant's most recent communication alleging police disturbance of the NNTA's third national conference, including the arrest of 72 named teachers and interference in the national union's international contacts.

(d) The Committee again requests the Government to supply its specific comments on the alleged police raid on the NNTA premises in May 1985 and the confiscation of union papers.

(e) The Committee urges the Government to examine the Director-General's offer to send a representative to Nepal in order to discuss the general situation and find solutions to the

problems raised in this case, in the light of ILO principles on freedom of association.

B. Further allegations

293. In a further letter dated 16 December 1987 the WCOTP stated that Mr. Sushill Chandra Amatya, a founder member of the NNTA, was still in prison four months after his arrest. The WCOTP supplied a list of nine named teachers who were leaders of the NNTA and were arrested in November 1987. The WCOTP added that repression continued; that the salaries of teachers with NNTA connections were not paid; and that government officials were visiting every school, threatening and pressing teachers to join the two associations formed by the Government.

C. The Government's reply

294. In its letter of 29 January 1988 the Government affirms that the constitutions of the two associations of primary and secondary teachers were duly approved by the Government on 12 February 1987 in accordance with the National Guidance Act of the year 2018 BS of the Nepalese calendar. The Government repeats its previous statement that these constitutions were adopted after discussions at a meeting of the teachers' representatives from all the 14 zones of Nepal.

295. The Government states that under the said constitutions, two separate ad hoc committees at the central level were formed, one for secondary teachers and one for primary school teachers. It recalls that as far back as 21 years ago, in the year 2023 BS of the Nepalese calendar, the professional school teachers had asked for permission to organise themselves into two separate organisations to protect and promote their interests. Pursuant to the decisions made by the central ad hoc committees of the said associations, ad hoc committees had been formed in all districts of Nepal.

296. The Government admits that persons who, it states, no longer belong to the teaching profession opposed these two associations. Those persons are Devi Prasad Ojha and Sita Ram Maskey, and a handful of their followers, and they had called for one teachers' association to be formed. These persons submitted the constitution of their association in the year 2036 BS of the Nepalese calendar, but the constitution was not approved by the Government because it made no provision for representation of primary-school teachers, and because those teachers were vehemently opposed to it and had made an application for a separate association of their own.

297. The Government adds that these persons, motivated by political objectives, were making endeavours to sow the seeds of discontent in the teaching profession. They were misleading some of the teachers and declaring themselves to be members of committees they had secretly constituted.

298. Nevertheless, the Government continues, the constitution independently prepared by the secondary and primary-school teachers from all the 14 zones of Nepal was warmly welcomed by the entire community of teachers. A large number of teachers who were once the supporters of the constitution of the teachers' association proposed in the year 2036 BS of the Nepalese calendar were now serving as members of the ad hoc committees formed pursuant to the approved constitution of the two associations.

299. The Government states further that these two associations have as one of their aims that of electing office bearers, and that within the short period of three months district-level committees have been constituted in nearly half the total number of districts through democratic means. Meetings of teachers have, it says, accorded a warm welcome to these associations. Elections of trade union leaders at both levels have taken place among the teachers. According to the Government, the so-called NNTA trade union leaders are only self-declared leaders. Nine of them, including a secretary general, had in a joint declaration denounced the so-called NNTA for publishing their names as leaders of the NNTA without their prior knowledge, and they had dissociated themselves from the "association". The Government adds that in the context of its announcement that the so-called NNTA was illegal, it did not authorise the holding of a conference by this illegal organisation.

D. The Committee's conclusions

300. The Committee notes that this case concerns the trade union representation of primary- and secondary-school teachers in Nepal and reprisals carried out against trade unionists, including the death, arrest and dismissal of trade union activists and leaders, as well as the occupation of premises and confiscation of trade union material and obstruction of a national trade union conference.

301. The Committee notes that the accounts of the facts at issue given by the complainant organisation and the Government are completely contradictory.

302. According to the complainant organisation, the Government flagrantly interfered in the trade union affairs of teachers, causing the death, arrest and dismissal of trade unionists, refusing to register a trade union organisation set up by Nepalese teachers themselves, occupying the premises of the organisation and hindering the holding of a national trade union conference and international

contacts of Nepalese trade unionists with foreign trade union representatives.

303. According to the Government, on the other hand, the two legally registered associations represent primary- and secondary-school teachers, in accordance with the wish expressed by teachers at a meeting of teachers' representatives from all the 14 zones of Nepal. The Government admits, however, that persons who, it states, no longer belong to the teaching profession opposed the setting up of these two associations and that these persons submitted the constitution of their association; it explains that this constitution was not approved because it made no provision for representation of primary-school teachers, against the express wish of such teachers.

304. The Committee, while noting the Government's explanations on the matter, profoundly regrets the fact that the Government has not replied to several particularly serious allegations relating to the death, arrest and dismissal of trade unionists, as well as the occupation of premises and confiscation of trade union property.

305. The Committee recalls the principle expressed in its First Report (para. 31), that the purpose of the whole procedure set up in the ILO for the examination of allegations of violations of freedom of association is to promote respect for trade union rights in law and in fact. As the procedure protects governments against unreasonable accusations, governments on their side should formulate, so as to allow objective examination, detailed replies to the allegations brought against them. The Committee wishes to stress that, in all the cases presented to it since it was first set up, it has always considered that the replies from governments against whom complaints are made should not be limited to general observations.

306. The Committee notes that the constitutions of the two primary and secondary school teachers' associations were drafted by two committees set up by the Government. In this respect, the Committee recalls that workers' and employers' organisations should have the right to draw up freely their constitutions and rules without interference from the public authorities.

307. In addition, the Committee can only repeat its previous requests, and urges the Government to supply specific and detailed information on all of the allegations in this case.

308. In particular, it requests the Government to set up a judicial inquiry into the alleged deaths of teacher trade unionists at the hands of the police in 1985 and to inform it of the charges brought against the eight named trade union leaders of the NNTA, to give explanations on the occupation of NNTA premises and the confiscation of trade union papers in May 1985, and to state whether the teachers arrested in June and November 1987 as well as trade union leader Sushill Chandra Amatya, a founding member of the NNTA, have been released.

The Committee's recommendations

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

(a) The Committee regrets that, despite the time which has elapsed since the allegations were made, the Government has supplied only general observations on this case and that it has not yet replied to several specific and extremely serious allegations.

(b) The Committee recalls that workers' organisations should have the right to draw up freely their own constitutions and rules without interference from the public authorities.

(c) The Committee urges the Government to supply detailed information on any judicial inquiry that might have been carried out into the alleged deaths of teacher trade unionists at the hands of the police in 1985, to state the charges brought against the eight named trade union leaders of the NNTA, to give explanations of the violent occupation of premises and confiscation of NNTA property in May 1985, and to state whether the teachers arrested in June and November 1987, as well as trade union leader Sushill Chandra Amatya have been released.

Case No. 1402

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

310. The Committee examined this case at its November 1987 meeting, when it submitted an interim report to the Governing Body [see 253rd Report, paras. 357 to 380]. Since then the Government has sent certain information and observations on this case, in a communication dated 18 April 1988.

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

A. Previous examination of the case

312. In its previous examination of the case, the Committee noted that the allegations of the ICFTU concerned the following: (1) the

dissolution by the Government of Czechoslovakia of the Jazz Section of the Musicians' Union of Czechoslovakia (MUC); and (2) the prison sentences allegedly imposed on the Chairman of the Section, Mr. Karel Srp, and its Secretary, Mr. Vladimír Kuril, as well as other trade union activists and leaders, for carrying out trade union activities.

313. As regards the dissolution of the Jazz Section, the ICFTU had explained that this Section had been founded on 30 October 1971, that it was part of the MUC, and that it offered assistance to its membership, consisting of defending the interests of individual performers, and publishing pamphlets on jazz, contemporary music and other cultural subjects. The Jazz Section, whose membership soon grew to several thousand, acted as representative for jazz musicians, organised their performances, and negotiated honoraria and working conditions on their behalf. In 1978, the Jazz Section started to face harassment by the authorities because of the moral support it had extended to members of a musical group who had been tried for expressing views allegedly hostile to the Government. Between 1982 and 1984, the Government launched a series of attacks through the press against the Jazz Section and its activities. In 1983 the Government ordered the Jazz Section to disband, which it refused to do. However, following strong pressure from the Government, the MUC disbanded the Jazz Section on 15 June 1983, thus compelling leaders and members of the Jazz Section to create a new section as part of the Prague division of the MUC. However, the authorities ordered the Prague division to disband by administrative orders of 19 July and 22 October 1984. Faced with this situation, the Jazz Section, which would also have been dissolved as a result of this, replied that, according to its own by-laws, it could decide on its dissolution only by a two-thirds majority vote of its membership. On 21 January 1985, the Ministry of Internal Affairs disregarded this and issued its final decision on the dissolution of the Prague division. On 15 January 1986, the Supreme Court refused to review the legality of the administrative dissolution.

314. According to the ICFTU, the dissolution Decree of 22 October 1984 which had been issued under Act No. 126/68 entitled "Act on certain transitory measures to reinforce the public order", which was adopted in the wake of the events of 1968, and which permits the dissolution, at the Ministry of Internal Affairs' request, of organisations which threaten the stability of the State during a period of crisis, without prior examination by a court of law. This Decree provided that any organisation liable to administrative dissolution could lodge an appeal (but this right was subsequently removed by Decree No. 99 (para. 6) of 22 August 1969, for a period ending 31 December 1969). The ICFTU states that the dissolution Decree of October 1984 should have mentioned the possibility of lodging an appeal. The Jazz Section appealed to the Constitutional Court on the grounds that the legislation invoked for the organisation's dissolution, namely, Act No. 126/68, had been of a temporary nature and should therefore be deemed to have fallen into desuetude. Although the Constitutional Court had been set up in 1968, it was never formally installed and thus the appeal had not been

heard. Another legal petition to quash the Decree, introduced by the complainants before the Prague Municipal Court, had also been rejected ab initio and on appeal, explained the ICFTU.

315. As concerns the arrests, the ICFTU had stated that, in addition to the arrests of the President and Secretary of the Jazz Section, other members of its Steering Committee had also been sentenced to imprisonment for engaging in "illegal lucrative activities". By a decision of 11 March 1987 of the Prague District Court No. 2, upheld on appeal on 12 May of the same year, the Chairman of the Jazz Section, Mr. Karel Srp, was sentenced to 16 months' detention, and Mr Vladimír Kuril, Secretary of the Section, to ten months; Mr. Josef Skalnik, Deputy-Chairman, to a ten month suspended sentence and three years' probation; Mr. Cestmír Hunat and Mr. Tomás Kriványek were placed on probation for two years. Two other defendants in the trial, Mr. Milos Drda and Mr. Vlastimil Drda, both excused from appearing in court on medical grounds, were to stand trial at a later date. According to the ICFTU, all of these trade unionists had been arrested on 2 September 1986 for "operating an unauthorised enterprise", "illegal lucrative activities" and "distribution of illegal publications". On 28 December 1986, a Prague court ordered the release of two members of the Jazz Section, Mr. Josef Skalnik and Mr. Milos Drda and, on 22 January 1987, another court ordered the release of Vlastimil Drda, Tomás Kriványek and Cestmír Hunat.

316. The complainant organisation had stated that the arrest of the seven above-mentioned persons had been the culmination of several years of administrative harassment of the Jazz Section, as well as anti-union discrimination in employment and judicial repression against its leaders and members.

317. The ICFTU had alleged the following harassment: Mr. Karel Srp, Chairman of the Jazz Section, had lost his post as technical editor for the state-owned Panton recording company on 28 February 1984 because of his trade union activities. In addition, the headquarters of the Jazz Section were allegedly raided by officials of the Ministry of Internal Affairs and the police, who took away files, membership lists, books and casette tapes.

318. In October 1985, Mr. Petr Cibulka, member of the Jazz Section and signatory of the Charter 77, was allegedly sentenced to seven months' imprisonment for having "insulted the nation"; according to the Jazz Section, he was in fact being prosecuted for his activities linked to the Section. On 15 January 1986, an appeal court upheld the sentence and imposed three subsequent years of "protective supervision".

319. After losing his job, Mr. Karel Srp was allegedly accused on 18 December 1985 of "social parasitism" by the Ministry of Internal Affairs and threatened with charges of "illegal lucrative activities" within the Jazz Section. These threats were allegedly linked to Mr. Srp's presence at the Cultural Forum of the Conference on Security and Co-operation in Europe, held in Budapest as part of the Helsinki

agreements; on 8 January 1986, the authorities allegedly withdrew Mr. Srp's passport, in apparent retaliation for his trip to Budapest.

320. According to the ICFTU, the notice of dismissal given to Mr. Karel Srp on 27 November 1983 was explained by an administrative reorganisation of the Panton Music Fund which eliminated the post of technical editor which Mr. Srp had held for 11 years and for which he had been decorated as an exemplary worker. Mr. Srp challenged the legality of the notice in court; however, Prague District Court No. 1 rejected this challenge on 7 June 1984, and its decision was upheld on appeal on 7 September 1984. Mr. Srp remained unemployed for a certain time and subsequently found work at the JRD co-operative farm in Kamenica. According to the ICFTU, the courts' decisions were based on the above-mentioned administrative reorganisation, and on the fact that no position within the Panton enterprise was available for Mr. Srp. The complainant organisation states that copies of documents show that certain state authorities, in particular the Ministry of Culture, had exceeded their mandate by seeking to have Mr. Srp dismissed because of his activities in the Jazz Section. It appears that the authorities fabricated a situation by taking measures to ensure that Mr. Srp's dismissal would appear to be in accordance with the spirit of the law and international Conventions. On 13 March 1987, states the ICFTU, Mr. Srp requested authorisation to reopen the case, but the Municipal Court referred the case to another jurisdiction on 30 March. The ICFTU states that, at the time of the complaint, the post of technical editor which Mr. Srp had held previously had been reinstated.

321. The ICFTU also alleges the arrest and imprisonment of other members of the Jazz Section on 28 April 1986: Mr. Jaroslav Svestka was sentenced to two years' imprisonment followed by three years' protective custody for "harming the Republic's interests abroad". The sentence appears to be related to Mr. Svestka's attempt to seek international support for the Jazz Section and its members. His sentence was later reduced on appeal. Mr. Vlastimil Marek was arrested and charged with the same offence. However, he was released after two months.

322. Lastly, the ICFTU had explained that the court had refused to hear the testimony of Mr. Prusha, the Section's legal adviser (he had previously been prevented by the authorities from exercising his professional duties as an attorney in four civil cases); the only matters examined by the court had been the accusations concerning the Jazz Section's financial activities, and the court had not debated the legality of the Jazz Section's dissolution; moreover, the president of the court, Judge Vladimir Striborik, had imposed considerably lighter sentences than those requested by the State Prosecutor (a four-year sentence against Mr. Karel Srp) and had said that the Jazz Section's work was "of high quality ... (and) commendable, but needs a legalised form". Hence, stated the ICFTU, it appeared that the judge's sentences were based on section 118(1) of the Penal Code, which punishes illegal economic activities, whereas the prosecution had based its calls for severe sentences on section 118(2) which

concerns the exercise of illegal economic activities "involving considerable profit". According to the ICFTU, the application of the lighter sentences under paragraph 1 of section 118 implied that the court chose to take into account only such economic activities as were conducted after 15 January 1986, the date on which the Supreme Court refused to review the legality of the administrative dissolution of the Jazz Section of the Prague division, and not those undertaken since 22 October 1984, as requested by the prosecution, which is the date of the second dissolution Decree issued by the Ministry of Internal Affairs.

323. At its previous examination of the case, the Committee had been informed that the Government, in a communication dated 28 May 1987, had sent its observations concerning the allegations of the ICFTU. It had recalled that the Jazz Section had been set up in October 1971 as a section of the Musicians' Union, a "voluntary mutual interest organisation". Its aims and duties, as well as the nature of its activities, stated the Government, were subject to the "Regulations for organisations" approved by the Musicians' Trade Union Central Committee. The Government had enclosed a copy of this document as well as Newsletter No. 1 (dated 30 October 1971) of the Jazz Section. The Government had also enclosed with its reply a copy of the objectives which the Jazz Section had drawn up upon its creation, namely "to promote the development of jazz music and foster its integration into society's cultural life".

324. According to the Government, the Jazz Section had considerably overstepped its mandate over the years; in addition to its activities in the area of music, it had published books and other publications on such subjects as creative arts, photography and fiction and the translation of foreign writers. It had also engaged in the production and sale of posters and the recording of music on cassettes which it then sold; it had organised exhibits for a number of organisations and other promotional activities. In the area of music, in keeping with its objectives, the Jazz Section had helped to establish groups of non-professional musicians and organised concerts and recitals for professional and amateur musicians.

325. Leaving aside the questions of legality, tax evasion, copyright infringement and others which had marked the Jazz Section's activities, the Government had indicated that, in addition to fulfilling its objectives as regards the promotion of jazz music, the Jazz Section had engaged in a number of commercial operations. According to the Government, the Jazz Section's activities had never been concerned with the occupational interests of its members, and the Jazz Section had never aspired to become a trade union organisation, or pretended to be one. Rather, its members were jazz fans, and those among them who were employed, were organised at their workplace. Most professional musicians, with the exception of self-employed artists, belonged to the Trade Union of Workers in Art, Culture and Social Organisations; this trade union was part of the workers' movement and participated in collective bargaining on behalf of its members with their employers; the fruits of this bargaining were reflected in the

regulations concerning wages and conditions of work issued by state bodies. These regulations applied to professional as well as amateur musicians.

326. The Government had stated that none of the members of the Jazz Section considered their affiliation to the Section as equivalent to membership in a trade union organisation; moreover, none of them had renounced their membership in the Revolutionary Trade Union Movement owing to their membership in the Jazz Section. Thus, the Government did not consider that there was any relationship between the activities of the Jazz Section and its own obligations flowing from its ratification of Conventions Nos. 87 and 98 on freedom of association and collective bargaining.

327. On the basis of the information available to it, at its November 1987 Session, the Committee had submitted the following interim conclusions to the Governing Body:

(a) In order to be in a position to reach conclusions on the grounds for the detention of Mr. Karel Srp and other leaders and members of the Jazz Section, the Committee requests the Government to send copies of the judgements handed down against them.

(b) The Committee recalls the principle concerning the non-dissolution of workers' organisations by administrative authority and requests the Government to ensure that workers may freely establish the organisations of their choice, and manage and administer them without interference. It also requests the Government to re-examine its position concerning the Jazz Section, in the light of the foregoing conclusions and the principles of freedom of association.

(c) The Committee requests the Government to supply information on the searches made of the Jazz Section's premises by the administrative authorities and the police, as well as the seizure of files and membership lists.

(d) The Committee requests the Government to supply information concerning the dismissal of Mr. Karel Srp.

B. The Government's reply

328. In its reply dated 18 April 1988, the Government refers to the statement made by the Czechoslovakian Government delegate before the Governing Body of the ILO in November 1987, from which it appears that the Government cannot accept the conclusions adopted by the Committee and that therefore it will not proceed according to the recommendations contained in paragraph 380 of the 253rd Report of the Committee.

329. The Government states in particular that it does not agree with the contents of paragraph 377 of the report, in which the Committee expressed the view that the former Jazz Section had been a trade union organisation. It considers it strange that the Committee stated no grounds for such a conclusion, as this was a key issue for the consideration of the complaint. The Government also objects to the fact that this conclusion was reached by the Committee after having admitted that "the regulations of the Jazz Section" did not define any trade union aspects of the Section's activities. Neither did the Committee indicate which other aspects of the Section's activities had been considered to be of a trade union nature. A careful reading of paragraphs 369 to 373 leads to the conclusion that the Committee received incomplete and distorted information concerning the Government's reply. Substantial parts of the Government's reply were omitted, relevant documents not reproduced, and changes were even made in the Government's reply, distorting the meaning of the text. The Government fails to understand the reasons for such peculiar practice, the more so since all of these changes and omissions tended to play down arguments proving that the Jazz Section had never been a trade union organisation and had never engaged in trade union activities. In these circumstances, the Government considers that the conclusions adopted by the Committee are based on a wrong assumption, namely that the members of the Jazz Section were professional musicians and that the Section defended their occupational interests.

330. The Government considers that the matter should be re-examined taking the following into account: (a) that an important passage referring to the Regulations of the Jazz Section, quoted by the Government representative in the Governing Body, had been omitted from the Government's reply and the text of the regulations of the Jazz Section and that of the resolution adopted at the constituent conference of the Jazz Section, where the main objectives of the Section were defined, had not been included in the Governing Body document (the Government wonders what other arguments are more convincing than authentic texts; it encloses the English translation of the documents in question); (b) the title "Regulations for Organisations" was used in paragraph 370, although it must have been evident that the document in question represented the statutes or regulations of the Jazz Section (in Czech, organizacní rád); the plural used in the ILO document could imply the intention to downgrade the importance of this document with respect to the consideration of this case; (c) in paragraph 370 the Government's reply was distorted by stating that the "Regulations for organisations were approved by the Musicians' Trade Union Central Committee"; neither the Government's reply, which had been sent in Czech, nor the unofficial translation into English made any mention of a musicians' "trade" union central committee, because no such trade union had ever existed; the Government's reply had been changed and a word had been added, turning upside down the information provided; (d) finally, the statement made by the Government to the effect that the members of the Jazz Section were prevailingly, i.e. predominantly, jazz fans, was distorted by stating that they were "rather" fans. This change prevented the Committee from reaching the obvious conclusion that the

Jazz Section could not defend occupational interests of fans, i.e. of students, apprentices and young workers of various occupations who formed the overwhelming majority of its members.

331. The Government requests that the case be resubmitted to the Committee on Freedom of Association, together with full information provided by the Government, so that the case might be reconsidered on the basis of full and undistorted information.

332. The Government also supplies the following additional information concerning the membership of the Jazz Section. During the various years of its existence, the membership of the Jazz Section ranged from 2,500 to 4,000, states the Government. The vast majority of members, i.e. more than 90 per cent, were fans, people interested in jazz music. The percentage of fans in the total tended to increase with the growing membership. The remaining members were amateur musicians and collective members, such as libraries, which, through membership, ensured supplies of the Section's publications. Individuals ordering publications sometimes also registered as members. According to the Government, the relationship of the Jazz Section members to real trade union organisations can be illustrated by referring to the case of members of its presidium:

- Mr. Karel Srp was employed in the Panton Recording Company and was a member of the Trade Union of Art, Culture and Social Organisations' Workers;

- Mr. Cestmír Hunat was employed in the Administration of Commerce Housing Facilities and was a member of the Trade Union of Commerce Workers;

- Mr. Vladimír Kouril was employed as a designer in Metroprojekt, Prague, and was a member of the Trade Union of Transport Workers;

- Mr. Tomás Krivánek was a mechanic in the Regional Administration of Telecommunications and was a member of the Trade Union of Communications Workers;

none of them were professional musicians.

333. The Government also defines the dividing line which, in its view, lies between trade union organisations on the one hand, and other types of associations, on the other. According to Article 10 of Convention No. 87, the term "organisation" means any organisation of workers or of employers for furthering and defending the interests of workers or of employers. According to the Government, this definition means that the organisations concerned must be those of workers or of employers - and not those of any persons with common or mutual interests, and that these organisations are expected to defend the interests of workers or of employers, i.e., their occupational interests, and not any other interests. The definition can be further understood to mean that organisations claiming protection under Convention No. 87 should meet two basic conditions. At the outset,

they must clearly express the intention to associate workers or employers and to defend their occupational interests and they should be able to demonstrate that their real activities consist in whole or predominantly in defending occupational interests of their members. Where these conditions are not met the national legislation, and its application in practice, is unable to provide protection in accordance with Convention No. 87.

334. In the present case, states the Government, none of these conditions had been met. The declared objective of the Jazz Section (section 2 of its Regulations) was to associate jazz musicians and friends of jazz with the objective of promoting the development of jazz music and of contributing to its progress in the cultural life of society, and by no means to defend occupational interests of jazz musicians and of friends of jazz. Consequently, professional musicians did not join the Section and its membership consisted of people sharing the same hobby. The activities of the Jazz Section had never consisted and could not consist in defending occupational interests of its members; no aspect of its activities concerned collective bargaining, conclusion of collective agreements or similar trade union activities.

335. In order to avoid further possible doubts, the Government states that the membership of a small number of amateur musicians (of different occupations) in the Jazz Section in no way implied the alleged trade union character of the Jazz Section. The situation, explains the Government, is similar to that of a number of associations and unions, such as unions of small-plot gardeners, animal- and bird-breeders, sporting club fans, etc., which according to their statutes "defend the interests" of their members. These specific interests correspond to the objectives of the organisations concerned. That is why national legislation makes a distinction between trade union organisations, which are not subject to approval or control by the state authorities, and organisations of a general nature (the Czech term is "voluntary social organisations"), the activities of which are subject to Law No. 68 of 1951. The title of the organisation is not relevant. There exist various unions, associations, federations, clubs, etc., which are covered by this Law. However, none of these organisations bears the title "trade union organisation" or "trade union" or engages in trade union activities.

336. The Government concludes by stating that governments implementing the Conventions and the ILO supervisory bodies should have a common objective, i.e. to understand fully the meaning of the Conventions. It is generally recognised that the ILO supervisory bodies cannot interpret international Conventions. Interpretations, especially extensive interpretations, might lead to uncertainties concerning the contents and scope of obligations accepted by the States concerned in ratifying a Convention. This case also shows that extensive interpretation as to the scope of the Convention could also open the way towards misusing the supervisory machinery.

C. The Committee's conclusions

337. The Committee observes that this case concerns allegations of the ICFTU relating to the dissolution by administrative authority of the Jazz Section of the Musician's Union of Czechoslovakia (MUC) and to anti-trade union reprisals, including prison sentences and dismissals of trade union leaders, and to the occupation of premises and confiscation of trade union property.

338. The Committee notes that the accounts given by the complainant confederation and the Government concerning the status of the Jazz Section, which is the subject of the complaint, are completely contradictory.

339. According to the complainant confederation, the Government interfered in the affairs of a trade union organisation. In violation of Article 4 of Convention No. 87, which is ratified by Czechoslovakia, it dissolved, by administrative authority, a trade union organisation which, according to the ICFTU, was part of the Musician's Union of Czechoslovakia (MUC), and which acted as a representative of jazz musicians, organised their performances, and negotiated honoraria and working conditions on their behalf, because of the moral support which this organisation had extended, in particular, to members of a musical group who had been tried for expressing views allegedly hostile to the Government. The dissolution had been ordered in application of the "Act on certain transitory measures to reinforce the public order", which was adopted in the wake of the events of 1968, and which permits the dissolution, at the Ministry of Internal Affairs' request, of organisations which threaten the stability of the State during a period of crisis. The courts had also imposed prison sentences on a number of members of the Jazz Section, including its Chairman, who was sentenced to 16 months' imprisonment, and its Secretary, to ten months' imprisonment, as well as other members of the Section, to seven months' and two years' imprisonment, respectively, for engaging in illegal lucrative activities, for insulting the nation or for harming the Republic's interests abroad. Still others had been given suspended sentences and were subjected to long probationary periods. In fact, according to the complainant, these persons had been convicted for their trade union activities. Moreover, the Chairman of the Section is alleged to have been dismissed on the pretext that his post of technical editor had been eliminated (whereas the post had subsequently been reinstated), and threatened with charges of social parasitism and illegal lucrative activies within the Jazz Section. Finally, the headquarters of the Jazz Section had been raided by officials of the Ministry of Internal Affairs and police officers, who had removed files, membership lists, books and cassette tapes.

340. According to the Government, on the other hand, the organisation which is the subject of the complaint is not a trade union organisation within the meaning of Article 10 of Convention No. 87, i.e. an organisation of workers for furthering and defending the interests of workers. Indeed, under the terms of its Regulations

(section 2), the aim of this organisation is to assemble musicians and friends of jazz with a view to promoting the development of jazz and to contributing to its progress in the cultural life of society. According to the Government, it is in no way the aim of this organisation to defend the occupational interests of musicians and friends of jazz, and no aspect of its activities have concerned collective bargaining, the conclusion of collective agreements or similar trade union activities.

341. The Committee can therefore only note that the Government considers that the complainant has misused the supervisory machinery, since the complaint does not concern an organisation of workers for furthering and defending the interests of its members.

342. In this respect, the Committee on Freedom of Association has considered in previous reports [See, in particular, 25th Report, Case No. 158 (Hungary), para. 327] that the principles which are applicable for the purpose of determining whether an organisation is entitled to submit a complaint to the Committee are equally applicable for the purpose of determining whether an organisation is one to which the procedure for the examination of allegations of infringements of trade union rights applies. Already, in its First Report, the Committee had occasion to examine the meaning of the term "organisation of workers". It then adopted a criterion based on the conclusions unanimously approved by the Governing Body in 1937, concerning a representation of the Labour Party of the Island of Mauritius. In that case, the Committee had affirmed that it was the responsibility of the Committee to determine, in each case, the actual nature of an organisation, irrespective of its title. The Governing Body had therefore laid down the principle that it would exercise its discretion in deciding whether or not a body is to be regarded as an "industrial association" for the purpose of the Constitution of the Organisation, and would not consider itself bound by any national definition of this term. The Committee therefore declared its intention to follow the same principle in examining the receivability of all of the complaints referred to it.

343. In the present case, the question which arises is therefore whether the organisation to which the complaint refers is an occupational organisation within the meaning of the ILO Constitution and Article 10 of Convention No. 87. Since it is the Committee's responsibility to state its opinion on this point first, it must gather the most exhaustive information possible in order to reach a conclusion in full knowledge of the case. Given the information now at its disposal, the Committee can only note the obvious contradictions between the assertions of the complainant organisation and the Government's statements. Moreover, the Regulations of the Jazz Section and the resolution adopted at its constituent conference fail to elucidate the nature of the activities which it intended to carry out within the framework of the Musicians' Union to which it was attached. The Committee therefore requires additional information in order to decide whether or not the organisation concerned is a trade union.

344. The Committee therefore considers that it is for the complainant confederation to supply additional information on what it considers to be the trade union nature of the Jazz Section referred to in the complaint, with particular regard to any specific activities which it may have carried out in order to defend the occupational interests of its members.

345. The Committee further considers that precise information on the specific grounds for the sentences handed down against the leaders of the Jazz Section - and in particular the texts of the judgements - and on the circumstances of, and reasons for the administrative authorities' raid on the premises of the Section would enable it to conduct a more thorough examination into the activities engaged in by the Jazz Section and its leaders.

The Committee's recommendations

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

(a) In view of the contradiction between the complainant's opinion and that of the Government as to the trade union nature of the Jazz Section referred to in the complaint, the Committee considers that, given the information now at its disposal, it is not yet in a position to decide whether or not the organisation concerned is an occupational organisation within the meaning attributed by the ILO.

(b) The Committee therefore requests, on the one hand, the complainant confederation to supply additional information on what it considers to be the trade union nature of the Jazz Section referred to in the complaint, with particular regard to any specific activities which it may have carried out in order to defend the occupational interests of its members; on the other hand, it requests the Government to supply precise information on the specific grounds for the sentences handed down against the leaders of the Jazz Section, and on the circumstances of, and reasons for the administrative authorities' raid on the premises of the Section.