beginning of 1990 at the Intercontinental Hotel - a state enterprise administered by the State.

533. The complainant points out that on 27 November 1990, an extraordinary general assembly of the Free and Independent Trade Union of the Intercontinental Hotel was held. During this meeting, the majority of participants voted that the trade union should be affiliated to the Romanian Confederation of Independent Trade Unions (FRATIA).

534. Soon after, according to the complainant organisation, a parallel trade union was set up as a result of pressure from the hotel management which had expressed its wish that the trade union of the Intercontinental Hotel belong to the Federation of Trade Unions in the Tourist Industry, itself affiliated to the National Confederation of Free Trade Unions of Romania (CNSLR). The complainant points out that the President of this rival trade union, Mr. Aurel, is a former leader of the official trade unions and a member of the Communist Party; at the Intercontinental Hotel, he coordinates the catering services and is manager of the three restaurants.

535. The complainant states that following these events, three members of the Intercontinental Hotel management (Mr. Stancu, Director-General of the hotel, his assistant, Mr. Negrea, and Mr. Aurel) used their authority to exert various forms of pressure (threats, salary cuts, downgradings, transfers) against leaders and activists of the Free and Independent Trade Union and against mere employees in order to force them to leave or not to take up membership of the Free and Independent Trade Union.

536. The complainant organisation, stressing the courage of employees who had allowed their names to be disclosed whereas others, also subject to anti-union discrimination, preferred to remain anonymous, quoted the cases of the following persons:

(a) Mr. Spiridon was allegedly threatened in public by Mr. Stancu because of his trade union activities;

(b) in June 1990, Mr. Mihaescu, a waiter for 20 years at the Intercontinental, was transferred to room service duty after he had a discussion with Mr. Stancu on his reasons for having been seen talking with demonstrators in University Square. In December 1990, he was informed that he would be sent to the Continental Hotel unless he - as was allegedly inferred by Mr. Aurel - joined the parallel trade union;

(c) on 2 August 1990, Mr. Porumb, a waiter for 20 years, was transferred from the Continental Hotel to the Intercontinental Hotel for having attempted, in his capacity as trade union delegate of the Free and Independent Trade Union, to improve employees' working conditions. When the two hotels were officially separated on 2 September 1990, he was once again transferred to the Continental Hotel by Mr. Stancu. Mr. Negrea

allegedly informed him that if he belonged to the trade union that the management was introducing and he denounced an article that had appeared in the newspaper Romania Libera stating that he had been harassed, he would have no further problems;

(d) after December 1990, Mrs. Nedelciu and Mrs. Andrei were allegedly downgraded by Mr. Aurel from the position of "head waitress" to "station waitress" for having, in their capacity as delegate and activist of the Free and Independent Trade Union, respectively, sought to cut daily working time from 11 to eight hours. The post of head waiter was given to an employee belonging to the parallel trade union. Furthermore, their wages were reduced from November 1990 and, in addition, Mrs. Nedelciu was allegedly transferred to the "Corso" restaurant - considered to be a less interesting post. The Director-General, Mr. Stancu, refused to intercede on behalf of Mrs. Nedelciu because, as he told her, she had made her political and trade union choices and, furthermore, had not given support to the "miners" which had led to a reign of terror in Bucharest;

(e) on 16 January 1991, Mrs. Popescu, elected in March 1990 as secretary of the Free and Independent Trade Union, was allegedly transferred after 20 years of service as head typist at the Continental Hotel. When she asked the reasons for this transfer, Mr. Stancu allegedly replied that, if she denounced an article published in the newspaper Romania Libera on a number of discriminatory practices of the management, they could be friends once again;

(f) on 16 January 1991, Mr. Carianopol, after 20 years of service in the internal auditing department, was transferred to the Continental Hotel for having supported the criticisms made by the Free and Independent Trade Union of the management's misuse of authority;

(g) on 16 January 1991, Mr. Radulescu, engineer, was transferred to the Continental Hotel for having refused to leave the Free and Independent Trade Union and to belong to the parallel trade union controlled by the management.

537. The complainant organisation adds that it was against such a background that the first meeting of the parallel trade union was held on 17 January 1991. At this meeting, Mr. Stancu, Mr. Negrea and Mr. Aurel clearly gave the employees to understand that if they belonged to the Free and Independent Trade Union they would be held back in their jobs whereas if they joined the parallel trade union they would be rewarded. As a result of these threats and penalties, many employees felt obliged to join the parallel trade union controlled by the management and, allegedly, even had to pay the management to obtain the jobs that they wanted.

538. The complainant maintains that these actions clearly show that a vast intimidation campaign has been organised by the management

of the Intercontinental Hotel to ensure that a majority belongs to the parallel trade union that it supports while awaiting the adoption of the new Labour Code - thus depriving employees, activists and leaders of the Free and Independent Trade Union trade union rights guaranteed under international labour Conventions Nos. 87 and 98.

539. Finally, the complainant points out that as the Intercontinental is a state enterprise, its management is made up of public officials directly responsible to the public authorities. The Prime Minister, the Ministers of Labour and Social Affairs, of Trade and of Tourism, were informed by telex of the situation in the Intercontinental Hotel; however, although the national legislation does not authorise any dismissal if workers have a lawful reason to oppose this dismissal - the exercise of trade union rights clearly being a lawful reason - no measures were taken by the competent authorities to stop these violations.

B. The Government's reply

540. In a communication dated 12 March 1991, the Government points out that on 27 November 1990 a number of employees of the Intercontinental, who refused to belong to the Confederation of Independent Trade Unions (FRATIA), set up a trade union and decided to belong to the National Confederation of Free Trade Unions of Romania (CNSLR).

541. The Government further states that, for economic reasons, the Intercontinental company was divided into two companies. Some of the staff, including employees belonging to the Free and Independent Trade Union, were transferred to the Continental Hotel - including Mrs. Popescu.

542. The Government adds that the governing body of the Intercontinental accepted the constitution of the Free and Independent Trade Union as being representative of the justified economic and social interests of the employees. The governing body moreover cooperated with the Free and Independent Trade Union to find a solution to the requests it made. The Government specifies that the tension that arose between the two partners may be ascribed to the fact that it was impossible to meet the claims which did not have a legal basis.

543. Furthermore, the Government states that the complaint of the International Union of Food and Allied Workers' Associations (IUF) was submitted, according to the persons involved, without first seeking the mediation of the Ministry of Labour and Social Affairs, which, up to the actual bargaining and conclusion of a collective agreement, is able to assume this function.

544. The Government ends by specifying that the mediation of the Ministry of Labour and Social Affairs resulted in the following:

- the reinstatement of Mrs. Popescu at the Intercontinental Hotel in the post she had filled before the dispute; today, her case is considered closed. The Government encloses a communication from the Confederation of Independent Trade Unions (FRATIA) confirming this fact;

- the firm commitment from the governing body of the Intercontinental Hotel to respect the protection of trade union officials, irrespective of their choice as to the membership of a higher trade union organisation. The Government points out in this respect that the Parliament is to adopt legislation on trade unions in the near future, that guarantees full protection of trade union officials.

C. The Committee's conclusions

545. The complaint concerns allegations of anti-trade union discrimination against officials and activists of the Free and Independent Trade Union of the Intercontinental Hotel with a view to preventing employees from belonging to this trade union and obliging them to join the trade union backed by the management.

546. From the information provided, the Committee notes that there are indeed two trade unions at the Intercontinental Hotel: the Free and Independent Trade Union of the Intercontinental Hotel, set up at the beginning of 1990, and a parallel trade union that set itself up on 27 November 1990 to oppose the Free and Independent Trade Union's affiliation to the Confederation of Independent Trade Unions (FRATIA).

547. According to the complainant organisation, this parallel trade union was formed as a result of pressure from the management; its President is allegedly a former member of the official trade unions and fulfils leading functions within the hotel management; he is supposed to have used his authority to encourage employees to belong to his trade union. The Committee notes that the Government does not provide any information on this aspect of the dispute, more particularly on the circumstances and procedures leading up to the creation of the parallel trade union.

548. In this respect, the Committee must point out that under Article 2 of Convention No. 98 ratified by Romania, workers' and employers' organisations should enjoy adequate protection against any acts of interference by each other. This Article specifies that acts of interference include those "designed to promote the establishment of workers' organisations under the domination of employers ... with

the object of placing such organisations under the control of employers".

549. As concerns the allegations of anti-trade union discrimination (threats, salary cuts, downgradings, transfers) against officials and activisits of the Free and Independent Trade Union, the Committee notes with interest that, following the Government's mediation, Mrs. Popescu was reinstated in her previous post at the Intercontinental Hotel and that, as far as she is concerned, the case is now closed. This positive step is confirmed by the Confederation of Independent Trade Unions (FRATIA).

550. The Committee notes, however, that the Government has not provided any information concerning the case of other employees who, according to the complainant organisation, were also subject to transfers and other anti-trade union discriminatory measures - including Mrs. Andrei, Mrs. Nedelciu, Mr. Carianopol, Mr. Mihaescu, Mr. Porumb and Mr. Radulescu. None the less, the Committee notes the Government's statement to the effect that the governing body of the Intercontinental Hotel has given its firm commitment to respect the protection of trade union officials, irrespective of their choice as to membership of a higher trade union organisation and that the Romanian Parliament is going to adopt legislation on trade unions in the near future to guarantee the full protection of trade union officials.

551. The Committee recalls the importance of guaranteeing all workers covered by Convention No. 98, and not only trade union officials, adequate protection against acts of anti-union discrimination that might infringe freedom of association in respect of their employment. In this respect, Article 1 of Convention No. 98 stipulates that protection must apply more particularly in respect of acts calculated to: (a) make the employment of a worker subject to the condition that he does not join a union or relinquish trade union membership; (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours. The Committee expresses the hope that the forthcoming trade union legislation will be in conformity with these principles, and that it will be fully applied in practice.

552. The Committee notes moreover that, according to the information provided by the complainant organisation, one of the reasons prompting the management of the Intercontinental Hotel to take discriminatory measures was the attempt of officials of the Free and Independent Trade Union to change the employment conditions of the employees concerned. The Government points out in this respect that the governing body of the Intercontinental Hotel has cooperated with the Free and Independent Trade Union in finding a solution to the dispute but that it is impossible to meet the trade union's claims because they do not have a legal basis.

553. The Committee draws the Government's attention to the fact that the main objective of trade union organisations is to defend the economic and occupational interests of their members. In order that these objectives may be attained and that harmonious occupational relations should prevail, it is relevant that measures should be taken to encourage and promote the widest possible development and use of procedures of voluntary negotiation of collective agreements between social partners, and that the latter participate in good faith.

554. While noting that the Government mediated between both parties, the Committee trusts that the negotiations between the governing body of the Intercontinental Hotel and the Free and Independent Trade Union can be resumed in order to settle, by these means, the employment and pay conditions of the employees concerned.

The Committee's recommendations

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

(a) The Committee notes with interest that, following the Government's mediation, Mrs. Popescu was reinstated in her former post at the Intercontinental Hotel and that today her case has been settled.

(b) The Committee regrets the Government did not provide information on the other cases in which, according to the complainant organisation, persons were transferred for trade union activities, including Mrs. Andrei, Mrs. Nedelciu, Mr. Carianopol, Mr. Mihaescu, Mr. Porumb and Mr. Radulescu; the Committee requests the Government to provide information in this respect.

(c) The Committee requests the Government to guarantee all workers covered by Convention No. 98, and not only trade union officials, adequate protection against acts of anti-union discrimination, both at the time of recruitment and during their employment relationship, accompanied by sufficiently effective and dissuasive penalties. In this respect, the Committee notes that legislation on trade unions is to be adopted in the near future and that it contains, according to the Government, provisions to this effect. The Committee expresses the hope that this legislation will be in conformity with the principles of freedom of association and that it will be fully applied in practice. The Committee also draws the attention of the Committee of Experts on the Application of Conventions and Recommendations to this aspect of the case.

(d) The Committee draws the Government's attention to the need to provide adequate protection against acts of interference by

employers in workers' organisations. The Committee requests the Government to inform it of the measures taken at the Intercontinental Hotel to guarantee the respect of this right.

(e) The Committee requests the Government to provide information concerning negotiations between the management of the Intercontinental Hotel and the Free and Independent Trade Union affiliated to the Confederation of Independent Trade Unions (FRATIA).

Geneva, 28 May 1991.

Roberto Ago,
Chairman.

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Reports of the Committee on Freedom of Association (279th and 280th Reports)

279TH REPORT

Earlier reports of the Committee on Freedom of Association have been published as follows:

Report	Publication		
	Reports of the International Labour Organisation to the United Nations (Geneva, ILO)		
1-3	Sixth Report (1952), Appendix V		
4-6	Seventh Report (1953), Appendix V		
7-12	Eighth Report (1954), Appendix II		
	Official Bulletin		
	Volume	Year	Number[1]
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15-16	XXXVIII	1955	1
17-18	XXXIX	1956	1
19-24[2]	XXXIX	1956	4
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89-92	XLIX	1966	3 SII
93	L	1967	1 S
94-95	L	1967	2 S
96-100	L	1967	3 SII

[1] The letter S, followed as appropriate by a roman numeral, indicates a supplement.

[2] For communications relating to the 23rd and 27th Reports see Official Bulletin, Vol. XLIII, 1960, No. 3.

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107-108	LII	1969	1 S
109-110	LII	1969	2 S
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INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

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Reports of the Committee on Freedom of Association (279th and 280th Reports)

279TH REPORT[1]

I. INTRODUCTION

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 31 October and 1 and 6 November 1991 under the chairmanship of Mr. Robert Ago, former Chairman of the Governing Body.

2. The members of the Committee of Argentinian and Indian nationality were not present during the examination of the cases relating to Argentina (Cases Nos. 1532, 1551 and 1560/1567) and India (Case No. 1550), respectively.

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3. The Committee is currently seized of 86[2] cases in which complaints have been submitted to the Governments concerned for observations. At its present meeting it examined 35 cases in

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[1] The 279th and 280th Reports were examined and approved by the Governing Body at its 251st Session (November 1991).

[2] This figure includes the cases relating to Turkey (Cases Nos. 997, 999 and 1029).

substance, reaching definitive conclusions in 18 cases and interim conclusions in 17 cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

New cases

4. The Committee adjourned until its next meeting the cases relating to Turkey (Cases Nos. 1582 and 1583), Greece (Case No. 1584), Nicaragua (Case No. 1586), Guatemala (Cases Nos. 1588 and 1595), Morocco (Case No. 1589), Lesotho (Case No. 1590), India (Case No. 1591), Uruguay (Case No. 1596), Mauritania (Case No. 1597), Peru (Case No. 1598), Gabon (Case No. 1599), Czechoslovakia (Case No. 1600), Canada/Quebec (Case No. 1601) and Spain (Case No. 1602), concerning which it is awaiting information or observations from the Governments concerned. These cases relate to complaints submitted since the last meeting of the Committee.

Subsequent adjournments

5. The Committee is still awaiting observations or information from the Governments or the complainants concerned in the cases relating to Peru (Cases Nos. 1478/1484, 1527, 1541 and 1579), India (Cases Nos. 1479, 1514 and 1517), Sudan (Case No. 1508), Panama (Cases Nos. 1531 and 1580), Honduras (Cases Nos. 1538 and 1554), Malaysia (Cases Nos. 1542 and 1552), the Dominican Republic (Case No. 1549), United Kingdom/Hong Kong (Case No. 1553), United States (Case No. 1557), Spain (Case No. 1561), Morocco (Case No. 1574), Venezuela (Case No. 1578) and Canada/British Columbia (Case No. 1587). The Committee adjourns these cases and asks the Governments of these countries or the complainants to send the information or observations requested from them.

6. As regards Cases Nos. 1510, 1546 and 1573 (Paraguay), 1523 (United States), 1534 (Pakistan), 1559 (Australia), 1569 (Panama), 1575 (Zambia) and 1593 (Central African Republic), the Committee intends to examine these cases in substance at its next meeting.

URGENT APPEALS

7. As regards Cases Nos. 1273 and 1524 (El Salvador), 1564 (Sierra Leone) and 1568 (Honduras), the Committee observes that, despite the time which has elapsed since the presentation of these complaints, the Governments concerned have not transmitted the observations or information which had been requested. The Committee draws the attention of these Governments to the fact that, in accordance with procedural rules set out in paragraph 17 of the Committee's 127th Report, approved by the Governing Body, it will present a report on the substance of these cases at its next meeting

even if the observations or information requested from the Governments have not been received in due time. The Committee accordingly requests these Governments to transmit their observations as a matter of urgency.

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8. As regards Case No. 1511 (Australia) which the Committee examined at its February 1991 meeting [277th Report, paras. 151 to 246], the International Federation of Airline Pilots' Associations addressed to the Office a communication dated 18 July 1991 containing certain observations in relation to this case. These observations concerned three principal issues: (i) the alleged unfairness of the procedures of the Committee in dealing with cases of this kind; (ii) supposedly misleading information provided to the Committee by the Government; and (iii) a detailed critique of the decision of the Committee. After having examined this communication, the Committee considered (i) that the procedures adopted by it have been developed over a period of time, and that they are calculated to provide the fullest possible opportunity to both governments and complainants to bring all relevant information to its attention; and (ii) that having considered the further information provided by the complainant in this instance, that it would not be appropriate to reopen this case at this juncture.

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9. The Committee draws the legislative aspects of the following cases to the attention of the Committee of Experts on the Application of Conventions and Recommendations: Cases Nos. 1571 (Romania), 1576 (Norway), 1585 (Philippines) and 1592 (Chad).

Effect given to the recommendations of the Committee and the Governing Body

10. As regards Case No. 1054 (Morocco), the Committee had requested the Government to supply the text of the Royal Decision of 18 February 1988 under which, according to the Government, all those persons suspended or dismissed due to the general strike of June 1981 had been reinstated. In a communication dated 29 May 1991, the Government states that, according to the instructions given by the Prime Minister in pursuance of the above-mentioned Decision, all permanent and additional public servants who had been obliged to leave their jobs because of the collective work stoppage of June 1981, have been reinstated. The Committee takes note of this information and asks the Government to regularise as soon as possible the administrative and financial situation of those few officials who, according to the complainant, had remained under suspension.

11. As regards Case No. 1271 (Honduras), at the Committee's November 1990 meeting, it took note of the information supplied by the Government on 9 July 1990 and the World Confederation of Organisations of the Teaching Profession (WCOTP) on 29 May 1990, according to which the dispute between the two executive committees of the union of the Professional College for the Advancement of Teaching in Honduras (COLPROSUMAH) had been settled by means of an agreement between the rival executives to hold a reconciliation meeting. Subsequently, by a communication dated 10 January 1991, the WCOTP complains of the persistent interference by the Government of Honduras in the normal activities of COLPROSUMAH by the granting of privileges to certain pro-government leaders, by laying down in the law the periodicity of union elections (every four years), by obtaining the disqualification from office of the union president, Mrs. Santana Dominguez, by hindering the holding of the organisation's extraordinary general meeting and by interfering in the exercise of its normal activities. The WCOTP adds that thanks to the protection afforded by the army and the police, COLPROSUMAH's headquarters are currently occupied by the remaining group of pro-government union leaders that had existed since 1982, and the Government refuses to recognise the new executive which was democratically elected at the extraordinary meeting held on 20 and 21 September 1990. This letter from the WCOTP was transmitted to the Government on 16 January 1991 with a request for its observations on the matter. The Committee takes note of this information and observes that the Government has not yet replied despite the time which has elapsed; it thus urges the Government to send its observations on these allegations as soon as possible.

12. As regards Case No. 1417 (Brazil) concerning the murder of three union leaders: Mauro Pires (4 September 1987), Sebastio Teixeira do Carmo (July 1988) and Francisco Alves Mendes (22 December 1988), the Government had stated in October 1990 that the trials of those accused of the murder of Messrs. Pires and Alves Mendes were currently before the courts, but it did not indicate what was happening with regard to the murder of Mr. Teixeira do Carmo. The Committee had requested the Government to keep it informed of developments in the trials and as to the Teixeira case. In a communication dated 11 July 1991, the Government transmits the text of the verdict handed down against the guilty parties in the Mendes murder trial according to which they were sentenced to 19 years' imprisonment. The Committee takes note of this information and requests the Government to continue to keep it informed of developments in the trials concerning the deaths of the union leaders Messrs. Pires and Teixeira do Carmo.

13. As regards Case No. 1426 (Philippines), the Committee last examined it at its May 1991 meeting and asked the Government to keep it informed of developments in the criminal proceedings under way into the Antojado and Balaud murder cases and of any concrete follow-up action to identify suspects in the murder of Oscar Bantayan. The Committee also requested the Government to take measures to dissolve the Civilian Auxiliary Force Geographical Units (CAFGUs) and all other paramilitary forces or armed groups which are not part of the regular

bodies which legitimately operate in the country. In a communication dated 12 August 1991, the Government states that due process should be accorded in all criminal cases and adds that, as soon as the cases relating to the deaths of Messrs. Antojado and Balaud are concluded, it shall furnish the texts of the courts' decisions on these cases; with respect to Oscar Bantayan's murder, the police are still continuing their investigations although they have been hampered by the lack of leads, witnesses and evidence to identify suspects in the case; finally, concerning the dissolution of the CAFGUs and other paramilitary forces, the Government states that a Philippine National Police has been recently created to merge the police authority, functions and responsibilities into one agency to the exclusion of all others, the CAFGUs remaining part of the military establishment. The Committee takes note of this information and asks the Government to continue informing it on the criminal proceedings and investigations still under way.

14. As regards Case No. 1438 (Canada), the Committee had requested the Government to keep it informed of the industrial relations situation in the railway transport sector after the enactment of the Maintenance of Railway Operations Act, 1987, which had ordered railway workers back to work. In a communication dated 7 January 1991, the Government indicated it has supported and continues to support the collective bargaining process. While acknowledging that its 1987 back-to-work legislation temporarily limited the right to strike of certain railway workers, it indicated that the unique role of this industry required it to act to protect the welfare of major segments of the population from the adverse social and economic effects of a dispute which the parties had been unable to resolve despite extensive private bargaining, and significant conciliation and mediation efforts by the Government. In temporarily removing the right to strike and providing for independent arbitration to resolve the dispute, the Government had to weigh the right of the parties freely to negotiate their collective agreements against the general welfare and the special circumstances involved (heavy dependency of the resource and manufacturing sectors on the industry in a country with a vast geography; limited opportunity to employ alternate modes for the type of commodities handled; highly integrated nature of the country's transport system). The August 1987 legislation that provided independent compulsory arbitration and extended collective agreements some 16 months to 31 December 1988 is no longer in effect. Collective bargaining returned to the industry in late 1988 when notices to bargain were served and bargaining began for new contracts. The current situation is as follows: the two major railways affected by back-to-work legislation have freely negotiated new three-year collective agreements covering the period 1 January 1989 to 31 December 1991. Some 56,000 workers represented by 14 unions were involved in this bargaining process and achieved significant improvements in their conditions of employment. Agreements covering two-thirds of these workers were signed by the parties in direct bargaining - the remaining third were concluded in conjunction with federal government conciliation assistance. The Committee takes note of this information and observes with interest

that the parties have been able freely to negotiate their current collective agreements. Since new bargaining rounds are about to take place, the Committee reminds the Government that transport is not an essential service in the strict sense of the term and that the workers in this sector should therefore enjoy the right to strike.

15. As regards Case No. 1467 (United States), the Committee had requested the Government to inform it of the final resolution of the labour dispute through the current negotiations between the United Mine Workers of America and Agipcoal, USA, subsidiary of Ente Nazionale Idrocarburi. In two communications of 15 May and 20 September 1991, the United Mine Workers of America and the Government of the United States respectively, state that the labour dispute with Agipcoal has been resolved at the company's American coal operations, the UMWA expressing its wish to withdraw its complaint. The Committee takes note with satisfaction of this information and decides that this case does not call for further consideration.

16. As regards Case No. 1483 (Costa Rica), in communications of 12 June and 23 July 1991, the Government refers to the elaboration of standards and proposals relating to certain points examined by the Committee during its consideration of this case and requests, in accordance with the Committee's recommendation, the ILO's technical assistance in the drawing up of the revisions with a view to bringing the labour legislation into conformity with Convention No. 98, ratified by Costa Rica. The Committee has been told that the Government and the Office are examining the modalities of this technical assistance.

17. As regards Case No. 1493 (Cyprus), the Committee last examined it at its November 1990 meeting [see 275th Report, paras. 125 to 143] and requested the Government to take the necessary measures to draft the regulations under the Public Service Law and to have them approved by the Council of Ministers and the House of Representatives concerning, in particular, the new system of staff appraisal and working conditions in the public sector. In a communication of 21 June 1991, the Government provides the text of the Appraisal of Employees and Working Time Regulations of December 1990, as adopted. It adds that the Public Service (Remuneration, Allowances and Benefits of Public Employees) Regulations have already been drafted and it expects them to be approved shortly. The Committee takes note with satisfaction of this information.

18. As regards Case No. 1495 (Philippines), the Committee asked the Government to inform it of the adoption of two bills intended to amend or repeal the Privatisation Proclamation No. 50. In a communication of 12 August 1991, the Government states that several bills are pending in Congress and that among these bills pending second reading are Senate Bill No. 303 to provide recognition of existing collective bargaining agreements or other written forms of employer-employee contracts in case of disposal of the employer's assets and Senate Bill No. 1255 which will protect the rights of workers in government corporations and agencies undergoing

privatisation. The Committee takes note of this information and asks the Government to transmit the text of these bills when adopted.

19. As regards Case No. 1502 (Peru), when the Committee examined it at its May 1990 meeting it requested the Government to keep it informed of developments in the case, in particular of the appeals for protection of constitutional rights (amparo) lodged by the electricity sector workers and requesting the unilateral amendment of the collective agreement involved in line with the system of automatic wage adjustment which had been suspended in April 1989. In a communication of 19 June 1991, the Government states that these appeals were being dealt with in the Office of the Civil Public Prosecutor and in the Supreme Civil Chamber. The Committee takes note of this information and repeats its previous request that the Government keep it informed of the decision to be taken by the Supreme Court in relation to these appeals.

20. As regards Case No. 1513 (Malta), the Committee asked the Government to inform it of the outcome of any representation ballot which could finally settle the representation conflict between the General Workers' Union (GWU) and the Union Haddiema Maghqudin (UHM). In a communication of 16 September 1991, the Government states that both unions finally agreed to hold a secret ballot of customs and excise personnel which took place on 27 May 1991 and that the majority opted for the General Workers' Union. The result was accepted by both unions, and the government authorities concerned have formally recognised the GWU as the union which represents this sector of workers at the Customs Department. The Committee notes with satisfaction the final settlement of this matter.

21. As regards Case No. 1529 (Philippines), at the Committee's last examination of it at its meeting in February 1991, it requested the Government to keep it informed of the outcome of the police investigations into the murder of union leader, Mr. Mariano Caspe, which had occurred on 19 March 1990. In a communication of 19 June 1991, the Government sends an extract from the text of a resolution adopted by the Philippines Commission on Human Rights which carried out an investigation into this killing and which reflects the lack of cooperation of three alleged eyewitnesses. The resolution also indicates that the police authorities trying to investigate the shooting of Mr. Caspe encountered the same uncooperative attitude even among people who appear to be close to the victim. While agreeing with some press descriptions that the killing of Mr. Caspe is a "dastardly crime", the resolution questions whether the authorities can be blamed for not having succeeded in clarifying this affair. The Commission on Human Rights decided that in these circumstances, the case shall be archived, to be reopened only as soon as witnesses shall have cooperated with the Commission. The Committee takes note of this information and regrets that, due to the unavailability of evidence, the police authorities and the investigations of the pertinent independent body did not succeed in solving this murder.

22. As regards Case No. 1530 (Nigeria), when the Committee examined it at its meeting in May 1991 [see 278th Report, paras. 192 to 209], it asked the Government to take measures for the repeal of the Trade Unions (International Affiliation) Decree No. 35 of 1989 and to transmit the text of the repeal. In a communication of 10 October 1991, the Government forwards the text of Decree No. 32 of 1991 which repeals the Trade Unions (International Affiliation) Decree No. 35 of 1989. The Committee takes note of this information with satisfaction.

23. As regards Case No. 1544 (Ecuador) when the Committee examined it at its May 1991 meeting, it requested the Government in its definitive conclusions and recommendations to amend Decrees Nos. 1535 and 1589 which prohibited a worker or an employer being designated more than once as a delegate to International Labour Conferences. In a communication of 27 May 1991, the Government states that a resolution of the Court of Constitutional Guarantees published on 10 May 1991 annulled Decree No. 1535. The Committee takes note of this information with interest and requests the Government to inform it whether Decree No. 1589 - which concerned employers - has also been repealed.

24. As regards Case No. 1570 (Philippines), when the Committee last examined it at its May 1991 meeting, it asked the Government to take measures to allow teachers to exercise the right to strike; urged the Government to take steps to have the suspension and dismissal orders reviewed and to secure the reinstatement without loss of pay of the teachers concerned, to keep it informed of any appeals brought by sanctioned teachers and to supply any statistics on the number of teachers who may have returned to their posts following the expiry of the suspensions. In a communication of 12 August 1991, the Government states that the Department of Education, Culture and Sports is now in the process of reinstating the dismissed teachers but only five have so far been availed of this process. Concerning the right of public sector employees to strike, the Government adds that the Congress is now studying several bills on this subject for adoption into law. In a letter of 23 September 1991, the Alliance of Concerned Teachers states that 36 dismissed teachers have now been reinstated in Bulacan and Manila City and an increasing number of suspended teachers have gradually benefited from reinstatement orders. It adds that it is seeking, through Supreme Court procedures, repeal of the strike ban policy. The Committee notes with interest the recent reinstatements and asks the Government to continue informing it on the evolution of the reinstatement process and to transmit the text of the bills mentioned above when adopted.

25. Finally, as regards Cases Nos. 1168 (El Salvador), 1189 (Kenya), 1341, 1435, 1446, 1482 and 1519 (Paraguay), 1388 (Morocco), 1396 (Haiti), 1408, 1485 and 1501 (Venezuela), 1413 (Bahrain), 1419 (Panama) and 1505 (Barbados), the Committee again requests these Governments to keep it informed of developments in the various matters. The Committee hopes that these Governments will communicate the information requested at an early date. In a communication dated 23 October 1991, the Government of Germany stated that it would

endeavour to submit the requested information concerning Case No. 1528 for the next meeting of the Committee.

II. CASE NOT CALLING FOR FURTHER EXAMINATION

Case No. 1504

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

26. The Committee examined this case at its February 1990 meeting and presented an interim report to the Governing Body which is contained in paragraphs 358 to 368 of the Committee's 270th Report, approved by the Governing Body at its 245th Session (February-March 1990). Since then the Government sent further comments on the matter in a communication which reached the ILO on 21 January 1991. Although the complainant has been asked to send its observations on the Government's reply, it has not yet done so.

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

A. Previous examination of the case

28. In this case the ICFTU alleges that although during the 48-hour strike called as from 19 June 1989 by most of the trade union organisations of the country (including the National Confederation of Dominican Workers (CNTD), affiliated to the ICFTU) to protest against the Government's economic policy, the workers demonstrated peacefully, the police and armed forces reacted with extreme violence. They fired on demonstrators, killing three, wounding dozens and arrested over 3,000 people throughout the country. The ICFTU called for an inquiry into the death of the workers and the unconditional release of all those under arrest.

29. The Government had noted that this general strike was essentially a political protest aimed at destabilising the Government in which a number of trade union organisations, including the Unified Workers' Confederation (CUT), were set up as guinea-pigs. According to the Government, it had respected the decision to call a general strike as it believed that opposition groups of workers and of the people had a legitimate right to protest in a country that recognises

their full democratic rights, provided they do not pose a threat to public law and order. However, instead of the strikers holding a peaceful demonstration, the general strike degenerated within 20 hours into street fighting, public disorder and the destruction of public and private property. The national police and the armed forces therefore found themselves obliged to intervene in order to restore law and order in some parts of the city of Santo Domingo and of other towns in the interior of the country. The persons who were caught disturbing the peace or breaking into private premises were arrested and handed over to the courts of justice. However by a decision of the President of the Republic, most of these people were released unconditionally just a few hours after the strike ended. Only a small number of persons were actually charged with committing acts of violence.

30. Furthermore, the Government had confirmed that on 19 and 20 June, during the general strike, deaths had occurred; however, it had claimed that these deaths were totally unrelated to the strike. On the other hand, it did admit that several persons had been wounded while resisting arrest.

31. At its February 1990 meeting, the Committee recommended the Governing Body to approve the following interim conclusions:

(a) The Committee deplores that the acts of violence of 19 June 1989, the day of the general strike, resulted in three deaths and a considerable number of wounded.

(b) So that it has sufficient information at its disposal to be able to reach conclusions on the allegations, the Committee requests the Government to inform it of developments and of the outcome in the criminal proceedings initiated in connected with the aforementioned deaths and against those persons who are still under arrest (including the text of the judgement handed down).

B. The Government's reply

32. In a communication dated 21 January 1991, the Government pointed out that the three deaths which occurred during the general strike called on 19 and 20 June 1989 were isolated incidents totally unrelated to the general strike, contrary to the statements made by the complainant in this respect. It appended to its communication evidence (inquiry and autopsy reports recording violent deaths which had occurred in bars following a heated discussion which led to a brawl) in corroboration of its statements.

C. Subsequent developments in the case

33. At its February-March 1991 meeting, in view of the contradiction existing between the complainant's and the Government's descriptions of the three violent deaths in this case, the Committee asked the Office to request the complainant confederation to send its comments on the Government's reply [see 277th Report of the Committee, para. 8].

34. Since then, despite several requests, the complainant has furnished no comments on this matter.

D. The Committee's conclusion

35. The Committee considers that in view of the contradiction existing between the versions of the complainant confederation and the Government concerning the violent deaths which occurred on 19 and 20 June 1989 and since the complainant, although invited to do so, has not furnished its comments on the Government's reply, the case does not call for further examination on its part.

The Committee's recommendation

36. In the light of its foregoing conclusion, the Committee invites the Governing Body to decide that this case does not call for further examination.

III. CASES IN WHICH THE COMMITTEE HAS REACHED DEFINITIVE CONCLUSIONS

Case No. 1556

COMPLAINTS AGAINST THE GOVERNMENT OF IRAQ PRESENTED BY
- THE TRADE UNIONS INTERNATIONAL OF PUBLIC AND ALLIED EMPLOYEES (TUI),
- THE GOVERNMENT OF KUWAIT,
- THE KUWAIT TRADE UNION FEDERATION AND
- THE CHAMBER OF COMMERCE AND INDUSTRY OF KUWAIT
AS WELL AS THE INTERNATIONAL ORGANISATION OF EMPLOYERS (IOE)

37. The Trade Unions International of Public and Allied Employees (TUI) presented allegations of violations of trade union

rights against the Government of Iraq in communications dated 17 September and 23 October 1990. In addition, the Governing Body of the ILO, at its 248th Session (November 1990), decided to refer to the Committee on Freedom of Association a memorandum containing allegations of violations of freedom of association made jointly on 8 November 1990 by the Government of Kuwait, the Kuwait Trade Union Federation and the Chamber of Commerce and Industry of Kuwait. The International Organisation of Employers (IOE) presented its complaint of violations of freedom of association in a communication dated 8 January 1991. Additional information was supplied by the Government of Kuwait in letters dated 18 and 28 December 1990, 20 January 1991, and by the Kuwait Trade Union Federation on 25 January 1991.

38. The Government sent certain observations on the case in letters dated 11 January and 17 May 1991.

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

A. The complainants' allegations

40. In letters dated 17 September and 23 October 1990, the TUI accuses the Government of Iraq of blatant violation of Conventions Nos. 87 and 98. It states that Iraq's aggression against Kuwait has led to the dissolution of Kuwait's trade unions, all of which in the public service sector are affiliates of the TUI. Not only does the TUI protest the annexation and occupation of Kuwait, but also demands an immediate and unconditional end to the occupation so that trade union rights can be restored. The TUI adds that after the 2 August invasion, Iraqi armed forces destroyed the offices of all trade unions affiliated to it, damaging the building, burning documents and ruining technical equipment. The pressure against union activity forced those union leaders still in Kuwait to work illegally, to change their names and to leave their houses. Many union leaders had to leave Kuwait because the Iraqi armed forces were trying to imprison them, although as of 20 September it appeared that only one union activist had been imprisoned. Publications of the Kuwaiti unions are forbidden, but union activists are publishing small leaflets and despite the dissolution of all unions, some activists in the fire brigades and health services are attempting to continue union activities.

41. In a memorandum dated 8 November 1990, the Government of Kuwait, Kuwait Trade Union Federation and the Chamber of Commerce and Industry of Kuwait state that the Kuwaiti employers' and workers' organisations have been annihilated by the Iraqi forces, which have plundered and destroyed their premises and have detained or expelled their leaders with their families. They allege that the Iraqi occupation authorities have also destroyed civilian installations,

factories, commercial establishments and all transport facilities, which has deprived 1 million inhabitants of Kuwait of their savings and means of livelihood.

42. Noting that these events have been condemned by the competent bodies of the United Nations, these complainants request that the Governing Body also condemn the effect they have had on the situation of workers' and employers' organisations in occupied Kuwait and the sending of a mission to the country to report on the conditions facing these organisations.

43. In its further communication of 18 December 1990, the Government of Kuwait supplies details on the daily injustices suffered by the Kuwaiti working class under the occupation forces. It refers to UN resolutions on the subject, and complains of the use of foreigners in Kuwait as "human shields" at certain strategic sites, as well as the persecution and forced flight of foreign migrant workers and the fate of their home countries which are losing an important source of economic revenue. Specifically, it refers to the following:

- the occupation authorities have taken over the Workers' Education Institute which had received ILO assistance for its creation; the contents of its library were taken to Baghdad and its publication Al Amel ("The Worker") was terminated;

- the occupation authorities emptied the premises of the headquarters of the Federation of Public Service Workers and they were turned into a detention and torture centre;

- the occupation authorities took over the headquarters of 11 unions, stole the equipment and furniture and converted them to detention and torture centres or military command posts;

- they confiscated all union bank accounts and stole, during the first hours of occupation, all the cash from workers' organisation safes;

- Ali Mohamed Al Ajami, member of the National Union of Petrol Workers, was executed in front of his home and family members;

- Nasser Moubarak Al Faraj, former President of the Kuwait Trade Union Federation, although suffering from cancer, was not allowed to receive the medical treatment he needed because the occupation forces had stolen all medicines and technical apparatus from the cancer hospital "Hossein Maké";

- Nohad Makrad, former Secretary of the Union of Employees of the Water and Electricity Ministry, was arrested in the early days of occupation and his whereabouts are unknown;

- Saleh Al Darbas, Secretary of the above-mentioned union, was arrested, tortured and is now paralysed;

- Hamad Soyane, President of the Federation of Petrol Workers, was arrested several times and his current whereabouts are unknown;

- Jalal Al Sabli, member of the executive committee of the Federation of Petrol Workers, was forced, together with members of his family, to get out of the family car at a checkpoint; the car was stolen and they were abandoned on the roadside;

- Ahmad Said Al Asbahi, Secretary of the Workers' Education Institute linked to the Kuwait Trade Union Federation, has his house attacked, was thrown out with members of his family while the household goods and his cars were confiscated.

44. In its letter of 28 December 1990, the Government of Kuwait announces the death of union leader Nasser Moubarak Al Faraj, mentioned in its earlier communication, from lack of medical treatment. It adds the following additional information:

- Mohamad Abdel Mohsen Al Osaymi, former President of the Kuwait Trade Union Federation and of the Union of Ministry of Education Staff, was arrested and tortured and his residence was burnt down;

- Nasser Hamad Mojib, former President of the Federation of Petrol and Petrochemical Industry Workers and of the Chemical Industry Union, was arrested and his house burnt down;

- Ali Mahdi Al Ajami, President of the Union of Workers in the Kuwait Petrol Company and Vice-President of the Federation of Petrol Workers, was arrested and forced to flee Kuwait and his house was burnt down;

- Mofreh Al Tahous Al Otaybi, Internal Relations Secretary of the Kuwait Trade Union Federation and Secretary-General of the Union of the Ministry of Education Staff, was forced to flee Kuwait and his house was burnt down;

- Nachi Al Saad Al Ahsan, former union member of the Kuwait Petrol Company, was forced to flee Kuwait and his house was burnt down.

The Government adds that many other trade union leaders and members inside occupied Kuwait, whose names it cannot reveal for fear for their families' safety, have disappeared and their whereabouts are unknown.

45. In its letter of 8 January 1991, the IOE complains against the Government of Iraq for violations of the freedom of association of its member the Kuwait Chamber of Commerce and Industry (KCCI). Since the invasion on 2 August, Iraqi forces have forced the KCCI into exile and attempted to subsume the activities of the Chamber in the framework of Iraqi institutions. For example, three persons representing the Iraqi Federation of Industries and the Iraqi Federation of Chambers of Commerce, supported by armed occupation forces, forced their way into KCCI premises and announced to those

present that the KCCI was henceforth subordinated to the Iraqi organisations; they demanded the KCCI's documents and ordered that it be split into two branches along the lines of the Iraqi system, namely one for commerce and one for industry. The intruders also tried to recruit senior KCCI staff present to form a puppet committee to give the impression that Kuwaiti employers supported the invasion, but they did not succeed. Since anyone who refused to cooperate with the authorities was arrested, imprisoned, tortured and murdered, the KCCI officials felt obliged to flee the country and set up operations from a temporary office in Dubai. According to the IOE, neither the elected board nor the General Assemby of the KCCI can hold meetings or elections or any other normal functions.

46. In a further communication, dated 20 January 1991, the Government of Kuwait alleges the death of union leader Manihan Ramadan Al Arabi, after he escaped from one of the Iraqi occupying forces concentration camps.

47. In a letter dated 25 January 1991, the Kuwait Trade Union Federation alleges violations of trade union rights following the Iraqi occupation, detailing in so far as possible in the prevailing situation of insecurity the need to protect union leaders inside Kuwait who are being hunted by torture and execution squads. In addition to the numerous deaths of workers at their workplaces during the invasion itself, this complainant gives more details on the following specific cases mentioned above:

- the death of Nasser Moubarak Al Faraj when Iraqi death squads pursued him in to the hospital where they disconnected the apparatus keeping him alive; and

- the death of Moliehan Ramadan Al Arbi who, suffering a cardiac ailment, was ousted from his hospital bed when the "Al Jahra" hospital was converted into a military hospital and was then forced to flee across the desert towards Saudi Arabia during which he died.

48. This complainant also alleges the loss of work suffered by about 400,000 Kuwaitis who were forced to flee their country, as well as their loss of belongings which took place during the pillage of Kuwait organised by the Iraqi authorities. For instance, it repeats the details of arrest, torture and loss of personal belongings concerning the above-mentioned trade union leaders Mohamed Abdel Mohsen Al Osaymi, Nasser Hamad Mojib, Ali Mahdi Al Ajami, Mofreh Tahous Al Oteibi, Nachi Al Saad Al Ahsan, as well as the fears for the safety and whereabouts of certain unionists listed above who remained in Kuwait. The new names of missing unionists it supplied are as follows:

(1) Ali Abdel Rahman Al Kandari, Secretary-General of the Kuwait Trade Union Federation;

(2) Sabet Ibrahim Al Haroun, President of the Federation of Trade Unions of the Public Sector and External Relations Secretary of the Kuwait Trade Union Federation;

(3) Moslem Mohamed Al Barak, member of the executive committee of the Kuwait Trade Union Federation and Director of the Workers' Education Institute;

(4) Abdallah Al Dougaichim, member of the executive committee of the Kuwait Trade Union Federation;

(5) Bader Hamad Al Nadji, President of the Union of Workers in Communications and External Relations Secretary of the Union of Public Sector Staff;

(6) Kaled Al Chamri, Secretary of the Water and Electricity Union;

(7) Mohamed Abdellah Al Ojeylane, President of the Union of Finance Workers;

(8) Hossein Saker Abdel Latif, former President of the Kuwait Trade Union Federation, former Deputy Director-General of the Arab Labour Organisation;

(9) Ali Hossein Al Yohat, member of the executive committee of the Union of Municipality Workers and Firefighters;

(10) Hasan Falah Al Ahsan, former President of the Union of Workers in the Kuwait Petrol Company and of the Federation of Petrol Workers and former executive committee member of the Kuwait Trade Union Federation;

(11) Ibrahim Ali Al Kandari, Vice-President of the Union of Electricity and Water Workers;

(12) Ali Mohamed Al Mohana, Administrative Director of the Workers' Education Institute and member of the executive committee of the Kuwait Trade Union Federation;

(13) Abdallah Al Saad Al Ahsan, former President of the Kuwait Trade Union of Petrol Workers;

(14) Bandar Ibrahim Al Kayran, Vice-President of the National Union of Petrol Workers;

(15) Ibrahim Ali Abdallah, member of the executive committee of the Union of Workers in the Kuwait Petrol Company and of the Workers' Education Institute;

(16) Amar Hamoud Al Ajami, former executive committee member of the Federation of Petrol Workers;

(17) Fahed Faleh Al Sahli, member of the exectuive committee of the Union of Petrochemical Workers and former member of the Federation of Petrol Workers.

49. Lastly, this complainant adds that the premises of various unions, of the Workers' Education Institute and of the workers' publication "Al Amel" have been pillaged and the modern equipment therein (such as typewriters, photocopiers, telephones and fax machines, computers, videos, air conditioning equipment, etc.) taken. Union paperwork and files have been destroyed or stolen.

B. The Government's reply

50. In a communication dated 11 January 1991, the Government sends very general information on the situation which gave rise to the complaints.

51. First, it challenges the authority of the Government of Kuwait to present the memorandum because, having been put in place by the British colonial regime over a separated part of Iraq, these authorities no longer have legal or legitimate status now that unification has brought Kuwait back into Iraq, as its 19th province. The Government of Iraq adds that all ratified Conventions are being applied throughout its territory, in particular through the Trade Unions Act No. 52 of 1987. Now that Kuwaiti workers are part of the Iraqi people, they benefit from the rights set out in the Iraqi Constitution, such as equality before the law. This was pointed out in a presidential circular of 5 August 1990. The Government is therefore of the opinion that there is no basis for accusations of inhumane treatment.

52. The Government points out that the administrative measures taken in the province of Kuwait were sovereign acts and linked to the American invasion in the region which necessitated the taking of measures to protect the national and citizens' security. It stresses that it took no measures to force Arab and foreign workers to leave their employment and the country: it believes that it was after the military intervention of certain foreign governments and the unjust air, land and sea blockade that workers decided to leave. Their salaries and monies due were paid to them in national currency. It is of the view that this temporary flight of labour will cease when the threat of war disappears with the withdrawal of foreign troops. In response to certain other allegations, the Government states that the National Assembly decided, following a presidential request dated 6 December 1990, to authorise foreigners who so wished to leave Iraq. It therefore considers that it is not necessary to send a mission to investigate the allegations, which it absolutely denies and rejects.

53. In a further letter of 17 May 1991, the Government reiterates its comments on the situation of Arab and foreign workers

in Kuwait and states that it is not necessary to pursue this question given the changed circumstances and Iraq's withdrawal from Kuwait. As for the other allegations listed by the various complainants, the Government adds that they are part of a campaign of denigration organised against Iraq after 2 August 1990; given the changed circumstances, it does not wish to go into this again.

C. The Committee's conclusions

54. The Committee notes that the allegations presented in this case come from both international and national workers' and employers' organisations and a government, and refer to a number of serious events following Iraq's invasion of Kuwait on 2 August 1990.

55. The allegations can be grouped around four principal aspects of freedom of association: (a) the dissolution of all workers' and employers' organisations in the country, with the consequence that their leaders were forced to flee or work clandestinely; (b) the occupation and/or destruction of occupational organisations' premises (including the Workers' Education Institute), property and assets, confiscation of union bank accounts, banning of union publications; (c) the deaths of three trade union leaders (Messrs. Ali Mahdi Al Ajami, Nasser Moubarak Al Faraj and M. Ramadan Al Arbi); and (d) the arrest and/or disappearance of a total of 23 named trade unionists (three listed in a letter of 18 December 1990, three listed in a letter of 28 December 1990 and 17 listed in a communication of 25 January 1991).

56. Neither of the Government's replies gives specific responses to the detailed allegations concerning named union leaders and members. The Government's first reply denies the allegations in general terms, relying on the Iraqi Constitution and labour laws as sufficient protection of freedom of association for the workers involved. It justifies the administrative measures taken by reference to the military operations under way at that time. Its second letter points out that Iraq withdrew from Kuwait and maintains that examination of the case need not be pursued in view of these changed circumstances. It adds that the allegations were part of a denigration campaign against Iraq over the events of 2 August 1990 and does not wish to go into them.

57. At the outset the Committee must express its regret that, apart from these brief communications suggesting that the case need no longer be discussed in view of the Iraqi withdrawal from Kuwait, the Government has not sent detailed responses to the many serious allegations listed by both the Kuwait workers' and employers' organisations and the Kuwait Government itself. The Committee would recall the importance for governments of formulating full and detailed replies, so as to allow a thorough examination of the allegations brought against them.

58. Also at the outset, the Committee emphasises the seriousness of the allegations made in this case. It deplores in the strongest terms the violence used against trade union leaders and members and recalls that trade union rights can only be exercised in a climate that is free from violence, pressure or threats of any kind against trade unionists and that governments should ensure that this principle is respected [Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 70]. It draws the Government's attention to the contents of the resolution concerning trade union rights and their relation to civil liberties, adopted by the International Labour Conference in 1970, which stress that the absence of civil liberties removes all meaning from the concept of trade union rights; the rights conferred on workers' and employers' organisations must be based on respect for those civil liberties, such as security of the person and freedom from arbitrary arrest and detention [Digest, para. 72].

59. Turning to the first principal allegation in the case, the Committee notes that, according to the complainants, all workers' and employers' organisations in Kuwait were dissolved after the invasion and their leaders forced to flee the country or to work clandestinely. The Government is silent on this. However, it appears that following the end of hostilities, these organisations of the country have been able to resume functioning and return to the territory. For example, representatives of the Kuwait Chamber of Commerce and Industry and of the General Union of Kuwait Workers attended together with the Kuwaiti Government delegation the 78th Session of the International Labour Conference in June 1991. The Committee must draw the attention of the Government of Iraq to the principle that measures of suspension or dissolution by the administrative authority constitute serious infringements of the principles of freedom of association.

60. Secondly, with regard to the deaths of three trade union leaders (Messrs Ali Mahdi Al Ajami, Nasser Moubarak Al Faraj and Manihan Ramadan Al Arbi) in circumstances linked to the invasion itself, the Committee cannot but deplore these losses of life, especially as the Government makes no comment thereon at all. It would recall that a climate of violence such as that surrounding the murder of trade union leaders constitutes a serious obstacle to the exercise of trade union rights and such acts require severe measures to be taken by the authorities [Digest, para. 76].

61. Thirdly, as regards the 23 arrested and/or missing trade unionists listed by the complainants, the Committee once again deplores the Government's lack of cooperation in supplying information on their whereabouts and any charges laid against them and their current legal status. It draws the Government's attention to the principle that the detention of trade union leaders and members for activities connected with the exercise of their trade union rights is contrary to the principles of freedom of association [Digest, para. 87]. In addition, the arrest and detention of trade unionists, even for reasons of internal security, may constitute a serious

interference with trade union rights unless attended by appropriate judicial safeguards [Digest, para. 94]. The Committee would particulary recall that detained unionists, like anyone else, should benefit from normal judicial proceedings and have the right to due process, in particular, the right to be informed of the charges brought against them, the right to have adequate time and facilities for the preparation of their defence and to communicate freely with counsel of their own choosing, and the right to a prompt trial by an impartial and independent judicial authority [Digest, para. 110]. The Committee asks the Government of Iraq to release these unionists if any are still in detention.

62. Lastly, as concerns the various allegations of destruction of property, premises and equipment and confiscation of financial assets of workers' and employers' organisations in Kuwait, the Committee recalls the 1970 resolution on trade union rights and their relation to civil liberties, mentioned above, which declares that the right to adequate protection of trade union property is one of those civil liberties which are essential for the normal exercise of trade union rights. The Committee accordingly requires that, where identification of confiscated documents, equipment and monies is possible, the Iraqi authorities restore such property to the workers' and employers' organisations to which it rightly belongs and that, where this identification is not possible, the Iraqi authorities supply just compensation.

The Committee's recommendations

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

(a) The Committee must express its regret that, apart from two brief communications suggesting that the case need no longer be discussed in view of the Iraqi withdrawal from Kuwait, the Government of Iraq has not sent detailed responses to the many serious allegations listed by both the Kuwait workers' and employers' organisations and the Kuwait Government itself.

(b) The Committee deplores in the strongest possible terms the violence used against trade union leaders and members, particularly the deaths of three leading trade union figures.

(c) As regards the dissolution of all workers' and employers' organisations, the Committee draws the attention of the Government of Iraq to the principle that measures of suspension or dissolution by administrative authority constitute serious infringements of the principles of freedom of association.

(d) As regards the 23 unionists arrested and/or missing following the Iraqi invasion, the Committee once again deplores the Government's lack of cooperation in supplying information on their whereabouts and any charges laid against them and their current legal status; it asks the Government to take the measures necessary to release these unionists if any are still in detention.

(e) As for the other acts of harassment and confiscation of union and employers' associations' assets and property which violate the principles of freedom of association, the Committee requires that, where identification of confiscated documents, equipment and monies is possible, the Iraqi authorities restore such property to the workers' and employers' organisations to which it rightly belongs and that, where this identification is not possible, they supply just compensation.

Case No. 1566

COMPLAINTS AGAINST THE GOVERNMENT OF PERU PRESENTED BY - THE INTERSECTORAL CONFEDERATION OF STATE WORKERS (CITE) - THE NATIONAL COALITION OF TRADE UNIONS OF PUBLIC ENTERPRISES (CONSIDEP) - THE FEDERATION OF ELECTRICITY AND ENERGY WORKERS OF PERU (FTLYF) - THE NATIONAL FEDERATION OF DRINKING WATER AND SEWAGE WORKERS OF PERU (FENTAP) - THE NATIONAL FEDERATION OF MINING, METALLURGICAL AND IRON AND STEEL WORKERS OF PERU (FNTMMSP) AND - THE GENERAL CONFEDERATION OF WORKERS OF PERU (CGTP)

64. The complainant organisations presented their complaint in a joint communication dated 20 November 1990 and provided supplementary information in a communication dated 25 April 1991. The CGTP sent a communication dated 7 June 1991. The Government furnished its observations on the allegations made in a communication dated 26 March 1991, which was received in the ILO on 2 May 1991.

65. Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Labour Relations (Public Service) Convention, 1978 (No. 151).

A. The complainants' allegations

66. In their joint communication dated 20 November 1990, the complainants point out that Article 55 of the Constitution of Peru

guarantees workers the right to strike, which must be exercised in the form provided by statute. The law in question is Supreme Decree No. 017 dated 2 November 1962, which establishes the requirements for calling a strike. On 17 November 1990 the Government issued Supreme Decree No. 070-90-TR on the exercise of the right to strike in essential services and which extended the scope of Supreme Decree No. 017 which referred only to the private sector. According to the complainants, this new Decree is a clear obstacle to the exercise of freedom of association and, in particular, the right to strike.

67. The complainants state that Supreme Decree No. 017 dated 2 November 1962 establishes a series of requirements for calling a strike, including the giving of 72 hours advance notice to the employer and the labour administrative authority. In practice, all advance notice of strikes given by workers and their organisations, even though scrupulously complying with the requirements set forth in the above-mentioned Decree, is rejected by the administrative authorities of the Ministry of Labour and Social Advancement. This declaration of the irreceivability of the advance notice automatically makes the strike illegal without the need for any further administrative action, thus placing the strikers in a situation of having committed a serious misdemeanour which would justify their dismissal.

68. Section 1 of Supreme Decree No. 070-90-TR stipulates that "essential services are those whose interruption may jeopardise the life, freedom, safety or health of persons and which make it necessary to guarantee the provision of a minimum service to prevent such risks".

69. Section 2 of the Supreme Decree stipulates that the following are considered essential services:

(a) health services, hospitals, clinics and care services;

(b) public cleaning and sanitation services;

(c) supply and distribution of water, electricity, gas and fuel;

(d) cemeteries, burials and autopsies;

(e) public transport, communications and telecommunications;

(f) administration of justice, at the request of the Supreme Court of Justice;

(g) all services in which the extension, duration or timing of the interruption of the service or activity may endanger the life, health, freedom or safety of persons, as decided by the ministry of the corresponding sector.

70. In the same way, section 3 of the above-mentioned Supreme Decree stipulates that enterprises and bodies where workers provide the essential services set forth in section 2 shall communicate each year to their workers and the labour administration authority or the

National Institute of Public Administration, as the case may be, the number of necessary workers for the maintenance of such services. The complainants point out that the provision to which reference is made in section 3 makes it obligatory for the trade union organisations in the public or private sector or the workers themselves who have gone on strike to provide "the list of necessary workers who shall ensure that essential services are not interrupted" (section 5 of Supreme Decree No. 070-90-TR).

71. The complainants point out that the number of workers determined by the Supreme Decree is not intended to guarantee the maintenance of minimum operations in the sector considered to be essential, but is in fact designed to maintain such services, which is something very different from normal procedure in such cases. In this way, the legislation imposes a disproportionate burden as regards the exercise of the right which is supposedly being protected. Thus this Decree is clearly intended to render the right to strike null and void, contrary to the provisions of Article 3 of Convention No. 87.

72. In cases of discrepancies concerning the number of workers to be included on the above-mentioned list, section 4 of the Decree stipulates that such discrepancies shall be resolved by the labour administration authority or the National Institute of Public Administration, in coordination with the corresponding sector, which is contrary to certain principles of freedom of association.

73. Furthermore, the obligation contained in section 5, in pursuance of section 6 of the same Supreme Decree, "is also applicable to cases where the strike could result in the deterioration of equipment, raw material, machinery or installations which prevents the immediate resumption of work once the stoppage ends". The complainants state that in accordance with these principles it can clearly be seen that the objective of the provision respecting minimum services resulting from section 6 is not the respect of the basic rights of citizens but rather the respect of the economic interests of employers.

74. Section 8 stipulates furthermore that "the refusal of the trade union or the workers to comply with the obligations established in the Supreme Decree shall constitute a fault which shall be penalised in accordance with the law, without prejudice to the illegal nature of the strike". According to the complainants, the provisions of this Decree give wide discretionary powers to the government authorities and substantially restrict the exercise of the right to strike by the workers, without providing any kind of compensation for this weakening of the right to exercise of which is limited. The deprivation of trade union rights undoubtedly leads to situations of violence and is a restriction of the legitimate interests of the workers which in the end is detrimental to the community as a whole.

75. Furthermore, in their communication of 25 April 1991 as well as in their earlier communication, the complainants express their concern at the imminent approval by the Congress of the Republic of the Bill on strikes which, in 1981, was the subject of observations by

the Committee on Freedom of Association in the context of Case No. 1081. On that occasion it was found that certain provisions of the Bill to regulate the right to strike contained restrictions of this right (see 214th Report of the Committee, paragraph 269). The complainants refer in detail to the observations set forth by the Committee on certain provisions of this Bill and add that there is no evidence which would suggest that the legislative authorities have adopted the suggestions of the Committee, and the trade union movement in Peru is concerned at the Government's intention of approving this Bill as soon as possible.

76. The communication from the CGTP dated 7 June 1991 refers to several decrees which impose restrictions on collective bargaining, by establishing maximum limits and certain structural parameters for negotiation. Several of these decrees were already examined in the context of Case No. 1548 (Peru). Furthermore, the communication refers to the decrees on strikes which are the subject of the present complaint.

77. In the light of these considerations, the complainant organisations ask the Committee to send a direct contacts mission to the country to try and prevent the further deterioration of freedom of association in Peru.

B. The Government's reply

78. In a communication dated 26 March 1991, the Government states that Supreme Decree No. 070-90-TR stipulates that in accordance with Article 55 of the State Constitution, the exercise of the workers' right to strike is subject to the statutory provisions and the rules which regulate such provisions. Thus the Government of Peru fully respects the constitutional rights of workers in this domain.

79. According to the Government, the exercise of the above-mentioned rights is in no way an obstacle to freedom of association or the right to strike. The right to organise is respected by the Government, although restrictions apply to specific workers in a workplace who are legally prevented from joining the trade union of their respective enterprise.

80. As regards the right to strike, the Government points out that this right is recognised and granted to workers as a means of allowing them to act collectively, but that it is not a trade union right, notwithstanding the link which exists between these recognised rights which, furthermore, are of a collective nature. The right to strike has not been restricted in any way; on the contrary, the regulations contained in Supreme Decree No. 070-90-TR guarantee its free exercise but at the same time introduce the concept of "essential services" to protect the legitimate right of individuals, a right which takes precedence over labour rights.

81. The Government states that it is inconceivable therefore that in pursuance of the exercise of the right to strike, the life, freedom, safety or health of persons should be placed in danger since these are natural rights which transcend any legal framework, including that of the political Constitution, Article 2 of which clearly sets forth individual rights.

82. The Government points out that although it is true that the rights of workers working in areas considered to be essential services (health services, hospitals, clinics, and care services, as well as public cleaning and sanitation services, the supply and distribution of water, electricity, gas and fuel, public transport, communications and telecommunications, cemeteries, burials and autopsies) must be protected when a dispute arises with the employer, the State also has the right to guarantee and protect the fundamental rights of individuals in general.

83. It is for this reason that legislation has been passed so that workers in exercising their right to strike cannot abandon the public or essential services enumerated in Supreme Decree No. 070-90-TR since this would infringe not only the provisions of the Decree but could also result in an offence punishable under the Penal Code.

84. Workers who exercise their right to strike are obliged to maintain the described essential services so that the rights of persons are not infringed. Labour doctrine establishes that the right to strike is not an absolute right of workers, but is subject to the regulations which guarantee its exercise and which protect the fundamental rights of persons. This was the objective and basis of the promulgation of Supreme Decree No. 070-90-TR.

C. The Committee's conclusions

85. The Committee notes that the allegations made in this case refer to Supreme Decree No. 070-90-TR dated 16 November 1990 on the exercise of the right to strike in essential services and the establishment of minimum services, the practical difficulties in calling a strike, according to the requirements established in Supreme Decree No. 017 of 2 November 1962 and the Bill to regulate the right to strike which is being discussed by Parliament.

86. As regards Supreme Decree No. 070-90-TR, the Committee takes note of the replies sent by the Government to the effect that this Decree in no way restricts the right to strike but, by introducing the concept of minimum services in the essential services, attempts to establish a balance between the right to strike of workers and the right of individuals in general, both of which are constitutional rights. However, the Committee would like to recall that the right to strike may be subject to restrictions and even be prohibited only in the public service (where public servants are those persons acting on

behalf of the public authorities) or in essential services in the strict sense of the term, that is those services whose interruption would endanger the life, personal safety or health of the whole or part of the population [see in this respect, for example, Case No. 1140 (Colombia), 236th Report, para. 144]. It would also reiterate that when the right to strike is limited or prohibited in enterprises or services considered to be essential, the restrictions on the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration, proceedings in which the parties concerned can take part at every stage and in which the awards, once made, are fully and promptly implemented.

87. As regards the establishment of minimum services, the Committee notes that the allegations made by the complainants concern certain provisions of Supreme Decree No. 070-90-TR. At the same time it recalls that a minimum service may be set up in the event of a strike, the extent and duration of which might be such as to result in an acute national crisis in which the normal conditions of existence of the public could be endangered, always provided the said minimum service is confined to operations which are strictly necessary to avoid endangering the life or normal conditions of existence of the whole or part of the population and that the defining of minimum service should involve not only employers and the public authorities but also workers' organisations [see in this respect, 234th Report, Case No. 1244 (Spain), paras. 153 and 154].

88. As regards the list of the essential services set out in section 2 of Supreme Decree No. 070-90-TR for the purposes of fixing a minimum service, while although the Committee believes it is legitimate to establish a minimum service in the event of a strike, it urges the Government to adopt a flexible attitude when setting a minimum service in certain sectors which in themselves are not considered as essential, provided that the said minimum service is confined to operations which are strictly necessary to avoid endangering the life, personal safety or health of the whole or part of the population [see in this respect Case No. 1244 (Spain) op. cit.].

89. As regards the administrative obstacles and practical difficulties in declaring a legal strike, the Committee notes that under the provisions of Supreme Decree No. 017 of 1962 it is necessary to give 72 hours advance notice to the authorities with details of the time of the vote to call the strike, the number of workers participating in the vote and the number of workers which the trade union groups together or which belong to the enterprises affected. The Committee would emphasise in this connection that the legal procedures for declaring a strike should not be so complicated as to make it practically impossible to declare a legal strike. Moreover, although the Committee considers that the obligation to submit an advance notice of a strike does not constitute a violation of freedom of association, it notes that in the case before it, an advance notice could be declared as irreceivable by the administrative authorities, which could risk leading to the dismissal of the workers participating in the strike. The Committee therefore urges the Government to take

measures with a view to simplifying the legal procedures for calling a lawful strike in any future revision of the Act on strikes.

The Committee's recommendations

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

(a) As regards Supreme Decree No. 070-90-TR, the Committee takes note of the information provided by the Government but reiterates that when the right to strike has been restricted or banned in enterprises or services considered to be essential, these restrictions should be accompanied by adequate, impartial and speedy arbitration and conciliation procedures.

(b) As regards the establishment of minimum services, the Committee would recall that a minimum service may be fixed in the event of a strike, the extent and duration of which might be such as to result in an acute national crisis in which the normal conditions of existence of the public could be endangered, provided that the said minimum service is confined to operations that are strictly necessary to avoid endangering the life or normal conditions of existence of the whole or part of the population and that the defining of minimum services should involve not only employers and the public authorities but also workers' organisations.

(c) As regards the list of essential services set out in section 2 of Supreme Decree No. 070-90-TR for the purposes of fixing a minimum service, the Committee asks the Government to adopt a flexible attitude when setting a minimum service in certain sectors which in themselves are not considered as essential, it being understood that the said minimum service should be confined to operations which are strictly necessary to avoid endangering the life, personal safety or health of the whole or part of the population.

(d) As regards the administrative obstacles and practical difficulties for calling a legal strike under the provisions of Supreme Decree No. 017 of 1962, the Committee emphasises that the legal procedures for declaring a strike should not be so complicated as to make it impossible in practice to call a lawful strike. Thus the Committee urges the Government to take measures with a view to simplifying the legal procedures necessary for calling a legal strike in any future revision of the Bill on strikes.

Case No. 1576

COMPLAINT AGAINST THE GOVERNMENT OF NORWAY PRESENTED BY THE NORWEGIAN TRADE UNION FEDERATION OF OIL WORKERS (OFS)

91. The Norwegian Trade Union Federation of Oil Workers (Oljearbeidernes Fellessammenslutning, OFS) presented a complaint of violation of trade union rights in Norway in a communication dated 20 March 1991. The Government supplied its observations in a communication dated 1 October 1991.

92. Norway 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

93. In its communication of 20 March 1991, the OFS alleges that the Government violated ILO Conventions Nos. 87 and 98 by using compulsory arbitration in June 1990 to end a legal strike by the oil workers in the North Sea.

94. A wage agreement, valid until 30 June 1990, existed between the OFS and the Confederation of Norwegian Business and Industry/Oil Industry Association of Norway (NHO/OLF). The negotiations over a new agreement failed and a joint walk-out of some 4,000 OFS members was initiated on 30 June at 12.00 p.m. On 2 July, the Government adopted a Provisional Arrangement prohibiting strikes in the North Sea and referring the dispute to compulsory arbitration. Up to that date all procedures had been duly carried out under the Labour Dispute Act.

95. Recourse to compulsory arbitration in Norwegian labour law is approved by a special Act of the Storting (Parliament), or a Provisional Arrangement if the Storting is not in session. The Government, in each case, decides whether the dispute in question should be solved by compulsory arbitration; there is no law which indicates the circumstances allowing the authorities to use compulsory arbitration to solve labour disputes. In this instance, the Government gives the following reasons to justify its intervention: loss of revenue, taxes and duties; hurting Norway's credibility as a reliable gas supplier; risks of damage to the installations in case of a lengthy shut down; dismissal of employees in related operations (maintenance, supply, transport); indications of a long conflict because of the complete standstill in negotiations.

96. The OFS considers that the potential losses to the Norwegian economy are the main reason invoked by the Government; it points out

in this respect that any strike has the purpose of creating financial set-backs. As to the risks of damage to the installations, these problems may easily be solved by excepting necessary maintenance personnel from the strike and, if necessary, by doing additional maintenance work after the dispute. As regards the alleged possible dismissal of other employees for lack of work, that does not justify prohibiting labour disputes nor does it make compulsory arbitration legal and legitimate. Furthermore, the OFS cannot see how a long dispute could decrease Norwegian credibility as a reliable gas supplier.

97. The OFS points out that the Norwegian Government has been consistently using compulsory arbitration to end any labour dispute in the North Sea oil installations. In effect the parties are not really free to negotiate. In addition, because of this systematic recourse to compulsory arbitration, employers do not show any willingness to negotiate. This intervention in June 1990 should be put in perspective with other instances, in December 1983 and November 1986, where the Government also imposed compulsory arbitration in that sector. The OFS refers in particular to Cases Nos. 1255 and 1389 where the Committee on Freedom of Association concluded in similar circumstances, between the same parties, that the Government's actions were contrary to the freedom of association principles as embodied in Conventions Nos. 87 and 98. The OFS claims that, in practice, any dispute concerning the North Sea oil installations is prohibited through compulsory arbitration, which undermines entirely the workers' freedom to organise and negotiate in this sector.

B. The Government's reply

98. In its communication of 1 October 1991, the Government points out that the right to industrial action is not expressly embraced by the Articles of ILO Conventions, but is considered part of the principles of freedom of association. According to ILO standards as interpreted by the ILO bodies, the consequences of a labour conflict may become so serious that government intervention or restrictions on the right to strike is compatible with the principles of freedom of association. Limitations on or prohibitions of strikes are thus accepted when the strike involves: (a) public servants engaged in the administration of the State; (b) essential services in the strict sense of the term, i.e. services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. According to the ILO interpretation, the damaging effects must, in addition, be clear and imminent.

99. According to the Government, the oil conflict of 1990 must be considered in the light of the general 1990 settlements. Temporary pay and dividends regulation Acts were in force in 1988-89. During this period signs of improvements had occurred in the Norwegian economy. The last regulation Act expired on 31 March 1990. The

challenge then was for the employers' and workers' organisations through free collective bargaining to reach new agreements which would not jeopardise the improvements gained during the wage regulation period. General negotiations for the private sector started on 2 March 1990. OFS withdrew from these negotiations on 12 March, while other central unions came to terms on 15 March. In leaving the central negotiations, OFS lost its possibility of influencing the economic framework of the forthcoming settlements. Based on the agreed general economic framework, union-by-union negotiations were carried out. In the North Sea, new agreements were made between NHO/OLF, on the one hand, and the Norwegian Oil and Petrochemical Union (NOPEF) and the Norwegian Association of Supervisors (NALF), on the other. These two unions had as their members about one-half of the organised workers on the oil installations at the time.

100. The Government explains that the OFS complaint gives on the whole an adequate description of the development of the conflict, but it adds some supplementary observations. The collective agreement expired on 30 June 1990; OFS and NHO/OLF started negotiations for a new agreement on 7 June. OFS broke off the negotiations the same day, maintaining that these should be carried out without regard to the results of the central negotiations, which had also been accepted by the parties in the public sector. OLF, as a member of the employer's body, did not accept this. According to the regulations in the Labour Disputes Act, compulsory mediation by the state mediator started on 21 June. OFS demanded the mediation closed on 26 June. On 30 June the mediator suggested a solution which the parties could not accept. The Minister of Local Government appealed on the same day to the parties to try to reach an agreement, but this final attempt also failed.

101. The Storting was not in session at this time. On 2 July the Government decided by Provisional Ordinance pursuant to section 17 of the Constitution that further strikes were forbidden, and that the dispute was to be solved by the National Wages Board. Despite this Provisional Ordinance, large numbers of workers continued the strike. The employers then brought the dispute before the Labour Court, claiming that continued strikes were illegal and contrary to the collective agreement. OFS for its part claimed that the Provisional Ordinance was incompatible with Norway's obligations under international law and was therefore invalid. The Labour Court rejected OFS's claim, as it found that the Government had given due consideration to Norway's international obligations; it found the continued strike to be illegal and contrary to the collective agreement. Furthermore, one of the leaders of the strike was deprived of the right to serve as a shop steward. OFS has had to accept to pay to the employers a considerable sum in compensation for the losses incurred.

102. The Government lists the consequences of the strike and the Government's evaluation of the situation. First, the strike among about 3,900 OFS members led to the closing down of all fields on the Norwegian continental shelf and full stoppage in all Norwegian oil and gas production. Secondly, there were economic consequences since the

oil sector plays a crucial role for Norwegian society and it is the State rather than the oil companies that has to bear most of the loss of income. The OFS strike in question was estimated to incur a loss in gross production value of about 1,500 million NOK per week, with the State suffering a loss of about 800 million NOK per week in taxes and royalties, and about 300 million in income from its direct involvement in the petroleum industry. The State would thus suffer a loss of about 1,100 million NOK per week, or three-fourths of the total loss. Obviously, deterioration of the trade balance and a reduction in the State's income of such dimensions would have a serious impact on the economy, even after a short time. A labour conflict of some duration would have even more serious consequences. The Government knew that the parties were far apart in views, and that there was every reason to believe that the conflict would be a long one. Thirdly, in 1990, the export income from the oil industry contributed nearly one-third to Norway's total export income and the State's gross income from the petroleum sector (including taxes and dividends) amounted to about one-half of its expenditure on the purchase of goods and services. Since the high level of Norwegian social benefits has for a large part been made possible by oil revenues, a long-lasting conflict of this magnitude might undermine the basis of the welfare state. Fourthly, the Government was concerned about Norway's long-term economic interests being damaged, as frequent labour conflicts in the North Sea may endanger Norway's reputation as a trustworthy gas supplier and weaken its position in international negotiations on gas deliveries.

103. The Government also refers to the difficult employment situation as an additional factor influencing its considerations. From 1987 to 1990 the unemployment rate increased from 2 per cent to 6 per cent. All parts of the society are concerned about this situation. Through wage regulation and moderate settlements the industrial partners have made valuable contributions in controlling the rise in prices. It was important to continue the joint efforts for improvements in the mainland economy. All other parties involved in the 1990 settlements contributed to this end, coming to terms on moderate wage increases. These results would have been jeopardised by a better agreement for the OFS members. The Government therefore argues that expected economic losses from last year's full-scale oil strike were of such dimensions that the intervention should be accepted as compatible with the Conventions protecting the freedom of association.

104. The Government notes that the OFS questions the account of the consequences of the strike as presented by the Government in the Provisional Ordinance denying that "a long dispute could decrease Norwegian credibility as a reliable gas supplier" and stating this is not in accordance with the ILO Convention as regards compulsory arbitration. The Government points out that the Provisional Ordinance describes the broad consequences in many fields which the strike would lead to. This does not, however, imply that the Government found each individual factor to be serious enough to cause the use of compulsory arbitration. There would be economic consequences as described