INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

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Reports of the Committee on Freedom of Association (254th and 255th Reports)

254th REPORT

	Paragraphs	Pages
Introduction	1-29	1-10
Cases which do not call for further examination .	30-148	10-34
Case No. 1190 (Peru): Complaints against the Government of Peru presented by the International Confederation of Free Trade Unions, the World Federation of Trade Unions, the Peruvian General Confederation of Workers and the Federation of Municipal Workers of Peru	30-39	10-12
The Committee's conclusions	37-38	11
The Committee's recommendation	39	12
Case No. 1411 (Ecuador): Complaint against the Government of Ecuador presented by the World Confederation of Labour	40-57	12-15
The Committee's conclusions	53-56	14-15
The Committee's recommendation	57	15

	Paragraphs	Pages
Case No. 1416 (United States): Complaint against the Government of the United States presented by the United Industry Workers' Local 424	58-86	15-22
The Committee's conclusions	80-85	21-22
The Committee's recommendation	86	22
Case No. 1422 (Colombia): Complaint against the Government of Colombia presented by the Workers' Union of the General CEAT Company of Colombia, S.A.	87-107	22-27
The Committee's conclusions	102-106	26-27
The Committee's recommendation	107	27
Case No. 1424 (Portugal): Complaint against the Government of Portugal presented by the National Trade Union of Civil Aviation Flight Personnel	108-148	27-34
The Committee's conclusions	139-147	32-33
The Committee's recommendation	148	34
Cases in which the Committee has reached definitive conclusions	149-237	34-57
Case No. 1362 (Spain): Complaint against the Government of Spain presented by the National Federation of Driving Schools ...	149-163	34-39
The Committee's conclusions	159-162	38-39
The Committee's recommendation	163	39
Case No. 1392 (Venezuela): Complaint against the Government of Venezuela presented by the Union of Pilots of the Venezuelan International Aviation Corporation	164-179	39-42
The Committee's conclusions	175-178	42
The Committee's recommendations	179	42

	Paragraphs	Pages
Case No. 1393 (Dominican Republic): Complaint against the Government of the Dominican Republic presented by the International Confederation of Free Trade Unions	180-188	43-45
The Committee's conclusions	186-187	44
The Committee's recommendations	188	44-45
Case No. 1400 (Ecuador): Complaint against the Government of Ecuador presented by the International Confederation of Free Trade Unions (ICFTU)	189-199	45-47
The Committee's conclusions	197-198	47
The Committee's recommendation	199	47
Case No. 1418 (Denmark): Complaint against the Government of Denmark presented by the Danish Seamen's Union	200-227	47-55
The Committee's conclusions	218-226	52-54
The Committee's recommendations	227	55
Case No. 1427 (Brazil): Complaint against the Government of Brazil presented by the World Confederation of Organisations of the Teaching Profession	228-237	55-57
The Committee's conclusions	234-236	56-57
The Committee's recommendation	237	57
Cases in which the Committee requests to be kept informed of developments	238-287	57-71
Case No. 1376 (Colombia): Complaints against the Government of Colombia presented by the Union of Workers of the National Coffee Trade Federation of Colombia (SINTRAFEC) and the World Federation of Trade Unions (WFTU)	238-254	57-61
The Committee's conclusions	249-253	60-61
The Committee's recommendation	254	61

	Paragraphs	Pages
Case No. 1415 (Australia): Complaint against the Government of Australia presented by the Customs Officers Association of Australia	255-287	61-71
The Committee's conclusions	281-286	69-70
The Committee's recommendations	287	70-71
Cases in which the Committee has reached interim conclusions	288-523	71-138
Case No. 1309 (Chile): Complaints against the Government of Chile presented by the International Confederation of Free Trade Unions (ICFTU), the World Confederation of Labour (WCL), the World Federation of Trade Unions (WFTU) and other trade union organisations	288-350	71-89
The Committee's conclusions	338-349	84-88
The Committee's recommendations	350	88-89
Case No. 1341 (Paraguay): Complaints against the Government of Paraguay presented by several trade union organisations	351-369	90-93
The Committee's conclusions	362-368	91-93
The Committee's recommendations	369	93
Case No. 1396 (Haiti): Complaints against the Government of Haiti presented by the Latin American Central of Workers, the World Federation of Trade Unions, the International Confederation of Free Trade Unions and the Autonomous Confederation of Haitian Workers	370-400	94-100
The Committee's conclusions	385-399	97-99
The Committee's recommendations	400	99-100

	Paragraphs	Pages
Case No. 1399 (Spain): Complaint against the Government of Spain presented by the Independent Trade Union Confederation of Public Employees	401-427	100-110
The Committee's conclusions	423-426	108-109
The Committee's recommendations	427	109-110
Case No. 1403 (Uruguay): Complaints against the Government of Uruguay presented by the Single National Trade Union of Workers in the Clothing Industry, the Inter-Union Workers' Assembly and the National Workers' Convention	428-449	110-118
The Committee's conclusions	443-448	116-118
The Committee's recommendations	449	118
Case No. 1406 (Zambia): Complaint against the Government of Zambia presented by the Zambia Congress of Trade Unions	450-473	119-126
The Committee's conclusions	466-472	123-125
The Committee's recommendations	473	125-126
Case No. 1413 (Bahrain): Complaint against the Government of Bahrain presented by the International Confederation of Arab Trade Unions	474-492	126-130
The Committee's conclusions	485-491	128-130
The Committee's recommendations	492	130
Case No. 1417 (Brazil): Complaint against the Government of Brazil presented by the International Confederation of Free Trade Unions	493-504	131-133
The Committee's conclusions	500-503	132-133
The Committee's recommendations	504	133

	Paragraphs	Pages
Case No. 1425 (Fiji): Complaint against the Government of Fiji presented by the International Union of Food and Allied Workers' Associations and the International Confederation of Free Trade Unions	505-523	134-138
The Committee's conclusions	516-522	136-137
The Committee's recommendations	523	138

255th REPORT

	Paragraphs	Pages
Introduction	1-3	139
Cases Nos. 1129, 1298, 1344, 1351 and 1372 (Nicaragua): Complaints against the Government of Nicaragua presented by the Latin American Central of Workers (CLAT), the World Confederation of Labour (WCL), the International Confederation of Free Trade Unions (ICFTU) and the International Organisation of Employers (IOE)	4-68	140-154
The Committee's conclusions	48-67	149-153
The Committee's recommendations	68	153-154

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]
13-14	XXXVII	1954	4
15-16	XXXVIII	1955	1
17-18	XXXIX	1956	1
19-24[2]	XXXIX	1956	4
25-26	XL	1957	2
27-28[2]	XLI	1958	3
29-45	XLIII	1960	3
46-57	XLIV	1961	3
58	XLV	1962	1 S
59-60	XLV	1962	2 SI
61-65	XLV	1962	3 SII
66	XLVI	1963	1 S
67-68	XLVI	1963	2 SI
69-71	XLVI	1963	3 SII
72	XLVII	1964	1 S
73-77	XLVII	1964	3 SII
78	XLVIII	1965	1 S
79-81	XLVIII	1965	2 S
82-84	XLVIII	1965	3 SII
85	XLIX	1966	1 S
86-88	XLIX	1966	2 S
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.

Report	Publication		
	Volume	Year	Number
101	LI	1968	1 S
102-103	LI	1968	2 S
104-106	LI	1968	4 S
107-108	LII	1969	1 S
109-110	LII	1969	2 S
111-112	LII	1969	4 S
113-116	LIII	1970	2 S
117-119	LIII	1970	4 S
120-122	LIV	1971	2 S
123-125	LIV	1971	4 S
126-133	LV	1972	S
134-138	LVI	1973	S
139-145	LVII	1974	S
146-148	LVIII	1975	Series B, Nos. 1-2
149-152	LVIII	1975	" No. 3
153-155	LIX	1976	" No. 1
156-157	LIX	1976	" No. 2
158-159	LIX	1976	" No. 3
160-163	LX	1977	" No. 1
164-167	LX	1977	" No. 2
168-171	LX	1977	" No. 3
172-176	LXI	1978	" No. 1
177-186	LXI	1978	" No. 2
187-189	LXI	1978	" No. 3
190-193	LXII	1979	" No. 1
194-196	LXII	1979	" No. 2
197-198	LXII	1979	" No. 3
199-201	LXIII	1980	" No. 1
202-203	LXIII	1980	" No. 2
204-206	LXIII	1980	" No. 3
207	LXIV	1981	" No. 1
208-210	LXIV	1981	" No. 2
211-213	LXIV	1981	" No. 3
214-216	LXV	1982	" No. 1
217	LXV	1982	" No. 2
218-221	LXV	1982	" No. 3
222-225	LXVI	1983	" No. 1
226-229	LXVI	1983	" No. 2
230-232	LXVI	1983	" No. 3
233	LXVII	1984	" No. 1
234-235	LXVII	1984	" No. 2
236-237	LXVII	1984	" No. 3
238	LXVIII	1985	" No. 1
239-240	LXVIII	1985	" No. 2
241-242	LXVIII	1985	" No. 3
243	LXIX	1986	" No. 1

Report	Publication		
	Volume	Year	Number
244-245	LXIX	1986	Series B, No. 2
246-247	LXIX	1986	" No. 3
248-250	LXX	1987	" No. 1
251-252	LXX	1987	" No. 2
253	LXX	1987	" No. 3

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Reports of the Committee on Freedom of Association (254th and 255th Reports)

254th REPORT[1]

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 15, 16 and 19 February 1988 under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body.

2. The members of the Committee of Venezuelan and Australian nationality were not present during the examination of the cases relating to Venezuela (Case No. 1392) and Australia (Case No. 1415).

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3. The Committee is currently seized of 55[2] cases in which the complaints have been submitted to the governments concerned for

[1] The 254th and 255th Reports were examined and approved by the Governing Body at its 239th Session (February-March 1988).

[2] This includes the cases concerning Nicaragua (Cases Nos. 1129, 1298, 1344, 1351 and 1372) which are examined in the 255th Report.

observations. At its present meeting it examined 28 cases in substance, reaching definitive conclusions in 16 cases and interim conclusions in 12 cases; the remaining cases were adjourned for the various reasons set out in the following paragraphs.

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New cases

4. The Committee adjourned until its next meeting the cases relating to Indonesia (Case No. 1431) and Peru (Case No. 1432) concerning which it is still awaiting information or observations from the governments concerned. All these cases relate to complaints submitted since the last meeting of the Committee.

Subsequent adjournments

5. The Committee awaits observations or information from the governments concerned in the cases relating to Liberia (Case No. 1410) and Israel (Case No. 1414). The Committee again adjourned these cases and requests the governments of these countries to transmit the information or observations requested.

6. As regards Cases Nos. 1385 (New Zealand), 1397 (Argentina) and 1402 (Czechoslovakia), the Governments have indicated that their observations will be sent shortly. In Cases Nos. 1420 (United States/Puerto Rico) and 1428 (India), the Governments concerned have sent certain information and have indicated that they will send further observations as soon as possible. Concerning Case No. 1421 (Denmark), the Government had sent its observations but, as the complainant transmitted certain comments, additional observations from the Government are awaited.

7. As regards Cases Nos. 1337 (Nepal), 1395 (Costa Rica), 1408 and 1412 (Venezuela), 1419 (Panama) and 1430 (Canada/British Columbia), the Committee has received the Governments' observations and intends to examine these cases in substance at its next meeting. As for Case No. 1391 (United Kingdom), the Committee will examine it at its next meeting in the light of the comments of the Committee of Experts on the Appplication of Conventions and Recommendations.

8. As regards Cases Nos. 997, 999 and 1029 (Turkey), in a communication of 7 January 1988, the Government states that due to the important political events which have taken place in Turkey during 1987 (referendum on the repeal of transitory article 4 of the Constitution restricting the political activities of certain persons, general elections and the formation of a new government), the examination of the labour legislation has been temporarily interrupted. Nevertheless, states the Government, a series of consultations between the social partners is drawing to a close and it

will do its utmost to send its observations before the next meeting of the Committee. The Committee awaits receipt of the detailed observations referred to by the Government.

9. As regards Case No. 1429 (Colombia), in a communication dated 3 February 1988 the Government states that for it to be able to complete its observations on the case, the Workers' Trade Union of Olivetti Colombia Ltd. should sent additional information, in particular more detail in relation to the allegations in its complaint. To this end the ILO sent an extract of the Government's communication to the complainant organisation and the Committee decided to adjourn its examination of the case.

Irreceivable complaints

10. As regards Case No. 1404 (Uruguay), relating to a complaint presented by the Payareros Workers' Union (UTP), the Committee notes that a government communication of 28 September 1987 had objected to the receivability of the complaint. The Government relied on the fact that at the date when the complaint was submitted (10 April 1987), Mr. Nelson Saldivia was not a representative of the UTP and that, even if the letter containing the complaint was on UTP letterheaded paper, the present address of the UTP had been scored out and replaced by a post box number. In accordance with the procedure in force, the Government's comments on the receivability of the complaint were sent to Mr. N. Saldivia so that he might make any comment he considered pertinent. Under the Committee's procedures, the receivability of complaints depends, in particular, on their being duly signed by a representative of a body entitled to present them. The Committee has not received any comment from the UTP or Mr. Saldivia, and on the basis of the documents submitted by the Government it has been proven that the signatory to the complaint was not, at the date of the letter, a UTP representative. In these circumstances, the Committee decides that Mr. Nelson Saldivia submitted the complaint in an individual capacity, without being a representative of the UTP, and that consequently the complaint is irreceivable.

11. As for Case No. 1407 (Mexico), relating to a complaint presented by the Authentic Labour Front and the Committee for Trade Union Dialogue, the Committee notes that government communications of 23 June, 5 August and 16 December 1987 replied on the substance of the case (ban on strike action in the Central Light and Power Company), but objected to the receivability of the complaint on the basis that the Authentic Labour Front and the Committee for Trade Union Dialogue were not registered as occupational organisations and therefore had no legal existence. On the other hand, the Government argues that these organisations had no direct interest in the events complained of since at best it was the Mexican Electrical Workers' Union (SME) which had been involved. In accordance with the procedure in force, the Government's observations were transmitted to the complainants with a request that they send as soon as possible the maximum amount of information on both organisations and on their relationship with the

Mexican Electrical Workers' Union. Under the Committee's procedure, complaints are receivable if presented by a national organisation directly interested in the matter, and the Committee has full freedom to decide whether an organisation may be deemed to be an occupational organisation and is not bound by any national definition of the term. In the present case, the Committee is unable to determine whether the complainant organisations have a direct interest in the matter since neither has replied to its two requests for information. In addition, there are no indications that the SME is affiliated to or authorised either the Authentic Labour Front or the Committee for Trade Union Dialogue to present the complaint. In these circumstances, the Committee decides that the complaint is irreceivable.

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12. As regards Case No. 1405 (Burkina Faso), in a communication of 21 April 1987 the Trade Union Confederation of Burkina Faso (CSB) had criticised the new regulations affecting public officials published in Zatu No. AN IV 011 BIS CNR-TRAV of 25 October 1986, which entered into force on 1 January 1987 and which allegedly infringed the freedom of association of public officials. In addition, it had alleged the detention of several CSB leaders. Subsequently, in a letter of 25 January 1988, the new Government of Burkina Faso states that by virtue of Communiqué No. 5 of the Popular Front - transmitted to the ILO in December 1987 - all political prisoners and persons under administrative detention have been released and consequently there are no trade union leaders presently in detention. In addition, the Government states that in his Message to the Nation on 31 December 1987 the Head of State indicated that the Zatu of 25 October 1986 on the general regulation of public officials would be revised. The Committee takes note of this information on the release of the trade unionists with interest. It would nevertheless draw the attention of the Committee of Experts on the Application of Conventions and Recommendations to the legislative aspect of this case.

URGENT APPEALS

13. As regards Cases Nos. 1168 and 1273 (El Salvador), 1423 (Côte d'Ivoire) and 1426 (Philippines), the Committee observes that, despite the time which had elapsed since the presentation of these complaints and despite the seriousness of the allegations involved, the Governments have not transmitted their observations or information which had been requested from them. The Committee draws the attention of these Governments to the fact that, in accordance with the procedural rules set out in paragraph 17 of the Committee's 127th Report approved by the Governing Body, it will present a report at its next meeting on the substance of these cases even if the observations requested from the Government have not been received in time. The

Committee accordingly requests the Governments to transmit their observations as a matter of urgency.

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14. 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. 1383 (Pakistan), 1393 (Dominican Republic) 1405 (Burkina Faso), 1418 (Denmark).

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

15. As regards Case No. 1074 (United States), the Committee had requested the Government to continue to inform it of the outcome of the appeals pending before various appeal bodies against the dismissals of air traffic controllers after a strike in 1981. In a communication of 28 January 1988, the Government indicates that, as at 1 January 1988, 460 reinstatements had been ordered and that, following the issuance of the "lead case" decision in May 1984, 3,378 controllers had renewed their appeals, two of which were still pending. The Committee takes note of the information provided by the Government.

16. As regards Case No. 1130 (United States), in a communication dated 18 December 1987, the Government provides the following information concerning the collective bargaining rights of Senate restaurant employees: no new legislation has been introduced thus far during the 100th Congress in an effort to bring Congressional employees within the scope of the National Labor Relations Act; the Executive Branch of Government has specifically brought the Committee's recommendations to the attention of the Architect of the Capitol and will advise the ILO of any developments in this matter. The Committee takes note of this information.

17. As regards Case No. 1174 (Portugal), which the Committee examined in November 1983 [see 230th Report, paras. 172 to 221], the Trade Unions International of Food, Tobacco, Hotel and Allied Industries' Workers (WFTU), stated in a communication dated 30 December 1987 that the Federation of Unions of Workers in the Food, Beverage and Tobacco Industries, affiliated to the General Confederation of Portuguese Workers (CGTP-IN), had presented to the Portuguese Government in December 1983 an order regulating work in the baking industry, but that order was yet to be adopted. The Committee requests the Government to supply its observations on this matter.

18. In Case No. 1266 (Burkina Faso), the Committee had requested to be kept informed of the reinstatement of the teachers dismissed following the 1984 strike and of the release of the Secretary-General

of the former SNEA-HV, Jean Bila [see 253rd Report, para. 23]. In a communication of December 1987, the Government provides a copy of Communiqué No. 5 of the Popular Front published in the "Sidwava" No. 879 of 19 October 1987 which provides for the reintegration in their previous posts of all the teachers dismissed in 1984 for having taken part in strikes, the lifting of sanctions which had been imposed on suspended public employees and the release of all political prisoners and persons interned on administrative grounds. The Government also supplies a copy of the staff lists of teaching establishments in the different provinces and the capital covering almost 300 teachers dismissed for striking, and reinstated by virtue of Communiqué No. 5, including the position of Jean Bila, which was published in "Sidwava" No. 889 of 30 October 1987. The World Confederation of Organisations of the Teaching Profession (WCOTP) - one of the complainants in this case - asks that the case be closed in a communication dated 14 January 1988. The Committee takes note with satisfaction of the information communicated by the Government, in particular the reinstatement of dismissed teachers, the release of the Secretary-General of the union which was the complainant in this matter and his reinstatement in his teaching post.

19. As regards Case No. 1282 (Morocco), the Committee had requested the Government to send it a copy of the judgement handed down in the appeal brought in 1985 by the workers dismissed after a strike in January and February 1984 in the Moroccan company Vincent Computers in Mohammedia. In a communication of 10 December 1987, the Government states that both the employers and workers had lodged appeals against the sentence handed down by the Court of First Instance, and the Appeals Court had suspended the sentence but had not as yet been able to study the substance of the matter. The Committee takes note of this information and asks the Government to inform it of the decision to be taken by the Appeals Court and whether the dismissed workers have been reinstated in their jobs.

20. As regards Case No. 1327 (Tunisia), examined by the Committee at its May 1987 meeting, the Government was asked to keep the Committee informed of the measures taken to reinstate the workers who had been dismissed following a strike, as well as of any act of amnesty which might be taken in favour of the trade union leader, Mr. Habib Achour. In a communication dated 11 November 1987, the Government states that it has cancelled the order placing Mr. Achour under house arrest. In a further communication dated 16 November 1987, the Government states that at the 13 November meeting between the Minister of Education, Teaching and Science and the Executive Committee of the UGTT, it was decided in reply to this central union's requests to reintegrate 13 dismissed teachers and to gradually re-employ the rest of the teachers as required, giving them priority. The Committee takes note of this information with satisfaction.

21. As regards Case No. 1332 (Pakistan), which the Committee last examined in November 1986 [see 246th Report, paras. 167 to 183], the Government reports in a communication dated 29 December 1987 that it is keeping a close watch on all the circumstances which led to the

imposition of the ban on trade union activities in the Pakistan International Airlines Corporation. According to the Government, developments taking place in this regard are being monitored carefully and, as soon as it is satisfied that there exist fair prospects of healthy and purposeful trade union activities in the Corporation, these will be allowed in full conformity with Convention No. 87. The Committee takes note of this information. It would recall, however, that the legislation covering the employees of this Corporation prohibits them from forming trade union organisations in direct violation of Convention No. 87 which only allows limitations on the right to organise in respect of the armed forces and the police. Since the Government, during the examination of the case, stated that this ban contained in the PIAC Act is only temporary, and given that the legislation dates from November 1984, the Committee urges the Government to take the necessary measures as rapidly as posible so as to restore to the workers concerned their freedom of association rights, and to keep it informed thereon.

22. As regards Case No. 1340 (Morocco), the Committee had been obliged at its November 1987 meeting to examine this case without the additional information which had been requested from the Government. At that time the Committee repeated its earlier requests for information, in particular on the judicial decisions handed down against various trade union leaders dismissed following a strike in the Al Hamman mine. In addition, the Committee requested the Government to communicate the outcome of requests for reinstatement of the dismissed miners. In a communication of 18 November 1987, the Government states that the Court of First Instance at Khémisset sentenced these miners to prison terms of two to four months and fines of 500 Dirhams. It adds that they appealed to the Appeals Court of Rabat which confirmed the sentences. The Committee expresses its concern at these decisions and draws once again the Government's attention to the principle that the authorities should not have recourse to measures of imprisonment for the mere fact of having organised or participated in a peaceful strike. It urges the Government to inform it of the measures that might be taken to enable these dismissed miners to be eventually reinstated in their jobs.

23. As regards Case No. 1343 (Colombia), in a communication dated 11 November 1987, the Government states that in the case of the deaths of Herberth Lascarro, Celso Paternina and Jesús López the 9th Higher Judge of Barrancabermeja (Santander) ordered the closure of the file following a second stay in proceedings which had been granted in favour of the two persons accused of these crimes. Nevertheless, explains the Government, the investigation of the deaths of these three persons is not closed because the police are continuing their inquiries. As for the death of Dionisio Hernán Calderón, the trial was transferred to the 9th Criminal Investigating Magistrate at Cali from whom information has been requested on the inquiries under way. The Government adds that it is also awaiting information on the trial opened against the Vianini Entrecanales undertaking for the dismissal of Pedro Antonio Rodríguez and on developments in the inquiries into the death of Francisco Correa Múñez. The Committee takes note of this

information and requests the Government to continue to keep it informed of progress in the investigations and trials currently under way.

24. The Committee examined Case No. 1346 (India) at its February 1987 meeting and requested the Government to keep it informed on the outcome of the appeals lodged by the 33 medical representatives dismissed from the Raptakos, Brett and Co. Ltd. in 1983. In a communication dated 19 October 1987, the Government states that the State Government of Maharashtra has informed it that the President of the Industrial Court of Bombay has given instructions to the Labour Court Judge to decide the two outstanding cases before 31 December 1987. The Government also indicates that it will keep the Committee informed of further developments in due course. The Committee takes note of this information and requests the Government to transmit a copy of the judgements as soon as they are handed down.

25. As regards Case No. 1350 (Canada/British Columbia) concerning restrictions on teachers' collective bargaining, examined in February 1986 and concerning which certain further information was supplied by the Government in November 1986, the Committee notes from government communications dated 4 and 11 January 1988 that the recently adopted British Columbian Teaching Profession Act and Industrial Relations Act amend and repeal certain sections of the Schools Act. In particular, the new legislation ensures that teachers shall have the same bargaining rights as other employees in the Province, including the right to strike. The Committee takes note of this information.

26. As regards Case No. 1377 (Brazil), examined by the Committee at its February 1987 meeting, the Government had been requested to organise a judicial investigation into the deaths of Orlando Correia and Sibel Aparecida Manoel and into the physical attacks which occurred in Leme due to a strike in July 1986, and to keep the Committee informed thereon. In a communication dated 25 January 1988, the Government states that during the police investigation it had been established that these two persons were not trade unionists or strikers but were simply passers-by. The Government adds that a ballistics test is being carried out before handing over the case to the competent criminal instance for trial and sentencing of the guilty parties. The Committee takes note of this information.

27. The Committee examined Case No. 1383 (Pakistan) at its November 1987 meeting [see 253rd Report, paras. 80 to 100], expressing its profound regret that it had been obliged to do so in the absence of any observations from the Government. The Governing Body approved the Committee's recommendations which urged the Government to ensure the application of Article 2 of Convention No. 87, ratified by Pakistan, in particular by initiating appropriate action to amend the Pakistan International Airlines Corporation Act so as to restore to the airline's employees the right to establish organisations of their own choosing; to amend sections 32 and 33 of the Industrial Relations Ordinance which enable a very wide ban on strike action in

non-essential services, as well as section 4 of the Export Processing Zone Rules which bans strikes by workers in such zones. The case as a whole was drawn to the attention of the Committee of Experts on the Application of Conventions and Recommendations. In a communication dated 29 December 1987, the Government sends its observations on the Committee's conclusions. As regards restrictions on the right to organise of public employees (which include the airline's employees), the Government insists that this ban applies only to public employees engaged in the administration of the State and is only temporary in such public undertakings where trade union activities have been found prejudicial to the national interest; other public employees are free to form and join organisations of their own choosing, except those holding Grade 16 and above because it is not in the public interest to allow them to do so and they can form associations for protecting their rights. On sections 32 and 33 of the Industrial Relations Ordinance, the Government states that if a strike or lock-out lasts for more than 30 days and is causing serious hardship to the community or is prejudicial to the national interests - or is in a public utility service as listed in the law - it can, by order in writing, ban such action and refer the dispute for compulsory adjudication to a labour court. Lastly, the Government states that the issue of strike bans in export processing zones is receiving its active consideration. The Committee takes note of this information but is of the opinion that it does not change the considerations which led the Committee to the conclusions reached in November 1987. It accordingly decides to maintain its reference of this case to the Committee of Experts.

28. As regards Case No. 1388 (Morocco), examined by the Committee at its November 1987 meeting, the Government was requested to keep the Committee informed of the outcome of its efforts for the reinstatement of the trade union leaders and officials dismissed because of the labour dispute in the phosphate mines at Youssoufia and Mohammedia, as well as of the measures taken for the reinstatement of the members of the executive committee of the trade union in the Itma Plastics undertaking. In a communication of 10 December 1987, the Government states that the Labour Inspectorate has held investigations into the reasons behind the dismissals so as to conciliate a solution: the complainants stated that the dispute arose because of the creation of a trade union section in the undertaking which belonged to the Moroccan Federation of Labour; the employer considered that the workers had voluntarily left their posts and that the conflict had nothing to do with the creation of a trade union section in the company. The Government adds that, given the contradictory statements of the complainants and employer, the matter has been transmitted to the competent tribunal which is to take a decision on it. The Committee takes note of this information and requests the Government to inform it of the decision to be handed down on these dimissals.

29. Finally, as regards Cases Nos. 1016 and 1258 (El Salvador), 1176, 1195, 1215 and 1262 (Guatemala), 1189 (Kenya), 1261 (United Kingdom), 1271, 1369 and 1398 (Honduras), 1279 (Portugal), 1354

(Greece) and 1380 (Malaysia), the Committee again requests these Governments to keep it informed of developments in these various matters. The Committee hopes that these Governments will communicate the information requested at an early date.

CASES WHICH DO NOT CALL FOR FURTHER EXAMINATION

Case No. 1190

COMPLAINTS AGAINST THE GOVERNMENT OF PERU PRESENTED BY
- THE INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS
- THE WORLD FEDERATION OF TRADE UNIONS
- THE PERUVIAN GENERAL CONFEDERATION OF WORKERS
- THE FEDERATION OF MUNICIPAL WORKERS OF PERU

30. The Committee last examined Case No. 1190 at its meeting in November 1987 when it presented interim conclusions to the Governing Body [see 253rd Report, paras. 246 to 256, approved by the Governing Body at its 238th Session (November 1987)].

31. Following the latest examination of the case, the Government on 11 January 1988 sent additional information on the allegations that were still under consideration.

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

A. Previous examination of the case

33. When the Committee last examined the case in November 1987, allegations relating to the arrest of trade unionists as a result of the national strike of May 1983 were still pending. More specifically, the Committee had requested the Government to provide additional information on the situation of trade union leaders Jorge Rabines Bartra and Juan Calle Mendoza (specifying, in particular, whether they had been charged, and the stage the proceedings, if any, had reached) and to send precise observations concerning the alleged detention of 84 trade unionists.

B. The Government's reply

34. In its communication of 11 January 1988, the Government sent additional information on this case and, specifically, on the detention of 84 people as a result of the national strike of 10 May 1983 and on the state of proceedings against Jorge Rabines Bartra and Juan Calle Mendoza. The Government states that trade union leaders Jorge Rabines Bartra and Juan Calle Mendoza, among others, were summoned before the Fourth Provincial Office of the Public Prosecutor which found that a misdemeanour had indeed been committed but that the responsibility of the accused had not been established; Jorge Rabines Bartra and Juan Calle Mendoza were therefore not detained.

35. The Government added that the case had been brought before the 19th investigating court and had been passed on to the tenth magistrate's court, which stated that no ruling was called for inasmuch as those responsible for the misdemeanour had not been identified and ordered that the case be dismissed. This decision was confirmed by the Supreme Court of Justice in a ruling of 14 October 1987, whereupon the judicial proceedings were terminated and the original examining magistrate ordered the closure of the file.

36. Finally, the Government notes that with the foregoing information it has given effect to the Committee's recommendation that it supply additional details of the proceedings initiated against the trade union leaders Jorge Rabines Bartra and Juan Calle Mendoza, and specific observations concerning the alleged detention of 84 trade unionists, and that there are therefore no longer any grounds for a complaint.

C. The Committee's conclusions

37. The Committee notes the information supplied by the Government regarding the outstanding allegations in this case, and specifically concerning the alleged detention of trade union leaders Jorge Rabines Bartra and Juan Calle Mendoza and of 84 trade unionists.

38. The Committee further notes that, although the judicial authority found that a misdemeanour had indeed been committed, the responsibility of the accused has not been established and that Jorge Rabines Bartra and Juan Calle Mendoza, among others, have therefore not been detained. The Committee also understands from the information supplied, and particularly from the decision of the Supreme Court of Justice to order the original examining magistrate to close the file on the case since those responsible for the misdemeanour have not been identified, that no one is under detention.

The Committee's recommendation

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

The Committee, taking into account the information supplied by the Government, considers that this case does not call for further examination.

Case No. 1411

COMPLAINT AGAINST THE GOVERNMENT OF ECUADOR PRESENTED BY THE WORLD CONFEDERATION OF LABOUR

40. In a letter dated 12 June 1987 the World Confederation of Labour (WCL) presented a complaint of violations of trade union rights in Ecuador.

41. The Government replied to the allegations of the complainant organisation in a letter of 21 October 1987.

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

A. The complainant's allegations

43. In its complaint, the WCL explains that, at the request of its affiliate, the "Central Ecuatoriana de Organizaciones Clasistas" (CEDOC), it makes the following allegations: that on 29 May 1987 the Government issued Executive Decree No. 2947 authorising the placing of private social development agencies under trusteeship - an operation known as intervenciones; and that, in virtue of the said Decree, on 1 June 1987, the Ministry of Social Welfare and Advancement instituted a trusteeship over the Ecuadorian Institute for Social Training (INEFOS), a private body attached to CEDOC, which had been engaged in the training of trade union officers for over 20 years.

44. The WCL adds in the same letter that the Minister of Social Welfare, in Circular No. 186 of 1 July 1987, informed INEFOS that Dr. Oliver Orellano Rosales had been appointed administrator and that its official documents and accounts must be sent to him and to several auditors: this had prevented INEFOS from operating normally.

45. The WCL also states that according to Ecuadorian television the Minister of Social Welfare had hurriedly made accusations against INEFOS, on the basis of fragmentary documentation which it had obtained from that organisation; the Ministry had sought thereby to arouse real hostility against INEFOS for clearly political and pro-governmental purposes and with the object of securing the withdrawal of its legal personality and the confiscation of its property.

B. The Government's reply

46. In its letter of 21 October 1987, the Government states that it was acting in virtue of its power to regulate public order and safety in relation to a civil - not a trade union - body which was suspected of committing reprehensible acts.

47. The Government explains at length that the body placed under trusteeship is an association subject to the provisions of the Civil Code (sections 584, 586, 588, 590, 593 and 596) and that, in accordance therewith, corporations and foundations, as civil associations, are responsible for any frauds, peculations and embezzlements attributable to their representatives.

48. Accordingly, the Government continues, in May 1987 the President of the Republic issued Decree No. 2947, according to which the authority which had granted legal personality to a non-profit making association, could appoint an administrator who would check whether the said association was devoting itself fully to the purposes for which it had been established. This was a general measure, prompted by the well-founded suspicion that several of the bodies in question had been dishonestly managed or that their officers were committed to the service of foreign interests which might well be contrary to those of Ecuador.

49. The Government also states that, in virtue of Decree No. 2947, the Minister of Social Welfare instructed an administrator to take charge of INEFOS after several improper acts had been discovered. In addition, it appends to its reply copies of several communications signed by the director of INEFOS, dated February, March and April 1987, which - in the Government's opinion - prove considerably that there had been cases of embezzlement and misuse of the Association's funds for the benefit of an unrelated organisation, namely a political party calling itself "People's Democracy". According to the Government, this evidence sufficed to bring the representatives of the relevant association before a court of law.

50. The Government also appends other communications signed by the director of INEFOS, including one dated 10 April 1987, addressed to the President of CEDOC and asking him to make representations to the Latin-American Central of Workers (CLAT) so that the latter would

request a certain "Konrad Adenauer Foundation" not to reduce the subsidy in German marks sent by it to INEFOS, and other similar documents.

51. The Government maintains that the above documents demonstrate the links existing between the CLAT, the WCL and the Konrad Adenauer Foundation, and that they are indications of foreign intervention in the internal affairs of Ecuador. It adds that the administrator's report into the accounts of the "non-profit making" corporation reveals assets of 640,000 German marks and US$253,694 - coming from foreign sources - for the two-year period 1985-86; that 50 per cent of those resources were paid to CEDOC without documentary justification; that some money was paid on various pretexts to finance political campaigns; and lastly that the director of INEFOS had acquired for himself a big insurance policy out of funds which ought to have been deposited to the credit of INEFOS.

52. In conclusion, the Government states that in virtue of Ecuadorian law the association in question ought to be dissolved on formal and on substantial grounds and that the Government has sent a diplomatic note to the Federal Republic of Germany protesting against foreign interference in Ecuadorian affairs; the note reminds the Federal Republic that the German foundations, which concluded contracts with the Ecuadorian Government in 1974, 1979, 1983 and 1985, with a view to the economic, social, cultural and technical development of Ecuador in both the public and the private sectors, remain subject, on the territory of Ecuador, to Ecuadorian law; for that reason the foundations have been asked to send accounts for verification by Ecuadorian agencies.

C. The Committee's conclusions

53. The complaint involves allegations of government interference in the running of a private social development association, whose function is the training of trade union officers, this organisation being attached to a trade union confederation. The versions put forward by the complainant organisation and the Government on the matter are contradictory. According to the complainant, the association was unjustly placed under trusteeship and it was wrongly accused, on the basis of fragmentary documentation, of improper management. According to the Government, on the other hand, the said association, not being a trade union organisation but a non-profit making body subject to civil law, was indeed taken over by the authorities because it was suspected of irregularities in management, abuse of social property and diversion of subsidies coming from foreign foundations, particularly one in the Federal Republic of Germany, for the benefit of a political party.

54. In the Committee's view, it is generally recognised that when accounts are being audited, the auditors should have the

appropriate professional qualifications and be independent persons, a judicial inquiry into the internal management of an occupational organisation such as to guarantee impartial and objective procedures is of special importance in the case of the management of trade union property and finances.

55. In the present case, the Committee points out that the Government disputes the trade union character of the association under trusteeship. The Committee observes further that the investigations made by the administrator show that part of the funds of INEFOS have been used to finance the propaganda activities of a political party.

56. Since financing of the above kind goes beyond the parameters of normal trade union activity, the Committee considers that it should be left to the judicial authorities of the country to give a ruling on this matter.

The Committee's recommendation

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

Case No. 1416

COMPLAINT AGAINST THE GOVERNMENT OF THE UNITED STATES
PRESENTED BY
THE UNITED INDUSTRY WORKERS' LOCAL 424

58. By a communication dated 25 June 1987 the United Industry Workers' Local 424 (UIW) presented a complaint of violations of trade union rights against the Government of the United States. It supplied further information in a letter dated 10 July 1987. The Government supplied its observations on this case in a communication dated 14 October 1987.

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

A. The complainant's allegations

60. In its communication of 25 June 1987, the UIW alleges a series of anti-union practices - ranging from withholding of wages and lengthy legal proceedings to the illegal dismissal of 200 UIW members - carried out on UN headquarters premises in New York in an effort by the concessionaire to deny freedom of association and, more particularly, to avoid collective bargaining.

61. The UIW, an independent nationally recognised workers' organisation with over 2,000 members, claims that an agency of the executive branch of government of the United States has wilfully neglected laws designed to protect the rights of workers and selectively enforced laws regarding sovereign immunity. This pattern of conduct has caused the denial of timely certification of the validly elected union, and the frustration of the legitimate efforts of workers to bargain collectively with their employer.

62. The UIW outlines the circumstances surrounding its complaint as follows: on 17 October 1983, the UIW received a letter signed by "a group of desperate workers!", including the signatures of shop-stewards and workers employed at UN headquarters in New York, many of whom had worked on UN premises since 1946. The letter complained of wages improperly withheld, illegal firings and sexual harassment on the job by the employer, Canteen Corporation, the corporate food service caterer under contract with Commercial Management Services (CMS), an agency of the UN. The UN agency was apparently indifferent to these problems, and the employees had first turned to their then union - Hotel Employees and Restaurant Employees Local 100 (AFL-CIO) - for help. The UIW states that the workers decided to change their union and over 90 per cent of them signed UIW membership cards. On 13 November 1984 a petition was filed with the National Labor Relations Board (NLRB) for a union representation election.

63. The UIW alleges that for six months the attorneys for Canteen Corporation stalled and blocked the NLRB from holding an election. Canteen Corporation claimed that while it had voluntarily recognised the AFL-CIO Local, the workers concerned did not have the right to vote for another union because the NLRB did not have jurisdiction in the UN. According to the UIW, it thus was choosing to ignore UN directives to the contrary. The UIW states that the employer used the time delay to coerce and threaten workers, telling them they would "lose everything" if they changed unions.

64. On 12 April 1985 at the Hotel Tudor in New York City, states the complainant, the NLRB ordered and held, over the objections of Canteen Corporation, a representation election by secret ballot. Permission could not be obtained to hold the election on UN premises. The employer's attorneys, however, had the ballots impounded by appealing the decision to allow the election (in a "Request for Review") - originally made by a regional office of the NLRB - to the

full NLRB in Washington DC. On 27 March 1986, 16 months after petitioning for a representation election and still with no decision on the outcome or the validity of the election, the UN suddenly terminated its contract with Canteen Corporation and the 200 workers involved were fired.

65. The complainant states that the UN brought in a new caterer (Restaurant Associates Industries Inc.), which engaged a law firm having acquired the services of a recently retired senior NLRB official.

66. On the same day as the dismissals the NLRB finally counted the ballots, but some challenges concerning the eligibility of voters were raised. The complainant states that on 30 June 1986 the NLRB rendered its decision regarding the challenged ballots, all of which were found in favour of the UIW. However, it was not until 22 August 1986 (i.e. 21 months after the UIW had filed its original petition) that the NLRB finally certified it as bargaining agent for Canteen Corporation's employees in the UN food service and retail concession units. According to the complainant, now that it was empowered to act on behalf of these employees, the UIW contacted the UN and the new caterer, as successor employer, so as to commence collective bargaining, but was refused any meeting.

67. The UIW immediately filed unfair labour practice charges in the appropriate NLRB regional office against the UN agency Commercial Management Services (CMS) and against the new caterer, but these charges were mysteriously assigned to another region whose recently retired director now worked for the law firm representing Restaurant Associates Industries Inc., the new caterer. The UIW explains that, apparently, at the time it filed the charges, the NLRB had already decided that the new caterer was not a successor employer and that CMS was, by virtue of sovereign immunity, not within the jurisdiction of the NLRB, therefore neither was bound by the election. The UIW claims that this decision to reject its charges was arrived at either in ignorance of, or indifference to, the following facts: the UN had, on more than one occasion, conceded that labour disputes involving the food service and retail concession workers were under NLRB jurisdiction; and the UN through CMS had the final say over the conditions of employment of the food service and retail concession workers and had considerable control over the operations of Canteen Corporation and its successor, Restaurant Associates Industries Inc.

68. The UIW therefore alleges that because it had been denied the opportunity to argue against this conspiracy to thwart the election results, it found itself in the incredible position of being the certified representative of 200 illegally dismissed workers with no one to whom it could appeal and no one with whom it could bargain.

69. The complainant attaches several supporting documents to its complaint, two of which are letters from the NLRB (dated 31 July and 17 November 1986) rejecting the allegations of unfair labour practices

lodged against the Commercial Management Services of the UN. In these letters the NLRB Regional Director states that the United Nations -

> ... is exempted from the Board's jurisdiction under the Public International Organizations Act, which sets forth the privileges and immunities of the United Nations. You contend that the Headquarters Agreement between the United Nations and the United States in effect constitutes consent to the application of US law to the United Nations. I note, however, that the United Nations does not interpret the Headquarters Agreement in this manner and contests an assertion of jurisdiction by the NLRB in this case. Moreover the Agreement seems to refer to the application of US law to the premises of the United Nations but not to the application of such law over the United Nations as an entity. Thus in the absence of any clear consent by the United Nations to the jurisdiction of the National Labor Relations Board, I conclude that the Board is precluded from asserting jurisdiction over Commercial Management Services, a division of the United Nations.

70. On the other hand, another attachment to the complaint is a letter addressed on 26 February 1985 to the UIW by the UN Assistant Secretary-General for General Services which states:

> As far as the United Nations is concerned, the question of representation of Canteen [Corporation's] employees by any particular labor union is a question to be resolved in accordance with the normal procedures of United States labor law, which law is applicable within the Headquarters district because it has not been excluded by any United Nations Regulation. However, no one, including officials of governmental agencies such as the NLRB, may have access to the Headquarters district without our consent.

71. In its communication of 10 July 1987, the UIW attaches copies of its pleas for assistance addressed to various personalities and bodies, as well as an earlier collective agreement covering the UN food service and retail concession workers. The agreement, signed on 1 February 1980 for two years by the Hotel, Restaurant and Club Employees and Bartenders Union (AFL-CIO) and a Trusthouse Forte subsidiary, provided that the agreement would be transferred or assigned to any successor employer. The complainant also provides a copy of the updated renewal of Trusthouse Forte's agreement proposed by its successor, Canteen Corporation, and of the agreement itself, to be in force from 1 February 1982 to 31 January 1985. This second collective agreement contains the same provision concerning its transfer or assignment to any successor employer.

B. The Government's observations

72. In its communication of 14 October 1987, the Government does not dispute the description of the facts in this case given by the complainant, but adds certain clarifications. For example, it supplies a copy of the March 1985 NLRB "Decision and Direction of Election" which was issued in favour of the UIW's petition for a representation election and which rejected Canteen Corporation's arguments on its lack of jurisdiction. It likewise supplies a copy of the NLRB's June 1986 "Order directing that certain ballots be counted" from which it emerges that the employer had withdrawn its "Request for Review" in February 1986.

73. The Government also points out that the change of concessionaire had already been arranged in February 1986, and in early March Restaurant Associates Industries Inc. solicited employment applications from Canteen Corporation employees. Sixteen of them were offered positions with the new employer which also hired its own complement of employees. The Government explains that after the March changeover in employer, several former employees twice filed unfair labour practice charges with the NLRB alleging anti-union bias in the refusal to re-hire them and discriminatory termination of employment; these charges were found to be without merit, and on appeal, it was confirmed that that the dismissals were not unlawful and, in any event, CMS was exempted from judicial process by the federal Public International Organization Act of 1945.

74. As regards the specific allegation that the NLRB improperly refused to assert jurisdiction over CMS, the Government states that the NLRB's decision is fully supported by well-established United States labour law, including the Public International Organization Act (which provides that international organisations, such as the UN, are immune from every form of legal process as is enjoyed by foreign governments, except when the immunity is expressly waived by treaty or expressly limited by statute). Moreover, the Government denies that the UN letter of 26 February 1985 referred to by the complainant amounts to a waiver of immunity. To support this, the Government supplies a copy of a July 1986 letter from the UN Legal Counsel to the NLRB which stresses that CMS, being a unit of of the UN secretariat and the UN being exempt from every form of legal process by virtue of the 1945 Act, the UN Charter and the Convention on Privileges and Immunities of the UN (to which treaties the United States is a party), cannot be made subject to NLRB proceedings. The Government adds that there is no express waiver to or limit on the UN's immunity to suit, and that nothing in Conventions Nos. 87 or 98 limits the NLRB's discretion to assert or decline jurisdiction.

75. As regards the NLRB's rejection of the unfair labour practice charges, the Government points out that they were fully investigated in an impartial manner with the parties' procedural rights being fully protected. The Regional Director's determinations were appealed to the General Counsel of the NLRB who confirmed that,

on the facts, there was insufficient evidence that the new employer or CMS had violated the National Labor Relations Act.

76. The Government denies that there was a deliberate tardy handling of the UIW's representation case. It states that, once the UIW's position was filed, the usual administrative process of investigation and hearings went ahead with the procedural rights of all parties being protected. According to the Government, it is not necessarily incompatible with Convention No. 87 for legislation to provide for certification of the most representative union in a given unit when certain safeguards are provided; such safeguards in this case included: a review of the decision to hold the election; secret ballot during the election; a delay in counting the ballots and impounding of the ballots upon the employer's challenge. After the challenge had been settled the NLRB certified UIW as the exclusive bargaining representative of Canteen Corporation's employees at certain UN restaurants, cafeterias and kiosks.

77. According to the Government, given the number of procedural steps involved and the complexity of the issues raised, the time taken for the NLRB to certify UIW was not unreasonable. More importantly, it states, the rights of the workers to freely elect their collective bargaining agent, as guaranteed by Convention No. 98, were fully protected in this case.

78. As regards the allegation that the NLRB's rejection of Restaurant Associates Industries Inc. as the successor to Canteen Corporation denied the collective bargaining rights of the workers involved, the Government emphasises that Canteen Corporation's contract with the UN terminated at the end of March 1986. Thus the August 1986 representation certification only covered those former Canteen Corporation employees who stayed on under the new caterer. The Government explains that under United States labour law a new employer is a successor employer only when the bargaining unit remains unchanged (the new employer having hired a majority of the employees in question) and would then be required to recognise a recently certified bargaining agent of these employees. The NLRB therefore correctly concluded that there was no violation of the National Labor Relations Act when Restaurant Associates Industries Inc. refused to bargain with the UIW.

79. As regards the complainant's statement that its charges were "mysteriously assigned" to another NLRB regional office for investigation, the Government states that the NLRB official investigating the matter was temporarily assigned from region 29 (Brooklyn) to region 2 (New York City) only during the currency of the UIW's case. Such reassignments, being inter-office matters, are at the discretion of regional directors. According to the Government this transfer did not affect the investigation of the charges or the procedural rights of the parties.

C. The Committee's conclusions

80. The Committee would first observe that, although the workers involved in this case happened to work on United Nations premises, they are not UN employees. They were employed by a private catering company which won a concessionaire contract to supply food and catering services at UN headquarters. In addition, the UN Assistant Secretary-General for General Services, in a letter of 26 February 1985, clearly stated that the national legislation governed the employment of the workers concerned.

81. To turn to the substance of the case, the Committee notes that two main sets of violations of freedom of association are alleged: (1) that the NLRB did not handle the UIW's petition for certification and its charges of unfair labour practices in an expeditious and fair manner; and (2) that the present employer - a private company - of staff in UN restaurants, cafeterias and kiosks is refusing to bargain with the UIW.

82. On the first issue the Committee notes that it indeed took 21 months (from 13 November 1984 to 22 August 1986) for the complainant union to achieve certification as the exclusive bargaining agent for certain workers on UN premises. At the same time it does not consider this to be an unreasonable period given the fact that, over these months, the NLRB had to deal with several not unusual procedural questions which the employer was entitled to raise under the legislation (e.g. requests for review, challenge of ballots). The Committee recognises that each procedural move by the employer was handled with respect for due process. It also notes that the UIW appears to have won on all the early procedural points concerning the certification election. Moreover, the Committee notes from the Government's reply that between the March 1986 changeover in employer and the August 1986 certification, it was the former employees - rather than the employer - who were continually using NLRB procedures.

83. The Committee also observes that the complainant's suggestions of improper treatment of its unfair labour practices charges are not supported by evidence. The Government clearly explains that it was the NLRB investigating official who was transferred in this case and not the UIW's case. It also emerges from the facts that the NLRB correctly dismissed the charges laid against the UN agency which, in any case, is not the employer of the workers in question. The Committee accordingly decides that this aspect of the case does not involve violations of freedom of association.

84. As for the NLRB's rejection of Restaurant Associates Industries Inc. as successor employer and its decision that this new caterer was not obligated to bargain with the UIW, the Committee observes that the UIW was duly certified as bargaining agent for the 200 or so Canteen Corporation employees of whom only 16 were re-employed by the new caterer. According to the national legislation in question, the UIW has no right to force the new caterer to bargain

with it in respect of its present employees since the composition of the bargaining unit has changed. The ILO supervisory bodies' position on the recognition of trade unions for collective bargaining purposes has always been that, where systems provide for the most representative trade union to have preferential or exclusive bargaining rights, it is important that the determination of the union in question should be based on objective and pre-established criteria so as to avoid any opportunity for partiality or abuse [see General Survey on Freedom of Association and Collective Bargaining, ILC, 69th Session, 1983, Report III (Part 4B), para. 295]. Moreover, the Committee on Freedom of Association has stressed the importance of the principle that employers should recognise, for the purposes of collective bargaining, the organisations which are representative of the workers they employ [See 207th Report, Case No. 886 (Canada), para. 97].

85. In the present case, the Committee is bound to note that the UIW now only represents a small minority of the workers employed by the new caterer and that, accordingly, there was no violation of the above principles when the employer refused to meet with it. The Committee would observe, however, that it no doubt remains open to the UIW to campaign and petition for coverage of the other food service workers on UN premises if it so wishes.

The Committee's recommendation

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

Case No. 1422

COMPLAINT AGAINST THE GOVERNMENT OF COLOMBIA PRESENTED BY THE WORKERS' UNION OF THE GENERAL CEAT COMPANY OF COLOMBIA, S.A.

87. The complaint is contained in two communications from the Workers' Union of the General CEAT Company of Colombia, S.A., dated 21 August and 21 September 1987. The Government supplied its observations in communications dated 21 October 1987 and 26 January 1988.

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

(No. 98). It has not ratified the Workers' Representatives Convention, 1971 (No. 135).

A. The complainant's allegations

89. In its communication of 21 August 1987, the Workers' Union of the General CEAT Company of Colombia alleges that the undertaking infringed trade union rights on 11 August 1987 by dismissing Luis Antonio García and Carlos Arturo Ceballos, the President and General Secretary of the Union, without complying with the legal procedure for the dismissal of workers enjoying trade union immunity; it is also alleged that the undertaking disregarded the officials' entitlement to time off for trade union purposes and failed to recognise the Workers' Central Organisation (CUT) to which the Union is affiliated at the national and regional levels.

90. The communication states that the General CEAT undertaking of Colombia has, by these acts, violated the trade union rights embodied in the Colombian Labour Code, specifically: section 353 which guarantees the right of employers and workers to defend their interests by freely forming occupational associations or unions which, in turn, have the right to join together or to form federations; section 405 in respect of trade union immunity, which establishes the guarantees enjoyed by certain workers who may not be dismissed without just cause attested to by a labour court; and section 406 which lists the workers who may be covered by such guarantees.

91. The complainant's communication adds that with these dismissals, the undertaking has infringed article 19 of the Universal Declaration of Human Rights in respect of freedom of opinion and expression, Article 1(1) and (2)(a) and (b) of Convention No. 98 and Article 1 of Convention No. 135. The complainant adds to its communication the letters sent to Luis Antonio García and Carlos Arturo Ceballos informing them of their dismissal and a copy of the minutes of the meeting of the joint committee of the undertaking and of the Union, held on 11 August 1987, and at which the parties were unable to reach an agreement on the dismissals.

92. In its other communication, dated 21 September 1987, the complainant states that the Departmental Division of Labour and Social Security of the town of Cali was requested to undertake an administrative investigation in respect of the General CEAT undertaking of Colombia, but that at the time of writing there had not been a favourable decision regarding the reinstatement of Luis Antonio García and Carlos Arturo Ceballos.

B. The Government's reply

93. In its communication of 21 October 1987 the Government states that according to the chief of the "Sección de Colectivos" of the Valle Departmental Division of Labour and Social Security, the situation of Mr. Luis Antonio García and Mr. Carlos Arturo Ceballos viz-à-vis the General CEAT undertaking of Colombia involves two different aspects: their dismissal as workers and their subsequent removal from trade union office.

94. Firstly, as regards dismissal from the undertaking, it must be made clear that a dismissed worker is entitled to bring an action for reinstatement before the ordinary labour courts (section 118 of the Code on the procedure to be followed in labour matters, as amended by section 6 of Decree 204 of 1957); the dismissed worker may also, if he deems fit, bring a charge before a criminal court for trade union persecution or infringement of the right of association. Mr. García and Mr. Ceballos, like all citizens, are fully entitled by law to bring an action in a labour court for the restoration of their rights if they consider, and can prove before such a court, that these rights have been infringed; the law also entitles them to bring charges before a criminal court seeking the sanctioning of the undertaking if it is proved that there has been infringement of the relevant provisions. It must be fully realised that under the laws in force only the labour courts are competent to deal with and give rulings on cases concerning trade union immunity and that consequently the Ministry of Labour and Social Security is absolutely prohibited from giving a ruling on such matters; such intervention in matters that come within the legal jurisdiction of another branch of public authority would amount to a misuse of power. Similarly, the Ministry is not empowered to decide whether a party (the undertaking) committed the offence of infringing freedom of association or the right of association since such matters come with the jurisdiction of the criminal courts.

95. The Government stresses in its communication that it is up to the person concerned both to bring an action for reinstatement before a labour court and, if deemed appropriate, to bring a charge before a criminal court for violation of the section of the Penal Code which prohibits attacks on the right of association; no provision is made for this to be dealt with by court officials on their own initiative.

96. Secondly, the Government goes on to say that the investigation being carried out by the Valle Departmental Division for Labour and Social Security is a consequence of the objection made to the election of the new executive of the Workers' Union of the General CEAT Company of Colombia, S.A., which took place at the general assembly of 16 August 1987. The general assembly of the Union's members had been convened on that date and, in the course of the meeting, when the agenda was being submitted for consideration, one of the members requested that it be modified to include the election of a

new executive. This proposal was approved. In the course of the meeting three other members of the Union's executive (i.e. not Mr. García or Mr. Ceballos) submitted their resignations which, as stated in the minutes of the general assembly, meant that a new executive had to be elected, as was done at the unanimous and free decision of the supreme decision-making body of the Union.

97. Nevertheless, former worker Ceballos lodged an objection to the election of the new executive before the Valle Departmental Division. A decision was reached on this objection in ruling No. 1029, dated 16 September 1987, in which the objection was rejected as it had been proved that the Union's general assembly and the election of the new executive had taken place in accordance with the law and had involved no irregularities whatsoever. This ruling was appealed against and the matter was settled in a further ruling, No. 1045 of 29 September 1987, which fully upheld the earlier one. The Government's communication adds that it is perfectly clear that there was at no time negligence on the part of the Ministry of Labour and Social Security in its decision concerning the matter brought before it by Mr. Ceballos.

98. The Government's communication states that the complainant organisation cannot maintain that trade union rights are not guaranteed and that it should be noted, as regards trade union immunity, that although Mr. García and Mr. Ceballos were dismissed from the General CEAT undertaking of Colombia, without the requisite authorisation of the labour court, they are entitled to bring an action for reinstatement before a labour court in accordance with section 118 of the Code on the procedure to be followed in labour matters; the Ministry of Labour and Social Security is not empowered to order the undertaking to reinstate the dismissed persons. With regard to the right of association, if the persons in question consider that the undertaking has infringed this right in dismissing them, they are entitled to bring charges before the competent criminal court since it is not within the jurisdiction of the Ministry to give a ruling on the matter.

99. As regards membership of the Union's executive, the Substantive Labour Code provides that this body can be made up of whatever number of members that are freely elected, but that only five principal members and five deputy members enjoy trade union immunity (section 406). The union's general assembly is empowered both to elect members of the executive and to remove them from office when it deems this to be appropriate. Although Mr. García and Mr. Ceballos did not cease to be union members when they were dismissed from the undertaking, they could be removed from their position on the executive by the vote of the general assembly of the trade union organisation. Since Mr. Ceballos was not in agreement with his removal from the executive, he protested to the Ministry of Labour and Social Security against the election of the new executive; the Ministry decided not to entertain his protest since there had been no irregularities in the said election.

100. Finally, the Government's communication states that no complaint was received concerning refusal to allow time off for trade union activities and that it does not see how it can be maintained that there was failure to recognise the Workers' Central Organisation (CUT), a trade union organisation whose legal personality and representativity are beyond doubt.

101. In its communication of 26 January 1988, the Government states that it must stress the exclusive role of the labour courts in deciding whether or not the decision to dismiss Messrs. Garcia and Ceballos was in conformity with the law. Likewise, it is for the criminal courts to decide, if served with a claim by one of the persons affected, whether the undertaking acted in violation of the right to associate when it dismissed these above-mentioned persons.

C. The Committee's conclusions

102. The Committee notes the complainants' allegations, in particular the dismissal of Mr. Luis Antonio García and Mr. Carlos Arturo Ceballos, trade union leaders from the General CEAT undertaking of Colombia, refusal to allow time off for trade union activities and failure to recognise the Workers' Central Organisation (CUT) to which the said Union is affiliated.

103. The Committee observes that trade union leaders Mr. García and Mr. Ceballos were dismissed without the undertaking paying heed to the legal safeguards (section 405 of the Substantive Labour Code) afforded to workers enjoying trade union immunity, as was the case of the above-mentioned leaders; in fact the employer had not requested the authorisation from the labour court for the dismissals. These were therefore an infringement of the trade union freedoms of these workers.

104. The Committee also notes the information provided by the Government, especially regarding the right conferred by law to bring action for reinstatement when dismissal is considered to be unlawful or unjust, it being up to the persons concerned to bring such charges before a labour court. In the present case recourse was not had to such action.

105. Furthermore, as regards the renewal of the Union's executive by its general assembly, and the fact that Mr. García and Mr. Ceballos were not elected after their dismissal, the Committee notes that this was the unanimous and free decision of the members attending the general assembly and that the election was investigated by the administrative authority (following the protest lodged by Mr. Ceballos) which ruled that the meeting and the election had been held in accordance with the law and involved no irregularities whatsoever. In any case the Committee observes that apparently there is no obstacle in the law in force to prevent Mr. García and Mr. Ceballos

from continuing to be trade union leaders even after their dismissal from the undertaking.

106. Lastly, the Committee notes that the Government has not received any complaint concerning the refusal to allow time off for trade union activities, or concerning the alleged failure to recognise the legal status of the CUT which, according to the Government, enjoys legal personality and representative status.

The Committee's recommendation

107. In the light of its foregoing conclusions, the Committee invites the Governing Body, in view of all the information before it, to decide that this case does not call for further examination.

Case No. 1424

COMPLAINT AGAINST THE GOVERNMENT OF PORTUGAL PRESENTED BY THE NATIONAL TRADE UNION OF CIVIL AVIATION FLIGHT PERSONNEL

108. The National Trade Union of Civil Aviation Flight Personnel (SNPNAC) presented a complaint of violations of freedom of association against the Government of Portugal in a communication dated 16 September 1987. The Government sent its comments and observations in communications dated 14 and 28 January 1988.

109. Portugal 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. Allegations of the complainant trade union

110. The SNPNAC states that it is a trade union association which has been legally established under Portuguese legislation, its rules having been published in the Official Gazette. Most of its members are employed by the Portuguese airline, TAP, a public civil aviation undertaking whose main activity is overseas air transportation, explains the complainant trade union.

111. It states further that it is currently engaged in an industrial dispute started by TAP, through its board of directors, and which, in practice, infringes the trade union rights and the right to

collective bargaining of its members, who are protected by Conventions Nos. 87 and 98, ratified by Portugal.

112. The complainant trade union explains that TAP is a nationalised undertaking placed under direct government supervision, that the members of its board of directors are all appointed by the Government and that, in 1980, the undertaking was declared by the Government to be in a "difficult economic situation", which meant that the rights negotiated in collective agreements have been significantly restricted by the application of new rules replacing the provisions of freely concluded agreements.

113. The complainant describes the situation as regards the regulations governing working conditions in this branch. It explains that collective labour relations are now governed by an enterprise level agreement and an arbitration award which have cancelled certain controversial clauses following an arbitration procedure voluntarily undertaken by the parties. Both the agreement and the arbitration award were published in the Boletin do Trabalho y Emprego, Series 1, No. 10, 1985, of which the complainant trade union encloses a copy. It also specifies that at the time when these texts were published, the hours of work of cabin personnel, who account for nearly all of SNPNAC members, were governed by Decree No. 31/74, enclosed with the complaint. However, while negotiations on the above-mentioned enterprise-level agreement were taking place, two draft regulations on the minimum cabin crew and on the hours of flight duty and rest of flight personnel in air transportation were published in the Boletin do Trabalho y Emprego in order to inform the public, in accordance with Act No. 16/79. The draft amendments to Decree No. 31/74 provided that the maximum (continuous) flight duty time would be 15 hours for cabin flight personnel.

114. The arbitration award accepted by the SNPNAC therefore took this into account in the wording of clause 46-A, explains the complainant trade union. As a result, the maximum flight duty time for cabin crew is 13 and a half hours (clause 46-A, paragraph 1), but under paragraph 7 of the same clause, this limit may be exceeded at the captain's initiative, "should such a change be necessary to the performance of flight duty, that is, the upper limit provided for in paragraph 1 may be raised to 15 hours".

115. In accordance with this provision (clause 46-A of the arbitration award) and in view of the fact that in Portugal collective labour instruments may fix lower limits on hours of work than those set by legal standards (section 6(1)(c) of Legislative Decree No. 519/C1/79 of 21 December 1979), the SNPNAC's interpretation has always been that the maximum duration of flight duty for cabin crew is 13 and a half hours (paragraph 1), although the captain may increase the limit to 15 hours if necessary. According to the complainant trade union, the wording of this clause does not raise any doubts.

116. It explains that hours of flight duty and rest of flight personnel were subsequently governed by Ministerial Order No. 408/87

of 14 May 1987, which terminated the effect of Decree No. 31/74. Until this Ministerial Order was published, no questions had been raised as to the interpretation of clause 46-A of the arbitration award; at one point, the parties even changed the wording temporarily of paragraph 7 of that clause by deleting the last part specifying a 15-hour time-limit. However, shortly after publication of the Order, the undertaking alleged that it enabled the captain to exceed the limit on flight duty time laid down in the arbitration award in order to complete a flight or return to base, by raising it to the maximum laid down in the above-mentioned Ministerial Order.

117. TAP, which interprets the maximum limits as being those laid down in the Ministerial Order, concluded that the duration of a flight scheduled to last 13 and a half hours may be prolonged to 18 hours for the cabin flight crew, that is, 15 hours (the upper limit set in section 4 of the Order) plus three additional hours in the event of unforeseen reasons or force majeure as provided in section 8 of the Order. According to the complainant, however, this attitude infringes the right to conclude collective labour contracts allowing the parties the right to regulate their interests themselves by setting lower limits on hours of work than those provided for in legislation.

118. The complainant trade union refutes the argument that such an increase in flight duty time would only occur in exceptional cases. In fact, in its view, the terms of the collective labour instrument make provision for such situations, as has been demonstrated, by limiting them to what was laid down in the arbitration award.

119. The complainant states further that TAP insisted on imposing its interpretation, obliging cabin personnel to perform a maximum of 18 hours' flight duty, and instituted disciplinary proceedings against ten SNPNAC members accused of having refused - in conformity with the arbitration award - to work beyond the upper limit fixed in this agreement. It encloses a photocopy of one of the reprimands sent to one of its members and the reply made to it.

120. The complainant trade union adds that, in protest, it issued a strike warning to the undertaking which, faced with the firm stand taken by the trade union, following a number of discussions, agreed to cancel, without loss of remuneration, the suspensions which had been unlawfully imposed and to conduct a thorough inquiry into the facts concerning the flight which gave rise to the proceedings. The SNPNAC therefore called off the strike.

121. In the agreement protocol which was drawn up at the time, the SNPNAC, in a conciliatory spirit, stated that it would make every effort so that the agreed limits on flight duty time could be exceeded in genuinely exceptional circumstances. But the signatories of the agreement protocol did not have the necessary powers to revise the enterprise-level agreement in force, and therefore clause 46-A of the arbitration award was at no time changed, according to the complainant trade union.

122. Thus, the consensus reached only reflects the union's good faith and its intention to recall that, in situations where the undertaking had no other alternative, cabin personnel would continue to display goodwill by agreeing, if necessary, to exceed the limits fixed by the parties.

123. The complainant trade union states further that it goes without saying that it never agreed to annul clause 46-A or to allow the undertaking to impose a limit on flight duty - once the schedule has been fixed - of 18 consecutive hours.

124. It is to be deplored that, immediately after signing the protocol, TAP publically stated through the public communication media that the SNPNAC had accepted the obligation for its members to perform 18 consecutive hours of flight duty, should the captain so decide. The SNPNAC retaliated immediately by having a motion of protest approved by the general assembly of its members. TAP, which persisted in refusing to apply the provisions contained in the collective labour instrument, again issued a public statement expressing its intention to distort the letter and the spirit of the arbitration award.

125. In view of the above, the complainant trade union considers that it should be stated that in the case at issue, the board of directors of TAP, placed under the supervision of the Portuguese Government, infringed the right to freedom of association and to conclude collective labour agreements, by refusing to respect the enterprise-level agreement and the arbitration award on flight duty time for cabin personnel, which contain more favourable provisions than those of the law which it insists on imposing at all costs.

B. The Government's reply

126. In its reply dated 14 January 1988, the Government communicates the information it has gathered from the ministry in charge of supervising the public undertaking TAP and from the latter's board of directors, from which it appears that the facts are as follows.

127. In 1985, Legislative Decree No. 56 of 4 March 1985 was issued in accordance with national technical standards on the operation of aircraft and with the recommendations of the International Civil Aviation Organisation. This Legislative Decree vests the Ministry of Equipment with the power to issue regulations, in the form of an order, on various matters, including "the duration of flight duty and rest of crews of aircraft engaged in commercial and private air transportation".

128. Section 5 of Legislative Decree No. 56/85 repeals Decree No. 31/74 cited by the complainant trade union, but provides that the

latter's provisions shall temporarily remain in force until publication of the above-mentioned Order.

129. The Government considered that the matters dealt with in the Order, although of a technical nature, could be interpreted in a certain way as constituting labour legislation, and therefore the draft in question was submitted for public discussion under the conditions laid down in Act No. 16/79 respecting workers' participation in drafting labour legislation.

130. The Government stated that the complainant trade union outlined its position on the contents of the draft Order in a written contribution, of which it sends a copy, and that Order No. 408 of 14 May 1987 was subsequently published.

131. The Government concludes that the persons concerned were heard at the time when this text was being drawn up and that the principles of tripartism on which the ILO's work is based have been taken into consideration.

132. As regards the totally exceptional and unpredictable situation which occurred only once, in which a captain ordered continuation of a flight, thus extending flight duty time within the limits and conditions laid down in section 8(2) of the regulations approved by Order No. 408/87, and under the control of the competent aeronautical authority, in conformity with subsection 3 of the same section 8, the Government, while admitting the facts, states the following.

133. According to the Government, this entirely exceptional possibility is only justifiable in the event of unforeseen reasons and force majeure and was already provided for by the draft submitted to public discussion, as may be seen from the document which it encloses with its reply.

134. The complainant trade union acknowledged and accepted the possibility of such an exceptional prolongation, although it would have liked to limit it to one hour, as was stated in the contribution made by the trade union regarding the above-mentioned draft, on 12 November 1985, in the course of the public discussion.

135. Moreover, according to the Government, international provisions concerning hours of work allow the limits to be exceeded in exceptional circumstances (see international labour Conventions Nos. 1, 30, 43, 46, 51, 61, 67 and 153).

136. In the present case, considers the Government, it follows from the documents enclosed with the complaint and the additional information provided by TAP in its reply, of which the Government encloses a copy, that the Lisbon-Montreal-Toronto flight (TP 302 of 29 July 1987) arrived in Montreal two hours and 28 minutes late for unforeseen technical reasons. Failure to continue the flight to Toronto would have caused serious prejudice, since 76 passengers would

have had to spend the night in Montreal or be transported by another airline at TAP's expense. This is why the captain decided to avail himself of the exceptional power conferred on him by section 8(2) of Order No. 408/87, ten members of the cabin personnel having refused to continue the flight.

137. As regards the disciplinary proceedings allegedly instituted against members of the cabin crew, the Government states that it is unable to confirm facts of which it is unaware and which concern cabin crew members affiliated to the complainant trade union and the TAP undertaking. Nevertheless, adds the Government, considering the form of the present complaint, this is a matter for the Portuguese courts, to which both sides may present their arguments.

138. In a subsequent communication, dated 28 January 1988, the Government communicates the observations of the board of directors of TAP on this matter, in which the employer specifies that under section 8(2) of the regulations approved by Order No. 408/87, the limits on hours of work may be extended in the event of unforeseen reasons and force majeure, in which case the captain must justify his decision and send a report within 15 days to the General Directorate of Civil Aviation (subsection 3 of section 8). In the case in question, such a report was in fact sent to the competent authority, which noted that the period of flight duty had hardly exceeded 30 minutes, whereas the captain, under the legal provisions in force, had authority to exceed the statutory limit on flight duty time by up to three hours.

C. The Committee's conclusions

139. The Committee notes that the present complaint concerns a labour dispute referred to by the National Trade Union of Civil Aviation Flight Personnel concerning the hours of work of cabin personnel of the Portuguese airline, TAP.

140. According to the complainant trade union, the employer, TAP, a public undertaking placed under government supervision, infringed its right to conclude collective contracts by applying the Ministerial Order providing for a maximum flight duty time which is higher than that provided for in the enterprise-level agreement and the arbitration award. In addition, the undertaking imposed disciplinary penalties (even though the penalties were subsequently lifted) on ten members of the cabin crew who merely refused to work beyond the limit fixed by the arbitration award, during the flight TP 302 of 29 July 1987.

141. The Government, on the other hand, considers that, firstly, the above-mentioned Order which amended, inter alia, the "duration of flight duty and rest of crews of aircraft engaged in commercial and private air transportation", was adopted on the basis of a Legislative Decree after consultation of workers and employers under the terms of

the Legislative Decree of 4 March 1985, itself adopted in accordance with national technical standards governing the operation of aircraft and with the recommendations of the International Civil Aviation Organisation.

142. Secondly, the case at issue referred to by the complainant trade union involves a totally exceptional and unforseeable situation. Thus, during flight TP 302 of 29 July 1987, a captain had to order continuation of a flight, in the event of unforeseeable reasons and force majeure (as permitted in section 8(2) of the regulations approved by Order No. 408 of 14 May 1987), since the Lisbon-Montreal-Toronto flight had arrived in Montreal two hours and 28 minutes late for unforeseen technical reasons, and since failure to continue the flight to Toronto would have caused serious prejudice to the passengers.

143. The Committee, for its part, gathers from the voluminous documentation supplied both by the complainant trade union and by the Government that the protocol of agreement signed by TAP and the SNPNAC on 28 August 1987 simultaneously lifted the disciplinary penalties, instituted an inquiry into the case which had given rise to the dispute, and called off the strike warning issued by the same complainant trade union.

144. Moreover, the documentation indicates that the complainant trade union lodged a complaint with the Public Prosecutor of Portugal in order to obtain a total clarification of the legal situation as regards the limits on flight duty time which should be observed by trade union members. Finally, the Government itself states that this is a matter for the Portuguese courts.

145. Having considered all of these elements, the Committee can only note that Order No. 408 of 14 May 1987 provides for maximum hours of work which are higher than those fixed by the arbitration award applicable to TAP personnel. Systematic application of this Order by TAP would therefore run counter to the arbitration award freely accepted by both parties, and would infringe the right to collective bargaining of the workers' organisations concerned.

146. However, the Committee must note that the Order provides for a continuation of flights beyond 15 hours only in the event of unforeseen reasons and force majeure. In the case in question, this possibility was only used on one occasion in unforeseen circumstances. In addition, the complainant trade union itself, in a spirit of conciliation, admitted that in really exceptional circumstances the limits on flight duty time may in fact be exceeded.

147. In these conditions, in view of the exceptional circumstances underlying the application of hours of work in excess of those provided for in the arbitration award, the Committee considers that the case does not call for further examination.

The Committee's recommendation

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

CASES IN WHICH THE COMMITTEE HAS REACHED DEFINITIVE CONCLUSIONS

Case No. 1362

COMPLAINT AGAINST THE GOVERNMENT OF SPAIN PRESENTED BY THE NATIONAL FEDERATION OF DRIVING SCHOOLS

149. The complaint is contained in a communication from the National Federation of Driving Schools (FENAE) dated 6 February 1986. The Federation furnished further information and new allegations in communications dated 15 March, 31 October and 1 November 1986 and 21 July 1987. The Government replied in communications dated 29 May 1986 and 5 February, 14 July and 2 December 1987.

150. Spain 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

151. The National Federation of Driving Schools (FENAE) alleges that the General Directorate of Traffic of the Ministry of the Interior has been seeking to promote the creation of a parallel employers' federation under the control of the Administration so as to split up driving school operators. The FENAE adds that the General Directorate of Traffic and the bodies coming under it have a hostile attitude and refuse to hold discussions and to collaborate on matters of mutual interest either with the FENAE or with its provincial affiliate associations, despite the fact that the Federation is the most representative organisation which has been negotiating collective agreements at the state level for the driving school sector.

152. As regards attempts to set up a parallel organisation, the FENAE states that the General Directorate of Traffic convened the provincial associations to a meeting held on 11 September 1985. According to the Federation, the meeting was held under such conditions that the representatives of its provincial associations had

to withdraw and sign a document protesting at the manner in which the Director-General of Traffic had acted in failing to convene the Federation to the meeting, and in including on the agenda the subject "the problem of genuine discussion at the national level". Following the said meeting, the General Directorate of Traffic set up a management committee made up of public servants which convened a National Congress of Driving Instructors, which was held on 30 and 31 May 1986 (that is to say eight days after the Third National Congress of Driving Schools organised by the FENAE), with the aim of setting up an employers' organisation parallel to the Federation. The latter states that the subjects discussed at the Congress included "driving schools as enterprises; financial problems; and labour-management relations", that is to say matters pertaining specifically to management and labour. The FENAE adds that its affiliate associations were not invited, but that the members of these associations were invited individually. The latter withdrew in view of the attitude adopted by the General Director of Traffic during the preparations for the Congress. Those invited to the Congress included public servants and persons outside the sector.

153. The FENAE states, in its latest communications, that through the so-called follow-up committees to the First Congress of Driving Instructors, the traffic services are interfering in the activities of the driving schools to promote the creation of a joint organisation made up of representatives of employers and workers, as well as public servants, that will be called the Autonomous Federation of Driving Schools. According to the FENAE, in the Baleares province a management committee of the said Autonomous Federation of Driving Schools has been formed. The FENAE encloses a copy of the review "Trafico", published by the General Directorate of Traffic in January 1987, containing an article headed "Towards an Autonomous National Federation", from which the following is an extract:

> Last Saturday, 20 December 1986, in the presence of a number of presidents of regional and provincial federations of driving school organisations, a management committee was set up to create a new association for members of this sector. So far this National Autonomous Federation of Driving Schools, as it is to be known, has set up its management committee to negotiate with the General Directorate of Traffic and identify the problems of driving instructors and their firms since "we do not consider the FENAE to be representative".
>
> The management committee drew up a three-point document setting out its democratic constitution, the general problems facing driving schools and proposals for resolving them. At the same time this new National Autonomous Federation of Driving Schools aims, as one of its first actions, to recover the assets, or the part of the assets corresponding to the FENAE and former employers' organisations, from those regional and provincial organisations belonging to them.

B. The Government's reply

154. The Government states that the organisation of the First National Congress of Driving Instructors by the General Directorate of Traffic comes fully within the legal competence of the said Directorate. This was a conference on driving instruction and not a congress of driving schools, firms or operators, and consequently it was open to everyone who was connected with or interested in the activity of driving instruction, provided they registered and paid their expenses themselves. Of the 1,623 participants, a group of between 150 and 200 was made up of public servants who were connected with driving and came from various ministries to serve in an advisory capacity. The purpose of the Congress was to deal with a number of problems concerning driving instruction and to adopt conclusions that could be taken into account if driving instruction were to be regulated. The statement by the FENAE that its associations were not invited (it must be emphasised that no provincial or national association was invited), but that their members were invited on an individual basis is proof that the Congress was open to everyone involved in the sector so as to have the largest possible number of participants.

155. The Government adds that it is wrong to maintain that the Congress was concerned mainly with labour matters. The principal subjects dealt with at the Congress, chosen freely by the management committee, were: "driving schools as teaching centres", "driving schools as enterprises - problems, financing and labour-management relations", and "legislation applicable to driving schools". It is obvious that labour-management questions and financial issues in the sector are closely related to the enterprise as a teaching centre.

156. The Government goes on to say that the committees established to follow up the conclusions of the Congress of Driving Instructors should be looked at from this point of view and are proof that the Congress was not organised in vain since as a result of it the Administration undertook to implement its recommendations and to look further into the subjects thought to require further study.

157. The Government recalls that it was decided to hold the Congress of Driving Instructors at a meeting which was held at the headquarters of the General Directorate of Traffic on 11 September 1985 between representatives of the said General Directorate and of associations of private driving schools. The Government has furnished a summary of the discussions at the meeting and of the agreements adopted, stating in particular the following:

> "Before considering the agenda, note was taken of a communication to the General Directorate from the Executive Board of the National Federation of Driving Schools (FENAE) stating that it considered the holding of the Congress to be illegal and contrary to the Constitution. The FENAE maintained that it implied interference in the internal affairs of the Federation

since the latter's affiliate associations were being invited without its knowledge and independently of it.

Telegrams were read out that had been sent to the General Directorate by the Presidents of the Provincial Associations of Driving Schools of Cuidad Real, Granada, Guipúzcoa, Palencia, Segovia, Seville, Soria and Zamora, stating that they wished to be represented 'for all purposes' by the President of the National Federation of Driving Schools.

Since, despite this, the Presidents of the said provincial associations attended the meeting, they were asked to explain their position because, whilst on the one hand they had stated that they would be represented for all purposes by the President of the National Federation - who did not attend - on the other hand they themselves did attend, which was obviously contradictory.

The Director-General made the following points rebutting the written statement of the Executive Board of the National Federation of Driving Schools: that the General Directorate of Traffic could have direct relations with the provincial associations, which remain autonomous whether or not they are federated, that its representatives were free to remain or to leave, but that they should clarify their position and publicly resolve the confusing situation that had arisen.

After the representative of the Provincial Association of Avila, had spoken, these representatives decided of their own free will to leave the meeting.

Following speeches by the Director and the representatives of other associations, some of whom (Las Palmas and Zaragoza) asked for it to be placed on record that they considered that discussions should be held with the FENAE, the items on the agenda were discussed and the following summarised agreement was reached:

> To hold a national congress of driving schools at which all the problems affecting the sector would be discussed. Prior to the national congress special days would be held at provincial or regional levels. For this purpose a management committee was established, made up, in addition to representatives of the General Directorate of Traffic, of representatives of the Association of Driving Schools of the Province of Madrid, the Association of Driving Schools of the Province of Jaén, the Union of Driving School Operators of Asturias, the Union of Directors and Operators of Driving Schools of the City and Province of Valencia, the Associations of Driving Instructors of León, Jaén and the National Co-ordinating Committee of the Associations of Driving Schools, as well as representatives of the UGT, USO and APTTAE and an independent member of the branch."

158. The Government, which recognises the difficulties of dialogue between the General Directorate of Traffic and the FENAE (though stating that it is not true that the traffic authorities refuse to deal with associations affiliated to the FENAE) and describes relations between the two as unfriendly, concludes by stating that it does not deny the representativity of the FENAE, that it is not true that the General Directorate of Traffic is interfering in the driving school sector by setting up a federation of driving schools dominated and controlled by the Administration and even less true that meetings are being held to this end. The Government supplies the text of a ruling by the Court of the Province of Madrid, dated 20 September 1986, rejecting an application by the FENAE for the suspension of the Congress organised by the General Directorate of Traffic on the grounds of alleged anti-union activities.

C. The Committee's conclusions

159. The Committee observes that the complainant organisation refers mainly to attempts by the Administration to set up an organisation of driving schools that would replace the National Federation of Driving Schools (a federation of employers' associations), in particular by organising a National Congress of Driving Instructors in May 1986 and establishing follow-up committees to this Congress. The Committee observes that the Government denies these allegations.

160. The Committee notes the Government's explanations concerning the nature, legal framework, functioning and purpose of the said Congress of Driving Instructors and its follow-up committees, and in particular the fact that no association was invited since it was a congress open to all involved in driving instruction who registered and met the expenses themselves. The Committee also observes that the Court of the Province of Madrid, in a ruling of 20 September 1986, rejected the application of the FENAE for the Congress to be suspended on account of alleged anti-union activities.

161. In view of the foregoing and of the fact that there was nothing to prevent participation by leaders of the FENAE or of their provincial associations in the Congress in question, the Committee considers that the complainant organisation has not proved that there was interference by the authorities with a view to setting up a new organisation.

162. Nevertheless the Committee regrets that at the meeting of 11 September 1985 - at which it was agreed to hold the Congress - the competent authorities invited, inter alia, national-level trade union organisations and provincial employers' associations affiliated to the FENAE, but not the FENAE itself, despite the fact that the Government has stated that it does not deny the Federation's representativity. In these circumstances, noting the difficulties as regards dialogue

and the tension existing between the General Directorate of Traffic and the FENAE, the Committee emphasises the importance it attaches to the promotion of dialogue and consultations on matters of mutual interest between the public authorities and the most representative occupational organisations of the sector involved. The Committee expresses the hope that relations between the General Directorate of Traffic and the FENAE will become easier in the future and that a climate of collaboration and mutual trust will develop.

The Committee's recommendation

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

> The Committee requests the Government to endeavour in the future to create conditions propitious to dialogue and consultation between the traffic authorities and the FENAE on matters of mutual interest.

Case No. 1392

COMPLAINT AGAINST THE GOVERNMENT OF VENEZUELA PRESENTED BY THE UNION OF PILOTS OF THE VENEZUELAN INTERNATIONAL AVIATION CORPORATION

164. The Union of Pilots of the Venezuelan International Aviation Corporation (OSPV) submitted a complaint of violations of freedom of association on 22 September 1986. Subsequently, on 16 January, 17 February and 21 May 1987, it provided additional information.

165. The Government sent information on the matter in letters dated 24 April, 6 May and 16 and 23 October 1987 and 11 February 1988.

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

A. The complainant's allegations

167. The OSPV states that on 16 July 1986, the Ministry of Labour, acting through a labour inspector, ordered the suspension of the members of the OSPV executive committee, who were also prevented