



ELEVENTH ITEM ON THE AGENDA

**330th Report of the Committee
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Part I

Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951) met at the International Labour Office, Geneva on 6, 7 and 21 March 2003, under the chairmanship of Professor Paul van der Heijden.
2. The members of Salvadorean, French, Guatemalan, Indian, Mexican, Pakistani and Swedish nationality were not present during the examination of the cases relating to El Salvador (Case No. 2208), France (Case No. 2193), Guatemala (Cases Nos. 2103, 2179, 2194, 2203 and 2230), India (Case No. 2158), Mexico (Case No. 2207), Pakistan (Case No. 2229) and Sweden (Case No. 2171), respectively.

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3. Currently, there are 99 cases before the Committee, in which complaints have been submitted to the governments concerned for their observations. At its present meeting, the Committee examined 41 cases on the merits, reaching definitive conclusions in 30 cases and interim conclusions in 11 cases; the remaining cases were adjourned for the reasons set out in the following paragraphs.

New cases

4. The Committee adjourned until its next meeting the examination of the following cases: Nos. 2233 (France), 2234 (Mexico), 2235 (Peru), 2237 (Colombia), 2238 (Zimbabwe), 2239 (Colombia), 2240 (Argentina), 2241 (Guatemala), 2242 (Pakistan), 2243 (Morocco), 2244 (Russian Federation), 2245 (Chile), 2246 (Russian Federation) and 2247 (Mexico), since it is awaiting information and observations from the governments concerned. All these cases relate to complaints submitted since the last meeting of the Committee.

Observations requested from governments

5. The Committee is still awaiting observations or information from the governments concerned in the following cases: Nos. 2087 (Uruguay), 2164 (Morocco), 2172 (Chile), 2174 (Uruguay), 2216 (Russian Federation), 2218 (Chile), 2219 (Argentina), 2221 (Argentina), 2222 (Cambodia), 2223 (Argentina), 2224 (Argentina), 2225 (Bosnia and Herzegovina) and 2227 (United States).

Partial information received from governments

6. In Cases Nos. 2068 (Colombia), 2096 (Pakistan), 2097 (Colombia), 2138 (Ecuador), 2153 (Algeria), 2154 (Venezuela), 2177 (Japan), 2183 (Japan), 2187 (Guyana), 2201 (Ecuador), 2204 (Argentina), 2211 (Peru) and 2215 (Chile), the governments have sent partial information on the allegations made. The Committee requests all these governments to send the remaining information without delay so that it can examine these cases in full knowledge of the facts.

Observations received from governments

7. As regards Cases Nos. 1865 (Republic of Korea), 2162 (Peru), 2209 (Uruguay), 2213 (Colombia), 2214 (El Salvador), 2217 (Chile), 2220 (Kenya), 2226 (Colombia), 2228 (India), 2231 (Costa Rica), 2232 (Chile) and 2236 (Indonesia), the Committee has received the governments' observations and intends to examine the substance of these cases at its next meeting.

Urgent appeals

8. As regards Cases Nos. 2127 (Bahamas), 2132 (Madagascar), 2169 (Pakistan), 2185 (Russian Federation) and 2199 (Russian Federation), the Committee observes that despite the time which has elapsed since the submission of the complaints, it has not received the observations of the governments. The Committee draws the attention of the governments in question to the fact that, in accordance with the procedural rules set out in paragraph 17 of its 127th Report, approved by the Governing Body, it may present a report on the substance of these cases if their observations or information have not been received in due time. The Committee accordingly requests these governments to transmit or complete their observations or information as a matter of urgency.

Questions of receivability

9. In communications dated 7 and 21 May 2002, the Mandate Trade Union, representing the Irish staff employed in the administrative support section of the South African Embassy in Dublin, submitted a complaint against the Government of South Africa for failure to ensure the respect for freedom of association and collective bargaining rights in its Embassy in Ireland. These communications were transmitted to the Government of South Africa in accordance with the complaints procedure, which subsequently replied in a communication dated 8 October 2002 stating that the relationship between an embassy as employer and its locally recruited personnel is governed by the law of the country in which the embassy is situated and emphasizing that neither the South African Constitution, nor the statute law, has application to the employment by an embassy of locally recruited personnel. In light of the contradictory understandings between the complainant and the Government of South Africa in respect of the country whose jurisdiction would be applicable in this case, the Committee would invite the Government of Ireland to indicate whether Irish law indeed governs the employment relationship between locally recruited personnel and the South African Embassy.

Serious and urgent cases which the Committee draws to the special attention of the Governing Body

10. The Committee considers it necessary to draw the Governing Body's special attention to Cases Nos. 1787 (Colombia), 2189 (China), 2090 (Belarus) and 2203 (Guatemala) because of the extreme seriousness and urgency of the matters dealt with therein. Furthermore, the Committee wishes to draw the special attention of the Governing Body to the extremely serious and urgent situation in Venezuela, which has been shown by the continuing progression of complaints brought before the Committee concerning repeated violations of freedom of association for both the workers' and employers' organizations. In this respect, the Committee would refer to its examination in the present report of Cases Nos. 2058, 2067, 2088, 2160, 2161 and 2191.

**Complaint against the Government of China/Hong Kong
Special Administrative Region
presented by
the International Federation of Airline Pilots' Associations (IFALPA)**

Allegations: The complainant alleges that Cathay Pacific Airways dismissed 50 HKAOA members and officers by reason of their trade union activities, refused to enter into meaningful negotiations, tried to break up the union and committed other acts of intimidation and harassment. It is also alleged that the Government has left these practices unchecked.

335. In communications dated 14 March and 24 April 2002, the International Federation of Airline Pilots' Associations (IFALPA) presented a complaint of violations of freedom of association against the Government of China/Hong Kong Special Administrative Region.
336. The Government furnished its observations in a communication dated 25 November 2002.
337. China has declared the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), applicable in the territory of Hong Kong Special Administrative Region, with modifications, and has declared the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), applicable without modifications.

A. The complainant's allegations

338. In its communication dated 14 March 2002, the International Federation of Airline Pilots' Associations (IFALPA) expresses grave concern over the unjust treatment of one of their member associations, the Hong Kong Aircrew Officers' Association (HKAOA) who represent the pilots of Cathay Pacific Airways and its subsidiary companies Veta Limited and USA Basing Limited. IFALPA adds that the manner in which Cathay Pacific, under the leadership of its parent company, the Swire Group, has treated its pilots and their representative body goes against the very principles which the ILO is intended to protect and promote.
339. IFALPA states that the dispute between Cathay Pacific and the HKAOA is one of the longest running industrial disputes in aviation history as, for several years now, the union has tried to engage management in a constructive conversation about fair pay and benefits and basic safety policies, without any success. Despite repeated attempts, Cathay has refused to enter into a meaningful dialogue with the leadership of the union and made it clear that their number one intention is to eliminate the union in its entirety. IFALPA attaches a large number of documents as evidence of its allegations, including the complaints lodged with the Labour Department by four dismissed HKAOA officers. The name of the officers does not appear in the documents submitted.
340. It is alleged in the complaints inter alia that the attack on the pilots' terms and conditions of employment started in 1994 when an industrial dispute concerning working time ended

with the unilateral issuance by management of an offer of new individual contracts of employment in the absence of an agreed settlement with HKAOA. The letter which was sent to each pilot at home, started by repeatedly warning the pilots that: “what I have to say is of vital importance to you and your family [...] it is with the utmost regret that I report we have been unable to reach an agreement [with HKAOA] [...] What we have done is to take the ‘negotiating fat’ out of our proposal and build in the safeguards which protect against fatigue and provide an acceptable lifestyle. The most generous package we are able to provide is now on offer to those of you who wish to take it [...] note – you do not have to accept the new package – it is only for those who volunteer. If you choose not to accept the offer [...] your salary will only rise by normal increments [...] until it reaches a competitive level and you will not be eligible for a basing. Those who wish to transfer to the new conditions must [sign and] return the attached acceptance form within one month [...] This is a one-off offer.” In addition to the fact that those who did not choose to sign the offer would suffer a pay freeze and lose the prospect of being based outside of Hong Kong, one dismissed HKAOA officer notes that as a result of his decision not to sign the “voluntary” offer, he was demoted, suffered a reduction in pay and saw his career progression effectively stop.

341. According to the complaints, no progress was achieved when the renegotiation of the conditions of service began in 1997, and HKAOA realized that the company was intent on levering the contract down further. In 1998 the talks stalled because the company refused to discuss any issues unless the union was first prepared to agree to pay concessions and refused an independent third party audit of its finances, as requested by the union in order to determine whether or not such concessions were justified. As a result, the union instituted a withdrawal of goodwill by refusing to work on days off and simply complying with the terms and conditions of the contract of employment, a strategy termed “contract compliance”.
342. According to the complaints, in 1999 a fresh round of negotiations commenced with the company again demanding pay concessions. Talks culminated in management (the Deputy Chairman and Chief Executive and the Director Flight Operations) writing to all the senior pilots informing them that, unless they signed a new contract that imposed 28 per cent pay cuts on some pilots by a deadline of 11 June 1999, they would be dismissed. IFALPA attaches the letter in question and, after informing each pilot that “the only remaining option [...] is to appeal to you again as individuals”, invited them to return to the company a signed declaration of their acceptance of the new conditions of service or their intention to join the voluntary separation scheme. “I am afraid that having failed to reach a negotiated settlement [with HKAOA] there can be no third option. A notice to terminate current employment contracts will be issued on 11 June to all A scale crew members who have not elected to accept the new conditions of service or who have not applied for the voluntary separation scheme.” The pilots are also informed in the letter that the salary concessions will be set off by an increase in the value of stock options: “In effect the Cathay Pacific share price now needs to grow at approximately 7 per cent per annum over the next ten years to return 100 per cent of the salary concession for Hong Kong-based crew. Such a long-term rate of growth in an equity market should be considered reasonable by any measure.”
343. IFALPA also attaches a letter to all crew members dated 8 June 1999 in which the Chief Executive of Cathay Pacific states: “You have been advised that we will terminate the current contract of any A scale crew member who does not accept the 1999 conditions of service or apply for the voluntary separation scheme [...] I am aware that the HKAOA has set up a process [...] in an attempt to secure protection for individuals [...] If you want to place your career and your family’s welfare in the hands of a third party, that is your choice but we will press ahead whether the number of affected crew is 81 or 381.” The

Labour Department acted in a conciliatory role during these negotiations and agreement was reached just prior to the unilaterally imposed deadline.

344. According to the complaints, the agreement left a number of the union's concerns unaddressed, in particular, rostering practices. It was agreed that fresh talks on these would commence by the end of October 1999 but they never led to an agreement, primarily because the company has been demanding significant concessions from the pilots. In addition to this, the pay concessions agreed to in 1999 were on the basis that the company was in serious financial trouble as, repeatedly, pilots had been informed by management. Thus, when at the end of 2000 the company declared an after tax profit attributable to shareholders of HKD5.005 billion, following a profit for 1999 of HKD2.191 billion, many of the pilots felt that they had been lied to. In 2001, the union requested that, in light of the company's miraculous financial recovery, the outstanding issues on remuneration and benefits, such as the provident funds, be addressed and that the pay cuts agreed to in 1999, which were to be implemented over a three-year period, be reviewed. To date, the union's objectives have still not been met.

345. IFALPA submits further evidence in order to demonstrate Cathay Pacific's refusal to enter into meaningful dialogue with the union. This includes:

- the complaint lodged with the Labour Department by the former HKAOA President and current Chief Negotiator who stated that during negotiations on rostering practices in 2001, Cathay Pacific engaged in aggressive rostering tactics in order to delay negotiations (assigning flying duties in a way that the members of the HKAOA negotiating team are not present for meetings at the same time; assigning flying duties at weekends after a week of negotiations in order to wear down the negotiators), to the point that the Labour Department became concerned at the lack of progress in negotiations and the infrequency of the meetings;
- text in the *Crews Bulletin* (company newsletter addressed to the crew) of August 1998 in which the Director Flight Operations notes that the initiation of industrial action concerning rostering practices in the form of contract compliance could lead to management reviewing "all contractual matters" and adding: "Think about 92 GDOs [guaranteed days off] per year and not the 140 plus that some get and how that would impact your lifestyle. Think about long-term sick leave. The sad fact is that a career or life-threatening illness could happen to any of us.";
- letters of October-November 1997 and January 1998 in which the Director Flight Operations refuses to acknowledge and discuss letters signed on behalf of the HKAOA President, including a letter dated 13 January 1998, which informs the administration that HKAOA intends to initiate court proceedings with regard to the "erosion of the benefits [and] terms of employment in a unilateral manner" especially in the area of rostering practices;
- letters of June-December 1997 and March 1998 in which the Director Flight Operations rejects a dozen requests for rostered time off for attendance of symposiums and meetings for the sole reason that HKAOA had initiated contract compliance;
- a letter of September 1996 in which the then Director Flight Operations refuses to negotiate a basings agreement with HKAOA, noting that "your representatives were not interested in moving forward in a constructive manner [...] I regret that joint progress was not made [...] it would be pointless to reopen the discussion with your representatives";

- a letter of February 1996 in which the Director Flight Operations suspends the regularly held meetings between HKAOA and management, in protest for the content and tone of a HKAOA survey;
 - letters of November-December 1995 and January 1996 in which the Director Flight Operations suspends all meetings between HKAOA and management because HKAOA intended to table a motion at a forthcoming extraordinary general meeting concerning work on GDOs;
 - letters of July 1995 addressed by the Director Flight Operations to the HKAOA President, concerning the distribution of three anonymous letters that expressed extreme anti-company opinion to approximately 1,200 pilots (according to management's estimates). Although HKAOA's President expressed "regret" and accepted "responsibility" for the incident, the company considered "withdrawing the facility of your [i.e. HKAOA's] monthly dues collection or withdrawal of recognition of the Association";
 - a letter of May 1995 in which Cathay Pacific's Managing Director refuses to address the questions raised in a circular letter by B scale personnel on their terms of employment.
346. IFALPA alleges that Cathay Pacific's desire to bust the union took a dangerous turn with the unfair termination of 51 employees without cause. The complainant states that, not so coincidentally, all except one of these pilots were union members. The action was clearly designed to try to dismantle the union as an effective representative group, as the group of sacked pilots included top union negotiators and a number of the union's committee members.
347. According to the complaints lodged with the Labour Department by four dismissed HKAOA officers, on 3 July 2001 the membership of the union voted to take limited industrial action; in direct response to this, on 5 and 9 July 2001, the company sacked 51 pilots of which 50 were union members. Eight were trade union officers or involved in the day-to-day operations of the trade union. Three out of four members of the HKAOA negotiating team were also dismissed. According to the complaints, the dismissals were due to no other reason than the trade union activities of the HKAOA members and in particular, the industrial action staged by HKAOA on 3 July 2001. This flagrant act of industrial intimidation was calculated to frighten the remainder of the unionized pilots into "toeing the line" and deter them from exercising their freedom of association rights. It was, moreover, a tactic designed to attempt to remove the more experienced negotiators in the union's ranks.
348. The dismissed HKAOA officers state, as proof of their allegations that the Director Flight Operations of Cathay Pacific admitted in particular in his affidavit to the Hong Kong Labour Department, that the company undertook an assessment of all aircrew as a result of the initiation of limited industrial action on 3 July 2001. This resulted in the identification of 51 pilots for termination because they were not working in the interests of CPA. The complainants also emphasize that the Director Flight Operations stated that the pilots were "not terminated" on the ground of any or any alleged misconduct" and that "none of the plaintiffs were dismissed for any or any alleged offence or for any or any alleged breach of contract" (sic).
349. The four dismissed HKAOA officers also refer to the criteria on the basis of which individuals were selected for dismissal according to the Director Flight Operations. These appear to be "warning [...] about absences from work", "warning [...] in respect of disciplinary action" and "attitude [which] was unhelpful and uncooperative". According to

the dismissed HKAOA officers, to the extent that these criteria apply in their case, they correspond to incidents which constitute harassment and intimidation as a result of their trade union activities and cannot be relied upon to justify their dismissal. With regard to warnings about absences from work, they state that in response to increased absences from work noted at the height of the industrial dispute in 1999, Cathay Pacific had instituted an “absence management programme” which involved the creation of **blacklists of pilots based on their attendance records**, the dispatch of letters to the pilots, and the implementation of a series of humiliating and intimidating “incentives and disincentives” including, inter alia, loss of job and full body check designed to intimidate pilots who reported unfit for duty on more than a certain number of occasions.

350. With regard to disciplinary warnings, the dismissed officers refer to a number of instances where such action was used in order to intimidate trade union officers:

- the HKAOA Secretary indicates that disciplinary and grievance proceedings were instituted against him on two occasions in 2000 and 2001 for acts which do not constitute disciplinary offences or violations of the law. He states that these incidents were acts of intimidation for his trade union activities as a result of which his health has suffered. In 2001, this HKAOA officer was **summarily dismissed just minutes after the disciplinary and grievances proceedings had exonerated him of all charges**. With regard to this incident, the Director Flight Operations noted in his affidavit that the officer in question would have been dismissed anyway irrespective of the outcome of the proceedings;
- the HKAOA Deputy Director Welfare claims that he has been the victim of **an assault by a Cathay Pacific manager involving physical violence**, insulting and foul language and threats of dismissal. He claims that although the manager later apologized, this incident probably drew management’s attention to his case when blacklists of trade unionists were drawn up;
- the former HKAOA President and current Chief Negotiator reports **several attacks on the integrity of trade union officers** including an attempt to dismiss one trade union leader, an attempt to classify another one as permanently unsuitable for command, and the withdrawal of an offer for promotion after a pilot became a trade union officer;
- IFALPA also attaches the text of a warning addressed on 18 July 1995 by the Director Flight Operations to a trade union officer with regard to the abovementioned incident of three anonymous letters expressing extreme anti-company opinion: “Should your conduct be, once again, prejudicial to the interests, good name or reputation of the company, serious consideration will be given to your suitability for continued employment. This letter will remain on your personal file.”

351. The dismissed officers also indicate that the decision to terminate their employment did not seem to be justified by any commercial reasons, bearing in mind the cost of training a pilot and that the employer avoided stating the real motives of the dismissals because of the criminal responsibility involved under Hong Kong law.

352. IFALPA submits the *Crews Bulletin* of September 2001, from which it appears that shortly after the dismissals, negotiations took place between management and HKAOA concerning the reinstatement of the dismissed trade unionists. The Director Flight Operations states: “Clearly both sides have suffered since the [HK]AOA Committee launched into its carefully planned campaign of industrial action against the company. The airline has lost revenue which cannot be recovered and 51 pilots have lost their jobs. In an effort to restart negotiations the company proposed a process by which all 51 crew

members could apply to rejoin the airline. In order to enable such crew members to rejoin at the same rank, same seniority number and same point on the salary scale, the company and all other crew members would be required to agree to a temporary variation in the conditions of service. [...] The company would then establish a means of interviewing all individuals who wish to be re-employed. Such a process would be necessary if the company was to regain confidence in an individual. Any talk of ‘winding the clock back’ to 1st July and pretending that contracts have not been terminated is not practical and not possible. However I am advised that that is the only option acceptable to the HKAOA Committee. They have made it crystal clear through their representatives that unless there is complete and unconditional reinstatement of all individuals, then there will be no negotiation and certainly no agreement. [...] [This] is a demonstration of misplaced trade unionism.” In the complaints submitted to the Labour Department reference is made to a similar incident which took place in 1996 when several employees were invited to rejoin the company under lower conditions of employment and after being interviewed.

353. IFALPA adds that in addition to the company’s intention to break up the union, the pattern of **employee abuse has continued after the dismissal of the trade unionists** with the institution of a number of intimidatory tactics against HKAOA members. As evidence, IFALPA attaches certain documents which include:

- the *Crews Bulletin* of September 2002 in which the Director Flight Operations warns crew members that whatever the reason for which they might have participated in industrial action in the past, “it is now time to face reality. Job protection of those in current employment is now the name of the game. [...] From this point forward we have little choice but to demonstrate far less tolerance towards any pilot who undertakes industrial action that is contrary to the company’s interest. If you have any trouble interpreting ‘company’s interest’, then my advice is very simple: just do your job in accordance with normal custom and practice and to the best of your ability”;
- the *Crews Bulletin* of March 2002 in which the Deputy Director Flight Operations explains in graphic detail the loss of wages and benefits that will be suffered at the expiration of the current agreement with HKAOA and goes on to say: “Why can’t non-[HKAOA] members revalidate their own policy agreements or negotiate a pay rise? [...] The company will only negotiate pay and benefits agreements with the body representing the majority of flight crew in Cathay Pacific and is only prepared to do so if that representative body is prepared to work for the mutual benefit of both the company and the flight crew alike and is not intent on working directly against the company’s interests. The Association’s current ‘aims’ are extreme and give little cause for optimism. [...] A way forward is only going to be found if the company and all flight crew, both [HK]AOA and non-[HK]AOA members, begin to work together in a mutually constructive fashion to find solutions”;
- the *Crews Bulletin* of January/February 2002, in which the Director Flight Operations welcomes an initiative by a captain to seek the views of all pilots as to whether the present leadership of the HKAOA should step aside, stating: “There can and will be no further industrial discussions or negotiations with the current leadership [...] Further development rests with the pilot community and the company will neither endorse nor discourage any particular prospective candidate or group of candidates”;
- a letter to all crew members of January 2002 in which the Director Flight Operations states that “it is unthinkable that there could be any meaningful dialogue with an [HK]AOA leadership hell-bent on trying to damage the revenue streams and the safety reputation of the airline. [...] What does this mean for your contract? Simply put, [...] it will mean: No increase in salary. [...] No roster practice agreement [...] No re-negotiation of the side agreements [...] We can only hope that a degree of

common sense will eventually return. [...] The matter lies very much in your own hands.”

354. According to IFALPA, perhaps even more disturbing is the fact that these actions have gone **completely unchecked by Hong Kong’s governing authorities** raising serious concerns on the part of the international labour community about the commitment of Hong Kong to basic human and labour rights.

B. The Government’s reply

355. In its communication dated 25 November 2002, the Government provides an account of the events leading to the latest dispute and the current impasse between HKAOA and Cathay Pacific:

1999

- in March 1999, Cathay Pacific put forward to its pilots a proposal on pay concessions;
- negotiations between Cathay Pacific and HKAOA on the proposal broke down in May;
- on 1 June 1999 HKAOA passed a resolution in its Extraordinary General Meeting (EGM) to call a strike ballot in the event Cathay Pacific dismissed any pilot who refused to sign up for the proposal;
- Cathay Pacific reported an increase in the number of pilots reporting sick as well as flight cancellations from 28 May 1999;
- the Labour Department of the Hong Kong Special Administrative Region (HKSAR) offered its conciliation service and conciliation meetings commenced on 5 June 1999. On 10 June 1999 Cathay Pacific reached a deal with HKAOA on a three-year agreement on pay and conditions of service. Both parties also agreed to form a working group with a view to devising a better roster system.

2000

- direct negotiations between Cathay Pacific and HKAOA on roster practice continued throughout 2000 but the two sides were unable to reach agreement on all the roster issues;
- meanwhile, HKAOA had from July 2000 launched a work-to-rule campaign called “contract compliance”, under which the pilots would not answer calls from Cathay Pacific management to work on their days off;
- in early December 2000, HKAOA passed a motion in its EGM to vote on taking further action that could lead to flight disruptions during Christmas;
- the Labour Department again offered its conciliation service to both sides. Consequent to the conciliation meetings, both parties reached an agreement on interim roster practice before Christmas;
- Cathay Pacific and HKAOA resumed direct negotiation on long-term roster practice and meetings were held from late December 2000.

2001

- in March 2001, HKAOA sought to set aside the three-year agreement of June 1999 and put forward to Cathay Pacific a package of demands for improved pay and benefits. Cathay Pacific considered the demands unacceptable. The two sides held separate meetings to deal with the pay and benefits issues without success;
- with both the negotiations on roster and on pay and benefits coming to an impasse, both sides turned to the Labour Department for assistance in June 2001. A series of conciliation meetings were held;
- on 20 June 2001, HKAOA passed a motion at its EGM to take industrial action from 1 July if agreement on roster, pay and benefits was still not reached by then;
- on 28 June 2001, HKAOA rejected a counter offer of a package proposal on roster, pay and benefits put forward by Cathay Pacific. Negotiations broke down;
- on 29 June 2001, HKAOA announced postponement of its industrial action to 3 July. At the same time, Cathay Pacific set a deadline for HKAOA to accept its counter offer by 30 June;
- on 1 July 2001, Cathay Pacific withdrew its counter offer;
- on 3 July 2001, HKAOA launched a work-to-rule campaign called maximum safety strategy, under which the pilots would operate according to the maximum safety procedures;
- Cathay Pacific reported increases in the number of pilots reporting sick as well as in flight delays;
- Cathay Pacific dismissed three pilots on 5 July 2001 and another 49 on 9 July 2001. Cathay Pacific stated in a press statement that the dismissal decision was based on a review of the employment history of all its pilots, that it had lost confidence in the dismissed employees and that their continued employment would not be in the best interests of the company;
- the Labour Department tried to bring the two sides back to the negotiation table without success. Cathay Pacific stated that HKAOA must drop all industrial action before negotiation could resume. HKAOA stated that any settlement must include reinstatement of the dismissed pilots. Both parties found the precondition for further negotiation set by the other party unacceptable;
- on 9 July 2001, Cathay Pacific announced a package of pay, benefits and roster arrangement with improvement in various terms. The new pay and benefits took immediate effect. The new roster arrangement was to come into effect on 1 August 2001;
- in September 2001, HKAOA launched phase 2 of its maximum safety strategy;
- in early October 2001, HKAOA announced a recruitment ban on Cathay Pacific whereby it would refuse membership to new recruits of Cathay Pacific, and pass the names of the new recruits to pilot unions in their home countries;
- in late October 2001, HKAOA announced the lifting of its contract compliance campaign. Following this announcement, Cathay Pacific and HKAOA resumed direct

negotiation and a meeting was held. However, both sides maintained their previous positions and would not compromise. Negotiations again came to a halt;

- in November 2001, a group of dismissed pilots brought civil action in the High Court against Cathay Pacific for having terminated their employment in breach of their contracts;
- also in November 2001, nine of the dismissed pilots lodged a complaint with the Labour Department against Cathay Pacific for breach of section 21B of the Employment Ordinance for having terminated their employment by reason of exercising their rights in respect of trade union membership and activities. The Labour Department conducted an investigation into the complaint and sought the advice of the Department of Justice. The latter has decided not to take prosecution action because there was insufficient evidence to substantiate an offence. The complainants were duly informed in December 2001.

2002

- in January 2002, HKAOA reinstated its contract compliance campaign. Cathay Pacific responded with a letter to all pilots stating its stance that there could not be any further dialogue with HKAOA while industrial action targeted at damaging the airline's revenue streams and safety reputation was under way;
- in June 2002, 21 of the dismissed pilots sought the Labour Department's assistance to file claims against Cathay Pacific at the Labour Tribunal for civil remedies for unreasonable and unlawful dismissal under the Employment Ordinance. The Labour Tribunal heard the case in July 2002 and ruled that it be transferred to the High Court to be dealt with, together with the civil action brought by the pilots earlier on the same issue. The case is pending hearing.

356. The Government states that Cathay Pacific has not refused dialogue with HKAOA which at the end of 2001 represented 1,423 of Cathay Pacific's 1,700 pilots. Cathay Pacific and HKAOA have been bargaining over pay, benefits and roster issues since 1999 and have struck two deals of settlement in previous disputes. Negotiations over the latest dispute ceased only after January 2002 with HKAOA launching a new round of industrial action and Cathay Pacific refusing to negotiate further while the industrial action was under way.

357. The Government further states that the allegation that the Hong Kong Special Administrative Region Government has left any unjust actions by Cathay Pacific unchecked is totally ungrounded and that all necessary steps were taken to safeguard the statutory and contractual rights of the pilots. Upon the dismissal of 51 pilots by Cathay Pacific in July 2001, the Labour Department promptly advised HKAOA of the relevant provisions of the Employment Ordinance and the channels available for the pilots to seek redress should they feel aggrieved. Nine dismissed pilots subsequently lodged complaint in November 2001 with the Labour Department against Cathay Pacific for having terminated their employment in contravention of the anti-union discrimination provisions under the Employment Ordinance. The Labour Department conducted an immediate and thorough investigation into the complaint. The pilots and Cathay Pacific management were interviewed. Witness statements were provided by the pilots. Written submission was obtained from Cathay Pacific. The case was passed to the Department of Justice for scrutiny. After careful examination, the Department of Justice advised that there was insufficient evidence to establish the alleged offence under the Employment Ordinance and decided not to take prosecution action. The pilots were informed in December 2001.

358. The Government further states that in June 2002, 21 dismissed pilots approached the Labour Department for direct referral to the Labour Tribunal for adjudication of claims

against Cathay Pacific for civil remedies for unreasonable and unlawful dismissal under the Employment Ordinance. The Labour Department promptly assisted the pilots to file their claims at the Labour Tribunal. At the hearing in July 2002, the Labour Tribunal ruled that the case should be transferred to the High Court because the claimants had in November 2001 initiated civil action against Cathay Pacific at the High Court on the same issue. The case is now pending hearing at the High Court.

359. The Government states that it attaches great importance to upholding industrial harmony in Hong Kong. However, Hong Kong follows the principle of free market economy and it is not the Government's policy to interfere with private sector operations. The employer and employees of an enterprise are in the best position to deal with matters of mutual concern through direct negotiation. In this regard, the Labour Department actively promotes voluntary collective bargaining at the enterprise level through voluntary conciliation service and assistance as a neutral intermediary in the settlement of disputes.
360. The Government believes that constructive dialogue is the best way to resolve the present dispute. The Labour Department's conciliation efforts facilitated the amicable conclusion of the previous dispute in June 1999 and December 2000. The Labour Department has spared no efforts to persuade the two sides to resume dialogue and has made every endeavour within the framework of the voluntary conciliation system to help resolve the differences. However, it requires two willing parties to have a negotiation, and participation in conciliation is voluntary. The ongoing dispute between HKAOA and Cathay Pacific over the setting of new terms and conditions of employment is a dispute of interest. The current deadlock is due to the uncompromising positions taken by both sides in this round of negotiation. The Labour Department stands ready to render its conciliation service to both parties to resolve the dispute.
361. The Government states, moreover, that the allegations for breaches of Conventions Nos. 87 and 98 are totally unjustified. Hong Kong has a well-established labour relations system which provides for the basic rights of employees and employers by prescribing in the law the minimum employment standards, on the basis of which they are free to negotiate the terms and conditions of employment. Should the statutory or contractual rights of either party be infringed, there is an independent and reliable judicial system to seek redress and justice.
362. The Government further adds that employees' statutory rights and benefits are guaranteed under the Employment Ordinance, Part IVA of which prohibits an employer from dismissing an employee by reason of exercising his rights in respect of trade union membership and activities. An employer who is found in breach of this provision is subject to criminal prosecution and is liable upon conviction to a fine of HKD100,000. Moreover, under Part VIA of the Employment Ordinance, an employee who is dismissed on ground of his exercising his trade union rights is entitled, within 12 months immediately after the dismissal, to claim civil remedies for unreasonable and unlawful dismissal by his employer. Remedies awarded by the Labour Tribunal may include an order to reinstatement or re-engagement subject to the consent of both the employer and employee, or an award of terminal payments and compensation up to a maximum of HKD150,000.
363. Furthermore, the Government states that there is in place an effective mechanism for employees to seek redress if they are deprived of their statutory or contractual rights. Aggrieved employees can lodge their claims with the Labour Department which will render conciliation services. They can also seek adjudication of their claim at the Labour Tribunal, which provides speedy and inexpensive service and they can bring civil action for damages for breach of the employment contract under common law. On the side of law enforcement, the Labour Department takes a serious view of complaints about non-compliance with the Employment Ordinance. Investigation will be conducted into all

complains and prosecution action will be taken against the employer if there is sufficient evidence to substantiate an offence.

364. With regard to collective bargaining, the Government notes that article 27 of the Basic Law guarantees freedom of speech and association. Article 18, section 8, of the Bill of Rights Ordinance prohibits restrictions on freedom of association, except as prescribed by law in the interests of national security or public safety. Article 16 gives everyone the right to hold opinions without interference and guarantees freedom of expression. Thus, employers and employees and their respective organizations are free to exchange their views voluntarily, bargain freely and enter into collective agreements on the terms and conditions of employment. The Government believes that for collective bargaining to be effective, it should assume a voluntary character.
365. The Government states that it has made sustained efforts to promote voluntary negotiation both at the enterprise and industry level through the setting up of the Workplace Consultation Promotion Unit (WCPU) in 1998. WCPU provides a comprehensive range of services to encourage employers to enter into direct and ongoing negotiation with their employees or workers' unions on employment issues and promotes the setting up of industry-based tripartite committees to discuss and agree on industry-specific issues.
366. In conclusion, the Government states that legislation has been enacted in Hong Kong to implement Conventions Nos. 87 and 98 and the Government has been assisting HKAOA members throughout their dispute with Cathay Pacific. The case is now pending in the High Court which, after examining all the evidence and witnesses' testimonies from both sides, will decide whether Cathay Pacific is in breach of the legislation and, if it so finds, will grant the appropriate remedies. Given the independence of the judiciary, it is the function and role of the Court to make these determinations and the Government cannot, and must not, interfere with the judicial process. Moreover, the Government states that since all the complaints are directed against Cathay Pacific and are yet to be proven in court, the allegations directed against Hong Kong are unfounded and should be dismissed.

C. The Committee's conclusions

367. *The Committee notes that this case concerns allegations that Cathay Pacific Airways dismissed 50 pilots by reason of their trade union activities, refused to enter into meaningful negotiations, tried to break up the union and committed other acts of intimidation and harassment, while the Government has left these practices unchecked.*
368. *The Committee observes that on 5 and 9 July 2001, just a few days after the initiation of industrial action by HKAOA over pay, benefits and rostering practices, 51 pilots were dismissed. Fifty of these pilots were trade union members including eight officers and three members of the union negotiating team. The Committee notes that according to the complainant, the trade union officers were dismissed without reason and the company representative indicated (in his affidavit at the Labour Department of Hong Kong and in his declaration before the Superior Court of the State of California) first, that the dismissals were not due to any offence or breach of contract and, second, that as a direct result of the industrial action initiated by HKAOA, Cathay Pacific reviewed the employment history of all its crew and selected pilots for dismissal based on criteria like "warning [...] about absences from work", "warning [...] in respect of disciplinary action" and "attitude [which] was unhelpful and uncooperative". The Committee notes that according to the complainants these criteria cannot be relied upon to justify their dismissal because they point towards incidents of harassment and intimidation against them. The Committee also takes note of the statement made in the **Crews Bulletin of September 2001** that the dismissals were a result of the industrial action undertaken by HKAOA.*

369. The Committee notes that the Government does not provide any information as to the exact motives for the dismissals. The Committee also notes the Government's statement that pursuant to complaints by nine trade union officers for anti-union dismissals, the Labour Department and the Department of Justice undertook an investigation into the motives for the dismissal based on interviews of the pilots and written submissions from Cathay Pacific. However, no action was taken because there was insufficient evidence to substantiate an offence. The Committee notes that the Government has not provided the material of the investigation.
370. The Committee observes that Cathay Pacific's representative repeatedly confirmed that the dismissals were a direct result of the industrial action undertaken by HKAOA. With regard to the criteria which have been put forward as a basis for the dismissals, the Committee is of the view that generic reasons like "attitude [which] was unhelpful and uncooperative" cannot provide an objective criterion for selection. With regard to criteria such as warnings about absences from work and warnings concerning disciplinary action, the Committee observes that increased absences from work had been noted whenever HKAOA initiated industrial action in the form of contract compliance and that according to the complainant, the company had set up blacklists on the basis of the attendance record and had sent letters to workers in an effort to intimidate them to report for duty. The Committee also observes that according to the complainant and the evidence submitted, disciplinary proceedings and warnings had been used by Cathay Pacific in the past as a means to intimidate trade union officers and prevent them from exercising lawful trade union activities. The Committee observes that under these circumstances, there is a likelihood that the number of warnings in a worker's file concerning attendance and disciplinary action could be closely related to his trade union membership and activities.
371. In these circumstances, the Committee expresses concern at the dismissal of 50 trade union members and officers following the lawful staging of industrial action, which is authorized under Part V of the Labour Relations Ordinance (CAP.55). The Committee recalls that no person should be dismissed or prejudiced in his or her employment by reason of trade union membership or legitimate trade union activities, and it is important to forbid and penalize in practice all acts of anti-union discrimination in respect of employment [see **Digest of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, para. 748]. The dismissal of trade union leaders by reason of union membership or activities is also contrary to Article 1 of Convention No. 98, and could amount to intimidation aimed at preventing the free exercise of their trade union functions [see **Digest**, op. cit., para. 730].
372. Furthermore, given the gravity and nature of the allegations, the Committee expresses concern at the decision not to initiate legal proceedings for absence of sufficient evidence. The Committee notes that the basic regulations that exist in the national legislation prohibiting acts of anti-union discrimination are inadequate when they are not accompanied by procedures to ensure that effective protection against such acts is guaranteed [see **Digest**, op. cit., para. 739] and that respect for the principles of freedom of association clearly requires that workers who consider that they have been prejudiced because of their trade union activities should have access to means of redress which are expeditious, inexpensive and fully impartial [see **Digest**, op. cit., para. 741]. The Committee notes that it may often be difficult, if not impossible, for a worker to furnish proof of an act of anti-union discrimination of which he has been the victim and that workers face many practical difficulties in proving the real nature of their dismissal or denial of employment, especially when seen in the context of blacklisting, which is a practice whose very strength lies in its secrecy [see **Digest**, op. cit., paras. 740, 710]. The Committee requests the Government to transmit the material of the investigation conducted.

373. The Committee notes that the complainant provides information on certain unsuccessful negotiations between the company and HKAOA concerning the reinstatement of the dismissed pilots and that the Government provides information on another conciliation effort which did not succeed. The Committee notes that in November 2001, a group of dismissed pilots brought civil action to the High Court against Cathay Pacific for breach of contract and that in June 2002, 21 dismissed pilots filed claims at the Labour Tribunal for civil remedies for unreasonable and unlawful dismissal under the Employment Ordinance. The Labour Tribunal ruled that the case be transferred to the High Court where it is pending. The Committee notes the Government's statement that the High Court will, after examining all the evidence and witnesses' testimonies, decide the case and, if applicable, grant the appropriate remedies.
374. The Committee underlines the need to ensure by specific provisions accompanied by civil remedies and penal sanctions the protection of workers against acts of anti-union discrimination at the hands of employers [see *Digest*, op. cit., para. 746] and recalls that the remedy of reinstatement should be available to those who were victims of anti-union discrimination [see *Digest*, op. cit., para. 755]. The Committee hopes that the High Court will give its ruling as soon as possible and requests the Government to keep it informed of the outcome of the civil action brought before it by the pilots who were dismissed following the staging of industrial action and, if the Court finds that the dismissals were on anti-union grounds, to take all necessary measures with a view to the possible reinstatement of the pilots in their previous employment, without loss of pay, and to ensure that the enterprise faces any legal sanctions imposed.
375. With regard to the substantive issues of the dispute, the Committee notes that according to the complainant and the Government, the dispute between HKAOA and Cathay Pacific over pay, benefits and roster issues dates as far back as 1999. The Committee notes that according to the complainant, over these years Cathay Pacific has refused to enter into any kind of meaningful dialogue with HKAOA but has rather tried to delay negotiations, intimidate the union, its members and their families, avoid meetings and mislead the union on the economic position of the company. The Committee also notes that according to the complainant, on two occasions the company sent individual letters to the pilots in the absence of an agreed settlement with HKAOA inviting them to either accept the unilaterally modified conditions of service or suffer adverse consequences such as a pay freeze or immediate dismissal. Moreover, the Committee notes that according to the complainant, Cathay Pacific has made it clear that its number one intention is to eliminate the union in its entirety and that after the dismissals of July 2001, the pattern of employee abuse has continued with the institution of further intimidatory tactics against the aircrew. Finally, the Committee notes that the complainant alleges that the Government has left these acts unchecked.
376. The Committee notes that the Government has not provided any specific comments on allegations concerning intimidatory, dilatory and misleading negotiating practices. The Committee notes that according to the Government, Cathay Pacific has not refused dialogue, since negotiations between Cathay Pacific and HKAOA have been going on over these years, and that the current dispute is the result of the uncompromising attitude adopted by both parties. The Committee takes particular note from the chronology of the dispute provided by the Government that new conditions of service concerning roster, pay and benefits were unilaterally issued by the company on 9 July 2001, that is, the day of the dismissals. Finally, the Committee notes that the Government states that allegations against the Hong Kong authorities are unfounded because the evidence demonstrates that the complaint is directed exclusively against Cathay Pacific and is yet to be proven in court.

377. However, the Committee draws attention to the many instances in which threats are addressed against HKAOA, its members and their families (August 1998, July 1995), dialogue between HKAOA and management is refused (May 1995, September 1996, October-November 1997, January 1998), trade union facilities are withdrawn as reprisal for industrial action (June-December 1997, March 1998), and meetings are suspended in retaliation for lawful trade union activities (January-February 1996, November-December 1995). The Committee recalls that the rights of workers' and employers' organizations can only be exercised in a climate that is free from pressure or threats of any kind against the leaders and members of these organizations and it is for governments to ensure that this principle is respected.
378. Furthermore, the Committee deplores certain recent acts of interference and intimidation, in particular, the open threats of dismissal in case of industrial action addressed to all pilots in the *Crews Bulletin* (company newsletter) of September 2002; the implicit invitation to replace the HKAOA leadership in the *Crews Bulletin* of March 2002 and January/February 2002; the detailed and graphic illustration of the loss of pay and benefits which will be suffered by the aircrew as a result of their affiliation to and support for HKAOA, in the letter to all crew members of January 2002 and the *Crews Bulletin* of January/February 2002.
379. The Committee emphasizes that Article 2 of Convention No. 98 establishes the total independence of workers' organizations from employers in exercising their activities [see *Digest*, op. cit., para. 759] and provides that workers' and employers' organizations shall enjoy adequate protection in this respect. The Committee also emphasizes that no person shall be prejudiced in his employment by reason of his trade union membership or legitimate trade union activities, whether past or present [see *Digest*, op. cit., para. 690] and that protection against anti-union discrimination should apply more particularly in respect of acts calculated to cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside the workplace or, with the employer's consent, during working hours [see *Digest*, op. cit., para. 694]. Noting that this is a long-running and serious dispute, the Committee requests the Government to take all necessary measures as soon as possible to put an immediate end to all acts of interference, anti-union discrimination and intimidation against HKAOA and its members, prevent their recurrence in the future and keep it informed of measures taken in this respect, including any legal action that may be initiated with regard to such acts.
380. The Committee expresses concern at allegations that management engaged in aggressive rostering practices as a means to delay the negotiations and wear out the HKAOA negotiating team in 2001. The Committee also takes note of allegations that workers were misled into believing that the financial condition of the company was bad, when in fact the company made significant gains, and the written assurances provided by the company in 1999 that there was a reasonable prospect that the company's share price would increase by 7 per cent every year in the coming ten years so that pilots would be compensated in the long run for wage cuts. The Committee also notes with concern that the HKAOA was asked to accept a "temporary variation" in the conditions of service in return for the possible reinstatement of the dismissed pilots. The Committee recalls the importance which it attaches to the obligation to negotiate in good faith for the maintenance of the harmonious development of labour relations [see *Digest*, op. cit., para. 814] and emphasizes that the principle that both employers and trade unions should negotiate in good faith and make efforts to reach an agreement means that any unjustified delay in the holding of negotiations should be avoided [see *Digest*, op. cit., para. 816].
381. The Committee expresses particular concern at the three instances in which Cathay Pacific unilaterally issued new conditions of service and invited pilots to accept them in

their individual capacity or else suffer grave consequences (1994, 1999 and 2001). The Committee deplores the fact that the latest such incident took place on the same day that a large number of trade union members and officers were dismissed. The Committee notes that this strategy places workers before a disconcerting dilemma, namely, to give up their right to collective bargaining or else suffer a wage freeze or lose their jobs.

382. The Committee recalls that measures should be taken to encourage and promote the full development and utilization of machinery for voluntary negotiation between employer or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements [see **Digest**, op. cit., para. 781]. When examining various cases in which workers who refused to give up the right to collective negotiation were denied a wage rise, the Committee considered that it raised significant problems of compatibility with the principles of freedom of association, in particular as regards Article 1(2)(b) of Convention No. 98. In addition, such a provision can hardly be said to constitute a measure to "encourage and promote the full development and utilization of machinery for voluntary negotiation [...] with a view to the regulation of terms and conditions of employment by means of collective agreements", as provided in Article 4 of Convention No. 98 [see **Digest**, op. cit., para. 913].

383. The Committee notes that the conditions of service which were unilaterally imposed by management in 2001 have not been agreed upon with HKAOA and that their application is in flagrant violation to the voluntary nature of collective bargaining and Article 4 of Convention No. 98. The Committee requests the Government to take all necessary measures as soon as possible to put an immediate end to practices which are contrary to Article 4 of Convention No. 98 and to encourage and promote negotiations in good faith between Cathay Pacific Airways and HKAOA with a view to finding a rapid and comprehensive solution on all outstanding issues. The Committee requests to be kept informed in this respect.

The Committee's recommendations

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

- (a) The Committee expresses concern at the dismissal of 50 HKAOA members and officers following the lawful staging of industrial action in July 2001 and the decision not to institute legal proceedings against Cathay Pacific for absence of sufficient evidence; the Committee requests the Government to provide the material of the investigation conducted on this case.
- (b) The Committee hopes that the High Court will give its ruling as soon as possible and requests the Government to keep it informed of the outcome of the civil action brought before the High Court by the pilots who were dismissed following the industrial action staged in July 2001 and, if the Court finds that the dismissals were on anti-union grounds, to take all necessary measures with a view to the possible reinstatement of the pilots in their previous employment without loss of pay, and to ensure that the enterprise faces any legal sanctions imposed.
- (c) Noting that this is a long-running and serious dispute, the Committee requests the Government to take all necessary measures as soon as possible to put an immediate end to all acts of interference, anti-union discrimination

and intimidation against HKAOA and its members, prevent their recurrence in the future and keep it informed of measures taken in this respect, including any legal action that may be initiated with regard to such acts.

- (d) *The Committee requests the Government to take all necessary measures as soon as possible in order to put an immediate end to practices which are contrary to Article 4 of Convention No. 98 and to encourage and promote negotiations in good faith between Cathay Pacific Airways and HKAOA with a view to finding a rapid and comprehensive solution to all outstanding issues. The Committee requests to be kept informed in this respect***

CASE NO. 2189

INTERIM REPORT

Complaints against the Government of China presented by

- the International Confederation of Free Trade Unions (ICFTU) and**
- the International Metalworkers' Federation (IMF)**

Allegations: The complainants allege the use of repressive measures, including threats, intimidation, intervention by security forces, beatings, detentions, arrests and other mistreatment meted out to leaders, elected representatives and members of independent workers' organizations at the Ferrous Alloy Factory (FAF) in Liaoning Province and the Daqing Petroleum Company in Heilongjiang Province, as well as violent police intervention in a workers' demonstration at Guangyuan Textile Factory and sentencing of workers rights' advocates in Sichuan Province. Finally, the complainants allege the detention, arrest and mistreatment in Shanxi Province of an independent labour activist for trying to set up a federation for retired workers.

- 385.** The complaint is contained in communications from the International Confederation of Free Trade Unions (ICFTU) dated 27 March, 2 June, 19 August 2002 and 10 January 2003. The International Metalworkers' Federation (IMF) associated itself with the complaint and made additional allegations in a communication dated 3 April 2002.
- 386.** The Government sent a reply to some of the allegations in a communication dated 26 September 2002.
- 387.** China has not ratified either 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).