



NINTH ITEM ON THE AGENDA

**333rd Report of the Committee
on Freedom of Association****Contents**

	<i>Paragraphs</i>
Part I	
Introduction	1-181
<i>Case No. 2153 (Algeria): Interim report</i>	
Complaint against the Government of Algeria presented by the National Autonomous Union of Public Administration Staff (SNAPAP)	182-215
The Committee's conclusions.....	203-214
The Committee's recommendations	215
<i>Case No. 2204 (Argentina): Report in which the Committee requests to be kept informed of developments</i>	
Complaints against the Government of Argentina presented by the Confederation of Argentine Workers (CTA), the World Confederation of Labour (WCL) and the Latin American Central of Workers (CLAT).....	216-230
The Committee's conclusions.....	226-229
The Committee's recommendation	230
<i>Case No. 2219 (Argentina): Definitive report</i>	
Complaint against the Government of Argentina presented by the Confederation of Argentine Workers (CTA) and the Association of State Workers (ATE)	231-239
The Committee's conclusions.....	238
The Committee's recommendation	239

Case No. 2277 (Canada/Province of Alberta): Interim report

Complaint against the Government of Canada concerning the Province of Alberta presented by the Alberta Union of Provincial Employees (AUPE).....	240-277
The Committee's conclusions	271-276
The Committee's recommendations.....	277

Case No. 2172 (Chile): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of Chile presented by the Trade Union of Pilots and Technicians of Lan Chile (SPTLC).....	278-319
The Committee's conclusions	314-318
The Committee's recommendation	319

Case No. 2245 (Chile): Definitive report

Complaint against the Government of Chile presented by the Amalgamated Workers' Union of Chile (CUT)	320-333
The Committee's conclusions	329-332
The Committee's recommendations.....	333

Case No. 2186 (China/Hong Kong Special Administrative Region): Report in which the Committee requests to be kept informed of developments

Complaint against the Government of China/Hong Kong Special Administrative Region presented by the International Federation of Air Line Pilots' Associations (IFALPA).....	334-362
The Committee's conclusions	347-361
The Committee's recommendations.....	362

Case No. 2189 (China): Interim report

Complaint against the Government of China presented by the International Confederation of Free Trade Unions (ICFTU) and the International Metalworkers' Federation (IMF).....	363-387
The Committee's conclusions	374-386
The Committee's recommendations.....	387

Case No. 1787 (Colombia): Interim report

Complaints against the Government of Colombia presented by the International Confederation of Free Trade Unions (ICFTU), the Latin-American Central of Workers (CLAT), the World Federation of Trade Unions (WFTU), the Single Confederation of Workers of Colombia (CUT), the General Confederation of Democratic Workers (CGTD), the Confederation of Workers of Colombia (CTC), the Trade Union Association of Civil Servants of the Ministry of Defence, Armed Forces, National Police and Related Bodies (ASODEFENSA), the Petroleum Industry Workers' Trade Union (USO) and the World Confederation of Labour (WCL) and others	388-464
The Committee's conclusions	446-463
The Committee's recommendations.....	464

with the provisions of Convention No. 87 all workers, with the sole possible exception of the armed forces and the police, should be able to establish organizations of their own choosing to promote and defend the interests of their members, and requests the Government to go on ensuring this right to the category of workers in question.

- (b) *The Committee requests the Government to ensure compliance with legislation (article 261 of the Labour Code which provides that the employer shall make the corresponding deduction and deposit it in the current or savings account of the respective trade union organization(s)) relating to the deduction of union dues for members of workers' organizations in the land registry sector.*

CASE NO. 2186

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

Complaint against the Government of China/Hong Kong Special Administrative Region presented by the International Federation of Air Line 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 has also been alleged that the Government has left these practices unchecked*

334. The Committee examined this case at its March 2003 meeting [see 330th Report, paras. 335-384, approved by the Governing Body at its 286th Session (March 2003)]. The Government furnished **new observations** in a communication dated 15 December 2003.
335. 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. Previous examination of the case

336. In its previous examination of the case in March 2003, the Committee made the following recommendations [see 330th Report, para. 384]:
- (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.

B. The Government's new observations

337. In a communication dated 15 December 2003 the Government emphasizes that the allegation that the Government has left any alleged unjust action by Cathay Pacific unchecked, is totally ungrounded and that all necessary steps have been taken to safeguard the statutory and contractual rights of the pilots concerned. The Labour Department will continue to do everything within its power to facilitate the resumption of meaningful dialogue, and will keep the Committee informed of any major development on this case.

338. With regard to point (a) of the Committee's recommendations, the Government notes that it is committed to protecting the statutory rights of employees under the Employment Ordinance, section 21B(2) of which provides that it is an offence for any employer to terminate the contract of employment of an employee by reason of his exercising rights in respect of trade union membership and activities. However, in a criminal prosecution, including under the Employment Ordinance, the standard of proof is very high and the prosecution has to prove every element of an offence beyond reasonable doubt.

339. The Government then recalls that upon being approached by nine of the dismissed pilots in November 2001, it undertook an immediate investigation, with in-depth interviews, witness statements, submissions and supporting documents and forwarded this material to the Department of Justice for consideration of prosecution action if there was a prima facie case to prove all the elements of the alleged offences. After careful evaluation, the Department of Justice advised that the prosecution would be unable to establish, to the requisite criminal standard, that the nine complainants were dismissed by reason of exercising their union rights under section 21B(2) of the Employment Ordinance. There was no direct evidence to support the complainants' belief that they were dismissed by reason of exercising their trade union rights. On the contrary, there was evidence to show that the employer had taken into consideration the attendance records and disciplinary history of the pilots before making the termination decision. HKAOA committee members and negotiators who had good attendance records and without any record of disciplinary action were not dismissed, while the nine complainants had either received warning letters in the past regarding their attitude or had a record of absence from work without leave. According to the Director of Flight Operations of Cathay Pacific, in reviewing the pilots'

employment histories and in assessing individual pilot's attitudes towards the aims, objectives and interests of the company, Cathay Pacific identified pilots who had an attendance problem, had a warning letter on file in respect of previous disciplinary action, and were considered by crew control representatives to be unhelpful and uncooperative in the performance of their duties, and difficult to deal with both from a management perspective and in their relations with other staff.

340. As for the request to provide the material of the investigation conducted on this case, the Government points out that under the Personal Data (Privacy) Ordinance, Cap. 486 of the Laws of Hong Kong, personal data shall not be used for any purpose other than the purpose for which the data were to be used at the time of its collection, or for a purpose directly related to this purpose. In the Hong Kong legal system, the only proper place for prosecutions of guilt or innocence to be determined is in a court, where the accused has the right to a fair trial in accordance with the rules of criminal justice, and the opportunity to defend himself. The prosecuting authority should not disclose investigative material about a case outside the court as it might amount to a public trial of the suspect without the safeguards which criminal proceedings are designed to provide.
341. With regard to point (b) of the Committee's recommendations, the Government points out that the civil action initiated by the dismissed pilots against Cathay Pacific is pending hearing at the High Court and no hearing date has been fixed yet. Given the independence of the judiciary, the Government cannot, and must not, interfere with the judicial process. The Government will inform the Committee of the High Court's decision on the civil action as and when it is delivered. Should the Court find that the dismissals were on grounds of exercising trade union rights, the Court will decide on the appropriate remedies. Remedies awarded for unreasonable and unlawful dismissal under the Employment Ordinance may include an order for reinstatement subject to the consent of both the employer and the employee, or an award of terminal payments and compensation up to a maximum of HK\$150,000. The Court may also make an award for damages for breach of employment contract under the common law.
342. With regard to point (c) of the Committee's recommendations, the Government states that the basic rights of Hong Kong employees, including those governing anti-union discrimination, are protected under the Employment Ordinance. An employer who dismisses an employee by reason of exercising his trade union rights commits an offence and is subject to criminal prosecution. The dismissed employee is entitled to claim against the employer for civil remedies for unreasonable and unlawful dismissal. When a dispute cannot be settled through conciliation, the Labour Department will assist the employee to seek adjudication at the Labour Tribunal. If the Department of Justice is satisfied that there is sufficient evidence, the Labour Department will take out prosecution against the employer. The aggrieved employee can also make a civil claim against the employer before the court and sue for damages for breach of employment contract.
343. The Government emphasizes that in the present dispute it has taken every necessary step to safeguard the statutory rights of the pilots. Upon the dismissal of 52 pilots by Cathay Pacific in July 2001, the Labour Department immediately advised HKAOA of the relevant provisions of the Employment Ordinance and the channels to seek redress. Subsequently, nine dismissed pilots lodged a complaint in November 2001 with the Labour Department for termination of their employment in contravention of the anti-union discrimination provisions. As already seen above, after conducting an immediate investigation into the complaint, it was found that there was insufficient evidence to establish a prima facie case and, as a result, no prosecution action was taken. It was not until June 2002 that 21 of the 52 dismissed pilots lodged claims with the Labour Department against Cathay Pacific for civil remedies for unreasonable and unlawful dismissal under the Employment Ordinance. They did not avail themselves of the Labour Department's conciliation service

and chose to approach the Labour Tribunal directly to seek adjudication of their claims. The Labour Department promptly assisted the pilots to file their claims at the Labour Tribunal. The case was subsequently transferred by the Labour Tribunal to the High Court on the ground that the claimants had initiated civil action against Cathay Pacific at the High Court on the same issue. The case is pending hearing.

344. The Government adds that the Registry of Trade Unions of the Labour Department conducts inspection visits to trade unions and employer associations to provide advice and assistance on the management of their organizations and to ensure that employees and employers are free from acts of interference by each other in the establishment, functioning and administration of their organizations. Finally, the Government has received no report or complaint from HKAOA about acts of interference against Cathay Pacific.

345. With regard to point (d) of the Committee's recommendations, the Government states that legislative and administrative measures appropriate to local conditions have been taken to implement Article 4 of Convention No. 98. Freedom of speech and association is guaranteed under the Basic Law and the Bill of Rights Ordinance. Employers and employees are free to bargain and enter into collective agreements on the terms and conditions of employment. In keeping with the philosophy and belief in a free market economy and non-intervention in private sector operations, the Government has made sustained efforts to promote voluntary negotiation between employers and employees and their respective organizations. At the enterprise level, the Labour Department provides a comprehensive range of services to encourage employers to enter into direct and ongoing negotiation with their employees and employees' unions on employment issues. At the industry level, the Labour Department promotes tripartite dialogue through the setting up of industry-based tripartite committees to discuss industry-specific issues. The Labour Department provides voluntary conciliation services and assists, as a neutral intermediary, to settle disputes when necessary.

346. The Government adds that Cathay Pacific has practised voluntary collective bargaining and entered into successive collective agreements with its union for decades. HKAOA has long been in direct negotiation with Cathay Pacific. The current deadlock in their negotiations over terms and conditions of service is due to the uncompromising positions taken by both sides in the last round of protracted negotiation. In this long-running dispute, the Government has left no stone unturned within the framework of the voluntary conciliation system to help resolve the differences. Its conciliation efforts had facilitated amicable settlement in two earlier rounds of collective bargaining in preceding years but had yet to be able to help the parties reach a common ground this time. Since the breakdown of the last round of negotiations, the Labour Department has spared no efforts to persuade the two sides to resume dialogue. However, it requires two willing parties to have a meaningful negotiation. With a new HKAOA president and committee coming to office in October 2003, Cathay Pacific and HKAOA have renewed their dialogue and have resumed talks on the outstanding issues. The Government very much hopes that this will lead to constructive discussion and cooperation and the ultimate resolution of their dispute. The Government recalls that, as always, the Labour Department stands ready to render its conciliation service as and when necessary.

C. The Committee's conclusions

347. *The Committee recalls that this case concerns allegations 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 has also been alleged that the Government has left these practices unchecked.*

348. During the previous examination of this case the Committee took note of the civil action for unreasonable and unlawful dismissal brought before the High Court by several of the 50 HKAOA members and officers who had been dismissed in July 2001 following the staging of lawful industrial action. The Committee expressed the hope that the High Court would give its **ruling as soon as possible** and requested the Government to keep it informed of the outcome; if the Court found that the dismissals were on anti-union grounds, the Government was requested 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 faced any legal sanctions imposed. The Committee notes from the Government's response that **civil action is pending at the High Court since June 2002 and no hearing date has been fixed yet.** The Committee also takes note of the Government's statement that given the independence of the judiciary, the Government cannot and must not interfere with the judicial process and that the Labour Department will continue to do everything within its power to facilitate the resumption of meaningful dialogue and will keep the Committee informed of any major development on this case.
349. The Committee also notes that recourse against acts of anti-union discrimination is possible under the provisions of the Employment Ordinance on unreasonable and unlawful dismissal. Conciliation services as well as civil and penal proceedings are available. Thus, upon the dismissal of 51 pilots by Cathay Pacific in July 2001 following the staging of lawful industrial action, nine pilots lodged a complaint for unreasonable and unlawful dismissal with the Labour Department but there was no prosecution due to lack of sufficient evidence. In June 2002, 21 of the dismissed pilots lodged civil claims with the Labour Department. They did not avail themselves of the conciliation services of the Labour Department and chose to approach the Labour Tribunal directly to seek adjudication of their claims. The case was subsequently transferred by the Labour Tribunal to the High Court on the ground that the claimants had initiated civil action against Cathay Pacific at the High Court on the same issue.
350. **The Committee notes with concern** that the civil action for unreasonable and unlawful dismissal brought before the High Court by several pilots of Cathay Pacific Airways, has been **pending since June 2002 without a date for a hearing having been fixed yet.** The Committee emphasizes that the facts of this case date as far back as July 2001 and that the pilots, whose status remains uncertain, are subject to a legal requirement to fly at least one trip per month to maintain recency, as indicated in the complaint. The Committee therefore considers that the delay in civil proceedings is likely to cause **considerable professional and personal prejudice to the dismissed pilots.** The Committee recalls that **justice delayed is justice denied** and 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 of decisions and principles of the Freedom of Association Committee**, 4th edition, 1996, paras. 56 and 739]. It therefore requests the Government to take all necessary measures **as soon as possible** to end the dispute through a negotiated settlement which may be considered by both parties as fair and equitable. In the absence of such settlement, the Committee requests the Government to intercede with the parties with a view to promoting interim measures preventing irreparable damage to the dismissed pilots pending final judgement on this case. It also reiterates its previous request to the Government to communicate the High Court ruling once rendered.
351. The Committee notes from the Government's response that remedies awarded for unreasonable and unlawful dismissal under the Employment Ordinance may include an order for reinstatement subject to the consent of both the employer and the employee, an award of terminal payments and compensation, or an award for damages for breach of employment contract under the common law. The Committee recalls in this respect the conclusions it reached in Case No. 1942 according to which it is **difficult to envisage** that

the requirement of prior mutual consent to **reinstatement** will be easily forthcoming if the **true reason for a dismissal is based on anti-union motives** [see 311th Report, paras. 235-271, approved by the Governing Body at its November 1998 session]. The Committee recalls that it would not appear that sufficient protection against acts of anti-union discrimination, as set out in Convention No. 98, is granted by legislation in cases where employers can in practice, on condition that they pay the compensation prescribed by law for cases of unjustified dismissal, dismiss any worker, if the true reason is the worker's trade union membership or activities [see **Digest**, op. cit., para. 707]. The Committee notes that the Government has been working on **a legislative amendment** to empower the Labour Tribunal to make **an order of reinstatement/re-engagement** in cases of unreasonable and unlawful dismissal without the need to secure the employer's consent and that the Labour Advisory Board which has an **equal number of employer and employee** representatives has **approved this amendment** [see 326th Report approved by the Governing Body at its 282nd Session, para. 44]. It requests the Government to keep it informed of developments in this respect.

352. The Committee also recalls that during the previous examination of this case it expressed 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, and requested the Government to provide the material of the investigation conducted on this case. The Committee notes that **the Government does not provide the results** of the investigation itself, but informs the Committee of the grounds on which it was decided by the Department of Justice that there was insufficient evidence to establish a prima facie case against the employer. Thus, the Committee notes that the Department of Justice found that prosecution could not go forward because the requisite standard of evidence, which is very high for criminal proceedings, every element having to be proved beyond reasonable doubt, had not been satisfied. According to the Government, there was no direct evidence to support the complainant's belief that they were dismissed by reason of their trade union activities and on the contrary, there was evidence to show that the employer had taken into consideration the attendance records and disciplinary history of the pilots as well as the views of the crew control representatives about the pilots who were unhelpful, uncooperative and difficult to deal with.
353. The Committee recalls that during the previous examination of this case it noted that the **number of warnings** in workers' files concerning attendance and disciplinary action could be **closely related** to trade union membership and activities and that generic reasons like "unhelpful and uncooperative" attitude could not provide an objective basis for dismissal. The Committee recalls that 50 out of 51 dismissed pilots were trade union members, including eight officers and three members of the union negotiating team. It recalls that in a similar case, the Committee found it difficult to accept as a coincidence unrelated to trade union activity that heads of departments should have decided, immediately after a strike, to convene disciplinary boards which, on the basis of service records, ordered the dismissal not only of a number of strikers, but also of the seven members of their union committee [see **Digest**, op. cit., para. 717].
354. The Committee notes that although the possibility of criminal prosecution against acts of anti-union discrimination might appear in theory to afford a very high level of protection to the workers, in the particular circumstances of this case it is likely to be ineffective due to the inhibitory effect of the high standard of proof required in criminal proceedings and the difficulties involved in proving beyond reasonable doubt that the dismissal was by reason of trade union activities. The Committee has recalled that the existence of basic **legislative provisions prohibiting acts of anti-union discrimination is not sufficient** if these provisions are **not accompanied by effective procedures** ensuring their application in practice. Thus, for example, 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. This shows the full importance of Article 3 of Convention No. 98, which provides that machinery appropriate to national conditions shall be established, where necessary, to ensure respect for the right to organize [see **Digest**, op. cit., para. 740].

355. The Committee considers furthermore that the available (civil and criminal) proceedings against unreasonable and unlawful dismissal **may not suffice** to prevent and redress acts of anti-union discrimination when the employer is allowed to justify the dismissals on the basis of the unhelpful and uncooperative character of those dismissed, or to rely on grounds which might indirectly be related to the trade union activities of those selected. The Committee notes that in the context of proceedings for unreasonable and unlawful dismissal, the presentation of indirect evidence has not been considered by the authorities as sufficient. It appears to the Committee that if the proceedings pertained to anti-union discrimination in particular, indirect evidence might have led the authorities to make further inquiries. The Committee therefore **requests the Government to take all necessary measures**, in consultation with the social partners, so as to consider the adoption of appropriate machinery geared to prevent and redress acts of anti-union discrimination, given that the generally applicable (criminal and civil) procedures for unjustified and unlawful dismissal do not seem to be sufficiently effective in affording protection against acts of anti-union discrimination, as required by Article 1 of Convention No. 98.
356. The Committee further recalls that during the previous examination of this case it noted that this is a long-running and serious dispute, and requested 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. The Committee notes that according to the Government, the Labour Department took every necessary step to safeguard the statutory rights of the pilots by advising them of their rights and channels to seek redress, conducting an investigation into the complaint, and assisting the pilots to file their claims at the Labour Tribunal, and then to the High Court where it is pending hearing. The Committee takes note of these measures.
357. The Committee further notes from the Government's response that it has received no report or complaint from HKAOA about acts of interference against Cathay Pacific. In this respect, the Committee observes that the allegations in this case relate to anti-union discrimination and interference at the same time. It recalls that in an earlier case, in endorsing an observation made by the Committee of Experts on the Application of Conventions and Recommendations concerning a law, the Committee pointed out that it would be extremely difficult for a worker who was dismissed by an employer invoking, for example, "neglect of duty", to prove that the real motive for his dismissal was to be found in his trade union activities. Further, since lodging an appeal in this case did not suspend the decision taken, the dismissed trade union leader had, by virtue of the law, to resign his trade union post when he was dismissed. The Committee considered that the law therefore made it possible for managements of undertakings to hinder the activities of a trade union, which is contrary to Article 2 of Convention No. 98, according to which workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration [see **Digest**, op. cit., para. 768].
358. The Committee also observes that the Government does not make reference to any legal provisions prohibiting acts of interference and refers instead to promotional measures like inspection visits to trade unions and employer associations so as to provide advice and assistance and ensure that they are free from acts of interference by each other. The Committee recalls that where legislation does not contain specific provisions for the

protection of workers' organizations from acts of interference by employers and their organizations, it would be appropriate for the Government to examine the possibility of adopting clear and precise provisions ensuring the adequate protection of workers' organizations against these acts of interference. Moreover, the existence of legislative provisions prohibiting acts of interference on the part of the authorities, or by organizations of workers and employers in each other's affairs, is insufficient if they are not accompanied by efficient procedures to ensure their implementation in practice. Legislation must make express provision for appeals and establish sufficiently dissuasive sanctions against acts of interference by employers against workers and workers' organizations to ensure the practical application of Article 2 of Convention No. 98 [see *Digest*, op. cit., paras. 762, 763 and 764]. The Committee recalls that it is incumbent on the authorities to ensure the application of Article 2 of Convention No. 98 and therefore requests the Government to take all necessary measures as soon as possible with a view to adopting legislative provisions prohibiting acts of interference in the establishment, functioning and administration of workers' organizations and establishing efficient procedures coupled with sufficiently dissuasive sanctions so as to ensure their implementation in practice.

359. The Committee recalls that during the previous examination of this case it requested 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 notes that the Government states that in addition to general measures taken in order to promote voluntary negotiation at the enterprise level, the Labour Department has done everything in its power within the framework of the voluntary conciliation system to help resolve the differences between HKAOA and Cathay Pacific and to persuade the two sides to resume dialogue. The Committee finally notes that after the election of a new HKAOA president and committee the two parties have resumed talks on the outstanding issues.

360. While taking note of the measures adopted so far to promote bipartite negotiations at the enterprise level in general, the Committee recalls the recent observation made by the Committee of Experts on the Application of Conventions and Recommendations according to which, "much further progress needs to be made" with respect to "the measures taken so far by the Government to promote bipartite collective bargaining" [see 2003 observation on the application of Convention No. 98, Report of the Committee of Experts on the Application of Conventions and Recommendations to the International Labour Conference, 92nd session, 2004]. Furthermore, the Committee notes that negotiations on the outstanding issues have resumed between Cathay Pacific and the new HKAOA committee. The Committee expects that relations between HKAOA and Cathay Pacific Airways will improve, and requests the Government to renew its efforts for the effective promotion of bipartite collective bargaining, both in general and between the parties, and to take all necessary measures so as to ensure that negotiations are genuine and meaningful.

361. The Committee requests the Government to keep it informed of developments on all the above issues.

The Committee's recommendations

362. *In the light of its foregoing conclusions, the Committee requests the Governing Body to approve the following recommendations:*

- (a) *The Committee notes with concern that the civil action for unreasonable and unlawful dismissal brought before the High Court by several pilots of Cathay Pacific Airways, has been pending since June 2002 without a date for a hearing having been fixed yet. It therefore requests the Government to take all necessary measures as soon as possible to end the dispute through a negotiated settlement which may be considered by both parties as fair and equitable. In the absence of such settlement, the Committee requests the Government to intercede with the parties with a view to promoting interim measures preventing irreparable damage for the dismissed pilots pending final judgement on this case. It also reiterates its previous request to the Government to communicate the High Court ruling once rendered.*
- (b) *The Committee notes that the Government has been working on a legislative amendment to empower the Labour Tribunal to make an order of reinstatement/re-engagement in cases of unreasonable and unlawful dismissal without the need to secure the employer's consent and requests the Government to keep it informed of developments in this respect.*
- (c) *The Committee requests the Government to take all necessary measures, in consultation with the social partners, so as to consider the adoption of appropriate machinery geared to prevent and redress acts of anti-union discrimination, given that the generally applicable (criminal and civil) procedures for unjustified and unlawful dismissal do not seem to be sufficiently effective in affording protection against acts of anti-union discrimination, as required by Article 1 of Convention No. 98.*
- (d) *The Committee recalls that it is incumbent on the authorities to ensure the application of Article 2 of Convention No. 98 and therefore requests the Government to take all necessary measures as soon as possible with a view to adopting legislative provisions prohibiting acts of interference in the establishment, functioning and administration of workers' organizations and establishing efficient procedures coupled with sufficiently dissuasive sanctions so as to ensure their implementation in practice.*
- (e) *The Committee expects that relations between HKAOA and Cathay Pacific Airways will improve, and requests the Government to renew its efforts for the effective promotion of bipartite collective bargaining, both in general and between the parties, and to take all necessary measures so as to ensure that negotiations are genuine and meaningful.*
- (f) *The Committee requests the Government to keep it informed of developments on all the above issues.*