

Reading Room Copy

REV
1

OUTSTEA
2

9219904

001-CP-

MT 2

BEFORE THE UNITED STATES

TRADE REPRESENTATIVE

PETITION TO REMOVE EL SALVADOR
FROM THE LIST OF BENEFICIARY DEVELOPING COUNTRIES
UNDER THE GENERAL SYSTEM OF PREFERENCES

PETITION SUBMITTED BY:

FENASTRAS (National Federation of Salvadoran Workers)

and

The Labor Coalition on Central America

June 1, 1990

Phillip R. Kete
Attorney at Law
239 Park Avenue
Takoma Park, Md. 20912
(301) 891-2295

Todd Howland
Attorney at Law
2675 West Olympic Boulevard
Los Angeles, Calif. 90006
(213) 387-9189

TABLE OF CONTENTS

I	GENERAL INFORMATION REQUIRED BY USTR REGULATIONS	3
	1. Petitioners and their interests.	3
	2. Identification of products of interest	3
	3. to petitioners.	3
	3. Action requested.	3
	4. Previous petitions.	4
	5. Benefits anticipated.	4
II	EL SALVADOR IS NOT TAKING STEPS TO AFFORD	
	<u>INTERNATIONALLY RECOGNIZED WORKERS RIGHTS TO</u>	
	BE REMOVED FROM THE LIST OF DESIGNATED BENEFICIARY	
	COUNTRIES UNDER THE GENERALIZED SYSTEM OF	
	PREFERENCES.	6
A.	APPLICABLE STATUTES, CONVENTIONS, AND CONSTITUTIONAL	8
	GUARANTEES.	
B.	WITHIN THE MEANING OF THE TRADE ACT, WORKERS ARE	
	NOT AFFORDED THEIR RIGHTS WHEN PRIVATE INDUSTRY OR	
	GOVERNMENT AGENTS PHYSICALLY ABUSE UNION LEADERS,	
	INCLUDING KILLING THEM, AND SEARCH OR DESTROY UNION	
	OFFICES.	13
(1)	The rights to associate, organize, and	
	<u>bargain collectively are violated by violent,</u>	
	as well as by nonviolent, interferences with	
	those rights.	16
(2)	A government's obligation to afford workers'	
	rights is breached when it fails to protect	
	those rights from violation by non-government	
	parties.	21
(3)	A government's obligation to afford workers'	
	rights is breached when the government arrests	
	unionists without proof of criminal conduct, or	
	tortures or kills them, or interferes with	
	<u>union offices, or engages in</u>	
	strike-breaking.	23
(4)	Allegations that unionists are tied to the	
	FMLN does not justify their arrest, torture,	
	murder, or other violations of union rights	
	by the government.	26

C. THE EVENTS OF 1989 SHOW A CONTINUED FAILURE OF EL SALVADOR TO AFFORD ITS WORKERS THEIR INTERNATIONALLY RECOGNIZED RIGHTS. 29

(1) El Salvador refuses to provide a mechanism to enforce organizing and collective bargaining rights, to cooperate with ILO investigations, and to prosecute military criminals. 31

(a) El Salvadoran employers continue to bar any organizing activities in the export processing zone. 32

(b) No protection for organizing and collective bargaining by farmworkers. 33

(c) No protection for organizing and collective bargaining by public employees. 34

(d) Virtual impossibility of completing union registration formalities to the government's satisfaction. 36

(e) Virtual impossibility of calling legal strikes. 37

(f) Lack of remedy for employer violations. 37

(g) Treatment of partisan politics as outside the scope of legitimate union activity. 38

(2) El Salvador continues to refuse to cooperate with ILO investigations. 39

(3) Non-violent denials of collective bargaining rights (privatizations, firings, strike-breakings, refusals to bargain, plant shutdowns). 44

(4) Union offices have been searched, ransacked, and destroyed either by the government or in the absence of protection by the government. 46

(5) The government continues to arrest unionists on unsupported allegations of FMLN activity and torture unionists arrested for whatever reason. 49

(6) There continues to be a pattern of unionists being abducted and killed by unknown persons, without investigation by the government. 53

CONCLUSION 55

PETITION FOR REVIEW OF THE CONTINUATION
OF EL SALVADOR'S STATUS AS A BENEFICIARY DEVELOPING COUNTRY

The National Federation of Salvadoran Workers (FENASTRAS) and the Labor Coalition on Central America hereby petition under section 502(b) of the Trade and Tariff Act of 1984, 19 U.S.C. 2461 et seq., for the removal of El Salvador from the list of beneficiary developing countries under the Generalized System of Preferences.

The U.S. State Department's Country Reports on Human Rights Practices¹ for 1989 makes several findings which, by themselves, should lead to Trade Representative review of El Salvador's status as a beneficiary developing country. These include the facts that the International Labor Organization has found that the rights to associate, organize, and bargain collectively do not fully exist in El Salvador, 1989 Country Report at 587; that El Salvador does not have in place a labor code or administrative procedures which would allow for enforcement of workers rights, 1989 Country Report at 585; and that employers have successfully relied on intimidation to block the rights to associate and organize in

¹ It was the expectation of the drafters of the Trade Act provisions that the Trade Representative would take account of State Department's annual report under section 116(d) of the Foreign Assistance Act of 1961, as amended, which it required to address the degree to which a country protects the right to associate, to organize, and to bargain collectively. Hirsch, Renewal of the GSP: An Explanation of the Program and Changes Made by the 1984 Legislation, 18 Vanderbilt Journal of Transnational Law 625, 655-6 (1985).

the country's export processing zone, 1989 Country Report at 588. Standing by themselves, these would provide a sufficient basis for removing El Salvador's benefits under the Generalized Systems of Preferences.² There are, however, numerous other instances of a failure to afford workers rights--some denied by the State Department's report and others ignored--which are also inconsistent with status as a beneficiary developing country.

Although El Salvador will no doubt have the right during the review process to attempt to contradict the State Department findings and the other evidence we rely on, at the present stage in the proceedings our supported factual allegations must be taken as accurate. Unquestionably, then, this request warrants further consideration and review should therefore be granted.

This petition is presented in two parts. Part I provides the general information required by the USTR regulations for petitions of this sort. Part II provides the standards to be applied and demonstrates that under those standards El Salvador must be denied continued status as a beneficiary developing country.

² Although the findings by the United States Department of State are not entitled to conclusive effect if contradicted by reliable evidence, for the purpose of determining whether the request for review warrants further consideration, 15 C.F.R. § 2007.2, the Trade Representative must assume to be true those findings which are inconsistent with El Salvador's continued GSP benefits.

I GENERAL INFORMATION REQUIRED BY USTR REGULATIONS.

As required by 15 C.F.R. 2007.1, the following information is provided.

1. Petitioners and their interests The petitioners are the National Federation of Salvadoran Workers (FENASTRAS) and the Labor Coalition on Central America.

FENASTRAS' interest derives from the fact that its members are employed in industries exporting products to the U.S. duty-free from El Salvador under the Generalized System of Preferences.

The Labor Coalition's interest derives from the fact that members of its affiliated locals are employed in U.S. industries competing with products exporting to the U.S. from El Salvador duty-free under GSP, and from the fact that one of the Labor Coalition's primary purposes is to assist in the improvement of labor conditions in Central America.

2. Identification of products of interest to petitioners. Petitioners' members and affiliates produce in all, or nearly all, the categories in which El Salvador exports duty free to the U.S. under the Generalized System of Preferences. A complete list is found at App. 1. (Reference is made to the appendix which is being submitted with the petition filed by the IUE and UFCW.)

3. Action requested. We request the removal of El Salvador from the list of beneficiary developing countries under § 504 of the Trade Act of 1974, 19 U.S.C. § 2461 et seq. The reasons for this request, and the supporting information, are provided in part II of this petition.

4. Previous petitions. Petitions seeking similar relief have been filed by Americas Watch and several other organizations in 1987, 1988, and 1989.

The basis of the present petition is El Salvador's labor rights record for calendar 1989 and the first quarter of 1990. By definition, this record was not available when the Trade Representative considered the 1989 petitions. To the extent disposition of prior petitions reflects reliance on an erroneous interpretation of the trade law, we identify the error and show how it should be corrected.

5. Benefits anticipated. The Labor Coalition has an interest in preserving the jobs of its members and an interest in preventing U.S. employers from escaping their responsibilities under U.S. labor laws. FENASTRAS has an interest in having workers' rights respected in El Salvador.

Unions which are part of the Labor Coalition have members who have lost jobs due to competition with exploited labor from countries from countries which do not meet the workers rights standards in the GSP statute. Union members have been forced to make wage concessions and sacrifice

threat
gains made in terms and conditions of employment due to direct or indirect threats that, if concessions are not made, the employer will transfer the jobs of petitioners' members to countries where international workers rights are not protected. The U.S. unions have a further interest in seeking to allow employers who have not deserted their U.S. workforce for exploitive countries this to remain competitive.

Finally, the U.S. unions are dedicated to promoting greater respect worldwide for internationally recognized workers rights and curbing the inhumane treatment of people who are systematically denied basic worker rights and who are unprotected in their own countries when they protest the exploitative conditions they must endure.

The direct benefit FENASTRAS expects is a cessation of the abductions, arbitrary arrests, tortures, office bombings, and murders which it and other union organizations have been suffering, as well as the creation of effective mechanisms to enforce collective bargaining rights.

FOA

m'death
tort
abductions
Jail

II EL SALVADOR IS NOT TAKING STEPS TO AFFORD INTERNATIONALLY RECOGNIZED WORKERS RIGHTS TO WORKERS IN THAT COUNTRY AND SHOULD, THEREFORE, BE REMOVED FROM THE LIST OF DESIGNATED BENEFICIARY COUNTRIES UNDER THE GENERALIZED SYSTEM OF PREFERENCES.

A company which is barred from torturing and murdering union leaders is at a competitive disadvantage vis-a-vis companies not so constrained, and this in turn affects the wages and job availability of the workers in the protected area. American big business has accommodated itself to the reduced reliance on violence within the U.S. by going international, by relying on production and imports from countries in which it is still openly a practice to systematically use beatings, tortures, kidnappings, and murder as labor relations tools. In order to encourage decent labor rights in developing countries,³ Congress in 1984 amended the U.S. Trade Act to bar GSP privileges to those developing countries which do not take steps to afford internationally recognized workers rights.

Petitioners are exercising their right under the statute and regulations to request the U.S. Trade Representative to review El Salvador's continued entitlement to benefits under the Generalized System of Preferences. We show that workers' rights are not respected in El Salvador, and

³ The purpose is declared in § 501(b) of Pub.L. 98-573, set out as note to 19 U.S.C.A. 2461.

that the Salvadoran government has taken no steps to improve matters.⁴ Review, therefore, should be granted.

⁴ Given El Salvador's notorious violation of workers rights, this petition should not even be necessary. The USTR is required by section 2464(c)(2)(a) to conduct a yearly review of the continued eligibility of any country receiving GSP benefits. The review must be based on the initial criteria of sections 2461 and 2462(c), which include the workers rights provisions. Further, 2464(b) requires the USTR to "withdraw or suspend" the designations of any country "if [s]he determines" that the country does not meet the initial criteria. Both these provisions create an affirmative duty to make annual determinations that all countries continue to meet the conditions for eligibility, including compliance with workers rights.

A. APPLICABLE STATUTES, CONVENTIONS, AND CONSTITUTIONAL
GUARANTEES.

TRADE AND TARIFF ACT OF 1984, AS AMENDED

The purpose of this title is to--

* * *

(9) encourage developing countries--

* * *

(C) to afford workers internationally recog-
nized workers rights.

Pub.L. 98-573 / 501(b), set out as note to 19 U.S.C.A. 2461.

[T]he president shall not designate any country a
beneficiary developing country under this section
--

* * *

(7) if such country has not taken or is not
taking steps to afford internationally recognized
workers rights to workers in the country
(including any designated zone in that country).

Paragraph[] . . . (7) shall not prevent the desig-
nation of any country as a beneficiary developing
country under this section if the President deter-
mines that such designation will be in the na-
tional economic interest of the United States and
reports such determination to the Congress with
his reasons therefor.

19 U.S.C. 2462(b).

Subsection (c) of section 2462 says essentially
the same thing, that in designating countries the
president shall take into account "whether or not
such country has taken or is taking steps to af-
ford to workers in that country (including any
designated zone in that country) internationally
recognized worker rights." 19 U.S.C. §
2462(c)(7).

For the purposes of this subchapter, the term
"internationally recognized worker rights" in-
cludes--

- (A) the right of association;
- (b) the right to organize and bargain collectively;
- (c) a prohibition on the use of any form of forced or compulsory labor;
- (d) a minimum age for the employment of children; and
- (e) acceptable conditions of work with respect to minimum wages, hours of work, and occupational health.

19 U.S.C. § 2462(a)(4).

**ILO RESOLUTION CONCERNING TRADE UNION RIGHTS
AND THEIR RELATION TO CIVIL LIBERTIES**

The General Conference of the International Labour
Organization,

* * *

1. Recognizes that the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenants on Civil and Political Rights and that the absence of these civil liberties removes all meaning from the concept of trade union rights.

2. Places special emphasis on the following civil liberties, as defined in the Universal Declaration of Human Rights, which are essential for the normal exercise of trade union rights:

- (a) the right to freedom and security of person and freedom from arbitrary arrest and detention;
- (b) freedom of opinion and expression and in particular freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers;
- (c) freedom of assembly;

- (d) the right to a fair trial by an independent and impartial tribunal;
- (e) the right to protection of the property of trade union organizations.

3. Reaffirms the ILO's special competence--within the United Nations system--in the field of freedom of association and trade union rights (principles, standards, supervisory machinery) and of related civil liberties.

ILO CONVENTION 87, ART. 3

1. Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

ILO CONVENTION 87, ART. 11.

Each Member of the International Labour Organization for which this convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

ILO CONVENTION 98, ART. 1.

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect to their employment.
2. Such protection shall apply more particularly in respect to acts calculated to--
 - (a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
 - (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities

outside working hours or, with the consent of the employer, within working hours.

ILO CONVENTION 98, ART. 2.

1. 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. . . .

ILO CONVENTION 135, ART. 1.

Workers' representatives in the undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activity, in so far as they act in conformity with existing laws or collectively bargaining agreements or other jointly agreed arrangements.

COMMON ARTICLE III, GENEVA CONVENTIONS

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely . . .

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and carrying out of executions without previous

judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

CONSTITUTION OF EL SALVADOR.

Art. 47. [Private sector] workers . . . have the right to freely associate to defend their respective interests, forming professional associations or labor unions. . . .

These organizations are entitled to recognition as juridical persons and to be duly protected in the exercise of their functions. . . .

CONSTITUTION OF EL SALVADOR.

Art. 48. Workers have the right to strike and owners have the right to lockout.

B. WITHIN THE MEANING OF THE TRADE ACT, WORKERS ARE NOT AFFORDED THEIR RIGHTS WHEN PRIVATE INDUSTRY OR GOVERNMENT AGENTS PHYSICALLY ABUSE UNION LEADERS, INCLUDING KILLING THEM, AND SEARCH OR DESTROY UNION OFFICES.

We are aware that in the past the office of the Trade Representative has taken the position that a review of GSP status for workers rights violations can be triggered only by allegations of mistreatment which are not themselves human rights violations,⁵ but which are committed by the government itself and which are traceable to legitimate union activities as defined by the government.

The Trade Representative has been wrong on each point. To begin with, it is nonsense to say that because torture is a human rights violation, the torture of a unionist does not violate his or her right to associate, organize, and bargain collectively. On the contrary, as the International Labor Organization has correctly held, where the human rights of unionists are violated, it cannot be said that union rights are respected. 236th Report, Case 1269, ¶ 537 (El Sal-

⁵ "The USTR again decided not take up the El Salvador petition [submitted by Americas Watch. This time, the justification for denial was not that the labor union victims were guerilla sympathizers, but, rather, that abuses against them were human rights violations, not labor rights violations." Americas Watch, Nightmare Revisited, at 83.

As noted in the 1988 Americas Watch El Salvador petition, pages 3-4, different standards are applied to petitions regarding other countries, e.g., Chile.

vador). Of course, Salvadoran unionists have been also been victimized by non-violent repression, including refusals to bargain, discharges for union activity, and contract repudiation. Account will be taken of these abuses as well.

Secondly, a government fails to afford workers rights when it fails to affirmatively protect those rights from being violated by private industry, as well as when the government actively assists industry in violating them. If a company is not forced to bargain with a union, or if the company is allowed to fire unionists with impunity, then the country is not affording its citizens their recognized workers rights. It does not matter one way or the other whether the government actively helps the company in its anti-union activities.

On the other hand, a government does itself violate workers rights whenever it arbitrarily arrests unionists, or tortures or kills them, or ransacks their offices. This is so regardless of whether there is direct evidence that the government is taking reprisal for legitimate union activity, and whether or not the government considers attempts to influence public policy to be a legitimate role for labor unions.

Finally, claims of FMLN relationships are irrelevant to any of the union rights violations raised in this petition.⁶ We are concerned with abductions, tortures, murders, arbitrary arrests, and office ransacking. None of these can be justified by the real or alleged crimes of the victims.

⁶ If we were claiming that a particular unionist was wrongfully convicted of treason on grounds of FMLN activity, different issues might be raised. However, none of the cases dealt with in this petition involves judicial conviction for any crime.

(1) The rights to associate, organize, and bargain collectively are violated by violent, as well as by nonviolent, interferences with those rights.

Americans tend to think of interferences with union rights only in the forms of discriminatory layoffs, refusals to bargain, and contract repudiations, and to consider the situation in El Salvador only with respect to what, in isolation, can be deemed human rights violations--tortures and murders. The erroneous conclusion from these presumptions would be that what is happening in El Salvador is the violation of the human rights of trade unionists, but no violation of their right to associate, organize, and bargain collectively.

As it happens, the atrocities committed against unionists in El Salvador have taken place in the context of a general failure to respect to the rights to associate, organize, and bargain collectively:

Trade union activities are often conducted in an atmosphere of fear which has an unfavorable effect on their exercise.

ILO 243rd Report, p. 112 (El Salvador).

This point is important, because, as the ILO has also stressed, union rights are afforded only where fundamental human rights are respected:

[T]he Committee draws the Government's attention to the fact that freedom of association can only be exercised in conditions in which the fundamental human rights, and in particular those relating

to the inviolability of human life and personal safety, are fully respected and guaranteed . . .

ILO 236th Report, Case 1269, ¶ 537 (El Salvador).

The Trade Act therefore necessarily requires a response to violent as well as non-violent interferences with the rights to organize and to bargain collectively, so action cannot be denied on the ground that the atrocities we complain of are only human rights violations.

This last point can be made clear by considering that if in a particular country people elected to union steward positions were routinely fired, the Trade Representative would have no difficulty finding that that country did not afford workers the right to organize and bargain collectively. If, instead of union stewards being fired, they are killed, it simply is beyond reason to say that there is not at least the same interference with the rights to organize and bargaining. This example, sadly, is not hypothetical. On December 19, 1987, unidentified persons attacked STISSS members from Zacatecoluca Regional Health Center riding in an ISSS ambulance. Lidia Esther Herrera de Castellanos and Victoria Cananguéz de Escobar were killed and ten others wounded. Interviewed by a US labor delegation in December 1988, workers at the regional health center stated that

death
②

beat
⑩

while they still supported the union, STISSS, no one was willing to serve as a steward.⁷

This common sense approach is bolstered by the history of labor relations in the United States itself, in which torture and murder--by employers, the government, and vigilantes--have certainly been recognized as tools for interfering with workers' right to organize and bargain. See, for example, Stark Ceramics, Inc., 155 NLRB 1258, 1269 (1965); Alma Mills, Inc., 24 NLRB 1, 15-16 (1940); Republic Steel Corp. v. NLRB, 107 F.2d 472, 476 (3rd Cir. 1939); Selig Perlman and Philip Taft, History of Labor in the United States, 1896-1932, at 420; Richard O. Boyer and Herbert M. Morais, Labor's Untold Story, at 212.

⁷ Another example of how repression of unions works was reported in the January 30, 1990, New York Times. According to the report, on April 16, 1988, the bodies of three men-- Jose Arnoldo Cerritos, Vicente Cerritos Torres, and Arturo Navarro Garcia--were discovered in a ravine near the Las Canas River in Soyapango. The three men had all participated in meetings to organize a union of sand diggers, who were being threatened with expropriation of their land by a wealthy businessman, José Rene Mendoza, who sought to monopolize and mechanize the sand-digging business. Sand diggers, among the poorest of the poor, have been forced to work ten hour days with all family members participating to make the minimum necessary for survival. By erecting a barbed wire fence across the river and bringing in bulldozer and armed guards, Mr. Mendoza deprived the sand diggers of access to public land from which they obtained their livelihood. Shortly after the workers began to organize a union in an attempt to recover their land, soldiers detained the three men, who were not seen again until their bodies were discovered. The Auxiliary Archbishop of San Salvador, Msgr. Gregorio Rosa y Chavez, claimed in a homily that the Salvadoran Air Force was responsible for the killings. A court case was initiated but no progress has been made by the Government in identifying the killers. Since the killing of the three men, all union organizing efforts have halted.

death (3)
threat (3)

Indeed, as the International Labor Organization has declared, a general absence of protection from torture, murder, and arbitrary arrests means it is impossible to say that workers are afforded their rights to associate and organize:

[T]he rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenants on Civil and Political Rights and that the absence of these civil liberties removes all meaning from the concept of trade union rights.

ILO Resolution Concerning Trade Union Rights and Their Relation To Civil Liberties.

It is important to note that the government of El Salvador agrees with the ILO position on this point:

The Government [of El Salvador stated] that it was conscious of the fact that a free and independent trade union movement could only develop when basic human rights were respected both by governments and the people they governed.

ILO 177th Report, Case 844 ¶ 250 (El Salvador).

Thus, if unionists have suffered tortures, murders, office bombings, and arbitrary arrests, the Trade Representative will have to find that El Salvador has failed to afford internationally recognized workers rights, even if unions have not been singled out for repression, and even if there is no direct proof that what specifically led to a particular unionist's torture or murder was some specific union activity. There can be no doubt that an interference with union rights must be dealt with under the Trade Act even if

it is violent or is a violation of the victim's ordinary human rights.

(2) A government's obligation to afford workers' rights is breached when it fails to protect those rights from violation by non-government parties.

We are aware of the administration's view that action under section 504 is not warranted unless the El Salvador government is itself violating workers rights:

The conclusion of the [inter-agency] committee was that the incidents listed in the petition -- whether true in whole or in part -- did not indicate that the Government of El Salvador either violated or intended to violate workers rights to associate, organize, or bargain collectively.

Dec. 9, 1987 letter from U.S. Trade Representative, printed in Hearing before the Subcommittee on Human Rights, U.S. House of Representatives, June 30, 1987, at 238-39.

El Salvador's obligation to take steps to afford workers their rights would not be met simply by the government refraining from itself violating those rights. This has been clearly held by the European Court of Human Rights:⁸

It is well established by now that apart from protecting the individual against State action, there are articles of the Convention which oblige the State to protect individual rights even against

⁸ In the passage being quoted, the court is referring to Article 11 § 1 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, which reads as follows:

Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

the action of others. The Commission is of the opinion that Article 11 is such a provision as far as dismissal on the basis of union activity . . .

Young, James and Webster v. United Kingdom, 3 EHRR 20, 28 (Eur.Ct. 1979) (footnote omitted).

Thus, to adopt the State Department's suggestion that the violent deaths of the many unionists murdered in 1989 were "the result of individual acts of rightwing vigilantism," 1989 Country Report at 572, would not support continuation of El Salvador's GSP status. That interpretation of the facts would only mean that El Salvador failed to protect the unionists from rightwing vigilantes; the ultimate conclusion--that unionists are not afforded their internationally recognized rights in El Salvador--would remain the same.

In short, to be eligible under the GSP, a country must have and enforce laws which provide efficacious remedies when employers fire union activists without just cause, or shut down plants for the purpose of avoiding bargaining, or fire strikers, or refuse to sign contracts which have been negotiated by their representatives, or repudiate contracts when it suits their purposes. To take a concrete example, it is not enough for a country to not ban strikes; the country must protect the right to strike by making discrimination against strikers illegal and by forcing full remedy for any discrimination that does occur.

(3) A government's obligation to afford workers' rights is breached when the government arrests unionists without proof of criminal conduct, or tortures or kills them, or interferes with union offices, or engages in strike-breaking.

Contrary to past statements by the Reagan Administration Trade Representative, it is an insufficient answer to claims that unionists have been arbitrarily arrested to simply to recite that they were arrested on "suspicion of guerilla activities." Hearing before the Subcommittee on Human Rights, U.S. House of Representatives, June 30, 1987, at 240. As the ILO has explained, for a government to simply arrest union leaders on sedition charges, without any evidence (reflected by the fact that even after days of torture no evidence is produced), is inherently inconsistent with workers' rights:

[M]easures of preventive detention of trade unionists may involve a serious interference with trade union activities where no grounds for conviction are subsequently found and which it would seem necessary to justify by the existence of a serious situation or emergency and which would be open to criticism unless accompanied by adequate judicial safeguards applied within a reasonable period.

ILO 207th Report, Case 963 ¶ 229 (Grenada).

Even if allegations of illegal activities could ever justify arrests, they cannot be cited as explanations for government-inflicted "disappearances," tortures, and killings. Indeed, were El Salvador to say officially its

motive in torturing or killing any of the victims identified below was that the victim was a member of FMLN, El Salvador would be admitting a blatant violation of the Geneva Convention which bars, even during civil wars, the torture of anyone taken without arms in hand:⁹

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

* * *

(d) the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

Common Article III of the Geneva Conventions.

It is therefore necessary, when weighing U.S. State Department suggestions that particular unionists were tortured or killed by the government while in custody for alleged unarmed support of the FMLN, to at least solicit the Salvadoran government's response to what is, in effect, a U.S. charge that the Geneva Convention is being flouted. Rather than admit the Geneva Convention charge, it is likely that the Salvadoran government will claim that the reason for the torture or killing was the unionist's labor work--thus ad-

⁹ El Salvador claims that the Geneva Conventions are not generally applicable to the FMLN. However the section quoted is expressly made applicable to civil wars.

mitting a mere violation of the internationally recognized workers' rights.

Finally, what has been said about the personal security of individual unionists applies as well to the security of union offices:

[O]ccupation of trade union premises and confiscation of materials and other trade union publications may constitute serious interference by the authorities in trade union affairs. . . . [T]he right to protection of trade union property is one of the civil liberties which is essential to the normal exercise of trade union rights. Thus, while recognizing that neither trade unions nor any other associations or individual can be exempt from a search of their premises, the Committee has always considered that, should such action be taken, it should occur only after a warrant has been issued by the ordinary judicial authority, when the latter is satisfied that there are serious grounds for supposing that the necessary evidence for prosecution of a crime will be found, and provided that the search is limited to the purposes for which the warrant was issued. In addition, any authorities who, during a search, exceed the powers conferred on them by law should be punished.

ILO 218th Report, Cases 844 etc. ¶ 388 (El Salvador).

If in fact union offices have been broken into, ransacked, stolen from, or bombed--by the government or without government investigation and punishment--there has been a denial of internationally recognized union rights.¹⁰

¹⁰ Even if the government claims a judicial warrant allowed the entry into a union office (claims which will have to be reviewed in each instance), no warrant would permit the theft or destruction of the union's property.

(4) Allegations that unionists are tied to the FMLN does not justify their arrest, torture, murder, or other violations of union rights by the government.

With respect to those attacks on unionists admittedly committed by the government, the previous administration's view was that a claim that the victims were tied to the FMLN is dispositive:

All of the arrested union members named in the petition were members of the organizations of the insurgent Faribundo Marti National Liberation Front (FMLN). The arrests listed in the petition were made under emergency Salvadoran legislation providing for detention and investigation of suspected members of the FMLN. Of those union and cooperative members subsequently charged with a crime and jailed pending trial, all were charged with membership in a specific guerilla organization.

Hearing before the Subcommittee on Human Rights, U.S. House of Representatives, June 30, 1987, at 238-39.

The State Department has, however, since admitted that this explanation does not suffice, even under Salvadoran law:

Holding political views opposed to the Government is not justification for arrest unless the suspect advocates violence. The courts have held that membership in a front organization controlled by the guerillas is not in itself sufficient reason for holding an arrestee, although membership in one of the guerilla groups is.

1989 Country Reports at 576.

Thus, even a simple arrest of a unionist, not accomplished by abduction and unaccompanied by torture, is a denial of internationally recognized union rights if the government's only explanation is that it suspected the unionist

of FMLN membership and unless the arrest itself was based on substantial evidence of actual guerilla activity.

It must be stressed that this has consistently been the AFL-CIO's position, stated again as recently as late 1989:

Regardless of motive, of course, the AFL-CIO opposes all violations of due process and abuses of persons taken into custody, for any reason. Even when arrests are sincerely motivated by justifiable suspicion of guerilla links, there can be no justification for torture, detention without trial, forced confessions, and lack of due process. Any democratic government has the right to arrest people who are clandestinely working to foment an armed insurrection. However, no government has the right to flagrantly violate individual rights in seeking to halt such activities.

App. 51.

The previous administration's rejection of this position has had its predictable consequence--if the U.S. government accepts allegations of subversive activities as an automatic justification for repressing unions, all unionists will be labelled subversive:

One campesino leader affiliated to FESACORA in the La Libertad Department states, "Any time we try to organize ourselves and stand up for our rights as workers and human being, the armed forces claim we are guerillas."

* * *

Increasingly, police and military officials refer to all trade unions, even those long associated with pro-democratic objectives, as "communist" or "subversive". On August 23, for example, the newspaper Diario de Hoy reported that according to the Treasury Police, the leader of UNOC, Amanda Villatoro, had been identified as an FMLN infiltrator by a captured guerilla fighter. This ominous trend, we believe, will lead to more arrests

. . . .

App. 55, 58.

The El Salvador government no doubt will point out that the identification of Ms. Villatoro as an FMLN member is supported by the same type of evidence as has led the U.S. to call the UNTS leaders such as the late Febe Velasquez FMLN agents: the torture-induced testimony of an alleged FMLN member. This, however, should lead the trade representative to reconsider the charges against the UNTS leaders, rather than simply accept as true the charges against the UNOC leadership.

Finally, we note that in section (2), above, we stressed the general rule that the fact that private parties may be responsible for the violations of union rights is not sufficient to allow a country to continue in the GSP program. We wish to foreclose the possibility of an exception for cases in which the victims of private murder have been fingered as alleged FMLN supporters.

As careful reflection will reveal, a private thug stands on no firmer legal or moral ground than a government one does. In any event, if there is proof that a particular union leader is an FMLN guerilla, the government no doubt is sufficiently motivated to arrest and convict him. If there is no proof, there is no benefit to even talking about allegations.

- C. THE EVENTS OF 1989 SHOW A CONTINUED FAILURE OF EL SALVADOR TO AFFORD ITS WORKERS THEIR INTERNATIONALLY RECOGNIZED RIGHTS.

A country can participate in the GSP program despite substandard labor practices as long as it is taking steps to improve the situation. El Salvador took steps in 1989, but all in the wrong direction. Although in past years some, even within the Salvadoran and U.S. labor movements, have been able to detect hopeful signs amid the shrapnel and charnel, no one can believe that a continuation of the current labor policies amounts to taking steps towards affording workers their internationally recognized rights.

The deterioration of the union rights climate was dramatically reflected in the November 20 letter from AFL-CIO President Lane Kirkland to President Cristiani, saying in part:

The AFL-CIO is deeply concerned . . . about what we believe to be a pattern of increasing violations of human and trade union rights against trade unionists who share our commitment to democratic values.

. . . We are especially alarmed about reported attempts to impose new leaders on campesino cooperatives by members of your government, abusive behavior on the part of local civil defense officials, and increasing reprisals by employers against union members engaged in legitimate organizing and bargaining activities. These violations, we believe, represent a deterioration of the workers rights situation in comparison to the recent past.

Indeed, months ago UNOC (in El Salvador) joined the AFL-CIO (in the U.S.) in serving notice that their sympathy for the Salvadoran government's side in the civil war should not be misunderstood as granting tolerance for the government's failure to afford the workers' rights identified in the trade act. The increasingly blatant anti-union policies of the El Salvador government has, ironically, brought the Salvadoran labor movement to unprecedented unity in support of eliminating the country's status as a beneficiary developing country. It will be seen that the united labor movement's call for action is well warranted.

- (1) El Salvador refuses to provide a mechanism to enforce organizing and collective bargaining rights, to cooperate with ILO investigations, and to prosecute military criminals.

The 1989 State Department Country report correctly acknowledges that El Salvador lacks adequate legislative and administrative machinery to actually enforce workers' rights¹¹:

[Article 47 of the Constitution] was intended to provide the legal framework for secondary legislations, including a revised labor code. Legislative action on such a code has been stymied, however, because of a lack of consensus between the government, the private sector, and labor. Several separate proposals for revising the code have been drafted since 1985, but none of these have been formally submitted to the Legislative Assembly. The Cristiani Administration has indicated interest in reform of labor laws, but has not yet developed any firm proposals nor taken a position on any of the proposals previously prepared. A confusing and sometimes conflicting sets of laws dating from 1963 which govern labor relations remains in place. While existing statutes provide protections which are enforceable under the Constitution, their inconsistencies often result in cumbersome procedures and significant delays.

1989 Country Reports at 585.

The importance of this is that the Salvadoran and U.S. governments define union activity not conforming with the labor code as being illegitimate, and use this label to jus-

¹¹ It should be noted, in addition, that from November 11, 1989 until April 10, 1990, a government-imposed state of siege prohibited all forms of assembly, allowed arrested people to be held incommunicado for fifteen days, and suspended most other civil liberties.

tify any punishment of the participating unionists are inflicted with.

The current labor policies and their consequences can be summarized as follows.

8
00 (a) El Salvadoran employers continue to bar any organizing activities in the export processing zone. The State Department's 1989 country report flatly establishes the denial of workers rights in El Salvador's export processing zone:¹²

El Salvador has one export processing zone. . . .
[T]here are no labor unions represented in any of the firms in this zone, and the firms discourage labor organizing by preventing organizers from entering the zone and intimidating workers who attempt to organize.

1989 Country Reports at 588.

¹² The situation with respect to the export processing zone was first acknowledged in the 1988 country report, page 567.

The Trade Act specifies that the assessment of a country's actions to afford workers rights applies to the entire country, "including any designated zone in that country." 19 U.S.C. 2462(b). This no doubt reflects Congressional awareness that unions typically are particularly barred from such zones:

Labor conditions in the zones are usually harsher than in the rest of the country. Besides offering exemption from customs duties, foreign exchange benefits, local tax windfalls, subsidized utilities and other common "incentives" for business, authorities in the zones also guarantee strike bans, sub-minimum wages, and exemptions from health and safety and fair labor standards.

International Labor Rights Education and Research Fund,
Trade's Hidden Costs, at 33-34.

For purposes of determining whether review is warranted, this unequivocal finding by the State Department suffices. In the event El Salvador challenges the finding, we will provide the necessary supporting evidence at the hearing.

(b) No protection for organizing and collective bargaining by farmworkers. There is no legal protection for collective bargaining by farmworkers.¹³ Although farmworkers can form associations, the GSP subcommittee itself has emphasized the importance of the difference between this type of organization and a union:

One of the more important proposed changes in the labor code would permit agricultural workers to form unions. These unions would have the right to strike and to bargain collectively. Under the present code, workers in the agricultural sector are only permitted to form associations, which lack such rights. . . .

GSP Subcommittee Rationale for Non-Acceptance of Worker Rights Petition on El Salvador, August 1988, at 7.

The 1989 Country Report confirms that in fact farmworkers remain barred from unionization:

[E]xisting law bars agricultural workers . . . from forming unions or striking . . .

1989 Country Report at 585.

¹³ In fact, there is no protection of the right to bargain individually. Seasonal workers cannot even obtain oral commitments as to terms of employment. Permanent workers are supposedly entitled to oral contracts plus periodic written confirmation of actual time worked and pay received.

Thus, the largest sector of workers in El Salvador is openly denied the right to bargain collectively. GSP benefits must be withdrawn as long as El Salvador chooses to continue this state of affairs.¹⁴

(c) No protection for organizing and collective bargaining by public employees. Union organizing and collective bargaining by public employees, except for employees of "autonomous institutions," is prohibited by Section 204 of the Labor Code. As with farmworkers, these employees can only form associations. The AFL-CIO has explained some of the practical problems this causes:

Associations must obtain legal recognition from the Ministry of the Interior. Government workers are thus faced with a Catch-22 dilemma. If they apply for legal status using statutes that forthrightly include collective bargaining functions, their petition will be denied. If, on the other hand, they submit statutes that omit such functions, they will face legal difficulties when they undertake them later on.

App. 61.

As noted in a leading ILO decision, the difference between the two types of organizations has substantial legal significance in the eyes of the El Salvador government, and is inconsistent with respect for the rights of those relegated to associations. Significantly, the case involves AN-

¹⁴ It should be noted that proposals to provide collective bargaining rights for farmworkers have in fact been before the legislative assembly since 1982, without action. U.S. Embassy, Foreign Labor Trends Report, 1984-1987, p. 26.

TEL, an autonomous institution whose workers, under the terms of the labor code, are in fact entitled to form unions:

In its letter of 8 July 1988, the Government [of El Salvador] states that there is no trade union in the national telecommunications administration of the type covered by El Salvadorian legislation. The description 'de facto union' referred to in this complaint is not known in Salvadoran law or industrial relations practice and it is therefore totally inappropriate to call ASTTEL (Asociación Salvadoreña de Trabajadores de Telecomunicaciones) a 'union'. According to the Government, this is not just a point of formality, but is of vital importance to the issue of legitimate representation of the workers. As an 'association', under section 540(2) of the Civil Code, ASTTEL comes under the jurisdiction of the Ministry of the Interior, whereas 'unions' are regulated by the Labor Code and administered by the Ministry of Labor.

*

*

*

[This committee] has repeatedly decided that where public employees--especially in public enterprises and nationalised undertakings--are not involved directly in the administration of the State, the national legislation should allow them to bargain collectively. . . .

*

*

*

[T]he Committee requests the Government to adopt legislative provisions ensuring that workers of the telecommunications company (ANTEL) have the right to associate in unions and to carry out activities, such as collective bargaining, to promote and defend their interests and that they are protected against acts of anti-union discrimination in employment.

ILO 259th Report, Case 1273, ¶¶ 313, 327, 331 (El Salvador).

The government's response has to been to pass a law placing ANTEL and the other major autonomous institutions (CEL, ISSS, and ANDA) under direct government control, thus removing any possible doubt that El Salvador denies workers

in these entities the right to organize unions and to bargain collectively. Law No. 483, to be effective June 1, 1990. In other words, the Salvadoran government is actually narrowing the scope of protected collective bargaining, rather than enlarging it as called for by the ILO.

(d) Virtual impossibility of completing union registration formalities to the government's satisfaction. Nothing an organization of workers does is legal or legitimate in the eyes of the El Salvador government and the U.S. State Department unless the organization has been approved as a union under articles 204 through 219 of the labor code. As the AFL-CIO reports, the declared policy of the Cristiani administration is to use technicalities as an excuse to routinely deny approval and to rescind approvals granted by previous governments:

In an interview with the Director of the Labor Ministry, Pedro Rodriguez, an AFL-CIO representative learned that since January 1989, only one union has received legal recognition. None has been granted since the new government was installed on June 1. Rodriguez stated that during the previous administration, unions were granted legal recognition without having all of their papers in order. Under the new procedures, he said, no union would be granted unless all of the forms were filled out properly. As a result, every organization that had applied so far had been told to return after having completely filled out the forms. In addition, he said, the documents for previously recognized unions were being reviewed with the intention of withdrawing legal status from organization that had failed to properly comply with ministry requirements under the previous administrations.

Thus, here, as in other areas, the El Salvador government is consciously taking steps to reduce the degree to which workers are afforded their internationally recognized rights.

(e) Virtual impossibility of calling legal strikes.

Article 553 of the Labor Code specifically forbids strikes except as allowed elsewhere in the code. Articles 480 through 515 create a series of steps which must precede a strike; these steps are, in practice, impossible to accomplish:

The right to strike for the private sector is provided for by law and is freely exercised in practice, despite cumbersome, time-consuming legal procedures. As unions routinely fail to fulfill these requirements, almost all strikes are declared illegal.

1989 Country Report at 586.

Forcing the label of illegality on every strike has practical consequences. For example, even the most recent State Department report justifies the use of troops and police to force strikers out of factories, but only in where the strike itself is illegal: "In cases where [factory occupation] is part of an illegal strike, security forces have intervened to remove workers and protect factory premises."

1989 Country Report at 586.

(f) Lack of remedy for employer violations. Article 58 provides that the only remedy for the improper discharge

of an employee is severance pay of one month's pay for each year of service. There is no provision of reinstatement and back pay; that is, there is neither restitution for the victim nor deterrence to the wrongdoer.

(g) Treatment of partisan politics as outside the scope of legitimate union activity. Article 229(a) of the Labor Code expressly bars unions from participating in partisan politics. The significance of this provision can be understood by considering the degree that the AFL-CIO, its major affiliates, and the major independent unions actively take part in U.S. domestic politics. To bar political participation by workers' organization assuredly interferes with the right to associate and organize, as political action is one of the primary aims of the union movement throughout the world.

(2) El Salvador continues to refuse to cooperate with ILO investigations.

El Salvador has consistently failed to cooperate with International Labor Organization investigations of complaints:

In 1989 the Committee on Freedom of Association (CFA) of the International Labor Organization (ILO) considered four cases based on complaints . . . The CFA has deplored the violence that has prevailed in the country which, according to the Committee, has prevented the full exercise of the rights guaranteed by the Convention. The Committee has considered it unacceptable that the Government had not provided detailed and complete answers when the lives and freedom of trade union leaders were at stake, and urged the Government to bring detainees to trial without delay and to initiate independent judicial inquiry into the murder and disappearances of numerous trade unionists named in the complaint.

1989 Country Report at 586-7.

A review of the actual ILO decisions makes clear that, if anything, the 1989 Country Report understates the degree of El Salvador's lack of cooperation with the ILO's Freedom of Association Committee (which is the international body charged with monitoring respect for workers' rights).

The government's response to ILO enquiries regarding apparent labor rights violations typically amount to mere unsubstantiated assertions that the violation did not occur, that no legal action was taken because no witnesses could be found, or that the workers illegally detained have been released (or strikes illegally interfered with have been settled). In many cases, even these inadequate responses were provided only after years of repeated requests by the ILO

committee. In a large number of cases, moreover, the government did not respond at all.

For example, case no. 953 was presented to the Freedom of Association Committee in July 1980. Among the allegations was that on June 24, 1979, armed forces had intervened in a strike by rural workers demanding wage increases at the enterprise El Granjero S.A., and had killed Tomás Rosales, one of the union leaders. 211th Report, ¶ 414. The Salvadoran government did not even respond to the Rosales allegation until 1987, and, while asserting that a judicial investigation had concluded that no crime had been committed, the government made no accounting for the whereabouts of Mr. Rosales. 251st Report, ¶ 344.

death
①

In case no. 973, originally presented to the ILO committee in April 1981, it was alleged that uniformed members of the Salvadoran National Guard had murdered the following members of the Salvadoran Peasants' Central (CCS): José Santos Tiznado, Pedro Gonzalez, Manuel Antonio Carrillo, and José Antonio Carrillo. 211th Report ¶ 395. The government at first claimed to be investigating these cases, then stated that it had no information. 234th Report ¶ 395. In 1986, the government stated that it had concluded that it was not possible to identify the three people who murdered the Carillos. 243rd Report ¶ 381. In 1987, the government stated that it was not possible to identify the murderers of Tiznado and Gonzales because of a lack of witnesses. 251st Report, ¶ 344.

death
④

Case no. 1168 was brought to the ILO committee in October 1982, complaining of the abductions of twenty different union leaders.¹⁵ As of 1989, following numerous requests to the Salvadoran Government and an ILO direct contacts mission, the government had provided no information concerning the fate of the unionists, nor had it even initiated an independent judicial inquiry into the cases as requested by the ILO. The ILO committee condemned the government's inaction as follows:

The Committee has shown considerable patience and comprehension in relation to the situation facing El Salvador. . . . However, the fact remains that no substantive information has been forthcoming on the 20 named persons. . . . The Committee finds it unacceptable that a member State would not provide detailed and complete answers when the lives and freedom of trade union leaders and trade unionists are at stake.

265th Report ¶ 256.

¹⁵ These were: Elsy Marquez, a leader of FENASTRAS, abducted by heavily armed men in the center of San Salvador in 1980 and subsequently seen in the custody of the rural police; José Sanchez Gallegos, General Secretary of the Revolutionary Union Front (FSR), kidnapped in Guatemala; Francisco Gomez Calles, a worker in the Izaloc textile factory; José Vidal Cortez, an officer of the Intesa Textile Trade Union; Luís Adalberto Diaz, General Secretary of the People's Liberation Movement; Hector Fernandez; Hector Hernandez, an officer of SETRAS; Jorge Hernandez, a member of STISSS; Sivestre Ortiz, officer of SETRAS; Maximiliano Montoya Pineda, a member of SETRAS; Raul Alfaro Pleitez, General Secretary of the union at the Constancia, S.A., brewery; Roberto Portillo, a leader of SIES; Antonio Quintanilla, former leaders of the Constancia brewery union; Santos Serrando, head of the union at Rayones, S.A.; Auricio Alejandro Valenzuela, an office of SIES; Rene Pompilio Vasquez, a member of STISSS; Manuel de la Paz Villalta, General Secretary of STISSS; and Jose Alfredo Cruz Vivas, a member of STISSS.

Case no. 1273 was filed in April 1984, complaining of the abductions and murders of a number of union leaders.¹⁶ Although the government claimed in 1986 that suspects in one of the murders had been arrested and brought to trial, the results of the trial were never reported. The government failed to provide any information regarding any of the other cases.

Finally--and sadly typical of the Salvadoran government's policy--is ILO case no. 1016, complaining of Rodolfo Viera, Secretary General of the Salvadoran Communal Union, and Michael Hammer and Mark Pearlman, officials of the AFL-CIO (211th Report, ¶ 419).

While two members of the National Guard were convicted and sentenced for these killings (and subsequently released under a government amnesty on December 19, 1987), no legal action has been taken against the officers and other individuals who have been identified as present at the scene of the crime and its probable authors: Ricardo Sol Meza, Hans Christ, National Guard Major Denis Moran, Lt. Isidro Lopez Sibrian, and Capt. Eduardo Alfonso Avila, all associates of ARENA party leader Major Roberto D'Aubuisson.

¹⁶ These were: the murder of Marco Antonio Orantes, Secretary of the National Union of Workers of the Transport Industry; the murder of José Aristides Mendez, a leader of SUCEPES; the murder of Francisco Mendez, a member of ASTTEL; the bombing of the home of Marta Castaneda, and threats against both her and Marta Alicia Siguenza, members of the SICAFE; the disappearance of Alberto Luis Alfaro, a member of ASTTEL; and the murder of Manuel de Jesús Rodas Barahona, a member of ASTTEL.

leath ③
+ threat ②
disc ①
leath ①

According to Amnesty International, the court refused to accept sworn testimony from the wife of a former U.S. military attache directly implicating at least one of these officers in the killings (Amnesty International, "El Salvador: 'Death Squads'-AGovernment Strategy," October 1988).

(3) Non-violent denials of collective bargaining rights (privatizations, firings, strike-breakings, refusals to bargain, plant shutdowns).

The overall tone of the collective bargaining system in 1989 is reflected in the following report by the AFL-CIO:

Even under Duarte, retaliatory firings were considered to be a major problem by all segments of the labor movement. Since the election, trade unionists report that such employer retaliation has increased dramatically . . .

* * *

[UNOC believes that] employers have interpreted the ARENA victory as a green light to proceed with illegal firings and reprisals without fear of serious government sanctions. In the public sector, UNOC leaders claim there is a blacklist compiled by the police to avoid hiring people thought to be pro-union.

* * *

According to UNOC representatives, resistance by private employers to collective bargaining began to increase even before the election, in anticipation of an ARENA victory. In the case of the Robertone S.A. de C.V., a plastics manufacturing company, striking workers from the CGT were told that "after the election, D'Aubuisson will take care of this union problem. We know where you live." The strike was initiated because management refused to recognize the union and engage in bargaining. Forty-eight employees were fired for union activity, and twenty others were individually threatened with death if they refused to abandon their strike.

threat
①
case ①

In another example, the owner of Cancun company shut down operations in July, in response to the request of the National Union of Commercial Workers (SINATRAC) to negotiate a collective contract. Despite the fact that the court declared the action illegal, the workers reportedly did not have the support of the officials of the Labor Ministry to return to work.

Another example of the government's labor policy is set out in the appendix beginning at page 111--a list of 135 union officers recently fired by the agricultural ministry. There have also been massive layoffs (generally accompanied by hiring non-union people) at the Banco Capitalizador, the Banco Comercial, the Acero, S.A., factory in Zacatecoluca, the INSINCA Textile factory, the San Salvador municipal government, and the Public Health Ministry. The fact that in nearly every case the work continues to be performed, albeit by new hires, shows that these firings are simply a pretext for destroying the unions.

- (4) Union offices have been searched, ransacked, and destroyed either by the government or in the absence of protection by the government.

1989 was an open season for attacks on union headquarters. The most notable, of course, was the bomb which went off at noon on October 31, killing ten people in the FENAS-TRAS office cafeteria (including Secretary General Febe Elizabeth Velasquez) and wounding more than thirty others. The bombing was preceded by broadcast and televised death threats against both the federation and Ms. Velasquez personally, issued by a group called the Civic Patriotic Committee. It was also preceded by a dynamite attack on February 22 and a rocket attack on May 9.

death
⑩
threat
①

The government's response to the October 31 murder was a dry-run of the tactics it would use after it murdered the six Jesuits and their housekeeping staff several weeks later: blaming the victims for refusing to cooperate in the investigation, and making clear that no leads would be produced absent overwhelming U.S. pressure. Unfortunately, in contrast to the Jesuits' case, that pressure has not existed.

death
②

Although the October 31 victims will join the tens of thousands of other unsolved murders in recent Salvadoran history, that does not end the significance of the murders. Under the principles discussed above, the fact that the FE-

There is more, however. In addition to the three anonymous attacks on the FENASTRAS office, the government conducted a large number of open attacks on union offices, attacks which typically included both thefts and destruction of property. Among the most significant of these government attacks were the following:

- | | |
|-------|---|
| 2/28 | Offices of four different federations shot up by the army and national police |
| 3/26 | Government raids offices of FENASTRAS and FUSS and surrounds the UNTS office |
| 3/26 | Government surrounds UNTS office |
| 4/20 | Army raids FUSS, FESTIAVSES and CODYDES offices, and blockades UNTS and AGEPYM offices; 15 members arrested |
| 4/21 | Local office of bank-workers union ransacked by Treasury police, more than \$11,000.00 cash taken, plus papers and office equipment |
| 5/25 | FENASTRAS and FUSS offices raided by national police, UNTS and COACES offices surrounded |
| 6/6 | Army raids SOICSCES office and steals documents and money |
| 9/24 | Riot police search and rob ANTMAG office |
| 11/21 | FENASTRAS office raided and furniture and equipment stolen |
| 11/13 | Army and treasury police raid office of ASPS and steal medicines and office equipment |

11/16 UNTS office raided by treasury police; medicine
and office equipment stolen

11/16 FEASIES office ransacked

11/19 STISSS office ransacked

11/21 FENASTRAS office raided and everything stolen

12/1 ANTA office ransacked

As the ILO has repeatedly emphasized in cases coming from El Salvador itself, even an otherwise justified search of a union office is improper if not conducted pursuant to a warrant issued by an independent judicial authority upon probable cause. Apparently none of these invasions was authorized by a warrant, and none of the searches produced evidence of either individual or organizational guilt. These facts reinforce the conclusion that the actions were taken merely to harass and intimidate, rather than for any legitimate purpose.

We emphasize additionally, however, that even if the incidents began as legitimate, properly authorized searches, there is no justification for the ransacking or the thefts. Again, the only possible conclusion is that in 1989, far from taking steps to ensure the integrity of union offices, the Salvadoran government repeatedly violated that integrity itself as well as condoned violations by unknown parties.

- (5) The government continues to arrest unionists on unsupported allegations of FMLN activity and torture unionists arrested for whatever reason.

Direct government violations of union rights, in addition to the office attacks addressed in the previous section, fall into two related categories: arbitrary arrests, and tortures.

We have placed in the appendix a partial list of anti-union actions suffered in El Salvador in 1989 and early 1990. App. 13-46; App. _____. As can be seen, a large number of these involved unionists who were arrested on one pretext or another.¹⁷ The Salvadoran government will not deny that the arrests took place, nor show that they were followed by trials. Under the ILO principles discussed above, the conclusion must be that the rights to organize and bargain collectively were violated through the repeated arbitrary

Jail (24)

¹⁷ Worthy of special note are two cases discussed by AIFLD in its April 12, 1990, report. In the first, on January 23 of this year the Vice-Minister of Public Security personally ordered that the headquarters of the Democratic Workers Central (CTD) be entered by the National Guard and the entire 24 member executive committee arrested. The pretext was that they were holding an unauthorized meeting, despite the fact that they had, and produced for the troops, a proper written permit. They were held for more than 24 hours, presumably as a notice of the government's willingness to arbitrarily punish any unionists it chooses.

Threat (1)

The second case is that of Luis Grande Presa, the General Secretary of the General Confederation of Labor (CGT). The military forcibly entered his house on February 1, terrorizing Mr. Grande Presa and his family. Among other things, their search turned up a copy of a book that Mr. Grande Presa had himself written, and an AIFLD training film. According to the military, these were evidence of ties to the FMLN. *(Fam)*

arrests of union activists.¹⁸ ILO 251st Report, Cases 953 etc., ¶ 351 (El Salvador); ILO 243rd Report, Cases 953 etc., ¶ 405 (El Salvador).

Our entitlement to have this petition reviewed on the ground that the El Salvador government inflicts torture on unionists has two separate grounds. First, we are including in the appendix the sworn statements of seven unionists providing the details of the tortures inflicted on them by the government while in government custody.¹⁹ The Salvadoran government cannot even raise a question of fact (i.e., create for itself the right to challenge our statements at a hearing) unless it presents credible sworn statements from the interrogators claiming that the beatings, etc., did not occur. In any event, the statements we submit entitled us to review regardless of the Salvadoran government response.

In addition to the evidence which is enclosed, there is the U.S. State Department's admission that there are "confirmed cases of torture and mistreatment of prisoners . . . " in El Salvador:

Jail
18 Of course, in some cases the record itself will show that even the ostensible purpose of the arrest was to punish the unionist for being a member of the union. See, for example, the May 29, 1989, police report reciting that José Basilio Chévez was arrested "for belonging to the union at ANTEL (ASTTEL)." ["por pertenecer al Sindicato de ANTEL (ASTTEL)."] App. 73.

19 These are: Mario Ernesto Chávez, José Basilio Chévez, Ricardo Alberto Lazo Quevedo, Alfredo Oswaldo Lemus, Jorge López, Adalberto Martínez, José Tomás Mazariego. App. 68-110.

There were many charges and reports of abuse by the security services, with most asserting both physical and psychological torture. Alleged abuses include deprivation of food and sleep, threats against the detainee or his family, prolonged interrogation while blindfolded, being forced to stand for long periods of time, forced exercise, and blows to the ears. . . . Instances of severe beatings, rape, choking, use of a hood to asphyxiate, injection with unidentified drugs, and electric shock were also reported.

While there are confirmed cases of torture and mistreatment of prisoners by members of the security services, it is not believed that there is a government policy that permits or condones torture or mistreatment of prisoners.

1989 Country Reports at 574-5 (emphasis added).

Given the fact that the security forces do torture prisoners, it is quite easy to determine whether the Salvadoran government policy condones or permits what its officials do on government time in government jails to government prisoners: if every allegation of torture is conscientiously investigated, and if every confirmed case of torture is accompanied by the criminal prosecution of the torturer, one might say the government does not "condone or permit" the torture that occurs. Since El Salvador is not going to prove that it systematically criminally prosecutes its torturers,²⁰ the State Department's 1989 confirmation of torture at the hands of the government forces establishes a

²⁰ In this connection, it is worth noting that "14 of the 15 officers in El Salvador's primary commands have risen to their positions despite having had documented abuses of human rights carried out by troops under their command, including Chief of Staff Rene Emilio Ponce, the Minister and two Vice Ministers of Defense, the heads of the three security forces and five of the six major brigades." United States Congress, Arms Control and Foreign Policy Caucus, "Barriers to Reform: A Profile of El Salvador's Military Leaders."

lack of the respect for human dignity which is necessary under ILO standards if union rights are to be considered to exist.

- (6) There continues to be a pattern of unionists being abducted and killed by unknown persons, without investigation by the government.

In addition to the murders at the FENASTRAS office, there were numerous other abductions and killings of unionists as to which the government denies responsibility.²¹ Indeed, the State Department admits that during the first eight months of 1989 there were nearly 60 apparently politically motivated killings done by persons other than the FMLN or the Salvadoran government. 1989 Country Reports at 571.

Among them was a leader in the teachers' union:

One case drew special attention and grave concern. On April 5 Maria Cristina Gomez, a school teacher and member of the National Teacher's Union (ANDES), was kidnapped by unidentified persons in a Jeep Cherokee wagon as she was leaving her school in Ilopango. Later that day, her body was discovered near a cemetery. An autopsy showed she had been severely tortured and raped before being shot four times. . . . By year's end there had been no progress in identifying her assailants or the motive for her abduction and death.

1989 Country Report at 572-573.

²¹ This continues a long-standing practice. Note, for example, that the GSP Subcommittee's response to the 1988 Americas Watch petition admits that Eulalio Antonio Martinez Vasquez (ANIS) and José Gilberto Pérez Ramos (Arcitex Building Supplies Factory Union) were murdered by (or on behalf of) business management, and by discounting the evidence of government involvement, it properly implies that the following other murder victims were killed as a result of business opposition to their collective bargaining activities: Luis Armando Lemus Urrutia (SICAFE), Edwin Ernesto Vargas Aguilar (SICAFE), and Julio Ernesto Garcia Lucero (Bakers).

Also specifically discussed in the report were the abductions of two leaders in the union at the Lido plant, affiliated with FEASIES:

On August 19, ~~Sara Cristina Chan Chan~~ and Juan Francisco Massi disappeared from in front of a ~~factory~~ near the Ilopango Air Force base and have not been seen or heard from since.

1989 Country Report at 574.

In our list of anti-union actions are a substantial number of cases similar to those just discussed. App. 13-46. From these cases, two inferences are possible: that the unionists were abducted in reprisal for their union activity, or random violence in El Salvador exists at a level to foreclose any notion of personal security and, therefore, any finding that workers are afforded their rights to associate, organize, and bargain collectively.

CONCLUSION

This petition should be granted and El Salvador should be removed from the list of beneficiary developing countries under the General System of Preferences.

Respectfully submitted,²²

Phillip R. Kete

Phillip R. Kete
Attorney at Law
239 Park Avenue
Takoma Park, Md. 20912
(301) 891-2295

Todd Howland (PRK)

Todd Howland
Attorney at Law
2675 West Olympic Boulevard
Los Angeles, Calif. 90006
(213) 387-9189

²² Correspondence concerning this petition should be served on counsel of record, with copies sent to:

Mr. Pedro Cruz
Salvador Labor Office
1300 Connecticut Avenue, N.W.
Room 808
Washington, D.C. 20036

Labor Coalition on Central America
P.O. Box 53407
Temple Heights Station
Washington, D.C. 20009