

**INTERNATIONAL LABOUR
CONFERENCE**

**SEVENTY-SIXTH SESSION
GENEVA, 1989**

RECORD OF PROCEEDINGS

**INTERNATIONAL LABOUR OFFICE
GENEVA**

20. As was indicated above, the interventions concerning the supervisory system showed a notable improvement over the discussions of previous years on the subject. Employers' members, Workers' members and Government members, in the main, recognised the quality of the work of the Committee of Experts carried out faithfully with respect to its tradition of independence, objectivity and impartiality. These principles applied to the Conference Committee, which continued to apply the methods of work which had been agreed upon in 1980. Appreciation had been particularly expressed for the part of the Committee of Experts' report (paragraph 7) where it indicated that its own working methods included the spirit of mutual respect, co-operation and responsibility which had consistently prevailed in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards, whose proceedings the Committee took fully into consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also in respect of specific matters concerning the way in which various States fulfilled their standard-setting obligations. The Employers' and Workers' members noted with interest this clarification made by the Committee of Experts on the relationship of the two supervisory bodies and of their roles. Many Government members referred to this. The Government member of the USSR, after recalling this numerous interventions during previous sessions of the Conference, welcomed the above-mentioned statement of the Committee of Experts on the relationship between that Committee and this Committee. Since, in his opinion, all possibilities for co-operation and interaction between the various supervisory bodies had not yet been exhausted, he hoped that there would be still further movement in this direction.

21. As regarded the interpretation of Conventions, the Employers' members indicated that, if the report of the Committee of Experts was the very basis of the Committee's work, this was not to say that all the opinions and evaluations of the Committee of Experts had to be shared, and different views would be expressed if necessary in concrete cases. The Employers' member of the United States stated, basically, that the jurisprudence of the Committee of Experts was sometimes unstable, evolving and variable. The Employers' member of Sweden recalled the views expressed by the Employers' members on the supervisory system and on the respective roles played by the Committee of Experts and the Conference Committee. Only one body – the International Court of Justice – could make authoritative interpretations of international labour Conventions. Recourse to it had seldom been sought, probably because there had been considerable satisfaction with the way the system functioned. None the less, the role of the International Court of Justice as the ultimate arbiter should always be borne in mind. A Convention had to be interpreted in line with the principles laid down in the Vienna Convention on Treaties (1969), which the speaker enumerated. He drew attention to a representative case he thought showed an over-interpretation of Convention No. 96, based on a faulty reading of the preparatory works many years ago. In his view, this year's report of the Committee of Experts unfortunately contained a number of over-interpretations,

especially regarding basic human rights Conventions and in particular Convention No. 87. Even though his country had not been mentioned in this connection, he thought that some of the comments were inadmissible. In the long term, he believed over-interpretations would only erode the credibility of the supervisory system. A drastic cut was needed in the number of reports examined by the Committee of Experts each year. This should be combined, however, with a rather strict application of the constitutional annual interval where a report had given rise to critical observations. If the Committee of Experts' burden were lightened, then more than one expert would be able to examine the application of a particular Convention. These speakers reiterated that it was neither for the Committee of Experts nor the Office to provide conclusive interpretations of Conventions since the only competent body for this was the International Court of Justice according to article 37 (1) of the Constitution of the ILO.

22. Commenting on the statement of the Employers' member of Sweden, the Workers' member of the United Kingdom was opposed to this stance which he considered dangerous, particularly when it came to a Convention such as Convention No. 87: what was, for some, only a legal nicety was hard reality for workers, for example, when there was imprisonment for having exercised the right to strike. The Workers' member of the Netherlands, referring to the statement of the Employers' member of the United States concerning the changes in the jurisprudence, observed that if it was normal that the doctrine of the Committee of Experts had undergone developments, this in no way meant that one could talk of incoherencies.

23. At the closure of the general discussion, the representative of the Secretary-General stated that the Committee of Experts had itself recognised, and recalled on many occasions – particularly in 1987 when it re-examined its terms of reference, governing principles and working methods – that: "its terms of reference do not require it to give definitive interpretations of conventions, competence to do so being vested in the International Court of Justice by article 37 of the Constitution; nevertheless, in order to carry out its function of evaluating the implementation of Conventions, the Committee has to consider and express its views on the meaning of certain provisions of Conventions". In 1921, in a document to which the Office still referred, it was clearly indicated that no particular authorisation had been granted to it to interpret provisions of Conventions. However, it was considered to be part of the task for which the Office was created to strive to provide the fullest information possible on the intentions of the Committee and the Conference which had drafted the Convention. In this way, the Office considered that there would be greater uniformity in interpretation. Thus the last time the Governing Body has examined the question of the interpretation of Conventions, in 1982, it had concluded that the current practice concerning interpretation was entirely satisfactory. The representative of the Secretary-General indicated that it was within the power of governments disagreeing with the interpretations given by the supervisory bodies to have recourse to the International Court of Justice. In two cases, the Committee of Experts had drawn attention to this option. On the questions of the right