

INTERNATIONAL LABOUR
CONFERENCE

SEVENTY-NINTH SESSION
GENEVA, 1992

RECORD OF PROCEEDINGS

INTERNATIONAL LABOUR OFFICE
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be followed (including, whether the Governing Body would be involved); whether it would be a court of first or of last jurisdiction; and the effect of its judgments.

19. The Government member of the Syrian Arab Republic was in favour of setting up an article 37 (2) tribunal. The Workers' member of Norway stated that such a tribunal should have a tripartite basis, and that it would make the ILO's supervisory machinery more complete. The Workers' member of Finland stated that until recently the established interpretations made by the Committee of Experts have been considered binding by member States until the International Court makes a final decision; however, there was now a need for a special tribunal for speedy resolution of disputes in cases such as those involving Germany or the United Kingdom, where governments did not recognise the interpretations made by the supervisory bodies – including special commissions of inquiry – but at the same time failed to appeal to the International Court of Justice. The Government member of Germany did not believe reliance on the Vienna Convention would lead to ILO Conventions losing value.

20. The representative of the World Federation of Trade Unions (WFTU) referred to the quasi-judicial role of the Committee of Experts which allowed the present tripartite Committee to aim through its debates at encouraging member States to apply Conventions effectively rather than condemning them. In his view, establishing an article 37 (2) tribunal would accentuate the judicial character of the supervisory system and made the procedures less flexible; there would be problems if executory judgments were pronounced against governments. Conventions were the fruit of political compromise reached in a tripartite framework and should be supervised too in a tripartite manner: existing mechanisms should be improved but not weakened.

21. The Government member of Iceland, speaking on behalf of the Nordic Governments (Denmark, Finland, Iceland, Norway and Sweden) considered it preferable to resolve problems in the spirit of mutual respect, cooperation and responsibility than to resort to an article 37 (2) tribunal. The Government members of Pakistan and Portugal emphasised the importance of dialogue between the two Committees, and if that did not resolve problems, solutions other than resort to the International Court of Justice should be sought. The Government member of the United States shared the view of the Nordic governments and considered a tribunal would be no more legally definitive than the Committee of Experts and that it could undermine the key role of the latter in the supervisory process. The Government member of Iraq considered the current machinery based on dialogue preferable to a more judicial one: if after a study it were decided to set up a tribunal, it should be competent only for interpretation and not for dispute settlement; interpretation should be a matter for legal experts, but the Committee of Experts had in certain cases gone a long way in interpreting Conventions beyond the true meaning of the actual text, which could create problems for some countries and discourage them from ratification. The Government member of Morocco doubted the need to create another body: the current system had proved its effective-

ness, dominated by the spirit of pragmatism and dialogue; and the qualifications for judges of a tribunal would be the same as those for members of the Committee of Experts; in addition to which, a tribunal would risk bringing greater rigidity into the system at a time when flexibility is wanted. The Employers' member of the United States also considered dialogue preferable to implementation of article 37 (2), which he believed would lead to an alternative appeals procedure and would have the effect of diminishing the stature of the Committee of Experts. He recalled that article 37 (2) was included in the Constitution at a time when it was uncertain whether the ILO would enjoy direct access to the advisory jurisdiction of the International Court reconstituted as a United Nations organ; and the Governing Body had taken no action on the procedure because access to the Court was in fact provided for.

22. The Employers' member of the United States stated that the Committee of Experts had an expansive application of the right to strike, even though the legislative history of Convention No. 87 did not relate to it. He said that the Committee of Experts had first mentioned as an observation the right to strike being contemplated by the Convention more than a decade after the adoption of Conventions Nos. 87 and 98, and in the meantime many countries had ratified them with no knowledge that the right to strike was involved. He stated that from 1960 through the 1980s the Committee of Experts had concluded that those Conventions contain an ever-widening right to strike, including sympathy, political and solidarity strikes, and that they applied a narrower and narrower definition of "essential services". He wondered at what moment evolving Committee of Experts' interpretations became "valid and generally recognised". On behalf of the Employers' members, he stated it was preferable to address these questions in the context of specific cases. It was in the interests of the Committee that the Committee of Experts should explain the basis for their decision making more clearly and listen to this Committee's concerns in "the spirit of mutual respect, cooperation and responsibility".

23. The Workers' members emphasised their support for the working methods and principles applied by the experts as a whole, including the right to strike.

24. The Workers' member of the United Kingdom observed that a State which does not agree with the Committee of Experts' views may take the matter to the International Court of Justice, but it should not expect the present Committee to contradict the Committee of Experts on points of law. The right of the present Committee to differ on interpretation does not extend to individual governments, as the standard-setting machinery could not exist in those conditions.

25. The representative of the Secretary-General stated that the question of an article 37 (2) tribunal would be studied in detail by the Office and submitted in due course to the competent bodies.

(iii) Recent trends: democratisation and tripartism

26. The Committee reflected further on the continuing evolution of the international environment in