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RECORD OF PROCEEDINGS

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Committee's mention of it last year. It was recalled that ratified Conventions should be fully applied in conformity with international law, and special concern was expressed as to matters of freedom of association, discrimination and safety and health.

57. The Workers' member of Argentina observed that the general part of the Committee of Experts' report did not deal this year with offshore installations, seafarers on board ships flying flags of convenience, or fishing workers. The Committee's attention was nevertheless drawn by the representative of the Secretary-General to current consideration being given within the Organization to possible new maritime standards, and to the Committee of Experts' comments to individual States on the application of various Conventions to seafarers. The observer of the World Federation of Trade Unions stated that the exclusion of provisions of ratified ILO Conventions or restriction or abolition of freedom of association in export processing zones or other special economic zones was a violation not only of ILO Conventions but also of the Vienna Convention, which provides that a treaty must apply throughout the territory of a State.

(xiv) Freedom of association

58. The Employers' members discussed the issue of the interpretation of Conventions (see above, section I (ii)), particularly in connection with the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), and the question of the right to strike. They indicated that they had consistently held the view that Convention No. 87 does not regulate the right to strike. The text of the Convention did not mention it, and the preparatory work showed the Conference had reached no consensus on the matter. Nor, in their opinion, could there be recourse to "relevant rules of the organization" under Article 5 of the Vienna Convention, since in this case there were no such rules, and under the related ILO procedures it was clear that the views taken by the non-governmental constituents (i.e. employers' and workers' organizations) would conflict. According to the Employers, Convention No. 87 had been interpreted as incorporating the right to strike 13 years after its adoption. Where there was doubt, the principle of international law *in dubio mitius* should be applied so as not to exaggerate the obligations of the Convention. However, the Committee of Experts had, the Employers stated, considered that a restriction of strikes was admissible only within very narrow limits, which was to the Employers legally incomprehensible. They hoped these questions would be dealt with in next year's article 19 general survey.

59. The Employers' members stated that in the legal order of the States, there were very different models for the legal classification of strike and lock-out. One model could be sketched out as follows: a strike was regarded as a basic right that was established above the generally applicable legal order. In such a conflictual order, the social partners would have an antagonistic and irreconcilable stance. Under another model, labour disputes would also be part of a generally applicable order, a legal order which saw itself mainly as a peace order. Rights and

duties of individuals and of interest groups would be balanced in relation to the rights of others and of the entire society. There were many variants of these models. Nothing indicated that the extreme conflictual model that set hardly any limits to strikes should be interpreted from Convention No. 87. Referring to the statement of a Workers' member of Germany, that the Employers were only opposing a certain interpretation of strikes because this would not coincide with their own interests, the Employers considered it natural that they should attend to their own interests and were directly affected by strikes, as they normally were directed against them. However, in today's production which was increasingly based on the principle of the division of labour, strikes more and more often also affected individuals and parts of society which were not at all involved. To this extent, it was much more important than in the past that the State established rules of law. It seemed strange that one speaker pointed out that the Employers had not been able to fully prove that the Vienna Convention was relevant for interpretation. In view of the fact that a legal question was not open to proof, this was not a task that the Employers' members had to undertake. As the applicability of the Vienna Convention was widely accepted and the Experts themselves were referring to it, there was no need for further comment. The Employers' members had already commented sufficiently on Article 5 of the Vienna Convention. Everybody was also familiar with the importance of Article 4 on non-retroactivity of the Vienna Convention. However, the Committee of Experts considered that a restriction of strikes was admissible only within very narrow limits. On page 186 of the English version of their report they state "that any prohibition or restriction of strikes should be confined to the following three cases: strikes in essential services in the strict sense of the term, namely those whose interruption would endanger the life, personal safety or health of the whole or part of the population; strikes by public servants acting in their capacity as agents of the public authority; and strikes during an acute national crisis". This abstract basic formula was further developed until a very exactly defined right to strike arose which had a tendency to allow nearly any strike and therefore forbade any restriction. According to the Experts, a State that used a different yardstick violated its international duties. The Employers had repeatedly upheld that this was juridically incomprehensible. In substance, it appeared unacceptable to any State that its possible action be restricted to cases of endangering life, personal safety or health of the entire population or parts thereof. The Employers thought that it was a fundamental duty of every State to protect its citizens, even individuals, as comprehensively as possible. This was one of the basic reasons for the existence of a State.

60. The Employers' member of the United States considered that the decisions of the Governing Body Committee on Freedom of Association were an inappropriate basis for defining the scope of the right to strike under Conventions Nos. 87 and 98, since those decisions depended on principles of the ILO Constitution and not the terms or legislative histories of the Conventions. The Employers' member of Turkey found the Committee of Experts' conclusions questionable, particularly with regard to Conventions

Nos. 87 and 98: the legislative history did not justify the position taken as to sympathy strikes, political strikes, and a strict notion of essential services. The Committee of Experts did not seem to accord employers their reciprocal right under Article 3 of Convention No. 87 to have recourse to lockouts. In view, nevertheless, of the link with freedom of association, a new Convention should be considered to regulate the right to strike. It would also be desirable for the general survey on Conventions Nos. 87 and 98 next year to give clear, reasoned explanations as to the right to strike, taking account of all the views expressed in this Committee.

61. The Workers' members strongly supported the views of the Committee of Experts with regard to the right to strike, which were in accord with the case-law of the Committee on Freedom of Association. They regarded the Employers' criticism as politically rather than legally motivated. The right to strike was inseparable from the notion of freedom of association, and the Workers hoped the next general survey would consolidate the principles already established on this point. They fully shared the views of a Workers' member of Germany, that various principles of freedom of association were regarded as part of customary law; the Committee of Experts' interpretation of the right to strike in Convention No. 87 had been accepted over many years, and this made it relevant under article 31(3)(c) of the Vienna Convention. They also agreed with a Workers' member of Poland that the right to strike had to be seen in the light of the principle *ubi jus ibi remedium* as a last resort means of exercising the substantive rights of Conventions Nos. 87 and 98. They equally agreed with another Workers' member of Germany that the right to strike could not be dissociated from other fundamental rights of workers; in fact, it was impossible to characterize the right to strike as interpreted by the Committee of Experts as an unlimited one.

62. The Government member of Germany observed that if the right to strike was contained implicitly in Convention No. 87, it was a matter of concern that the Convention was interpreted to imply not "the" but "a certain kind of" right to strike.

63. The Workers' member of Colombia reminded the Committee of the vital importance of the right to strike for workers where large numbers of trade unionists had even been assassinated for daring to exercise their rights. The Workers' member of Pakistan observed that, if workers are forbidden to exercise their right to strike, they are subjected to forced labour in violation of Conventions Nos. 29 and 105. He noted that the right to strike is a fundamental one in UN instruments, but underlined that the strike is not an end in itself – rather a means of achieving real dialogue between the parties.

64. Two Workers' members of Poland referred also to the continuing problem of redistribution of trade union assets in countries where union pluralism has been restored. They urged the supervisory bodies to take an active stand in this matter so as to assist in the dismantling of the former monopolistic trade unions.

(xv) *Application of the Employment Policy Convention, 1964 (No. 122)*

65. The Committee discussed the Committee of Experts' general comments as to the implementation of a policy for full, productive and freely chosen employment. It fully agreed that employment policy should be the object of concertation with employers' and workers' organizations, and that many factors, such as training and economic and collective bargaining policies, must be taken into account, involving various government ministries and agencies.

66. The Employers' members again questioned the inclusion of a special section on Convention No. 122 in the general part of the Committee of Experts' report, although they found what was said realistic, particularly as to the countries in transition to a market economy. Labour market policy alone cannot create lasting jobs. The social partners, by the conclusion of collective agreements, themselves determine whether jobs are created or lost. The Employers' member of the United States stated that there was a need to open to change, when faced with the dynamic world economy, with ready availability of technology, instantaneous telecommunications and rapid transportation. Such an economy had resulted in a great deal of structural adjustment and governments, employers and workers were no longer in a position to address the consequences of these changes as if they still lived in closed economies. A single policy prescription was not necessarily the solution to these changes.

67. The Government member of Germany attributed the need for this section to the fact that the terms of the Convention allow the formulation of hypotheses rather than the establishment of violations.

68. The Workers' members hoped the Committee of Experts would continue to draw attention in its general report to Convention No. 122, insofar as employment and the right to work are a prerequisite to the existence of various other workers' rights: occupational safety and health, the right to organize, the right to strike. Unemployment could not be treated as a by-product of economic growth: in some countries it was no longer due only to recession but was becoming part of the system, and it behoved this Committee to voice concern for the unemployed and the poorest people in the world. The Workers' members pointed to the need under Article 3 of the Convention for governments to consult in advance organizations and representatives of different regions and sectors concerned, including the informal sector which is often overlooked. They detected a positive change in the attitudes of high officials of international institutions responsible for structural adjustment programmes (the International Monetary Fund and the World Bank) as to the impact of such programmes on the most disadvantaged sections of the population, although much remains to be done in this respect. The ILO stands for the social objectives which must be safeguarded in the face of enforced "liberalism" disguised as structural adjustment, and the 1994 High-Level Meeting in the ILO would deal with this aspect. Action on the part of the international community was needed in particular to ease the burden of foreign debt on developing countries.

PROPOSED CONVENTION CONCERNING THE PREVENTION
OF MAJOR INDUSTRIAL ACCIDENTS: ADOPTION

Original Arabic: The PRESIDENT – We move on now to the adoption of the proposed Convention concerning the prevention of major industrial accidents. I submit the Preamble for your approval. If there are no objections I shall consider it adopted.

(The Preamble is adopted.)

Original Arabic: The PRESIDENT – We shall now adopt the proposed Convention, Article by Article.

(Articles 1 to 22, are adopted seriatim.)

Original Arabic: The PRESIDENT – We shall now adopt the proposed Convention as a whole. If there are no objections, I shall consider it adopted.

(The proposed Convention is adopted as a whole.)

Original Arabic: The PRESIDENT – In accordance with article 40, paragraph 7, of the Standing Orders of the Conference, the proposed Convention concerning the prevention of major industrial accidents as adopted by the Conference, will be submitted to the Drafting Committee of the Conference for the preparation of the final text.

PROPOSED RECOMMENDATION CONCERNING THE PREVEN-
TION OF MAJOR INDUSTRIAL ACCIDENTS: ADOPTION

Original Arabic: The PRESIDENT – We now move on to the adoption of the proposed Recommendation concerning the prevention of major industrial accidents, starting with the Preamble. If there are no objections I shall consider it adopted.

(The Preamble is adopted.)

Original Arabic: The PRESIDENT – We shall now adopt the proposed Recommendation, Paragraph by Paragraph.

(Paragraphs 1 to 6 are adopted seriatim.)

Original Arabic: The PRESIDENT – We shall now consider the proposed Recommendation as a whole. If there are no objections. I shall consider it adopted.

(The proposed Recommendation is adopted as a whole.)

Original Arabic: The PRESIDENT – In accordance with article 40, paragraph 7, of the Standing Orders of the Conference, the proposed Recommendation concerning the prevention of major industrial accidents as adopted by the Conference, will be submitted to the Drafting Committee of the Conference for the preparation of the final text.

RESOLUTION CONCERNING EXPOSURE TO AND SAFETY
IN THE USE OF BIOLOGICAL AGENTS AT WORK, SUBMITTED
BY THE COMMITTEE ON THE PREVENTION OF MAJOR IN-
DUSTRIAL ACCIDENTS: ADOPTION

Original Arabic: The PRESIDENT – We shall now move on to the adoption of the resolution concerning exposure to and safety in the use of biological agents at work. If there are no objections, I shall consider this resolution adopted, taking into account the reservations expressed.

(The resolution is adopted.)

Original Arabic: The PRESIDENT – We have now completed the consideration of the report, the proposed Convention and Recommendation, and the resolution submitted by the Committee on the Prevention of Major Industrial Accidents. I express my gratitude to the Chairman, the Vice-Chairmen, the Reporter, the members of the Committee and the staff of the Secretariat for the excellent work they have done, with special thanks to the experts. I would like to assure Mr. Campbell, the Employer Vice-Chairman, that we will not do to him what the people did to Socrates. I thank the Secretariat for the excellent work they have done.

REPORT OF THE COMMITTEE ON THE APPLICATION OF
STANDARDS: SUBMISSION, DISCUSSION AND ADOPTION

Original Arabic: The PRESIDENT – We shall move on to the second item on our agenda – the report of the Committee on Application of Standards, contained in *Provisional Record* No. 25.

It is my pleasure to ask the officers of the Committee to come to the rostrum. The Chairman, Mr. Pérez del Castillo, Government member, Uruguay; the Employer Vice-Chairman, Mr. Wisskirchen, Employers' member, Germany; the Worker Vice-Chairman, Mr. Peirens, Workers' member, Belgium; and the Reporter, Ms. Wiklund, Government member, Sweden.

I give the floor to Ms. Wiklund to submit the report.

Ms. WIKLUND (*Government member, Sweden; Reporter of the Committee on the Application of Standards*) – It is an honour for me to present to this session of the Conference the Report of the Committee on the Application of Standards which appears as *Provisional Record* No. 25.

The Committee was set up under article 7 of the Standing Orders of the International Labour Conference to consider and report on item III on its agenda, "Information and reports on the application of Conventions and Recommendations".

The Committee based its work on the report of the Committee of Experts on the Application of Conventions and Recommendations. As usual, the Committee divided its work into different parts, as is reflected in the Report. Part One began with a general discussion of various aspects of the application of international labour standards. It then discussed the General Survey of the Committee of Experts which this year dealt with the Workers with Family Responsibilities Convention (No. 156) and Recommendation (No. 165), 1981. Lastly, it examined a

number of individual cases relating to compliance by States with their obligations under or relating to international labour standards.

Numerous statements were made during the Committee's general discussion. In many of these statements, opinions were voiced concerning the roles of the supervisory bodies and the complementary mission of the Committee of Experts and the tripartite Conference Committee on the Application of Standards.

The Conference Committee again acknowledged the work done by the Committee of Experts based on the principles of independence, objectivity and impartiality and emphasized again the importance of dialogue between the two Committees.

This year's Conference Committee on the Application of Standards was rather special, in that it was the first time ever that the Committee of Experts on the Application of Conventions and Recommendations was represented. The Chairman of the Committee of Experts, Mr. José Maria Ruda, attended the general discussion and that of the general survey, in accordance with the wish expressed by the Conference Committee last year.

The Committee very much welcomed this development, as a mark of the intensification of constructive dialogue between the committees. Each one of these is an essential element in the ILO's supervisory machinery which according to Mr. Ruda and many others, is the most effective of its kind in any international organization.

The Committee expressed its warm appreciation of this direct contact between the two committees and hoped that the presence of the Chairman of the Committee of Experts will be ensured in the future as well.

The Committee was informed of the consideration being given within the Organization to ways in which the arrangements for requesting Government reports on ratified Conventions under article 22 of the Constitution might be improved. This followed the Committee's discussions in previous years of the difficulties encountered by some governments in fulfilling their reporting obligations.

There was general support for such efforts, although it was emphasized by many members of the Committee, and the Committee was reassured by the representative of the Secretary-General on this point – that any future reforms would in no case be allowed to weaken the quality and effectiveness of the supervisory system.

The Committee understood that a proposed balanced package of measures replacing certain automatic reporting procedures with more selective and objective ones could be foreseen. In this context the Committee wanted to underline the vital part played by employers' and workers' organizations at various stages of the supervisory system.

The question of the interpretation of Conventions was considered further by many speakers, in the light of an Office document submitted last month to the Governing Body, concerning the possibility under article 37(2) of the Constitution of the ILO of setting up a tribunal competent to give interpretations.

Diverse views were voiced in the debate. Some members expressed varying degree of support for a tribunal which, according to them, would speedily resolve disagreements regarding interpretations. Other members questioned the need for a tribunal given

the existing supervisory system. The Committee agreed that the matter required further study.

The ILO's standard-setting policy was dealt with by several members. One innovation of particular interest to this Conference is the participation of a senior official of the International Labour Standards Department in the secretariat of technical committees of the Conference responsible for new instruments. This is seen as a means of improving the drafting of Conventions and Recommendations in the light of the Organization's experience with existing instruments.

Personally, I do welcome this cooperation between the technical and the standards departments. It is a fact that in technical committees which are given the difficult task to formulate international standards on specific subjects, for the majority of members, at least on the government benches, it is their first concrete contact with the ILO and with international standard setting.

With the assistance within the technical committees of experts from both technical departments and the International Labour Standards Department, the risk of confusion and ambiguities in the formulation and later application of standards can be reduced.

The Committee also draws to the attention of the Conference the different views expressed as to flexibility in ILO standards. Many members raised the importance of the principle of universality, both as regards the terms in which international labour standards are conceived and as regards the application in a continuously changing economic and social environment.

In this context, some members stressed the need to review and adapt standard setting and other activities in order to meet the new challenges. Others emphasized the link between economic development and transition, on the one hand, and the maintenance and improvement of social protection, which are the task of ILO standards, on the other.

The link between standards and development was on several occasions explicitly or implicitly referred to during our meetings.

There was, no doubt, widespread agreement in our Committee as to the role of the ILO's standard-setting activities in the fight against poverty and the realization of the objective of social justice which are the Organization's priorities.

Personally, I fully endorse this.

I do, however, think that we have to understand – and also to accept – that an issue as vast as that of poverty alleviation, in some quarters, can be approached from other angles. It is necessary also to consider the way in which we and they – mainly economists – look upon each other.

Perhaps because the mother tongue of our Chairman is Spanish, I have come to think of one of the most widely translated books in the world, namely *Don Quijote* by Cervantes. The subject-matter of that famous novel is idealism and realism.

Like Cervantes, I am convinced that we need them both – the Knight and his Squire. Therefore both sides participating in this debate should try to learn from each other – realizing that the means are always subordinate to the aims.

Two subjects – freedom of association and employment policy – held the Committee's special attention. The report shows the opinions of the mem-

bers of the Committee as to the particular question of the interpretation of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and whether and how far that Convention protects the right to strike.

It was not for the Committee to come to any agreed conclusion on this point. The Committee noted that the General Survey of the Committee of Experts will next year be on the subject of freedom of association and Convention No. 87.

The other subject covered in this part of the report is the implementation of a policy of full, productive and freely chosen employment, under the Employment Policy Convention, 1964 (No. 122). Contrary to most Conventions, this is a policy instrument and it is my belief that such a Convention requires an approach and discussion which differ from other instruments.

The Convention cannot be regarded as a blueprint for economic or employment policies in an ever-changing world economy. This Convention mentions, and that is extremely important, a framework, some basic principles and ideas and also some fundamental procedures for economic and employment policy.

As you will find in the report, the discussion on this Convention, therefore and as usual, has its own specific characteristics.

As regards technical cooperation and standards, and the various forms of assistance given by the Office, the Committee heard with interest of the inclusion of standards specialists in 12 of the new multidisciplinary teams in the field. Several Government members spoke of the help they had received through the Office. The Committee noted the objective of the Office of increasing promotional activities as complementary to supervisory activities – and in no way detracting from them.

The Committee was very interested in the Committee of Experts' indications as to the ILO's relations with other international organizations, especially on human rights issues, and with special reference to the World Conference on Human Rights in Vienna. The Committee expressed clearly its view that the ILO should improve its image and play a more active role in the debate on labour and social issues in countries at all stages of development, including such areas as the protection of children.

The Committee devoted the second part of the general discussion to the overall study by the Committee of Experts which this year dealt with the application, by all member States, of the Workers with Family Responsibilities Convention, (No. 156), and Recommendation (No. 165), 1981. Those ILO standards have a dual objective. They aim at creating equal opportunity and treatment in working life between men and women with family responsibilities. And, in addition, they have the goal of promoting equality between workers with family responsibilities and those without such responsibilities.

It was apparent from the many statements made that, all over the world, women especially face difficulties of various kinds in combining gainful employment with family responsibilities. Women still shoulder all or most of the duties of caring for family members and maintaining the home, while men are the main breadwinners – full stop.

Moreover, it appeared from the discussion that women are still suffering considerable discrimination in the areas of vocational training and employment

on account of their actual or anticipated family responsibilities. Indeed, a number of statements indicated that for women labour conditions had worsened in this respect as a result of the high and increasing levels of unemployment which often result from structural adjustment measures.

Though there was general support for the objectives of the standards in question, reservations were expressed by some as to the feasibility of meeting those objectives through the application of the standards. Certain members concluded that there was a case for revising the Convention in the hope that it would be reframed in terms that were more practicable, thereby increasing the possibility of a higher rate of ratification.

Generally, however, it can be said that the discussion concluded on an optimistic note. Many speakers commended the Committee of Experts for providing clarifications and explanations concerning the requirements of the instruments, which might encourage more countries to apply the instruments and to ratify Convention No. 156. For many speakers, the survey was an important contribution to the activities to be undertaken next year, which has been declared the "International Year of the Family" by the United Nations.

This was considered an opportune time for the ILO to disseminate information on the implementation of these instruments, concerning both shortcomings and successes, to the United Nations and the ILO's constituents. The aim is to promote equality worldwide and to inspire more States to ratify Convention No. 156.

The third and largest part of the work of the Committee consisted in examining, on the basis of observations made by the Committee of Experts, individual cases of respect for ILO standards. For the discussion of individual cases, the Committee continued to apply the working methods which it had previously followed.

As regards cases concerning the fulfilment of certain obligations, or so-called automatic cases, however, the Committee tried a new approach designed to increase the impact of the discussion and make better use of the time available.

These are the cases concerning compliance with the obligations under articles 19, 22 and 35 of the Constitution to supply reports on ratified Conventions, in reply to comments made by the Committee of Experts; to supply reports on submission to the competent national authorities of instruments adopted by the Conference; and to supply reports on unratified Conventions and on Recommendations.

The new approach was simply to discuss all those cases in sequence at one sitting instead of examining them piecemeal during several different sittings. The results may be regarded as interesting, and the Committee hopes to continue next year to refine its approach to these cases in order to find the best possible means of improving its effectiveness in this respect.

The cases considered in this way are mentioned under the appropriate headings in section D of the report and, as usual, Part Two of the report gives full details of the information provided by governments to the Conference in response to the indications of the Committee of Experts and also gives details of the Committee's discussions of these cases.

Further, the Committee examined the application by 33 governments of their obligations under individual ratified Conventions.

It was pleasing to note that all the governments invited by the Chairman to participate in the Committee's discussions of their cases of this kind and present at the Conference responded to his invitation. Many of these cases concerned problems of the application of Conventions relating to freedom of association, forced labour or equal opportunity and treatment.

The Committee decided to draw the attention of the Conference to the case of Myanmar as regards the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87). Paragraph 125 of the report expresses the Committee's deep concern that the necessary measures should be taken to guarantee the application of the Convention.

The Committee also decided to note with grave concern in paragraph 127 that there had been continued failure over several years to eliminate serious discrepancies in the application by Sudan of the Forced Labour Convention, 1930 (No. 29).

In these two cases, the Committee invites the Governments concerned to supply the relevant reports and information so that the Committee may follow up the matters at the next session of the Conference.

Part Two of the report contains a record of the detailed discussions of the individual cases, as well as the conclusions adopted by the Committee.

I want to take this opportunity to thank the Chairman of the Committee, Mr. Pérez del Castillo, as well as the Employer and Worker Vice-Chairmen, Mr. Wisskirchen and Mr. Peirens, for the competence and efficiency with which they made sure that the Committee could complete such a large volume of work and discharge the heavy responsibilities which the Conference placed on it. May I also through you thank Mr. Bartolomei de la Cruz for his valuable support and also all his staff for their dedicated work, whether they were seen in the meeting room or not.

As you can see, the Committee on the Application of Standards continues to perform its vital tasks in a spirit which recognizes both the strength of traditions and established procedures and the necessity to maintain a dynamic attitude in the constant search to ensure maximum effectiveness.

I am convinced that it is the idea of dialogue which lies behind both the strength and the dynamism, and it is in this confidence that I commend the report to the Conference.

(Mr. Gray takes the Chair.)

Original German: Mr. WISSKIRCHEN (Employers' member Germany; Vice-Chairman of the Committee on the Application of Standards) – Our Committee has succeeded once again in presenting to the Conference a report that is not only comprehensive but very substantive. The Reporter has touched on and explained the essential points.

We noted in our Committee, like others, that the world is undergoing a very rapid and intensive process of change.

I could therefore place my contribution under the motto of change, for the challenges involved are ultimately

challenges to the efficiency and credibility of this Organization, because the ILO is not exempt from these changes on the eve of the twenty-first century. On the contrary, it must make its own contribution to this change. The ILO must therefore review its goals and priorities in its respective areas of activity. The area of standard setting should be reviewed as well as those of the supervisory machinery, technical cooperation and advisory services and an organizational structure must be devised that is adequate to meet these new challenges. The IOE recently presented proposals for a basic reform of the ILO, which we emphatically endorse.

In the Committee on the Application of Standards, we have noted for a long time now that it appears essential to make amendments to our standard setting activities. We have been registering a significantly reduced rate of ratifications in connection with the more recent instruments over the past 15 years. At the same time, we see that member States are meeting the obligations which they have accepted in ratifying the instruments to an increasing less extent. The close connection between standard setting, ratification and practical application has been evident for many years. Standards which were too high, too complex, unclear or too detailed in content and aims will either not be ratified or will be ratified with the certainty that they will not be implemented in law and in practice. Such an attitude is prejudicial to the credibility and the prestige of member States as well as the ILO as a whole.

In this connection we must also develop greater sensitivity to noting when standards have become obsolete rather than reacting only when there is a series of denunciations of an instrument.

An appropriate adjustment to the new challenges requires greater use of the assistance, support and advisory services of the ILO must be strengthened. We consider these services of the ILO, from the standpoint of practical efficiency, to be as at least as valuable with regard to the application of standards as the supervisory machinery in the traditional sense.

The comments of the Committee in the general part of its report on the Employment Policy Convention, 1964 (No. 122), are in essence a very objective inventory of the problems in this respect. Meanwhile, there is general agreement that there can be no isolated employment policy which can create lasting jobs profitably. This requires the coordination of many areas of policy, not least of which is collective bargaining whereby the social partners can set the points towards an increase or decrease in jobs.

Some matters of principle concerning the supervision of standards and the supervisory machinery could be placed under the heading of "change" and dealt with in this context. Concerning the two most important supervisory bodies of the ILO, the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards, there has been no doubt for at least two years that both bodies are autonomous and independent and do their work accordingly. Equally undeniable, according to the unambiguous statement of the Committee of Experts in its report of 1991, is the fact that the decisions of the one are not binding on the other, and that the respective evaluations do not prevail *erga omnes*. We think it is a very good sign of a new dialogue between these two autonomous bodies within the ILO super-

visory system that the Chairman of the Committee of Experts accepted the invitation of our Committee and was present during the entire general discussion in our Committee as a very attentive observer. Mr. Ruda, the Chairman of the Committee of Experts, welcomed this new and intensive form of dialogue, a dialogue which in Mr. Ruda's words includes a review of previously held opinions.

Now that the more formal but essential issue of the autonomy and independence of the two bodies has been clarified, in future only the substance of the different views will be at issue. Such differences do not occur very often, but occasionally in connection with particularly important questions, in particular the interpretation methods to be applied in regard to Conventions and their concrete results. The only measuring rod for the interpretation of Conventions is, in our view, international customary law as well as international law in the written form set forth in Articles 31 and 32 of the Vienna Convention on the Law of Treaties. This is also in principle recognized by the Committee of Experts. As we repeatedly stated in the Conference Committee, none of the interpretation methods that are relevant under international law allows for the "creation" of an extremely broad right to strike to be derived from Convention 87, such has been gradually developed by the Committee of Experts. Neither the text nor any discernable agreement between the signatory States or their subsequent conduct allow for such an interpretation. On the contrary, in the drafting of Conventions Nos. 87 and 98, it was clear that issues of the right to strike were not to be dealt with. We have already referred to the corresponding documents. The historical facts confirm therefore merely what results from the first priority interpretation rule. The Employers, for example, already in 1953 expressed this view in the Governing Body when the Committee on Freedom of Association began to develop a right to strike.

We are not dealing here with a classical interpretation *de lege artis*. To that extent, a close connection may exist with the undeniable fact that the decision-making body of the ILO, that is to say the plenary of the Conference, has hitherto been deliberately prevented from dealing with this topic. A proposal from the Employers last year to place this problem on the agenda of the Conference was also rejected.

Implicitly, the right to strike developed by the Committee of Experts is virtually unlimited and the regulatory scope of the member States therefore tends to be non-existent.

The formulae developed by the Committee of Experts, which allow almost any type of strike and prescribe almost any restriction as being contrary to international law, cannot be justified on the basis of any interpretation instrument derived from Convention No. 87, because a strike is obviously not the internal affair of a trade union. It is directed primarily against employers but, given the scale of the division of labour in our time, its inevitable and calculated impact tends increasingly and ever more intensively to affect third parties and the general public. So-called "solidarity strikes" are intentionally directed first and foremost against people who are not actually involved in the conflict and political strikes are always designed to put pressure on lawmakers – hence, in a democracy – on parliament. No State can afford to accept such action without some

form of regulation. On the contrary, it is the task of every State to make provision, in the area of labour conflict, for the protection of individual citizens and the population as a whole. The basic purpose of a State and its chief *raison d'être* is to provide the best possible protection for its citizens.

In recent years there has been a suggestion, not unrelated to these interpretation issues, that article 37, paragraph 2, of the ILO Constitution should be examined more closely. According to this provision, the Conference, at the suggestion of the Governing Body, can draw up rules for the establishment of a tribunal for the expeditious determination of any dispute or question relating to the interpretation of a Convention. The Office has prepared a document in this connection, dealing with various aspects of article 37, paragraph 2, of the Constitution and other issues of interpretation. Credit is due to the Office for its thorough and careful work. A whole series of findings are extremely enlightening. Some comments, however, are not so clear and call for further explanation and examination. In the Committee we also discussed certain points in greater depth and voiced a certain amount of criticism. Moreover, some issues which are not addressed at all by the document will have to be considered at some stage. To sum up, therefore, we would say for the time being that this important issue cannot be decided on the basis of the present document. Further careful study is necessary. Only when all further possibilities have been explored can we consider whether and how such a tribunal under article 37, paragraph 2, of the ILO Constitution might be established.

This year's General Survey under article 19 of the ILO Constitution is devoted to Convention No. 156 and Recommendation No. 165. This, too, is a topic oriented towards the future and towards change. The question at issue is the equality of workers, particularly those with and without family obligations. While nobody would underestimate the significance of this topic or fail to support the general objective, the measures needed to attain these goals cannot be limited to the typical employee-employer relationship, but have other far-reaching implications, partly of a general political and social nature. Full attainment of the goal in question would require an almost inconceivably large package of practical measures, in particular statutory regulations. Such an array of regulations would be bound to conflict with the basic principles of a free social order. The Convention therefore avoids this unnegotiable path but heads off in another direction that is no less fraught with problems. It establishes extraordinarily wide-ranging and comprehensive objectives, which are to be incorporated in any policy relating thereto. Together with further sub-goals, which are not always crystal clear, the whole experience creates an impression that family and occupational responsibilities can be combined without conflict provided that the State steps in with the necessary measures and regulations. As these ideas are thus conceived with an ideal situation in mind, they are bound to be unwieldy. The experts talk about flexibility but what we have before us is a considerable lack of clarity and vagueness. One gets the same impression from the way individual provisions of the Convention are dealt with in the experts' report. Member States have raised many questions about the meaning and interpretation of the individual provisions and the Committee of Experts has

tried to give answers, which tend to reinterpret the obligations in very broad terms.

From the methodological point of view, it is extremely interesting to note that the Committee of Experts, in its attempts at interpretation, refers in practically all cases to the preparatory work, which therefore determines their interpretation. We find this aspect important in the light of the general discussion of the matter of deriving a right to strike from Convention No. 87.

Since the instruments before us do not prescribe specific and limited measures but only a goal to aim at, we are no longer dealing here with the flexible standards which are certainly also sought by employers; we are dealing rather with an overloaded instrument which describes an ideal goal. The Report of the Committee of Experts itself shows that we are not dealing with a flexible and easily applied Convention, because any measures taken by member States, whenever these are assessed by experts, are routinely described as inadequate and therefore criticized.

The member States have evidently recognized the problems inherent in these instruments, since only 19 ratifications have thus far been registered, and some of the States which have ratified the Convention will hardly be in a position fully to comply with its exacting requirements. One of the contracting States has not even submitted its first report. Although the employers have a natural interest in everyone being able to attain self-fulfilment through their occupation, we are sceptical that such a dream could be realized on the basis of standards alone. There are, after all, deeply rooted, traditional values which must be taken into account, and they can only be changed cautiously, and in small steps. This is what happens in practice in plants and factories. A uniform comprehensive model which takes account of different value systems and allows time for a gradual change in attitude is along way off.

In any case, we recommend that the report of the Committee of Experts be very carefully taken into account. Its analysis might finally lead to a review of Convention No. 156 with a view to making it more precise, practical and realistic.

The main object of the Committee is to examine the extent to which member States have met their obligations to the ILO. We are talking about varied reporting obligations and about material obligations of the ratifying States to implement Conventions which they have ratified. During the proceedings we have clearly differentiated between the so-called formal and material obligations. The purpose of concentrating our discussion of the report issues into one afternoon was to stress the significance of the issue, to bring together all the States concerned and to make better use of the limited time available to the Committee. This seems to have succeeded. It was not the purpose of the new procedure to absolve the member States concerned from the duty to reply.

Moreover, there has been a stagnation, or even decline, in the fulfilment of reporting obligation. This has caused much concern among the experts and on our Committee, since the fulfilment of reporting obligations is essential to any meaningful monitoring. Late or incomplete reports, or no reports at all, place the whole system in question and create an unacceptable degree of inequality in the treatment of different member States. Since, on the one hand, the absolute

numbers of reports due and received reaches new record levels owing to the increase in membership, in ratifications and in Conventions, the Committee has long recognized the necessity of taking steps to clarify the situation. At the request of the Conference Committee, the Office has produced a document with many proposals which could improve the situation. We are grateful for these very meticulous deliberations. The approach outlined there is one which we can support, and we trust that the Governing Body will soon take the necessary decisions.

As we have already noted during the discussion in Committee, the only thing that must not happen is that nothing happens.

It is in the very nature of our review system that we deal mainly with cases in which there is a considerable discrepancy between statute and practice in a member State and the demands of a given Convention. Nevertheless, we do not forget that most member States faithfully fulfil their obligations under the Constitution and the ratified Conventions. The problematic cases and the relevant discussions in the Committee are described in detail in the comprehensive annex to the general part of our Report. We do not want to name particular cases here because that would seem somewhat arbitrary. May I, however, say that there do exist most serious violations of human rights, such as persecution for ethnic, religious and political reasons, and these occur on a mass scale and lead to many deaths. It is regrettable that we are not even in a position to deal with these very clear violations of basic Conventions. On the contrary, like many other organizations in the world, we seem to be helpless in the face of these terrible events.

But whatever the sweeping changes happening in our time, our high recognition for the President of our Committee, and for his prudent guidance of our discussion remains undiminished, as it does for our Reporter and for the Office's large team under the very careful guidance of Mr. Bartolomei. All have made vital contributions.

We also remain firm in our desire for objective cooperation with the Workers' group and their spokesman, Mr. Peirens. My special thanks go to the Employers' group on the Committee for their unswerving support especially this year, represented by Mr. Potter.

Original French: Mr. PEIRENS (*Workers' member, Belgium; Vice-Chairman of the Committee on the Application of Standards*) – The role of the ILO in connection with international labour standards and their supervisory machinery in this changing world was the leitmotif in many speeches during the general discussion in our Committee.

Several members in this context pleaded in favour of a revision and updating of the supervisory machinery and in particular of the constitutional obligation to send in reports. The Office is also preparing a document for the Governing Body for November 1993.

The Workers' group of our Committee is of the opinion that this is not a secondary aspect of a technical nature. On the contrary, the sending of reports together with the observations of the workers' and employers' organizations is indispensable for the operation of the supervisory machinery.

We would like to emphasize that it is necessary to be prudent and to ask the competent bodies of the

ILO, that is the Governing Body, not to take hasty decisions which might, directly or indirectly, weaken the supervisory machinery and therefore the working of our Committee.

The Workers' group of our Committee proposes that the Governing Body, after a first discussion in November, should defer the question to next year so as to discuss it at the Conference and in particular in the Committee on the Application of Standards. Our Committee has, in fact, agreed to devote a special sitting at the next session of the Conference to the consideration of the future of the standard-setting machinery and the supervisory machinery, as can be found in paragraph 136 of our report. The Committee of Experts, in paragraph 12 of its report, has also indicated that it would put forward its views regarding the future of standards and the supervisory machinery of the ILO. The Governing Body could thus take a decision after the 81st Session of the Conference.

The Workers' group of the Committee feels that the proper working of the supervisory machinery is of capital importance. We are not against change on the condition that the future operation of the supervisory machinery is reinforced.

We would like to draw the attention of the Conference to the fact that the Employers' and Workers' groups have pleaded many times in favour of a reinforcement of the supervisory machinery and most of the Governments have quite clearly indicated their support of the standards and supervisory machinery.

Several Government members have declared that the supervisory machinery of the ILO is superior to that of other international or supranational organizations and that we should not be influenced by systems of an inferior quality.

We would therefore firmly like to ask for the maintenance of a very regular control of the application of Conventions in both law and practice. Within this framework we would like to insist that particular attention should be given to the Conventions which have been classified in the category of fundamental human rights and to certain Conventions in the priority category, such as Conventions Nos. 81, 122 and 144. This classification was formally decided on by the Governing Body in 1987 on the proposal of the Ventejol report.

We would like to draw the attention of all the delegates of the Conference to the conclusions of this Ventejol report regarding the classification of Conventions.

This report concludes that the Conventions regarding the fundamental human rights, such as the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), require no revision and that, furthermore, most of them have already been revised.

The intervention of the supervisory machinery cannot be restricted to clear and flagrant violations of fundamental human rights. These have often become very sophisticated and masked by complex legislation, in the industrialized countries also. That is why we attach great importance to the sending in of first reports after the ratification of a Convention and to the sending of questionnaires and detailed reports on a regular basis, in particular for the fundamental Conventions regarding freedom of associ-

ation, free collective bargaining, prohibition of discrimination and forced labour.

The ILO could also extend the present system of the complaints procedure, before the Committee on Freedom of Association to other Conventions and fundamental principles, as for instance equality of treatment, as was suggested by the Committee of Experts last March.

Furthermore, we would like to ask the Office to send the report of the Committee of Experts earlier. This would facilitate the participation of workers in the developing countries.

As regards the possible setting up of a competent tribunal so as to resolve problems of interpretation for a given Convention in accordance with Article 37(2), the Workers' group is of the opinion that the setting up of such a tribunal could put into question the credibility and the authority of the Committee of Experts. To date, we are not convinced of the additional value of a tribunal as compared to the experts, to the dialogue of our Committee and the existing possibility of resorting to the International Court of Justice.

The extent of the right to strike was once again the subject of in-depth discussions, seeing as the Employers have some differences of opinion with the Committee of Experts.

We, as the Workers' group, firmly support the view of the Committee of Experts regarding the modalities of the right to strike.

The Committee of Experts has always based itself on the principles which have been developed and refined consensually by the tripartite Committee on Freedom of Association.

Even if the mandate of the Committee of Experts on the one hand and that of the Committee on Freedom of Association on the other are different, we really do not see how their respective interpretations could diverge. This would be illogical and inconsistent.

The legal value of the criticism of a group in our Committee, that is to say the Employers, as regards the position of the Committee of Experts should be put into perspective in view of the scope of the tasks of the two Committees. The Committee of Experts guarantees, through its composition and its methods of work, an objective assessment. Our tripartite Committee maintains and keeps alive the system, thanks to our knowledge of the situation in the field.

The position of the Employers, stating that the modalities of the right to strike as well as the scope of the concept of essential services should be governed by national law, is not compatible with the fundamental principle of universality of standards.

During the discussion of individual cases, we had a shocking case which illustrates very well the serious consequences of the non-respect of the universality of standards. This is the denial of trade union rights and the non-application of the labour code in the export processing zones in Pakistan (the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right of Association (Agriculture) Convention, 1921 (No. 11). Our Committee as a whole has adopted very firm conclusions on this particular case and if, next year, our Committee does not find that there has been concrete progress, the case of Pakistan, in the opinion of the Workers' group, will have to be referred to in a special paragraph. The Government has furthermore

formally accepted a technical assistance mission from the ILO.

As has already been mentioned by the Reporter, our Committee also dealt with the General Survey regarding workers with family responsibilities (Workers with Family Responsibilities Convention, 1981 (No. 156), and Recommendation No. 165).

The Workers' group is of the opinion that the objectives of these instruments are very topical and that countries should increase their efforts to make them more concrete.

The General Survey clarified the scope of the Convention and this clarification will undoubtedly facilitate its ratification. We encourage States to ratify. This Convention should not in our opinion be revised.

Our Committee has also adopted important conclusions on several serious cases. Even though no special paragraphs were included in the report, the conclusions imply very important commitments in very specific and concrete terms.

We are referring to the cases of Colombia (very serious violations of law and practice as regards Convention No. 87); Costa Rica (Convention No. 87, in relation to solidarity movements or company unions); Brazil, the Forced Labour Convention, 1930 (No. 29), including child labour, and the Indigenous and Tribal Populations Convention, 1957 (No. 107); and India, the Forced Labour Convention, 1930 (No. 29), with reference to servitude for debt by child labour.

We have also given great attention to the Employment Policy Convention, 1964 (No. 122). In two cases (the United Kingdom and New Zealand) we were able to see that employment is considered as an element or a variable which can be adjusted among many others. Such a policy is not in conformity with Convention No. 122 and we would like to suggest that you read paragraph 55 of the general part of the report of the Committee of Experts. In both cases the Government is not fully consulting workers' and employers' organizations for the implementation of employment policies (Article 3 of the Convention).

The case of Sweden (Right to Organize and Collective Bargaining Convention, 1949 (No. 98), has demonstrated that certain countries adopt socio-economic policies without an in-depth consultation of the employers' and workers' organizations who are the authors and signatories of collective agreements. These policies have direct and indirect effects on collective agreements and collective bargaining. This approach is contrary to the basic principle of Convention No. 98. Compliance with collective agreements and the outcome of negotiations is, in our opinion, a non-negotiable principle.

Our Committee was able, for the first time, to discuss a case involving the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The United Kingdom has not respected Convention No. 144 because it failed extensively to consult the workers' and employers' organizations regarding the denunciation of certain Conventions and regarding the replies to the comments of the Committee of Experts.

The technical Conventions were also discussed. I am referring to the conclusion of the case of Morocco and the Benzene Convention (No. 136). Our Committee found that Morocco is not applying the essential provisions of this Convention, whose practi-

cal importance is more than simply a technical question. The health and even the life of the workers are involved. If there is no decisive progress in the very short term, we will come back to this case next year.

We have also dealt with questions of substance as to the organization and operation of social security in Chile (the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35)). In this connection it is important to emphasize that the pension system in Chile is not only in violation of Convention No. 35, but its performance and credibility in the long run is also challenged by independent specialists. Furthermore, the system is not in conformity with the fundamental principles of the Social Security (Minimum Standards) Convention, 1952 (No. 102), and the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128). Chile has not yet ratified these two Conventions. The Committee firmly insisted that Chile should reconsider its position.

Because of a lack of time it was not possible for us to deal with a number of other cases. We hope that the report of the experts will make it possible for us to take them up next year if we feel the need to do so (for example, Conventions Nos. 87 and 111, as regards Germany, Convention No. 107 for Bangladesh, and Convention No. 87 for Canada).

As pointed out by our Reporter, we were obliged to single out Myanmar in a special paragraph of our report (paragraph 125), since the Committee of Experts and the Conference Committee have pointed out for many years, in connection with Convention No. 87, that certain provisions of national legislation require modification, without success up to now.

The case of Sudan is reported in paragraph 127, and refers to the continued failure to eliminate deficiencies in the application of the Forced Labour Convention, 1930 (No. 29). I would like to remind you that last year we had to single out Sudan in a special paragraph because of the continued existence of forced labour and the lack of cooperation on the part of the Government with the ILO and our committee.

In conclusion, I too would like to thank our Chairman, Mr. Pérez del Castillo, who guided and chaired our discussions in a remarkable manner. I would also like to thank our Reporter Ms. Wiklund, the representative of the Director-General, Mr. Bartolomei de la Cruz, Mr. Zenger and Mr. Gernigon, as well as the whole team of the Office and the interpreters for their efforts and devotion. I would also like to thank the Employers' Vice-Chairman, Mr. Wisskirchen, for his spirit of dialogue and constructive approach.

I would also like to thank the officers of the Workers' Group, particularly Mr. Hickey, who had to leave because of bad health, and everyone else who helped us.

Our Report was unanimously adopted by the Committee. I commend it to the Conference for adoption.

Original Spanish: Mr. PEREZ DEL CASTILLO (Government member, Uruguay; Chairman of the Committee on the Application of Standards) – I was not intending to speak, but I would like to take this unexpected opportunity to thank the members of the Committee on the Application of Standards for the work that we have done together.

I would particularly like to mention the cooperation, the serious and responsible work done and the

spirit of teamwork shown by Mr. Bartolomie de la Cruz, Mr. Zenger and Mr. Gernigon, and at the same time, alongside them I would like to thank all those people who as our Reporter so rightly said were visible or not in the meeting room but who we felt were with us and that we could count on their work the behind-the-scenes activities of so many staff members of our Office, which make it possible for the activities of this Committee, which are particularly difficult demanding greater effort and more time, can be carried out and enable us to submit this report to you. This report which like anything produced by human hand has its good and bad points but is well intended and the result of the efforts we made to ensure that something as important as the Application of Standards, could be dealt with at this session of the Conference.

So thank you all once again. I hope that we will meet again next year so that we can go on striving towards our objectives and fulfilling our mandate of social justice as laid down in the Constitution.

Original Japanese: Mr. HIROMI (Government adviser and substitute delegate, Japan) – I would like to comment on the wording in *Provisional Record* No. 25, concerning the case involving Japan.

An amendment submitted by the Government of Japan is not reflected in the Committee's report; we request that the amendment submitted by the Japanese Government be included in the Record of the Conference.

When inviting the ILO to Japan in connection with Convention No. 87, the Chairman of the Committee said at the meeting, and I quote "... to visit Japan to discuss this question of the right to organize of the fire-fighting personnel in order to be able to see the situation for themselves on the spot, and discuss the matter with the persons directly concerned". However, in PV 13 of the Committee's minutes, this comment was summarized as "... [Japan] ...". Since we consider "to invite ... to come to Japan ... to obtain information directly" to be different from the conclusions of the Chairman of the Committee, we submitted our amendment. In the Committee, it was announced that this part was adopted as amended. However, the meeting ended before the specific wording of this amendment was presented. The version in the report of the Committee distributed today in *Provisional Record* No. 25 remains unamended, and therefore does not reflect the decision of the Committee.

I regret that this has happened in terms of procedure. This should have been dealt with at Committee level, but since this was not done due to the situation I have described, I would like to state that the Government of Japan insists that the wording of the Chairman of the Committee be the correct version, and asks that this statement be placed in the Record of the Conference.

Original German: Mr. ADAMY (Workers' adviser and substitute delegate, Germany) – The World Conference on Human Rights that is meeting in Vienna makes it clear that the instruments for the guarantee of human rights have to be further developed and strengthened. But within the context of our terms of reference, we also have to make sure that there are no reductions made in the universality and binding nature of the central standards respecting human

rights. This is particularly valid as regards what I am sure is the most of important of all international labour Conventions, namely the Freedom of Association and Protection of the Right to Organize Convention 1948, (No. 87). And yet recently it was specifically against this instrument that the criticisms of the Employers were directed in the Committee on Application of Standards. This was very clear again this time. Quite obviously they want to make this central international standard conditional, and they are calling jurisprudence into question as regards the scope of the right to strike.

The criticisms by the German Employers' member in this Committee in particular concentrate on the points on which my country has also had problems in observing this Convention. It is therefore not surprising if the Government representative of my country in this Committee also tries to make conditional this human rights international labour Convention, and if he largely shares the position adopted by the Employers' group in this Committee. They have together been basing their criticisms recently on the fact that Convention No. 87 does not contain any express guarantee of the right to strike. However, this is not something which is true only for the ILO but is the case also with the Constitution of a number of member States. For instance, it is also the case with the Constitution of my country.

The supervisory machinery in the ILO, early on recognized, in a practice that goes back 40 years, that strikes are a central premise and a means of making it possible for workers and their trade unions to ensure that collective agreements be implemented and applied. In order to protect the activities of trade unions, you have to have the right to strike.

The Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association have established a number of basic principles on freedom of association which in particular define the conditions and circumstances under which the right to strike can be banned or limited. It is not true that these Committees recognize a practically unlimited right to strike as has been suggested here by the representative of the Employers. On the contrary, they have tried to establish a proper balance between the opposing interests in play and at the same time avoid an unjustified restriction of the activities of trade unions.

The Committee on Freedom of Association in the meantime has developed a body of important rulings which shows, as does the work of the Committee on the Application of Conventions and Recommendations, that the Employers' group has for many years agreed with the basic principles of this freedom of association. However, since the end of the 1980s and the end of the Cold War, this consensus has been questioned more and more by the Employers in the Conference Committee.

However, the justifications that are given do not really stand up to analysis. The Vienna Convention on the Law of Treaties is referred to more and more in order to allow greater intervention by the State in the exercise of the right to strike, and greater influence over case law within the ILO. In fact, however, and here I decisively disagree with the Employers' spokesman, the Vienna Convention on the Law of Treaties is not applicable to international organizations like the ILO if they have their own rules of interpretation. There is no principle of general inter-

national law that standards adopted by international organizations must be interpreted according to the rules of the Vienna Convention. Article 5 of that Convention, for instance, says that its own rules do not take precedence over the corresponding interpretative rules of international organizations. The case law developed over decades in the ILO therefore takes precedence over the corresponding provisions of the Vienna Convention.

But even if one invokes the rules of the Vienna Convention, then according to Article 31, paragraph 3, it matters not whether all the contracting parties have explicitly agreed to the interpretation of the Convention concerned. On the contrary, silence can be taken as consent. According to article 31 of the Vienna Convention it is necessary to take into account "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation".

For many years, there has been absolutely no contradiction by the Employers on the Conference Committee as regards the existing case law. On other supervisory bodies, like the Committee on Freedom of Association, they also support the principle of freedom of association and the practical way it is implemented.

Furthermore, the following facts also lead us to believe that the principles of freedom of association have become part of general international law. Firstly, in 1986 the United Nations Commission on Human Rights recognized as valid the interpretation by the ILO bodies of the right to strike. Secondly, the ILO Fact-Finding and Conciliation Commission on Freedom of Association concerning the Republic of South Africa designated many principles of freedom of association as part of customary international law. And, thirdly, the Legal Adviser, in his statement on article 37, paragraph 2, of the ILO Constitution drew attention to the fact that the long-standing interpretation of the Committee on Experts – which has not been contradicted – could become binding.

This incontrovertible principle of international law must be taken into account. It would also be wrong to accept the principle that an interpretation of ILO Conventions that is lenient on the States Parties must be chosen. This is something that can hardly be acceptable for international organizations and certainly not for Conventions on human rights. Otherwise the universality and the binding nature of human rights precepts would be called in question. The historical method of interpretation used by the Employers is also unconvincing. For example, the critical comments of the Employers shortly after the adoption of Convention No. 87 are today over-interpreted. Even at that time they could not be considered as a basic questioning of the right to strike. With regard to Convention No. 35, the Employers on this year's Committee relativized an historical interpretation themselves in the case of Chile. We very often have difficulties with historical interpretations because, as we all know, when standards are being established political compromises are frequently reached outside the committee room and therefore do not appear in any minutes or records. And this is something mentioned by the Legal Adviser in the opinions I have already referred to.

Above all, it should be borne in mind that the Vienna Convention – which is constantly being referred to by the Employers – views the historical

method merely as a source of supplementary assistance. According to Article 32 of the Vienna Convention, this method can only have significance if the meaning of the rules for interpretation is ambiguous or obscure or leads to a result which is manifestly absurd or unreasonable. This certainly does not apply to the decision-making practice in the ILO supervisory bodies. Hence, even under the Vienna Convention there is no basis for a strong emphasis on historical interpretation.

We should neither directly nor indirectly question the methods and case law of the ILO supervisory machinery. We must ensure that the approach adopted in assessing the implementation of standards is not influenced by ideas originating in a specific social or economic system. The law applied in some industrialized countries cannot and should not therefore become a standard for the interpretation of Conventions.

After the collapse of the former socialist bloc, we must in no way give in to the temptation to misuse the supervisory system for one-sided political and economic purposes.

The Committee of Experts, because of the status, knowledge and independence of its members, deserves the greatest attention and respect. By contrast with the Committee of Experts, the Conference Committee consists not of independent experts but of representatives of the different parties affected by the implementation of the Conventions. However, this certainly does not mean that the comments by the Conference are expressions of views and considerations without moral and political value. On the other hand, we should not overstress the importance of the Conference Committee, since otherwise in the long term we would be running the risk that majority decisions, taken by that body which is politically constituted, could conflict with the principle of independent proceedings according to due process. It should not be forgotten that numerous difficulties were encountered when the Committee's Report was approved. We should therefore decide jointly to ensure that the conclusions of the Committee of Experts, and the supervisory and interpretation method used, are in no way watered down.

If we do not wish to endanger the credibility of this international organization, then we must speak out against any relativization of human rights in the world of work as elsewhere. This applies particularly to the Committee of Experts.

Fortunately, the Chairman of that Committee, Mr. Ruda, has once again emphasized in the Conference Committee that the experts were expressly guided by the principles of objectivity, impartiality and independence and in this we emphatically support the Committee.

As the spokesman of the Employers' group emphasizes, we are in no position, when it comes to violations of international standards, to guarantee a solution, and we should rather aim at extending our procedures rather than at reducing them, otherwise we will lose our credibility.

Mr. POTTER (*Employers' adviser and substitute delegate, United States*) – I had not intended to participate in this general discussion but because of the unfortunate attack on the representative of the Employers' group characterizing that representative as a German Employer, I want to make it clear that the

points of view that Mr. Wisskirchen articulated are those of the entire Employers' group. The last few years have witnessed a substantial shift in world relations, particularly in the demise of the struggle between east and west. That earlier conflict involving diametrically opposed views cast a shadow on the work of our Conference Committee and the supervisory machinery generally. Disagreements that the Employers have always had with just a few interpretations by the Experts of the ILO Conventions, particularly concerning the right to strike, were muted in a show of solidarity to preserve the supervisory machinery. The support of the supervisory machinery was important then and still is. For the most part the Conference Committee follows the findings and interpretations of the Experts, but this does not mean that the Conference Committee is a rubber stamp for the Experts. While the report of the Experts is indispensable to the Conference Committee's work, the Conference Committee could not fulfil its obligations under article 7 of the Standing Orders without conducting its own independent evaluation. More often than not, the Conference Committee's conclusions and those of the Experts are consistent.

In the context of a number of cases this year, for example the cases of Ecuador, Colombia and Pakistan, to name a few, the Employers have set out in some detail the reasons why we believe the Experts' interpretations concerning the right to strike is not completely correct. The social and legal matter of the right to strike is not contemplated by the specific language of Conventions Nos. 87 and 98 or the respective legislative histories. Moreover, reliance on the decisions of the Committee on Freedom of Association is not appropriate, because its decisions are based on general principles and are not limited to the

terms and legislative histories of Conventions Nos. 87 and 98 as interpreted and applied in accordance with articles 31 and 32 of the Vienna Convention. But reliance on the Vienna Convention is not essential to reach this conclusion, because Conventions simply apply traditionally and generally accepted customary rules of interpretation of international treaties.

Perhaps more importantly the exercise of the right to strike does not take place in a vacuum. By its very nature the exercise of the right to strike not only affects the employer but the community as well. Strikes take place in different legal contexts, stages of economic and industrial development and economic circumstances. This has been the consistent position of the Employers' group since 1953. The Experts "one-size fits all" approach, particularly with regard to essential services in the public service, simply does not take into account these realities and the absence of any express provision of the right to strike in Conventions Nos. 87 and 98. Instead of simply reiterating past pronouncements on the right to strike, the Experts need to take these legal and economic factors into account and re-examine the right to strike both in the context of observations in particular cases, and in their 1994 survey on Convention Nos. 87 and 98.

The PRESIDENT (Mr. GRAY) – May I take it that the report of the Committee on the Application of Conventions and Recommendations is adopted by the Conference?

(The report is adopted.)

(The Conference adjourned at 1 p.m.)