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Institutional Section

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First item on the agenda

Action to be taken on the request of the Employers' group to urgently include a standard-setting item on the right to strike on the agenda of the 112th Session of the International Labour Conference

Purpose of the document

This document has been prepared for the purposes of the special meeting of the Governing Body convened under paragraph 3.2.2 of the Standing Orders of the Governing Body following the request of the Employers' group to urgently include a standard-setting item on the right to strike on the agenda of the 112th Session (June 2024) of the International Labour Conference. Its aim is to serve as a background report for the discussion. It contains information on the ILO statutory framework for placing a standard-setting item on the Conference agenda, ILO practice regarding the adoption of Protocols, an account of the origins of the standard-setting proposal on the right to strike and concluding observations summarizing the possible implications of the above for the proposed standard-setting item. The Governing Body is invited to take note of this background report and provide guidance on action to be taken in relation to the proposal for placing a standard-setting item on the agenda of next year's Conference (see the draft decision in paragraph 16).

Relevant strategic objective: Standards and fundamental principles and rights at work.

Main relevant outcome: Outcome 2: International labour standards and authoritative and effective supervision.

Policy implications: None at this stage.

Legal implications: None at this stage.

Financial implications: None at this stage.

Follow-up action required: Depending on the decision of the Governing Body.

Author unit: International Labour Standards Department (NORMES).

Related documents: [GB.349bis/INS/1](#); GB.349/INS/2.

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► Introduction

1. Under the Constitution of the ILO and the Standing Orders of the Governing Body, a special meeting of the Governing Body may be convened when a minimum number of regular members of the Governing Body so request in writing, or when the Chairperson of the Governing Body considers it necessary.
2. In particular, article 7(8) of the Constitution provides that:

A special meeting [of the Governing Body] shall be held if a written request to that effect is made by at least sixteen of the representatives on the Governing Body.
3. In addition, paragraph 3.2.2 of the Standing Orders of the Governing Body provides as follows:

Without prejudice to the provisions of article 7 of the Constitution of the Organization, the Chairperson may also convene after consulting the Vice-Chairpersons, a special meeting should it appear necessary to do so, and shall be bound to convene a special meeting on receipt of a written request to that effect signed by sixteen members of the Government group, or twelve members of the Employers' group, or twelve members of the Workers' group.
4. Accordingly, the holding of a special meeting is either compulsory, when a written request is made by 16 regular members regardless of group, by 16 regular Government members, or by 12 regular Employer members or 12 regular Worker members; or voluntary when convened at the Chairperson's discretion.¹
5. To date, special meetings have been convened on three occasions: in September 1932, October 1935 and May 1970, all under the discretionary authority of the Chairperson of the Governing Body.²

► Chronology

6. In a communication dated 12 September 2023 to the Chairperson of the Governing Body, the 14 regular Employer members of the Governing Body requested the holding of a special meeting under paragraph 3.2.2 of the Standing Orders of the Governing Body in order to decide on the urgent inclusion of a standard-setting item on the right to strike on the agenda of the 112th Session (June 2024) of the International Labour Conference.
7. More concretely, the Employers' group proposed that the Conference adopt a Protocol to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Protocol would concern the right to strike or more broadly, industrial action.³ The adoption of the Protocol would authoritatively determine the scope and limits of the right to strike in the

¹ For more information, see the [Office note](#) on the origin and evolution of rules on convening special Governing Body sessions.

² For more information, see the [Office note](#) on past practice on special Governing Body sessions.

³ It is recalled that in their 2015 joint statement, the Employers' and Workers' groups referred to the right to take industrial action. Based on a series of comments on the issue by ILO supervisory bodies and on several domestic laws, industrial action may be understood as a term that encompasses: (i) different types of strike actions carried out by workers and their organizations according to their modalities (including, for instance, down tools, go-slow, working to rule etc.); and/or (ii) both strike actions by workers and their organizations and lockouts by employers.

context of Convention No. 87. The obligations under the Protocol would become binding for those parties to the Convention that ratified the Protocol. In this way, the adoption of the Protocol would settle the ongoing dispute about the interpretations on the right to strike.

8. The communication by the Employer members also indicates that the adoption of a Protocol to Convention No. 87 on the right to strike would thus demonstrate that a lasting solution to the conflict over the interpretations of the right to strike is possible through dialogue within the tripartite structures of the ILO and that a referral to the International Court of Justice (ICJ) is not necessary.
9. The communication was handed to the Governing Body screening group by the Employer Vice-Chairperson at a meeting called on 13 September 2023 in order to discuss the convening of a special meeting to address a request of the Workers' group and of 36 governments to urgently refer the dispute on the interpretation of Convention No. 87 in relation to the right to strike to the ICJ for decision in accordance with article 37(1) of the Constitution.⁴
10. In their communication, the Employer members requested that a special meeting on a possible Protocol to Convention No. 87 on the right to strike be organized before the holding of the special meeting requested by the Workers' group and 36 governments, in order to ensure that the possibility of standard-setting on the right to strike is not rendered obsolete by a referral of the matter to the ICJ.
11. By circular letter dated 15 September 2023, the Director-General informed all Member States of the request of the Employers' group and of the screening group decision.
12. On 25 September 2023, the Office received a note verbale from the Permanent Mission of the Republic of Türkiye to the United Nations Office in Geneva welcoming the request for a special meeting to address the inclusion of a standard-setting item regarding the right to strike on the agenda of the 112th Session of the Conference and the preparation of a Protocol associated with Convention No. 87, and adding that the primary objective of the Protocol would be to establish precise and authoritative parameters governing the scope and limitations of the right to strike, thereby ultimately resolving the ongoing disagreement. The note verbale was communicated to all Member States by a circular letter of the Director-General dated 26 September 2023.
13. On 28 September 2023, the tripartite screening group decided that the special meeting to discuss the request of the Employers' group would be held on 11 November. The decision of the screening group was communicated to all Member States by a circular letter of the Director-General dated 29 September 2023.

► Office background report

14. Against this background, the special meeting of the Governing Body will examine the request of the Employers' group. The special meeting will offer an opportunity for a full exchange of views and an informed decision considering its aim, purpose and proposed timing.
15. Accordingly, the Office has prepared a background report to facilitate the deliberations of the Governing Body. The report provides information on: (i) the ILO statutory framework for placing a standard-setting item on the Conference agenda; (ii) ILO practice regarding

⁴ The chronology of events is explained in detail in document [GB.349bis/INS/1](#), paras 6–21.

Protocols; (iii) an account of the origins of the standard-setting proposal on the right to strike; (iv) final considerations on the possible implications of the proposed standard-setting item and (v) concluding observations.

► Draft decision

- 16. Further to the request of the Employers' group and of the Republic of Türkiye to urgently include a standard-setting item on the right to strike on the agenda of the 112th Session of the International Labour Conference (2024), the Governing Body decided to**
[decision to be taken at the end of the special meeting]

► Appendix

Standard-setting on the right to strike in the form of a Protocol – Background report

I. The statutory framework for placing a standard-setting item on the agenda of the International Labour Conference

Placing a standard-setting item on the agenda of the International Labour Conference

1. The proposed inclusion of a standard-setting item on the agenda of the 112th Session of the International Labour Conference (June 2024) must be considered in light of the legal and procedural framework for placing a standard-setting item on the Conference agenda that is set out in the Constitution, the Standing Orders of the International Labour Conference and the Standing Orders of the Governing Body.¹
2. The main responsibility for setting the agenda of the Conference lies with the Governing Body. Proposals to place an item on the Conference agenda must be considered at two successive sessions of the Governing Body, unless there is unanimous consent to place a proposed item on the agenda of the Conference when it is discussed for the first time by the Governing Body (paragraph 5.1.1 of the Governing Body Standing Orders).
3. Paragraphs 54–56 of the Introductory note of the Governing Body Standing Orders read as follows:
 54. The items to be placed on the agenda of the Conference are considered at two successive sessions of the Governing Body, so that the decision is taken two years prior to the opening of the session of the Conference in question.
 55. The first stage of the discussion, which takes place at the November session, consists in identifying the subjects from which a choice could be made. For this purpose the Governing Body bases its discussion on a paper containing all the information necessary on the items proposed by the Director-General.
 56. The second stage, which takes place at the March session, consists in adopting a definitive decision. The paper serving as the basis for this discussion covers any additional items proposed by the Governing Body during the first stage of the discussion. If a decision cannot be taken at the March session, it is still possible to adopt a definitive decision at the following November session. However, to allow for full preparation by the Office, such third discussion should remain an exceptional practice.
4. Standard-setting items are regarded as having been referred to the Conference for a double discussion unless the Governing Body decides otherwise (paragraph 5.1.4 of the Governing Body Standing Orders). Paragraph 5.1.5 of Governing Body Standing Orders provides that in cases of special urgency or where other special circumstances exist, the Governing Body may, by a majority of three fifths of the votes cast, decide to refer a question to the Conference for a single discussion with a view to the adoption of a Convention or Recommendation. So far, all

¹ See [ILO Constitution](#), art. 14(1); [Standing Orders of the International Labour Conference](#), arts 44–52; [Standing Orders of the Governing Body](#), art. 5.1; as well as the [Introductory Note](#) of the Compendium of rules applicable to the Governing, paras 54–to 56.

Protocols except for one (the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (No. 89), were adopted on the basis of a single Conference discussion.

Preparing a standard-setting discussion on a Protocol

5. Standard-setting items are generally placed on the agenda of the Conference more than two years before the opening of the Conference session at which the item is discussed, by reason of specific time limits applicable to the preparatory stages of a double or single-discussion procedure set forth in the Standing Orders of the Conference (articles 45–46 of the Standing Orders of the Conference). As detailed below, these preparatory stages include the preparation of a preliminary report on the national law and practice with a questionnaire, the communication of replies by constituents, and the preparation of a further report of the Office with draft conclusions which in principle serve as a basis for the first Conference discussion.
6. As per articles 45 and 46 of the Standing Orders of the Conference, when a standard-setting item is placed on the agenda of the Conference for either a single or a double discussion, the Office shall prepare as soon as possible a preliminary report setting out the law and practice in the different countries and any other useful information, together with a questionnaire requesting the governments to consult the most representative organizations of employers and workers before finalizing their replies and to give reasons for their replies. The Office shall communicate the report and questionnaire to the governments so as to reach them not less than 18 months before the opening of the session of the Conference at which the first discussion is to take place. The replies should reach the Office as soon as possible and not less than 11 months before the opening of the session of the Conference at which the first discussion is to take place. On the basis of the replies received, the Office shall prepare a further report indicating the main questions which require consideration by the Conference. This report shall be communicated by the Office to the governments as soon as possible and every effort shall be made to ensure that the report reaches them not less than four months before the opening of the session of the Conference at which the first discussion is to take place.
7. A detailed flowchart presentation of the statutory timeline of a standard-setting discussion is available [here](#).
8. These arrangements shall apply only in cases in which the question has been included in the agenda of the Conference not less than 26 months before the opening of the session of the Conference at which it is to be discussed in respect of a single discussion (article 45(4) of the Conference Standing Orders) or not less than 18 months before the opening of the session of the Conference in the case of a double discussion (article 46(5) of the Conference Standing Orders).
9. When the standard-setting item is placed on the agenda of the Conference less than 26 months for a single discussion or less than 18 months for a double discussion, a programme of reduced intervals shall be approved by the Governing Body.
10. The Governing Body last approved a programme of reduced intervals for a single discussion of a Protocol in March 2013 ([GB.317/PV](#), paragraph 25(b)) when it decided to place on the agenda of the 2014 session of the Conference a standard-setting item to supplement the Forced Labour Convention, 1930 (No. 29), which led to the adoption of the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29). Another example was the approval by the Governing Body of reduced intervals in March 2002 ([GB.283/PV](#), page I/7 and [GB.283/16/3](#)) when it decided to place on the agenda of the 2003 session of the Conference, a standard-setting item with a view to considering a Protocol to the Seafarers' Identity Documents

Convention, 1958 (No.108), that led to the adoption of the Seafarers' Identity Documents Convention (Revised), 2003, as amended (No. 185).

11. According to ILO records, no standard-setting leading to the adoption of a Protocol has been completed in a timeframe shorter than 14–15 months from the date the item was placed on the Conference agenda, except for the Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), which had been prepared in a prior technical conference.

Agendas of the forthcoming sessions of the Conference

12. Under the second item of its Institutional Section, the Governing Body considers proposals for the agenda of the Conference based on a strategic and coherent approach which it approved at its 322nd Session (October–November 2014).²
13. At its 341st Session (March 2021), the Governing Body placed on the agenda of the 112th and 113th Sessions (2024 and 2025) of the Conference an item related to occupational safety and health protection against biological hazards (standard-setting – double discussion).³
14. As indicated in the document GB.349/INS/2, which will be discussed at the 349th Session of the Governing Body (October–November 2023), the agenda of next year's Conference was completed by the Governing Body at its 344th Session (March 2022) when the Governing Body decided to place on it a general discussion item on decent work and the care economy.⁴
15. At its 347th Session (March 2023), the Governing Body completed the agenda of the 113th Session (2025) of the Conference with the addition of a standard-setting item on the platform economy and a general discussion item on innovative approaches to tackling informality and promoting transitions towards formality to promote decent work.⁵
16. The Governing Body is invited at its 349th Session (October–November 2023) to consider placing on the agenda of either the 114th Session (June 2026) or the 115th Session (June 2027) of the Conference a standard-setting item on the consolidation of instruments on chemical hazards based on a double discussion. In view of the statutory time limits recalled above, to place a standard-setting item on the consolidation of instruments on chemical hazards based on a double discussion on the agenda of the 114th Session (June 2026), the Governing Body should take a decision no later than at its 350th Session (March 2024).⁶

II. Standard-setting in the form of a Protocol

A. Protocols to international labour Conventions in general

A.1. Legal nature, purpose and effects of a Protocol

17. Protocols are international treaties, subject to ratification by ILO Member States. Each Protocol is linked to an existing Convention. Protocols enter into force in accordance with the conditions set out in their final provisions and create legal obligations for ratifying States without retroactive effect. Protocols are subject to the same reporting requirements as the

² GB.322/PV, para. 17, and GB.322/INS/2, paras 11–19.

³ GB.341/INS/3/1(Rev.2)/Decision.

⁴ GB.344/INS/3/1 and GB.344/INS/3/1/Decision.

⁵ GB.347/INS/2/1 and GB.347/INS/2/1/Decision.

⁶ GB.349/INS/2 para. 15.

Conventions to which they are attached and may give rise to complaint and representation procedures.⁷

18. A Protocol can only be ratified by those States which are already bound by the Convention to which the Protocol is attached. As for the States that decide not to ratify the Protocol, they remain bound by the provisions of the relevant Convention in its original reading. This is consistent with Article 40(4) of the Vienna Convention on the Law of Treaties, which provides that an “amending agreement does not bind any State already a party to the treaty which does not become a party to the amending agreement”.
19. The main advantage of a Protocol is that it has a circumscribed scope and that it preserves the ratifications of the Convention to which it is attached, which remains open to new ratifications. It is a simple and flexible instrument particularly useful for partially amending or supplementing a specific part or a limited number of provisions of an existing Convention.
20. To date, the ILO has adopted six Protocols to international labour Conventions. The first Protocol was adopted in 1982 and aimed at revising the Plantations Convention, 1958 (No 110). The intention was to introduce a limited amendment in a simplified format, avoiding the need for drafting a new Convention or reproducing the whole text of the Convention.⁸
21. This innovation originated in the [1979 report of the Ventejol Working Party](#) on the Revision of Standards. Prior to 1982, the only method for both total and partial revision of Conventions had been the drafting of a new Convention based on either a single or double Conference discussion. In fact, all revision exercises since 1950 had followed the general procedure used for the adoption of new standards.

A.2. Overview of ILO Protocols

22. A short overview of the six Protocols adopted by the ILO is provided below. The purpose is to take stock of past practice with regard to the purpose and content of Protocols, as well as the time frame and process for their adoption. This review will inform the final considerations set out at the end of the report.

Protocol of 1982 to the Plantations Convention, 1958 (P110)

23. **Purpose and content:** The Protocol aims at amending the scope of application of Convention No. 110 by allowing Member States to exclude from the coverage of the Convention, after consultation with organizations of employers and workers, undertakings the area of which covers not more than 5 hectares, and which employ not more than ten workers at any time during a calendar year.
24. **Adoption process:** At its [214th Session](#) (November 1980), the Governing Body decided to place on the agenda of the 68th Session (1982) of the Conference an item concerning the limited revision of Convention No. 110 under the single-discussion procedure. A law and practice report accompanied by a questionnaire were prepared so as to reach governments not less than 12 months before the opening of the 68th Session. Replies were to be sent not later than

⁷ ILO, *Strengthening Action to End Forced Labour*, ILC.103/IV/1, 2014, 67, and *Records of Proceedings*, PR 9(Rev.), International Labour Conference, 103rd Session, 2014, para. 580.

⁸ ILO, *Revision of the Plantations Convention (No. 110) and Recommendation (No. 110), 1958*, Report VII(2), 24; and “*Report of the Committee on Plantations*”, Provisional Record No. 18, International Labour Conference, 68th Session, 1982, para. 9

2 October 1981. No programme of reduced intervals was adopted as the item was placed on the agenda in accordance with the time limits set forth in the Conference Standing Orders.⁹

25. **Ratification:** To date, the Protocol has been ratified by two of the ten countries that are bound by Convention No. 110.

Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948 (P89)

26. **Purpose and content:** The Protocol aims at broadening the possibilities for exemptions from the prohibition of the night work of women in industry and introduce variations in the duration of the night period provided, as envisaged in the Night Work (Women) Convention (Revised), 1948 (No. 89). This was considered necessary to accommodate the changing role of women in the world of work and the sharp increase in women's labour force participation in the 42 years that elapsed since the Convention's adoption. Exemptions rely on the elaboration of consensual policies aimed at striking a balance between on the one hand, measures which limit women's freedom of choice regarding working time and reduce their ability to compete with men in the labour market, and on the other hand, measures aimed at providing protection tailored narrowly to meet a demonstrated need for protection in certain contexts.¹⁰ A meeting of experts which had preceded the adoption of the Protocol, had underlined the complexity of the subject involving conflicting values and competing legal doctrines on preventing discrimination in employment and ensuring the safety and health of workers. The Protocol was adopted in parallel to the Night Work Convention, 1990 (No. 171), in an attempt to reconcile the various perspectives and doctrines into a coherent policy.¹¹ The Protocol served to ease prohibitions on night work of women while maintaining restrictions still considered valid in certain contexts. For countries that were ready to move towards an approach focused on equal treatment between women and men, Convention No. 171 provided measures of protection for all night workers without discrimination including in relation to many aspects of special concern to women.
27. **Adoption process:** At its [238th Session](#) (November 1987) the Governing Body decided to place on the agenda of the 76th Session (1989) of the Conference, the question of night work under the double-discussion procedure. A law and practice report accompanied by a questionnaire were prepared so as to reach governments not less than 12 months before the opening of the 76th Session. Replies were to be sent not later than 6 October 1988. No programme of reduced intervals was adopted as the item was placed on the agenda in accordance with the time limits set forth in the Conference Standing Orders.

⁹ At the time, [article 38](#), para. 1 which read as follows:

When a question is governed by the single-discussion procedure the International Labour Office shall communicate to the governments, so as to reach them not less than 12 months before the opening of the session of the Conference at which the question is to be discussed, a summary report upon the question containing a statement of the law and practice in the different countries and accompanied by a questionnaire drawn up with a view to the preparation of Conventions or Recommendations. This questionnaire shall request governments to give reasons for their replies. Such replies should reach the Office as soon as possible and not less than eight months before the opening of the session of the Conference at which the question is to be discussed.

Article 38, para. 3 read as follows:

These arrangements shall apply only in cases in which the question has been included in the agenda of the Conference not less than 18 months before the opening of the session of the Conference at which it is to be discussed.

¹⁰ ILO, *Night Work for Women in Industry*, Report III (Part 1B), International Labour Conference, 89th Session, 2001, para. 24.

¹¹ ILO, *Meeting of Experts on Special Protective Measures for Women and Equality of Opportunity and Treatment*, MEPMW/1989/7, 1989, 1.

28. **Ratification:** The Protocol has been ratified by 3 of the 44 Member States that are still bound by Convention No. 89.

Protocol of 1995 to the Labour Inspection Convention, 1947 (P81)

29. **Purpose and content:** The Protocol brings within the scope of the Labour Inspection Convention, 1947 (No. 81), all categories of workplaces that are not considered as industrial or commercial. The need was felt to subject the non-commercial services sector to an “equally effective and impartial system of labour inspection”, and to harmonize the scope of Convention No. 81 with that of the Occupational Safety and Health Convention, 1981 (No. 155), and the Occupational Health Services Convention, 1985 (No. 161), which cover all branches of economic activity. The experience following the Convention’s adoption had demonstrated that many of the concerns expressed originally about the cost and difficulty of inspection in the non-commercial services sector had proved to be not insuperable or even unfounded.¹²
30. **Adoption process:** At its [258th Session](#) (November 1993) the Governing Body decided to place on the agenda of the 82nd Session (1995) of the Conference the question of extension of Convention No. 81 to activities in the non-commercial services sector under the single-discussion procedure. A law and practice report accompanied by a questionnaire were prepared so as to reach governments not less than 12 months before the opening of the 82nd Session. Replies were to be sent not later than 30 September 1994. No programme of reduced intervals was adopted as the item was placed on the agenda in accordance with the time limits set forth in the Conference Standing Orders.
31. **Ratification:** To date, the Protocol has been ratified by 12 of the 148 Member States that are bound by Convention No. 81.

Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 (P147)

32. **Purpose and content:** The Protocol aimed at updating the Convention through a partial revision of its Appendix drawing on the conclusions of a Tripartite Meeting on Maritime Labour Standards which had taken place two years earlier, in 1994. The Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), listed in an Appendix the standards that ratifying States had to apply in the maritime context. It required “substantial equivalence” in applying the listed standards, insofar as Member States were not otherwise bound by their provisions, notably by having ratified these instruments. The Protocol replaced the list of Conventions in the Appendix with up-to-date Conventions concerning seafarers’ social security, identity documents, repatriation and so on. The revision drew, among other things, on lessons learned from the regular supervision of implementation of the Convention by the Committee of Experts on the Application of Conventions and Recommendations in examining both article 22 reports and the article 19 reports submitted for the 1990 General Survey.¹³
33. **Adoption process:** At its [262nd Session](#) (March–April 1995) the Governing Body examined the Report of the Tripartite Meeting on Maritime Labour Standards (November–December 1994) and decided to include on the agenda of the 84th (Maritime) Session of the Conference to be held in January 1996 an item on the partial revision of Convention No. 147. At the time, it was considered that the proposed agenda item had been the subject of a preparatory technical

¹² ILO, *Extension of the Labour Inspection Convention, 1947 (No. 81), to Activities in the Non-commercial Services sector*, Report VI(1), International Labour Conference, 82nd Session, 1995, 33.

¹³ ILO, *Partial Revision of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)*, Report IV, International Labour Conference, 84th (Maritime) Session, 1996, 5–6.

Conference within the meaning of the applicable Conference Standing Orders provision.¹⁴ As a result, rather than communicating a report and questionnaire to the governments, the Office was requested to draw up a final report on the basis of the work of the Tripartite Meeting. The 84th (Maritime) Session of the Conference took place in October 1996.

34. **Ratification:** Until the adoption of the Maritime Labour Convention, 2006 (MLC, 2006), that revised Convention No. 147 and its Protocol, the Protocol had received 24 ratifications among the 56 States parties to Convention No. 147. At its 111th Session (June 2023), the Conference decided to withdraw the Protocol which was no longer in force as it had in the meantime been denounced by all ratifying Member States following ratification of the MLC, 2006.¹⁵

Protocol of 2002 to the Occupational Safety and Health Convention, 1981 (P155)

35. **Purpose and content:** The Protocol addressed an implementation gap in Convention No. 155, that is the “absence of reliable information about the incidence of occupational accidents and disease ... a major obstacle to curbing the appalling toll of work-related deaths and injuries that continues to plague humankind”.¹⁶ Concretely, the Protocol complemented Article 11 which gives effect to Article 4 of Convention No. 155 by providing that each ratifying State must, in consultation with the most representative organizations of employers and workers, establish and periodically review requirements and procedures for the recording and notification of occupational accidents, occupational diseases; and as appropriate, dangerous occurrences, commuting accidents and suspected cases of occupational diseases and must also publish compiled statistics on an annual basis. The relevance and importance of the questions addressed in the Protocol is illustrated by the fact that occupational injury rates currently serve as a target, monitoring progress made towards protecting labour rights and promoting safe and secure working environments in the context of the 2030 Agenda for Sustainable Development (target 8.8. and indicator 8.8.1 of the Sustainable Development Goals (SDGs)). When the Conference designated Conventions Nos 155 and 187 as fundamental instruments in 2022, it did not do the same for the Protocol to Convention No. 155, nor was the prospect of doing so considered at length in the discussions at the Conference.
36. **Adoption process:** At its [279th Session](#) (November 2000) the Governing Body decided to place on the agenda of the 90th Session (2002) of the Conference an item on the recording and notification of occupational accidents and diseases under the single-discussion procedure. A law and practice report accompanied by a questionnaire were communicated to governments in February 2001 and replies were to be received by 30 September 2001. A programme of reduced intervals was endorsed by the Governing Body, as provided for in the Conference Standing Orders.¹⁷

¹⁴ [Article 38](#), para. 4, read as follows:

If a question on the agenda has been considered at a preparatory technical conference the Office, according to the decision taken by the Governing Body in this connection, may either (a) communicate to the governments a summary report and a questionnaire as provided for in paragraph 1 above; or (b) itself draw up on the basis of the work of the preparatory technical conference the final report provided for in paragraph 2 above.

¹⁵ ILO, *Abrogation of One International Labour Convention and Withdrawal of Four Conventions, One Protocol and 18 Recommendations*, ILC.111/VII/1, 2023.

¹⁶ ILO, *Recording and Notification of Occupational Accidents and Diseases and ILO list of Occupational Diseases*, Report V(1), International Labour Conference, 90th Session, 2002, 3.

¹⁷ Following [amendments to the Standing Orders adopted in 1994](#), article 38, para. 3 read as follows:

These arrangements shall apply only in cases in which the question has been included in the agenda of the Conference *not less than 26 months* before the opening of the session to the Conference at which it is to be discussed. If the question has been included in the agenda less than 26 months before the opening of the session of the Conference at which it is

37. **Ratification:** To date, the Protocol has been ratified by 17 of the 75 Member States that are bound by Convention No. 155.

Protocol of 2014 to the Forced Labour Convention, 1930 (P29)

38. **Purpose and content:** The Protocol aims at reinforcing efforts to realize the elimination of forced labour by setting standards for prevention, protection and compensation measures, thereby closing implementation gaps identified. The Protocol drew on lessons learned from the supervision of the Convention's implementation by the Committee of Experts both through article 22 reports and article 19 reports submitted for the 2012 General Survey.¹⁸ The conference discussion of the Protocol was preceded by a Tripartite Meeting of Experts on Forced Labour and Trafficking for Labour Exploitation held in Geneva on 11–15 February 2013, which itself resulted from a recurrent discussion on fundamental principles and rights at work at the 101st Session of the Conference.¹⁹ A central objective of the Protocol has been to address contemporary forms of slavery and human trafficking which are the subject of widespread international concern despite near universal ratification of Convention No. 29. As indicated in the relevant Conference report, while forced labour imposed by state authorities continued to be a concern in certain countries, its scale had become dwarfed by the use of forced labour at the hands of private individuals and enterprises operating outside the rule of law.²⁰ The Protocol therefore provides that the definition of forced or compulsory labour includes trafficking and that “the measures referred to in this Protocol shall include specific action against trafficking in persons for the purposes of forced or compulsory labour”. It also complements Convention No. 29 by adding provisions on the prevention of forced or compulsory labour, and the protection, rehabilitation, remediation and compensation of victims. The Protocol has been designated a fundamental instrument. It serves as a basis for a global alliance to eradicate forced labour, modern slavery, human trafficking and child labour under SDG target 8.7.
39. **Adoption process:** At its [317th Session](#) (March 2013), the Governing Body decided to place on the agenda of the 103rd Session (2014) of the Conference an item on forced labour under the single-discussion procedure. A programme of reduced intervals was approved by the Governing Body as provided for in the Conference Standing Orders. A law and practice report accompanied by a questionnaire had to be sent by 15 July 2013; the replies to the questionnaire had to be received by 31 December 2013 and the final report had to be communicated by March 2014.
40. **Ratification:** To date, the Protocol has been ratified by 60 of the 181 countries that are bound by Convention No. 29.

to be discussed, a programme of reduced intervals shall be approved by the Governing Body; if the Officers of the Governing Body do not consider it practicable for the Governing Body to approve a detailed programme, it shall be in their discretion to agree on a programme of reduced intervals with the Director-General.

¹⁸ ILO, *Giving Globalization a Human Face: General Survey on the Fundamental Conventions concerning Rights at Work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008*, ILC.101/III/1B, 2012. The 2014 law and practice report indicates that “The Committee of Experts has examined trafficking and forced labour of children under Convention No. 182 since that instrument entered into force in 2000. Since 2001, it has systematically examined the issue of trafficking in its comments under Convention No. 29 and has requested information on the measures taken by governments to prevent, suppress and punish trafficking in persons.” ILO, *Strengthening Action to End Forced Labour*, ILC.103/IV/1, 2014, para. 37. See also, paras 57, 86, 126, 168 and 189 among numerous references.

¹⁹ TMELE/2013/6.

²⁰ ILO, *Strengthening Action to End Forced Labour*, ILC.103/IV/1, 2014, para. 3.

41. In summary, Protocols have so far been adopted for different purposes, namely:
 - (a) introducing flexibility and potentially reducing the scope of the Convention with a view to facilitating ratification (Protocol to Convention No. 110);
 - (b) expanding the scope and coverage of the Convention (Protocol to Convention No. 81);
 - (c) allowing for a widening of exemptions to facilitate a transition towards standards that reflect changing circumstances in the world of work (Protocol to Convention No. 89);
 - (d) updating certain regulatory aspects in the Convention they partially revise (Protocol to Convention No. 147);
 - (e) adding regulatory content to the standards in the Convention they partially revise with a view to closing implementation gaps (Protocols to Conventions Nos 29 and 155).
42. This points to the importance of determining the purpose of a Protocol to Convention No. 87 on the basis of any of the options mentioned above or any other purpose to be decided upon.

III. Proposed standard-setting on the right to strike: Origins of the proposal

43. With respect to the right to strike, the background report, prepared to discuss the request of the Workers' group and of 36 governments to urgently refer the matter to the ICJ for decision, provides a comprehensive account of the controversy which emerged as from 1989 around the view adopted by the Committee of Experts that the right to strike is an intrinsic corollary of the rights to organize protected by Convention No. 87.²¹
44. In relation to the request of the Employers' group to include a standard-setting item on the right to strike in the agenda of the next session of the Conference, this section of the document provides an account of previous Governing Body discussions on the right to strike during which the possibility of the inclusion of such a standard-setting item was raised.
45. A standard-setting item on the right to strike was proposed for the first time for inclusion in the agenda of the International Labour Conference at the Governing Body's 253rd Session, in May-June 1992.²² The proposal originated in a letter from the Minister of Labour and Social Security of Colombia to the ILO Director-General requesting, on the basis of article 10, paragraph 1 and article 14, paragraph 1 of the Constitution, that the item be brought to the Governing Body's attention for its consideration. At the time, several governments and the Workers' group were categorically against the proposal while the Employers' group, who had initiated a parallel proposal for a general discussion on the resolution of industrial disputes, "thought that it was more appropriate to discuss this question in the wider framework of labour disputes. Neither strikes nor lockouts were desirable methods of solving labour disputes. It was preferable to explore all means that could lead to avoiding a strike, which inevitably had negative consequences. The Employers' group would like to focus on the exchange of experiences with a view to finding mechanisms which would resolve disputes without recourse to strike action, the legitimacy of which was not contested. They suggested that prior to proceeding to the adoption of an instrument, the Conference should have the opportunity to debate the matter in a general discussion. That might help to avoid the formalisation of the opposing views of the various parties."²³

²¹ GB.349bis/INS/1.

²² GB.253/2/3(Rev.), paras 35–38 and Appendix I.

²³ GB.253/PV(Rev.), I/11.

46. Discussions on a possible general discussion or standard-setting item regarding the settlement of industrial disputes continued over the years including, from 1999, for a general discussion under the heading “New trends in the prevention and resolution of labour disputes”.²⁴ The proposal was discussed for the last time by the Governing Body at its 303rd Session (November 2008)²⁵ and given the lack of interest, it was eventually taken off the list of potential items for a general discussion.²⁶
47. The controversy over the right to strike intensified in 2012 when the Conference Committee on the Application of Standards was prevented for the first time from exercising its supervisory functions. This was followed by several informal tripartite consultations in 2013 and 2014 paving the way for the Governing Body discussion in November 2014 on “the standards initiative”.²⁷
48. Further to the wide-ranging discussion held under the fifth item on the agenda of the Institutional Section entitled *The standards initiative: Follow-up to the 2012 ILC Committee on the Application of Standards*, the Governing Body²⁸ decided in November 2014 to:
 - (1) convene a three-day tripartite meeting in February 2015, open to observers with speaking rights through their group, to be chaired by the Chairperson of the Governing Body and composed of 32 Governments, 16 Employers and 16 Workers with a view to reporting to the 323rd Session (March 2015) of the Governing Body on:
 - the question of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike; and
 - the modalities and practices of strike action at national level;
 - (2) place on the agenda of its 323rd Session, the outcome and report from this meeting on the basis of which the Governing Body will take a decision on the necessity or not for a request to the International Court of Justice to render an urgent advisory opinion concerning the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike;
 - (3) take the necessary steps to ensure the effective functioning of the Committee on the Application of Standards at the 104th Session of the International Labour Conference, and to this end reconvene the Working Group on the Working Methods of the Conference Committee on the Application of Standards to prepare recommendations to the 323rd Session of the Governing Body in March 2015, in particular with regard to the establishment of the list of cases and the adoption of conclusions;
 - (4) defer at this stage further consideration of the possible establishment of a tribunal in accordance with article 37(2) of the Constitution;

²⁴ see for instance, [GB.276/PV](#) and [GB.303/3/2](#), 22.

²⁵ [GB.303/PV](#). On that occasion, the Governments of Canada, China, Cuba, India, Mexico, the Russian Federation and Thailand expressed support for an item on new trends in the prevention and resolution of industrial disputes while neither the Employer nor the Worker groups referred to it.

²⁶ The more recent proposal for a general discussion on “access to labour justice: prevention and resolution of labour disputes” focuses on the functioning of the institutions responsible for the prevention and resolution of labour disputes, notably labour justice, and does not pertain to the right to strike.

²⁷ The standards initiative: Follow-up to the 2012 ILC Committee on the Application of Standards: [GB.322/INS/5](#), [GB.322/INS/5\(Add.\)](#), [GB.322/INS/5\(Add.1\)](#), [GB.322/INS/5\(Add.2\)](#), [GB.322/INS/5\(Add.3\)](#) and [GB.322/PV](#).

²⁸ [GB.322/INS/5\(Add.2\)](#), para. 1, as amended according to the discussion.

- (5) as part of this package, refer to the 323rd Session of the Governing Body the following:
- (a) the launch of the Standards Review Mechanism (SRM), and to this effect establish a tripartite working party composed of 16 Governments, eight Employers and eight Workers to make proposals to the 323rd Session of the Governing Body in March 2015 on the modalities, scope and timetable of the implementation of the SRM;
 - (b) a request to the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), Judge Abdul Koroma (Sierra Leone), and the Chairperson of the Committee on Freedom of Association (CFA), Professor Paul van der Heijden (Netherlands), to jointly prepare a report on the interrelationship, functioning and possible improvement of the various supervisory procedures related to articles 22, 23, 24 and 26 of the ILO Constitution and the complaints mechanism on freedom of association.
49. The Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87), in relation to the right to strike and the modalities and practices of strike action at national level, took place from 23 to 25 February 2015. Part I of the background document prepared by the Office for that meeting provided factual background on the adoption and supervision of the application of Convention No. 87 in relation to the right to strike and the relevant rules of international law on treaty interpretation. Part II provided a broad overview of modalities concerning strike action at the national level in both law and practice.²⁹
50. As reported to the Governing Body in March 2015, the Tripartite Meeting was conducted in a constructive atmosphere.³⁰ The Workers' and Employers' groups presented a joint statement concerning a package of measures to find a possible way out of the existing deadlock in the supervisory system.³¹ In their statement, the Workers and Employers recognize the mandate of the Committee of Experts as defined in its report of 2015 (paragraph 29) according to which "[I]ts opinions and recommendations are non-binding, being intended to guide the actions of national authorities. They derive their persuasive value from the legitimacy and rationality of the Committee's work based on its impartiality, experience and expertise". They do not include any specific follow-up on the question of Convention No. 87 and the right to strike. The Government group expressed its common position on the right to strike in relation to freedom of association³² and also delivered a second statement in response to the social partners' joint statement.³³
51. Noting the outcome and report of the Tripartite Meeting, the [Governing Body](#) decided not to pursue for the time being any action in accordance with article 37 of the Constitution to address the interpretation question concerning Convention No. 87 in relation to the right to strike. It further adopted the Standards Initiative which aimed at strengthening the supervisory system, including through legal certainty and at maintaining a clear, robust and up-to-date body of international labour standards through the Standards Review Mechanism.
52. In the framework of the implementation of the Standards Initiative, the Employers' and Workers' groups, while reaffirming their joint statement of 23 February 2015, observed in

²⁹ [GB.323/INS/5/Appendix III.](#)

³⁰ [GB.323/INS/5/Appendix.I.](#)

³¹ See Annex I, GB.323/INS/5/Appendix.I.

³² See Annex II, GB.323/INS/5/Appendix.I.

³³ See Annex III, GB.323/INS/5/Appendix.I.

March 2017 that “divergent views and disputes about the interpretation of Conventions continue to be a reality” and recognized that to advance legal certainty there could be value in a tripartite exchange of views on the elements and conditions necessary for the operation of an independent body under article 37(2) of the ILO Constitution.³⁴

53. The Governing Body provided further preliminary guidance on the issue of legal certainty in November 2017 and March 2018. Some Government members underlined the need to pursue measures to enhance legal certainty based on article 37(2), while other Government members preferred to continue “exploring avenues for consensus-based interpretation of Conventions”. The Worker and Employer members supported a proposal to have informal consultations on this first.³⁵
54. In November 2018, the Governing Body decided to request the Office to provide concrete proposals to prepare the discussion on consideration of further steps to ensure legal certainty – including, but not limited to, organizing a tripartite exchange of views on article 37(2). In March 2019, the Governing Body decided to hold informal consultations in January 2020 and, to facilitate that tripartite exchange of views, requested the Office to prepare “a paper on the elements and conditions for the operation of an independent body under article 37(2) and of any other consensus-based options”.³⁶
55. On that occasion, in March 2019, the Employers’ group made a statement supporting the proposal to hold informal tripartite consultations on the issue of legal certainty “... in a comprehensive manner, considering all options and not limiting the discussion to article 37(2)”. For the Employers, “the Office document and the related consultations should focus on consensus-based options. The Office should explore approaches to address possible disagreements regarding the interpretation of Conventions before they developed into major controversies. The ILO constituents had the primary responsibility for the functioning of the standards supervisory system. Related decisions should not be easily outsourced to a new body, as would be the case if the chosen option were article 37(2). Nevertheless, the Employers were keen to engage in discussions regarding all possible options”.³⁷ For their part, with regard to the parameters of a possible tripartite exchange of views on legal certainty, the Workers maintained that the Office document should focus on the necessary elements for the operation of an independent body under article 37(2), rather than on other possible solutions. It was necessary to fully explore options under articles 37(1) and (2) before considering other suggestions.³⁸ Some Government members considered that it was appropriate to explore consensus-based options.³⁹
56. The Governing Body discussion on proposals on further steps to ensure legal certainty resumed in March 2022 informed by a paper on the elements and conditions for the operation of an independent body under article 37(2) and of any other consensus-based options, as well as the article 37(1) procedure.⁴⁰ Paragraphs 60 to 65 of the document GB.344/INS/5 addressed the role of tripartite consensus-based modalities as a modality to either: (i) attempt reconciling

³⁴ GB.335/INS/5, para. 47 and GB.329/PV, Appendix II, Joint Position of the Workers’ and Employers’ groups on the ILO Supervisory Mechanism, 194.

³⁵ GB.335/INS/5, para. 48.

³⁶ GB.335/INS/5, paras 48 and 84(g).

³⁷ GB.335/PV, para. 243.

³⁸ GB.335/PV, para. 241.

³⁹ GB.335/PV, paras 244, 247 and 248.

⁴⁰ GB.344/INS/5.

diverging views through tripartite discussion prior to referral of the matter for interpretation to the ICJ or an internal tribunal; or (ii) to follow-up on the advisory opinion of the ICJ or the award of an internal tribunal. It also clarified that if legal certainty in matters of interpretation is understood as the ability to obtain final pronouncements on the scope and meaning of conventional provisions, the only two mechanisms that can offer such certainty are explicitly set out in article 37. A consensus-based modality involving standard-setting cannot and does not generate the legal certainty provided by article 37 of the ILO Constitution as the consensus-based outcome of a Convention or Protocol would be binding only for those Member States which have eventually ratified these. Legal uncertainty would therefore continue to prevail in respect of Member States having ratified the Convention subject to a legal dispute for as long as they are not in a position to ratify the newly adopted Convention or Protocol.⁴¹

57. The Employers' group expressed views on these possible options and included a reference to normative action: "The Employers' group would have liked to have seen the option of tripartite consensus-based modalities addressed in greater depth They should be the first option to resolve diverging views on interpretation and would maintain the competence of the tripartite constituents to determine the content of international labour standards. The purpose of a consensus-based option would not be to find a legally binding solution based on legal process, but a solution based on the authority arising from the support of a majority of the tripartite constituents. A dispute over a particular interpretation of an ILO Convention could be placed on the agenda of the International Labour Conference, which could decide to discuss the matter in a committee which would make a recommendation on the interpretation or on further action to address the issue. Another possibility would be to organize a process whereby constituents would be requested to provide their views in writing on a contentious interpretation, which would indicate the level of acceptance of the interpretation and help settle the dispute. The Committee of Experts should then take into account the outcomes of those processes in its future comments on Convention No. 87. If such options did not lead to a settlement, a final possibility could be to consider the initiation of a standard-setting process which could establish a Protocol to the respective Convention setting out the interpretation considered to be the appropriate one, which would have to receive a two-thirds majority of the International Labour Conference. Such a Protocol would become binding only for those countries that ratified it".⁴²
58. For their part, the Workers were categorically opposed to the suggestion that the ILO could adopt a new standard to address an interpretation dispute as, in their view, the same disagreement on interpretation would persist in the development of the new standard, thus preventing consensus.⁴³ As for the Governments, some emphasized the need to take measures to strengthen legal certainty based on article 37, while others reiterated their conviction that social dialogue could pave the way to consensus, recalling that responsibility for adopting and monitoring the application of standards lay primarily with the tripartite constituents.⁴⁴
59. In March 2023, the Employers' group stressed once again that the core issue underlying discussions was the interpretation by the Committee of Experts of the right to strike in the context of Convention No. 87 and that it was necessary for the Office to provide the groups

⁴¹ GB.344/INS/5, para. 65.

⁴² GB.344/PV, para. 142.

⁴³ GB.344/PV, para. 148.

⁴⁴ GB.344/PV, paras 150 et seq.

with all possible means to resolve interpretation issues internally, such as a tripartite technical meeting or a dedicated discussion at the International Labour Conference: "... [t]he Employers' objective was to ensure that the Committee of Experts did not create new obligations beyond those intended by the tripartite constituents at the Conference. The Committee of Experts should refer difficult questions or gaps in a Convention to the constituents for them to resolve; its failure to do so in the case of the right to strike had led to the current dispute".⁴⁵ In their proposed amendments the Employers' group referred to "further proposals to ensure legal certainty and strengthen the supervisory system, including by placing an item for discussion on the agenda of the International Labour Conference".⁴⁶ The Workers' group reiterated that legal certainty could only be achieved through referral to the International Court of Justice and that the ILO should make good use of the conflict resolution mechanism laid down in its Constitution. They recalled that the situation had lasted too long and that the lack of consensus meant that an authoritative solution had now to be found.⁴⁷ Similar views were expressed by a number of Government representatives.⁴⁸

IV. Final considerations

60. As indicated in the introduction, the purpose of the present report is to recap the background against which the request of the Employers' group to urgently include a standard-setting item on the right to strike in the form of a Protocol on the agenda of the Conference in June 2024 as well as to set out the various aspect of the request with a view to assisting constituents in making an informed decision thereon. In the light of the preceding analysis, a few final considerations may guide the discussion of the Governing Body.

Purpose and aim of an ILO Protocol on the right to strike

61. The purpose and aim of the proposed Protocol to Convention No. 87, as proposed by the Employer's group, would be to authoritatively determine the scope and limits of the right to strike in the context of Convention No. 87, thereby setting out the interpretation considered to be the appropriate one.
62. The review of the six Protocols adopted by the Organization to date points out that none of the Protocols adopted so far by the Conference aimed at settling a dispute with respect to the interpretation of provisions of the related Convention.⁴⁹
63. As noted above, ILO Protocols need to be ratified by those Member States already bound by the Convention to which they are attached to have a binding effect. Consequently, Members States which do not ratify the Protocol remain bound by the Convention concerned in its original form and the Protocol does not affect the obligations arising from the ratification of

⁴⁵ GB.347/PV(Rev.), paras 229–230.

⁴⁶ GB.347/PV(Rev.), para. 235.

⁴⁷ GB.347/PV(Rev.), paras 278. See also GB.349bis/INS/1, Appendix, background report, para.8.

⁴⁸ GB.347/PV(Rev.), paras 247 et seq., and GB.349bis/INS/1, Appendix, background report, footnote 15.

⁴⁹ A possibility exists under general international law for parties to a treaty to adopt a Protocol of Signature as an instrument subsidiary to the treaty in order to address ancillary matters including the interpretation of particular clauses of the treaty. However, such Protocol is usually adopted at the same time as the treaty and ratification of the latter will ipso facto involve ratification of the Protocol. This naturally serves to ensure the treaty's coherent application among the parties: [United Nations Treaty Collection \(UNTC\)](#).

the Convention. Legal uncertainty would therefore persist in respect of those Member States that would decide not to ratify the newly adopted Protocol.⁵⁰

64. This also raises the question of the extent to which consideration is given to the comments made by the Committee of Experts since the beginning of its examination of the application of Convention No. 87 by ILO Member States in relation to the right to strike.⁵¹

A synergetic relationship between the Committee of Experts' independent supervisory functions and the standard-setting function of the Conference

65. It appears from the review of the six existing Protocols that at least two Protocols – those linked to Conventions Nos 29 and 147 – explicitly drew on the Committee of Experts comments and general surveys, to update and add regulatory content to the provisions of the Conventions concerned.
66. The proposed purpose and aim of a Protocol on the right to strike or on industrial action may suggest that the Committee of Experts comments and the five general surveys on Convention No. 87 which reviewed the application by ILO Member States in relation to the right to strike would not inform the standard-setting discussion. In this respect, it is to be recalled that the Committee of Experts' comments by and large draw upon the conclusions of the Committee on Freedom of Association adopted through tripartite consensus, thereby ensuring coherence and consistency across supervisory bodies.
67. Another aspect to be considered is the incidence a Protocol on the right to strike or on industrial action would have on the review by the Committee of Experts and other supervisory bodies of the application of Convention No. 87 by those Member States that would eventually decide not to become parties to the said Protocol.
68. While the Committee of Experts would have to take fully into account the provisions of the Protocol vis-à-vis the Member States that have ratified it, it will have to decide, as an independent body, how to proceed vis-à-vis Member States which have not ratified the Protocol and are bound only by the Convention.
69. By way of example, reference may be made to the adoption of the 2014 Protocol to Convention No. 29 and its incidence on the supervision of the application of this Convention. The adoption of this Protocol in 2014 led to a differentiation by the Committee of Experts between Members that have ratified the Protocol and those that have not. Prior to the adoption of the 2014 Protocol, the Committee of Experts would systematically raise questions related to trafficking, prevention and compensation/remediation of victims in its comments under Convention No. 29, based on the acknowledgment in the *travaux préparatoires* of the Convention that these aspects are an integral part of the obligations entrenched in the Convention. By consolidating this interpretation, the Protocol of 2014 enabled the Committee of Experts to pursue a detailed examination of these questions in Member States bound by the Protocol while addressing comments of a more general nature vis-à-vis Member States bound only by the Convention.

⁵⁰ GB.344/INS/5, para. 65.

⁵¹ With regard to the source of data and materials serving as background for the revision, an additional question is whether this would include the work of ILO supervisory bodies other than the Committee of Experts. These supervisory bodies include the Conference Committee on the Application of Standards, the Committee on Freedom of Association, the Fact-Finding and Conciliation Commissions on Freedom of Association, the ad hoc tripartite committees established for the examination of representations under article 24 of the ILO Constitution and Commissions of Inquiry established to examine complaints under article 26 of the ILO Constitution. These sources contain valuable guidance based on findings and recommendations including on the right to strike provided over several decades.

70. In one case, the Conference explicitly addressed a question related to the purpose of a Convention and effectively influenced the way in which the Committee of Experts exercised its supervision, by adopting a resolution, namely, the 2006 resolution concerning asbestos, at its 95th Session (2006). The Asbestos Convention, 1986 (No. 162), prioritizes prevention and control in the use of asbestos (Article 3) and does not require the outright ban of all types of asbestos.⁵² At the same time, the Occupational Cancer Convention, 1974 (No. 139), requires Member States to periodically determine the carcinogenic substances and agents to which occupational exposure shall be prohibited (Article 1). Noting that all forms of asbestos, including chrysotile, are classified as human carcinogens by the International Agency for Research on Cancer (IARC), and expressing its concern that workers continue to face serious risks from asbestos exposure, the Conference underlined, among other things, that the ILO Convention concerning Safety in the Use of Asbestos, No. 162, should not be used to provide a justification for, or endorsement of, the continued use of asbestos.
71. Following up on the resolution adopted by the Conference, the Governing Body instructed the Office to continue encouraging Member States to ratify and give effect to Conventions Nos 162 and 139 and the Committee of Experts took the guidance contained in the resolution fully into account in exercising its supervisory function over the application of Convention No. 162.⁵³

Adoption process and timeframe

72. As per the statutory timeline provided for in articles 45 and 46 of the Standing Orders of the Conference, all existing Protocols were placed on the agenda of the Conference between 15 and 19 months before the opening of the session at which they would be discussed, except for the Protocol to Convention No. 147 which had been prepared in the context of an earlier technical meeting. A programme of reduced intervals was adopted for the preparation of the two most recent Protocols to Conventions Nos 155 and 29 in line with article 38, paragraph 3 (now article 45, paragraph 4) of the Standing Orders of the Conference. The question of the feasibility of the current proposal for a discussion at the 112th Session of the Conference, that is in less than seven months from the date of the special meeting, must be debated in the light of those factual parameters.
73. In addition, it is to be noted that of the six Protocols adopted by the Conference, four have been preceded by technical or tripartite meetings of experts. This preparatory work, consisting in in-depth technical analyses and tripartite debates, has been demonstrated to be essential in developing sound and well-informed standards for the purpose of the protection of workers and taking into account the needs of sustainable enterprises.

V. Concluding observations

74. In considering the request of the Employers' group, constituents may wish to pay particular attention to:
 - (a) the advantages and disadvantages of a legislative process that may result in a negotiated instrument open to voluntary ratification;

⁵² Art. 10 provides that Member States shall provide for total or partial prohibition in the use of asbestos where necessary to protect the health of workers and technically practicable and Art. 11 prohibits crocidolite.

⁵³ See for example, CEACR, Convention No. 162: Plurinational State of Bolivia, [Observation](#), 2021; Montenegro, [Direct Request](#), 2019; Portugal, [Observation](#), 2017; and Brazil, [Observation](#), 2015.

- (b) the aim and purpose of the proposed Protocol on the right to strike or on industrial action vis-à-vis Convention No. 87. Questions that would have to be addressed include, for example: the exact provision or provisions of Convention No. 87 that the prospective Protocol would revise; the level of detail of the provisions to be inserted in the Protocol; the scope of the revision; the content of the regulatory provisions; the source of data and information for the revision, etc.;
- (c) the extent to which consideration is given to the comments made by the Committee of Experts and other supervisory bodies in their examination of the application of Convention No. 87 by ILO Member States in relation to the right to strike;
- (d) the incidence of a Protocol on the right to strike or on industrial action on the examination by the Committee of Experts and other supervisory bodies of the application of Convention No. 87 by Member States not bound by the said Protocol;
- (e) the statutory timelines for placing a standard-setting item on the Conference agenda and preparing a draft instrument;
- (f) the decisions previously taken by the Governing Body in respect of the agenda of the International Labour Conference.