

Governing Body

349th *ter* (Special) Session, Geneva, 11 November 2023

Minutes of the 349th *ter* (Special) Session of the Governing Body of the International Labour Office

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► Institutional Section

1. 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 (GB.349ter/INS/1)

Committee of the Whole

1. **The Chairperson** recalled that the 349th *ter* (Special) Session of the Governing Body had been convened pursuant to article 7(8) of the Constitution of the International Labour Organization and paragraph 3.2.2 of the Standing Orders of the Governing Body. At its 349th Session, the Governing Body had approved the arrangements for the special session. They included a sitting as a Committee of the Whole, in accordance with article 4.3 of the Standing Orders, to hold a broad exchange of views with the participation of governments not represented on the Governing Body, on the understanding that any decisions would be made by the Governing Body in its ordinary plenary composition after the Committee of the Whole had been concluded.
2. At its 349th *bis* (Special) Session, the Governing Body had decided to refer the dispute on 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 to the International Court of Justice (ICJ) for decision in accordance with article 37(1) of the ILO Constitution. The 349th *ter* (Special) Session was dedicated to a discussion of the request made by the Employers' group to urgently include an item on the agenda of the International Labour Conference concerning the adoption of a Protocol to Convention No. 87, with a view to authoritatively determining the scope and limits of the right to strike or, more broadly, industrial action, in the context of that Convention. The Office had prepared a document containing 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 foregoing for the proposed standard-setting item. Member States and national employers' and workers' organizations had been invited to submit their comments on the issues raised in the document, and those comments had been published on the Governing Body's website. The Governing Body was invited to provide guidance on action to be taken.
3. The Committee of the Whole had before it two amended versions of the draft decision, which had been circulated by the Office. The first, which had been proposed by the Employers' group, read:

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 follow up on the outcome of 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 that took place in 2015; and

1) place on the agenda of the 112th, 113th or 114th Session of the Conference (2024, 2025 or 2026) an item for standard setting (Protocol to Convention No. 87/Recommendation/Convention) on the right strike and/or industrial action;

OR

2) place on the agenda of the 112th, 113th or 114th Session of the Conference (2024, 2025 or 2026) an item for a general discussion on the right to strike and/or industrial action;

OR

3) convene a meeting of experts with the view to discussing the right to strike and/or industrial action at the earliest opportunity;

OR

4) continue to discuss all possible proposals on further steps to ensure legal certainty at the 350th session of the Governing Body with the view to reaching agreement on the way forward.

4. The second amended version of the draft decision had been proposed by the Workers' group and read:

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 that no further action was needed.

5. **The Employer Vice-Chairperson** expressed profound disappointment at the outcome of the 349th *bis* (Special) Session of the Governing Body, which marked the beginning of what would be an extremely difficult period for the ILO. It was regrettable that, despite the Chairperson's assurances that he would strive to achieve consensus, he had been persuaded to force a vote on the matter under consideration. It was also regrettable that certain governments, while claiming to be champions of social dialogue, had refused to engage with her group. Some had even violated their obligations under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), by not consulting national employer organizations on the matter.
6. Most of the governments participating in the Committee of the Whole had been in favour of resolving the dispute through social dialogue – which was the cornerstone of the ILO – in the context of the Conference, a state of affairs that had not been reflected in the vote, undermining the relevance of a large number of Member States that were not Governing Body members. As a consequence, her group would take further steps to enhance the democratization and inclusiveness of decision-making processes at the ILO, including by calling for further discussions on the issue at forthcoming sessions of the Governing Body and the Conference. A minority of governments should not be allowed to impose their political agenda on technical matters that had an impact on the rest of the world. Social dialogue had been seriously damaged and the Organization's values had been jeopardized, affecting the credibility and pertinence of many ILO initiatives. Furthermore, the refusal by the Workers' group to engage in tripartite social dialogue on the right to strike, and therefore the selective decision on the topics on which to engage, as well as their refusal to take action to fill the gap in the normative framework, set a worrying precedent for the work of the Organization.
7. The dispute would not be resolved through the referral of one question to the ICJ. The right to strike was a multifaceted and complex issue, and the different industrial relations systems and practices in place among Member States must be taken into account when determining international rules on the subject. Such rules should be developed by the tripartite constituents in the framework of the established procedures of the ILO. Therefore, regardless of the

advisory opinion to be issued by the ICJ, there would still be a need for standard-setting if the right to strike was to be regulated at the international level.

8. Her group remained of the view that standard-setting by the Conference was the most appropriate and logical way to definitively end the dispute. The tripartite constituents, as well as the ILO's supervisory bodies, had acknowledged that there was currently no ILO instrument expressly providing for the right to strike. The only way to address the regulatory gap was through regulatory means. Furthermore, standard-setting was a well-established procedure for creating authoritative rules on important topics in the world of work, the importance of which had been reaffirmed in the ILO Centenary Declaration for the Future of Work (2019). It had been the first step towards addressing a dispute concerning the interpretation of the Night Work (Women) Convention, 1919 (No. 4), for example. The matter had been referred to the predecessor of the ICJ only after efforts had been made to resolve it by placing a standard-setting item on the subject on the agenda of the Conference. The Conference could authoritatively provide legal certainty on a particular issue, which a non-binding advisory decision of the ICJ could not. Only the standard-setting route would ensure that all ILO constituents would be able to actively engage in the process, that any solution would be based on consensus or a majority vote of all ILO constituents, and that any outcome would be universally relevant and accepted. Conversely, an advisory opinion of the ICJ would not stop her group and many governments from disagreeing with the excessive interpretations and opinions on the right to strike issued by the Committee of Experts on the Application of Conventions and Recommendations.
9. To resolve the dispute, the Employers' group was proposing the development of a Protocol to Convention No. 87. Its intention would not be to amend the Convention, but rather to define in a separate instrument the scope and limits of the right to strike from a global perspective. Her group would not be opposed to standard-setting through another type of instrument. However, on the basis of lessons learned from the development and implementation of the Protocol of 2014 to the Forced Labour Convention, 1930, a Protocol would be the most appropriate instrument with which to regulate the right to strike. Following the adoption of such an instrument, the Committee of Experts would be expected to faithfully comply with the decision of the Conference and the intentions of its drafters, and would be unable to continue issuing excessive and inappropriate views on the right to strike with reference to Convention No. 87.
10. Her group had requested the inclusion of a standard-setting item on the agenda of the Conference in 2024 to accommodate the urgency of the requests made by the Workers' group and a number of governments. There would be no legal obstacles to that measure if the Governing Body decided to adopt a programme of reduced intervals for the preparatory process. There was precedent for such a proposal, as one had been made in 1992. Her group was not opposed to including the item on the agenda of the Conference in 2025 or 2026 instead, if doing so would facilitate preparations. Challenges in respect of including the issue on the agenda of the Conference in 2024 must not be used as a pretext for discarding that option altogether.
11. The discussions at the 112th Session (2024) of the Conference would not be easy. Her group would be more vocal in its disagreement with the Committee of Experts and she anticipated that a request would be made to hold a special session of the Committee on the Application of Standards to discuss the matter. The decision taken by the Governing Body at its 349th *bis* (Special) Session would also have a negative impact on the recurrent discussion on the fundamental principles and rights at work and on the work of the Committee on Freedom of Association.

12. While standard-setting was the most appropriate solution to the problem, her group remained flexible regarding other options – such as holding a general discussion or a tripartite meeting of experts on the matter – and regarding the outcomes and timing of standard-setting action. Its proposals were fully aligned with the ILO's values of tripartism and social dialogue. She called on all governments to demonstrate their commitment to those values and to give their views on the options presented in her group's amended version of the draft decision.
13. **The Worker Vice-Chairperson** acknowledged that standard-setting was central to the ILO's mandate. Faithful to the ILO's mandate as set out in its Constitution, the Governing Body contributed to that work by constantly striving to improve standards. However, the proposal put forward by the Employers' group – set out in the Employers' group's comments on the Office document – would have the opposite effect, as it would involve adopting a Protocol with the sole objective of undoing the long-standing authoritative guidance of the ILO supervisory system regarding Convention No. 87. Moreover, the attempt to limit the interpretative authority of the Committee of Experts would not work in practice, as the Committee would still have to review the implementation of the Protocol and determine the legal scope, content and meaning of its provisions. The proposed Protocol would not therefore provide definitive legal certainty on the matter, and the discussion on standard-setting required to establish it would expose the same fundamental and persistent disagreements regarding interpretation.
14. There were no gaps in the protection and regulation of the right to strike at the international level. However, in order to address the disagreement between the Employers' group on the one hand, and the Workers' group and a large number of governments on the other, a decision had been taken to request the ICJ to render an advisory opinion on whether the right was protected under Convention No. 87. In view of the mutually exclusive and opposing positions on the issue, it would be impossible to advance any initiative of a normative nature without first having settled the issue through an authoritative and binding decision of the ICJ.
15. Protocols were generally introduced as a flexible way to partially revise certain provisions of existing Conventions, so in the current case it would be necessary to identify which provisions of Convention No. 87 required revision or clarification. However, if, as the Employers' group claimed, the right to strike was not in any way addressed in Convention No. 87, then it would neither be logical nor consistent with the ILO's constitutional theory and practice to link such a Protocol to that Convention.
16. It was legally and technically impossible to annul the authoritative guidance on Convention No. 87 provided under the supervisory system and replace it with binding provisions under the proposed Protocol, which would effectively silence the Committee of Experts. Moreover, it was deeply concerning that the Employers' group had expressed repeated opposition to the comments of the Committee of Experts on the right to strike and was proposing to reverse them; that would only create further legal uncertainty. It would also result in a two-tier system: one for countries that had ratified only Convention No. 87, and another for countries that had ratified both the Convention and its Protocol. The Committee of Experts would then have to provide guidance on both, which could lead to divergent outcomes.
17. The Workers' group objected to the argument by the Employers' group that standard-setting was the only viable solution to the dispute as that would allow a "a tripartite social dialogue-based solution" that was "based on consensus or at least a broad majority". Given the fundamental disagreement underlying the dispute, it was difficult to see how such a consensus or broad majority could be achieved. The Employers' group simply appeared to be attempting to take away the existing fundamental right and protection currently afforded to workers under Convention No. 87, forcing the ILO's constituents to renegotiate that fundamental

principle and right at work. That was unacceptable to the Workers' group and the wider international trade union movement, and was unlikely to be supported by Governments. The constitutional objective and mandate of the ILO was to protect the rights of workers; standard-setting to undo or reverse existing rights ran counter to that objective and mandate.

18. In practical terms, the proposal by the Employers' group to include a standard-setting item on the right to strike on the agenda of the 112th Session of the Conference in 2024, just seven months later, showed little respect for the procedures of the Organization. As explained in the Appendix to document GB.349ter/INS/1, such a move would be unfeasible, even if a programme of reduced intervals was approved, especially given the preparatory work required to ensure the full participation of the tripartite constituents. In making such a proposal, the Employers' group also showed scant respect for previous decisions of the Governing Body regarding the Conference agenda, which had been developed through consensus based on the recommendations of the Standards Review Mechanism Tripartite Working Group.
19. As well as rejecting the Employers' group's standard-setting proposal, her group also objected to its proposed amendment to the draft decision, which made little sense in the light of the decision to refer the dispute to the ICJ, and again failed to recognize the normal procedure for placing items on the Conference agenda. No debate should be held at the Conference until the ICJ had delivered its opinion on the matter. Convening a meeting of experts would also be counterproductive at the current stage and would not constitute a sufficiently inclusive procedure. The final element of the amendment, according to which the Governing Body would continue to discuss further steps to ensure legal certainty, was simply unnecessary. The Workers' group was of the view that the Governing Body should wait for guidance from the ICJ before taking any further action, and had proposed an amended version of the draft decision to that effect.
20. **Speaking on behalf of the European Union (EU) and its Member States**, a Government representative of Spain said that Montenegro, Iceland and Norway aligned themselves with his statement. He reiterated the importance of obtaining legal certainty on the question of whether Convention No. 87 provided for the right to strike, but stressed that standard-setting – including by introducing a Protocol to the Convention – would not help in that regard. Not only was the scope and added value of such a Protocol unclear, but it might also further challenge the authority of the ILO's supervisory bodies. Moreover, it did not seem possible to introduce a Protocol on the right to strike to a Convention that was the subject of an ongoing dispute in relation to that right. Scheduling a new standard-setting item for next year's session of the International Labour Conference would also leave insufficient time for the ILO constituents to prepare. His group did not therefore support the request to include a standard-setting item on the right to strike on the agenda of the 112th Session of the Conference.
21. **A Government representative of Austria** said that the current discussion was no longer necessary, as no further action should be taken until the advisory opinion from the ICJ had been received. Her Government did not support the request to hold a standard-setting discussion on the right to strike.
22. **A Government representative of Switzerland** said that her Government respected the request made by the Employers' group. However, in the light of the decision taken by the Governing Body at its 349th *bis* (Special) Session, which her Government respected, it would refrain from entering into consideration of any potential legal instrument regarding the right to strike until the ICJ had delivered its advisory opinion, as requested. Her Government maintained that establishing whether or not Convention No. 87 protected the right to strike

would not shed light on the conditions for its exercise. If it was decided that the Convention protected the right to strike without regulating it, it would then be necessary to ask who determined how that right could be exercised, namely whether that fell to the tripartite legislators, the supervisory bodies, the ICJ's judges or domestic court judges to make a binding decision on the conditions for the exercise. In conclusion, she recalled the common position expressed by the Government group in 2015: "[T]he right to strike, albeit part of the fundamental principles and rights at work of the ILO, is not an absolute right. The scope and conditions of this right are regulated at the national level." She also asked the Office what would happen to current cases concerning the right to strike before the Committee on Freedom of Association or the Committee of Experts, notably whether they would be suspended.

23. **A Government representative of Türkiye** emphasized the importance of safeguarding the right to strike as an integral element of labour rights and principles and reiterated that, while the right to strike was fundamental, it did not constitute an absolute right. The scope and conditions of that right should therefore be regulated at the national level. His Government maintained that disputes regarding the interpretation of Convention No. 87 should be resolved through the Organization's existing mechanisms. That said, while it would have been preferable to refer the issue to the Conference, it should nevertheless be possible to reach a positive outcome for all parties on the basis of the Governing Body's decision to refer the dispute to the ICJ. A constructive and collaborative approach within the ILO's tripartite framework should always be the first resort to find practical solutions and increase understanding of the diverse perspectives among its constituents.
24. **A Government representative of Algeria** expressed regret regarding the lack of consensus on the issue, which had divided the Organization and must be addressed in a constructive and pragmatic manner in accordance with the ILO's values, while maintaining the clarity and coherence of international labour standards. Any standard-setting discussion pertaining to Convention No. 87 should be carried out through a transparent, balanced and mutually beneficial process grounded in social dialogue and in accordance with the relevant procedures. Discussions on the development of a Protocol or similar instrument must ensure that relations between employers and workers would not be compromised. An in-depth discussion should be held on the implications of standard-setting actions on the scope of the Convention, which should provide an avenue for the resolution of the dispute.
25. **A Government representative of Colombia** said that it would have been preferable for the discussions held at the 349th *bis* (Special) Session of the Governing Body to have resulted in consensus. The right to strike was inextricably linked to the rights to collective bargaining and freedom of association. His Government was in the process of applying the recommendations of the Committee of Experts and the Committee on Freedom of Association on the right to strike in its labour legislation reform process and thus valued the legal certainty that could be provided by the ILO in that regard. Dialogue should continue to be strengthened as a pillar of the ILO; however, when consensus was unachievable, the Organization should make use of the mechanisms available to it. He thanked the Chairperson for his efforts to seek convergence among constituents, and the Office for enabling the discussion, noting that both had acted in an impartial manner. He expressed support for the draft decision as amended by the Workers' group, noting that no further action should be taken until the ICJ had issued an opinion on the matter.
26. **A Government representative of Japan** said that, although his Government could understand the intention of the proposal by the Employers' group, which was that the issue regarding the right to strike in relation to Convention No. 87 should be discussed

democratically and inclusively by the International Labour Conference, in the light of the decision taken by the Governing Body at its 349th *bis* (Special) Session, it would be premature to evaluate the proposal given the uncertainty regarding the content of a Protocol to Convention No. 87. His Government could therefore not support the draft decision as amended by the Employers' group. He suggested subamending the amendment proposed by the Workers' group to include "for the moment" at the end, since the Governing Body might need to consider its options after the ICJ had issued its opinion.

27. **Speaking on behalf of the group of Latin American and Caribbean countries (GRULAC)**, a Government representative of Mexico thanked the Office, under the leadership of the Director-General, for its work, which had been conducted with integrity and impartiality. She also recognized the skill of the Chairperson in guiding the discussions.
28. **The Government representative of Mexico**, speaking in her national capacity, said that the right to strike was an inherent part of the exercise of freedom of association. She welcomed the proposal from the Employers' group to adopt explicit provisions to regulate the right to strike on the basis of Convention No. 87. However, before agreeing to such a discussion, the ILO's tripartite constituents needed to have the legal certainty that would be provided by the advisory opinion of the ICJ. The various options contained in the Employers' group's proposed amendment were appreciated, and some of them could be helpful in the future, once the advisory opinion had been received. Having legal certainty regarding Convention No. 87 would strengthen the ILO's bodies, tripartism and social dialogue, and enable them to strengthen the fundamental rights of workers.
29. **A Government representative of the Russian Federation** began by thanking the Chairperson for his leadership in steering the Governing Body through difficult debates. The right to strike was recognized in the overwhelming majority of, if not all, Member States, including the Russian Federation. However, legal provisions regulating the right to strike varied from State to State, which meant that an international instrument would be unlikely to be able to consolidate all approaches. Therefore, he could not support the proposal to develop an international instrument, but did not rule out the possibility of working on one in the future. An item could be put on the agenda of a future session of the Conference, on the understanding that the discussions would not lead to the development of a legally binding instrument.
30. **A representative of the Director-General** (Director, International Labour Standards Department), responding to a question from the Government representative of Switzerland, referred back to document GB.347/INS/5, particularly to paragraph 27 in the main body of the document and paragraph 17 of the procedural framework contained in Appendix I, which said that "[t]he referral of an interpretation question or dispute to the Court and the ensuing advisory proceedings may not suspend, or otherwise affect, the supervision of the application of any Convention(s) which may be the subject of those proceedings." The supervisory bodies would of course remain free to decide the course of action they would deem appropriate in that regard.
31. **The Worker Vice-Chairperson** said that she was concerned that some of the issues raised by the Government representative of Switzerland might not have been developed in strong tripartite consensus, although, unlike the Employers' group, she did not want to suggest that any government was violating Convention No. 144. It was important to agree that the long-running dispute would not disrupt the work of the ILO supervisory bodies any more than it already had. The prevailing view was that the right to strike was covered by Convention No. 87, and it was only the Employers' group that had challenged that, without any broad

support among governments, so the supervisory system should have been able to continue functioning on that basis. The disruptive effect of the dispute had, however, resulted in the need to take the matter to the ICJ. Hopefully, the question regarding the functioning of the supervisory system had highlighted what a sensitive issue it was, but everybody needed to understand, as just clarified by the Office, that requesting an opinion from the ICJ did not stand in the way of the supervisory bodies continuing to work as usual, until told otherwise by the Court. The system should not be eroded any further.

32. **A Government representative of Switzerland** said that governments had a right to request clarifications from the Office and asking a question about whether a referral to the Court had a suspensory effect did not entail calling into question the ILO's supervisory system. Her Government's position, submitted to the Office in response to its background report, had been very clear from the start, and had been developed in consultation with Swiss social partners. Swiss social partners had also sent their own response to the Office. She therefore requested the Worker Vice-Chairperson to withdraw her comment casting doubt on their consultation with the Swiss social partners, and her comment suggesting that her query had called into question the ILO's supervisory system.
33. **The Worker Vice-Chairperson** said that if the Government of Switzerland had consulted on the matter recently, she would withdraw her suggestion that there had been no consultation. However, her group had heard during the early stages of the process that unions were not happy about what had been happening in Switzerland. She fully accepted everybody's right to ask the Office questions. She just wanted to make it very clear that the issue was very sensitive, and in that regard she thanked the Government representative of Switzerland for asking the question and said she appreciated the clarification from the Office.
34. **The Employer Vice-Chairperson** deplored the fact that the decision taken during the 349th *bis* (Special) Session the previous day had derailed the discussions at the 349th *ter* (Special) Session, and that both alternatives could not have been discussed calmly through social dialogue. Having heard mostly from non-Governing Body members during the Committee of the Whole, she would reserve her closing statement until she had heard from the Governing Body members.

Governing Body

35. The Governing Body had before it two amended versions of the draft decision, proposed by the Employers' group and the Workers' group, which had been discussed in the Committee of the Whole.
36. **The Chairperson**, as required by article 4.3 of the Standing Orders and as reflected in the arrangements for the special session adopted by the Governing Body at its 349th Session, provided the following oral report on the exchange of views in the Committee of the Whole:

Pursuant to article 4.3 of the Standing Orders of the Governing Body, and as reflected in the special arrangements adopted for this special session, I have the honour to report to the Governing Body on the exchange of views that took place this morning.

The Committee of the Whole offered the opportunity for a constructive exchange of views that involved a total of 11 speakers, including governments not represented in the Governing Body.

On the principal question of whether or not the Organization should urgently include a standard-setting item on the right to strike on the agenda of the International Labour Conference at its 112th Session (June 2024), the Workers' and Employers' groups reaffirmed their respective positions.

The Employers' group expressed its profound regret and disappointment at the outcome of the 349th *bis* (Special) Session of the Governing Body, as they considered that social dialogue had been severely damaged. Social dialogue, not litigation, was the cornerstone of the ILO.

The Employers' group also expressed its thanks for the support expressed by many governments for a solution based on tripartite dialogue in the context of the International Labour Conference and regretted that its views and those of many governments had not been taken into account and that a vote in favour of referral to the International Court of Justice (ICJ) had been forced. As a consequence, the Employers' group would take further steps at the next sessions of the Governing Body and International Labour Conference to enhance the democratization and inclusiveness of ILO procedures.

The Employers' group considered that the questions related to the right to strike were multifaceted and that neither the ICJ nor the Committee of Experts on the Application of Conventions and Recommendations were able to address such properly and conclusively.

In the light of the absence of ILO standards addressing the issue and the fact that the existing international instruments concerning the right to strike referred to the role of domestic legislation, there was a need to adopt an international regulation. That was fully consistent with the normative role of the ILO.

The Employers' group reiterated its view that a standard-setting process involving all ILO constituents was the only appropriate manner to solve interpretation disputes, which would result in legal certainty and authoritative rules that would have to be followed by the Committee of Experts. In contrast, ICJ advisory opinions were not legally binding and would not prevent the Employers' group from continuing to oppose the detailed positions developed by the Committee of Experts on the right to strike.

The proposed Protocol would not amend the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which did not include a right to strike, but would define rules applicable to that right, binding only those who would ratify it. The Employers' group would, however, not oppose other standard-setting options, such as a Recommendation or a Convention.

The Employers' group stated that it was possible for the Governing Body in March 2024 to put a standard-setting item concerning the right to strike on the agenda of the 112th Session (2024) of the International Labour Conference. Alternatively, it could be discussed at the 2025 and 2026 sessions of the Conference. The Employers' group was also open to other options, such as a general discussion or a tripartite meeting of experts.

The Workers' group recalled that standard-setting was at the heart of the ILO and that the Organization had been created to reduce poverty and to safeguard human dignity through the improvement of rights and working conditions. The Workers' group could therefore not accept proposals aimed at lowering standards on the right to strike and undermining or reversing the authoritative guidance of the Committee of Experts in this respect. A Protocol would not resolve the dispute at stake. On the contrary, it would lead to more legal uncertainty as a Protocol would create two separate legal regimes, one for those members having ratified Convention No. 87 only and the other for those ratifying both the Convention and the Protocol. No initiative would be relevant before the advisory opinion of the ICJ had been delivered. It was not clear either how a Protocol on the right to strike could be linked to a Convention which, according to the Employers, did not cover the right to strike.

The Workers' group stated that it would be difficult to reach tripartite consensus at the Conference, as dialogue had not resulted in consensus so far. The attempts to undo or take away existing fundamental rights were contrary to the objectives and mandate of the ILO and would never be acceptable to the trade union movement nor to many governments. The Workers' group also raised procedural issues in view of the items already decided by the Governing Body, as well as the preparatory standard-setting processes. The alternative options to the Protocol contained in the Employers' amendment were not valid either. In the opinion of the Workers' group, the only possible approach was to await the guidance of the ICJ, which would clarify whether the right to strike was covered by Convention No. 87. This could

jeopardize the work of the ILO system or other discussions. On the contrary, that was the only means to put an end to the dispute.

All governments reaffirmed the importance of freedom of association and the right to strike. Many highlighted that the right to strike was an intrinsic corollary of freedom of association and a fundamental principle and right at work.

A significant number of governments was of the view that, following the decision to refer the dispute on the right to strike to the ICJ for an advisory opinion, it was premature to discuss the question of placing a standard-setting item on the agenda of the Conference. Some added that it was not possible to discuss standard-setting on the right to strike as long as the dispute on whether the right to strike was contained in Convention No. 87 was not resolved.

Some governments expressed regret at the decision to refer the dispute to the ICJ, which, in their view, precluded social dialogue as the normal means through which disputes should be settled in the ILO. Other governments were of the view that legal certainty was in the interest of the Organization as a whole, including the tripartite constituents and the supervisory bodies.

Some governments referred to the prospect of resuming tripartite dialogue, possibly through standard-setting at the Conference or through other means, once the advisory opinion from the ICJ was received. They expressed the wish that a solution garnering tripartite support would eventually be found.

Several speakers noted that the right to strike was not an absolute right and should be regulated at the national level. A view expressed in that regard was that the ICJ was not in a position to address the question of the modalities for the exercise of the right to strike. According to certain speakers, the modalities for the exercise of the right to strike could be addressed through social dialogue after the advisory opinion was delivered.

Some speakers expressed the wish to revert to the Conference at a later stage, with a view to arriving at a balanced outcome and pragmatic solutions, taking into account divergent views.

All the speakers emphasized the importance of social dialogue and expressed the hope that it would be safeguarded and shored up within the ILO.

Finally, in reply to a question from a government, the Office indicated that the referral of the dispute to the ICJ would not have a suspensive effect on the regular functioning of the ILO supervisory mechanism (see document GB.347/INS/5, paragraph 27, and paragraph 17 of the procedural framework in its Appendix I).

I hope that this report has done justice to the quality of the exchange of views and to the engagement and sense of responsibility shown by all three groups.

I trust that the Governing Body, meeting in plenary, will now be able to take over and engage in a constructive debate on the possible way forward.

- 37. The Employer Vice-Chairperson** said that the Committee of the Whole was an important and useful format for the discussion of fundamental issues. She reiterated that her group's aim was to allow the International Labour Conference to discuss and decide on potential international regulations regarding the definition, scope and boundaries of the right to strike. Such regulations could be issued only by the tripartite constituents, within the framework of established ILO procedures, and not by the ICJ or the Committee of Experts.
- 38.** In determining whether Convention No. 87 covered the right to strike, the ICJ should consider the continued refusal of the Workers' group and of certain governments to allow standard-setting on that right. A matter that the Workers' group did not wish to be explicitly regulated in an instrument could not be implicitly regulated in the Convention. In its amendment, the Employers' group had set out four different options for inclusive discussion on the right to strike. The key difference between the two proposed amendments was that while the Employers' group had proposed an unprecedented discussion at the Conference, the Workers' group had unilaterally forced its position, going against the spirit of social dialogue.

39. The first option proposed by her group was flexible standard-setting, whether in the form of Recommendations, Protocols or Conventions. Although her group had proposed that those efforts should take place in 2024, that was only to take account of the urgency alleged by the Workers' group, and her group would be satisfied if they were deferred to a later session of the Conference in order to better prepare for the discussion. The second option was a general discussion on the right to strike and industrial action in the Conference which would be substantive and involve all Member States and social partners. The meeting of experts proposed in the third option would entail substantive discussion, unlike the meeting of experts held in 2015. The fourth option was to continue to discuss, at the next Governing Body session, all possible proposals on further steps to ensure legal certainty.
40. The amendment proposed by the Workers' group, meanwhile, indicated complete disregard for the Conference and for the ILO as a whole. The group's refusal to place the matter on the Conference's agenda demonstrated an unwillingness to resolve the issue, instead preferring to set a standard forcibly, through external means. Although the Workers' group claimed that the proposed Protocol would be substantially inferior to existing standards, that could not be true since the right to strike was not yet regulated at the global level. Moreover, while Convention No. 87 did not contain the word "strike", the Workers' group was opposed to filling that regulatory gap through standard-setting. Furthermore, all international treaties dealing with the right to strike referred to national law and practice, so any ILO instrument could either confirm or diverge from the opinions of the Committee of Experts. Any standard developed by the Conference, the most authoritative body of the ILO, would enjoy legitimacy and ownership by the ILO as a whole. A starting point for resolving the dispute might be to acknowledge the unique role of the Conference as the creator of standards on all labour issues, including the right to strike.
41. The Forced Labour Convention, 1930 (No. 29), contained no explicit or implied reference to trafficking in persons. Nonetheless, over time, the Committee of Experts had made comments on trafficking when examining its application, and that regulatory gap had been filled by a Protocol. The standard-setting via a Protocol proposed by her group was therefore wholly consistent with previous practice, since the Committee of Experts had similarly developed detailed opinions on the right to strike when examining the application of Convention No. 87, even though the right to strike had been expressly excluded from it.
42. A number of governments had referred to her group's proposals as possible options to be considered at a later stage. She therefore reiterated her group's intention to bring the matter before the Conference at a future session, as well as to reaffirm its views on the opinions of the Committee of Experts on the right to strike during the next session of the Conference, particularly since the Office had indicated that the referral to the ICJ would not have a suspensive effect and that the Committee of Experts could therefore continue to express its views on the matter.
43. **The Worker Vice-Chairperson** said that she remained dissatisfied with the Employer Vice-Chairperson's response to her urgent request for clarification of the statement that the decision adopted by the Governing Body at its 349th *bis* (Special) Session would have consequences for the Conference's 2024 session. She sought assurances that all ILO constituents would participate faithfully in tripartite discussion at that session of the Conference. In the absence of such assurances, her group would cease engaging in genuine social dialogue in the ILO owing to the disingenuous stance of the Employers' group.
44. The Workers' group took a different view of the precedent relating to Convention No. 4, that had been used by the Employers' group to make the case for standard-setting. Prior to the

referral to the ICJ of the dispute concerning the interpretation of that Convention, which had related to the definition of women workers, there had been considerable disagreement within the Governing Body as to its possible resolution. The Governing Body's initial decision to engage in standard-setting had failed because persistent disagreement on the definition had prevented the required majority from being reached in the Conference, demonstrating the need for the ICJ's guidance before the Convention could be revised. It was clear, therefore, that when views on the interpretation of a Convention varied greatly, legal clarity must be sought before standard-setting could be efficient or desirable.

45. The Employers' group had repeated its arguments time and time again, and little progress had been made. The strong support for standard-setting voiced by the Employers' group represented a dramatic, albeit welcome, change to its stance over the previous decade. The idea that all issues should be resolved through standard-setting ran counter to the long-standing position of the Employers' group, and the Workers' group believed that such an approach was inappropriate, particularly given that the ICJ was yet to issue its advisory opinion. Lastly, while there had been general recognition of a regulatory gap in relation to Convention No. 29, leading to the development of a Protocol on the basis of guidance from the Committee of Experts, in the case of Convention No. 87 there was disagreement as to the existence of a gap, and the Protocol proposed by the Employers' group would not be based on the guidance of the Committee of Experts, but obliterate it.
46. **Speaking on behalf of a majority of Asia and Pacific group (ASPAG) countries,** a Government representative of the Islamic Republic of Iran expressed strong support for the timely inclusion of a standard-setting item on the right to strike on the agenda of the 112th Session of the International Labour Conference. The proposed Protocol to Convention No. 87, while voluntary, would provide legal certainty on a long-standing issue and represent meaningful progress by creating binding obligations regarding the right to strike for States that ratified it, and it could also serve to update the Convention. Disagreements on key provisions should be resolved through tripartite dialogue and standard-setting, and the governments on whose behalf he was speaking stood ready to participate actively in tripartite discussion and technical preparations for the standard-setting item. It was, however, disappointing that the decision to request an advisory opinion of the ICJ had been taken through a Governing Body vote rather than at the International Labour Conference, which had been the preference stated by most ILO Member States in the Committee of the Whole. Tripartism, consensus and standard-setting procedures represented the best means of following up the advisory opinion in line with countries' particular circumstances.
47. **Speaking on behalf of a group of 45 countries,**¹ a Government representative of Colombia highlighting his group's commitment to reaching consensus through social dialogue and tripartism and noting that it would not be possible to adopt the necessary measures until the advisory opinion of the ICJ had been received, proposed a subamendment to the Workers' proposed amendment that read:

16. The Governing Body decided:

- (a) 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

¹ Argentina, Australia, Austria, Barbados, Belgium, Brazil, Bulgaria, Canada, Colombia, Costa Rica, Croatia, Chile, Cyprus, Czechia, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, South Africa, Spain, Sweden, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America.

112th Session of the International Labour Conference (2024), not to include such an item; and

(b) that after having received the advisory opinion of the International Court of Justice as requested by the Governing Body at its 349th^{bis} (special) Session, it would consider appropriate follow-up action. ~~decided that no further action was needed to~~

48. **Speaking on behalf of a majority of ASPAG countries**, another Government representative of the Islamic Republic of Iran proposed another subamendment to the amendment proposed by the Workers' group, to replace the words "decided that no further action was needed" by "recommended a follow-up to the International Court of Justice advisory opinion by placing an item, at the earliest session of the International Labour Conference, to conduct an in-depth discussion on the possible follow-up."
49. **A Government representative of Argentina** highlighted that a standard-setting item could not be placed on the agenda of the next session of the Conference because it was not for States to establish the scope of the right to strike, which was linked to the defence of workers' interests and therefore constituted a human right. Moreover, the requests of the Employers' group might be impacted by the fact that the right to strike was enjoyed solely by workers. States could only place limits on the right to strike when it affected the human rights of other groups or endangered life, security or health, or in other specifically determined circumstances. Those situations could be regulated only by States, in line with national legislation and the relevant international instruments, including Convention No. 87; they could not be regulated by means of an international treaty. Should a Protocol to Convention No. 87 be developed, the right to strike would be limited only in States that ratified it, thereby undermining coherence in the multilateral system.
50. There were also procedural barriers to placing a standard-setting item on the Conference's agenda. For example, it was not appropriate to address the matter before the ICJ had issued its advisory opinion, and there was insufficient time before the 112th Session of the Conference to respect the procedural timeframes set out in the Standing Orders of the Governing Body and the Conference.
51. **A Government representative of Bangladesh** voiced concern at the fact that the decision on the referral to the ICJ had been taken via a vote by the Governing Body, excluding many Member States, and at the apparent division within the Organization; the situation strengthened the argument for the democratization of the Governing Body. A standard-setting discussion was necessary given that the ICJ would not rule on the extent to which governments should allow strikes, or in which circumstances. The issue had arisen from the unmandated interpretation of Convention No. 87 by the Committee of Experts, and the divergence in opinions related to how, rather than whether, the right to strike should be enjoyed. Given that most national legislation permitted strike action, it was likely that most governments would be willing to contribute to the process of determining the scope and limits of the right to strike. The contribution of all ILO constituents would be vital in developing the proposed Protocol. He supported the subamendment proposed by a majority of ASPAG countries.
52. **A Government representative of Brazil** drew attention to the need to strengthen social dialogue, given the obstacles to it that had led to the current situation. His Government engaged in social dialogue on a daily basis through tripartite working groups, and it would welcome further discussion of the right to strike, for example via a tripartite technical group and at a future session of the Conference, provided that the Governing Body adopted a decision to that effect and only after the ICJ had concluded its legal assessment.

53. **A Government representative of Indonesia** stressing the importance of social dialogue in the ILO's decision-making, said that in the interest of fairness, the proposal of the Employers' group should be afforded equal attention to that of the Workers' group. She supported the subamendment proposed by a majority of ASPAG countries.
54. **A Government representative of India** highlighted that although the decision on the referral to the ICJ had been arrived at by means of a vote by the Governing Body, the majority of Member States had believed that it should be discussed by the Conference. Nevertheless, the subamendment proposed by a majority of ASPAG countries recognized the need to move forward constructively and collectively by placing the ICJ's advisory opinion before the Conference, a step that would democratize the decision-making process. That proposed subamendment also addressed the Governing Body's responsibility to the Conference, which was particularly relevant given that most Member States that would be affected had not been able to voice an opinion.
55. **Speaking on behalf of the Arab group**, a Government representative of Morocco supported the subamendment proposed by a majority of ASPAG countries.
56. **The Employer Vice-Chairperson** clarified that her group's proposed amendment was not intended to lower established standards; rather, the proposal was for the International Labour Conference to have a discussion thereon. The issue of the definition of women workers in Convention No. 4 had been referred to the ICJ only after the Conference had failed to reach a majority decision; that procedure should be followed in the current circumstances. The subamendments proposed by the group of 45 countries and by a majority of ASPAG countries demonstrated a desire for a more inclusive discussion of the right to strike.
57. **A representative of the Director-General** (Legal Adviser) recalled that the ICJ's advisory opinion would be delivered to the Governing Body as the requesting organ. It would then fall to the Governing Body to analyse it and consider possible follow-up, which could include bringing the matter before the Conference. That aspect was addressed in paragraphs 18–20 of the procedural framework for the referral of interpretation questions or disputes to the ICJ under article 37(1) of the Constitution, contained in Appendix I to document GB.347/INS/5.
58. **The Employer Vice-Chairperson** raised a point of order, since the Governing Body was aware of the legal procedures, and the Legal Adviser should not intervene in policy discussions.
59. **The Director-General** said that the intention had been to ensure that all Governing Body members were aware of the procedure.
- (The Governing Body resumed its consideration of the item following a brief suspension of the sitting.)*
60. **The Worker Vice-Chairperson** expressed support for the subamendment proposed by the group of 45 countries.
61. **The Employer Vice-Chairperson** rejected the subamendment proposed by the group of 45 countries, as her group wished to secure a firm commitment to discussing the issue of the right to strike at the International Labour Conference. That decision was completely separate from the decision on referral to the ICJ taken at the 349th *bis* (Special) Session of the Governing Body, although the Employers' group recognized that discussion of the right to strike at the Conference should naturally take place after the ICJ had delivered its advisory opinion. She therefore supported the subamendment proposed by a majority of ASPAG countries, which captured the need for an inclusive discussion on the right to strike. Another acceptable option would be to merge the two subamendments by retaining the element whereby the Governing

Body would consider appropriate follow-up action, but adding wording to the effect that such action would include placing an item on the agenda of the Conference. She called on the Governing Body to show flexibility by considering that solution, which represented a compromise between two opposing positions.

- 62. The Worker Vice-Chairperson** said that her group had not accepted referral to the Conference as part of the decision taken at the 349th *bis* (Special) Session of the Governing Body, and would not accept it in any decision taken at the current session. The parameters of any follow-up action taken by the Governing Body should not be fixed before the ICJ had delivered its advisory opinion. In that context, she asked the Employer Vice-Chairperson to clarify her position regarding the Conference in the light of the decision to refer the issue to the ICJ.
- 63. The Employer Vice-Chairperson** said it was regrettable that her attempt to seek a compromise had been rejected by the Workers' group and certain governments. The Employers' group was ready to make concessions, but had met with obstruction from the other parties; that did not generate confidence in the Organization's capacity for tripartite dialogue. Given the disastrous state of debate at recent Governing Body sessions, the Office leadership should give careful consideration to how the proceedings were conducted.

(The Governing Body resumed its consideration of the item following a brief suspension of the sitting.)

- 64. The Worker Vice-Chairperson** said that, following a discussion in which various options to avoid a vote had been explored, her group had decided that, due to the seriousness of the situation, it could not compromise. Its attempts to find solutions through social dialogue over the past 11 years had been blocked by the Employers' group. Any recognition that there was a persistent and deep-rooted dispute and that the Workers' group wanted access to justice had been denied. The Employers' group was demonstrating a serious lack of trust towards the Workers and Governments and towards the Office. She therefore called for a vote.
- 65. The Employer Vice-Chairperson** pointed out that the Chairperson did not seem to recognize the Employers' attempt to bring the house together. She requested the opportunity to review the draft minutes of the session to ensure their accuracy, as they would constitute relevant information to be submitted to the ICJ.
- 66. A Government representative of Morocco** said that, when he had first participated in the work of the Governing Body, he had been told that the Governing Body always found solutions through discussion and that voting was extremely rare. That appeared to no longer be the case. Voting meant that there were winners and losers. In reality, the biggest loser would be tripartism and the Organization itself, which would be blocked every time an important decision needed to be made. It was important to look to the future. The members of the Governing Body could not continue to work together if they did not trust one another.
- 67.** Sincere efforts to find consensus could still be made, based on the subamendment proposed by the group of 45 countries. Although the Workers' group was within its rights to call for a vote, he appealed to it to reconsider the importance of social dialogue and to make one final attempt to find a solution together. In that regard, he proposed that the phrase ", including possible discussions at the Conference" could be added at the end of subparagraph (b) of the subamendment proposed by the group of 45 countries.
- 68. The Worker Vice-Chairperson** said that her group had already explored all the options and none of them were acceptable. The issue would not be resolved through a discussion at the Conference. She reiterated her call for a vote.

69. **The Employer Vice-Chairperson** thanked the Government representative of Morocco for his tireless efforts to achieve consensus and recalled the willingness of her group and others to compromise. Nonetheless, the Workers' group remained completely inflexible. The situation was disastrous and did not bode well for the future. Regrettably, she needed to leave the meeting, but another Employer spokesperson would take her place.
70. **Speaking on behalf of a majority of ASPAG countries**, a Government representative of the Islamic Republic of Iran agreed that votes should be carried out only in exceptional situations and urged all participants to consider the cost to the ILO and to tripartism of taking that route. She supported the proposed addition by Morocco, but suggested the deletion of the word "possible".
71. **The Worker Vice-Chairperson** speaking on a point of order, said that the special session was being held at the request of the Employers' group, and all participants had made their weekend available and been told to be prepared for extended sittings. It showed an extreme disregard for the work of the Governing Body that, before the discussions had ended, the Employer Vice-Chairperson had decided to leave.
72. **Speaking on behalf of the group of 45 countries**, a Government representative of Colombia welcomed the efforts that had been made to reach consensus, but noted with regret that all avenues had been exhausted. He called for a vote to be taken.
73. **The Employer Vice-Chairperson** said that the remarks made by the Worker Vice-Chairperson were completely unacceptable. There was a good reason behind why she had been obliged to change her travel plans and leave the meeting early. It was not for the Worker Vice-Chairperson to criticize how the Employers' group organized itself.
74. **The Worker Vice-Chairperson** presented her apologies to the Employer Vice-Chairperson. Nonetheless, it would have been polite to have given the Governing Body advance notice of her early departure.
75. **Speaking on behalf of the Government group**, a Government representative of Namibia urged all participants to focus on the issues before the Governing Body, think of the process and respect the systems that were in place.
76. **The Chairperson** invited the Workers' and Employers' spokespersons, the Government representatives of Colombia and the Islamic Republic of Iran, and the Chairperson of the Government group to attend an informal meeting.
- (The Governing Body resumed its consideration of the item following a brief suspension of the sitting.)*
77. **Speaking on behalf of the group of 45 countries**, a Government representative of Spain noted the complexity and the deep-rooted nature of the issue. His group sought to obtain legal certainty as well as support for the supervisory mechanisms of the ILO, the legitimacy of which should not be questioned. Other questions had been raised, including on inclusivity and democratization, which also contributed to the current impasse. However, it was not appropriate to conflate issues that were completely disparate and could not be mixed with negotiations that had to follow a different path. A discussion by the Conference should not be the only avenue for legitimizing a decision. The Governing Body should wait for the advisory opinion of the ICJ and then decide what to do.
78. **Speaking on behalf of GRULAC**, a Government representative of Mexico noted that, while she was grateful to the Chairperson for his efforts to reach agreement on the issue, any informal

meetings held in the margins of the plenary sitting should be inclusive and involve the coordinators of all regional groups.

79. **The Chairperson** took note of the comment by GRULAC and explained that the attendees at the informal meeting had been selected in a bid to find consensus.
80. **Speaking on behalf of the group of 45 countries**, a Government representative of Spain requested information on the order in which the Governing Body would discuss the proposed subamendments.
81. **A Government representative of Morocco** said that, as his proposal had not met with consensus, he wished to withdraw it.
82. **The Chairperson** referring to the subamendments to the Workers' proposed amendment, said that the Governing Body would decide first on the subamendment proposed by the group of 45 countries, and then on the one proposed by a majority of ASPAG countries.
83. **The Clerk of the Governing Body** invited the Governing Body to proceed with a vote by show of hands on the subamendment proposed by the group of 45 countries.
(The subamendment proposed by the group of 45 countries was accepted, with 30 votes in favour, 19 votes against and 6 abstentions.)
84. **The Worker Vice-Chairperson** raising a point of order, requested clarification as to the rationale for the upcoming vote on the subamendment proposed by a majority of ASPAG countries; that subamendment should have fallen after the adoption of the one proposed by the group of 45 countries.
85. **Speaking on behalf of a majority of ASPAG countries**, a Government representative of the Islamic Republic of Iran confirmed that ASPAG had not withdrawn its subamendment.
86. **A representative of the Director-General** (Legal Adviser) clarified that the subamendment proposed by a majority of ASPAG countries conflicted with the one proposed by the group of 45 countries that had just been adopted. Therefore, the former had fallen upon the acceptance of the latter. He suggested that the Governing Body could proceed to decide on the amendment proposed by the Workers' group – it could be accepted by consensus or by a vote.
87. **The Employer spokesperson** said that the implications of the vote had not been clearly explained before the vote. She asked whether it would be possible for the Governing Body to hold another vote, on which of the two proposed subamendments it wished to accept.
88. **The Chairperson** acknowledged that Governing Body members may not have been clear about the voting process. The vote would therefore be retaken in order to protect the integrity of the process. The two subamendments would be put to a vote against each other, as expressly provided for in the Standing Orders.
89. **The Clerk of the Governing Body** said that the Governing Body would proceed to a vote by show of hands on which of the two proposed subamendments it wished to accept.
(There were 30 votes in favour of the subamendment submitted by the group of 45 countries, 22 votes in favour of the amendment submitted by a majority of ASPAG countries and 3 abstentions.)
90. **The Chairperson** announced the results, noting that the subamendment proposed by the group of 45 countries was accepted and the one proposed by a majority of ASPAG countries was rejected. Accordingly, and in the absence of any objection, he took it that the Governing Body was prepared to adopt the amendment proposed by the Workers' group, as subamended by the group of 45 countries.

Decision

91. The Governing Body decided:

- (a) 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), not to include such an item; and
- (b) that after having received the advisory opinion of the International Court of Justice, as requested by the Governing Body at its 349th *bis* (Special) Session, it would consider appropriate follow-up action.

(GB.349ter/INS/1, paragraph 16, as amended by the Governing Body)

Closing remarks

- 92. **The Worker Vice-Chairperson** said that, while her group was supportive of the International Labour Conference, past experience had demonstrated that a calm discussion of the right to strike would not be possible, and her group could not trust the unclear motives behind such proposals. The Employers' group had proposed standard-setting that aimed to void 70 years of the Committee of Experts' jurisprudence. She invited those who had accused her group and others of failing to respect democracy or adhere to the values of social dialogue to consider their own actions in their countries.
- 93. She welcomed the recognition by the group of 45 countries that the only appropriate outcome of the current session was to await the ICJ's advisory opinion before submitting it for assessment by the Governing Body. Thanking the Chairperson for guiding an extremely complicated session and other participants for engaging in respectful, tripartite social dialogue, she called on the Employers' group to engage in further discussion so as to avoid future conflict.
- 94. **The Employer spokesperson** while expressing deep disappointment at the outcome of the two special sessions, thanked the participants that had supported her group's positions. While she welcomed the efforts made to reach consensus, the outcome of the two special sessions was disastrous for the ILO and indicated significant division. Not for the first time, the Governing Body had resorted to voting rather than consensus, severely compromising its credibility and integrity. The tone and content of debate in the Governing Body should be respectful, and she took great exception to the false accusations levelled at her group by the Workers' group.
- 95. Given that many governments had stressed the importance of inclusivity and democratic decision-making, the right to strike must be placed on the agenda of the Governing Body's next session to ensure that it was discussed at the Conference, which was the Organization's supreme body. Her group believed that one of the underlying reasons for the current situation was some governments' reluctance to make progress towards democratization and to strengthen the role of the Conference. The mistrust of the outcome of the Conference on the part of the Workers' group was regrettable.
- 96. She commended the Chairperson for his work in such difficult circumstances and thanked the Office for its support. She also thanked the Employer Vice-Chairperson for her commitment to defending her group's views, which were informed by its desire to take decisions acceptable to all; the importance of those decisions meant that the Governing Body must endeavour to accommodate opposing views and reach consensus.

97. **Speaking on behalf of the Africa group**, a Government representative of Morocco thanked the Office for its unfailing support and the Chairperson for his impartial steering of the 349th Session and 349th *bis* and *ter* (Special) Sessions of the Governing Body.
98. **Speaking on behalf of the Government group**, a Government representative of Namibia commended the Chairperson for his leadership, the participants for their openness to considering differing views and negotiating in good faith, and the Office for its continued support.
99. **Speaking on behalf of a majority of ASPAG countries**, a Government representative of the Islamic Republic of Iran clarified that the countries on whose behalf she was speaking had not withdrawn their proposed subamendment because they maintained that the International Labour Conference must remain the Organization's supreme body. All ASPAG countries thanked the Office for its efforts.
100. **A representative of the Director-General** (Legal Adviser) explained that the Director-General would, in the coming days, formally transmit the Governing Body's resolution in which it decided to refer the question of the interpretation of Convention No. 87 to the ICJ, requesting that the ICJ authorize the participation in advisory proceedings of international employers' and workers' organizations that enjoyed general consultative status at the ILO. He would also request that the ICJ consider, if possible, an accelerated procedure. The Director-General would also write to the United Nations Economic and Social Council to inform it of the request, as required under article IX(4) of the 1946 Agreement between the United Nations and the International Labour Organization (also known as the UN-ILO relationship agreement).
101. Upon receipt of the Director-General's communication, the Registrar of the ICJ would give notice of the referral request to all ILO Member States and notify any international organization considered by the ICJ as likely to be able to furnish information on the question. The ICJ would then determine the form and time limit for written submissions and decide whether to hold oral hearings, setting a date if necessary. The Office would shortly begin preparing a comprehensive dossier of documentation likely to shed light on the matter for submission to the ICJ. That dossier and other relevant information would be published on a dedicated page of the ILO's website. The Office would provide detailed information as the process progressed.
102. **The Chairperson** thanked all participants for their valuable contributions and commendable dedication.