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INTRODUCTORY NOTE TO RIGHT TO STRIKE UNDER ILO CONVENTION NO. 87 (I.C.J.)

BY GEORGE POLITAKIS*

[May 21, 2026]

Abstract: On May 21, 2026, the International Court of Justice (ICJ) rendered an advisory opinion on whether the right to strike is protected under the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (Convention No. 87), following a decade-long controversy within the ILO's tripartite constituency. Applying the customary rules of treaty interpretation contained in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, the Court held that the right to strike is protected under Convention No. 87 as an integral part of freedom of association. It found that strike action falls within the ordinary meaning of the right of workers' organizations to organize their "activities," a conclusion confirmed by supplementary means of interpretation, including ILO supervisory practice, international human rights instruments and jurisprudence of regional courts. Two aspects of the advisory opinion are particularly significant. First, the Court adopted a flexible approach to the principle of systemic integration under Article 31(3)(c) of the Vienna Convention. Second, it recognized that the pronouncements of the ILO supervisory bodies may carry significant interpretative weight within their respective mandates. The advisory opinion thus contributes to the development of treaty interpretation while restoring legal certainty concerning the right to strike and clarifying an important aspect of the ILO supervisory system.

Introduction

On May 21, 2026—some two and a half years after the request was submitted by the International Labour Organization (ILO)—the International Court of Justice (the Court, or ICJ) rendered its advisory opinion (Opinion) on whether the right to strike is protected under the ILO's Freedom of Association and Protection of the Right to Organise Convention, 1948 (Convention No. 87).[1] The advisory opinion is the Court's fifth pronouncement rendered at the request of a UN specialized agency, its sixth at the request of the ILO,[2] and the third with the largest number of individual opinions appended to it.[3]

Applying, in a "single combined operation," the customary rules of treaty interpretation reflected in Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties (Vienna Convention), the Court answered the question in the affirmative, holding that the right to strike is essential to the realization of the freedom of association guaranteed by Convention No. 87. Applying the general rule of interpretation, the Court concluded that the right to strike is effectively encompassed within the right of workers' organizations to organize their "activities" and formulate their "programmes." It then sought confirmation of that conclusion by considering several supplementary means of interpretation, including the *travaux préparatoires* (whose examination yielded no conclusive result), the pronouncements of the ILO supervisory bodies, relevant regional human rights instruments, and the related jurisprudence of regional courts.

Background

The matter was referred to the Court in November 2023, following ten years of intense and highly polarized debate, principally between the employers' and workers' groups of the tripartite ILO constituency.[4] At the heart of the deadlocked discussions were two issues: (1) the interpretation of Convention No. 87, which refers to the right of workers' organizations to organize their "activities" and formulate their "programmes," as well as the right of workers to establish organizations for defending their "interests," but contains no express provision on the right to strike; and (2) the weight to be attributed to the view consistently expressed by the ILO supervisory bodies over several decades that the right to strike is a corollary of freedom of association and is therefore protected under Convention No. 87.

From the late 1980s onwards, the employers' group began to challenge the existence of an internationally protected right to strike, arguing in particular that Convention No. 87 was silent on the matter and that regulating the right to strike had never been the intention of the Convention's drafters, as evidenced by the preparatory work. Over the years, it also questioned the detailed comments of the ILO's Committee of independent experts (formally known as the Committee of Experts on the Application of Conventions and Recommendations, or CEACR), which in its view had tended to develop a quasi-legislative framework governing the scope and modalities of the exercise of the right to

*George Politakis is former Legal Adviser of the International Labour Organization (2014–2024).

strike. Beyond the interpretation of the specific Convention, what was ultimately at stake for the employers' group was the mandate of the Committee of Experts and, more generally, its alleged lack of authority to interpret international labour conventions.[5]

The workers' group, for its part, emphasized that, for more than 60 years after Convention No. 87 had entered into force, there had been a shared and uncontested understanding that the Convention protected the right to strike as an integral element of freedom of association. It further contended that the provisions of Convention No. 87 guaranteeing the right to organize should be understood in the context of the relevant provisions of the Preamble to the ILO Constitution and the Declaration of Philadelphia, and in the light of subsequent practice establishing general agreement regarding their interpretation, including the consistent case law of the bodies responsible for supervising the application of the Convention.[6]

The point of rupture came at the International Labour Conference in 2012, when the employers' group announced that it would no longer participate in any discussion concerning the application of Convention No. 87 in relation to the right to strike. As a result, the Conference Committee on the Application of Standards—a tripartite body that examines the annual report of the CEACR and discusses selected cases of non-compliance—was unable to perform its supervisory functions. This marked the beginning of a prolonged period of institutional crisis and increasingly strained relations between the two non-governmental groups.

In 2014, the possibility of referring to the ICJ the question of the interpretation of Convention No. 87 in relation to the right to strike, pursuant to Article 37(1) of the ILO Constitution,[7] was thoroughly examined by the Governing Body. No decision was taken, however, as it was considered that a negotiated solution might still be achieved through further tripartite discussions.

In the years that followed, and in view of the continuing stalemate, the International Labour Office—that is, the ILO Secretariat—sought to convince the tripartite constituents that, in the interest of ensuring legal certainty and in view of the unambiguous terms of Article 37(1) of the Constitution, recourse to the ICJ was not only feasible but necessary.[8]

Finally, in July 2023, the Worker Vice-Chairperson of the ILO Governing Body formally requested that the long-standing dispute be referred urgently to the ICJ for decision, in accordance with Article 37(1) of the ILO Constitution. The Court's assistance would be sought with respect to two questions: (1) whether the right to strike of workers and their organizations is protected under Convention No. 87; and (2) whether the CEACR is competent to determine that the right to strike derives from Convention No. 87 and, in fulfilling its supervisory functions, to specify elements concerning the scope, limits and conditions governing the exercise of that right.

Following the request of the workers' group, thirty-six governments addressed separate communications supporting an urgent discussion and decision on the referral to the ICJ. In the event, a special session of the ILO Governing Body was held on November 10, 2023, at which a resolution was adopted requesting the International Court of Justice to render, urgently, an advisory opinion on the first question only, namely whether the right of workers and their organizations to strike is protected under Convention No. 87.

The ICJ Advisory Opinion

From the outset, the Court distanced itself from a narrow grammatical or literal interpretation by clarifying that the mere absence of an express treaty provision referring to a certain issue does not necessarily mean that the issue in question falls outside the treaty's scope.[9] In support of that conclusion, the Court recalled similar pronouncements of the PCIJ in two ILO-related advisory opinions.

Applying the general rule of interpretation contained in Article 31 of the Vienna Convention, the Court had little difficulty in determining that the right to strike—namely, industrial action in the form of temporary work stoppage aiming at exerting pressure, resisting demands, or supporting grievances—is capable of falling within the ordinary meaning of the word "activities" in Article 3 of Convention No. 87, when read in conjunction with Articles 2 and 10.[10] For the Court, the object and purpose of Convention No. 87, namely to guarantee freedom of association as a means of improving labour conditions and achieving sustained progress, clearly pointed in the same direction.[11] For some judges in the majority, the interpretative exercise could well have ended there,[12] while Judge Cleveland

underscored the self-evident nature of the Court's conclusion by observing that "workers do not form organizations to play cards."[13]

Although the application of the primary means of interpretation had not produced a finding or result that was ambiguous, obscure or manifestly absurd, the Court nevertheless considered supplementary means of interpretation under Article 32 of the Vienna Convention. These included the pronouncements of ILO supervisory bodies and relevant regional human rights instruments—all of which, in the Court's view, confirmed the finding reached on the basis of Article 31.

It is worth noting that, in concluding its advisory opinion, the Court specified that its finding that the right to strike is protected under Convention No. 87 did not entail any determination on the precise content, scope, or conditions for the exercise of that right. This was a clear reminder that the so-called "second question" in the original request submitted by the workers' group—and perhaps the true heart of the matter—was not before the Court.[14]

In their dissenting opinions, four judges criticized the reasoning of the majority judges in strong terms. The common thread running through their opinions was the view that the Court had been unjustifiably driven by a teleological approach, had misread the principle of effectiveness (*effet utile*),[15] and had constructed its reasoning around a preconceived conclusion[16] at the expense of legal rigour.

Overall, two aspects of the Court's advisory opinion stand out in particular: the application of the principle of systemic integration and the validity of the interpretative pronouncements of the ILO supervisory bodies.

With respect to "any relevant rules of international law applicable in the relations between the parties," as provided for in Article 31(3)(c) of the Vienna Convention (also known as principle of systemic integration), the Court found that the two 1966 UN Covenants contained relevant rules that had to be taken into account.[17] This is particularly significant since not all states parties to Convention No. 87 have ratified either or both Covenants. The ICJ took the view that Article 31(3)(c) did not necessarily require all parties to the treaty under interpretation to be bound by he relevant rules of international law in order for those rules to be taken into account.[18] This veritable "interpretation within the interpretation" has been welcomed by some as a fresh reading of one of the most consequential rules of treaty interpretation,[19] while being criticized by others as an unacceptable lowering of the threshold established by Article 31(3)(c).[20]

Admittedly, much of the academic literature understands the principle to mean that all parties to the Convention under interpretation must be formally bound by a rule of international law before that rule can be considered relevant. There nevertheless appears to be broad agreement that such a narrow reading of Article 31(3)(c) would considerably limit its usefulness in the context of multilateral treaties with large numbers of ratifying states. The Court satisfied itself that the "high degree of overlap" (or "almost complete identicality," in the words of Judge Bhandari) between the states having ratified Convention No. 87 and those bound by the two Covenants may indicate the existence of a common understanding of the parties relevant for the purposes of the interpretation at hand.[21]

A second significant takeaway of the advisory opinion is that the Court drew a parallel with its judgment in the *Ahmadou Sadio Diallo* case and considered that the pronouncements of the ILO supervisory bodies, including but not limited to those of the CEACR, may be accorded great weight as a supplementary means of interpretation. In so doing, the Court recognized that the ILO supervisory bodies have, "within the scope of their respective functions," the authority to interpret the instruments they are mandated to monitor. Thus, the Court indirectly answered—as was particularly noted by dissenting Judge Tomka[22]—part of the second question contained in the original referral request of the workers' group.

Conclusion

The ICJ advisory opinion on the right to strike under ILO Convention No. 87 is believed to make a significant contribution to international legal theory on treaty interpretation, and is also likely to have important institutional implications for the ILO—particularly in its efforts to end years of institutional crisis and resume the smooth operation of its supervisory system.

At the doctrinal level, the advisory opinion breaks new ground in the wider application of the principle of systemic integration. By affirming that a rule may be "applicable between the parties" within the meaning of Article 31(3)(c) if it expresses their common understanding regarding certain provisions of the treaty under interpretation, even though not all of those parties are formally bound by that rule, the Court articulated a more flexible approach to systemic integration that may prove particularly relevant to promoting the coherence of international human rights law.[23] Convention No. 87, with its 158 ratifying states—only four of which are not parties to either of the two UN Covenants—provided a particularly suitable test case for recalibrating the scope of Article 31(3)(c) in a manner suggestive of a dynamic and evolutive approach to treaty interpretation.[24]

From an institutional point of view, the advisory opinion has revitalized Article 37(1) of the ILO Constitution, restored legal certainty concerning the long-disputed relationship between Convention No. 87 and the right to strike, and clarified a critical aspect of the ILO supervisory machinery, namely the authority of its supervisory bodies to interpret, incidentally, the provisions of the instruments whose application they supervise.

Moreover, the advisory opinion dispelled a series of doubts surrounding the referral process, many of which had been raised only in the course of the internal debates—including the validity of the 1949 authorization of the International Labour Conference empowering the Governing Body to seek advisory opinions from the ICJ, the legitimacy of a referral decision taken by the Governing Body rather than by the Conference, the relevance of the five PCIJ precedents, the role of the Office, and the autonomous participation of international employers' and workers' organizations in the proceedings. In one important respect, however, the Court refrained from confirming or otherwise commenting on the final and binding character of an advisory opinion rendered pursuant to Article 37(1) of the ILO Constitution, notwithstanding the unambiguous wording of that provision.[25]

Whether the ILO constituents, and, in particular, the two non-governmental groups, will now be able to re-engage constructively on the basis of the Court's authoritative "decision" remains to be seen.

NOTES

1 ILO Convention No. 87 was adopted on July 9, 1948. To date, 158 of the 187 ILO member states have ratified it. Convention No. 87 is one of the ten fundamental ILO conventions—that is, conventions that contain core labour rights. These conventions address the following five fundamental principles and rights at work: freedom of association and collective bargaining; elimination of forced labour; effective abolition of child labour; elimination of discrimination; and a safe and healthy working environment.

2 The ILO had requested an advisory opinion from the Permanent Court of International Justice (PCIJ) on five occasions between 1921 and 1932.

3 With eleven dissenting or separate opinions and declarations appended to the final text, the advisory opinion ranks third after the opinions on the *Legality of the Threat or Use of Nuclear Weapons* (14) and *Obligations of States in respect of Climate Change* (12).

4 For an overview of the legal dispute, *see* Collection of documents, Document No. 29, Appendix, *The dispute on the interpretation of Convention No. 87 in relation to the right to strike—Background report*, https://www.icj-cij.org/sites/default/files/case-related/191/191-20231214-req-02-00-en.pdf, ¶¶ 9–33.

5 See Written Statement of the International Organisation of Employers (IOE), https://icj-web.leman.un-icc.cloud/sites/default/files/case-related/191/191-20240516-wri-07-00-en.pdf, ¶¶ 3–17.

6 See Written Statement of the International Trade Union Confederation (ITUC), https://icj-web.leman.un-icc.cloud/sites/default/files/case-related/191/191-20240515-wri-04-00-en.pdf, ¶¶ 4.68–4.153.

7 Article 37, paragraph 1, provides that "any question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice."

8 *See* Written Statement of the International Labour Office, https://icj-web.leman.un-icc.cloud/sites/default/files/case-related/191/191-20240516-wri-01-00-en.pdf, ¶¶ 63–87. *See also* George Politakis, *Thinking Inside the Box: The Quest for Legal Certainty in* ILO100—LAW FOR SOCIAL JUSTICE 1007–1030 (G. Politakis, T. Kohiyama, T. Lieby eds., 2019).

9 Opinion, ¶ 68.

10 *Id.* ¶ 70.

11 *Id.* ¶¶ 72–73.

12 *See* Declaration of Vice-President Sebutinde, https://www.icj-cij.org/sites/default/files/case-related/191/191-20260521-adv-01-02-en.pdf, ¶ 29.

13 *See* Declaration of Judge Cleveland, https://www.icj-cij.org/sites/default/files/case-related/191/191-20260521-adv-01-09-en.pdf, ¶ 5.

14 At least one government argued that a limited interpretation of the question put to the Court would not enable the ILO to find

a lasting solution; *see* Written Statement of the Swiss Confederation, https://icj-web.leman.un-icc.cloud/sites/default/files/case-related/191/191-20240506-wri-02-00-en.pdf, ¶ 20. In the same vein, *see* Dissenting Opinion of Judge Xue, https://www.icj-cij.org/sites/default/files/case-related/191/191-20260521-adv-01-05-enc3.pdf, ¶ 67. For its part, the ITUC opposed any attempt to reinterpret the intention of the ILO Governing Body and thus broaden the question; *see* Verbatim Record of Oral Statements, https://www.icj-cij.org/sites/default/files/case-related/191/191-20251006-ora-01-00-bic.pdf, ¶ 3, pp. 38–39.

15 Judge Tomka refers to an "outcome-driven notion of 'effectiveness' and to "teleology that permeates, and subverts, the entire interpretive exercise"; *see* Dissenting Opinion of Judge Tomka, https://www.icj-cij.org/sites/default/files/case-related/191/191-20260521-adv-01-03-en.pdf, ¶ 2. Judge Xue, for her part, considered that the opinion "reflects an exercise of human rights advocacy rather than treaty interpretation." On the principle of effectiveness, see Dissenting Opinion of Judge Abraham, https://www.icj-cij.org/sites/default/files/case-related/191/191-20260521-adv-01-04-en.pdf, ¶¶ 14–21.

16 Judge Hmoud considered that the majority "appears to have inverted the judicial process, starting from a conclusion and, thereafter, assembling its reasoning to support it"; see Dissenting Opinion of Judge Hmoud, https://www.icj-cij.org/sites/default/files/case-related/191/191-20260521-adv-01-11-encc.pdf, ¶ 2. See also Separate Opinion of Judge Tladi who referred to "reverse engineering" in the sense that the Court first reached its conclusion and then sought reasons to support it; https://www.icj-cij.org/sites/default/files/case-related/191/191-20260521-adv-01-10-en.pdf, ¶ 3.

17 Both instruments make explicit reference to ILO Convention No. 87. Article 8 of the International Covenant on Economic, Social and Cultural Rights lays down a specific obligation for states parties to ensure the right to strike, provided it is exercised in conformity with the laws of the country, while Article 22 of the International Covenant on Civil and Political Rights provides for everyone's right to freedom of association with others, including the right to form and join trade unions for the protection of their interests.

18 Opinion, ¶ 90.

19 *See, e.g.*, Separate Opinion of President Iwasawa, https://www.icj-cij.org/sites/default/files/case-related/191/191-20260521-adv-01-01-en.pdf, ¶¶ 3–7.

20 *See, e.g.*, Dissenting Opinion of Judge Tomka, https://www.icj-cij.org/sites/default/files/case-related/191/191-20260521-adv-01-03-en.pdf, ¶¶ 71–74.

21 Opinion, ¶¶ 92–93, 96.

22 Dissenting Opinion of Judge Tomka, https://www.icj-cij.org/sites/default/files/case-related/191/191-20260521-adv-01-03-en.pdf, ¶ 82.

23 In this vein, *see* Julian Arato, Justina Uriburu, *Treaty Interpretation in the ICJ's Opinion on the Right to Strike*, EJIL: Talk! (May 28, 2026), https://www.ejiltalk.org/treaty-interpretation-in-the-icjs-opinion-on-the-right-to-strike.

24 It is in this sense that Judge Gómez Robledo wrote that, when rules relating to human rights are in play, the approach must be in keeping with the jurisprudence of the European Court of Human Rights, in particular its repeated assertions that the European Convention on Human Rights is a "living instrument" that may evolve with the civilizations in which it is applied: see Separate Opinion of Judge Gómez Robledo, https://www.icj-cij.org/sites/default/files/case-related/191/191-20260521-adv-01-08-en.pdf, ¶¶ 5–6.

25 The ITUC had specifically requested the Court to deliver an advisory opinion that would confirm, *inter alia*, that by virtue of Article 37 of the ILO Constitution the advisory opinion was authoritative and binding on the ILO and its constituents: see Written Statement of the ITUC, https://icj-web.leman.un-icc.cloud/sites/default/files/case-related/191/191-20240515-wri-04-00-en.pdf, ¶ 4.223. The legal effect of an advisory opinion requested under Article 37(1) is analysed in the Written Statement of the International Labour Office, https://icj-web.leman.un-icc.cloud/sites/default/files/case-related/191/191-20240516-wri-01-00-en.pdf, ¶¶ 127–154. *See also* Pranay Lekhi, *When Advice Should Have Turned Binding: A Missed Opportunity*, EJIL: Talk! (June 1, 2026), https://www.ejiltalk.org/when-advice-should-have-turned-binding-a-missed-opportunity.

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21 MAY 2026

ADVISORY OPINION

RIGHT TO STRIKE UNDER ILO CONVENTION NO. 87

DROIT DE GRÈVE AU REGARD DE LA CONVENTION N^{O} 87 DE L'OIT

21 MAI 2026

AVIS CONSULTATIF

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RIGHT TO STRIKE UNDER ILO CONVENTION NO. 87

Jurisdiction and discretion.

Article 65, paragraph 1, of the Statute — Article 96, paragraph 2, of the Charter — Article IX, paragraph 2, of the Agreement between the United Nations and the International Labour Organization (ILO) — ILO authorized to request advisory opinions of the Court — Power of Governing Body to request advisory opinions of the Court — Question submitted to the Court is of a legal nature — Question arises within scope of activities of the ILO — The Court has jurisdiction to give advisory opinion requested.

Discretionary power of the Court to decline to give an advisory opinion — Only "compelling reasons" may lead the Court to refuse to exercise its advisory function — Assertion that dispute between ILO constituents should be resolved using mechanisms specifically provided for within the ILO — Efforts by ILO constituents to resolve the matter — Article 37, paragraph 1, of the ILO Constitution — No need for internal procedures within the ILO to be exhausted before a request for an advisory opinion is made — No compelling reasons for the Court to decline to give opinion requested.

*

Context of the request for an advisory opinion.

Tripartite structure of the ILO — Main organs — International Labour Conference — Governing Body — International Labour Office — System of special and regular supervision — Regular supervision — Committee of Experts — Committee on Standards — Special supervisory procedures — Commissions of Inquiry — Fact-Finding and Conciliation Commission — Committee on Freedom of Association (CFA).

Assertion by CFA in 1952 that right to strike an essential part of trade union rights — According to Committee of Experts, Article 3 of Convention No. 87 includes recourse to strikes — CFA and Commissions of Inquiry affirm that right to strike is protected by the Convention — Employers' representatives within Committee on Standards questioned position that Convention No. 87 should be interpreted as protecting right to strike — Workers' representatives within Committee on Standards in support of view of Committee of Experts — Attempts to resolve disagreement through negotiations within the ILO not successful.

Decision of Governing Body to submit question to the Court in accordance with Article 37, paragraph 1, of the ILO Constitution.

*

Scope and meaning of question put by Governing Body.

Question circumscribed and specific — Question relates solely to whether right to strike of workers and their organizations is protected under Convention No. 87 — No need for the Court to reformulate question or broaden its scope.

*

Whether right to strike is protected under Convention No. 87.

Applicable rules for interpretation of Convention No. 87.

1969 Vienna Convention on the Law of Treaties (Vienna Convention) — Articles 31 to 33 of the Vienna Convention reflecting rules of customary international law applicable to treaties concluded before its entry into force — Argument that the travaux préparatoires *of Convention No. 87 should be given special consideration in its interpretation pursuant to Article 5 of the Vienna Convention — Assertion that such an interpretative approach could constitute "a relevant rule of the organization" that prevails over customary international law rules of treaty interpretation — No particular importance should be accorded to the* travaux préparatoires *beyond that envisaged under Article 32 of the Vienna Convention — The Court to apply rules of interpretation as reflected in Article 31 and Article 32 of the Vienna Convention.*

Interpretation of Convention No. 87.

Article 31, paragraph 1, of the Vienna Convention.

Ordinary meaning to be given to the terms of Convention No. 87 in their context and in light of its object and purpose — No explicit reference to right to strike in Convention No. 87 — Absence of an express treaty provision governing a certain issue does not necessarily mean that the issue is excluded from that treaty — Articles 2, 3, paragraph 1, and 10 of Convention No. 87 — Workers' and employers' right to create organizations to defend their interests, including to organize their activities and programmes — Meaning of the terms "activities" and "programmes" — Meaning of the term "strike" — Article 3, paragraph 1, read in conjunction with Articles 2 and 10, suggests that strike action is capable of falling within ordinary meaning of the term "activities" and, thus, within scope of Convention No. 87 — Strike action not explicitly excluded under Convention No. 87 — Protections set out by the Convention limited by Article 8, paragraph 1, and Article 9, paragraph 1 — Terms of Convention No. 87 do not allow inference that right to strike is excluded — Right to strike in line with object and purpose of Convention No. 87 — Ordinary meaning of the terms of the Convention indicates that protection of right to strike is encompassed in protection of freedom of association provided for in Convention No. 87.

Article 31, paragraph 3 (b)*, of the Vienna Convention.*

No subsequent agreement between the States parties to Convention No. 87 therefore Article 31, paragraph 3 (a)*, not applicable.*

Subsequent practice which establishes agreement of the parties regarding interpretation of a treaty — Distinction between subsequent practice under Article 31, paragraph 3 (b)*, and Article 32 of the Vienna Convention — Subsequent practice under Article 31, paragraph 3* (b)*, as establishing existence of a common understanding of the parties regarding meaning to be given to a treaty — Subsequent practice as a supplementary means of interpretation under Article 32 — No need for evidence of the common understanding of all parties regarding a given interpretation — The two categories of subsequent practice differ in terms of the interpretative significance and threshold of agreement required to establish their existence.*

Interpretation of Convention No. 87 by ILO supervisory bodies and reactions of State parties — General Surveys of Committee of Experts — Position of CFA — Views of Commissions of Inquiry — Progressive recognition by ILO supervisory bodies that right to strike is protected under Convention No. 87 — Pronouncements of treaty supervisory bodies do not in themselves constitute subsequent practice under Article 31, paragraph 3 (b) *— Pronouncements may be relevant if they give rise to, or refer to, subsequent State practice — Significant majority of States parties to Convention No. 87 have accepted or endorsed interpretation of supervisory bodies that Convention*

No. 87 protects right to strike — That interpretation challenged, however, by a number of States parties — This opposition precludes conclusion that there is subsequent practice establishing agreement of the parties within meaning of Article 31, paragraph 3 (b) *— National legislative provisions and judicial practice relating to right to strike do not allow for any conclusion as to existence of subsequent practice.*

No subsequent practice within meaning of Article 31, paragraph 3 (b) *— Conclusion without prejudice to relevance of subsequent practice as a supplementary means of interpretation.*

Article 31, paragraph 3 (c)*, of the Vienna Convention.*

Relevant rules of international law applicable in the relations between the parties — No relevant rule with respect to right to strike in any other treaty binding upon all parties to Convention No. 87 — Rule may be applicable if it expresses common understanding — Not all parties necessarily required to be bound for rule to apply — Relevance of Article 8 of the ICESCR and Article 22 of the ICCPR — High degree of overlap between States parties to Convention No. 87 and States parties to both the ICESCR and the ICCPR — States parties to Convention No. 87 that are neither parties to the ICESCR nor parties to the ICCPR or that have formulated reservations or declarations regarding Article 8 of the ICESCR — No objection by these States that right to strike is protected under Convention No. 87 — Indication that protection of right to strike is encompassed in protection of freedom of association provided by Convention No. 87 — Interpretation under Article 31 of the Vienna Convention leads to conclusion that right to strike is protected by Convention No. 87.

*

Article 32 of the Vienna Convention — Supplementary means of interpretation.

No ambiguity, obscurity, manifestly absurd or unreasonable result arising from interpretation of Convention No. 87 under Article 31 — Recourse to supplementary means for the purposes of confirming meaning of the Convention resulting from application of Article 31.

Travaux préparatoires *of Convention No. 87 — Discussions during preparation of Convention No. 87 appear to have focused on right to strike of public officials — Intention of drafters of Convention No. 87 unclear with respect to right to strike — Analysis of* travaux préparatoires *leads to an inconclusive result.*

Subsequent practice of the parties as a supplementary means of interpretation — Subsequent practice confirming the interpretation reached by the Court under Article 31.

Pronouncements of ILO supervisory bodies — ILO supervisory bodies progressively converged in recognizing right to strike as protected under Convention No. 87 — Court may ascribe "great weight" to pronouncements of ILO supervisory bodies — Pronouncements confirm interpretation reached by the Court under Article 31.

Regional instruments — States parties to Convention No. 87 are parties to various regional human rights instruments — African legal framework — Arab legal framework — European legal framework — Inter-American legal framework — Regional instruments, jurisprudence and pronouncements revealing a shared view of States parties to Convention No. 87 that right to strike is encompassed in freedom of association.

Supplementary means of interpretation confirm conclusion reached through interpretation based on Article 31 of the Vienna Convention.

*

Conclusion.

Right to strike protected under Convention No. 87 — Conclusion does not entail any determination on precise content, scope or conditions for exercise of that right — Question to be answered in the affirmative.

ADVISORY OPINION

Present: *President* IWASAWA; *Vice-President* SEBUTINDE; *Judges* TOMKA, ABRAHAM, XUE, BHANDARI, NOLTE, CHARLESWORTH, BRANT, GÓMEZ ROBLEDO, CLEVELAND, AURESCU, TLADI, HMOUD; *Registrar* GAUTIER.

On the right to strike under ILO Convention No. 87,

THE COURT,

composed as above,

gives the following Advisory Opinion:

1. On 10 November 2023 at its 349th *bis* (Special) Session, the Governing Body of the International Labour Office (hereinafter the "Governing Body"), acting in accordance with Article 37, paragraph 1, of the Constitution of the International Labour Organization (ILO) and Article IX, paragraph 2, of the Agreement between that Organization and the United Nations, adopted a resolution by which it decided, pursuant to Article 65 of the Statute of the Court, to request the International Court of Justice to render an advisory opinion. By a letter dated 13 November 2023 and received in the Registry of the Court on the same day, the Director-General of the International Labour Office officially communicated to the Court the decision taken by the Governing Body to submit a question for an advisory opinion. Certified true copies of the English and French texts of the resolution were enclosed with that letter. The operative part of the resolution reads as follows:

"The Governing Body,

... ...

Decides, in accordance with article 37, paragraph 1, of the Constitution of the International Labour Organization,

1. To request the International Court of Justice to render urgently an advisory opinion under Article 65, paragraph 1, of the Statute of the Court, and under Article 103 of the Rules of Court, on the following question:

Is the right to strike of workers and their organizations protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)?

2. Instructs the Director-General to:
   (a) transmit this resolution to the International Court of Justice, accompanied by all documents likely to throw light upon the question, in accordance with article 65, paragraph 2, of the Statute of the Court;
   (b) respectfully request that the International Court of Justice allow for the participation in the advisory proceedings of the employers' and workers' organizations that enjoy general consultative status with the ILO;
   (c) respectfully request that the International Court of Justice consider possible steps to accelerate the procedure, in accordance with Article 103 of the Rules of Court, so as to render an urgent answer to this request;
   (d) inform the United Nations Economic and Social Council of this request, as required under article IX, paragraph 4, of the Agreement between the United Nations and the International Labour Organization, 1946."

2. By letters dated 14 November 2023, the Registrar gave notice of the request for an advisory opinion to all States entitled to appear before the Court, pursuant to Article 66, paragraph 1, of the Statute.

3. By an Order dated 16 November 2023, the Court decided, in accordance with Article 66, paragraph 2, of its Statute, that the ILO, as well as the States parties to the Freedom of Association and Protection of the Right to Organise Convention (No. 87) (hereinafter "Convention No. 87"), were likely to be able to furnish information on the question submitted to the Court for an advisory opinion. The Court subsequently fixed 16 May 2024 as the time-limit within which written statements on that question might be presented to it, in accordance with Article 66, paragraph 2, of the Statute, and 16 September 2024 as the time-limit within which States and organizations having presented written statements might submit written comments on the other written statements, in accordance with Article 66, paragraph 4, of the Statute.

4. By the same Order, the Court decided that in light of the particular tripartite structure of the ILO, which is comprised of representatives of governments, employers and workers, six organizations that have been granted

general consultative status at the ILO by the Governing Body (the International Organisation of Employers, the International Trade Union Confederation, the World Federation of Trade Unions, the International Cooperative Alliance, the Organization of African Trade Union Unity and Business Africa) were also considered likely to be able to furnish information on the question submitted to the Court for an advisory opinion. The Court further decided to invite those organizations to make written contributions to the Court within the above-mentioned time-limits.

5. By letters dated 22 November 2023, the Registrar informed the ILO and the States parties to Convention No. 87, as well as the six organizations having general consultative status at the ILO, of the Court's decisions contained in its Order of 16 November 2023 and transmitted a copy of the said Order to them.

6. Pursuant to Article 65, paragraph 2, of the Statute, the International Labour Office, under cover of a letter from its Legal Adviser dated 14 December 2023, communicated to the Court a dossier of documents likely to throw light upon the question formulated by the Governing Body, which was received in the Registry on 15 December 2023.

7. Ruling on a request dated 15 March 2024 from the United States of America, which is not a party to Convention No. 87, the Court decided, in accordance with Article 66, paragraph 3, of its Statute, that the United States, as a member of the ILO, was likely to be able to furnish information on the question submitted to the Court and, consequently, that it might do so within the time-limits fixed for that purpose by the Order of the Court dated 16 November 2023. The States and organizations having been considered by the Court likely to be able to furnish information on the question were informed accordingly.

8. Ruling on a request from the Organisation of African, Caribbean and Pacific States dated 16 April 2024, the Court decided, in accordance with Article 66 of its Statute, that this organization was likely to be able to furnish information on the question submitted to the Court and, consequently, that it might do so within the time-limits fixed for that purpose by the Order of the Court dated 16 November 2023. The States and organizations having been considered by the Court likely to be able to furnish information on the question were informed accordingly.

9. Ruling on a request dated 16 May 2024 from Brazil, which is not a party to Convention No. 87, the President of the Court decided, in accordance with Article 66, paragraph 3, of the Statute, that Brazil, as a member of the ILO, was likely to be able to furnish information on the question put to the Court. Brazil was therefore authorized, on an exceptional basis, to submit to the Court a written statement after the expiry of the relevant time-limit, by 4 June 2024 at the latest, and written comments on the written statements made by other States or authorized organizations within the time-limit of 16 September 2024, as fixed by the Court in its Order of 16 November 2023. The States and organizations having been considered by the Court likely to be able to furnish information on the question were informed accordingly.

10. Within the time-limit fixed by the Order of the Court dated 16 November 2023, written statements were filed in the Registry by, in order of receipt, the International Cooperative Alliance, the International Labour Office of the ILO, France, Vanuatu, the Organisation of African, Caribbean and Pacific States, Spain, Italy, the International Trade Union Confederation, the World Federation of Trade Unions, the United Kingdom of Great Britain and Northern Ireland, Colombia, Bangladesh, Germany, Poland, Business Africa, the International Organisation of Employers, South Africa, Canada, Switzerland, Norway, Tunisia, the United States of America, Australia, Japan, Costa Rica, Indonesia, Mexico, Somalia, the Kingdom of the Netherlands and Belize.

11. By a communication dated 24 May 2024, the Registry transmitted to the States and organizations having presented written statements the list of participants that had filed written statements in the proceedings and informed them that those statements could be downloaded from a designated web portal managed by the Registry. By a letter of the Registrar dated 28 May 2024, this list was also communicated to the States and organizations having been considered likely to be able to furnish information, but which had not presented written statements.

12. On 30 May 2024, Brazil filed its written statement within the time-limit fixed by the President of the Court (see paragraph 9 above). The Registry informed the States and organizations having presented written statements, accordingly. The States and organizations having been considered likely to be able to furnish information, but which had not presented written statements, were also informed.

13. Within the time-limit fixed by the Order of the Court dated 16 November 2023, written comments on the written statements were filed in the Registry by, in order of receipt, the International Trade Union Confederation, Japan, Mexico, the International Cooperative Alliance, Tunisia, the Organisation of African, Caribbean and Pacific States, South Africa, Switzerland, the United States of America, the International Organisation of Employers, Business Africa, Australia, Bangladesh, the Kingdom of the Netherlands and Vanuatu.

14. By a communication dated 19 September 2024, the Registry transmitted to the States and organizations having filed written statements the list of participants that had filed written comments and informed them that those written comments could be downloaded from a designated web portal managed by the Registry. A similar communication was sent to the States and organizations having been considered likely to be able to furnish information but which had not presented written statements.

15. On 3 October 2024, the Government of the United Kingdom of Great Britain and Northern Ireland notified the Court of the withdrawal of its written statement filed on 16 May 2024 and requested that this statement not be published on the Court's website under Article 106 of the Rules of Court. The States and organizations authorized to participate in the advisory proceedings were informed accordingly.

16. By communications dated 10 June 2025, the Registry informed the States and organizations considered likely to be able to furnish information on the question that the Court had decided to hold public hearings on the request for an advisory opinion, which would open on 6 October 2025. The addressees were further invited to inform the Registry, by 8 September 2025, if they intended to take part in those hearings.

17. By a communication dated 8 September 2025, the Government of the United States of America notified the Court of the withdrawal of its written statement filed on 16 May 2024 and of its written comments filed on 16 September 2024. It further requested that the statement and comments not be published on the Court's website under Article 106 of the Rules of Court. The States and organizations authorized to participate in the advisory proceedings were informed accordingly.

18. By letters dated 16 September 2025, the Registrar communicated to those States and organizations which were taking part in the oral proceedings the list of participants as well as information on the practical arrangements regarding the organization of the oral proceedings and a schedule of the proceedings.

19. Following receipt of two communications after the expiry of the relevant time-limit, the Court authorized, on an exceptional basis, the participation of Mauritius and Somalia in the oral proceedings.

20. By letters dated 22 September 2025, the Registrar communicated to the States and organizations having been considered likely to be able to furnish information on the question but which were not taking part in the oral proceedings the schedule for those proceedings, together with a list and the speaking order of the participants.

21. Further revisions to the schedule were subsequently communicated to the States and organizations authorized to participate in the advisory proceedings.

22. Pursuant to Article 106 of its Rules, the Court decided to make the written statements and written comments submitted to it accessible to the public after the opening of the oral proceedings. The written statements and written comments of States and organizations not taking part in the oral proceedings were made accessible to the public on the first day of the oral proceedings. The written statements and written comments of States and organizations taking part in the oral proceedings were made accessible to the public at the end of the day on which they presented their oral statements.

23. In the course of the oral proceedings held on 6, 7 and 8 October 2025, the Court heard oral statements, in the following order, by:

for the International Labour Office:	Ms Tomi Kohiyama, Legal Adviser;
for the International Trade Union Confederation:	Mr Paapa Kwasi Danquah, Director of Legal and Human and Trade Union Rights, International Trade Union Confederation, Mr Pierre Klein, Professor of International Law, Université Libre de Bruxelles, Ms Phoebe Okowa, Professor of Public International Law, Queen Mary University of London, member of the International Law Commission, associate member of the Institut de droit international, Advocate, High Court of Kenya, Mr Harold Hongju Koh, Sterling Professor of International Law, Yale Law School, member of the Bars of the State of New York and of the District of Columbia;
for the International Organisation of Employers:	Mr Roberto Suárez Santos, Secretary-General, International Organisation of Employers, Ms Michelle Butler, member of the Bar of England and Wales, Matrix Chambers, Mr Anirudh Mathur, member of the Bar of England and Wales, Matrix Chambers; Ms Rita Yip, member of the Bar of New Zealand, Senior Adviser, International Organisation of Employers;
for the Republic of South Africa:	HE Mr Vusimuzi Madonsela, Ambassador of the Republic of South Africa to the Kingdom of the Netherlands, Mr John Dugard, Counsel and Advocate, Mr Halton Cheadle, Counsel and Advocate;
for the Federal Republic of Germany:	Ms Tania von Uslar-Gleichen, Legal Adviser and Director-General for Legal Affairs, Federal Foreign Office;
for Australia:	Mr Jesse Clarke, General Counsel (International Law), Office of International Law, Attorney-General's Department, Mr Stephen Donaghue, KC, Solicitor-General of Australia, Ms Kate Parlett, member of the Bar of England and Wales, Twenty Essex Chambers, London;
for the People's Republic of Bangladesh:	HE Mr Tareque Muhammad, Ambassador of the People's Republic of Bangladesh to the Kingdom of the Netherlands, Mr Fabián Raimondo, Associate Professor of Public International Law, Maastricht University, member of the Bar of the City of La Plata (Argentina);
for the Republic of Colombia:	HE Mr Mauricio Jaramillo Jassir, Vice-Minister for Multilateral Affairs;
for the Federative Republic of Brazil:	Mr Marcelo Marotta Viegas, Director, Department of International Organizations, Ministry of Foreign Affairs;
for the Kingdom of Spain:	Ms María José Ruiz Sánchez, State Attorney, Office of the Attorney General, Mr Santiago Ripol Carulla, Professor of International Public Law, Universitat Pompeu Fabra, Head of the International Legal Advisory Service, Ministry of Foreign Affairs, European Union and Cooperation;
for the Republic of Indonesia:	HE Mr Mayerfas, Ambassador of the Republic of Indonesia to the Kingdom of the Netherlands;
for the Republic of Mauritius:	HE Mr Muhammad Reza Cassam Uteem, Minister of Labour and Industrial Relations, Ms Priya Veedu Ramjeeawon-Varma, Assistant Solicitor General, Office of the Attorney General;
for the United Mexican States:	HE Ms Carmen Moreno Toscano, Ambassador of the United Mexican States to the Kingdom of the Netherlands, Ms Alicia Patricia Pérez Galeana, Deputy Legal Adviser "B", Ministry of Foreign Affairs, Mr Pablo Arrocha Olabuenaga, Legal Adviser, Ministry of Foreign Affairs;
for the Kingdom of Norway:	Mr Kristian Jervell, Director-General, Legal Affairs Department, Ministry of Foreign Affairs;
for the Republic of Panama:	HE Mr Javier Eduardo Martínez Acha Vásquez, Minister of Foreign Affairs;
for the United Kingdom of Great Britain and Northern Ireland:	Mr Daniel Stilitz, KC, Barrister, member of the Bar of England and Wales, 11 King's Bench Walk Chambers, Ms Philippa Webb, Professor of Public International Law, University of Oxford, member of the Bar of England and Wales, and the Bars of the State of New York and Belize, Twenty Essex Chambers;
for the Arab Republic of Egypt:	Ms Jasmine Moussa, PhD, Minister Plenipotentiary, Cabinet of the Minister for Foreign Affairs, Emigration and Egyptian Expatriates, Ministry of Foreign Affairs, Emigration and Egyptian Expatriates;

(*Continued*)

Continued.

for the Eastern Republic of Uruguay:	HE Mr Álvaro González Otero, Ambassador of the Eastern Republic of Uruguay to the Kingdom of the Netherlands, HE Ms Alejandra de Bellis, Ambassador, Permanent Representative of the Eastern Republic of Uruguay to the United Nations;
for the Federal Republic of Somalia:	HE Ms Khadija Ossoble Ali, Ambassador of the Federal Republic of Somalia to the Kingdom of the Netherlands, the Kingdom of Belgium, the Grand Duchy of Luxembourg and the European Union, Mr Guled Yusuf, Partner, A&O Shearman LLP;
for the Swiss Confederation:	HE Mr Franz Xaver Perrez, Head of the Directorate of International Law, Federal Department of Foreign Affairs of the Swiss Confederation, HE Ms Valérie Berset Bircher, Ambassador and Head of International Labour Affairs, State Secretariat for Economic Affairs (SECO);
for the Republic of Vanuatu:	Ms Angelyne Glenda Dovo Roy, Attorney General, Ms Murielle Metsan Meltenoven, Commissioner of Labour, Ms Florence Williams Samuel, Solicitor General;
for the International Cooperative Alliance:	Mr Santosh Kumar Padmanabhan, Director of Legislation, International Cooperative Alliance, Mr Hagen Henrÿ, Chairperson, International Cooperative Alliance Cooperative Law Committee;
for Business Africa:	Mr Kaizer Moyane, Special Adviser, Business Africa, Mr Paul Clark, member of the Bar of England and Wales, Garden Court Chambers.

24. By a letter dated 10 October 2025, the Registrar informed the Legal Adviser of the International Labour Office of a discrepancy between the English text of Article 3, paragraph 1, of Convention No. 87, as reproduced in the dossier submitted by the International Labour Office in the proceedings (document No. 120), and the English text of the same provision, as reproduced in the United Nations *Treaty Series* (United Nations, *Treaty Series*, 1950, Vol. 68, No. 881, p. 17).

25. By a letter dated 13 October 2025, the Legal Adviser of the International Labour Office confirmed that the text appearing in the dossier submitted by the International Labour Office constituted the correct version of Convention No. 87, since it reproduced the original text authenticated by the President of the Conference and the Director-General, pursuant to Article 19, paragraph 4, of the Constitution of the ILO.

I. JURISDICTION AND DISCRETION

26. When seised of a request for an advisory opinion, the Court must first consider whether it has jurisdiction to give the opinion requested and, if so, whether there is any reason why the Court should, in the exercise of its discretion, decline to answer the request (*Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory, Advisory Opinion of 22 October 2025*, para. 17; *Obligations of States in respect of Climate Change, Advisory Opinion of 23 July 2025*, para. 37).

A. Jurisdiction

27. The Court's jurisdiction to give an advisory opinion is based on Article 65, paragraph 1, of its Statute, which provides that "[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request". The General Assembly and the Security Council are authorized by Article 96, paragraph 1, of the Charter to request an advisory opinion on "any legal question"; and, under Article 96, paragraph 2,

> "[o]ther organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities".

28. Three conditions must be satisfied to found the jurisdiction of the Court when a request for an advisory opinion is submitted to it by a specialized agency: the agency requesting the opinion must be duly authorized by the

General Assembly, under the Charter, to request opinions from the Court; the opinion requested must be on a legal question; and this question must be one arising within the scope of the activities of the requesting agency (*Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 71-72, para. 10; *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982*, pp. 333-334, para. 21).

29. The ILO, a specialized agency, has been duly authorized to request advisory opinions of the Court. By its resolution 50 (I) of 14 December 1946, the General Assembly approved the Agreement governing the relationship between the United Nations and the ILO, which entered into force on the same date. Under the terms of Article I of that Agreement, "[t]he United Nations recognizes the International Labour Organization as a specialized agency". Article IX, paragraph 2, of the same instrument provides that

> "[t]he General Assembly authorizes the International Labour Organization to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its activities other than questions concerning the mutual relationships of the Organization and the United Nations or other specialized agencies",

while Article IX, paragraph 3, stipulates that "[s]uch request may be addressed to the Court by the Conference, or by the Governing Body acting in pursuance of an authorization by the Conference". On 27 June 1949, by means of a resolution adopted for that purpose, the International Labour Conference expressly "authorise[d] the Governing Body of the International Labour Office to request advisory opinions of the International Court of Justice" (International Labour Conference, 32nd Session, 1949, Resolution concerning the Procedure for Requests to the International Court of Justice for Advisory Opinions, *Official Bulletin*, Vol. XXXII, p. 339).

30. To be of a legal nature, a question must be "framed in terms of law and raise problems of international law" (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 18, para. 15; see also *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, pp. 414-415, para. 25). It must also be "susceptible of a reply based on law" (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 18, para. 15; see also *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, pp. 414-415, para. 25). In its request, the ILO asks the Court to determine whether "the right to strike of workers and their organizations [is] protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)". Since the question constituting the subject of the request concerns the interpretation of treaty provisions, it is indeed a legal question.

31. The Court must satisfy itself that the opinion sought concerns a question arising "within the scope of the activities" of the requesting organ. To that end, the Court must refer "to the relevant rules of the organization and, in the first place, to its constitution" (*Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 74, para. 19). As the Court will explain below, in fulfilling its mandate, the ILO has since 1919 developed international labour standards which can take the form of international labour conventions and protocols or international labour recommendations (see in particular Article 19 of the ILO Constitution). Since the opinion requested relates to the interpretation of a "fundamental" convention of the ILO (see paragraph 40 below), it undoubtedly falls within the scope of the activities of the requesting organ. In addition, the Court notes that the question at the heart of the present proceedings does not concern the "mutual relationships of the [ILO] and the United Nations or other specialised agencies", which are excluded under Article IX, paragraph 2, of the Agreement governing the relationship between the ILO and the United Nations and by the aforementioned International Labour Conference resolution of 27 June 1949.

32. In view of the foregoing, the Court concludes that the request meets the conditions set out in the Charter and in the Statute of the Court, and that it therefore has jurisdiction to give the opinion sought.

B. Discretion

33. The Court has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met (*Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory, Advisory Opinion of 22 October 2025*, para. 23). Only compelling reasons may lead the Court to refuse to give its

opinion in response to a request falling within its jurisdiction (*ibid.*; *Obligations of States in respect of Climate Change, Advisory Opinion of 23 July 2025*, para. 46).

34. In the present proceedings, one participant has argued that the Court should exercise its discretion to decline to give the advisory opinion requested. This participant contends that responding to the request would be tantamount to deciding an ongoing dispute between ILO constituents — more specifically, between employers and workers — without having first obtained their consent to that end. The participant asserts that the dispute should be resolved using the mechanisms specifically provided for within the ILO and that an advisory opinion of the Court would place the social dialogue and the inherent tripartite nature of such dialogue at risk.

35. The Court is not convinced by this argument. First, ILO constituents have made sustained efforts to resolve the matter through other means. According to the preamble of the resolution adopted on 10 November 2023 during its 349th *bis* (Special) Session, it is precisely because the Governing Body was "[c]onscious that there is serious and persistent disagreement within the tripartite constituency of the International Labour Organization (ILO) on the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), with respect to the right to strike" that it decided to request an advisory opinion from the Court. In any event, it is not for the Court to engage in conjecture about the possible effects of an advisory opinion on the ongoing discussions between the ILO constituents or, more broadly, on the tripartite functioning of that Organization. As the Court has made clear, "[it] cannot speculate about the effects of its opinion" (*Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, I.C.J. Reports 2024 (III)*, p. 775, para. 40). Moreover, the Court recalls that the tripartite nature of the ILO, which is embedded in the Constitution of the Organization, did not prevent the Permanent Court of International Justice from rendering advisory opinions on legal questions concerning the ILO (*Interpretation of the Convention of 1919 concerning Employment of Women during the Night, Advisory Opinion, 1932, P.C.I.J., Series A/B, No. 50*, p. 365; *Free City of Danzig and ILO, Advisory Opinion, 1930, P.C.I.J., Series B, No. 18*; *Competence of the ILO to Regulate Incidentally the Personal Work of the Employer, Advisory Opinion, 1926, P.C.I.J., Series B, No. 13*; *Competence of the ILO to Examine Proposals for the Organization and Development of the Methods of Agricultural Production, Advisory Opinion, 1922, P.C.I.J., Series B, No. 3*; *Competence of the ILO in Regard to International Regulation of the Conditions of Labour of Persons Employed in Agriculture, Advisory Opinion, 1922, P.C.I.J., Series B, No. 2*; *Designation of the Workers' Delegate for the Netherlands at the Third Session of the International Labour Conference, Advisory Opinion, 1922, P.C.I.J., Series B, No. 1*).

36. Secondly, the Court notes that under Article 37, paragraph 1, of the ILO Constitution, "[a]ny question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice", and that the instruments in force do not require certain internal procedures within the ILO to be exhausted before a request for an advisory opinion is made. In submitting a question concerning the interpretation of Convention No. 87 to the Court, the Governing Body has made use of one of the options provided for in the constituent instrument of the Organization. In so far as it is seeking the Court's opinion on a question of interpretation of an ILO convention, the request conforms with the Court's advisory function, "the purpose of [which] is to enable organs of the United Nations and other authorized bodies to obtain opinions from the Court which will assist them in the future exercise of their functions" (*Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, p. 421, para. 44). The Court can therefore find no compelling reason that should lead it to refuse to exercise "an interpretative function which falls within the normal exercise of its judicial powers" (*Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948*, p. 61).

37. In light of the above, the Court concludes that there is no compelling reason for it to decline to give the opinion requested by the Governing Body of the International Labour Office.

II. Context of the request for an advisory opinion

A. Purpose and structure of the ILO

38. The ILO was founded in 1919 for the promotion of social justice and the improvement of conditions of labour. In 1945 it became the first specialized agency of the United Nations. At present, it has 187 Member States. In accordance with its tripartite structure, representatives of governments, employers and workers are involved in its activities. It is made up of three main organs: the International Labour Conference, the Governing Body and the International Labour Office.

39. The International Labour Conference, which is composed of tripartite delegations of all Member States, is the ILO's highest decision-making body. It is responsible for the drafting, adoption and revision of labour standards. The Governing Body is the executive body of the ILO. It comprises 56 regular members (28 representing governments, 14 representing employers and 14 representing workers) and is vested with governance functions in relation to determining the standard-setting agenda of the Conference and the functioning of the ILO's supervisory system, which is aimed at ensuring the effective implementation of international labour standards (see paragraphs 41 to 46 below). The International Labour Office serves as the secretariat of the Organization. Its function includes facilitating the preparation of the discussions of the International Labour Conference and the Governing Body in relation to standards and assisting the various supervisory bodies. It is headed by the Director-General, who is elected by the Governing Body.

40. The ILO adopts international labour standards which may take the form of international labour conventions and protocols that can be ratified by Member States or non-binding international labour recommendations. Since its establishment in 1919, the ILO has adopted 192 conventions, 6 protocols and 209 recommendations. In 1998, the General Conference of the International Labour Conference adopted the ILO Declaration on Fundamental Principles and Rights at Work. The Governing Body initially identified eight conventions which they determined to be "fundamental" in the sense that they covered core principles which all Member States must respect. By 2022, this number was expanded to ten (the Forced Labour Convention, 1930 (No. 29) and its 2014 Protocol; the Freedom of Association and Right to Organise Convention, 1948 (No. 87); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Equal Remuneration Convention, 1951 (No. 100); the Abolition of Forced Labour Convention, 1957 (No. 105); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Minimum Age Convention, 1973 (No. 138); the Occupational Safety and Health Convention, 1981 (No. 155); the Worst Forms of Child Labour Convention, 1999 (No. 182); and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)).

41. In order to ensure compliance and accountability with regard to these instruments, the ILO has in place a system of regular and special supervision. Regular supervision is discharged by two permanent supervisory bodies, namely the Committee of Experts on the Application of Conventions and Recommendations (hereinafter the "Committee of Experts" or CEACR) and the Conference Committee on the Application of Standards (hereinafter the "Committee on Standards").

42. The main role of the Committee of Experts, established in 1926 and currently composed of 20 experts appointed by the Governing Body in their individual capacity, is to analyse the periodic reports submitted by Member States regarding the application of the "fundamental" conventions, including Convention No. 87 (see paragraph 40 above), as well as other ILO conventions and recommendations. The Committee of Experts also considers information submitted by trade unions and employers' associations about the application of ILO conventions ratified by Member States. Following its review, the Committee can issue two types of comments on a State party's compliance with a relevant convention: "observations", when it identifies serious issues regarding the fulfilment by a State of its obligations, or "direct requests", when it wishes to raise questions of a primarily technical nature or when it requires further information. In addition, the Committee of Experts publishes a General Survey, which is included in its annual report and provides a comparative and detailed analysis of the legislation and practices of Member States of the ILO with respect to labour rights.

43. The Committee on Standards has a tripartite composition: it comprises delegates from governments, as well as from employer and worker organizations. It provides an opportunity for representatives of these three

constituencies to consider the measures taken by Member States to give effect to the provisions of labour conventions and issues raised in the annual reports of the Committee of Experts. Specifically, the Committee on Standards is mandated to review: *(a)* compliance by Member States with their obligations to communicate information and reports in accordance with the relevant provisions of the Constitution, including annual reports by Member States on the measures taken to give effect to the provisions of conventions to which they are a party; *(b)* individual cases relating to the measures taken by Member States to give effect to the conventions to which they are parties; and *(c)* the law and practice of Member States as set out in the General Survey of the Committee of Experts. The Committee on Standards holds sessions during the International Labour Conference. It selects a list of cases for general discussion on the basis of "observations" made by the Committee of Experts. The Committee on Standards submits its report to the plenary of the Conference for discussion and approval.

44. The supervisory system also involves special supervisory procedures. In particular, under Article 24 of the ILO Constitution, employers' or workers' organizations can use the "representation" procedure to raise concerns about a Member State's failure to implement a ratified Convention. Under Article 26 of the ILO Constitution, a Member State has the right to file a "complaint" regarding the failure of another Member State to give effect to any convention which both States have ratified. Paragraph 3 of that Article states that the Governing Body "may appoint a Commission of Inquiry to consider the complaint and to report thereon". Pursuant to Article 29, paragraph 1, of the ILO Constitution, the Director-General of the International Labour Office shall communicate the report to the Governing Body and to each of the governments concerned in the "complaint". Paragraph 2 of that Article provides that each of those governments shall inform the Director-General whether it accepts the recommendations contained in the report of the Commission and, if not, whether it proposes to refer the "complaint" to the International Court of Justice. In accordance with Article 33 of the ILO Constitution, should a Member State fail to carry out the recommendations contained in the report of the Commission of Inquiry, the Governing Body may "recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith".

45. In 1950, the Governing Body established a Fact-Finding and Conciliation Commission for the impartial examination of "complaints" relating to alleged infringements of trade union rights. In 1951, the Committee on Freedom of Association (hereinafter the "CFA") was set up by the Governing Body to undertake a preliminary examination of such "complaints". In practice, the CFA deals with the majority of "complaints" made by employers' and workers' organizations, whereas the Fact-Finding and Conciliation Commission is used in the event of allegations of serious violations.

46. The tripartite CFA is composed of 18 members who serve in an individual capacity and are drawn in equal proportion from the government, employers' and workers' groups of the Governing Body. Following the receipt of a "complaint", the CFA determines whether particular legislation or practices comply with the principle of freedom of association. If the CFA finds that there has been a violation of freedom of association standards or principles, it issues a report to the Governing Body and makes recommendations. The Governing Body then examines the recommendations of the CFA and, if the recommendations are approved, the Governing Body can subsequently request the governments concerned to report on the implementation of those recommendations.

B. History of the disagreement regarding Convention No. 87

47. The present request for an advisory opinion originates in a disagreement within the ILO over the interpretation of Convention No. 87 and, more specifically, over the question whether the right to strike of workers' organizations or trade unions is protected under that Convention.

48. In 1952, when considering a "complaint" against the United Kingdom in respect of Jamaica relating to the 1947 Right of Association (Non-Metropolitan Territories) Convention (No. 84), the CFA asserted that the right to strike was an essential part of trade union rights (CFA, Case No. 28 (United Kingdom of Great Britain and Northern Ireland), Complaint date: 1 July 1951, Definitive Report □ Report No. 2, 1952, para. 68). However,

the CFA did not, at that point in time, make any assertion as to whether the right to strike was protected under Convention No. 87.

49. In its General Survey of 1959, the Committee of Experts stated that, in its view, there is a possibility that a prohibition on strikes may run counter to Convention No. 87. Over the course of many years, the Committee of Experts further developed its position, ultimately considering in 1992 that Article 3 of Convention No. 87 includes recourse to strikes (see paragraph 80 below). The CFA and Commissions of Inquiry have also come to affirm the position that the right to strike is protected by the Convention (see paragraphs 81 to 83 below).

50. Since 1989, the employers' representatives within the Committee on Standards have questioned the position that Convention No. 87 should be interpreted as protecting a right to strike and have challenged the Committee of Experts' authority to interpret that instrument. For their part, the workers' representatives within the Committee on Standards have supported the views of the Committee of Experts as well as the role of that Committee in interpreting Convention No. 87 (International Labour Conference, 76th Session, 1989, Record of Proceedings, pp. 26/6, 26/35, 26/43 and 26/51; International Labour Conference, 81st Session, 1994, Record of Proceedings, pp. 25/32-33 and 25/38-40).

51. The divergence of views between the workers' group and the employers' group led to what the ILO and other participants have referred to as an "institutional crisis" at the 101st Session of the International Labour Conference in 2012. That year, on the occasion of the examination of the Committee of Experts' General Survey concerning the "fundamental" conventions, including Convention No. 87, the employers' group and the workers' group were unable to agree on the list of cases of non-compliance to be examined by the Committee on Standards. According to the employers' group, the Committee of Experts' comments on Convention No. 87 and the right to strike "were illegitimate and served to undermine the ILO's established tripartite standard setting processes". The employers' representatives in the Committee on Standards were therefore unwilling to discuss cases concerning that Convention or referring to a right to strike. At the same session, the workers' group expressed strong disagreement with the views of the employers' group (International Labour Conference, 101st Session, 2012, Report of the Committee on the Application of Standards, para. 145 *et seq*.). As a result, the Committee on Standards did not proceed with its work and did not discuss any cases of non-compliance in 2012.

52. At the 102nd Session of the International Labour Conference in 2013, the employers' group challenged the authority of the Committee to interpret international labour standards, contending that the terms of reference did not include the interpretation of international labour standards. It argued that the Governing Body could not have intended to change those terms of reference, "since the ILO Constitution provided that the authority to interpret ILO Conventions was vested with the International Court of Justice, which meant that the Constitution would need to be amended first" (International Labour Conference, 102nd Session, 2013, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 9, para. 16). Based on this statement, the employers' group requested the inclusion of a caveat in the reports of the Committee of Experts to specify that the Committee's views and observations had not been approved by the tripartite bodies of the ILO and that they were neither legally authoritative nor legally binding for ratifying countries (*ibid.*). At the same session, the workers' group reiterated its disagreement with the views of the employers' group (*ibid.*, para. 25).

53. Since 2012, the Committee on Standards has refrained from addressing the right to strike in its conclusions on individual cases concerning the application of Convention No. 87.

54. Following various unsuccessful attempts to resolve the disagreement over the interpretation of Convention No. 87 through negotiations within the ILO, in 2023 the Governing Body decided to submit the question to the Court. In a letter dated 12 July 2023 addressed to the Director-General of the International Labour Office, the Chairperson of the Workers' Group and Vice-Chairperson of the Governing Body referred to the long-standing disagreement over the interpretation of Convention No. 87, in relation to the right to strike, and formally requested that the matter be submitted urgently to the International Court of Justice in accordance with Article 37, paragraph 1, of the ILO Constitution. On 10 November 2023, at its 349th *bis* (Special) Session, the

Governing Body adopted a resolution by which it decided to request the International Court of Justice to give an advisory opinion (see paragraph 1 above for the text of this resolution).

III. SCOPE AND MEANING OF THE QUESTION PUT BY THE GOVERNING BODY

55. The Court will now examine the scope and meaning of the question put by the Governing Body which, it recalls, is worded as follows: "Is the right to strike of workers and their organizations protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)?"

56. Some participants have argued that the question put to the Court is too narrow, in that it does not adequately reflect the discussions within the ILO which gave rise to the institutional deadlock (see paragraphs 47 to 54 above). More specifically, they claim that the phrasing of the question posed does not allow consideration of the content of the right to strike, its limits or the conditions of its exercise, or make it possible to ascertain which authority has the competence to determine the scope and content of that right, namely national legislators, the tripartite constituents of the ILO Conference, the ILO supervisory bodies, or a tribunal appointed pursuant to Article 37, paragraph 2, of the ILO Constitution. Those participants ask the Court to "depart from the language of the question put to it in order to 'reflect the legal questions really in issue'". One participant further considers that the question posed does not accurately reflect the intention of the Governing Body.

57. As the Court has held on numerous occasions, "it may depart from the language of the question put to it where the question is not adequately formulated" (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 129, para. 135; see also *Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV), Advisory Opinion, 1928, P.C.I.J., Series B, No. 16*, p. 14) or does not reflect the "legal questions really in issue" (*Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 89, para. 35). Similarly, where the question asked is ambiguous or vague, the Court may clarify it before giving its opinion (*Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982*, p. 348, para. 46).

58. In the present proceedings, the question put by the Governing Body is both circumscribed and specific in so far as it asks the Court to determine whether the right to strike is protected under Convention No. 87. Since there is no ambiguity in either the question or its terms, the Court considers that there is no need to reformulate the question referred to it.

59. The Court notes, moreover, that the referral request as initially proposed in the letter of the Worker Vice-Chairperson of the Governing Body to the Director-General of the International Labour Office, dated 12 July 2023, contained a second question concerning the competence of the Committee of Experts. This question was divided into two parts: first, whether the Committee of Experts was competent to "determine that the right to strike derives from … Convention [No. 87]"; and second, if so, whether, "in examining the application of that Convention, [the Committee of Experts was competent to] specify certain elements concerning the scope of the right to strike, its limits and the conditions for its legitimate exercise" (Letter of the Worker Vice-Chairperson of the Governing Body to the Director-General of the International Labour Office, dated 12 July 2023). That question, which appeared in the Governing Body's draft resolution (see document GB.349*bis*/INS/1/1), was removed from the text of the draft resolution submitted to, voted on and ultimately adopted during the 349th *bis* (Special) Session of the Governing Body of 10 November 2023. Consequently, by reintroducing a question that was intentionally omitted, the Court would substitute its assessment for that of the body requesting the advisory opinion. The question referred to the Court relates solely to whether the right to strike of workers and their organizations is protected under Convention No. 87 and the Court will limit the scope of the opinion to answering that question.

60. In view of the foregoing, the Court considers that it need not reformulate the question posed or broaden its scope. Its task consists solely in responding to the question put to it as to whether the right to strike is protected under Convention No. 87.

IV. Whether the right to strike is protected under Convention No. 87

61. Having defined the scope and meaning of the question posed by the ILO, the Court will first consider the applicable rules of interpretation (Section A) before proceeding to the interpretation of Convention No. 87 (Section B).

A. Applicable rules for the interpretation of Convention No. 87

62. The Court will interpret Convention No. 87 applying the rules of treaty interpretation set out in the 1969 Vienna Convention on the Law of Treaties. Although the Vienna Convention is not applicable to treaties concluded before its entry into force, it is well established that Articles 31 to 33 of that instrument reflect rules of customary international law applicable to such treaties (see, for example, *Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea), Judgment of 19 May 2025*, para. 34; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar), Preliminary Objections, Judgment, I.C.J. Reports 2022 (II)*, p. 510, para. 87; *Territorial Dispute (Libyan Arab Jamahiriya/Chad), I.C.J. Reports 1994*, pp. 21-22, para. 41).

63. Some participants have argued that the *travaux préparatoires* of Convention No. 87 should be given special consideration in its interpretation, pursuant to Article 5 of the Vienna Convention on the Law of Treaties, which provides that the Vienna Convention applies to "any treaty adopted within an international organization without prejudice to any relevant rules of the organization". These participants consider that the tripartite structure of the ILO has given rise to a specific practice of ascribing particular importance to the *travaux préparatoires*. In their opinion, this specific practice is a relevant rule of the Organization in the interpretation of the "legislative corpus" developed over time within the ILO framework. In their view, this approach is justified because the preparatory work reflects the deliberations among the representatives of employers, workers and governments.

64. The Court is not persuaded that such an interpretative approach developed through the practice of ILO bodies constitutes "a relevant rule of the organization" that would affect the application of the customary international law rules of treaty interpretation reflected in the Vienna Convention on the Law of Treaties. Consequently, no particular importance should be accorded to the *travaux préparatoires* beyond that envisaged under Article 32 of the Vienna Convention.

65. In light of the above, the Court will apply the general rule of interpretation as reflected in Article 31 of the Vienna Convention on the Law of Treaties and the rule on supplementary means of interpretation as reflected in Article 32 of the same instrument.

B. Interpretation of Convention No. 87

66. Article 31, paragraph 1, of the Vienna Convention on the Law of Treaties provides that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose". Article 31, paragraph 2, sets out what is to be regarded as context: "in addition to the text, including its preamble and annexes", "[a]ny agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty" and "[a]ny instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty". Article 31, paragraph 3, provides that there shall be taken into account, together with the context, "[a]ny subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions", "[a]ny subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation" and "[a]ny relevant rules of international law applicable in the relations between the parties". These means of interpretation are to be considered by way of a single combined operation (*Obligations of States in respect of Climate Change, Advisory Opinion of 23 July 2025*, para. 177). The Court will interpret Convention No. 87 pursuant to Article 31, commencing with Article 31, paragraph 1.

1. Ordinary meaning to be given to the terms of Convention No. 87 in their context and in light of its object and purpose (Article 31, paragraph 1, of the Vienna Convention on the Law of Treaties)

67. Convention No. 87 does not contain an explicit reference to the right to strike.

68. The Court has held that an interpretation according to which "the fact that the provision expressly provides for one category of situations is said to justify the inference that other comparable categories are excluded" is "only warranted ... when it is appropriate in light of the text of all the provisions concerned, their context and the object and purpose of the treaty" (see, for example, *Certain Iranian Assets (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I.C.J. Reports 2019 (I)*, p. 30, para. 64; *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 19, para. 37). Thus, the absence of an express treaty provision governing a certain issue does not necessarily mean that the issue is excluded from that treaty. Such an exclusion is only warranted when the text of all the provisions concerned, their context and the object and purpose of the treaty point to it. In the specific context of the ILO, the Permanent Court of International Justice rejected the argument that the mere absence of certain terms leads to the conclusion that particular activities fall outside the scope of ILO conventions (*Interpretation of the Convention of 1919 concerning Employment of Women during the Night, Advisory Opinion, 1932, P.C.I.J., Series A/B, No. 50*, pp. 375-376; *Competence of the ILO in Regard to International Regulation of the Conditions of Labour of Persons Employed in Agriculture, Advisory Opinion, 1922, P.C.I.J., Series B, No. 2*, pp. 39-41).

69. Article 2 of Convention No. 87 provides that "[w]orkers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing". Article 3, paragraph 1, further provides that "[w]orkers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes". The wording of this provision indicates ways in which the rights accorded to workers' and employers' organizations are exercised. This includes not only internal negotiation and adoption of constitutions and rules, and the election of representatives, but also broader powers enabling workers' and employers' organizations to decide on matters relating to their administration, as well as to activities to be performed and programmes to be formulated and implemented in both internal and external contexts. Article 10 defines the term "organisation" as "any organisation of workers or of employers for furthering and defending the interests of workers or of employers". Reading these three provisions together, in good faith and in accordance with their ordinary meaning, suggests that, under Convention No. 87, workers and employers have the right to create and join organizations for the purpose of furthering and defending their respective interests, including to organize their activities and programmes to pursue that purpose.

70. Convention No. 87 does not include definitions of the terms "activities" and "programmes", both of which are referred to in Article 3, paragraph 1. The ordinary meaning of the term "activities", which generally encompasses any action taken to pursue an objective, and of the term "programmes", which generally means a set of planned actions pursued to achieve a result, is broad and encompasses the various dimensions of the activities and programmes of workers' organizations (see paragraph 69 above). The term "strike" generally means an activity consisting of a temporary work stoppage or slowdown wilfully effected by one or more groups of workers with a view to enforcing or resisting demands or expressing or supporting grievances (see *Freedom of Association, Compilation of decisions of the Committee on Freedom of Association*, International Labour Office - Geneva: ILO, 6th edition, 2018, p. 148, para. 783). Consequently, when Article 3, paragraph 1, is read in conjunction with Articles 2 and 10, it suggests that strike action is capable of falling within the ordinary meaning of the term "activities" and, thus, within the scope of Convention No. 87.

71. The Court also observes that strike action itself is not explicitly excluded under Convention No. 87. The protections set out by the Convention are limited by two provisions: Article 8, paragraph 1, which states that "[i]n exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land"; and Article 9, paragraph 1, which states that "[t]he extent to which the guarantees provided for in this Convention shall apply

to the armed forces and the police shall be determined by national laws or regulations". These provisions show that workers, employers and their respective organizations must respect domestic law when exercising the rights provided for in the Convention, and that armed forces and the police may be deprived of the guarantees contained in Convention No. 87 if their national legislation so provides. However, these provisions do not otherwise limit the scope of the rights protected under Convention No. 87. Thus, while Convention No. 87 sets out certain rights and related limitations, the Court considers, in line with its jurisprudence (see paragraph 68 above), that the terms of the Convention, in their context and in light of the object and purpose of the Convention (see paragraphs 72 and 73 below), do not allow the inference that other rights, such as the right to strike, are excluded.

72. Regarding the object and purpose of Convention No. 87, the third paragraph of the preamble to the Convention refers to the preamble to the Constitution of the ILO, which "declares 'recognition of the principle of freedom of association' to be a means of improving conditions of labour and of establishing peace". The fourth paragraph of the preamble to Convention No. 87 also refers to the Declaration of Philadelphia which forms an integral part of the Constitution of the ILO and reaffirms that "freedom of … association [is] essential to sustained progress". Therefore, the object and purpose of Convention No. 87 is to guarantee freedom of association as a means of improving labour conditions and achieving sustained progress.

73. The Court notes that strike action is one of the main activities engaged in and tools used by workers and their organizations to promote their interests and improve conditions of labour, thereby ensuring the effective exercise of the freedom of association protected under Convention No. 87. At the same time, freedom of association is instrumental in facilitating workers' organizations to take collective action to further and defend the interests of their members, including through the exercise of the right to strike. Therefore, the protection of the right to strike is in line with the object and purpose of Convention No. 87.

74. The Court concludes from the above analysis that the ordinary meaning of the relevant terms of the Convention, read in good faith, in their context and in light of the object and purpose of the treaty, indicates that protection of the right to strike is encompassed in the protection of the freedom of association provided for in Convention No. 87.

2. Subsequent practice which establishes the agreement of the parties (Article 31, paragraph 3 *(b)*, of the Vienna Convention on the Law of Treaties)

75. Since there has been no subsequent agreement between the States parties to Convention No. 87 regarding the interpretation or the application of its provisions, Article 31, paragraph 3 *(a)*, of the Vienna Convention on the Law of Treaties is not applicable in the present circumstances, and there is no need for the Court to give it further consideration.

76. The Court now turns to the subsequent practice of the parties within the meaning of Article 31, paragraph 3 *(b)*, of the Vienna Convention on the Law of Treaties, which requires that account be taken, together with the context, of "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation". Such practice consists of any conduct of the parties in the application of the treaty, after its conclusion, which establishes their agreement regarding its interpretation. It may be manifested in the conduct of a State party, as reflected both in official acts that serve to apply the treaty and in official statements expressing its interpretation thereof.

77. It is relevant to distinguish the subsequent practice of the parties depending on whether it is considered under Article 31, paragraph 3 *(b)*, or under Article 32 of the Vienna Convention on the Law of Treaties. In the first case, subsequent practice is of particular importance in that it constitutes objective evidence of the understanding of the parties as to the meaning of the treaty (*Kasikili/Sedudu Island (Botswana/Namibia), Judgment, I.C.J. Reports 1999 (II)*, p. 1075, para. 49; *Yearbook of the International Law Commission*, 1966, Vol. II, p. 221, Article 27, paragraph 15 of the commentary; *Yearbook of the International Law Commission*, 2018, Vol. II, Part Two, p. 24, Conclusion 3). In other words, subsequent practice within the meaning of Article 31, paragraph 3 *(b)*, constitutes an authentic means of interpretation aimed at establishing the existence of a common understanding of the parties regarding the meaning to be given to a treaty. On the other hand,

when considered under Article 32 of the Vienna Convention, subsequent practice serves as a supplementary means of interpretation and, as such, does not require evidence of the common understanding of all the parties regarding a given interpretation. This distinction was previously noted in 1964 by the International Law Commission in its commentary to the Draft Articles on the Law of Treaties:

> "[T]he practice of an individual party or of only some parties as an element of interpretation is on a quite different plane from a concordant practice embracing all the parties and showing their common understanding of the meaning of the treaty. Subsequent practice of the latter kind evidences the agreement of the parties as to the interpretation of the treaty ... For this reason the Commission considered that subsequent practice establishing the common understanding of all the parties regarding the interpretation of a treaty should be included in paragraph 3 [of what became Article 31] as an authentic means of interpretation ... The practice of individual States in the application of a treaty, on the other hand, may be taken into account only as one of the 'further' means of interpretation mentioned in [current Article 32 of the Vienna Convention on the Law of Treaties]" (*Yearbook of the International Law Commission*, 1964, Vol. II, p. 204, Article 69, paragraph 13 of the commentary).

It follows that the two categories of subsequent practice differ in terms of both the interpretative significance attributed to each and the threshold of agreement required to establish their existence.

78. Throughout the proceedings, participants referred extensively to the subsequent practice of the parties to Convention No. 87 as an element of its interpretation. In support of their respective arguments, participants cited various manifestations of the States parties' conduct. These include, in particular, reactions to pronouncements of the different ILO supervisory bodies on the relationship between the right to strike and Convention No. 87, as well as legislative and constitutional provisions adopted at the national level and domestic court decisions relating to the right to strike. The Court will consider each of these categories in turn.

79. First, the Court will provide an overview of the interpretation of Convention No. 87 advanced by the different ILO supervisory bodies and examine the parties' reactions to those interpretations. Within the scope of their respective functions, these bodies have had occasion to pronounce on the question whether the right to strike is protected under Convention No. 87.

80. In the General Survey submitted to the International Labour Conference at its 43rd Session in 1959, the Committee of Experts observed that

> "there is a possibility that th[e] prohibition [of the right to use strikes as a means of action] may run counter to Article 8, paragraph 2, of the Freedom of Association and Protection of the Right to Organise Convention ... (No. 87) ... and especially the freedom of action of trade union organisations in defence of their occupational interests" (International Labour Conference, 43rd Session, 1959, Report III (Part IV), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 115, para. 68).

Since then, it has repeatedly affirmed the existence of a relationship between the right to strike and Convention No. 87. In its 1973 General Survey, the Committee of Experts stated that

> "[a] general prohibition of strikes constitutes a considerable restriction of the opportunities open to trade unions for furthering and defending the interests of their members (Article 10 of Convention No. 87) and of the right of trade unions to organise their activities (Article 3)" (International Labour Conference, 58th Session, 1973, Report III (Part 4B), *Freedom of Association and Collective Bargaining*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, p. 44, para. 107).

This statement was reinforced in the Committee of Experts' 1983 General Survey, which reads as follows:

> "A general ban on strikes seriously limits the means at the disposal of trade unions to further and defend the interests of their members (Article 10 of the Convention) and their right to organise their activities (Article 3) and is, therefore, not compatible with the principles of freedom of association." (International Labour Conference, 69th Session, 1983, Report III (Part 4B), *Freedom of Association and Collective Bargaining*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, p. 63, para. 205.)

In 1992, in its "observations" concerning ratified conventions, the Committee of Experts took the view that,

> "although it is clear that the provisions of the Convention do not specifically mention the right to strike, Article 3 of the Convention provides that workers' organisations shall have the right to organise their activities and formulate their programmes in full freedom. The Committee considers that this right includes recourse to strikes, which are one of the

> essential means through which workers and their organisations may promote and defend their economic and social interests." (International Labour Conference, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 208.)

Similarly, in its 1994 General Survey, the Committee of Experts stated that "[t]he right to strike is … considered as an activity of workers' organizations within the meaning of Article 3 [of Convention No. 87]" (International Labour Conference, 81st Session, 1994, Report III (Part 4B), *Freedom of Association and Collective Bargaining*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, p. 66, para. 149). In 1996, in its "observations" concerning particular countries, the Committee of Experts stated that, in the view of the Committee, "the right to strike is an intrinsic corollary of the right to organize that is protected by the Convention [No. 87]" (International Labour Conference, 83rd Session, 1996, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 147, para. 2). In its 2012 General Survey, the Committee of Experts summarized this development in the following terms:

> "In the absence of an express provision in Convention No. 87, it was mainly on the basis of *Article 3* of the Convention, which sets out the right of workers' organizations to organize their activities and to formulate their programmes, and *Article 10*, under which the objective of these organizations is to further and defend the interests of workers, that a number of principles relating to the right to strike were progressively developed" (International Labour Conference, 101st Session, 2012, Report III (Part 1B), *Giving Globalization a Human Face*, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, 2008, p. 46, para. 117).

81. The CFA, for its part, considered for a time that Convention No. 87 did not address the right to strike, while still recognizing that it was an essential element of trade union rights. In 1964, the CFA endorsed "the opinion of the Committee of Experts on the Application of Conventions and Recommendations to the effect that [the absolute] prohibition [of strikes] may constitute a considerable restriction of the potential activities of trade unions" (CFA, Case No. 364 (Ecuador), Report in which the committee requests to be kept informed of developments — Report No. 78, 1965, para. 80). Subsequently, in 1977, the CFA specifically considered the right to strike as being linked to Convention No. 87 and, in particular, to Article 3 thereof (CFA, Case No. 834 (Greece), Definitive Report — Report No. 160, 1977, para. 199). In 1998, the CFA recalled "the importance that it attaches to respect of the right to strike which is an intrinsic corollary to the right to organize protected by Convention No. 87" (CFA, Case No. 1954 (Côte d'Ivoire), Report in which the committee requests to be kept informed of developments — Report No. 311, November 1998, para. 405); it has since reiterated this position on several occasions (see *Freedom of Association, Compilation of decisions of the Committee on Freedom of Association*, International Labour Office- Geneva: ILO, 6th edition, 2018, p. 143, para. 754).

82. In addition, since 1971, five of the Commissions of Inquiry established under Article 26 of the ILO Constitution to examine, in particular, "complaints" concerning Members' observance of Convention No. 87, have considered that the right to strike is protected under Convention No. 87 (Report of the Commission of Inquiry appointed under Article 26 of the ILO Constitution to examine the complaints concerning the observance by Greece of Conventions Nos. 87 and 98 made by a number of delegates to the 52nd Session of the International Labour Conference, *Official Bulletin*, Vol. LIV, 1971, para. 261; Report of the Commission of Inquiry instituted under Article 26 of the ILO Constitution to examine the complaint on the observance by Poland of Conventions Nos. 87 and 98 presented by delegates at the 68th Session of the International Labour Conference, *Official Bulletin*, Vol. LXVII, 1984, para. 517; Report of the Commission of Inquiry appointed under Article 26 of the ILO Constitution to examine the observance by Nicaragua of Conventions Nos. 87, 98 and 144, *Official Bulletin*, Vol. LXXIV, 1991, para. 506; Report of the Commission of Inquiry appointed under Article 26 of the ILO Constitution to examine the observance by the Government of Zimbabwe of Conventions Nos. 87 and 98, *Official Bulletin*, Vol. XCIII, 2010, para. 575; Report of the Commission of Inquiry established in accordance with Article 26 of the ILO Constitution concerning the non-observance by Myanmar of Conventions Nos. 87 and 29, 4 August 2023, para. 586).

83. In view of the foregoing, the Court notes that these ILO supervisory bodies have progressively recognized the right to strike as being protected under Convention No. 87, a position that they now have affirmed for decades.

Their pronouncements in this regard have converged in support of such recognition. While the Court may give particular consideration to the pronouncements of treaty supervisory bodies (see paragraph 118 below), such pronouncements do not in themselves constitute subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation, within the meaning of Article 31, paragraph 3 *(b)*, of the Vienna Convention on the Law of Treaties. Such pronouncements may nonetheless be relevant under that provision in the event that they give rise to, or refer to, subsequent State practice, thereby establishing the agreement of the parties within the meaning of the said provision.

84. Accordingly, the Court must determine whether the interpretations adopted by ILO supervisory bodies have elicited any relevant reactions from the States parties to Convention No. 87 and whether such reactions establish the agreement of the parties. To this end, the Court has examined the positions expressed over time by various States parties as and when the ILO supervisory bodies have affirmed that the right to strike is protected under that instrument.

85. In the context of discussions within the ILO, while a significant majority of States parties to Convention No. 87 have accepted or endorsed the interpretation of the supervisory bodies that Convention No. 87 protects the right to strike, a number of States parties have, over the years, occasionally challenged that interpretation. The Court also notes that, during the present proceedings, certain States either expressly objected to the view that the right to strike is protected under Convention No. 87 or, at the very least, expressed some reservations in this regard.

86. The Court recalls that, pursuant to Article 31, paragraph 3 *(b)*, of the Vienna Convention on the Law of Treaties, the expression of conflicting positions by different parties to a treaty precludes the Court from inferring from subsequent practice in the application of the treaty that an agreement exists between the parties regarding its interpretation. Where such differences exist, the practice invoked cannot be considered as objectively establishing a common intention of the parties.

87. Consequently, in the Court's view, the fact that a number of States parties have expressed clear opposition to the interpretation according to which Convention No. 87 protects the right to strike precludes the conclusion that there exists subsequent practice which establishes the agreement of the parties on this point within the meaning of Article 31, paragraph 3 *(b)*, of the Vienna Convention on the Law of Treaties.

88. Second, the Court notes that the participants have submitted examples concerning the States parties' conduct at the national level regarding the application of Convention No. 87, particularly in the exercise of their legislative and judicial functions. National legislation, like decisions rendered by the courts of the States parties, may provide valuable indications for the purpose of treaty interpretation. In the present case, however, the Court considers that the examples brought to its attention do not enable it to draw any conclusions as to the existence of subsequent practice in the application of Convention No. 87 which establishes the agreement of the parties regarding its interpretation on the matter of whether the right to strike is protected under that treaty. The Court therefore considers that it is not necessary to further examine those additional elements.

89. The Court concludes that, taken as a whole, the foregoing elements cannot constitute subsequent practice in the application of Convention No. 87, within the meaning of Article 31, paragraph 3 *(b)*, of the Vienna Convention on the Law of Treaties, which establishes the agreement of the parties that Convention No. 87 protects the right to strike. This conclusion is without prejudice to the relevance of subsequent practice as a supplementary means of interpretation under Article 32 of the Vienna Convention on the Law of Treaties (see paragraphs 112 to 115 below).

3. Relevant rules of international law (Article 31, paragraph 3 *(c)*, of the Vienna Convention on the Law of Treaties)

90. Pursuant to the customary rule reflected in Article 31, paragraph 3 *(c)*, of the Vienna Convention on the Law of Treaties, "[a]ny relevant rules of international law applicable in the relations between the parties" shall be taken into account when interpreting a treaty. In the view of the Court, Article 31, paragraph 3 *(c)*, does not necessarily require all parties to the treaty under interpretation to be bound by the "relevant rules of international law" in order for those rules to be taken into account. A rule may be "applicable in the relations

between the parties" if it expresses their common understanding regarding certain provisions of the treaty under interpretation.

91. With respect to the right to strike, there is no relevant rule of international law in any other treaty that is binding upon all the parties to Convention No. 87. However, the two 1966 Covenants the International Covenant on Economic, Social and Cultural Rights (hereinafter the "ICESCR") and the International Covenant on Civil and Political Rights (hereinafter the "ICCPR") contain relevant rules of international law that concern the right to strike. Article 8 of the ICESCR and Article 22 of the ICCPR both make explicit reference to Convention No. 87. The ICESCR, in Article 8, paragraph 1 *(d)*, expressly protects the right to strike, provided that it is exercised in conformity with domestic laws. Importantly, paragraph 3 adds that nothing in that article shall authorize the States parties to Convention No. 87 to take legislative measures that would prejudice the guarantees provided for in that Convention. The ICCPR, in Article 22, paragraph 1, provides for the right to freedom of association. It is also significant that paragraph 3 of the same article adds that nothing therein shall authorize the States parties to Convention No. 87 to take legislative measures that would prejudice the guarantees provided for in that Convention. The Court notes that, while Article 22 of the ICCPR refers only to the freedom of association, the Human Rights Committee has considered, for more than 25 years now, that the protection of the right to strike is encompassed in the protection of the freedom of association under the ICCPR (see, for example, Concluding observations on the fourth periodic report of Chile, 30 March 1999, UN doc. CCPR/C/79/Add.104, para. 25; Concluding observations on the second periodic report of Lithuania, 1 April 2004, UN doc. CCPR/CO/80/LTU, para. 18; Concluding observations on the third periodic report of Estonia, 27 July 2010, UN doc. CCPR/C/EST/CO/3, para. 15; Concluding observations on the sixth periodic report of the Dominican Republic, 3 November 2017, UN doc. CCPR/C/DOM/CO/6, paras. 31-32).

92. The question before the Court is whether these relevant rules are applicable in the relations between the parties to Convention No. 87. In the Court's view, a high degree of overlap between the States bound by the treaty under interpretation and those bound by the relevant rules of international law may indicate the existence of a common understanding of the parties regarding certain provisions of the treaty under interpretation. Such a common understanding may be presumed when rules contained in another treaty have been so widely adopted that they can be considered implicitly accepted by all parties to the treaty being interpreted. In determining whether this is the case, the position of those States which are not parties to the treaty containing the relevant rule or which have formulated reservations to the relevant rule are of significance.

93. There is a high degree of overlap between the States parties to Convention No. 87 and States parties to both the ICESCR and the ICCPR. The ICESCR has 173 States parties and only 8 States parties to Convention No. 87 are not parties to the ICESCR, while the ICCPR has 175 States parties and only 7 States parties to Convention No. 87 are not parties to the ICCPR.

94. Four States parties to Convention No. 87 are neither parties to the ICESCR nor parties to the ICCPR (the Comoros, Cuba, Kiribati and Saint Lucia). In the case of the Comoros, as noted in 2025 by the Committee of Experts exercising its supervisory functions in relation to the application of Article 3 of the Convention, following its requests to this State to specify the content of its legislation on strikes, the Comoros indicated that its labour code is adapted to the spirit of the Convention and that it recognizes trade union rights, particularly the right of workers to strike (see Direct Request (CEACR) adopted 2025, published 114th International Labour Conference session (2026) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Comoros (Ratification: 1978)). Regarding Cuba, during proceedings in a case before the CFA concerning *inter alia* Convention No. 87 and involving an allegation that the right to strike was not recognized in its domestic law, Cuba repeatedly stated that there was no law or legal provision laying down any prohibition on the right to strike and that its criminal legislation did not establish any penalty for exercising this right, since it was the prerogative of trade unions to take decisions in this regard (Case No. 3271 (Cuba) Complaint date: 21 December 2016: Interim Report Report No. 386, June 2018; Interim Report Report No. 391, October 2019). Concerning Kiribati, in 2022, when the Committee of Experts, in exercising its supervisory functions in relation to the application of Article 3 of Convention No. 87, asked this State to amend its domestic legislation on the right to strike, Kiribati informed the Committee that it had subsequently

amended the relevant legislation (see Direct Request (CEACR) □ adopted 2022, published 111th International Labour Conference session (2023) □ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) □ Kiribati (Ratification: 2000)). Saint Lucia has been a party to Convention No. 87 since 1980, and there is no indication that it has objected to the interpretation of the Organization's supervisory bodies that the right to strike is protected under Convention No. 87. All of the above suggests that these four States, under the circumstances, understand that the right to strike is protected under Convention No. 87.

95. Of the few reservations regarding Article 8, paragraph 1 *(d)* of the ICESCR, most concern restrictions on the right to strike of public officials or essential services. While one State (Kuwait) has made a reservation that excludes the application for this State of Article 8, paragraph 1 *(d)*, it has never objected to the interpretation that the right to strike is protected under Convention No. 87.

The Court notes that, of the four States participating in the present proceedings that opposed the view that the right to strike is protected under Convention No. 87, two (Costa Rica and Switzerland) have not made any reservation or declaration regarding Article 8 of the ICESCR. The other two (Bangladesh and Japan) have formulated reservations or declarations regarding that provision. However, Japan's reservation does not purport to exclude the right to strike as such, while Bangladesh's declaration merely states that it will apply Article 8 "under the conditions and in conformity with the procedures established in the Constitution and the relevant legislation of Bangladesh".

96. In these circumstances, the Court considers that the two Covenants contain relevant rules that must be taken into account when interpreting Convention No. 87. In particular, Article 8 of the ICESCR and Article 22 of the ICCPR assist in establishing a common understanding of the States parties to Convention No. 87 that the protection of the right to strike is encompassed in the protection of the freedom of association guaranteed by Convention No. 87.

97. In this regard, the Court notes the joint statement issued in 2019 by the Committee on Economic, Social and Cultural Rights and the Human Rights Committee acknowledging the protections afforded by Article 8 of the ICESCR and Article 22 of the ICCPR. That statement affirms that the two Committees

> "welcome the progress made by States to guarantee freedom of association in labour relations. At the same time, the two Committees note the challenges faced in the effective protection of this fundamental freedom, including undue restrictions on the right of individuals to form and join trade unions, the right of unions to function freely, and the right to strike." (Committee on Economic, Social and Cultural Rights and Human Rights Committee, Statement on freedom of association, including the right to form and join trade unions, 6 December 2019, UN doc. E/C.12/66/5-CCPR/C/127/4, para. 1.)

The joint statement further asserts that "[f]reedom of association includes the right of individuals, without distinction, to form and join trade unions for the protection of their interests" (*ibid.*, para. 3) and

> "recall[s] that the right to strike is the corollary to the effective exercise of the freedom to form and join trade unions. Both Committees have sought to protect the right to strike in their review of the implementation by States parties of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights." (*Ibid.*, para. 4.)

98. The Court concludes that an interpretation taking into account the relevant rules of international law contained in the ICESCR and the ICCPR indicates that the protection of the right to strike is encompassed in the protection of the freedom of association provided by Convention No. 87.

*

99. Overall, the interpretation of Convention No. 87 applying the general rule reflected in Article 31 of the Vienna Convention on the Law of Treaties leads to the conclusion that the right to strike is protected by Convention No. 87.

4. Supplementary means of interpretation (Article 32 of the Vienna Convention on the Law of Treaties)

100. Article 32 of the Vienna Convention on the Law of Treaties states that

> "[r]ecourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:
>
> *(a)* [l]eaves the meaning ambiguous or obscure; or
> *(b)* [l]eads to a result which is manifestly absurd or unreasonable".

As the Court has repeatedly observed, recourse may be had to supplementary means of interpretation such as the preparatory work and the circumstances in which the treaty was concluded either to confirm the meaning resulting from the application of Article 31 of the Vienna Convention, or to determine the meaning when the interpretation according to Article 31 leaves the meaning of the treaty or its terms ambiguous or obscure or leads to a result that is manifestly absurd or unreasonable (see, for example, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, pp. 95-96, para. 76; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro), Judgment, I.C.J. Reports 2007 (I)*, pp. 109-110, para. 160).

101. The preceding analysis of Convention No. 87 pursuant to Article 31 of the Vienna Convention on the Law of Treaties does not result in an interpretation that is ambiguous or obscure, or that leads to a result that is manifestly absurd or unreasonable. Nevertheless, the Court may have recourse to supplementary means of treaty interpretation under Article 32 to ascertain whether or not it confirms the meaning of the Convention resulting from the application of Article 31.

102. The Court further observes that the use of the term "including" in Article 32 of the Vienna Convention on the Law of Treaties indicates that the means mentioned therein do not constitute an exhaustive list. The Court may therefore have recourse to other supplementary means of interpretation that it considers relevant in the circumstances of the case. This may include any subsequent practice of the parties that does not meet the conditions of Article 31, paragraph 3 *(b)*, of the Vienna Convention, and pronouncements of competent supervisory bodies.

103. In the present proceedings, the Court will examine the *travaux préparatoires* of Convention No. 87, the subsequent practice of the parties, the pronouncements of the ILO supervisory bodies, and the relevant regional instruments and related jurisprudence of regional courts as well as pronouncements by other regional bodies as relevant supplementary means of interpretation of Convention No. 87.

(a) Travaux préparatoires *of Convention No. 87*

104. Convention No. 87 was adopted on 9 July 1948 following a drafting process that began in 1947, when the Economic and Social Council of the United Nations, subsequent to a démarche by the World Federation of Trade Unions and the American Federation of Labor, requested the ILO to put an item regarding trade union rights on the agenda of the 30th session of the International Labour Conference (Economic and Social Council, Resolutions adopted by the Economic and Social Council during its Fourth Session from 28 February to 29 March 1947, doc. E/437, p. 43, Resolution 52 (IV), 24 March 1947). The draft resolution of the American Federation of Labor, presented to the Economic and Social Council in order to be submitted to the ILO, proposed, *inter alia*, the following question: "[t]o what extent is the right of workers and of their organizations to resort to strikes recognized and protected?" (International Labour Conference, 30th Session, 1947, Report VII, *Freedom of Association and Industrial Relations*, p. 6, question 8). The International Labour Office observed, *inter alia*, that the question concerning the right to strike in general "relate[d] directly to the problem of freedom of association" (*ibid.*, p. 7). However, the Economic and Social Council resolution inviting the ILO to place the above-mentioned item on the agenda contained no explicit reference to the right

to strike (Economic and Social Council, Resolutions adopted by the Economic and Social Council during its Fourth Session from 28 February to 29 March 1947, doc. E/437, p. 43 Resolution 52 (IV), 24 March 1947).

105. The Governing Body placed the item regarding freedom of association and industrial relations on the agenda of the 30th Session of the International Labour Conference in June 1947. The preparatory materials included a legislative survey on labour conditions in various States prepared by the International Labour Office, a proposed resolution, which envisaged the possibility of drawing up a convention on the freedom of association, protection of the right to organize and to bargain collectively, and collective agreements, as well as discussion points (International Labour Conference, 30th Session, 1947, Report VII, *Freedom of Association and Industrial Relations*, p. 127 *et seq.*). In the background report prepared in 1947 for discussion at the International Labour Conference, the International Labour Office mentioned, *inter alia*, two resolutions adopted by the Third Regional Conference of the American States Members of the ILO (Mexico City, April 1946) in which the right to strike in general was only briefly addressed in connection with the issue of conciliation and arbitration (*ibid.*, pp. 31 and 34).

106. Prior to the 31st session of the Conference, the International Labour Office circulated a questionnaire to the Member States to clarify their views regarding the right to strike of public officials. Question 3, paragraph *(c)*, of that questionnaire was worded as follows: "Do you consider that it would be desirable to provide that the recognition of the right of association of public officials by international regulation should in no way prejudge the question of the right of such officials to strike?" (International Labour Conference, 31st Session, 1948, Report VII, Questionnaire, *Freedom of Association and Protection of the Right to Organise*, p. 15.)

107. In the background report prepared in 1947 for discussion at the International Labour Conference, the International Labour Office provided the following analysis of the status of the freedom of association at the time: "Certain legal systems exclude civil servants ... from the application of the right of association ... In declaring civil servants to be thus excluded, the legislature actually intended to debar them from the right to strike and not from the right of association." (International Labour Conference, 30th Session, 1947, Report VII, *Freedom of Association and Industrial Relations*, p. 46.) In its conclusions and observations, the Office took the view that "the guarantee of the right of association should apply to all employers and workers, public or private, and, therefore, to public servants and officials", but that "the recognition of the right of association of *public servants* in no way prejudges the question of the right of *such officials* to strike" (*ibid.*, pp. 108-109 (emphasis added)). This account by the Office sheds light on the considerations that informed the formulation of the above-mentioned question 3, paragraph *(c)*.

108. The International Labour Office summarized the responses of States to the question in the following manner:

> "To the question whether the provision should be included to the effect that the recognition of the right of association of public officials does not prejudge the question of their right to strike Question 3 *(c)* Australia, Austria, Belgium, Bulgaria, Canada, Denmark, Ecuador, Finland, France, Hungary, India, Switzerland, Union of South Africa and United States reply in the affirmative, while the United Kingdom states that it does not object if it is thought to be necessary. China's reply omits any answer to this particular question, and Mexico answers in the negative. Both the Netherlands and Sweden consider that this Convention should not be concerned with questions relating to the right to strike, and the United States, while replying in the affirmative, considers that it would be undesirable to attempt to resolve this problem under this Convention.
>
> Most countries, therefore, implicitly recognise the right of association of public officials without prejudice to the question of the right to strike, which latter question, many countries point out, is not relevant to the present proposed Convention." (International Labour Conference, 31st Session, 1948, Report VII, *Freedom of Association and Protection of the Right to Organise*, p. 67.)

In a later chapter of the same document, the International Labour Office stated that

> "[i]t may be observed ... that the Governments were ... consulted on the question whether it would be desirable to provide in the international regulations that the recognition of the right of association of public officials should in no way prejudge the question of the right of such officials to strike. Several Governments, while giving their approval to the formula, have nevertheless emphasised, justifiably it would appear, that the proposed Convention relates only to the freedom of association

> and not to the right to strike, a question which will be considered in connection with Item VIII (conciliation and arbitration) on the agenda of the Conference.
>
> In these circumstances, it has appeared to the Office to be preferable not to include a provision on this point in the proposed Convention concerning freedom of association." (*Ibid.*, p. 87.)

109. The summary prepared by the International Labour Office refers only to the first round of responses submitted by States (International Labour Conference, 31st Session, 1948, Report VII, *Freedom of Association and Protection of the Right to Organise*, pp. 15-24), which was followed by a second round of responses (*ibid.*, Supplement, pp. 8-12).

110. A significant majority of all the responding States confined their answers to the question presented in the questionnaire, which concerned only the right to strike of public officials, and responded in the affirmative to that question. Egypt, Italy and Mexico responded in the negative to the question, and Sweden responded that the right to strike of public officials does not appear to be directly connected with the right of association and therefore should not be addressed in the Convention. The Kingdom of the Netherlands responded that the issue of the right to strike in general should not be dealt with in the Convention, while Norway replied that the question of the right to strike must be kept strictly separate from the question of freedom of association (International Labour Conference, 31st Session, 1948, Report VII, *Freedom of Association and Protection of the Right to Organise*, pp. 16-20; *ibid.*, Supplement, pp. 9-12). The above analysis of the responses reveals that, as the 1948 summary of the International Labour Office stated, "many" countries pointed out that the question of the right to strike of public officials was "not relevant to the . . . proposed Convention" (International Labour Conference, 31st Session, 1948, Report VII, *Freedom of Association and Protection of the Right to Organise*, p. 67), while very few referred to the right to strike in general. Despite the fact that the great majority of those responses was limited to the right to strike of public officials alone, the International Labour Office preferred not to include provisions concerning the right to strike in the draft Convention.

111. The *travaux préparatoires* of Convention No. 87 indicate that, although the right to strike in general was briefly mentioned at the very beginning of the preparatory work, the discussions during the preparation of Convention No. 87 negotiations appear to have focused on the right to strike of public officials. Therefore, the intention of the drafters of Convention No. 87 with respect to the right to strike in general is unclear and the question was left open. In the view of the Court, the analysis of the *travaux préparatoires* leads to an inconclusive result.

(b) ***Subsequent practice of the parties as a supplementary means of interpretation***

112. The Court turns now to the subsequent practice of the parties as a supplementary means of interpretation to which recourse may be had under Article 32 of the Vienna Convention on the Law of Treaties.

113. When the subsequent practice of the parties to a treaty falls outside the scope of Article 31, paragraph 3 *(b)*, of the Vienna Convention on the Law of Treaties (see paragraph 77 above), it may nevertheless be taken into account, including to support or confirm the interpretation reached by the Court under Article 31 of that Convention. As a supplementary means of interpretation, subsequent practice therefore remains relevant, even when it does not establish the agreement of the parties to the treaty.

114. As regards how the States parties have reacted to the interpretation adopted by the ILO supervisory bodies (described in paragraphs 80 to 85 above), the Court notes that a significant majority have accepted the interpretation that Convention No. 87 protects the right to strike. This majority opinion is also reflected in the Statement of 23 February 2015 issued by the Government Group (the 28 members representing governments within the Governing Body of the ILO, see above paragraph 39), made on the occasion of the meeting known as 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", according to which

> "[t]he Government Group recognizes that the right to strike is linked to freedom of association which is a fundamental principle and right at work of the ILO. The Government Group specifically recognizes that without protecting a right to strike, Freedom of Association, in particular the right to organize activities for the purpose of promoting and protecting workers' interests, cannot be fully realized." (Government Group Statement, 23 February 2015, GB.323/INS/5/Appendix I, Annex II, para. 4.)

115. The Court concludes that the fact that a significant majority of States parties to Convention No. 87 considers that the Convention protects the right to strike, as reflected by the subsequent practice of those States parties, is an element that must be taken into account as a supplementary means of interpretation. Indeed, it confirms the conclusion already reached by the Court under Article 31 of the Vienna Convention on the Law of Treaties (see paragraph 99 above).

(c) ***Pronouncements of ILO supervisory bodies***

116. The participants in these proceedings disagree about the weight that should be ascribed to the pronouncements of ILO supervisory bodies regarding the interpretation of Convention No. 87. Some participants rule out the possibility of any interpretative value being accorded to such pronouncements. Other participants consider, for their part, that the pronouncements of ILO supervisory bodies may have some bearing on the interpretation of the treaty. Among these participants, some consider that such pronouncements constitute subsequent practice in the application of Convention No. 87, within the meaning of Article 31, paragraph 3 *(b)*, of the Vienna Convention on the Law of Treaties, while others consider them to be relevant as a supplementary means of interpretation under Article 32 of the Vienna Convention.

117. The Court recalls that it has previously taken account of the practice of supervisory committees established under human rights conventions. For instance, in *Ahmadou Sadio Diallo*, the Court declared, with regard to the Human Rights Committee, that,

> "[a]lthough the Court is in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the Covenant on that of the Committee, it believes that it should ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty. The point here is to achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with treaty obligations are entitled." (*Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 664, para. 66.)

118. The supervisory bodies of the ILO differ from the expert treaty bodies with which the Court has previously dealt, owing to their specific characteristics (see paragraphs 41 to 44 above). However, the fact remains that both perform a similar function, namely monitoring the proper implementation of the provisions of the convention under their supervision. Consequently, the Court considers that it may, *mutatis mutandis*, ascribe "great weight" to the pronouncements of ILO supervisory bodies, as a supplementary means of interpretation of Convention No. 87. The Court nevertheless deems it important to recall that it is "in no way obliged, in the exercise of its judicial functions, to model its own interpretation [on that of those bodies]" (*Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 664, para. 66; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 104, para. 101).

119. The Court has carefully examined the pronouncements of the supervisory bodies that monitor the application of Convention No. 87 in paragraphs 80 to 83 above and found that those bodies have progressively converged in recognizing the right to strike as protected under that Convention. The Court observes that these pronouncements, which constitute a relevant supplementary means of interpretation under Article 32 of the Vienna Convention on the Law of Treaties, confirm the finding reached by the Court on the basis of Article 31 of the same instrument (see paragraph 99 above).

(d) ***Regional instruments***

120. Most States parties to Convention No. 87 are also parties to various regional human rights instruments. These instruments are relevant as supplementary means of interpretation of Convention No. 87, since they reflect the position of the States parties to those instruments regarding the relationship between the protection of the right

to strike and the protection of the freedom of association. Pronouncements of human rights courts or bodies established by these instruments are also relevant for the interpretation of such instruments.

(i) African legal framework

121. Fifty-one States parties to Convention No. 87 are also parties to the African Charter on Human and Peoples' Rights. Article 10 of the African Charter on Human and Peoples' Rights protects the freedom of association, and Article 15 protects the right to work.

122. While the African Charter on Human and Peoples' Rights does not explicitly protect the right to strike, the African Commission on Human and Peoples' Rights (ACHPR) has explained that the minimum core obligations of States regarding the right to work comprise "[e]nsur[ing] the right to freedom of association, including the rights to collective bargaining, to strike and other related organisational and trade union rights" (ACHPR, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights, 2011, p. 21, para. 59 *(b)*). This confirms that the protection of the right to strike is encompassed in the protection of the freedom of association.

123. This interpretation is also reflected in the 2004 ACHPR Pretoria Declaration on Economic, Social and Cultural Rights in Africa, which affirms that the right to work protected under Article 15 of the African Charter on Human and Peoples' Rights entails "[t]he right to freedom of association, including the rights to collective bargaining, strike and other related trade union rights" (Pretoria Declaration on Economic, Social and Cultural Rights in Africa, 17 September 2004, para. 6).

124. A similar approach may be found in the instruments of the Southern African Development Community (SADC), a regional economic organization whose 16 members are also parties to Convention No. 87. Both the SADC Charter of Fundamental Social Rights and the SADC Protocol on Employment and Labour explicitly protect the right to strike. Further, Article 4, paragraph *(e)* (i), of the SADC Charter and Article 6, paragraph *(e)* (i), of the Protocol demonstrate that the right to strike comes within the protection of the right to collective action, to which freedom of association is inherent. Article 4, paragraph *(e)* (i), of the SADC Charter mentions that "the right to resort to collective action in the event of a dispute remaining unresolved shall: i) for workers, include the right to strike and to traditional collective bargaining", while Article 6, paragraph *(e)* (i), of the Protocol includes a similar provision (SADC Charter of Fundamental Social Rights, 1 August 2003; SADC Protocol on Employment and Labour, 1 November 2014). That the protection of the right to strike is encompassed in the protection of the freedom of association is also referred to in paragraph 59 *(b)* of the African Commission's Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights. This paragraph mentions that "[t]he right to work includes the ... obligations of the State to ... [e]nsure the right to freedom of association, including the rights to collective bargaining, to strike and other related organisational and trade union rights".

(ii) Arab legal framework

125. The right to strike is also protected by the Arab Charter on Human Rights. Thirteen States parties to Convention No. 87 are parties to this Charter. Article 35 of the Charter reads as follows:

> "1. Every individual has the right to freely form trade unions or to join trade unions and to freely pursue trade union activity for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights and freedoms except such as are prescribed by the laws in force and that are necessary for the maintenance of national security, public safety or order or for the protection of public health or morals or the rights and freedoms of others.
>
> 3. Every State party to the present Charter guarantees the right to strike within the limits laid down by the laws in force." (Council of the League of Arab States, Arab Charter on Human Rights, 2004 (translation from the Arabic version provided by the League of Arab States).)

The structure of this article reflects the close connection between the right to form trade unions, which is an expression of freedom of association in the labour context, and the right to strike.

(iii) European legal framework

126. Forty-three States parties to Convention No. 87 are also parties to the European Convention on Human Rights. Article 11 of the European Convention on Human Rights reads as follows:

> "Freedom of assembly and association
>
> (1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
> (2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

127. This provision has been interpreted by the European Court of Human Rights as also protecting the right to strike (see, for example, ECtHR, *Association of Academics* v. *Iceland (Application No. 2451/16), Decision, 15 May 2018*, pp. 9-11, paras. 24-27; ECtHR, *National Union of Rail, Maritime and Transport Workers* v. *the United Kingdom (Application No. 31045/10), Judgment, 8 April 2014*, pp. 29-30, paras. 76-77 and p. 32, para. 84; ECtHR, *UNISON* v. *the United Kingdom (Application No. 53574/99), Decision as to the Admissibility, 10 January 2002*, pp. 10-11), thus confirming that the protection of the right to strike is encompassed in the protection of the freedom of association under the European Convention on Human Rights.

128. The European Court of Human Rights has recognized that the right to strike is one of the most significant means by which a trade union may protect its members' occupational interests and is thus a core element of the freedom of association protected under Article 11, such that to restrict it could, in certain circumstances, impair the very essence of freedom of association (see, for example, ECtHR, *Humpert and Others* v. *Germany (Applications Nos. 59433/18, 59477/18, 59481/18 and 59494/18), Judgment, 14 December 2023*, pp. 47-48, paras. 105-106 and 108, and pp. 62-63, paras. 144-146; ECtHR, *National Union of Rail, Maritime and Transport Workers* v. *the United Kingdom (Application No. 31045/10), Judgment, 8 April 2014*, pp. 29-30, paras. 76-77 and p. 32, para. 84; ECtHR, *Wilson, National Union of Journalists and Others* v. *the United Kingdom (Applications Nos. 30668/96, 30671/96, 30678/96), Judgment, 2 July 2002*, pp. 15-16, paras. 45-46; ECtHR, *Schmidt and Dahlström* v. *Sweden (Application No. 5589/72), Judgment, 6 February 1976*, pp. 12-13, para. 36).

129. Moreover, when interpreting the right to strike under Article 11 of the European Convention on Human Rights, the European Court of Human Rights has also taken into account Convention No. 87 and its interpretation within the ILO (see, for example, ECtHR, *Humpert and Others* v. *Germany (Applications Nos. 59433/18, 59477/18, 59481/18 and 59494/18), Judgment, 14 December 2023*, p. 54, para. 55; ECtHR, *Demir and Baykara* v. *Turkey (Application No. 34503/97), Judgment, 12 November 2008*, pp. 11-14, paras. 37-44 and pp. 27-28, paras. 100-102; ECtHR, *Wilson, National Union of Journalists and Others* v. *the United Kingdom (Applications Nos. 30668/96, 30671/96, 30678/96), Judgment, 2 July 2002*, pp. 11-13, paras. 34-37).

130. Within the European legal framework, the close connection between the right to strike and freedom of association is also provided under the 1961 European Social Charter and the 1996 Revised European Social Charter. Common Article 5 of both Charters first guarantees the right to organize as an expression of the freedom of association in the labour context. Common Article 6 then explicitly protects the right to strike, recognizing, in paragraph 4, "the right of workers … to collective action in cases of conflicts of interest, including the right to strike". Twenty-seven States parties to Convention No. 87 are also parties to the 1961 European Social Charter while 35 States parties to Convention No. 87 are parties to the 1996 Revised European Social Charter. Thus, in accordance with the two Charters, the protection of the right to strike is encompassed in the protection of the right to collective action, to which freedom of association is inherent.

131. The right to strike is also protected by the Charter of Fundamental Rights of the European Union. Article 28 of that Charter reads as follows:

> "Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action."

132. The Court of Justice of the European Union has acknowledged that the protection of the right to strike is encompassed in the protection of the right to collective action, to which freedom of association is inherent. When interpreting Article 28 of the Charter of the European Union, the Court of Justice of the European Union found that "the right to take collective action, including the right to strike, must . . . be recognised as a fundamental right which forms an integral part of the general principles of Community law" (CJEU, *Laval un Partneri Ltd* v. *Svenska Byggnadsarbetareförbundet and Others, Case C-341/05, 18 December 2007*, p. I-11884, para. 91; CJEU, *International Transport Workers' Federation, Finnish Seamen's Union* v. *Viking Line ABP, OÜ Viking Line Eesti, Case C-438/05, 11 December 2007*, p. I-10826, para. 44). In its interpretation, the Court of Justice of the European Union stated on numerous occasions that the right to take collective action, including the right to strike, is recognized by various international instruments, including Convention No. 87 (CJEU, *Laval un Partneri Ltd* v. *Svenska Byggnadsarbetareförbundet and Others, Case C-341/05, 18 December 2007*, p. I-11884, para. 90; CJEU, *International Transport Workers' Federation, Finnish Seamen's Union* v. *Viking Line ABP, OÜ Viking Line Eesti, Case C-438/05, 11 December 2007*, p. I-10826, para. 43).

(iv) Inter-American legal framework

133. In the Inter-American system, the protection of the right to strike is explicitly included within the protection of the freedom of association under the Charter of the Organization of American States. Article 45, paragraph *(c)*, of the Charter reads as follows: "Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike". Thirty-two States parties to Convention No. 87 are also parties to the Charter of the Organization of American States.

134. The Additional Protocol to the American Convention on Human Rights (San Salvador Protocol) provides in Article 8, paragraph 1 *(a)*, that the States parties shall ensure "[t]he right of workers to organize trade unions and to join the union of their choice for the purpose of protecting and promoting their interests", while the same paragraph 1, under subparagraph *(b)*, provides that States parties shall ensure the right to strike. The manner in which this paragraph is structured reflects the close connection between the right of workers to organize trade unions, which is the expression of the freedom of association in the labour context, and the right to strike. Seventeen States parties to Convention No. 87 are also parties to the San Salvador Protocol.

135. In its 2021 Advisory Opinion on the *Right to freedom of association, right to collective bargaining and right to strike, and their relation to other rights, with a gender perspective*, the Inter-American Court of Human Rights considered, *inter alia*, the relationship between these rights under the Charter of the Organization of American States, the American Convention on Human Rights and the San Salvador Protocol (IACtHR, *Right to freedom of association, right to collective bargaining and right to strike, and their relation to other rights, with a gender perspective, Advisory Opinion OC-27/21, 5 May 2021*, p. 18, para. 45, p. 19, para. 48, and p. 39, para. 106). The Advisory Opinion refers to the statements of the CFA which recognized that the right to strike is protected under Article 3 of Convention No. 87 (*ibid.*, p. 37, para. 96) and concludes that

> "[f]reedom of association, the right to collective bargaining and the right to strike are interdependent and indivisible.
> . . . . . .
> [They] are fundamental rights for allowing workers and their representatives to organize and express their specific demands concerning working conditions" (*ibid.*, pp. 73-74, operative para. 213, subparas. 3 and 4).

136. Furthermore, in *Former Employees of the Judiciary* v. *Guatemala*, the Inter-American Court of Human Rights emphasized the "close links" and "close relationship" between the freedom of association, the freedom to organize and the right to strike. It indicated that the protection of the right to strike, as an "essential tool[] of the rights of association and freedom to organize, is fundamental" (IACtHR, *Case of Former Employees of the*

Judiciary v. *Guatemala, Preliminary Objections, Merits and Reparations, Judgment of 17 November 2021, Series C No. 445*, pp. 40-42, paras. 110-115, and p. 44, para. 123). The Inter-American Court of Human Rights also stated that, without such protection, "the negative dimension of freedom of association in its individual aspect could be impaired" (*ibid.*, p. 39, para. 106). The Inter-American Court of Human Rights cited Convention No. 87 and its interpretation by the CFA as encompassing the protection of the right to strike (*ibid.*, p. 39, para. 107).

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137. A large majority of States parties to Convention No. 87 are parties to the various regional instruments examined above. These instruments reveal a shared view of those States parties to Convention No. 87 that the protection of the right to strike is encompassed in the protection of the freedom of association. This view, which is supported by the relevant regional jurisprudence and pronouncements, further confirms the interpretation reached by the Court in applying the general rule reflected in Article 31 of the Vienna Convention on the Law of Treaties that the protection of the freedom of association under Convention No. 87 encompasses the protection of the right to strike.

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138. In view of the above, the Court considers that, with the exception of the *travaux préparatoires* of Convention No. 87, whose examination leads to an inconclusive result, the supplementary means of interpretation taken into consideration by the Court in accordance with Article 32 of the Vienna Convention on the Law of Treaties confirm the conclusion reached by it through its interpretation based on Article 31, namely that the right to strike is protected under Convention No. 87.

C. Conclusion

139. In light of the foregoing, the Court concludes that, in accordance with the customary rules of interpretation reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, the right to strike is protected under Convention No. 87.

140. The Court's conclusion that the right to strike is protected by Convention No. 87 does not entail any determination on the precise content, scope or conditions for the exercise of that right.

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141. The Court is of the opinion that the question of whether "the right to strike of workers and their organizations [is] protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)" is to be answered in the affirmative.

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142. For these reasons,

THE COURT,

(1) Unanimously,

Finds that it has jurisdiction to give the advisory opinion requested;

(2) Unanimously,

Decides to comply with the request for an advisory opinion;

(3) By ten votes to four,

Is of the opinion that the right to strike of workers and their organizations is protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

IN FAVOUR: *President* Iwasawa; *Vice-President* Sebutinde; *Judges* Bhandari, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Judges* Tomka, Abraham, Xue, Hmoud.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this twenty-first day of May, two thousand and twenty-six, in three copies, one of which will be placed in the archives of the Court, and the others transmitted to the Secretary-General of the United Nations and to the Director-General of the Governing Body of the International Labour Office.

(Signed) IWASAWA Yuji,
President.

(Signed) Philippe GAUTIER,
Registrar.

President IWASAWA appends a separate opinion to the Advisory Opinion of the Court; Vice-President SEBUTINDE appends a declaration to the Advisory Opinion of the Court; Judges TOMKA, ABRAHAM and XUE append dissenting opinions to the Advisory Opinion of the Court; Judge BHANDARI appends a declaration to the Advisory Opinion of the Court; Judges NOLTE and GÓMEZ ROBLEDO append separate opinions to the Advisory Opinion of the Court; Judge CLEVELAND appends a declaration to the Advisory Opinion of the Court; Judge TLADI appends a separate opinion to the Advisory Opinion of the Court; Judge HMOUD appends a dissenting opinion to the Advisory Opinion of the Court.

(Initialled) I.Y.

(Initialled) Ph.G.