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**Ref.: Request by the International Labor Organization for an advisory opinion concerning the right to strike under ILO Convention No. 87. International Court of Justice 2023, General List No. 191**

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1. The International Cooperative Alliance ('the ICA') thanks the International Court of Justice ('the Court') for its invitation to submit a written contribution to the assessment by the Court of the question whether the right to strike is protected under ILO Convention No. 87.
2. The ICA welcomes the initiative by the ILO to take this question beyond its administrative assessment by the various ILO bodies and to seek the judicial, and according to Article 37 Section 2 of its Constitution, for the ILO binding opinion of the Court.
3. The ICA shares the view that ILO Convention No. 87 protects the right to strike of workers and their organizations. While the text of Convention No. 87 does not explicitly mention the right to strike, a purely textual interpretation would not comply with the rules of interpretation laid down in Articles 31 and 32 of the Vienna Convention on the Law of Treaties. Applying these rules leads to the conclusion that the right to strike is protected under Convention No. 87.<sup>1</sup>  
In addition, the ICA is of the view that the recognition of the right to strike through numerous national, regional and international instruments has led to an international custom, a source of public international law according to Article 38, 1.b. of the Statute of the Court.  
  
Further, the ICA is convinced of the positive effects in terms of social justice which the peaceful exercise of the right to strike has had over the past two centuries in many countries and will have in the future, often ensured through support by the ILO to its Member states.
4. Besides these general remarks the ICA opines that it has the privilege to submit this contribution because a narrow interpretation of Convention No. 87 and the subsequent denial of the right to strike could adversely affect the ICA in two closely interrelated ways.

<sup>1</sup> As for the scope of Articles 31 and 32 of the Vienna Convention on the Law of Treaties, see P. Daillier et al., *Droit international public*, LGDJ-Lextenso, *Traité*, 5<sup>ème</sup> éd., no. 208, 2022.

Firstly, a textual interpretation of ILO instruments could narrow the scope of the obligation of the Member states under Article 19 of the ILO Constitution to report on the implementation of ILO instruments, as well as the scope of the mandate of the ILO Committee of Experts on the Application of Conventions and Recommendations. It could thus weaken the capacity of the Office of the ILO to comply with its obligation under Article 10 of the ILO Constitution to assist Member states in the implementation of the ILO instruments. This, in turn, would have an effect on the capacity of the ILO to influence law-making. Among the instruments of the ILO is the Promotion of Cooperatives Recommendation [No. 193] ('ILO R. 193'). Its Paragraph 10. (1) states "Member States should adopt specific legislation and regulations on cooperatives, which are guided by the cooperative values and principles set out in Paragraph 3 [...]" and which are those enshrined in the 1995 ICA Statement on the cooperative identity ('ICA Statement').<sup>2</sup> This paragraph is increasingly being respected by legislators. Hence, through ILO R. 193 the ICA has at least the possibility to exert an indirect influence on legislation concerning cooperatives in order to ensure that cooperatives are obliged to pursue their social objective.

Secondly, the denial of the right to strike could negatively affect the compliance by the ICA with its legal obligation to see to it that the social well-being of its almost one billion individual members of cooperatives of various types worldwide and of the public at large be taken care of. The effectiveness of this compliance rests to a large extent on the institutional link between the ICA and the ILO and the latter's compliance with the obligation to cater for social justice. The ILO and the ICA have been linked for more than 100 years. This link predates the granting of general consultative status to the ICA in 1948 and it has been reinforced by subsequent events. Additional links include the following: Firstly, Article 12, 3. of the ILO Constitution states "The International Labour Organization may make suitable arrangements for such consultation as it may think desirable with recognized non-governmental international organizations, including international organizations of employers, workers, agriculturists and **cooperators** [emphasis added]." Secondly, despite unsuccessful attempts to further broaden the democratic legitimacy of the ILO by including the ICA as constituent besides the governments, the employers' and the workers' organizations of the Member states of the ILO, the Office of the ILO has had as from the inception of its operations in 1920 an organizational unit that is mandated to promote the development of cooperatives. Thirdly, in 2002 the International Labor Conference adopted the mentioned ILO R. 193. With minor modifications this Recommendation includes in its Paragraphs 2 and 3 and in its Annex the text of the ICA Statement, i.e. the definition of cooperatives, the cooperative values and the cooperative principles. This multiple institutional link has helped the ILO and the ICA to comply with their constitutional obligations in terms of social justice. For the ILO this obligation follows from the very first sentence of its Constitution, which reflects the *raison d'être* of this organization as specified in the Treaty of Versailles. For the ICA this obligation follows from its Articles of Association that include the text of the ICA Statement. The ICA is an association registered under Belgian law. According to the definition of cooperatives enshrined in the ICA Statement, and hence part of the Articles of Association of the ICA, the members of cooperatives have "to meet their common economic, **social** [emphasis added] and cultural needs and aspirations through a jointly owned and democratically controlled enterprise."

While the ILO and the ICA both have the obligation to pursue the goal of social justice, the means they employ differ. However, these means are complementary and mutually reinforcing. The creation of an organizational unit within the Office of the ILO that is mandated to promote the development of cooperatives, as well as the adoption of ILO R. 193, demonstrate the opinion of the constituents of the

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<sup>2</sup> ICA, 'Statement on the Cooperative Identity' (1995) *ICA Centennial Congress, Manchester* <https://www.ica.coop/en/cooperatives/cooperative-identity> .

ILO that the social effects of the classical means of the ILO - labor law - need complementing because they do not reach all persons. Persons who do not benefit from the social effects of labor law, such as for example members of most worker cooperatives, self-employed and unemployed persons, but who are members of a cooperative (for example a consumer or agricultural cooperative and/or a cooperative financial institution - credit and savings cooperatives, cooperative banks or insurance) will see part of their social needs looked after by that cooperative. Persons who do benefit socially from the effects of labor law may additionally benefit from their being a member of such cooperatives. Persons not falling in either of these categories may still benefit from the activities of cooperatives, as according to the 7<sup>th</sup> cooperative principle enshrined in the ICA Statement “[c]ooperatives work for the sustainable development of their communities through policies approved by their members.”

As the exercise of the right to strike of workers and their organizations has often led to improving social conditions, any denial of this right will have a negative effect in terms of social justice, create an additional burden for cooperatives and affect their ability to cater for social justice. Such denial would therefore have a direct effect on cooperatives.

5. Further to the above, the Court may wish to consider the following three interrelated arguments: Firstly, if the right to strike is protected under ILO Convention No. 87 and if this right is a special case of the human right to associate protected under Article 22 of the International Covenant on Civil and Political Rights (ICCPR), then the denial of the right to strike risks creating a precedent for the limitation of the free choice of the objective an association wants to pursue and of the means it wants to employ to this end. In the case of cooperatives this risk is real. Examples of policies and laws which reduce the above-mentioned triple objective of cooperatives to the economic aspect and which further transform this aspect into a financial objective and/or which exclude cooperatives from exercising certain activities, such as the provision of financial and/or insurance services to their members and the public, abound. Furthermore, the reduction of the objective of cooperatives weakens their capacity to (re)generate social justice. This leads to the second argument: Social justice is also the central aspect of sustainable development. Without it, political unrest is likely to occur. That, in turn, will not allow for economic security and economic insecurity is a hindrance to the concern for the biosphere. The Court has repeatedly emphasized the legal nature of sustainable development; <sup>3</sup> more and more national courts follow its example. Thirdly, by leading to the creation of the League of Nations and the ILO the Treaty of Versailles innovated as these organizations were to balance political with social democracy; the constituent pillars of the ILO - governments, employers’ and worker’ organizations - reflect this balance; the welfare state materializes this idea at the national level; the interplay between the legally binding Human Rights instruments, the mentioned ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR) do like-wise; the ICA Statement and the Articles of Association of the ICA translate this balance into the objective of cooperatives with the same wording as does the ICESCR.

The right to strike of workers and their organizations is part of this complex social justice-building and maintaining edifice. Denying it without replacing it with another, at least equally efficient, mechanism

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<sup>3</sup> See for example Case Gabcikovo-Nagymaros Project (Hungary/Slovakia), Judgment. I.C.J. Reports 1997, Paragraph 140; Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, ICJ Reports (2010) 14 at Paragraph 177; and Indus Waters Kishenganga (Pakistan v. India), Partial award 2013, at Paragraph 450.

does not seem opportune, especially at a time when the capacity of states to cater for social justice is diminishing.

6. In conclusion the ICA reiterates its thanks for the opportunity to submit this written contribution to the question of whether the right to strike of workers and their organizations is protected under ILO Convention No.87 and it hopes that the Court might find its arguments in favor of such protection worthwhile considering, be it for the sake of a socially just, hence peaceful world.



**Jeroen Douglas**  
**Director-General**