Note: This translation has been prepared by the Registry for internal purposes and has no official character

INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING
RIGHT TO STRIKE UNDER ILO CONVENTION NO. 87

(REQUEST FOR ADVISORY OPINION)

WRITTEN STATEMENT OF THE FRENCH REPUBLIC

14 May 2024

[Translation by the Registry]

TABLE OF CONTENTS

Page

INTRODUCTION

1. On 10 November 2023, at its 349th *bis* (Special) Session, the Governing Body of the International Labour Organization (hereinafter the "Governing Body") adopted a resolution (by 33 votes to 21, with 2 abstentions), by which it decided to request the International Court of Justice (hereinafter the "Court" or the "ICJ") to render urgently an advisory opinion on the interpretation of the Freedom of Association and Protection of the Right to Organise Convention (No. 87) (hereinafter "Convention No. 87").

2. On the basis of Article 65, paragraph 1, of the Statute of the Court and Article 103 of the Rules of Court, the Governing Body asked the Court to respond to 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)?"

3. The Director-General of the International Labour Organization (hereinafter the "ILO") transmitted this request for an advisory opinion to the Court by a letter of 13 November 2023.

4. By an Order dated 16 November 2023, the Court fixed 16 May 2024 as the time-limit within which written statements on this question might be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute.

5. France observes that the Governing Body expressed

> "the hope that, in view of the ILO's unique tripartite structure, not only the governments of ILO Member States but also the international employers' and workers' organizations enjoying general consultative status in the ILO would be invited to participate directly and on an equal footing in the written proceedings and any oral proceedings before the Court"[1].

6. France supports this inclusive approach, which allows all stakeholders to present their observations to the Court.

7. In this regard, France has the honour to submit to the Court the present written statement, whose introduction will address the context of the request for an advisory opinion (I) and the validity of the present proceedings (II).

I. The context of the present proceedings

8. Convention No. 87 was adopted in San Francisco on 9 July 1948 by the International Labour Conference of the ILO (hereinafter the "Conference" or the "ILC").

9. It should be noted that France has been a party to Convention No. 87 since 28 June 1951.

[1] Governing Body, 349th *bis* (Special) Session, 2023, Resolution, 10 Nov. 2023.

10. The question of the interpretation of Convention No. 87 has been the subject of discussion within the ILO. The various supervisory bodies that monitor the application of ILO standards — either through regular supervision or special procedures — have expressly, and consistently, considered that the right to strike is a corollary of freedom of association and, as such, is recognized and protected by Convention No. 87[2].

11. However, in 1989, the Employers' group, one of the tripartite constituents of the ILO, challenged this interpretation for the first time, and has regularly challenged it since. According to this group, the right to strike cannot be covered by Convention No. 87, because none of its provisions recognizes such a right, either expressly or implicitly. Most recently, the Employers' group stated that Convention No. 87

> "did not include any reference to a 'right to strike' or even the term 'strike'. The drafters of the Convention had deliberately excluded the subject from its scope, as they considered that it had to be regulated in a separate standard."[3]

12. At the 101st Session (2012) of the ILC, these differences in interpretation gave rise to a "major institutional crisis"[4], with the Conference's Committee on the Application of Standards (hereinafter "CAS") being prevented for the first time from exercising its supervisory functions: the two non-governmental groups of the ILO were unable to agree on the list of cases to be submitted to the Committee for its examination. Such an impasse was reached again in 2014, when only six out of 24 cases could be examined.

13. Since 2012, CAS has addressed the right to strike in its conclusions on the application of Convention No. 87 only once, at the 104th Session (2015) of the Conference. The absence of any reference to the right to strike in connection with Convention No. 87 is the *de facto* standard today. For example, in CAS's 2023 Record of Proceedings, the employer members reminded

> "the Committee that as in previous years, any issues referring to a right to strike in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which, as we all know, has been contentious, will not be included in the conclusions of cases"[5].

14. In contrast, the Committee of Experts on the Application of Conventions and Recommendations (hereinafter the "CEACR") and the Committee on Freedom of Association (hereinafter the "CFA") have, for their part, continued to pronounce on the subject. For example, in the last two years, the CEACR has addressed 75 observations to Member States relating to the exercise of the right to strike, in the context of monitoring the application of Convention No. 87[6], and in March 2024, the CFA adopted a definitive report on alleged violations of Convention No. 87

---

[2] See below, paras. 75 *et seq*.

[3] Governing Body, 349th *bis* (Special) Session, 2023, Minutes, GB.349bis/PV, 10 Nov. 2023, para. 15.

[4] ILO, The dispute on the interpretation of Convention No. 87 in relation to the right to strike — Background report, GB.349*bis*/INS/1/1, Appendix.

[5] ILC, 111th Session, 2023, Record of Proceedings, ILC.111/Record No 4A/P.I, 28 Sept. 2023, para. 44.

[6] ILC, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (A), 2022, pp. 99-340 and ILC, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (A), 2023, pp. 101-396.

resulting from restrictions on the right to collective bargaining and the right to strike of registrars in the administration of justice in Spain[7].

15. In addition to internal consultations, several options have been envisaged to put an end to this situation, which is both problematic from an institutional standpoint and a source of legal uncertainty: the adoption of a protocol to Convention No. 87 on the right to strike[8]; the appointment of an internal tribunal for the "expeditious determination" of the question, in accordance with Article 37, paragraph 2, of the ILO Constitution[9]; and the referral of the matter to the ICJ, pursuant to Article 37, paragraph 1, of the ILO Constitution.

16. At the 349th *bis* session, France — following the example of the European Union and its Member States — expressed support for the latter option, i.e. the "referral of the dispute [regarding the interpretation of Convention No. 87] to the ICJ to assure legal certainty"[10].

17. In the light of this, with the aim of clarifying the question of the interpretation of Convention No. 87, the Governing Body, at its 349th *bis* Session, referred the question to the ICJ for an opinion, thereby initiating the present proceedings.

II. The validity of the request for an advisory opinion

18. There is no doubt that the Governing Body's request for an opinion from the ICJ is in order.

19. Article 37, paragraph 1, of the ILO Constitution gives the ILO jurisdiction to seise the Court, in so far as it provides that

> "[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".

20. Article 96, paragraph 2, of the Charter of the United Nations (hereinafter the "UN") provides that

> "[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".

---

[7] CFA, Report No. 405, Case No. 3447 (Spain), 2024 (available at: https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:4396605).

[8] E.g. Letter signed by 14 regular members of the Employers' group to the Chairperson of the Governing Body, 12 Sept. 2023 (Document No. 16).

[9] Joint statements of workers/employers, GB.335/INS/5, para. 47 and GB.329/PV, Appendix II, Joint Position of the Workers' and Employers' groups on the ILO Supervisory Mechanism, para. 221.

[10] Governing Body, 349th *bis* (Special) Session, 2023, Minutes, GB.349bis/PV, 10 Nov. 2023, para. 27.

21. Under Article IX, paragraph 2, of the Agreement between the UN and the ILO[11],

> "[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".

22. Read together, these provisions constitute the legal basis of the Court's jurisdiction in these proceedings. The request for an opinion is also in line with a pre-existing practice: it is the seventh time that the ICJ has been seised of a request for an opinion relating to the ILO and the second time that such a request has concerned the interpretation of an international labour convention[12].

23. As regards the two other admissibility criteria for requests for opinions addressed to the ICJ — namely that the question posed is of a "legal character" and that it falls "within the scope of [the] activities" of the organization making the request[13] — there is no doubt that both have been met[14].

24. It follows from all these elements that the Court has jurisdiction to respond to the request for an opinion addressed to it on 10 November 2023 by the ILO Governing Body.

25. Two additional remarks can be made. First, France recalls that it is well established that the Court, when seised of a request for an advisory opinion, has the power to interpret and even reformulate the questions put[15]. Indeed, "lack of clarity in the drafting of a question does not deprive the Court of jurisdiction. Rather, such uncertainty will require clarification in interpretation, and such necessary clarifications of interpretation have frequently been given by the Court."[16] France notes that the question transmitted to the Court is drafted in clear terms and does not present any particular difficulty of interpretation or formulation. Indeed, these proceedings relate exclusively to the question of whether or not the right to strike is protected by Convention No. 87. They do not concern the limits and conditions of exercise of this right, nor the respective competencies of the ILO supervisory bodies in interpreting it. In particular, France notes that the question put to the Court

---

[11] UN General Assembly resolution 50 (I) of 14 Dec. 1946 approving the Agreement between the UN and the ILO and Resolution concerning the Procedure for Requests to the ICJ for Advisory Opinions adopted by the ILC on 27 June 1949.

[12] *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*; *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*; *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 to Regulate Incidentally the Personal Work of the Employer, Advisory Opinion, 1926, P.C.I.J., Series B, No. 13*; *Free City of Danzig and ILO, Advisory Opinion, 1930, P.C.I.J., Series B, No. 18*; *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*.

[13] *Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 78-81, paras. 25-26.

[14] In its Advisory Opinion of 12 August 1922, the PCIJ found that the ILO's competencies should be presumed to cover all workers and that a broad and holistic interpretation of the clauses conferring competence on the ILO should be favoured (e.g. *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. 23, 25, 33).

[15] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 153-154, para. 38.

[16] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019 (I)*, p. 112, para. 61.

does not concern the *régime* of the right to strike in the context of freedom of association, a régime which, it is well established, has certain specific features, moreover. The right to strike is not unconditional and it may be circumscribed and regulated by law.

26. Second, it should be noted that the Governing Body has requested the Court "to render urgently an advisory opinion" on the question posed. It is clear from the Court's judicial practice that when the body which has seised the Court requests that the advisory opinion be rendered urgently, "it is incumbent upon the Court to take all necessary steps to accelerate the procedure, as contemplated by Article 103 of its Rules"[17]. Indeed, Article 103 provides that

> "[w]hen the body authorized by or in accordance with the Charter of the United Nations to request an advisory opinion informs the Court that its request necessitates an urgent answer, or the Court finds that an early answer would be desirable, the Court shall take all necessary steps to accelerate the procedure, and it shall convene as early as possible for the purpose of proceeding to a hearing and deliberation on the request".

27. France has taken due note of the considerations that led the ILO to request an urgent response from the Court. Account must be taken of the institutional deadlock caused by the interpretation dispute and of the urgent need to put an end to the legal uncertainty generated by the different interpretations of Convention No. 87, particularly in the context of ongoing country case studies. France also considers that the situation as it stands calls for the question to be addressed as a matter of urgency. It will defer on this point to the wisdom of the Court; it is for the Court to assess this urgency and to organize the schedule of proceedings in a way that adequately addresses the concern expressed by the Governing Body, in the — more general — context of the sound administration of justice.

RESPONSES TO THE QUESTION PUT TO THE COURT

28. After some preliminary remarks on the methodological framework of the present request (I), this statement will focus on the interpretation of Convention No. 87 with regard to the means of interpretation set out in the Vienna Convention on the Law of Treaties (hereinafter "the Vienna Convention" or the "VCLT") (II and III). The statement will conclude that Convention No. 87 does indeed protect the right to strike (IV).

I. Preliminary remarks and methodological framework

29. The question of whether the right to strike of workers and their organizations is protected by Convention No. 87 is one that relates to the interpretation of the Convention. More specifically, since the right to strike is not expressly enshrined in Convention No. 87, the question put to the Court is whether that right is implicitly protected by one or more of its provisions.

30. To answer the question posed, it is therefore necessary to refer to the means of interpretation of international conventions as established in the international law of treaties. The reference framework refers to "customary rules of treaty interpretation which, as [the Court] has

---

[17] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Order of 19 December 2003, I.C.J. Reports 2003*, p. 429.

repeatedly stated, are reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties"[18].

31. France, which is not party to the Vienna Convention on the Law of Treaties, considers that Articles 31 and 32 reflect the state of the customary international law.

32. It should be noted at the outset that the rules of treaty interpretation do not call for a purely literal reading, but allow for the implicit, indirect or inferred meaning of a text to be taken into account. This is clear from the Court's consistent jurisprudence.

33. In 1932, when the Permanent Court of International Justice (hereinafter the "PCIJ") was seised of a question regarding the interpretation of the 1919 Convention concerning Employment of Women during the Night, it stated that the principle of broad interpretation applicable to the competence of the ILO also applied to the interpretation of a treaty of substantial scope. In that case, the Court stated that it was not

> "disposed to regard the sphere of activity of the International Labour Organization as circumscribed so closely, in respect of the persons with which it was to concern itself, as to raise any presumption that a Labour convention must be interpreted as being restricted in its operation to manual workers, unless a contrary intention appears"[19].

34. It follows from this approach that, in the event of differences as to the interpretation of an international labour convention, priority is to be given to a functional interpretation. A restrictive interpretation, for its part, must be proven by express justification on a case-by-case basis.

35. More broadly, it is well established that the means of interpreting international instruments are not limited to textual, literal or grammatical interpretations. In fact, the opposite is true. For example, when called upon in the *Anglo-Iranian Oil Co.* case to interpret a unilateral act referring to several treaties and conventions, the Court stated that it "cannot base itself on a purely grammatical interpretation of the text. It must seek the interpretation which is in harmony with a natural and reasonable way of reading the text"[20].

36. In the case concerning the *Dispute regarding Navigational and Related Rights*, the ICJ had to consider the extent of the rights conferred by a treaty concluded between the parties to the dispute, in particular whether it granted navigational rights to either one of them. In this regard, the Court considered that the question must be asked "whether such a right [of navigation] does not flow from other provisions with a different purpose, but of which it may, to a certain extent, be the necessary consequence"[21]. This reasoning led the Court to find, in the light of all the treaty's provisions, that

---

[18] *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Judgment, I.C.J. Reports 2020*, p. 319, para. 61.

[19] *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. 374.

[20] *Anglo-Iranian Oil Co. (United Kingdom* v. *Iran), Preliminary Objection, Judgment, I.C.J. Reports 1952*, p. 104.

[21] *Dispute regarding Navigational and Related Rights (Costa Rica* v. *Nicaragua), Judgment, I.C.J. Reports 2009*, p. 246, para. 77.

while "this right is not guaranteed by Article VI of the Treaty", it "is inferred from the provisions of the Treaty as a whole"[22].

37. Therefore, it is perfectly conceivable for an international convention to ensure the protection of a right that is not explicitly mentioned therein. In this regard, it is possible to refer, by analogy, to the so-called theory of "implicit jurisdictions", whereby "the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties"[23]. Moreover, in its 1949 and 1996 Advisory Opinions, the ICJ expressly noted that "[t]h[is] principle of law was applied by the Permanent Court of International Justice to the International Labour Organization in its Advisory Opinion No. 13 of July 23rd, 1926"[24].

38. A right may therefore be inferred from the interpretation of a treaty provision, or even several of them in conjunction, in accordance with the means of interpretation recalled in Article 31 of the Vienna Convention, provided that it necessarily follows from those provisions.

39. In this regard, the present written statement will find that the right to strike of workers and their organizations is protected by Convention No. 87. Indeed, it can be concluded from an interpretation of that Convention that a combined reading of its Articles 3, 10 and 11, in particular, necessarily implies that it protects the right to strike of workers and their organizations.

40. The articles in question read as follows:

— Article 3 provides that:

> "1. Workers' 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*.
>
> 2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."[25]

— Article 10 states that "[i]n this Convention the term organisation means any organisation of workers or of employers for furthering and defending the interests of workers or employers".

— Lastly, under Article 11,

> "[e]ach Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise".

---

[22] *Ibid*., p. 247, para. 8[4].

[23] *Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949*, p. 182.

[24] *Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 79, para. 25.

[25] Emphasis added.

41. It is, in this respect, a question of interpreting Convention No. 87 with regard to the means of interpretation codified in Article 31 of the VCLT.

42. Article 31 of the Vienna Convention recalls a "[g]eneral rule of interpretation" for treaties. Pursuant to its terms:

> "1. 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.
>
> 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
>
> *(a)* any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
>
> *(b)* any 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.
>
> 3. There shall be taken into account, together with the context:
>
> *(a)* any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
>
> *(b)* any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
>
> *(c)* any relevant rules of international law applicable in the relations between the parties.
>
> 4. A special meaning shall be given to a term if it is established that the parties so intended."

43. Interpreting Convention No. 87 with regard to this general rule entails an examination of the ordinary meaning of its terms, read in their context and in the light of the Convention's object and purpose (II). It will be observed that the interpretation resulting from recourse to the means provided in Article 31, paragraphs 1 and 2, is confirmed by subsequent practice, as referred to in paragraph 3 of the same Article (III).

II. The interpretation of the terms of Convention No. 87, read in their context and in the light of the Convention's object and purpose

44. Interpreting the terms of Convention No. 87 in good faith and in the light of its object and purpose (A), and having regard to the context of the Convention (B), leads to the conclusion that the right to strike is protected by Convention No. 87. It may be noted in passing, moreover, that this interpretation is not contradicted by recourse to the supplementary means of interpretation set forth in Article 32 of the VCLT (C).

A. The ordinary meaning of the terms of Convention No. 87, interpreted in good faith and in the light of the object and purpose of the Convention

45. Article 31, paragraph 1, of the VCLT recalls the fundamental rule 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". This provision must be read in conjunction with Article 26 of the same Convention, pursuant to which "[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith".

46. The Court has repeatedly been called upon to clarify the obligations arising from good faith, itself derived from the fundamental *pacta sunt servanda* principle. In the *Gabčikovo-Nagymaros Project* case, the Court stated in particular that

> "Article 26 combines two elements, which are of equal importance. It provides that 'Every treaty in force is binding upon the parties to it and must be performed by them in good faith.' This latter element, in the Court's view, implies that, in this case, it is the purpose of the Treaty, and the intentions of the parties in concluding it, which should prevail over its literal application. The principle of good faith obliges the Parties to apply it in a reasonable way and in such a manner that its purpose can be realized."[26]

47. Such an approach seems particularly relevant with regard to the question put to the Court. Indeed, it behoves the Court to depart from a literal reading of Convention No. 87 in order to determine how the parties may, in good faith, apply it in a reasonable way so as to achieve its purpose.

48. The purpose pursued by Convention No. 87 is undoubtedly to *effectively* guarantee — Article 1 of Convention No. 87 uses the terms "to give effect to" — freedom of association and protection of the right to organize.

49. A good faith interpretation of the terms of Convention No. 87 — particularly the right of trade unions "to formulate their programmes" (Article 3); their aim of "furthering and defending the interests of workers or of employers" (Article 10); and the reference to "exercise freely the right to organise" (Article 11) — shows that the right to strike is, implicitly but necessarily, protected by these provisions.

50. To argue otherwise would be to deprive freedom of association and protection of the right to organize of one of the means of action which is essential to their effective exercise — the *right* to strike. Such a reading would largely deprive Convention No. 87 of its useful effect.

51. Yet, as the Court itself has stated, it would be "incompatible with the generally accepted rules of interpretation to admit that a provision . . . occurring in a special agreement should be devoid of purport or effect"[27]; it is a "well-established principle in treaty interpretation that words ought to be given appropriate effect"[28].

---

[26] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, pp. 78-79, para. 142.

[27] *Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 24.

[28] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 125, para. 133. The Court cites *Free Zones of Upper Savoy and the District of Gex, Order of 19 August 1929, P.C.I.J., Series A, No. 22*, p. 13.

52. Considering Convention No. 87 as not including protection of the right to strike within it would give that instrument an essentially formal scope, since it would deprive freedom of association of one of its main levers — if not its main lever — for action. It is doubtful whether such an approach, which is also difficult to reconcile with the purpose fixed in Convention No. 87 — which, it should be recalled, is to "give effect" to freedom of association — is based on a good faith reading of the Convention.

53. This understanding of the terms of Convention No. 87, read in good faith and in the light of the Convention's object and purpose, is confirmed by a reading of the decisions and work of the judicial, quasi-judicial and academic authorities that have previously interpreted this instrument, or that have, more generally, considered the definition and scope of freedom of association in international labour law.

54. These examples are offered, within the framework of this written statement, as illustrations of the broad consensus that exists regarding the fact that the ordinary meaning of the terms of Convention No. 87, interpreted in the light of its object and purpose, necessarily leads to the conclusion that the Convention protects the right to strike.

55. For instance, in a Grand Chamber judgment of 11 December 2007, the Court of Justice of the European Union (hereinafter the "CJEU") stated that

> "the right to take collective action, *including the right to strike*, is recognised . . . by various international instruments which the Member States have signed or cooperated in, such as . . . Convention No 87 concerning Freedom of Association and Protection of the Right to Organise, adopted on 9 July 1948 by the International Labour Organisation"[29].

56. In an advisory opinion issued on 5 May 2021, the Inter-American Court of Human Rights (hereinafter the "IACHR") concluded, for its part, that the right to strike was one of the "components" of freedom of association, in the following terms:

> "For the purposes of this advisory opinion, which addresses the exercise of a comprehensive freedom (freedom of association), two components — the right to negotiate freely with employers concerning working conditions, and the right to strike — are essential, and their exercise is not subject to any resource constraints the state may be facing; in other words, freedom of association, the right to collective bargaining and the right to strike are rights subject to immediate enforcement, while any expansion of these rights or measures to conform them to higher-order standards is progressive."[30]

57. The European Court of Human Rights (hereinafter the "ECHR"), which considers freedom of association to be a specific aspect of the trade union freedom guaranteed by Article 11 of the Convention, "left open the question whether a prohibition on strikes affects an essential element of trade-union freedom under Article 11 of the Convention"[31]. However, it considered that "[s]trike

---

[29] CJEU, *International Transport Workers' Federation and Finnish Seamen's Union* v. *Viking Line ABP*, C-438/05, 11 Dec. 2007, para. 43 (emphasis added).

[30] IACHR, Right to freedom of association, right to collective bargaining and right to strike, and their relation to other rights, with a gender perspective, OC-27/21, 5 May 2021, para. 118.

[31] ECHR, *Humpert and Others* v. *Germany* [GC], No. 59433/18 *et al*., 14 Dec. 2023, para. 103.

action is clearly protected by Article 11"[32], in so far as it constitutes an important means for trade unions to defend the interests of their members.

58. In terms of quasi-judicial bodies, reference can be made to the position of the United Nations treaty bodies, although their findings are not legally binding. In a joint statement on freedom of association, including the right to form and join trade unions, the Committee on Economic, Social and Cultural Rights and the Human Rights Committee thus affirmed that "the right to strike is the corollary to the effective exercise of the freedom to form and join trade unions"[33].

59. Many academics, whose work can also contribute to identifying the meaning of certain legal terms or concepts, also consider that the right to strike is a component or corollary of freedom of association. For instance, one expert contends that "the right to strike . . . is one of the essential elements of the right to organize"[34]. Another writes that "[t]he right to strike can be derived not only from Convention 87 but more directly from the provisions in the ILO Constitution setting out the priority to be given to freedom of association"[35]. One specialist in international labour law considers that the

> "comments of the Employers' group reflect a lack of historical understanding of the process that has provided the framework for determining the response to these issues . . . Over the past 60 years the ILO constituents have recognized that there is a positive right to strike that is inextricably linked to — and an inevitable corollary of — the right to freedom of association"[36].

60. Taken together, these elements show that a good faith interpretation of Convention No. 87, in accordance with the ordinary meaning of its terms — particularly the right of trade unions "to formulate their programmes" and to "further[] and defend[] the interests of workers" — read in the light of the object and purpose of the Convention, which is to "give effect" to the rights it contains, must lead to the conclusion that the right to strike constitutes, within the framework of that Convention, an indissociable corollary of freedom of association.

B. The context of Convention No. 87

61. Interpreting Convention No. 87 also entails taking account of its context, within the meaning of Article 31, paragraph 2, of the Vienna Convention. As stated by the PCIJ in a case concerning the interpretation of an international labour convention,

> "[i]n considering the question before the Court upon the language of the Treaty, it is obvious that the Treaty must be read as a whole, and that its meaning is not to be

---

[32] *Ibid*., para. 104; *National Union of Rail, Maritime and Transport Workers* v. *United Kingdom*, No. 31045/10, 8 Apr. 2014, para. 84.

[33] Committee on Economic, Social and Cultural Rights and the Human Rights Committee, Joint Statement on freedom of association, including the right to form and join trade unions, E/C.12/66/5−CCPR/C/127/4, 6 Dec. 2019, para. 4.

[34] Anne-Marie La Rosa, "L'OIT, la liberté syndicale et le droit international", *Revue Belge de Droit International*, 2000/1, p. 10. *[Translation by the Registry.]*

[35] Jeffrey Vogt, "The Right to Strike and the ILO", *King's Law Journal*, Vol. 27, No. 1, 2016, p. 117.

[36] Janice Bellace, "The Right to Strike and the ILO", *International Labour Review*, Vol. 153, No. 1, 2014, p. 32. See also, Janice Bellace, "ILO Convention No. 87 and the Right to Strike in an era of Global Trade", *Comparative Labor Law & Policy Journal*, Vol. 39, 2018, p. 516; James Brudney, "The Right to Strike as Customary International Law", *The Yale Journal of International Law*, Vol. 46, 2021, p. 9.

> determined merely upon particular phrases which, if detached from the context, may be interpreted in more than one sense" [37].

62. Consequently, interpreting Convention No. 87 in its context requires that account be taken not only of the "text" of the treaty, as was done above, but also of all its related elements, such as the title and object of the Convention, the combination of its provisions, the way in which the instrument is structured and even the content of its preamble.

63. Several points can be noted in this regard. First, the provisions of Convention No. 87 should not be considered separately from each other, but must be read together in order to produce their full legal effect. The latter stems in particular from the articulation of Articles 3 and 10, as well as Article 11, which must be read in conjunction for the full effects thereof to be realized.

64. Second, attention can be drawn to the way in which Articles 3 and 11 are set out. Article 3, paragraph 2, of Convention No. 87, which sits in a first section relating to "Freedom of Association", states that "[t]he public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof". For its part, Article 11 of the same Convention, which sits in a separate section entitled "Protection of the Right to Organise", states that the parties "undertak[e] to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise". The articulation of these two provisions shows that Convention No. 87 seeks to combat any obstacle to the effective exercise of the rights conferred therein, and that it must not be interpreted restrictively, but in such a way as to give it its useful effect.

65. Third, it should be noted that the Treaty of Versailles, which in 1919 fixed the founding principles of the ILO, undoubtedly constitutes an "instrument related to the treaty", within the meaning of Article 31, paragraph 2, of the Vienna Convention. Article 427 of this Treaty, whose comprehensive character was noted by the PCIJ[38], states that these principles include "[t]he right of association for all lawful purposes" by the employed and the employers. The phrase "all . . . purposes" seems to imply that trade union freedom encompasses all (lawful) activities carried out within its framework, including, therefore, the right to strike governed by law.

66. These various elements relating to the "background" of Convention No. 87 once again confirm how the freedom of association enshrined therein should be understood, i.e. as necessarily including the right to strike.

C. An interpretation not contradicted by recourse to the supplementary means of interpretation in Articles 32 and 33 of the VCLT

67. Very much in the alternative, it may be noted that this reading is not contradicted by recourse to the supplementary means of interpretation recalled in Article 32 of the Vienna Convention. Article 32 of the VCLT provides 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

---

[37] *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*, p. 23.

[38] *Ibid.*, p. 33.

confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable."

68. It is important to recall that these means are "supplementary", in the sense that they cannot replace the principal means set out in Article 31. In the *LaGrand* case, after interpreting a provision "in the light of its object and purpose", the Court did not consider it "necessary to resort to the preparatory work in order to determine the meaning of that Article"[39]. Nevertheless it did, superfluously, adduce the *travaux préparatoires* as a supplementary means of interpretation, in order to establish that they did not "preclude the conclusion" drawn from the interpretation made on the basis of the principal means.

69. The PCIJ was already following this approach to the interpretation of international labour conventions in the 1930s. In a 1932 opinion, after analysing the 1919 Convention concerning Employment of Women during the Night, the Court stated that "[t]he preparatory work thus *confirms* the conclusion reached on a study of the text of the Convention that there is no good reason for interpreting Article 3 otherwise than in accordance with the natural meaning of the words"[40].

70. The *travaux préparatoires* of Convention No. 87 can therefore be utilized in a supplementary capacity, for the sole purpose of confirming the meaning that emerges from the interpretation of the Convention using the principal means, which in any event leaves no room for doubt.

71. However, the *travaux préparatoires* of Convention No. 87 are silent on the question of whether the right to strike is included among, or excluded from, the rights protected by it. In view of the conclusion reached with regard to the principal means of interpretation, it would clearly be wrong to deduce from this silence an intention on behalf of the drafters of the Convention to exclude the right to strike from its scope.

72. In any case, this finding can in no way invalidate the interpretation of Convention No. 87 resulting from the principal means set out in Article 31 of the VCLT.

73. In order to understand and interpret the silence of the *travaux préparatoires* of Convention No. 87 on the question of the right to strike, it is useful to examine the *travaux préparatoires* of the International Covenant on Economic, Social and Cultural Rights (hereinafter the "ICESCR"), drawn up shortly after the adoption of the Convention, to which Article 8, paragraph 3, of the ICESCR explicitly refers.

74. It is clear from the *travaux préparatoires* that States expressed certain reservations about explicitly mentioning the right to strike in the clause on freedom of association, for two main reasons. First, the concern was expressed that the right to strike should not appear to be a preferred means of

---

[39] *LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001*, p. 503, para. 104.

[40] *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. 380 (emphasis added).

action for trade unions compared to other means. Second, certain States insisted that the question should be considered as falling under the laws of each country[41].

75. These elements therefore show that the lack of explicit reference to the right to strike was not motivated by the idea that it was completely separate from freedom of association, but by other considerations, unrelated to the debate that is the subject of these advisory proceedings.

76. The interpretation of Convention No. 87 resulting from recourse to the means set out in Article 31, paragraph 1, of the VCLT is further confirmed by its interpretation in the light of its two language versions.

77. Article 33, paragraph 4, of the VCLT recalls that when a question arises as to the interpretation of a text authenticated in more than one language, "the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted".

78. Article 21 of Convention No. 87 states that "[t]he English and French versions of the text of this Convention are equally authoritative". However, the meaning of the term "freedom of association" used in the English version does not correspond exactly to the French term "*liberté syndicale*".

79. A broader term than "*la liberté d'association*" or even "*la liberté d'association professionnelle*", "*liberté syndicale*" refers to the freedom of workers' associations to engage in collective bargaining and to shore up their bargaining positions through action, including first and foremost strike action. The term "*liberté syndicale*" implies a proactive dimension, particularly in terms of means of action, in the defence of workers' interests, which is not necessarily as obvious in the more neutral term "freedom of association".

80. Both versions of the text of Convention No. 87 should be taken into account in determining its meaning. In this regard, several instructions and circulars issued by the ILO's Director-General recall that

> "[w]hen a request for an interpretation raises a question of terminology, the English and French terms of the instruments under discussion shall be studied and compared. It should be noted, in this connection, that the text of Conventions consists of versions in the English and French languages which are of equal authority and must be read in conjunction in order to determine the meaning of the Convention."[42]

---

[41] "On the one hand, it was asserted that the right to strike was essential if workers' economic and social interests were to be protected and if trade unions were to function properly. In the absence of the recognition of that right, it was claimed, there might not be any effective counterbalance to the greater authority of the State or the more advantageous position occupied by the employers . . . On the other hand, it was thought a mistake to single out the right to strike for inclusion without mentioning all the other means by which organized labour could attain its ends. Moreover, to give undue prominence to the right to strike was to ignore the great advances which had been made in co-operation between labour and management, in collective bargaining machinery, and in conciliation procedures." (Report of the Third Committee, A/3525, 9 Feb. 1957, para. 68).

[42] ILO, Director-General's Instruction No. 45, Procedure concerning requests for interpretations of Conventions and Recommendations, 23 Dec. 1952, para. 6; ILO, Circular No. 40, Procedure concerning requests for interpretations of Conventions and Recommendations, 15 Sept. 1987, para. 9.

81. Although it is not necessary to have recourse to Article 33 of the VCLT — because the interpretation of the Convention to be adopted is quite clear from recourse to Article 31 alone — France considers that, in any event, one language version of the text should not be given priority over another. The specificity of the French term "*liberté syndicale*" must thus be taken into account where appropriate for the purpose of interpreting Convention No. 87.

III. An interpretation confirmed by the subsequent practice in the application of Convention No. 87

82. The notion of "subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation" appears in Article 31, paragraph 3, of the Vienna Convention. In this context, two types of "practice" can be used to interpret Convention No. 87: State practice (1) and the practice of the bodies with authority to interpret it (2).

A. The subsequent practice of the parties in the application of Convention No. 87

83. The subsequent practice of the parties is a means of interpretation of international treaties, as the PCIJ acknowledged in 1922, when it was seised of a question of interpretation with regard to an ILO convention. The Court was of the view that

> "[i]f there were any ambiguity, the Court might, for the purpose of arriving at the true meaning, consider the action which has been taken under the Treaty. The Treaty was signed in June, 1919, and it was not until October, 1921, that any of the Contracting Parties raised the question whether agricultural labour fell within the competence of the International Labour Organisation. During the intervening period the subject of agriculture had repeatedly been discussed and had been dealt with in one form or another. All this might suffice to turn the scale in favour of the inclusion of agriculture, if there were any ambiguity."[43]

84. Recourse to the subsequent practice of the parties is now well established in the interpretation of a convention. It is clear from the jurisprudence that, "in the past, when called upon to interpret the provisions of a treaty, the Court has itself frequently examined the subsequent practice of the parties in the application of that treaty"[44]. In this respect, it has regularly recalled that, when interpreting a treaty, "the subsequent positions adopted by the parties should be taken into consideration"[45].

85. More generally, taking account of the subsequent positions of the parties when interpreting a treaty is of particular importance. This is in fact what is known as an "authoritative" interpretation, as recalled by the PCIJ in its Advisory Opinion of 6 December 1923: "the right of giving an authoritative interpretation of a legal rule belongs solely to the person or body who has power to modify or suppress it"[46]. The "authoritative" nature of interpretations based on the subsequent practice of the parties was also confirmed by the International Law Commission (hereinafter the "ILC") in its 2018 Draft conclusions on subsequent agreements and subsequent practice in relation

---

[43] *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.

[44] *Kasikili/Sedudu Island (Botswana/Namibia), Judgment, I.C.J. Reports 1999 (II)*, p. 1076, para. 50.

[45] *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 77, para. 138.

[46] *Jaworzina, Advisory Opinion, 1923, P.C.I.J., Series B, No. 8*, p. 37.

to the interpretation of treaties, more specifically in Conclusions 3, 4 and 5, and the commentaries thereto.

86. To identify the subsequent practice of the parties to Convention No. 87, one can look, first, to the practice of the Government group of the ILO. The tripartite structure of the ILO notwithstanding, under the rules of interpretation deriving from the international law of treaties, State practice alone is probative for the purpose of identifying any "subsequent practice of the parties". Consequently, the position of the Government group, which reflects that of the States parties to Convention No. 87, cannot be put on the same level as the practice of the Employers' group or the Workers' group. "Practice" can be understood as both a positive concept (an affirmation that the right to strike is linked to freedom of association) and a negative one (a lack of protest in the face of references to the right to strike in connection with freedom of association).

87. It should thus be noted that, in 2015, the Government group expressed support for recognizing the right to strike as an integral part of the freedom of association to be protected. It is clear from this position, which was adopted by consensus following the escalation of the disagreements prevailing within the Conference's Committee on the Application of Standards since 2012, that

> "[t]he Government group recognized that the right to strike was linked to freedom of association, which was a fundamental principle of the ILO. It specifically recognized that freedom of association, in particular the right to organize activities for the promotion and protection of workers' interests, could not be fully realized without protecting the right to strike, which albeit part of the fundamental principles and rights at work of the ILO, was not an absolute right. The scope and conditions of that right were regulated at the national level. Hence member States were responsible for the effective implementation and observance of labour standards."[47]

88. Furthermore, the Government group has never questioned the consistent interpretation of Convention No. 87 by the ILO's supervisory bodies, which closely links the right to strike to freedom of association.

89. Outside the ILO, there is also a widespread practice of recognizing the right to strike as a corollary of freedom of association. While this does not necessarily constitute "subsequent practice of the parties", within the meaning of Article 31, paragraph 3, of the Vienna Convention, it is nevertheless not without relevance in these advisory proceedings. For example, Article 28 of the Charter of Fundamental Rights of the European Union provides that

> "[w]orkers and employers, or their respective organisations, have, in accordance with Community 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".

90. Similarly, the 2019 Agreement concluded between Canada, the United States and Mexico ("CUSMA") states, in footnote 6 under Article 23.3, paragraph 1 *(a)*, that, "[f]or greater certainty, the right to strike is linked to the right to freedom of association, which cannot be realized without protecting the right to strike".

---

[47] Governing Body, 323rd Session, 2015, Minutes, GB.323/PV, 12-27 Mar. 2015, para. 54.

91. It can therefore be concluded from all these elements that there is indeed "subsequent practice of the parties", within the meaning of Article 31, paragraph 3, of the Vienna Convention, which confirms the interpretation of Convention No. 87 reached in accordance with paragraphs 1 and 2 of the same Article of the VCLT.

B. The subsequent practice of ILO bodies

92. Article 31, paragraph 3 *(b)*, of the Vienna Convention states that, for the purposes of the interpretation of a treaty, account shall be taken of "any subsequent practice in the application of the treaty". The practice of the treaty bodies established to supervise the application of a treaty undoubtedly falls into this category. Indeed, it is clear from ICJ jurisprudence that the Court "believes that it should ascribe great weight to the interpretation adopted by [an] independent body that was established specifically to supervise the application of [a] treaty"[48].

93. Similarly, in paragraph 3 of Conclusion 13 of its Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, the ILC considers that "[a] pronouncement of an expert treaty body may give rise to, or refer to, a subsequent agreement or subsequent practice by parties under article 31, paragraph 3, or subsequent practice under article 32 [of the VCLT]". Within the ILO, although several of its bodies with regular or special supervisory functions have pronounced on the link between freedom of association and the right to strike[49], the practice of two of them in particular — the CEACR and the CFA — seems especially relevant in this regard.

94. First, the CEACR, which is responsible for the periodic review of measures taken by States in the application of international labour standards, including Convention No. 87. In its 1959 General Survey, in which freedom of association was addressed for the first time, the CEACR commented on "the right of organisations to organise their activities and to formulate their programmes"[50]. It considered, in this context, that the prohibition of strikes by certain workers "may constitute a considerable restriction of the potential activities of trade unions" and be "counter to Article 8, paragraph 2, of the Convention"[51].

95. This approach has been reiterated and refined over the years. For example, in its 1994 General Survey, the CEACR stated that freedom of association "includes in particular . . . the right

---

[48] *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 664, para. 66.

[49] ILC, 58th Session, 1973, Freedom of Association and Collective Bargaining: General Survey by the Committee of Experts on the Application of Conventions and Recommendations, Report III (4B), para. 107; ILC, 69th Session, 1983, Freedom of Association and Collective Bargaining: General Survey, Report II (4B), paras. 200-201; ILC, 110th Session, 2022, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (A), pp. 99-340, and ILC, 111th Session, 2023, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (A) pp. 109-368; Governing Body, 253rd Session, 1992, Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning the Republic of South Africa, GB/253/15/7, May-June 1992, para. 303 (available at: https://webapps.ilo.org/public/libdoc/ilo/GB/253/GB.253_15_7_engl.pdf#page=87); Report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the complaints concerning the observance by Greece of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), *Official Bulletin,* Special Supplement, Vol. LIV, No. 2, 1971, para. 261; Case No. 1364 (1987), Representation against the Government of France pursuant to article 24 of the Constitution made by the General Federation of Labour, para. 140; Case No. 1810 (1996), Representation made by the Confederation of Turkish Trade Unions (TUK-IS) under article 24 of the ILO Constitution alleging non-observance by Turkey of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), para. 61.

[50] ILC, 43rd Session, 1959, Summary of reports on ratified Conventions, Report III (IV), paras. 65 *et seq*.

[51] *Ibid*., para. 86.

to strike and, in general, any activity involved in the defense of members' rights"[52], and in 2013, it recalled that "[s]trikes are essential means available to workers and their organizations to protect their interests"[53].

96. Second, the CFA, a tripartite body that was specially created in 1951 to examine complaints concerning violations relating to freedom of association. In 1952, the CFA stated that "the right to strike and that of organising trade union meetings are essential elements of trade union rights"[54]. This interpretation still prevails today, as demonstrated by the CFA's 404th report, adopted in November 2023, which addresses several alleged violations of Convention No. 87 resulting from restrictions on the right to strike[55]. In that report, the CFA explicitly recalls that "it has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests"[56].

97. It should be noted that, until at least 1989, that is for almost 40 years, this practice does not appear to have met with any opposition, either from the Government group or from the Employers' and Workers' groups. This lack of opposition also constitutes important subsequent practice.

98. As summarized by the Fact-Finding and Conciliation Commission on Freedom of Association,

> "Article 3 of Convention No. 87, providing as it does for the right of workers' organisations 'to organise their administration and activities and to formulate their programmes', has been the basis on which the supervisory bodies have developed a vast jurisprudence relating to industrial action. In particular they have stated as the basic principle that the right to strike is one of the essential means available to workers and their organisations for the promotion and protection of their economic and social interests."[57]

IV. Conclusion

99. It is clear from all these elements that a good faith interpretation of Convention No. 87, in accordance with the means of interpretation set out in Article 31 of the Vienna Convention, must necessarily lead to the conclusion that this instrument protects the right to strike as an indissociable component of freedom of association. This interpretation derives from a good faith reading of the terms of the Convention, in accordance with the Convention's object and purpose and in the light of

---

[52] ILC, 81st Session, 1994, Freedom of Association and Collective Bargaining: General Survey of the Reports on the Freedom of Association and the Right to Organize Convention (No. 87), 1948 and the Right to Organize and Collective Bargaining Convention (No. 98), 1949, Report III (4B), para. 128.

[53] ILC, 101st Session, 2012, Giving globalization a human face: General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, Report III (1B), para. 117.

[54] CFA, Report No. 2, 1952, Case No. 28 (United Kingdom of Great Britain and Northern Ireland) (available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2898071).

[55] E.g. Governing Body, 349th Session, 2023, Report of the Committee on Freedom of Association, GB.349/INS/16, 30 Oct.-9 Nov. 2023, pp. 84 *et seq*.; pp. 146 *et seq*.

[56] *Ibid*., para. 203.

[57] Governing Body, 253rd Session, 1992, Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning the Republic of South Africa, GB/253/15/7, May-June 1992, para. 303 (available at: https://webapps.ilo.org/public/libdoc/ilo/GB/253/GB.253_15_7_engl.pdf).

its context, a reading which is unequivocally confirmed by the subsequent practice in its application. France therefore considers that interpreting Convention No. 87 with regard to the means of interpretation of treaties set out in the Vienna Convention on the Law of Treaties leads to the conclusion that the right to strike of workers and their organizations is indeed protected by Convention No. 87 on Freedom of Association and Protection of the Right to Organise, 1948.

(Signed) Diégo COLAS,

Legal Adviser
Director of Legal Affairs
Ministry for Europe and Foreign Affairs
Agent of the French Republic.

_____