INTERNATIONAL COURT OF JUSTICE

RIGHT TO STRIKE UNDER ILO CONVENTION NO. 87

[REQUEST FOR ADVISORY OPINION]

WRITTEN STATEMENT

OF THE INTERNATIONAL TRADE UNION CONFEDERATION

15 MAY 2024

Table of Contents

Table of Defined Terms iii

Chapter 1. Introduction 1

A. The interest of the ITUC in the advisory proceedings before the Court 1

B. The scope of the question before the Court 3

C. Summary of the Written Statement 3

Chapter 2. The Court has jurisdiction to give the advisory opinion requested and there are no reasons for the Court to decline the exercise of its competence 5

A. The Court has jurisdiction to give the advisory opinion requested 5

B. There are no reasons for the Court to decline the exercise of its competence 6

Chapter 3. The ILO and Convention No. 87 8

A. The creation of the ILO 8

B. The institutional structure and activity of the ILO 9

1. Regular supervisory system 11

a. Committee of Experts on the Application of Conventions and Recommendations 11

b. Conference Committee on the Application of Standards 13

2. Special supervisory system 14

a. Commissions of inquiry 14

b. Committee on Freedom of Association 15

C. History of the disagreement concerning the right to strike 16

Chapter 4. The right to strike of workers and their organisations is protected under Convention No. 87 according to the principles of interpretation enshrined in the Vienna Convention on the Law of Treaties 18

A. The right to strike is inherent to Convention No. 87 according to the ordinary meaning of its terms 20

1. Material terms under Convention No. 87 21

2. Ordinary meaning of the material terms in their context 25

a. Article 3(1) as a whole 27

b. Autonomy of workers and their organisations under Articles 2 to 9 28

c. The qualifier "*syndical(e)*" 30

3. Ordinary meaning of the material terms in light of the object and purpose of Convention No. 87 31

4. Good faith and effective interpretation of Convention No. 87 33

B. The inherent link between the right to strike and freedom of association as protected by Convention No. 87 is confirmed by the subsequent practice of States Parties 36

1. Collective State practice confirms that the right to strike of workers and their organisations is protected under Convention No. 87 38

a. Collective State practice within the tripartite CFA 38

b. States Parties endorsement of the CEACR's findings 41

c. Collective State practice within the ILO Conference and the 2015 tripartite meeting on Convention No. 87 43

2. Individual State practice confirms that the right to strike of workers and their organisations is protected under Convention No. 87 45

a. Governments' positions taken individually within ILO bodies 45

b. Individual State practice outside the ILO 61

C. Applicable rules of international law, including treaties and customary international law, confirm that Convention No. 87 protects the right to strike 70

1. Universal and regional human rights instruments, as construed by supervisory bodies and courts, make explicit that the freedom of association includes the right to strike 70

a. Universal instruments 71

b. Regional instruments 73

2. The right to strike as an inherent component of freedom of association has achieved the status of customary international law 77

D. Supplementary means of interpretation confirm that Convention No. 87 protects the right to strike 81

1. Historical context of the principle of freedom of association 82

2. Preparatory work of Convention No. 87 86

Conclusions and submissions 93

LIST OF ANNEXES 95

Table of Defined Terms

CAS	Conference Committee on the Application of Standards
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CFA	Committee on Freedom of Association
Conference	International Labour Conference
Convention No. 87	Freedom of Association and Protection of the Right to Organise Convention (No. 87)
Convention No. 98	Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
ECOSOC	UN Economic and Social Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILC	International Labour Conference
ILO	International Labour Organization
ITUC	International Trade Union Confederation
Office	International Labour Office
VCLT	Vienna Convention on the Law of Treaties
UN	United Nations

Chapter 1. Introduction

A. The interest of the ITUC in the advisory proceedings before the Court

1.1. On 10 November 2023, at its 349th *bis* (special) session, the Governing Body of the International Labour Organization (the "ILO") adopted a resolution to request the Court to render an urgent advisory opinion pursuant to Article 65(1) of its Statute. The question referred by the Governing Body reads as follows: "Is the right to strike of workers and their organisations protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)?" On 16 November 2023, the Court fixed 16 May 2024 as the time-limit within which written statements may be submitted by the ILO and States Parties to the Freedom of Association and Protection of the Right to Organise Convention (No. 87) ("Convention No. 87"), in accordance with Article 66, paragraph 2, of the Statute By that Order, the Court also authorised the six organisations which have been granted general consultative status at the ILO to make written contributions within the same time-limits. As one of these organisations, the International Trade Union Confederation (the "ITUC") submits this Written Statement pursuant to the Court's Order.

1.2. The ITUC is the most representative international workers' organisation. It currently has 340 national affiliates representing approximately 191 million workers in 169 countries and territories. It was formed on 1 November 2006, out of the merger of the International Confederation of Free Trade Unions and the World Confederation of Labour. The ITUC was then granted "general consultative status" by the Governing Body of the ILO at its 297th session in November 2006,[1] in recognition of its "special institutional significance" for the ILO.[2] Specifically, the ITUC has a "special relationship" and "close institutional relationship with the ILO" as the secretariat of the workers' group, representing workers in the tripartite governance bodies of the ILO as detailed in Chapter 3. According to the ILO,

[1] GB.297/PV, Minutes of the 297th Session of the Governing Body, November 2006, paras 276-280 [Annex No. 1].

[2] ILO, Explanatory note on the role of international employers' and workers' organizations enjoying general consultative status at the ILO, 17 April 2023 [Document No. 51]. The documents referred to in footnotes in this Written Statement are the documents which have been provided in the Dossier submitted by the ILO on 14 December 2023.

> "due to their responsibilities as secretaries of the two groups, the IOE [the International Organisation of Employers, acting as the secretariat of the Employers' group] and the ITUC play a key role in facilitating tripartite dialogue within the Organization […] They play a major role in the work of the ILO supervisory bodies with a tripartite composition. […] They ensure the continuity of the groups' positions within the Organization, during and outside of the sessions of the Conference and the Governing Body."[3]

1.3. The ITUC's aims are set out in its constitution.[4] It is "inspired by the profound conviction that organisation in democratic and independent trade unions and collective bargaining are crucial to achieving the well-being of working people and their families […]"[5] Its mission is "[t]o defend and promote the rights and interests of all working people, without distinction".[6] Amongst its various activities, the ITUC commits to: "strive for the universal respect of fundamental rights at work until […] the trade union rights of all workers [are] observed fully and everywhere"; and to "denounce violations of the freedom of association, or the right to strike including cross-border action, and of the right to collective bargaining, and shall mobilise international solidarity to have them brought to an end."[7] It also commits to "work to strengthen the role of the ILO, and for the setting and universal application of international labour standards […] with a view to having their policies and activities contribute coherently to the achievement of decent work, social justice and sustainable development."[8]

1.4. Since 2012, when the employers' group brought the disagreement on the right to strike to a head [9], the ITUC has sought to protect the constitutional aims and institutional objectives of the ILO – namely to defend and promote the rights of workers.[10] From then to now, the ITUC has attempted to resolve the disagreement through dialogue. Those various attempts were not successful, and there has been as a result no resolution of the disagreement.

---

[3] *Ibid*, para. 14 [Document No. 51].

[4] International Trade Union Confederation, *Constitution and Standing Orders,* as amended by the 6th Extraordinary World Congress (Online, October 2023). [Annex No. 2].

[5] *Ibid.,* pp. 10-11.

[6] *Ibid.,* p. 11.

[7] *Ibid.*

[8] *Ibid*., p. 12.

[9] See *infra,* Chapter 3, Section C.

[10] ITUC, Comments to the Office background report on "Action to be taken on the request of the Employers' group to urgently include a standard-setting item on the right to strike on the agenda of the 112th Session of the International Labour Conference", dated 27 October 2023 [Document No. 26].

1.5. The ITUC strongly supports the role of the International Court of Justice (ICJ), as the principal judicial organ of the United Nations, to assist in the resolution of the dispute. Indeed, by a letter dated 12 July 2023 to the ILO's Director-General, the workers' group formally requested that the long-standing dispute in relation to the right to strike be referred urgently to the Court.[11]

1.6. The ITUC is well placed to furnish the Court with information on the question of the protection of the right to strike under Convention No. 87. The right to strike is an essential component of freedom of association to enable workers and their organisations to defend their rights and interests. An advisory opinion from the ICJ confirming that Convention No. 87 protects the right to strike would contribute to restoring the legal certainty that had existed for 60 years. It would also ensure that the hundreds of millions of workers that the ITUC represents worldwide can continue to effectively exercise their rights at work without fear that their governments will unduly limit or prohibit their right to strike, which would fundamentally alter the balance of power not only in the workplace but in society as a whole.

B. The scope of the question before the Court

1.7. The narrow question presented by the ILO request concerns whether the right to strike of workers and their organisations is protected under Convention No. 87, and that question only. The question before the Court does not concern *regulation* of the right to strike under Convention No 87. Further, other issues in connection with the right to strike that have been alluded to over the years are beyond the scope of this question. Any consequential matters, including on the scope of the right to strike and limitations thereto, will be dealt with by the ILO's long-standing and elaborate supervisory mechanisms.[12]

C. Summary of the Written Statement

1.8. This Written Statement is composed of four chapters. Chapter 2 submits that the ICJ has jurisdiction to give the advisory opinion requested and that there are no reasons for the Court to decline the exercise of its competence.

---

[11] Letter of the Worker Vice-Chairperson of the ILO Governing Body to the ILO Director-General, dated 12 July 2023, p. 57 [Document No. 5].

[12] For more on the ILO supervisory mechanisms, see *infra*, Chapter 3, Section B.

1.9. Chapter 3 sets out the relevant factual background, outlining in particular the unique tripartite institutional structure of the ILO, including its well-established supervisory mechanisms, and the history of the disagreement on the issue now before the Court.

1.10. Chapter 4 sets out the ITUC's legal submissions, namely that Convention No. 87 interpreted according to Articles 31 and 32 of the Vienna Convention on the Law of Treaties (the "VCLT") protects the right to strike. The chapter is composed of four parts.

1.11. Section A shows that Article 3(1) of Convention No. 87 (read together with Article 10) encompasses the right of workers' organisations to organise and plan for strikes, and submits that, as a corollary, this necessarily protects the right of workers to take part in the strikes so organised by their organisations. Section B presents an extensive survey of the practice of States Parties to Convention No. 87 both collectively within ILO bodies and individually within and outside the structures of the ILO; this practice confirms the fact that the right to strike is an inherent element of freedom of association. Section C shows that the relevant rules of international law applicable in the relations between the parties to Convention No. 87, including human rights instruments, as interpreted and applied in decisions of global and regional human rights bodies and commissions, all confirm that the "activities" "organise[d]" by workers' organisations "furthering and defending" the interests of workers referred to in Convention No. 87 include exercising the right to strike. This section also shows that the right to strike is an inherent component of freedom of association protected by the convention, which has emerged as a rule of customary international law. Together, Sections A to C show that the interpretation under Article 31 of the VCLT leads to the clear conclusion that the right to strike is inherent to Convention No. 87, and that any contrary interpretation is unreasonable and would deprive the convention of any practical effect.

1.12. Section D considers supplementary means of interpretation, including the 1919 ILO Constitution and the preparatory work of Convention No. 87 and submits that these supplementary means confirm and corroborate the fact that the right to strike is inherent to Convention No. 87.

Chapter 2. The Court has jurisdiction to give the advisory opinion requested and there are no reasons for the Court to decline the exercise of its competence

2.1. Some participants in the debates before the ILO Governing Body have questioned the advisability of referring the issue of the right to strike under Convention No. 87 to the Court for an advisory opinion.[13] Their objections, however, were based on political, rather than legal, considerations. None of the participants in those debates appears to have raised doubts as to the fact that this question falls within the Court's advisory jurisdiction or that the Court could indeed exercise such jurisdiction in this case. This part of the Written Statement will briefly confirm that the Court has jurisdiction to give the advisory opinion requested (Section A) and that there are no reasons for the Court to decline the exercise of its competence (Section B).

A. The Court has jurisdiction to give the advisory opinion requested

2.2. The Court's advisory jurisdiction is provided for in Article 65 of the Statute and Article 96 of the United Nations Charter. According to Article 65(1) of the Statute,

> "[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."

2.3. Article 96 of the Charter provides in turn that:

> "1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on all legal questions.
> 2. Other 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."

2.4. There is no doubt that the ILO is indeed a specialised agency which has been duly authorised to request such advisory opinions and that, in the case now before the Court, the request for an advisory opinion concerns a legal question within the scope of the ILO's activities.

[13] Draft Minutes of the 349th bis (Special) Session of the Governing Body, November 2023 [Document No. 31].

2.5. The ILO has been recognised as a specialised agency of the United Nations ("UN") in the agreement concluded in 1946 between the UN and the ILO.[14] Under Article IX(2) of the agreement, "[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 […]." Article IX(3) further stipulates that "[s]uch request may be addressed to the Court by the Conference or by the Governing Body in pursuance of an authorization of the Conference." Such authorisation has been given in open-ended terms to the Governing Body by the Conference by a resolution adopted on 27 June 1949.[15] The request for an advisory opinion on the right to strike under Convention No. 87 submitted to the Court by the ILO Governing Body on 13 November 2023 is therefore fully in accordance with all the requirements flowing from the applicable instruments.

2.6. The question referred by the ILO Governing Body is also plainly a legal question. According to the Court's jurisprudence, questions "framed in terms of law and rais[ing] problems of international law […] are by their very nature susceptible of a reply based on law […] [and] appear […] to be questions of a legal character."[16]

2.7. Such is indeed the case here. In order to determine whether the right to strike of workers and their associations is protected under Convention No. 87, the Court will have to interpret that treaty, a task which may be characterised as quintessentially legal.

2.8. The question referred to the Court by the Governing Body therefore falls squarely within its jurisdiction. It shall now be seen that there are no obstacles to the exercise of this jurisdiction in the instant case.

B. There are no reasons for the Court to decline the exercise of its competence

2.9. The Court has repeatedly emphasised that the wording of Article 65(1) of the Statute

> "leaves a discretion as to whether or not it will give an advisory opinion that has been requested of it, once it has established its competence to do so."[17]

[14] Agreement between the United Nations and the International Labour Organization, 1946 [Document No. 2].
[15] ILC, 32nd Session, 1949, Resolution concerning the Procedure for Requests to the International Court of Justice for Advisory Opinions, *Official Bulletin*, vol. XXXII, 1949, pp. 338-339 [Document No. 4].
[16] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 18, para. 15.
[17] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 235, para. 14.

2.10. However, the Court has also made clear that in view of its responsibilities as the "principal judicial organ of the United Nations" (in the words of Article 92 of the UN Charter), "it is mindful that it should not, in principle, refuse to give an advisory opinion."[18] The Court has explained that, in accordance with its consistent jurisprudence, "only 'compelling reasons' may lead [it] to refuse its opinion in response to a request falling within its jurisdiction."[19] According to the Court, the only "compelling reasons" that would prevent it from giving an advisory opinion are those which would threaten the "integrity of the Court's judicial function"[20].

2.11. Nothing, in the present case, would lead to such result. The request submitted to the Court, and the circumstances under which it is called upon to exercise its advisory jurisdiction are plainly in line with the Court's —and its predecessor's— practice.[21] The integrity of the Court's judicial function is clearly not at risk here. There is therefore no reason for the Court to refuse to give the opinion on the right to strike under Convention No. 87 requested by the ILO Governing Body.

[18] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 235, para. 14.

[19] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 113, para. 65, referring to *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 156, para. 44; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, p. 416, para. 30.

[20] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 113, para. 64.

[21] See in particular the advisory opinions given by the Permanent Court of International Justice upon request of the ILO (*e.g. Competence of the ILO in regard to International Regulation of the Conditions of Labour of Persons Employed in Agriculture, Advisory Opinion of 12 August 1922, P.C.I.J., Collection of Advisory Opinions, Series B; Competence of the International Labour Organisation to Regulate, Incidentally, the Personal Work of the Employer, 1926, P.C.I.J., Series B, No. 13; Interpretation of the Convention of 1919 Concerning Employment of Women during the Night, Advisory Opinion of 15 November 1932, P.C.I.J. Series A/B, No. 50).*

Chapter 3. The ILO and Convention No. 87

3.1. As the ILO Governing Body explained in its Resolution of November 2023 referring the question to the Court, the issue raised by the referral concerns "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".[22] This disagreement represents a serious challenge to the functioning of the ILO tripartite system and to the "credibility of its system of standards"[23]. Therefore, in order to fully comprehend the underlying issues of the question brought to the Court, it is necessary to expose the functioning of the ILO and the context in which the disagreement on the scope of the protection afforded by Convention No. 87 arose in some details.

3.2. This chapter sets out the creation of the ILO (Section A); the institutional structure and activity of the ILO (Section B); and the history of the disagreement concerning the right to strike (Section C).

A. The creation of the ILO

3.3. The ILO was founded in the aftermath of the First World War to reflect the belief that universal and lasting peace can be accomplished only if it is based on social justice. The driving forces for the ILO's creation arose from security, humanitarian, social, political and economic considerations. The founders of the ILO recognised the importance of social justice in securing peace, against a historical background of exploitation of workers in the industrialising nations of that time.

3.4. The ILO was created by the Treaty of Versailles in 1919, which was the main output of the Paris Peace Conference. Part XIII of the Treaty of Versailles (headed "*Labour*") represented the constitution of the ILO.[24] According to the preamble of Part XIII, Section I, the ILO is devoted to improving conditions of labour, in order to secure the social justice that is essential

[22] "Right to strike under ILO Convention No. 87", Request for advisory opinion transmitted to the court pursuant to the resolution of the Governing Body of the International Labour Organization of 10 November 2023

[23] *Ibid.*

[24] Part XIII of the Treaty of Peace of Versailles, 1919 [Document No. 70].

to universal and lasting peace.[25] Importantly, the preamble adds that those conditions are to be improved by, in particular, the "recognition of the principle of freedom of association".[26]

3.5. In 1944, the plenary organ of the ILO, the International Labour Conference (the "ILC"), unanimously adopted the Declaration of Philadelphia which was integrated two years later to the ILO Constitution. The Declaration states inter alia, that:

"(a) labour is not a commodity;

(b) freedom of expression and of association are essential to sustained progress;

(c) poverty anywhere constitutes a danger to prosperity everywhere;"[27]

B. The institutional structure and activity of the ILO

3.6. The ILO has a unique governing structure which is based on the principle of tripartism. The governance organs of the ILO are: (i) its plenary, the ILC, which meets annually in Geneva; and (ii) its executive arm, the Governing Body, which meets three times a year in Geneva. The tripartite structure of the ILO means that representatives of employers and workers – which organise themselves through independent groups – are integrated into these governance organs on an equal footing.[28] The International Labour Office (the "Office") is the permanent secretariat that serves the ILO and implements its activities.

3.7. One of the most significant activities of the ILO is the adoption of international standards, in the execution of its normative mandate. The development of international labour standards at the ILO is a unique legislative process involving representatives of governments, workers and employers from throughout the world. A two-thirds majority of votes is required for a standard to be adopted. International labour standards are legal instruments drawn up by the ILO's constituents setting out basic principles and rights at work. They are either conventions which are legally binding international treaties, or recommendations, which serve as non-binding guidelines. In many cases, a convention lays down the basic principles to be implemented by ratifying countries, while a related recommendation supplements the

---

[25] Preamble of the Constitution of the ILO [Document No. 1].

[26] *Ibid*.

[27] *Ibid*.

[28] ILO, Explanatory note on the role of international employers' and workers' organizations enjoying general consultative status at the ILO, 17 April 2023 [Document No. 51].

convention by providing more detailed guidance on how it could be applied.[29] A total number of 191 conventions have been adopted by the ILO to this day.[30]

3.8. Convention No. 87, adopted in June 1948, is one of the most ratified and significant of these conventions. Out of a total of 187 ILO Member States, 158 have ratified Convention No. 87, while the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) has been ratified by 168 Member States.[31]

3.9. Convention No. 87 protects the right of workers and employers to establish and join, respectively, workers' organisations, such as trade unions, and employer's organisations of their choosing. Convention No. 87 protects their right to join and establish organisations "for furthering and defending [their] interests" (Article 10). The key organisations that further and defend worker's rights are trade unions, as is made clear in the French title of Convention No. 87, which, according to Article 21, is equally authoritative: "*Convention sur la liberté syndicale et la protection du droit syndical*", where "*syndical*" refers specifically to trade unions and their rights. The ILO has since recognised freedom of association and the right to collective bargaining as "enabling rights". [32]

3.10. In 1998, the ILO Governing Body identified eight "fundamental" Conventions, covering subjects that were considered to be fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. By adopting the 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up, ILO Member States recognised that they have an obligation, arising from the very fact of their membership in the Organization, to work towards the realisation of these principles and values, even if they have not yet been able to ratify the relevant Conventions.[33] In 2022, two more conventions were added to the list of fundamental conventions.[34]

---

[29] ILO, *Rules of the Game: An introduction to the standards-related work of the International Labour Organization*, 2019 [Document No. 60].
[30] As of today, ILO Normlex website, normlex.ilo.org (last accessed on 9 May 2024).
[31] "Ratifications of fundamental instruments by country", ILO Normlex website, normlex.ilo.org (last accessed on 9 May 2024).
[32] ILO, Centenary Declaration for the Future of Work, part II.A.(vi) [Annex No. 3]
[33] Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022 [Document No. 128].
[34] *Ibid*.

3.11. The ILO has developed supervisory mechanisms in order to monitor the progress of Member States in the application of international labour standards. These mechanisms are unique at the international level and are also based on the principle of tripartism. This means that ILO instruments are developed and monitored not only by Member States but also by representatives of workers' and employers' organisations. This section outlines: the regular supervisory system, which issues observations and conclusions on the extent of a member state's level of compliance with ratified ILO conventions (Subsection 1); and the special supervisory system which comes into play when a complaint has been filed concerning a specific violation of a ratified convention, including the role of the Committee on Freedom of Association (Subsection 2).

1. Regular supervisory system

3.12. The regular supervisory system is based on the examination of periodic reports submitted by Member States on ratified conventions pursuant to Articles 22 and 23 of the ILO Constitution, which provides that each Member State must report annually to the International Labour Office "on the measures which it has taken to give effect to the provisions of conventions to which it is a party".[35] The examination of the reports submitted pursuant to the ILO Constitution is carried out successively by the Committee of Experts on the Application of Conventions and Recommendations ("CEACR" or the "Committee of Experts") and the Conference Committee on the Application of Standards (the "CAS"), which were both created in 1926.[36] This subsection outlines the role of each of these bodies in turn.

a. Committee of Experts on the Application of Conventions and Recommendations

3.13. The Committee of Experts is composed of 20 high-level jurists (such as judges of supreme courts, professors of law and legal experts) appointed by the ILO's Governing Body for renewable three-year terms.[37] The role of the Committee of Experts is to provide an impartial and technical evaluation of the application of international labour standards in ILO

---

[35] Constitution of the ILO, p. 22 [Document No. 1].

[36] ILO, *Rules of the Game: An introduction to the standards-related work of the International Labour Organization,* 2019, p. 106 [Document No. 60].

[37] ILO, *The Committee of Experts on the Application of Conventions and Recommendations: Its dynamic and impact*, 2003, pp. 1–17 [Document No. 68].

Member States.[38] The Committee of Experts examines the reports received from governments under Articles 19 and 22 of the ILO Constitution. It then issues two reports. The general survey (Article 19) is a comprehensive review of the law and practice of Member States on a specific set of ILO instruments. The annual report (Article 22) contains its comments on compliance by Member States with their constitutional obligations, as well as its observations on the application of ratified conventions. With the approval of the Governing Body, the annual report of the Committee of Experts is communicated to governments and to the ILC.

3.14. The mandate of the Committee of Experts is as follows:

> "The Committee of Experts on the Application of Conventions and Recommendations is an independent body established by the International Labour Conference and its members are appointed by the ILO Governing Body. It is composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO member States. The Committee of Experts undertakes an impartial and technical analysis of how the Conventions are applied in law and practice by member States, while cognisant of different national realities and legal systems. In doing so, it must determine the legal scope, content and meaning of the provisions of the Conventions. Its opinions and recommendations are non-binding, being intended to guide the actions of national authorities. They derive their persuasive value from the legitimacy and rationality of the Committee's work based on its impartiality, experience and expertise. The Committee's technical role and moral authority is well recognised, particularly as it has been engaged in its supervisory task for over 85 years, by virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers' and workers' organisations. This has been reflected in the incorporation of the Committee's opinions and recommendations in national legislation, international instruments and court decisions."[39]

---

[38] ILO, *Rules of the Game: An introduction to the standards-related work of the International Labour Organization*, 2019, p. 107 [Document No. 60].

[39] GB.349bis/INS/1/1, Action to be taken on the request of the Workers' group and of 36 governments to urgently refer the dispute on the interpretation of Convention No. 87 in relation to the right to strike to the International Court of Justice for decision in accordance with article 37(1) of the Constitution – Office background report, September 2023, p. 225 [Document No. 29].

3.15. For over 70 years, the Committee of Experts has taken the view that the right to strike is a corollary to the right to freedom of association and that, as such, it is recognised and protected by Convention No. 87.[40]

b. Conference Committee on the Application of Standards

3.16. The annual report of the Committee of Experts is examined by the Conference Committee on the Application of Standards (the "CAS"). The CAS is a standing tripartite body of the ILC, made up of government, employer and worker delegates.[41] Based on the technical examination of the Committee of Experts, the tripartite constituents in the CAS examine the manner in which Member States have complied with their obligations. The employers' group and workers' group, the "social partners" in the ILO system, negotiate a "short list" of 25 cases drawn from the Committee of Experts' annual report on which governments are then called upon to provide additional information to the CAS. Following the examination of each case, the employers' and workers' representatives negotiate conclusions and recommendations which are adopted by the plenary of the CAS. These conclusions direct the government concerned to take specific follow-up measures to comply with its obligations under the convention.[42] The CAS plays a complementary role in relation to the Committee of Experts. Once the CAS has considered an individual case, it returns it to the Committee of Experts for continued supervision, and cases may go back and forth between the two committees for many years in continuous dialogue with the State concerned.

3.17. Until 2012, the employers and workers representatives at the CAS adopted conclusions and recommendations confirming that the right to strike was part of Convention No. 87.[43]

---

[40] GB.349bis/INS/1/1, Action to be taken on the request of the Workers' group and of 36 governments to urgently refer the dispute on the interpretation of Convention No. 87 in relation to the right to strike to the International Court of Justice for decision in accordance with article 37(1) of the Constitution – Office background report, September 2023, paras. 49-52 [Document No. 29].

[41] ILO, *Rules of the Game: An introduction to the standards-related work of the International Labour Organization*, 2019, p. 110 [Document No. 60].

[42] *Ibid*, p. 103.

[43] GB.349bis/INS/1/1, Action to be taken on the request of the Workers' group and of 36 governments to urgently refer the dispute on the interpretation of Convention No. 87 in relation to the right to strike to the International Court of Justice for decision in accordance with article 37(1) of the Constitution – Office background report, September 2023, paras. 49-52 [Document No. 29].

2. Special supervisory system

3.18. The special supervisory system comes into play when a complaint has been filed by a Member State or a workers' or employers' organisation. The regular and special supervisory systems are complementary as the observations and conclusions of the special supervisory system are followed up through the regular supervisory system, and the observations and conclusions by the regular supervisory system inform the special supervisory system.

3.19. Under Article 24 of the ILO Constitution, a complaint ("representation") may be filed if a country "has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party".[44] A complaint may only be filed against a State that has ratified the convention concerned. After a complaint has been declared admissible, an *ad hoc* tripartite committee appointed by the Governing Body from among its members examines its substance. When all information from both parties has been received, or if no reply is received within the time limits set, the committee makes its findings on compliance and makes recommendations to the Governing Body. If the Governing Body decides that the government's explanations are not satisfactory, it publishes the complaint and the government's reply, along with its own discussion of the case. Complaints concerning the application of Conventions Nos. 87 and 98 are usually referred for examination to the Committee on Freedom of Association, in accordance with the procedure for the examination of representations (see Subsection b below). The issues raised in a complaint may be followed up by the Committee of Experts, if the government fails to take the requested measures.

3.20. Tripartite committees set up to examine representations under article 24 of the ILO Constitution with respect to Convention No. 87 have systematically confirmed that the convention protects the right to strike.

a. Commissions of inquiry

3.21. For the most serious cases where a Member State is not "securing the effective observance of any Convention" it has ratified, a complaint may be filed under Article 26 of the ILO Constitution to establish a commission of inquiry.[45] The complaint procedure may be instituted by governments that have ratified the same convention, by delegates to the ILC, or

[44] Constitution of the ILO, p. 23 [Document No. 1].
[45] *Ibid.*

by the Governing Body on its own motion. Once a complaint has been deemed admissible, a vote may be taken by the Governing Body to establish a commission of inquiry. A commission of inquiry is composed of three prominent and independent persons, and is tasked with preparing a report in which it makes findings, conclusions and recommendations which are then presented to the parties in accordance with Article 28 of the ILO Constitution.[46] Under Article 29 of the ILO Constitution, the government concerned in the complaint must inform the Office whether or not it accepts the recommendations contained in the report of the commission of inquiry and if not, whether or not it proposes to refer the complaint to the ICJ.[47] Article 33 of the ILO Constitution permits the International Labour Conference to take action to compel compliance with a convention based on the recommendations of a commission of inquiry or a decision of the ICJ.[48]

3.22. Commissions of inquiry that were set up to inquire into the application of Convention No. 87 in specific countries have systematically confirmed that the right to strike is protected under the convention.

b. Committee on Freedom of Association

3.23. In 1950, a special procedure was established to receive complaints regarding violations of freedom of association, whether or not the State concerned has ratified Conventions Nos. 87 and 98. The Committee on Freedom of Association (the "CFA") was created the following year for the same purpose.[49] The CFA is composed of an independent chairperson and representatives of governments, employers, and workers. It decides by consensus. If it finds that there has been a violation of freedom of association standards or principles, it issues a report through the Governing Body and makes recommendations on how the situation could be remedied.[50]

---

[46] Constitution of the ILO, p. 24 [Document No. 1].
[47] *Ibid.*, p. 25.
[48] *Ibid.*
[49] ILO, *Rules of the Game: An introduction to the standards-related work of the International Labour Organization*, 2019, p. 114 [Document No. 60]; Compendium of rules applicable to the Governing Body of the International Labour Office, Annex II, Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association [Document No. 90].
[50] ILO, *Rules of the Game: An introduction to the standards-related work of the International Labour Organization*, 2019, p. 114 [Document No. 60].

3.24. The CFA has examined more than 3,400 cases in the last 70 years and has consistently reaffirmed that the right to strike is protected by Convention No. 87. More than 60 countries on five continents have acted on its recommendations and have informed it of positive developments with regard to freedom of association in recent decades.

C. History of the disagreement concerning the right to strike

3.25. At the commencement of the ILC on 30 May 2012, the spokespersons for the employers' and workers' groups in the CAS met to finalise the short list of cases, in line with the long-standing practice of the CAS.[51] The employers' group spokesperson refused to agree to a short list that included any case on freedom of association where the Committee of Experts had made observations regarding the right to strike. The employers' group additionally sought a 'disclaimer' on the Committee of Experts' general survey which that year focused on the eight fundamental ILO conventions and, among other things, confirmed the long-standing view of the Committee of Experts that Convention No 87 protects the right to strike.[52] In a short statement at the ILC on 4 June 2012, the employers' group challenged the mandate of the Committee of Experts to interpret Conventions, and also specifically challenged its interpretation of Convention No. 87 as protecting the right to strike.[53] The entire workers' group as well as members of the government group and the ILO's Director General expressed sharp disagreement with these views.[54] The actions of the employers' group effectively prevented the CAS from functioning for the first time since 1926, with the employers' group, claiming that the entire supervisory system was "in crisis" " – a crisis created by none but itself.[55]

3.26. Immediately following the 2012 ILC, the ILO and its constituents made several efforts to find a way out of the impasse, without success. Over the course of the subsequent years, the ILO, governments, and the social partners have exhausted efforts to address the different views

---

[51] See *supra*, paras. 3.16 - 3.17.

[52] See *supra*, para. 3.12.

[53] See Employers' Statement in the Committee on the Application of Standards of the International Labour Conference on 4 June 2012 [Annex No. 4], available at: www.uscib.org/docs/2012_06_04_ioe_clarifications_statement.pdf.

[54] ILC, 101st Session, 2012, Report of the Committee on the Application of Standards, para. 187ff. [Document No. 268].

[55] See GB.317/INS/4/1, Matters arising out of the work of the International Labour Conference, Summary report concerning the informal tripartite consultations held on 19–20 February 2013, 317th Session of the Governing body, 7 March 2013, para. 19. [Annex No.5].

regarding the right to strike, as well as the mandate and functioning of the various bodies of the ILO supervisory system, to no avail[56].

3.27. On 12 July 2023, the workers vice chairperson of the Governing Body addressed a letter to the Director-General, formally requesting that the long-standing dispute be referred urgently to the ICJ in accordance with article 37(1) of the ILO Constitution.[57] The 349th *bis* (Special) Session of the Governing Body on 10 November 2023 was devoted to an in-depth discussion with a view to making an informed decision on that request, which had been supported by 36 governments.[58] The ILO Governing Body eventually adopted a resolution referring the matter to the ICJ, and recalling the serious and persistent disagreement and its implications for the functioning of the supervisory system and the credibility of the ILO as a standard setting organisation.[59]

---

[56] See GB.322/INS/5, The standards initiative: Follow-up to the 2012 ILC Committee on the Application of Standards, October 2014 [Document No. 34]; Minutes of the 322nd Session of the Governing Body, October–November 2014, paras 47–209 [Document No. 35]; GB.323/INS/5, The Standards Initiative, March 2015 [Document No. 36]; Minutes of the 323rd Session of the Governing Body, March 2015, paras 51–84 [Document No. 37]; GB.344/INS/5, Work plan on the strengthening of the supervisory system: Proposals on further steps to ensure legal certainty and information on other action points in the work plan, February 2022 [Document No. 38]; Minutes of the 344th Session of the Governing Body, March 2022, paras 136–199 [Document No. 39]; and GB.347/INS/5, Work plan on the strengthening of the supervisory system: Proposals on further steps to ensure legal certainty, February 2023 [Document No. 40]

[57] Letter of the Worker Vice-Chairperson of the ILO Governing Body to the ILO Director-General, dated 12 July 2023 [Document No. 5].

[58] *Ibid.*; Letter of the Permanent Representative of Spain to the International Organizations in Geneva to the ILO Director-General transmitting a letter on behalf of the EU Member States and Iceland and Norway, dated 14 July 2023 [Document No. 6]; Letter of the Minister of Labor and Employment of Brazil to the ILO Director-General, dated 13 July 2023 [Document No. 7]; Letter of the Minister of Employment and Labour of the Republic of South Africa to the ILO Director-General, dated 14 July 2023 [Document No. 8]; Letter of the Minister of Labour, Employment and Social Security of Argentina to the ILO Director- General, dated 14 July 2023 [Document No. 9]; Letter of the Employer Vice-Chairperson of the ILO Governing Body to the ILO Director-General, dated 2 August 2023 [Document No. 10]; Letter of the Ambassador and Permanent Representative of Barbados to the United Nations Office at Geneva to the ILO Director-General, dated 4 August 2023 [Document No. 11]; Letter of the Minister of Labour of Colombia to the ILO Director-General, dated 10 August 2023 [Document No. 12]; Letter of the Minister of Labour of Ecuador to the ILO Director-General, dated 25 August 2023 [Document No. 13]; Note Verbale No. 185/MP-ANG/GEN/2023 of the Permanent Mission of the Republic of Angola, dated 6 September 2023 [Document No. 14]; Letter of the Swiss Federal Councillor and Head of the Federal Department of Economic Affairs, Education and Research to the ILO Director-General, dated 6 September 2023 [Document No. 15]; Letter signed by 14 regular Employer members of the ILO Governing Body to the Chairperson of the Governing Body, dated 12 September 2023 [Document No. 16]; Note Verbale Z-2023/62441669/36640282 of the Permanent Mission of the Republic of Türkiye, dated 22 September 2023 [Document No. 17].

[59] Draft Minutes of the 349th *bis* (Special) Session of the Governing Body, November 2023 [Document No. 31].

Chapter 4. The right to strike of workers and their organisations is protected under Convention No. 87 according to the principles of interpretation enshrined in the Vienna Convention on the Law of Treaties

4.1. For more than 60 years after Convention No. 87 entered into force on 4 July 1950, the employers' group did not challenge the accepted shared understanding that the convention protects the right to strike as part of freedom of association. During the Cold War, the employers and workers groups had acted together to oppose repression of trade union rights in the Soviet bloc. But as the Cold War ended, that solidarity began to fray.[60] Still, the employers' group continued to generally respect the accepted understanding until the start of the International Labour Conference in May 2012.

4.2. As explained above, that year, the employers' group challenged the long-standing interpretation of Convention No. 87 as protecting the right to strike. It posited that the rules of interpretation enshrined in Article 31 of the VCLT do not support the conclusion that Convention No. 87 includes the right to strike, because the convention does not use the words "right to strike" *in haec verba*.

4.3. The employers' group further argued that the subsequent practice in relation to other international instruments does not establish the right to strike as customary international law, but only as a right regulated by national laws and regulations.[61]

4.4. Referring to Article 32 of the VCLT, the employers' group also argued that supplementary means of interpretation, including the *travaux préparatoires,* did not indicate that Convention No. 87 intended to include the right to strike.

4.5. None of these arguments appear to be founded. The ITUC submits that the right to strike is inherent in Convention No. 87 upon a good faith interpretation of the convention according to the ordinary meaning of its terms (Section A). This also accords with the subsequent practice of States Parties to Convention No. 87 (Section B) and the relevant rules of international law applicable in their relations (Section C). Finally, this is confirmed by

[60] See generally, J. VOGT, J. BELLACE *et al.*, *The Right to Strike in International Law*, Oxford, Hart Publishing, 2020, pp. 9-11.
[61] *Ibid.,* pp. 4-6.

supplementary means of interpretation, including the preparatory work of Convention No. 87 (Section D).

4.6. As a preliminary matter, there appears to be a consensus that Convention No. 87 should be interpreted in accordance with the rules of treaty interpretation enshrined in Articles 31-32 of the VCLT.[62] While the VCLT is not applicable as such to treaties concluded before it entered into force such as Convention No. 87, many rules of the VCLT are declaratory of customary law.[63] With regard to treaty interpretation specifically, as the Court consistently held, "it is well established that Articles 31 and 32 of the Vienna Convention reflect rules of customary international law".[64] Further, Article 5 of the VCLT also expressly confirms that the "Convention applies to […] any treaty adopted within an international organization without prejudice to any relevant rules of the organization". Since Convention No. 87 is a "treaty adopted within" the ILO, an international organisation, the rules of interpretation in Articles 31-32 of the VCLT are applicable.[65]

4.7. Pursuant to Articles 31-32 of the VCLT, and as the Court has consistently confirmed, Convention No. 87 will be interpreted by reference, first, to the elements set out in Article 31 of the Vienna Convention, which states the general rule of treaty interpretation. Only then will

[62] IOE, Comments to the background report prepared by the Office titled "Action to be taken on the request of the Workers' group and 34 governments to urgently refer the dispute on the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87), in relation to the right to strike to the International Court of Justice for decision in accordance with article 37(1) of the Constitution", dated 6 October 2023, p. 9 [Document No. 23].

[63] See *Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 7, paras. 46 and 99; J. ALVAREZ, *International Organizations as Law-Makers,* Oxford, OUP, 2006, p. 83; H. THIRLWAY, "Law and Procedure of the International Court of Justice", *BYBIL*, 1991, p. 3; A. AUST, *Modern Treaty Law and Practice,* Cambridge, CUP, 2023, p. 11.

[64] *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. 71, at p. 95, para. 75, citing *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2019 (II)*, p. 598, para. 106; *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I)*, pp. 320-321, para. 91; *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, *Preliminary Objections, Judgment, I.C.J. Reports 2016 (I),* p. 116, para. 33.

[65] See ITUC, *The Right to Strike and the ILO: The Legal Foundations*, March 2014, p. 69 [Annex No. 6].

it be made reference to the supplementary means of interpretation provided for in Article 32 in order to confirm the meaning resulting from that process.[66]

4.8. Accordingly, the primary and dominant rule of treaty interpretation is a good faith reading of the text. It is the role of the interpreter to elucidate the parties' intention by reference to the text and not any other extraneous circumstances. The interpretation of the provisions of Convention No. 87 in accordance with the general rule in Article 31 does not create any ambiguity or result in an interpretation that is absurd or unreasonable. Accordingly, as further detailed in Section D, it is only in order to confirm and corroborate the meaning arrived at pursuant to Article 31 that the Court should have recourse to the supplementary means in Article 32.

A. The right to strike is inherent to Convention No. 87 according to the ordinary meaning of its terms

4.9. The right to strike of workers and their organisations is protected upon a good faith interpretation of Convention No. 87 in accordance with both the ordinary meaning of the Convention's terms in their context and in the light of the Convention's object and purpose.

4.10. As the Court has consistently held, "[i]nterpretation must be based above all upon the text of the treaty".[67] The primacy of text is justified because it is in almost all cases the best evidence of the parties' intention.[68] Generally, under Article 31(1) of the VCLT, Convention No. 87 "shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the [convention] in their context and in the light of its object and purpose", provided that, pursuant to Article 31(4) of the VCLT, "[a] special meaning shall be given to a term if it is established that the parties so intended".

---

[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. 71, at pp. 95-96, para. 76, citing *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Preliminary Objections, Judgment, I.C.J. Reports 2018 (I),* p. 321, para. 91; *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.

[67] *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. 98, para. 81; *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, *I.C.J. Reports 1994*, p. 22, para. 41.

[68] J. CRAWFORD, "A consensualist Interpretation of Article 31 (3) of the Vienna Convention on the Law of Treaties" in G. NOLTE *et al.* (eds.), *Treaties and Subsequent Practice,* Oxford, OUP, 2013, pp. 29, 31.

4.11. As the Court has held several times, "[t]he Court's interpretation must take account of all these elements considered as a whole".[69] The interpretative tools in Article 31(1) are not discrete technical rules to be applied singularly. Instead, they must be seen as an interlinked group of propositions designed to be taken as a whole and as a guide to the interpreter on how to find the meaning that best represents the intention of the parties. In other words, there is no formal hierarchy on how the propositions in Article 31(1) are to be applied; but the interpretation must be arrived at through an accumulation of the application of the criteria in Article 31(1). In practice, it is the terms whose ordinary meaning is to be ascertained that are the starting point, as informed by the context, with the entire text being further illuminated by the treaty's object and purpose.[70]

4.12. Accordingly, after setting out the definitions of the material terms (Subsection1), this section analyses the ordinary meaning of those terms, both in their context (Subsection 2), and in view of the Convention's overall object and purpose (Subsection 3), and upon a good faith and effective interpretation of the convention (Subsection 4).

1. Material terms under Convention No. 87

4.13. The employers' group has argued that "to meet the criterion 'the ordinary meaning to be given to the terms of the treaty', the words 'right to strike' or similar terms would have to use [*sic*] in C87, which is not the case".[71] This very premise is factually and legally false. Upon a textual reading of Convention No. 87, the right to strike of workers and their organisations is clearly protected. Specifically, under Articles 2 and 3(1), read together with Article 10, *workers* have the right to strike based on the right of *their organisations* to organise and plan for strikes with a view to furthering and defending workers' interests. Accordingly, the analysis below

---

[69] *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. 71, at p. 96, para. 78; see also *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, *Preliminary Objections, Judgment, I.C.J. Reports 2017*, p. 29, para. 64.

[70] R. GARDINER, *Treaty Interpretation*, 2nd edition, Oxford, OUP, 2015, p. 162.

[71] IOE, Comments to the background report prepared by the Office titled "Action to be taken on the request of the Workers' group and 34 governments to urgently refer the dispute on the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87), in relation to the right to strike to the International Court of Justice for decision in accordance with article 37(1) of the Constitution", dated 6 October 2023, p. 9 [Document No. 23].

primarily focuses on the right to strike of workers' organisations. As mentioned, this subsection first sets out the material terms giving rise to such right and focuses on their definitions.

4.14. As a starting point, Article 2 provides that "[w]orkers and employers [...] shall have the right to establish and [...] to join organisations of their own choosing". In turn, the term "organisation" is given a specific meaning in Article 10 – the only definitional clause in Convention No. 87 – as follows:

> "In this Convention the term organisation means any organisation of workers or of employers for furthering and defending the interests of workers or of employers."

Under these provisions read together, workers thus "have the right to establish and [...] to join organisations" "for furthering and defending the interests of workers".

4.15. Next, and more pertinent to the right to strike of workers' organisations, Article 3(1) specifies the right of these organisations as follows:

> "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."

4.16. Apart from "organisation", none of these words are specifically defined. It is therefore convenient to first examine the "natural and ordinary meaning of the words employed in the provision", being mindful that any such meaning is subject to "spirit, purpose and context of the clause or instrument in which the words are contained" as further discussed in the subsequent subsections.[72]

4.17. Here, the natural meaning of the terms "organise their [...] activities" and "formulate their programmes" under Article 3(1) in particular clearly covers *collective action*, which includes industrial action (strikes), as explained below.

4.18. The literal meaning of the word "activities" is, in the relevant sense, "[s]omething which a person, animal, or group chooses to do; an occupation, a pursuit"; "[a]n operation, an active

---

[72] *South West Africa, Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 336.

force".[73] Similarly, the word "*activité*" means, in the relevant sense, "*exercice ou manifestation concrète de ce pouvoir*".[74]

4.19. The verb "organise" means, in the relevant and transitive sense, "[t]o coordinate or manage the activities of (a group of people)". This is distinguished from, but is also closely linked to, its intransitive sense (as in the titular "right to organise"): "[t]o become coordinated, attain an orderly structure; spec. (of a political body, esp. a trade union) to form; to put in place an administrative structure; to plan organised action."[75] When these terms are read together, it is clear that the "activities" that workers' organisations are entitled to "organise" are *collective* activities or action.

4.20. The word "programme" means, *inter alia*, "a definite plan or scheme of any intended proceedings; an outline or abstract of something to be done".[76] Further, the French text of Article 3(1) leaves no doubt that it is not any programme, but the "*programme d'action*" which workers' organisations are entitled to "formulate" (that is, to plan). Here, too, it must specifically mean plans of *collective* action rather than individual action.

4.21. Indeed, the possessive adjective "their" qualifying both "activities" and "programmes" refers to "[w]orkers' […] organisations". Similar to Article 2 regarding workers' right, this reference in Article 3(1) also directly incorporates the special meaning given to the term "organisation" under Article 10. In other words, this does not just refer to any workers' organisations generally, but specifically those whose purpose is "furthering and defending the interests of workers". Thus, the "natural and ordinary meaning of the words employed in the provision", namely "their activities" and "their programmes", clearly covers the *activities and programmes of workers' organisations for furthering and defending the interests of workers*. As further discussed in Subsection 4 below, it is only reasonable and effective that the "activities" and "programmes" of a workers' organisation cover the means to achieve its very designated objective.

4.22. In the natural and ordinary usage, "strike" (*grève*) is a form of collective action organised and planned by workers' organisations so as to further and defend the interests of

[73] Oxford English Dictionary, "activity (n.)", senses 3.a, 3.b, September 2023, available on www.oed.com.
[74] Centre National de Ressources Textuelles et Lexicales, available on www.cnrtl.fr..
[75] Oxford English Dictionary, "organize (v.)", sense 2.c, March 2024, available on www.oed.com (emphasis added).
[76] Oxford English Dictionary, available on www.oed.com.

workers. The literal meaning of "strike", in the relevant sense, is "a refusal to work organised by a body of employees as a form of protest, typically in an attempt to gain a concession or concessions from their employer".[77] Similarly, the natural meaning of "*grève*" is the "*[c]essation collective du travail pour la défense d'intérêts communs*".[78]

4.23. This is also in line with common legal usage. For instance, Article 28 of the Charter of Fundamental Rights of the European Union expressly refers to the right of "workers and employers, or their respective organisations" to "take collective action to defend their interests, including strike action". Similarly, the European Court of Justice has also used the terms "collective action" and "strike" interchangeably.[79]

4.24. As the CEACR consistently observed, "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".[80] Therefore, subject to the limitations in other provisions of the Convention (discussed below),[81] the right of workers' organisations under Article 3(1), read together with Article 10, must include the right to organise strikes and to plan for strikes for the defence of the rights and interests of workers.

4.25. In contrast, it is the employers' interpretation that is inconsistent with the ordinary meaning of the terms. As the Permanent Court already held in *Postal Service in Danzig*, the text of a treaty must be given no more and no less than its ordinary meaning; "limitations or restrictions" that do not follow from the text itself cannot be read into the text of the treaty stipulations.[82] The employers' argument – that the ordinary meaning excludes right to strike because that term is not used –essentially seeks to *exclude* strikes from the "activities" and "programmes" that a workers' organisation is entitled to "organise" and "formulate". This carve-out is inconsistent with the terms of Convention No. 87. In particular, by denying workers and their organisations the central means that they can use to further and defend their interests,

---

[77] Oxford Dictionary of English, available on www.oed.com.

[78] Multidictionnaire de la langue française, available on www.multidictionnaire.com.

[79] See, *e.g.*, the judgments CJEC, *Case C-438/05, International Transport Workers' Federation, Finnish Seamen's Union v. Viking Line ABP* (2007) [Document No. 321]; CJEC, *Case C-341/05, Laval Un Partneri Ltd v. Svenska Byggnadsarbetareförbundet* (2007) [Document No. 322].

[80] ILC, 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, para. 147 [Document No. 234].

[81] Articles 8, 9.

[82] *Polish Postal Service in Danzig, P.C.I.J., advisory opinion of 16 May 1925, collection of advisory opinions, Series B, No. 11*, p. 37.

it would deprive Article 10, which specifically defines the raison d'être of workers' organisations, of any meaning. This is because, as the CEACR observed,

> "[a] general prohibition of strikes constitutes a considerable restriction of the opportunities opened 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 organize their activities."[83]

4.26. Having set out the material terms and their definitions, the next subsection examines their contextual meaning informed by other terms and texts.

2. Ordinary meaning of the material terms in their context

4.27. Read in its context, the ordinary meaning of the material terms, particularly the expression "organise their […] activities and […] formulate their programmes", must include strikes. In this regard, the employers' group has adopted a limited view of "context" in insisting that "neither the Preamble nor the text of the ILO Constitution and of the Declaration of Philadelphia expressly or impliedly include the right to strike, nor even the right to organise".[84] This claim has no merits.

4.28. First, as a threshold matter, the ITUC submits that the relevant context includes both the entire text of Convention No. 87, as well as that of related instruments such as the ILO Constitution and the Declaration of Philadelphia.

4.29. Under Article 31(2) of VCLT, "[t]he context for the purpose of the interpretation of a treaty shall comprise", as a starting point, "the text, including its preamble and annexes".

4.30. Thus, in the case of an international labour convention, context also includes Part XIII of the Treaty of Versailles – the Constitution of the ILO. In *Employment of Women During the*

---

[83] ILC, 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, pp. 44–45, para. 107 [Document No. 233]; See, *e.g.*, ILC, 101st Session, 2012, Report III (Part 1B), *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, pp. 46–65 [Document No. 236].

[84] IOE, Comments to the background report prepared by the Office titled "Action to be taken on the request of the Workers' group and 34 governments to urgently refer the dispute on the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87), in relation to the right to strike to the International Court of Justice for decision in accordance with article 37(1) of the Constitution", dated 6 October 2023, p. 10 [Document No. 23].

Night, for example, the Permanent Court specifically referred to "[t]he words used in the preamble and operative articles of Part XIII" in interpreting the Convention on Night Work of Women (noting that the word "workers" in Part XIII was not limited to manual workers).[85]

4.31. Second, the employers' argument implies that in order for the ordinary meaning of the material terms to include the right to strike, the context must somehow refer to the right to strike. This is not what the well-established rule of contextual interpretation provides.

4.32. Indeed, the core principle has not changed since the Permanent Court's second advisory opinion on the *Competence of the ILO to Regulate Agricultural Labour* of 1922. There, the Permanent Court had to interpret Part XIII of the Treaty of Versailles, which provided for the establishment of a "permanent organisation" for the protection of the right of workers,[86] without expressly mentioning agriculture. The Permanent Court first stressed the importance of the terms read in context:

> "[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 determined merely upon particular phrases which, if detached from the context, may be interpreted in more than one sense."[87]

4.33. Specifically, the Permanent Court faced and rejected the contention that agriculture was beyond the scope of Part XIII due to the words "*industrie*" and "*industriel(le)*" used in certain clauses in Part XIII, which purportedly referred to manufactures rather than agricultural industry.[88] After surveying the dictionary definitions of the two words, the Permanent Court held that "the context", namely "the position in which these words are found and the sense in which they are employed in Part XIII", confirmed that their meaning covered agricultural industry. The Permanent Court noted that, for example, the preamble and other parts of Part XIII used broad words such as "*travail*" and "*professionnelle(s)*" rather than *industrie* and *industrielle*.[89]

[85] *Interpretation of the Convention of 1919 concerning Employment of Women during the Night*, *Advisory Opinion of 15 November 1932, P.C.I.J., Series A/B, No. 50,* pp. 375-376.
[86] *Competence of the ILO in regard to International Regulation of the Conditions of Labour of Persons Employed in Agriculture, Advisory Opinion of 12 August 1922, P.C.I.J., Collection of Advisory Opinions, Series B*, p. 21; see also Treaty of Versailles, arts. 387, 388 et seq.
[87] *Competence of the ILO in regard to International Regulation of the Conditions of Labour of Persons Employed in Agriculture, Advisory Opinion of 12 August 1922, P.C.I.J., Collection of Advisory Opinions, Series B*, p. 23.
[88] *Ibid.,* p. 33.
[89] *Ibid.,* pp. 33-39.

4.34. Overall, based on the "expressed design to establish a *permanent labour organisation*" in Section I of Part XIII, the Permanent Court rejected the argument that agriculture, which is, beyond all question, the most ancient and the greatest industry in the world, employing more than half of the world's wage-earners, was to be considered as left outside the scope of the International Labour Organisation because it was not expressly mentioned by name.[90]

4.35. Here, the context leaves no doubt that the ordinary meaning of "organise their […] activities" and "formulate their programmes" includes strikes. For reasons detailed below, the Court should dismiss the argument that striking – which is beyond all question a quintessential activity of workers' organisations – is to be considered outside the scope of Convention No. 87 merely because it is not expressly mentioned by name. Specifically, there are three relevant elements of context of the phrase "organise their […] activities and […] formulate their programmes" in Article 3(1), all of which confirm that its ordinary meaning includes the right to strike: namely Article 3(1) read as a whole (a); the reference to the autonomy of workers and their organisations under Articles 2 to 9 (b); and the use of the qualifier "*syndical(e)*" in the equally authoritative French version of the convention (c).

a. Article 3(1) as a whole

4.36. The phrase "to organise their […] activities and to formulate their programmes" must be interpreted in the "immediate context" of Article 3(1) as a whole. As set out above, Article 3(1) also protects the right of workers' organisations "to organise their administration", "to draw up their constitutions and rules", and "to elect their representatives in full freedom". The immediate context of Article 3(1) confirms that the ordinary meaning of "organise their […] activities" and "formulate their programmes" includes strikes, on two bases.

4.37. First, these other enumerated rights are compatible with the ordinary meaning of the phrase "organise their […] activities and […] formulate their programmes" as including strikes. The right of a trade union to organise its administration is clearly broad enough, in its ordinary meaning, to encompass the establishment of such administrative arrangements as the union may deem appropriate to regulate its affairs, including to initiate, support, encourage, fund, and "administer" strikes. By the same token, the broadly phrased right to draw up constitutions and rules also means, in its ordinary meaning, that unions have the right to draw up constitutions

[90] *Ibid*., pp. 23, 25.

providing that their objects may be achieved by organising and supporting strikes and prescribing the conditions under which such strikes may be organised or supported. Indeed, this is what unions' constitutions commonly provide.[91]

4.38. Second, more importantly and significantly, all the enumerated rights in Article 3(1) are couched in broad generic terms, none of which contain or have appended to them any explicit limitation. The breadth of these terms is incompatible with any interpretation of Article 3(1) that excludes strikes from the "activities" that workers' organisations are entitled to organise. Quite the contrary, it explains why strike is not expressly named in Article 3(1). Indeed, it would be at odds with this broad framing if every single activity or programme in which a workers' organisation was allowed to engage, including strike action, were to be specifically named in Article 3(1).

b. Autonomy of workers and their organisations under Articles 2 to 9

4.39. In fact, not only are the rights of workers' organisations under Article 3(1) broadly stated, but workers and their organisations in general enjoy a high degree of autonomy under Articles 2 to 9, which further confirms that the ordinary meaning of these terms must be wide enough to cover strikes.

4.40. On the one hand, the provisions of Convention No. 87 that confer rights to workers and their organisations do so in broad terms. For example, Article 2 emphasises workers' right to establish and join organisation "of their own choosing without previous authorisation", while Article 3(1) unreservedly emphasises the "full freedom" in the election of representatives of workers' organisations. As the ILO supervisory bodies such as the CEACR and CFA have pointed out, the right of workers' organisations to organise their activities and formulate their programmes is "one aspect" of the "autonomy of workers' and employers' organisations

---

[91] See *e.g.* 2023 constitution of the Canadian Labour Congress (CLC), article 2(5) [Annex No. 7]; 2016 statutes of the Confédération Générale du Travail (CGT, France), article 1 [Annex No. 8]; 9th quadrennial delegates congress (2012) of the Ghana Trades Union Congress (GTUC), point 3.3 [Annex No. 9]; 2015 acuerdos del XI congreso confederal Zaragoza, (CNT, Mexico), section 2, article 33(f), p. 31 [Annex No. 10]; 2023 constitution of the New Zealand Council of Trade Unions (NZCTU), point 1.2.2 [Annex No. 11]; Confederaciones Obreras, Anexo a los Estatutos de la CS de CCOO (Confederación Sindical de Comisiones Obreras, Spain), pp.104-105 [Annex No. 12]; 2024 constitution of UNITE the Union (United Kingdom), Rule 2.1.2, [Annex No. 13].

explicitly protected under the Convention".[92] In turn, this autonomy necessarily entails the right of workers organisations to take collective action such as strikes in appropriate circumstances.

4.41. On the other hand, the breadth of the rights conferred under Article 3(1) and the high degree of autonomy enjoyed by workers and their organisations are juxtaposed with the strict language on the interference, restriction, or impairment of such rights. This stark contrast further confirms that the right of trade unions to "organise their […] activities" and "formulate their programmes" must not exclude strikes.

4.42. First, and most immediately, this is seen in Article 3(2) of Convention No. 87, which provides that "[t]he public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."

4.43. Second, similarly, Article 4 prohibits the suspension and dissolution of trade unions by administrative authority, whereas Article 7 prevents the acquisition of legal personality from being abused as a tool to circumvent Articles 2 to 4.

4.44. Third, this is confirmed more broadly in Article 8 (concerning all the rights contained in the convention). While Article 8(1) provides that "workers and their […] organisations […] shall respect the law of the land" in exercising their rights, Article 8(2) equally provides:

> "[t]he law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention."

4.45. Fourth, in fact, Article 9, which concerns the possible exclusion of the armed forces and the police, is the only provision in Convention No. 87 specifying that the extent to which the guarantees of the Convention apply "shall be determined by national laws and regulations".

4.46. Overall, the high degree of freedom enjoyed by workers and their organisations evidenced in these provisions is a further context confirming that the ordinary meaning of the terms in Article 3(1) encompasses the right to strike, while militating against the narrow interpretation to the contrary.

---

[92] See, *e.g.*, ILC, 108th Session, 2019, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, General Report, para 28 [Document No. 239].

c. The qualifier "*syndical(e)*"

4.47. More broadly, the terms of Article 3(1) must also be understood in the entire context of the convention, which is directed to the principle of freedom of association generally, but also the freedoms and rights of *trade unions* in particular. The latter is highlighted by the qualifier "*syndical(e)"* in the French version.

4.48. First, Article 3(1) – together with all of the articles mentioned above – are situated in Part I, entitled "Freedom of association" or, in French, "*Liberté syndicale*". Second, the Convention itself is entitled "Freedom of Association and Protection of the Right to Organise Convention", or "*Convention sur la liberté syndicale et la protection du droit syndical*".

4.49. Third, similarly, the preamble to Convention No. 87, in its second substantive paragraph, refers to the International Labour Conference having adopted "certain proposals concerning freedom of association and the protection of the right to organise", or "*diverses propositions relatives à la liberté syndicale et la protection du droit syndical*". *Fourth*, the preamble of the ILO Constitution (expressly referred to and recited in the third preambular paragraph of Convention No. 87) also refers to the "recognition of the principle of freedom of association", or "*l'affirmation du principe de la liberté syndicale*".

4.50. The specific choice of the term "*syndical"* in Convention No. 87 and the ILO Constitution contextualises the *trade union* character of the "freedom of association" generally and the right of trade unions to "organise their […] activities" and "formulate their programmes" under Article 3(1) specifically. In the natural and common usage, "*syndical*" simply means "*[r]elatif à un syndicat*" ; in turn, a "*syndicat*" is a "*[g]roupe de travailleurs qui s'unissent pour défendre leurs droits et leurs intérêts*". Once again, this object aligns with and is indeed fulfIlled by means of "*grève*", being the "*[c]essation collective du travail pour la défense d'intérêts communs*".[93] Thus, just as agriculture is a quintessential labour, strikes are a quintessential trade union activity. It would be absurd to argue that a trade union's "activities" and "*programme d'action*" somehow exclude strikes.

[93] Multidictionnaire de la langue française, available on www.multidictionnaire.com.

3. Ordinary meaning of the material terms in light of the object and purpose of Convention No. 87

4.51. Contrary to the employers' argument, the object and purpose of Convention No. 87 – the recognition of the principle of freedom of association as a means to improve conditions of labour– do not leave any doubt that the ordinary meaning of the material terms includes the right to strike.

4.52. There appears to be no dispute that, apart from context, the ordinary meaning of a term is also ascertained in light of the treaty's purpose. As the Court held in *LaGrand*, it will not adopt an interpretation that is "contrary to the object and purpose" of the treaty or of the provision to be interpreted.[94] While this overlaps with the principle of effectiveness and good faith applicable to the interpretation of the Convention as a whole, this subsection first sets out the relevant objects and purposes of Convention No. 87 which inform the ordinary meaning of the phrase "to organise their [...] activities and to formulate their programmes" in Article 3(1).

4.53. According to the employers' group, however, the convention was not to regulate the right to strike, relying on preparatory work of Convention No. 87.[95] The employers have both misstated and misapplied the interpretive rule.

4.54. First, the employers' interpretation is fundamentally and fatally affected by their reliance on preparatory work. Under the general rule of interpretation in Article 31(1) of the VCLT, the object and purpose of a treaty are found first and foremost in the text and not in what the employers identify as the preparatory work of that treaty. Absent a specific provision, a useful starting point in ascertaining the object and purpose of a treaty is its preamble.[96] Moreover, the object and purpose of Convention No. 87 can also be found in the related instruments referenced in its preamble, including the ILO Constitution (previously Part XIII of the Treaty of Versailles) and the 1944 Declaration of Philadelphia mentioned above.

4.55. Second, the employers' group is wrong in suggesting – albeit under the guise of an acknowledgment – that "the 'object and purpose' of Convention No. 87 was to regulate freedom

[94] *LaGrand (Germany* v. *United States of America)*, *Judgment, I.C.J. Reports 2001,* p. 503, para. 102.
[95] IOE, Comments to the background report prepared by the Office [...], dated 6 October 2023, pp. 9-10 [Document No. 23].
[96] See, *e.g.*, *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, *Judgment, I.C.J. Reports 2002,* p. 625, at p. 652, para. 51.

of association and the right to organize" *only*, *without more*.[97] This convenient tautology naturally begs the question: but what is freedom of association and the right to organise *for*? As already seen in the previous subsection, the third preambular paragraph of Convention No. 87 refers to the preamble to the ILO Constitution, reciting that:

> "[t]he Preamble to the Constitution of the International Labour Organisation declares "recognition of the principle of freedom of association" to be a means of improving conditions of labour […]"[98]

4.56. The "conditions of labour" were more fully encapsulated in the preamble to the Treaty of Versailles, Part XIII, as part of the wider object of "social justice". It is worth quoting the relevant preambular paragraphs in full which make clear that the convention recognises freedom of association in order to improve the conditions of labour:

> "Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;
>
> And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, *recognition of the principle of freedom of association*, the organization of vocational and technical education and other measures;"

4.57. In other words, freedom of association is not an abstract object in a vacuum, but "a means of improving conditions of labour". It is a means to do so by enabling workers to form organisations "for furthering and defending the interests of workers". Therefore, the "activities"

---

[97] IOE, Comments to the background report prepared by the Office […], dated 6 October 2023, p. 10 [Document No. 23].

[98] Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) [Document No. 120].

and "programmes" of action that workers' organisations are entitled to organise and formulate under Article 3(1) must include those by which such conditions could be improved. As the CEACR consistently observed,

> "[t]he right to strike is one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests. These interests not only have to do with better working conditions and pursuing collective demands of an occupational nature, but also with seeking solutions to economic and social policy questions and to labour problems of any kind which are of direct concern to the workers."[99]

4.58. In sum, Convention No. 87's object and purpose of protecting freedom of association as a means of improving the conditions of labour and furthering and defending the interests of workers necessarily confirm that the ordinary meaning of the material terms includes the right to strike. Any contrary interpretation would frustrate the convention's object and purpose, as discussed immediately below.

4. Good faith and effective interpretation of Convention No. 87

4.59. More generally, a good faith interpretation and application of Convention No. 87 as a whole further confirms that the right to strike is an inherent corollary of the freedom of association under the convention. The employers' interpretation to the contrary is unreasonable and would deprive the convention of any practical effect.

4.60. The inclusion of good faith in Article 31(1) of the VCLT directs the manner in which the interpretation should be carried out. More broadly, good faith also demands that any interpretation and application of a treaty be reasonable, with a view to the realisation of its purpose. In the *Gabcikovo-Nagymaros* case, in the context of the application of a treaty, the Court observed that:

> "[i]t 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

[99] ILC, 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, para. 147 [Document No. 234].

obliges the Parties to apply it in a reasonable way and in such a manner that its purpose can be realized."[100]

4.61. Moreover, a good faith interpretation of the treaty ought to lead to the overall effectiveness of the provision when viewed against the objects and purpose of the treaty.[101] In its commentary on the draft articles on the law of treaties, the International Law Commission stated:

> "[w]hen a treaty is open to two interpretations one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation should be adopted."[102]

4.62. The Court has held that the interpretation it adopts must not "be contrary to one of the fundamental principles of interpretation of treaties, consistently upheld by international jurisprudence, namely that of effectiveness".[103] Provisions of a treaty instrument cannot be interpreted in a way that means that they are "deprived of all practical effect".[104] This applies equally in the context of the ILO. As the Permanent Court stated in *Personal Work of the Employer*, the Court, "in determining the nature and scope of a measure, must look to its practical effect rather than to the predominant motive that may be conjectured to have inspired it".[105] Thus, in deciding whether Convention No. 87 protects the right to strike, the Court must be guided by its practical effect.

4.63. Assuming that Convention No. 87 were "open to two interpretations" – one that protects the right to strike and another that does not – the principles of good faith and effectiveness demand that the former be adopted. The former interpretation is reasonable and "does […] enable [Convention No. 87] to have appropriate effects" because, as explained in the foregoing subsection, strikes are an indispensable means of workers and their organisations to improve

---

[100] *Gabčikovo-Nagymaros Project (Hungary/Slovakia)*, *Judgment, I.C.J. Reports 1997,* p. 79, para. 142.

[101] *Interpretation of Peace Treaties, Second Phase, Advisory Opinion, I.C.J. Reports 1950,* p. 221, at pp. 227, 229.

[102] *Yearbook of the International Law Commission, 1966,* vol. II, p. 219, para. 6.

[103] *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994,* p. 25, para. 51; See also *Case Concerning 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*, p. 70, para. 134; *Article 3, para 2 of the Treaty of Lausanne, Advisory Opinion of 21 November 1925, P.C.I.J., collection og advisory opinions, Series B, No 12, p. 28.*

[104] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971,* p. 35, para. 66.

[105] *Competence of the International Labour Organisation to Regulate, Incidentally, the Personal Work of the Employer*, *Advisory Opinion of 23 July 1926, P.C.I.J., collection of advisory opinions, Series B, No. 13,* p. 19.

the conditions of labour and further and defend their interests. The latter interpretation is unreasonable and would deprive the convention of practical effect.

4.64. First, any contrary proposition that there is no right to organise a strike because it is not *specified* in Article 3(1) – as one of the activities a trade union has the right to organise, or one of the programmes of action it is entitled to formulate – is plainly unreasonable. Under this contrary interpretation, although Article 3(1) confers trade unions and employers' associations the right to organise activities and formulate programmes *in general*, it nevertheless does not protect the right to organise any specific activity or formulate any specific programme. This contrary interpretation would also mean that protection of Articles 3(2) and 8 would not be available against the public authorities of a State Party which chose to ban, restrict or impede union(s) from undertaking strikes, or indeed *any* specified activity or programmes. This would deprive freedom of association under Convention No. 87 of any value, meaning or effect, and would be manifestly absurd.

4.65. Indeed, the rights to hold meetings, to collect dues, to access workplaces, among others, are not expressly mentioned in the convention. Yet, one could hardly imagine the freedom of association to be effective if those activities were to be prohibited. The fact that they are not expressly mentioned in Convention No. 87 cannot mean they are not protected. The same is true of strikes.

4.66. Second, the contrary interpretation would deprive Convention No. 87 of any practical effect and would frustrate its object and purpose. Without the potential to organise strike action, in most situations, workers' organisations would have no leverage to defend the economic and social interests of workers, which is their raison d'être under Article 10, nor improve the conditions of labour, which is the object and purpose of Convention No. 87. Removing the right to strike from the protection of the convention would deprive that treaty of any practical effect.

*

4.67. When all the elements (ordinary meaning of the terms in their context, in light of the convention's object and purpose, and in good faith) are taken as a whole, it is clear that Convention No. 87 generally and Article 3(1) (read together with Article 10) specifically enshrine the right of workers' organisations to organise and plan for strikes. As a corollary, this necessarily protects the right of workers to take part in the strikes so organised by their

organisations. It shall now be seen that this is further confirmed by the subsequent practice of States Parties to Convention No. 87.

B. The inherent link between the right to strike and freedom of association as protected by Convention No. 87 is confirmed by the subsequent practice of States Parties

4.68. According to Article 31(3)(b) of the VCLT,

> "[t]here shall be taken into account, together with the context […] any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation."

4.69. As stated, the customary character of Article 31 is well-established.[106] In accordance with Article 31(3)(b), subsequent State practice in the application of Convention No. 87 must therefore be taken into account in its interpretation.

4.70. As also stated, the rules of interpretation found in the different paragraphs of Article 31 must be read "according to an overall logic"[107] rather than in a hierarchical order. Thus, what prevails is a cumulative application of the principles identified in Article 31. Accordingly, the Court has used subsequent State practice to confirm the ordinary meaning of treaty terms, in their context and in the light of the treaty object and purpose.[108]

4.71. Villiger describes subsequent State practice in the application of the treaty as one of the forms of "authentic interpretation whereby all parties themselves agree on (or at least accept) the interpretation of the treaty terms by means which are extrinsic to the treaty. As a result, the

[106] See *ia. Legality of Use of Force (Serbia and Montenegro v. Belgium), Preliminary Objections, Judgment, I.C.J. Reports 2004*, p. 279, para. 100; *LaGrand (Germany v. United States of America), Judgment, I.C.J. Reports 2001*, p. 466, para. 99; *Case concerning Kasikili/Sedudu Island (Botswana/Namibia), Judgment, I.C.J. Reports 1999*, p. 1045, paras. 18, 47-50.

[107] *J.-M. Sorel, V. Bore-Eveno,* "Article 31 (1969)", *in* O. Corten, P. Klein (eds.), *The Vienna Conventions on the Law of Treaties. A Commentary*, Oxford, OUP, 2011, p. 807; see also M. E. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, Leiden, Brill, 2008, p. 435, para. 29; *Yearbook of the Internatinoal Law Commission,* 1966, vol. II. p. 219, para. 8 and p. 220, para. 9.

[108] *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 625, para. 80; see also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 392, para. 42; *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion, *I.C.J. Reports 1996*, p. 66, para. 27; *Immunities and Criminal Proceedings (Equatorial Guinea v. France), Judgment, I.C.J. Reports 2020*, p. 300, para. 69.

parties' authentic interpretation of the treaty terms is not only particularly reliable, it is also endowed with binding force."[109]

4.72. Relying on the rules of interpretation enshrined in Article 31 of the VCLT,[110] members of the employers' group seem to argue that practice is lacking to demonstrate States Parties' agreement that the right to strike is protected under Convention No. 87, due to the variety of rules regarding industrial action applicable within the different ILO Member States.[111] There is no dispute that the right to strike is exercised according to various modalities within different national legal systems. The ILO supervisory system has over the years developed a comprehensive corpus of principles to ensure that those modalities are in conformity with freedom of association protected under Convention No. 87. In doing so, the supervisory bodies never asserted that the right to strike is an absolute right. To the contrary, they have established precise limits to its scope. Neither have the supervisory bodies claimed that the modalities of exercise of the right should be uniform in all Member States. However, the supervisory bodies have consistently affirmed that the existence of the right was provided for by the convention. A fact that has, contrary to the employers' argument, continuously and uniformly been confirmed by subsequent state practice.

4.73. In summary, as set out below, the subsequent practice of States Parties to Convention No. 87 in its application confirms and reinforces the conclusion reached in Section A, namely that freedom of association protected under the Convention includes the right to strike. Indeed, the practice of States Parties, expressed both collectively (Subsection 1) and individually (Subsection 2), confirms that States Parties to Convention No. 87 have continuously understood the right to strike to be an inherent component of freedom of association.

---

[109] M. E. VILLIGER, *Commentary on the 1969 Vienna Convention on the Law of Treaties*, Leiden, Brill, 2008, p. 429.

[110] International Organisation of Employers (IOE), Position Paper – Do ILO Conventions 87 and 98 Recognize a Right to Strike?, October 2014, p. 10 [Annex No. 14], available at: https://www.ioe-emp.org/fileadmin/ioe_documents/publications/Policy%20Areas/international_labour_standards/EN/_2014-11-03__IOE_Paper_on_the_Right_to_Strike_in_Conventions_87_and_98__final_web_and_print_.pdf.

[111] A. WISSKIRCHEN, "The standard-setting and monitoring activity of the ILO: Legal questions and practical experience", *International Labour Review*, Vol. 144 (2005), No. 3, p. 284.

1. Collective State practice confirms that the right to strike of workers and their organisations is protected under Convention No. 87

4.74. In the *Wall* advisory opinion, the Court considered "that it is appropriate for it to examine the significance of [Article 12 of the UN Charter], having regard to the relevant texts and the practice of the United Nations"[112]. It emphasised thereby the importance of the practice of international organisations for the interpretation of treaties governing the functioning of these organisations or adopted under their auspices. Such reference is particularly relevant in the present case. State practice in the application of ILO conventions is indeed primarily manifested, collectively, within the ILO structure. More specifically, due to its tripartite nature,[113] ILO's supervisory system has been an important means for States to express their views regarding the rights protected by ILO conventions, including those protected by Convention No. 87. The practice of ILO supervisory bodies in this respect shows that States Parties have consistently recognised the right to strike to be an inherent component of freedom of association, as protected under Convention No. 87.

4.75. Accordingly, this section first focuses on the collective practice of States Parties in the application of Convention No. 87. This collective practice is mainly to be found in the decisions of the tripartite supervisory body which has competence concerning freedom of association, namely the Committee on Freedom of Association (CFA) (Subsection a). It is also evidenced by the States Parties' endorsement of the findings of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) (Subsection b) as well as by their participation in the tripartite ILO Conference and the 2015 tripartite meeting on Convention No. 87 (Subsection c).

a. Collective State practice within the tripartite CFA

4.76. As described above,[114] the CFA is a tripartite body, composed of representatives of Governments and of the workers' and employers' groups, chaired by an independent chairperson. Its mandate consists in "determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in

---

[112] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 25.

[113] See *supra*, Chapter 3, Section B.

[114] See *supra,* Chapter 3, Section B.

the relevant Conventions"[115]. Thus, the CFA is the tripartite ILO organ competent for examining the compliance of national practice and legislation with the principles of freedom of association, as enshrined in the ILO Constitution and in Convention No. 87. Importantly, the CFA "always endeavours to reach unanimous decisions."[116] Therefore, the conclusions reached by the CFA concerning the application of Convention No. 87 reflect the practice of ILO Member States, expressed collectively.

4.77. Importantly, the role of the CFA in interpreting the right to strike is confirmed by the national case law of States Parties to Convention No. 87. In a 2015 judgment, the Supreme Court of Canada for instance explained that

> "[t]hough not strictly binding, the decisions of the Committee on Freedom of Association have considerable persuasive weight and have been favourably cited and widely adopted by courts, tribunals and other adjudicative boards around the world, including our Court […] The relevant and persuasive nature of the Committee on Freedom of Association jurisprudence has developed over time through custom and practice and, within the ILO, it has been the leading interpreter of the contours of the right to strike."[117]

4.78. The CFA receives complaints from organisations of workers or employers or from governments[118] and its conclusions are compiled and published within the *Compilation of decisions of the Committee on Freedom of Association.*[119] In 1952 – a year after its inception – the CFA affirmed that "[t]he right to strike and that of organising union meetings are essential elements of trade union rights […]"[120] in a case concerning the United Kingdom, a State Party to Convention No. 87. Since then, a great number of the cases it has dealt with – more than

---

[115] Compendium of rules applicable to the Governing Body of the International Labour Office, Annex II, Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association, para. 14 [Document No. 90].

[116] Compendium of rules applicable to the Governing Body of the International Labour Office, Annex II, Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association, para. 11 [Document No. 90].

[117] Supreme Court of Canada, *Saskatchewan Federation of Labour v. Saskatchewan*, Case No. 2015 CSC 4 (2015), para. 69 [Document No. 342].

[118] Compendium of rules applicable to the Governing Body of the International Labour Office, Annex II, Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association, para. 31 [Document No. 90].

[119] ILO, *Compilation of decisions of the Committee on Freedom of Association*, sixth edition, 2018, pp. 143–182 [Document No. 282].

[120] CFA, Case No. 28 (United Kingdom of Great Britain and Northern Ireland), Complaint date: 01-JUL-51, Definitive Report - Report No 2, 1952, para. 68 [Annex No. 15].

3,400 to this date – have concerned the protection of the right to strike.[121] In those decisions, the CFA has consistently reaffirmed that the right to strike is protected under ILO standards, including by Convention No. 87.

4.79. Indeed, the CFA repeatedly stated that the right to strike constitutes a legitimate[122] and essential[123] means for workers and their organisations to defend their economic and social interests. The CFA could not have been clearer when it confirmed that this right "is an intrinsic corollary to the right to organize protected by Convention No. 87"[124]. Accordingly, in various cases the CFA has considered whether restrictions imposed by States on the right to strike in their national legal systems were in conformity with the principle of freedom of association and Convention No. 87. In so doing, the CFA has never questioned the existence of the right to strike under Convention No. 87. Rather, in the observations it has made through the years, the CFA has recognised the right and developed its precise scope and definition.

4.80. In its practice, the CFA has defined principles regarding:

- the accepted objectives of strikes,[125]
- the type of strike actions that should be allowed,[126]
- the adequate representant of the employer side during negotiations,[127]
- the prerequisites that could legitimately be imposed on the organisation of a strike,[128]
- principles regarding the limitation of the duration of a strike,[129]
- the circumstances that could legitimately justify a restriction on or a prohibition of the right to strike.[130]
- situations in which minimum service may be imposed,[131]
- responsibility for declaring a strike illegal,[132]
- suspension of a strike,[133]

---

[121] ILO, *Compilation of decisions of the Committee on Freedom of Association*, sixth edition, 2018, pp. 143–182 [Document No. 282].
[122] *Ibid.,* para. 752**.**
[123] *Ibid.,* para. 753.
[124] *Ibid.,* para. 754.
[125] *Ibid.,* paras. 758-782.
[126] *Ibid.,* paras. 783-786.
[127] *Ibid.,* paras. 787-788.
[128] *Ibid.,* paras. 789 – 814; 816-823.
[129] *Ibid.,* para. 815.
[130] *Ibid.,* paras. 824 – 863.
[131] *Ibid.,* paras. 864 – 906.
[132] *Ibid.,* paras. 907 – 913.
[133] *Ibid.,* paras. 914 – 916.

- back-to-work orders, the hiring of workers during a strike, requisitioning orders,[134]
- interference by the authorities during the course of the strike,[135]
- police intervention during the course of the strike,[136]
- pickets,[137]
- wage deductions,[138]
- sanctions,[139]
- discrimination in favour of non-strikers,[140]
- and, closure of enterprises in the event of a strike.[141]

4.81. In determining its scope, the CFA systematically conceived the right to strike as an inherent component of freedom of association and the right to organise.

b. States Parties endorsement of the CEACR's findings

4.82. As stated above, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) was established in 1926 by the Governing Body, following a resolution adopted by the International Labour Conference to appoint a technical committee "for the purpose of making the best and fullest use" of the information provided by governments regarding the measures they take to give effect to the conventions they have ratified.[142] This mandate consists in examining the conformity of States' laws and practice with ILO conventions.[143]

4.83. A few years after the first CFA decisions, the CEACR developed principles concerning the modalities of the right to strike, "essentially taking into consideration the principles

[134] *Ibid.,* paras. 917 – 926.
[135] *Ibid.,* paras. 927 – 929.
[136] *Ibid.,* paras. 930 – 935.
[137] *Ibid.,* paras. 936 – 941.
[138] *Ibid.,* paras. 942 – 950.
[139] *Ibid.,* paras. 951 – 975.
[140] *Ibid.,* para. 976.
[141] *Ibid.,* paras. 977 – 978.
[142] ILC, 8th Session, 1926, Record of Proceedings, Appendix VII: Resolution concerning the methods by which the Conference can make use of the reports submitted under Article 408 of the Treaty of Versailles, p. 429 [Document No. 73].
[143] GB.320/LILS/4, The Standards Initiative: Follow-up to the 2012 ILC Committee on the Application of Standards, March 2014 [Document No. 83].

established by the Committee on Freedom of Association".[144] Thus, the CEACR followed the emerging practice of the CFA, a tripartite body where States are represented. In its 1959 general survey, the CEACR established that a prohibition of the right to strikes of workers "other than public officials acting in the name of the public powers […] may sometimes constitute a considerable restriction of the potential activities of trade unions".[145] Since then, it has constantly affirmed that "the right to strike is one of the essential means available to workers and their organizations to promote their economic and social interests" and that a general prohibition of the right to strike would violate Convention No. 87.[146]

4.84. Practice shows that the findings of the Committee regarding the right to strike are widely accepted by States Parties to Convention No. 87. First, the "individual cases relating to national provisions regulating strikes" are examined by the CEACR "most frequently without being challenged by the governments concerned, which generally adopt measures to give effect to the comments of the Committee of Experts."[147] Second, the annual reports of the Committee are submitted to the Governing Body and to the Conference.[148] In that context, States Parties to Convention No. 87 have consistently endorsed the Committee's interpretation of that treaty. This is for instance the case of the EU Member States which recently stated:

> "We also express our support to the Committee of Experts' reaffirmation of the right to strike being an intrinsic component and logical consequence of the freedom of association and the right to organize, as defined in the Freedom of

[144] ILC, 101st Session, 2012, Report III (Part 1B), *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, pp. 46–65, para. 117 [Document No. 236].

[145] ILC, 43rd Session, 1959, Report III (Part IV), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 101–129, para. 68 [Document No. 232].

[146] ILC, 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, pp. 43–47, para. 107 [Document No. 233]; ILC, 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, pp. 58–70, para. 191, 200, 205 [Document No. 234]; ILC, 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, pp. 61–78, para. 148, 151 [Document No. 235]; ILC, 101st Session, 2012, Report III (Part 1B), *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, pp. 46–65, para. 117 [Document No. 236].

[147] ILC, 101st Session, 2012, Report III (Part 1B), *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, pp. 46–65, para. 122 [Document No. 236] (emphasis added).

[148] ILO, *Handbook of procedures relating to international labour Conventions and Recommendations*, 2019, para. 63 [Document No. 59].

> Association and Protection of the Right to Organise Convention, 1948 (No. 87). We fully respect and support the independence and impartiality of the experts, which is a crucial aspect of the strength of the ILO's supervisory system."[149]

c. Collective State practice within the ILO Conference and the 2015 tripartite meeting on Convention No. 87

4.85. Even more widely, *collective* State practice regarding Convention No. 87 is also found within the ILO Conference composed of governments', workers' and employer's delegates of the ILO Member States. In a 1957 Resolution (adopted by 89 votes to 56, with 26 abstentions), the Conference called upon the ILO Member States to "adopt laws […] ensuring the effective and unrestricted exercise of trade union rights, including the right to strike, by the workers, and to guarantee the application of these laws in practice", considering notably Convention No. 87[150]. In 1972, the Conference adopted a Resolution *concerning the Policy of Colonial Oppression, Racial Discrimination and Violation of Trade Union Rights Pursued by Portugal in Angola, Mozambique and Guinea (Bissau),* in which it condemned violations of ILO standards, particularly those recognised by Conventions Nos. 87 and 98, including the right to strike:

> "Noting that in the areas of Angola, Mozambique and Guinea (Bissau) still under its rule the Government of Portugal is applying Portuguese trade union legislation which is in open and flagrant contradiction with the letter and spirit of ILO standards, in particular the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Considering that the workers of Angola, Mozambique and Guinea (Bissau) are thereby denied basic trade union rights including, above all, the right to set up free and democratic trade unions and to join them, the right of assembly, the right to elect their officers freely *and the right to strike*"[151]

---

[149] ILC, 109th Session, 2021, Government (Portugal), speaking on behalf of the European Union and its Member States, 8 July 2021, ILC.109/Record No.6C, pp. 10-11 [Annex No. 16].

[150] ILC, 40th Session, 1957, Resolution concerning the Abolition of Anti-Trade Union Legislation in the States Members of the International Labour Organisation [Document No. 133].

[151] ILC, 57th Session, 1972, Resolution concerning the Policy of Colonial Oppression, Racial Discrimination and Violation of Trade Union Rights Pursued by Portugal in Angola, Mozambique and Guinea (Bissau) [Document No. 137] (emphasis added).

4.86. This resolution, which was adopted by 211 votes in favour (0 against, 84 abstentions), confirms that ILO Member States, including those which ratified the convention, collectively recognise that the right to strike is protected under Convention No. 87.

4.87. Finally, governments participating in a three-day tripartite meeting in February 2015 issued a common statement in which they once again clearly reaffirmed that the right to strike, although not absolute, is an intrinsic corollary of the right to freedom of association, protected under Convention No. 87:

> "The 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*."[152]

4.88. This view was reiterated by the government group during the discussions in the Governing Body:

> "Speaking on behalf of the Government group, a Government representative of Italy said that the group recognized that the right to strike was linked to freedom of association which was one of the ILO fundamental principles and rights at work. The group also recognized that, without protecting a right to strike, freedom of association, and in particular the right to organize activities for the purpose of promoting and protecting workers' interests, could not be fully realized."[153]

4.89. The same position has been expressed individually by numerous States Parties to Convention No. 87, from different regions of the world, both within and outside the ILO.

---

[152] GB.323/INS/5/Appendix I, The Standards Initiative, Outcome of the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level, March 2015, para. 4 [Document No. 106] (emphasis added).

[153] GB.323/INS/5/Appendix II, The Standards Initiative, Final report of the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level, March 2015, para. 10 [Document No. 107].

2. Individual State practice confirms that the right to strike of workers and their organisations is protected under Convention No. 87

4.90. Individual State positions adopted both within (Subsection a) and outside (Subsection b) the ILO confirms the universality of the understanding that the right to strike is an inherent corollary to the freedom of association.

a. Governments' positions taken individually within ILO bodies

4.91. In the context of the ILO supervisory procedures, States are called upon to send their observations. Those observations shared in the context of procedures before the CFA (Subsection i), commissions of inquiry established to address issues relating to the right to strike (Subsection ii), and the CAS (Subsection iii) evidence their individual practice in the application of Convention No. 87 and demonstrate a broad consensus regarding its interpretation. Even after the 2012 incident created by the employers' group, States have consistently maintained their positions, including at the occasion of the 2015 tripartite meeting on the right to strike convened by the Governing Body (Subsection iv).

i. Individual State positions taken in the context of CFA procedures

4.92. The objective of the complaint procedure before the CFA is "to engage in a constructive tripartite dialogue to promote respect for trade union rights in law and practice".[154] Accordingly, States concerned by complaints brought before the CFA are requested to submit their observations.[155] It is here argued that although those States often contend that the right to strike is not absolute – a fact that is not disputed – and that their national policies are lawful restrictions to that right, they either explicitly recognise or implicitly accept the existence of the right to strike under Convention No. 87. This is evidenced by numerous observations of States Parties to Convention No. 87 as reflected in the reports of the CFA, which are adopted by consensus. Those observations are issued by a diversity of States from different regions of the world. The

[154] ILO, *Compilation of decisions of the Committee on Freedom of Association*, sixth edition, 2018, para. 3 [Document No. 282].

[155] Compendium of rules applicable to the Governing Body of the International Labour Office, Annex II, Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association, para. 52 [Document No. 90].

way in which they apply the convention, although in very different contexts, is uniform, leaving no doubt regarding its scope.

4.93. In case No. 3422, South Africa responded to the complaint that the national legislation unduly restricted the right of workers to organise secondary strikes with the following statement:

> "The Government provides a detailed account of the guarantees of labour rights, in particular the right to strike, in the national constitution (section 23), legislation (sections 64-66 LRA) and case-law, including the historical background of transition from apartheid to democracy. In this context, the Government refers also to the 1992 ILO Fact-Finding and Conciliation Commission (FFCC), which completed its report amidst the process of negotiation and transition to a democratic system. The Government indicates that in 1994, a Task Team was appointed to draft a Labour Relations Bill that would give effect to the commitment by the Government to ILO Conventions Nos 87, 98 and 111, and the findings of the FFCC, comply with the Constitution, and contain a recognition of fundamental organizational rights of trade unions. In relation to industrial action, the Task Team identified various deficiencies in the then-existing legislation, including its failure to give effect to the right to strike and recourse to lock-out; complicated and technical pre-strike procedures; the prohibition of socio-economic strikes and the ready availability of interdicts and damage claims.[156]

4.94. In case No. 2288 (Niger), the government justified the legal limitations to the right to strike of customs officials with reference to Convention No. 87:

> "In regard to the customs officials' case in particular, the Government states that the only option for industrial action available to these officials is work-to-rule, as the law considers customs officials to be covered by the provisions of Article 9 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which applies to the armed forces and the police. The Government, however, points out that it has entered into a consultation procedure with the social partners, with the aim of reviewing this legislation."[157]

[156] CFA, Case No. 3422 (South Africa), Complaint date: 07-MARCH-2022, Definitive Report - Report No 404, October 2023, para. 100 [Annex No. 17].

[157] CFA, Case No. 2288 (Niger), Complaint date: 17-JUN-03, Report in which the committee requests to be kept informed of development - Report No 333, March 2004, para. 822 [Annex No. 18].

4.95. Case No. 2413 (Guatemala) concerned the repression of protests organised against the signature of a free trade agreement. In this case, Guatemala clearly confirmed the inclusion of the right to strike under Convention No. 87:

> "As to the allegations relating to the stoppage and demonstration against the free trade agreement, the Government states in its communication dated 5 July 2005 that *Guatemalan legislation does not reduce the guarantees provided for in ILO Convention No. 87. The rights of trade unions (of employers and of workers) include the right to engage in work stoppages and strikes*, as regulated in the following articles of the Constitution: 104 for workers and employers in private enterprise and 116 for State employees, and subsequently regulated in the respective ordinary laws."[158]

4.96. In case No. 2897 (El Salvador), which concerned a strike ban imposed on workers in the judiciary branch of the state, the government provided the following response:

> "[w]ith regard to the strike ban imposed on public and municipal workers under article 221 of the national Constitution, the Government indicates that El Salvador has taken note of the observations of the ILO supervisory bodies so that the aforementioned article can be revised by the competent authorities in accordance with Convention No. 87."[159]

4.97. In case No. 2486 (Romania), the government referred to Convention No. 87 in order to justify the limitations on the right to strike provided for in its national law:

> "1192. In a communication dated 16 October 2006, the Government recalls that the Romanian Constitution states that "the law establishes the conditions and limits of the exercise of this right, as well as the guarantees necessary with a view to maintaining services that are essential to society". The exercise of the other rights and freedoms, including freedom of assembly, is still subject to the conditions set out by the Constitution and the law. *Convention No. 87 States that "In exercising the rights provided for in this Convention workers and employers and their respective organizations, like other persons or organized collectivities, shall respect the law of the land." In a democratic society, it is the authorities that ensure that the law is respected.*

[158] CFA, Case No. 2413 (Guatemala), Complaint date: 14-MAR-05, Interim Report - Report No 340, March 2006, para. 894 (emphasis added) [Annex No. 19].

[159] Case No 2897 (El Salvador), Complaint date: 05-JUL-11, Definitive Report - Report No 378, June 2016 para. 239 [Annex No. 20].

1193. The Government recalls that Act No. 168/1999, concerning the settlement of labour disputes, regulates in detail the procedure and conditions under which a strike may be called. If those conditions are not met, the authorities can declare a strike illegal or suspend it. […].”[160]

4.98. In case No. 2841 (France), it was argued that the requisition of staff on prefectural orders during industrial action in the oil sector in October 2010 respected the requirements of Convention No. 87, including the right to strike:

> “Regarding the analysis of the prefectural orders to establish whether or not they were in line with domestic law and with regard to ILO Conventions, the Government points out that the latter respond to the requirements set by article L. 2215-1, paragraph 4, of the CGCT. They are therefore in line with domestic law and respect the principles enshrined in Conventions Nos 87 and 98 with regard to freedom of association and collective bargaining. The Government recalls that in France the right to requisition workers is only allowed in exceptional circumstances, in the event of an actual or potential disturbance of public order. It also respects, de facto, the right to strike and to freedom of association, in accordance with the recommendations of the Committee on Freedom of Association which grant recourse to requisition in the most serious circumstances, or for essential services.
>
> […]
>
> Given the explanations provided, the Government states that it is neither demonstrated nor proven that the prefectural requisition orders issued against striking workers in the oil sector during the industrial action in October 2010 against pension reform infringe the provisions of ILO Conventions Nos 87 and 98, to which France is party.”[161]

[160] CFA, Case No. 2486 (Romania), Complaint date: 22-MAY-06, Interim Report - Report No 344, March 2007, paras. 1192-1193 [Annex No. 21] (emphasis added).

[161] CFA, Case No. 2841 (France), Complaint date: 17-FEB-11, Report in which the committee requests to be kept informed of development - Report No 362, November 2011, para 999 [Annex No. 22].

4.99. In case No. 2383 (United Kingdom of Great Britain and Northern Ireland), the government:

> "[s]tate[d] in summary that prison officers are public servants who exercise authority in the name of the State and/or are engaged in the provision of essential services. It is therefore permissible under Conventions Nos. 87 and 98 to prohibit them from taking strike action and, in any event, adequate measures have been taken to compensate them for this limitation on their freedom of association.
>
> […]
>
> Moreover, according to the Government, it does not follow from the fact that prison officers have a right to organize that they must also have a right to strike. There is no illogicality and it is indeed in conformity with freedom of association principles to hold that prison officers should be entitled to form and join trade unions and participate in trade union activities, as they are under United Kingdom law, whilst at the same time holding that they are not entitled to take strike action.[162]

4.100 In case No. 3439 (Republic of Korea), the government argued that

> "[…] its issuance of commencement of work orders and use of replacement of transport services in response to KPTU-TruckSol's "collective refusal to transport" were in conformity with the ILO Conventions Nos 87 and 98 and the principle of freedom of association. The Government indicates in this respect that the right to strike is not absolute and that the Committee on Freedom of Association (CFA) has held that back-to-work orders and replacement services may be applied in certain circumstances, in particular if the strike is in an essential service sector in the strict sense of the term or if it may cause an acute national crisis."[163]

4.101. In case No. 3124 (Indonesia), the government conducted an investigation into the issues raised in the complaint and specifically took into account Convention No. 87 to assess possible violations:

> "[i]n conclusion, the Government indicates that the Ministry of Labour, the Manpower Office of Tangerang City and the Tangerang City Police Department conducted an

---

[162] Case No 2383 (United Kingdom of Great Britain and Northern Ireland), Complaint date: 20-AUG-04, Report in which the committee requests to be kept informed of development - Report No 336, March 2005, para. 741 [Annex No. 23].

[163] CFA, Case No 3439 (Republic of Korea), Complaint date: 19-DEC-22, Report in which the committee requests to be kept informed of development - Report No 405, March 2024, para. 540 [Annex No. 24].

investigation into the issues raised in this case (lack of payment of wages, dismissal of union leaders after formation of a trade union, limitation on the right to strike, termination of employment after participation in strike and interference in trade union affairs) and concluded that these issues did not constitute a violation of Conventions Nos 87 and 98, as the allegations submitted by the complainant were found not to have violated Act No. 21 of 2000 on trade union/workers' union or Convention No. 87. The Government adds that employment issues started when the company suffered financial losses, which resulted in the suspension of the minimum wage and dismissal of workers, including trade union leaders, which in turn led to a strike. However, according to the Government, both the suspension of the minimum wages and the dismissals were done in accordance with the applicable procedures, including through negotiations with workers' representatives, as demonstrated by minutes of a bipartite meeting (attached), and were implemented prior to the registration of the workers' organization. The Government indicates that while employment issues have not yet been fully resolved, it has taken steps to settle these issues through deliberation between the management of the parent company and the workers' representatives."[164]

4.102. More cases concerning a variety of other States Parties to Convention No. 87 reaffirming the same principles could be referred to.[165] These examples confirm a general and consistent practice in the application of Convention No. 87 by States Parties, reflecting their conviction that the right to strike is an inherent component of freedom of association.

[164] CFA, Case No 3124 (Indonesia), Complaint date: 27-FEB-15, Report in which the committee requests to be kept informed of development - Report No 383, October 2017, para. 402 [Annex No 25].

[165] See for instance CFA, Case No 3079 (Dominican Republic), Complaint date: 28-MAY-14, Definitive Report - Report No 376, October 2015, para. 399 [Annex No. 26]; CFA, Case No 2587 (Peru), Complaint date: 10-JUL-07, Definitive Report - Report No 354, June 2009, para. 1053 [Annex No. 27]; CFA, Case No 2513 (Argentina), Complaint date: 30-JUL-06, Definitive Report - Report No 349, March 2008, para. 321 [Annex No. 28]; CFA, Case No 2650 (Bolivia (Plurinational State of)) - Complaint date: 07-MAY-08, Definitive Report - Report No 353, March 2009 para. 408 [Annex No. 29]; CFA, Case No 2770 (Chile), Complaint date: 27-MAR-10, Definitive Report - Report No 360, June 2011, para. 354 [Annex No. 30]; CFA, Case No. 3111 (Poland), Complaint date: 14-JAN-15, Definitive Report - Report No 378, June 2016, para. 697 [Annex No. 31]; CFA, Case No. 2496 (Burkina Faso), Complaint date: 29-MAY-06, Report in which the committee requests to be kept informed of development - Report No 344, March 2007, paras. 399 and 403 [Annex No. 32]; CFA, Case No. 2088 (Venezuela (Bolivarian Republic of)), Complaint date: 01-MAY-00, Effect given to the recommendations of the committee and the Governing Body - Report No 348, November 2007, para. 170. [Annex No. 33].

ii. Individual State positions taken in the context of commissions of inquiry

4.103. Similarly, in the context of procedures before commissions of inquiry under Article 26 of the ILO Constitution, established following complaints of non-observance of Convention No. 87, States have generally either expressly confirmed or not contested the existence of the protection of the right to strike under Convention No. 87. Each of the commissions that had to examine the observance of Convention No. 87 regarding the right to strike has confirmed that the right is protected under that treaty.[166]

4.104. The commission of inquiry established regarding the situation in Greece did not find a violation of Convention No. 87 regarding the right to strike. However, in its final report of 1971 it reaffirmed that an absolute prohibition of the right to strike would be contrary to the Convention:

> "The Commission observes that Convention No. 87 contains no specific guarantee of the right to strike. On the other hand, the Commission accepts that an absolute prohibition of strikes would constitute a serious limitation of the right of organisations to further and defend the interest of their members (Article 10 of the Convention) and could be contrary to Article 8, paragraph 2, of the Convention, under which " the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention ", including the right of unions to organise their activities in full freedom (Article 3)"[167]

4.105. Similarly, the commission of inquiry established in 1982 regarding the situation in Poland found that:

> "517. Convention No. 87 provides no specific guarantee concerning strikes. The supervisory bodies of the ILO, however, have always taken the view – which is shared by the Commission – that the right to strike constitutes one of the essential means that should be available to trade union organisations for, in accordance with Article 10 of the Convention, furthering and defending the interests of their members. *An absolute prohibition of strikes thus constitutes, in the view of the*

[166] List of complaints/commissions of inquiry (1934-to date) [Document No. 89].

[167] Report of the Commission of Inquiry appointed under article 26 of the 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 [Document No. 276].

> *Commission, a serious restriction on the right of trade unions to organise their activities (Article 3 of the Convention) and, moreover, is in conflict with Article 8, paragraph 2, under which "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for (by the Convention)".*"[168]

4.106. The commission established in 1987 regarding the situation in Nicaragua found that the restrictions imposed on the right to strike by the national Labour Code were in breach of Convention No. 87.[169]

4.107. The commission appointed in 2003 to examine the observance by the Government of the Republic of Belarus of Conventions Nos 87 and 98 stated that the prohibition of the use of foreign gratuitous aid for conducting actions, including strikes, was in breach of the right of workers' and employers' organisations to organise their own activities, protected by article 3 of Convention No. 87.[170]

4.108. The commission established in 2010 to examine the observance by the Government of Zimbabwe of Conventions Nos 87 and 98 confirmed that "the right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87". The commission concluded that the right to strike was not fully guaranteed in Zimbabwe due to disproportionate sanctions imposed on its exercise, the large definition of essential services limiting the right, the problematic procedure applicable to declare a strike as well as the intervention of security forces during strikes.[171]

---

[168] Report of the Commission instituted under article 26 of the 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 [Document No. 277] (emphasis added).

[169] Report of the Commission of Inquiry appointed under article 26 of the Constitution to examine the observance by Nicaragua of Conventions Nos 87, 98 and 144, *Official Bulletin*, vol. LXXIV, 1991, paras. 500–509 [Document No. 278].

[170] Trade Union Rights in Belarus, Report of the Commission of Inquiry appointed under article 26 of the Constitution to examine the observance by the Government of the Republic of Belarus of Conventions Nos 87 and 98, *Official Bulletin*, vol. LXXXVII, 2004, paras. 622–627 [Document No. 279].

[171] Truth, reconciliation and justice in Zimbabwe, Report of the Commission of Inquiry appointed under article 26 of the Constitution to examine the observance by the Government of Zimbabwe of Conventions Nos 87 and 98, *Official Bulletin*, vol. XCIII, 2010, paras. 572–575 [Document No. 280].

4.109. Finally, the Commission Towards Freedom and Dignity in Myanmar, established in 2022, found that

> "[…] the right to strike, as an essential means for workers to defend their interests, has been severely limited since the coup, both as a result of military orders restricting assemblies of more than five persons in public spaces and because of the significant risks and repercussions faced by strike participants, contrary to Article 3 of Convention No. 87."[172]

4.110. As already indicated, in their observations communicated in the context of those procedures, the States Parties concerned have generally either expressly confirmed the existence of the protection of the right to strike under Convention No. 87 or have not contested it.[173]

4.111. It is the case of Greece which argued:

> "36. Substantial limitations on the right to strike were, it was alleged, imposed by sections 3, 4 and 5 of Legislative Decree No. 185 and this right was in fact virtually suppressed. These provisions laid down, inter alia, that a strike for more than three days required the decision of the general assembly of a trade union and that even during a strike, trade unions were obliged to ensure the functioning of the basic installations of the workplace.
>
> In reply to this allegation the Government contended that the new provision prevented abuses in the exercise of the right to strike where the commencement of a strike was not decided by a competent body."[174].

---

[172] Towards Freedom and Dignity in Myanmar, 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 [Document No. 281].

[173] Regarding the Commission of Inquiry established to examine the situation in Zimbabwe, see GB.308/6/2, 308th Session, June 2010, para. 103 [Annex No. 34]; and ILC, 100th Session, 2011, Report of the Committee on the Application of Standards, p. 213 [Annex No. 35].
Regarding the Commission of Inquiry established to examine the situation in Myanmar, see GB.349/INS/14, 349th Session, October-November 2023, para. 8 and Appendix "Reply from the military authorities dated 29 September 2023", para. 2 [Annex No. 36].

[174] Report of the Commission of Inquiry appointed under article 26 of the 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, paras. 36-37; see also para. 192 [Document No. 276].

4.112. In other words, the Government did not argue that the right to strike was excluded from the scope of Convention No. 87 but rather that its national legislation was not in breach of the convention since its aim was to prevent abuses in the exercise of that very right.

4.113. Similarly, the Polish Government argued that:

> "445. […], the trade unions operate on the basis of their Constitutions prepared in accordance with the provisions of section 18 of the Trade Union Act. *The Constitutions refer as a rule to the ILO Conventions ratified by Poland, sometimes mentioning that the trade unions enjoy the rights deriving from these Conventions.* This is true, for example, of the Constitution of the Federation of Steelworkers' Unions, clause 5 of which provides that the Federation shall enjoy the rights guaranteed by the ILO Conventions that have been ratified by Poland. […]
>
> 446. With regard to the types of trade union activities, the Constitutions refer in particular to the organisation and carrying out of acts of protest, including strikes, in the event of infringement of the rights and interests of the workers, provision being made for the establishment of a strike fund. The Government gives as examples the Constitution of the Paper Workers' Union at Warsaw (clause 8), the Constitution of the Union of Workers in the Communications Equipment Works (WSK) at Okecie, Warsaw (clause 8), the Constitution of the Graphic Arts Workers' Union (clause 10, paragraph 1, concerning the right to actions of protest, including strikes, and paragraph 3, which provides for the setting up of a strike fund), the Constitution of the Federation of Unions of Workers in Coal Mines and Mining and Shaft-sinking Undertakings in the Coal Industry (clause 2, paragraph 3, which provides for the right to strike, and paragraph 4, which sets forth the types of strike: warning and actual strikes), the Constitution of the Federation of Workers' Unions in the Mechanical and Electro-mechanical Industries (clause 23, paragraph 3, concerning the strike fund) and the Constitution of the Federation of Miners' Unions (clause 22). Seventeen Constitutions of works and national trade union organisations are given in an annex to the report."[175]

[175] Report of the Commission instituted under article 26 of the 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, paras. 445-446 [Document No. 277] (emphasis added).

4.114.Only Belarus did not share the same view and stated:

> "In the Government's opinion, workers in Belarus enjoyed the right to strike. The Labour Code set out clear procedures in this regard. The Government further added that it did not agree that Convention No. 87 covered the right to strike and there were indeed different interpretations as to what international labour standards actually meant. The Government did not believe that it was the only constituent of the ILO to take this position."[176]

4.115. However, the latter has no impact on the uniformity of state practice in the application of Convention No. 87 as Belarus' statement cannot be considered to properly reflect the State's position. Firstly, previous to the commission of inquiry, Belarus had conceived the right to strike as a component of Convention No. 87 in the context of procedures before the CFA. Indeed, in case No. 1849, concerning restrictions on the right to strike of some categories of workers, the State did not contest the existence of the right under Convention No. 87.[177] What is more, in case No. 2090 the State argued that the restrictions on the right to strike were in conformity with Conventions Nos. 87 and 98, since they allowed workers to defend their interests by conducting strikes: "[...] *the Government believes that these provisions do not contravene Conventions Nos. 87 and 98 and fully guarantee the lawful workers' right to defend their economic interests through a strike*."[178]

4.116. Secondly, after the report of the commission of inquiry was noted by the Governing Body at its 291st session, the CFA was tasked with the following up of the implementation of the commission's recommendations.[179] In that context, the position of Belarus appears more nuanced regarding the right to strike. The State does not exclude *per se* the protection of the right to strike by Convention No. 87. Rather, it seems to question the extent of such protection. In that sense, Belarus stated that it had earlier expressed concerns

---

[176] Trade Union Rights in Belarus, Report of the Commission of Inquiry appointed under article 26 of the Constitution to examine the observance by the Government of the Republic of Belarus of Conventions Nos 87 and 98, Official Bulletin, vol. LXXXVII, 2004, para. 329 [Document No. 279].

[177] CFA, Case No 1849 (Belarus), Complaint date: 31-AUG-95, Report in which the committee requests to be kept informed of development - Report No 302, March 1996 [Annex No. 37].

[178] CFA, Case No 2090 (Belarus), Complaint date: 16-JUN-00, Interim Report - Report No 324, March 2001 para. 174 [Annex No. 38. (emphasis added)

[179] Governing Body, 294th Session, 339th Report of the Committee on Freedom of Association, GB.294/7/2, Geneva, November 2005, para. 4 [Annex No. 39].

“that neither the report of the Commission of Inquiry, nor the previous decisions of the ILO supervisory bodies indicated clearly which provisions of Decree No. 24 violate the provisions of Conventions Nos. 87 and 98. The right to strike is recognized by the national legislation. However, *the recognition of the right to strike and the procedure of conducting a strike are intrinsically different issues.* The Government considers that a general comment that the right to strike is one of the fundamental elements of the right to organize is insufficient to justify the reasoning of the supervisory bodies with regard to Decree No. 24. *The Decree by no means calls into question this right; it deals with one specific aspect – getting aid from abroad to conduct a strike.* The Government believes that neither Convention No. 87, nor Convention No. 98 regulate this issue.”[180]

4.117. In other words, the Government appears to imply that the specific question of foreign aid received to conduct strikes is not regulated by Convention No. 87, without prejudice to the protection of the right as such by the Convention. In later statements, the Government seems to indicate that the right to strike is limited to the settlement of collective labour disputes[181] or to demands of economic or social nature.[182]

4.118. It should also be noted that in June 2023, the 111th International Labour Conference adopted measures under an article 33 resolution to secure Belarus’s compliance with the recommendations of the commission of inquiry, confirming the commission’s interpretation of Convention No. 87 as protecting the right to strike.[183]

iii. Individual State positions taken in the context of the CAS

4.119. As detailed above,[184] the Conference Committee on the Application of Standards (“CAS”) is a tripartite committee of the International Labour Conference which considers the

[180] Governing Body, 298th Session, 345th Report of the Committee on Freedom of Association, GB.298/7/2, Geneva, March 2007, para. 82 [Annex No. 40] (emphasis added); see also: Governing Body, 303rd Session, 352nd Report of the Committee on Freedom of Association, GB.303/9/2, Geneva, November 2008, para. 58 [Annex No. 41].

[181] Governing Body, 344th Session, 398th Report of the Committee on Freedom of Association, GB.344/INS/15/2, Geneva, March 2022, para. 39 [Annex No. 42].

[182] Governing Body, 347th Session, 402nd Report of the Committee on Freedom of Association, GB.347/INS/17/2, Geneva, 13–23 March 2023, para. 23 [Annex No.43].

[183] ILC, 111th Session, 2023, Resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Belarus, [Annex No. 44]

[184] See *supra,* Chapter 3, Section B.

compliance of Member States with their obligations under the different ILO conventions.[185] Each year, the CAS is expected to examine a short-list of 25 cases drawn from the Committee of Experts' annual report. In this context, governments are asked to provide additional information to the CAS.

4.120. Before the unilateral blockade by the employers' group in 2012, the CAS discussed the right to strike on several occasions and, in this context, received observations from governments. Those observations do also reflect the practice of States Parties to Convention No. 87, prior to the 2012 disruption.

4.121. The government of the United Kingdom clearly confirmed as early as 1978 that it considered the right to strike to be an inherent component of the freedom of association under Convention No. 87 when it referred to:

> "[t]he right to strike, which, although not expressly laid down in Convention No. 87, was implied by the provision there for the right freely to organise activities a freedom which legislation such as the Labour Proclamation would limit. [The Government member of the United Kingdom] considered that the Government representative's statement that the Employers' Federation had not been dissolved but had simply disappeared by virtue of the socialist revolution illustrated well the point of view expressed by the Employers that, in an economic and social system such as Ethiopia's, employers' rights can no longer exist, demonstrating thus the incompatibility of the system with the tripartite structure of the ILO. "[186]

4.122.This view is shared by Norway:

> "[…] The Government member of Norway added that her country fully accepted the position of the Committee of Experts that the right to strike was a fundamental right protected under Convention No. 87."[187]

---

[185] Standing Orders of the International Labour Conference, Article 10 [Document No. 86].

[186] ILC, 64th Session, 1978, Report of the Committee on the Application of Standards, pp. 29/28-29/29 (Ethiopia) [Document No. 241].

[187] ILC, 101st Session, 2012, Report of the Committee on the Application of Standards, para. 90 [Document No. 268].

4.123. Other states have expressed the view that Convention No. 87 did not regulate its precise scope. Although those States indicated that additional instruments would be useful to clarify its content, they did not contest that the right to strike was protected by the convention.[188]

4.124. It is true that, in the 1970s and 80s, some States – specifically the USSR,[189] Ireland,[190] Uruguay[191] and the German Democratic Republic[192] - questioned the protection of the right to strike under Convention No. 87 in the context of the CAS. For instance, the USSR expressed the view that "it was doubtful whether ILO standards dealt with the right to strike".[193]

4.125. However, the position of those States has evolved since then. Indeed, in several later cases before the CFA, the Russian Government argued that the restrictions imposed on the right to strike under its national law were in conformity with "the international legal standards".[194] As for Ireland, the Supreme Court emphasised the link between freedom of association and the legitimacy of trade union activity – including industrial action – in a recent judgment of March 2024, although it did not directly refer to Convention No. 87.[195] In 2008, Uruguay argued that the right to strike was not absolute, but it did not deny that the right was protected under Convention No. 87.[196] Uruguay also justified national restrictions on the right to strike, arguing they were in line with "the declarations of the ILO's supervisory bodies regarding restrictions

---

[188] See ILC, 69th Session, 1983, Report of the Committee on the Application of Standards, para. 62 (Tunisia) [Document No. 265]. See also ILC, 79th Session, 1992, Report of the Committee on the Application of Standards, pp. 27/48-27/52 (Colombia) [Document No. 252].

[189] ILC, 64th Session, 1978, Report of the Committee on the Application of Standards, pp. 29/28-29/29 (Ethiopia) [Document No. 241].

[190] ILC, 65th Session, 1979, Report of the Committee on the Application of Standards, pp. 36/35-36/36 (Ireland) [Document No. 242].

[191] ILC, 68th Session, 1982, Report of the Committee on the Application of Standards, pp. 31/45-31/46 (Uruguay) [Document No. 243].

[192] ILC, 72nd Session, 1986, Report of the Committee on the Application of Standards, pp. 31/32-31/34 (Syrian Arab Republic) [Document No. 246].

[193] ILC, 64th Session, 1978, Report of the Committee on the Application of Standards, pp. 29/28-29/29 (Ethiopia) [Document No. 241].

[194] CFA, Case No. 2216 (Russian Federation), Complaint date: 12-AUG-02, Effect given to the recommendations of the committee and the Governing Body - Report No 334, June 2004 para. 54 [Annex No. 45]; see also CFA, Case No. 2216 (Russian Federation), Complaint date: 12-AUG-02, Effect given to the recommendations of the committee and the Governing Body - Report No 337, June 2005, para. 149 [Annex No. 46].

[195] Supreme Court of Ireland, *H. A. O'Neil Limited v. Unite the Union, Patrick James Goold, William Mangan and Damian Jones,* 2024, IESC 8, paras. 59, 62-63 [Annex No. 47].

[196] CFA, Case No. 2631 (Uruguay), Complaint date: 28-JAN-08, Definitive Report - Report No 353, March 2009, paras. 1349, 1352 [Annex No. 48].

on the right to strike"[197]. Finally, Germany also later expressed its view that the right to strike was enshrined in Convention No. 87:

> "As to its legal position with regard to Convention No. 87, the Government states that the position it adopted in its communication of 5 May 1993 concerns the scope of the Convention. The Government nevertheless wishes to clarify the reply it gave on 21 October 1992 to a question raised in the Bundestag. *The Government does not deny that the right to strike is essential to the freedom of action of trade unions and, in that sense, is implicitly recognized by the Convention, even if the text contains no reference to it.* The Government considers, however, that there is no justification for inferring from that Convention a detailed body of law on the right to strike which would be binding on States which have ratified it. It points out that it already made this position clear to the Committee on the Application of Standards at the International Labour Conference in June 1993."[198]

4.126. Thus, there is no doubt that before the unilateral blockage of the CAS by the employers, the matter appeared to be clearly settled. After 2012, States Parties have continued to support the protection of the right to strike under Convention No. 87 through their individual statements within the ILO.

iv. Individual State positions taken in the context of the Tripartite Meeting on Convention No. 87, in relation to the right to strike and the modalities and practices of strike action at national level

4.127. Since the unilateral action by the employers' group in 2012, it is notable that States Parties to Convention No. 87 have reaffirmed that the right to strike is an inherent component of freedom of association as protected under the convention at the occasion of the *Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level* held in Geneva in February 2015. This meeting was convened by the Governing Body, following the employers' blockage, as an attempt to address the controversial discussions surrounding the interpretation of Convention No. 87 and the functioning of the

---

[197] CFA, Case No. 1856 (Uruguay), Complaint date: 25-SEP-95, Report in which the committee requests to be kept informed of development - Report No 302, March 1996, para. 431, see also paras. 430, 434 [Annex No. 49]
[198] CFA, Case No. 1692 (Germany), Complaint date: 23-DEC-92, Definitive Report - Report No 291, November 1993, para. 217 [Annex No. 50] (emphasis added).

supervisory system more broadly.[199] As mentioned above, the participating States have collectively recognised "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."[200] In addition to that unequivocal collective statement, States individually expressed their position at this meeting.

4.128. The EU Member States, supported by the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden),[201] thus stated that

> "[t]he United Nations International Covenant on Economic, Social and Cultural Rights, 1966, in its Article 8(d), protected the right to strike. Some 140 countries had ratified both the Covenant and Convention No. 87. *The right to strike was thus a corollary of freedom of association, even though it was not mentioned explicitly in Convention No. 87*. However, it was not an absolute right, but could be governed by national law and practice.".[202]

4.129. Similarly, for Germany, "the right to strike was an essential part of Convention No. 87",[203] while France "welcomed signs of consensus, namely the recognition of the universal right to strike derived from Convention No. 87 and the implementation of a tripartite process for examining the modalities for the exercise of the right to strike."[204]. For its part, Mexico stated that "[w]hile the right to strike was not explicitly mentioned in Convention No. 87, it was protected under international law and should therefore be protected under the Convention.".[205] According to Panama, "[a]lthough not actually cited in Convention No. 87, [the right to strike] was protected thereunder."[206] Finally, for Argentina, "the right to strike was a human right

---

[199] GB.322/INS/5, The standards initiative: Follow-up to the 2012 ILC Committee on the Application of Standards, October 2014 [Document No. 34].

[200] GB.323/INS/5/Appendix I, The Standards Initiative, Outcome of the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level, March 2015, para. 4 [Document No. 106] (emphasis added).

[201] GB.323/INS/5/Appendix II, The Standards Initiative, Final report of the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level, March 2015, para. 15 [Document No. 107].

[202] *Ibid.*, para. 13 (emphasis added).

[203] *Ibid.,* para. 17.

[204] *Ibid.,* para. 18.

[205] *Ibid.,* para. 22.

[206] *Ibid*., para. 25.

within Convention No. 87".[207] No State expressed a different view at that tripartite meeting, nor did they outside of the ILO.

b. Individual State practice outside the ILO

4.130. States have consistently applied the same principles through their individual practice outside of the structure of the ILO. This is evidenced by numerous national judicial decisions in which States Parties' courts and tribunals applied Convention No. 87 – either directly or indirectly – and sometimes even referred to the decisions of the ILO supervisory bodies. Judgments of domestic courts and tribunals are relevant elements of subsequent practice as an authentic means of interpretation since they constitute "conduct in the application of a treaty, after its conclusion, which establishes the agreement of the parties regarding the interpretation of the treaty"[208].

4.131. Domestic courts in States Parties to Convention No. 87 have had to rule on numerous occasions – including very recently – on the constitutionality of national legislation restricting the right to strike as well as on the legality of specific strike actions. In their judgments concerning the right to strike, numerous national courts and tribunals have referred to Convention No. 87 as well as to the findings of the CFA and/or the CEACR, either by interpreting national provisions in light of the Convention, or by applying international law directly. Other national judicial decisions have linked the protection of the right to strike with freedom of association without expressly referring to Convention No. 87.[209] However, this section focuses on the decision whereby domestic courts of States Parties to Convention No. 87 have expressly referred to the convention.

4.132. In those cases, Convention No. 87 is either applied to recognise the protection of the right to strike under national law, or to establish its limits. However, national judges never negate the protection of the right to strike under Convention No. 87 *per se*. Rather, they systematically conceive this right as an inherent component of freedom of association.

---

[207] *Ibid*., para. 26.

[208] Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, with commentaries, *Yearbook of the International Law Commission,* 2018, vol. II, Part Two, Conclusion 4 and commentary para. 18.

[209] See for instance: Supreme Court of Ireland, *H. A. O'Neil Limited v. Unite the Union, Patrick James Goold, William Mangan and Damian Jones,* 2024, IESC 8, paras. 59, 62-63 [Annex No. 47].

i. Argentina

4.133. In a decision of 2016, the Supreme Court of Argentina reaffirmed that Convention No. 87 protects the right to strike:

> "[i]n this regard, it should be noted that Convention 87 – on freedom of association and protection of the right to organize – although it does not expressly mention the right to strike, does consecrate the right of ' workers ' organizations ' and employers ' to organize their administration and its activities and to formulate its program of action ' (Article 3) and establishes as object of said organizations ' to promote and defend the interests of workers or employers ' (Article 10). In support of these provisions, two bodies established to monitor the application of ILO standards, the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations have given wide recognition to this right, considering it as an indissociable corollary from freedom of association."[210]

ii. Botswana

4.134. In the case *Botswana Public Employees' Union and others v. Minister of Labour and Home Affairs and others*, the High Court of Lobatse declared the amendment of the schedule to the Trade Disputes Act that had broadened the definition of essential services – therefore limiting the protection of the right to strike – in breach of Section 13 of the Constitution which protects freedom of association. In interpreting Section 13 of the Constitution, the Court referred to ILO Conventions No. 87 and 98 as well as to the findings of the Committee of Experts. Specifically, it established that:

> "It is common cause that on the 22 December, 1997, Botswana ratified the Freedom of Association and Protection of the Right to Organize Convention (Convention No.87) and the Right to Organize and Collective Bargaining Convention (Convention No.98). […] Convention 87 confines "essential services for the purpose of limiting the right to strike, to "services the interruption of which would endanger life, personal safety or the health of part of or the whole population."
>
> […]

[210] Supreme Court of Argentina, *Orellano v el Correo Oficial de la República Argentina SA*, CSJ 93/2013 (49-0)/CS1, para. 11 [Annex No. 51] (unofficial translation)

> "Under international law, the right to freedom of association has attained the status of *ius cogens*. *The right to freedom of association in international law includes the right to strike.* It follows, in my view that if employees are free to associate and to bargain collectively, then the right to strike is necessarily implied in situations where collective bargaining fails to achieve the desired results."[211]

4.135. The Court thus accepted that Convention No. 87 protects the right to strike.

iii. Burkina Faso

4.136.In 2006, the Bobo-Dioulasso Appeal Court decided that a nationwide 48-hour strike was legitimate. To reach its decision, the Court interpreted national legislation in light of Convention No. 87 and the findings of the ILO Committee on Freedom of Association.[212]

iv. Canada

4.137. In its 2015 decision in the case *Saskatchewan Federation of Labour v. Saskatchewan*, the Supreme Court of Canada recognised that "the right to strike is constitutionally protected because of its crucial role in a meaningful process of collective bargaining"[213]. To reach that conclusion, the Court notably relied on Convention No. 87.[214] More specifically, the Court stated:

> "Although Convention No. 87 does not explicitly refer to the right to strike, the ILO supervisory bodies, including the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations, have recognized the right to strike as an indissociable corollary of the right of trade union associations that is protected in that convention."[215].

---

[211] High Court of Lobatse, *Botswana Public Employees' Union and others v. Minister of Labour and Home Affairs and others*, MAHLB-000674-11 (2012), paras. 221, 222 and 250 [Document No. 333] (emphasis added).

[212] Bobo – Dioulasso Appeal Court, Social Chamber, *Messrs Karama and Bakouan v. Société Industrielle du Faso (SIFA), No*. 035 (2006) [Document No. 330].

[213] Supreme Court of Canada, *Saskatchewan Federation of Labour v. Saskatchewan*, Case No. 2015 CSC 4 (2015), p. 51 [Document No. 342].

[214] Supreme Court of Canada, *Saskatchewan Federation of Labour v. Saskatchewan*, Case No. 2015 CSC 4 (2015), paras. 65-67 [Document No. 342].

[215] *Ibid.,* para. 67.

v. Colombia

4.138. In the 1999 case *Sindicato de las Empresas Varias de Medellín v. Ministry of Labour and Social Security*, the Ministry of Foreign Relations, the Municipio of Medellin and Empresas Varias de Medellín, the Constitutional Court of Colombia applied Convention No. 87 as well as the findings of the CFA and found that the dismissal of workers for participating in a strike was in breach of the national Constitution.

> "If the State is the employer, it is contrary to the principle of good faith in the fulfilment of the international commitments assumed by Colombia when ratifying ILO Conventions 87 and 98, for a governmental body to be the one to qualify the illegality of the strike, as this deprives the workers of a guarantee: to have access to an impartial third party to decide, when the conflict between them and their employer on the conformity of the strike with its legal regulation, cannot be settled by the parties." [216]

4.139. In 2008, the same Court had to decide on the constitutionality of the *Codigo Sustantivo del Trabajo (CST),* which limits the right to strike to economic and professional purposes only. The Court referred to Convention No. 87 and to the findings of the Committee of Experts and the CFA to interpret the contested provisions. Specifically, the Court followed the position taken by those bodies and concluded that

> "[i]n short, the ILO recognises the broad spectrum of the right to strike as a mechanism for achieving labour or trade union demands, provided that the collective suspension of work is related to the promotion and defence of workers' interests and not others of a different nature, such as those of a purely political nature."[217]

4.140. Consequently, the Court found that the provisions of the CST were constitutional, provided that economic and professional purposes of strike actions were interpreted broadly as including the expression of positions relating to social, economic or sectorial policy.[218]

[216] Constitutional Court of Colombia, Fourth Appellate Supervisory Chamber, *Sindicato de las Empresas Varias de Medellín v. Ministry of Labour and Social Security, the Ministry of Foreign Relations, the Municipio of Medellin and Empresas Varias de Medellín E.S.P.*, T-568/99 (1999) [Document No. 327].

[217] Constitutional Court of Colombia, Decision No. C-858/08 (2008), Section VI (4) (unofficial translation) [Document No. 332].

[218] Constitutional Court of Colombia, Decision No. C-858/08 (2008), Section VII [Document No. 332].

4.141. In turn, the Colombian Supreme Court of Justice referred to Convention No. 87 as well as the findings of the CFA in several cases to assess the legality of strike actions. It did so to justify the illegality of strike actions that had involved acts of violence,[219] or that had not respected the conditions established under national law.[220]

4.142. In 2020, the Supreme Court of Justice once again confirmed that the scope of the right to strike had to be considered in light of the findings of the CFA:

> "The Committee on Freedom of Association (CFA) and the Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the International Labour Organisation (ILO) have established that the right to strike is a fundamental right of workers, enabling them to assert and defend their interests. The jurisprudence of the ILO has established the basic principle that "the right to strike is one of the fundamental rights of workers and their organisations" which they can exercise in defence of their economic and social interests. In parallel, the CEACR has stated that "the right to strike is an essential means of action available to workers and their organisations to defend their interests" and therefore "constitutes a fundamental right" inseparable from the right to organise protected by Convention No. 87.
>
> Although the right to strike is not explicitly provided for in Convention No. 87, for more than half a century, the ILO supervisory bodies have taken it for granted that this right derives from Article 3 of Convention No. 87, which enshrines the right of workers and their organisations to "formulate their programme of action", and from Article 10, which states that the purpose of organisations is "to promote and defend the interests of workers".
>
> In the General Studies on Freedom of Association and the Protection of the Right to Organise, 1994, and on Fundamental Conventions, 2012, prepared by the CEACR, the CEACR has insisted that the right to strike is an inseparable corollary

---

[219] Supreme Court of Justice of Colombia, Employment Appeals Chamber (Sala de Casación Laboral), C*arbones de la Jagua S.A. v. National Union of Mining and Power Industry Workers (SINTRAMIENERGETICA),* Case No. 57731 (2013), p. 23 [Document No. 335].

[220] Supreme Court of Justice of Colombia, Employment Appeals Chamber (Sala de Casación Laboral), *CBI Colombiana S.A v. Petroleum Industry Workers' Trade Union (USO)*, Case No. 59420 (2013), p. 20 [Document No. 336]; Supreme Court of Justice of Colombia, *R y R. asociados S.A. v. National trade union of workers in the cork, plastics, polyethylene, polyurethane, synthetics, components and derivatives processing industry* (2014), p. 22 [Document No. 339].

of freedom of association, without which the latter would be nothing more than a rhetorical device, a postulate devoid of content. This is because "in order to promote and defend their interests, workers must have the means of action that allow them to exert pressure to achieve their demands".

It goes without saying that the Colombian State, as a member of the International Labour Organisation, must base its actions on the ratified conventions and their authentic interpretation by the ILO supervisory bodies (CFA and CEACR)".[221]

4.143.The Court added that:

> "It has been pointed out above that *the right to strike is a fundamental right deriving from Convention No. 87*, as considered by the ILO Committee on Freedom of Association and the ILO Committee of Experts on the Application of Conventions and Recommendations, which considered that it is a legitimate means of pressure available to workers and their organisations to defend their social and economic interests, without which freedom of association would be a mere rhetorical expedient."[222]

vi. Fiji

4.144. In a 2006 award, the Arbitration Tribunal in Fiji interpreted section 33 of the national constitution – which recognises the rights to form and join trade unions and the right to organise and bargain collectively in light of ILO Conventions No. 87 and 98. The Tribunal found that

> "[a]lthough the right to strike is not specifically referred to in the Constitution nor is it recognized in Conventions No. 87 and 98, the ILO's supervisory bodies have provided some guidelines on the subject. As a result *it is now accepted 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*". (Committee of Experts – General Survey 1983 paras 200 and 205). Consequently the Tribunal accepts that the right to strike is a right extended to workers under section 33 of the Constitution. The same section sets out certain

[221] Supreme Court of Justice (Colombia), Labour Cassation Chamber, *SL1680-2020, Radicación n.° 81296, Acta 22*, 24 June 2020, chapter 1.1, pp. 10-11. [Annex No. 52] (emphasis added) (unofficial translation).
[222] *Ibid.*, Chapter 2.a, pp. 26-27 (emphasis added) (unofficial translation).

circumstances which may enable a law to place limitations on the right to strike."[223]

vii. Nigeria

4.145. In 2014, the Industrial Court of Nigeria had to decide whether members of air transport trade unions had the right to strike. To do so, the Court directly applied Convention No. 87 that Nigeria had ratified. Referring to the findings of the CFA, the Court first recalled that "the right to strike and to organize union meetings are essential aspects of trade union rights".[224] The Court then found that air transport was not an essential service, referring to the definition established by the Committee of Experts on the Application of Conventions and Recommendations. Therefore, the Court decided that the trade unions members had the right to strike.

viii. Peru

4.146. The Constitutional Court of Peru found that the national Framework Law on Public Employment was in conformity with the Constitution, in spite of the fact that the law did not expressly recognise the right to organise, the right to collective bargaining and the right to strike for civil servants. To reach that conclusion, the Court explained that the list of rights protected under the national Framework Law on Public Employment was not exhaustive and that the extent of labour rights should be interpreted in accordance with the international treaties ratified by Peru, including Convention No. 87. Thus, the law had to be interpreted as also protecting the rights to organise, to collective bargaining and to strike.[225]

ix. Senegal

4.147. In 2013, the Constitutional Council of Senegal confirmed the prohibition of the right to strike for customs staff under national law. To justify such restriction on the right to strike, the Council notably referred to the findings of the CFA.[226] More precisely, it recalled that in case

---

[223] Arbitration Tribunal, *Fiji Electricity & Allied Workers Union v. Fiji Electricity Authority*, FJAT 62; FJAT Award 24 (2006) [Document No. 331].

[224] Industrial Court of Nigeria, *Aero Contractors Co. of Nigeria Limited v. the National Association of Aircrafts Pilots and Engineers, the Air Transport Senior Staff Association of Nigeria and the National Union of Air Transport Employees*, Case No. NICN/LA/120/2013 (2014), p. 18 [Document No. 340].

[225] Constitutional Court of Peru, *Juan José Gorriti and more than 5,000 citizens v. Congress of the Republic of Colombia*, Case No. 008-2005-PI/TC (2005), para. 50 [Document No. 329].

[226] Constitutional Council of Senegal, Case No. 2/C/2013 (2013), paras. 12-13 [Document No. 337].

No. 1719 the Committee had stated that the prohibition of strikes for customs workers, was not contrary to the principles of freedom of association.[227]

x. South Africa

4.148. In the case *NUMSA v. Bader Bop*, the South African Constitutional Court relied on Convention No. 87 and on the findings of the Committee of Experts on the Application of Conventions and Recommendations and of the CFA to interpret the Labour Relations Act as encompassing the right to strike for minority unions.[228]

4.149. In the case *Chamber of Mines of South Africa v. Association of Mineworkers of South Africa, National Union of Mineworkers*, the Labour Court of South Africa had to determine whether the restrictions to the definition of the 'workplace' in national law (Article 23 of the Labour Relations Act) were fair and reasonable. To do so, the Court referred to ILO Conventions No. 87 and 98 as well as to the findings of the Committee of Experts on the Application of Conventions and recommendations and those of the CFA. The Court underlined that those Committees had recognised that the right to strike under the above-mentioned conventions was not an absolute right. The Court found that the definition in national law of the workplace as encompassing mining organisations was a restriction on the right to strike compatible with the principles of freedom of association developed by the ILO bodies.[229]

xi. Spain

4.150. The Spanish Constitutional Tribunal referred to Convention No. 87, as well as to the findings of the competent ILO supervisory bodies to interpret the right to strike, observing that:

> "Freedom of association implies the freedom to exercise trade union action, including all lawful means, which are enshrined in the International Treaties ratified by Spain and, in particular, Conventions Nos. 87 and 98 of the International Labour Organisation and the interpretative resolutions issued by its Committee on Freedom of Association, as well as the Judgment of this Court of 8 April 1981, including collective bargaining and strike action, and should also extend to the initiation of collective disputes, as it would be

[227] CFA, Case No. 1719 (Nicaragua), Complaint date: 06-JUN-93, Report in which the committee requests to be kept informed of development - Report No 304, June 1996, para. 413 [Annex No. 53].
[228] Constitutional Court of South Africa, *NUMSA v. Bader Bop*, Case No. CCT 14/02 (2002) [Document No. 328].
[229] Labour Court of South Africa, *Chamber of Mines of South Africa v. Association of Mineworkers of South Africa, National Union of Mineworkers*, United Association of South Africa, Case No. J99/14 (2014), para. 61 [Document No. 341].

> paradoxical if those who can defend the interests of workers through negotiation or strike action could not do so through the use of the procedures legally established for the peaceful approach and resolution of collective disputes."[230]

*

4.151. In conclusion, there is a consistent and general practice of States Parties to Convention No. 87. Those States systematically recognised the right to strike as an inherent component of freedom of association, as it is protected under the Convention. State practice within the ILO structure, manifested both collectively within the CFA – and elsewhere – and by governments individually, has uniformly confirmed the protection of the right to strike under Convention No. 87. Neither the CFA, nor the governments against which the complaints were brought, or those making observations ever rejected it. Their arguments only concerned the contours of the right, an issue which lies beyond the scope of the question posed to the Court and a matter rightly for the continuous dialogue occurring between ILO constituents and the ILO supervisory bodies to determine. Thus, this practice clearly confirms the meaning to be given to freedom of association according to its ordinary meaning, in the context of the treaty and in the light of the treaty's object and purpose.[231]

4.152. In the *Competence of the ILO to Regulate Agricultural Labour* advisory opinion discussed above, the Permanent Court of International Justice emphasised that the ILO's competence over agricultural labour had not been questioned during the nearly three years that had passed since the adoption of the Treaty of Versailles:

> "[t]he 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 and another. All this might suffice to turn the scale in favour of the inclusion of agriculture, if there were any ambiguity."[232]

---

[230] Decision of the *Tribunal Constitucional* (Spain) 37/1.983, 11 May 1983 (ECLI:ES:TC:1983 :37), para. 2 of the section on *Fundamentos jurídicos* [Annex No. 54] (unofficial translation).

[231] *Supra,* Chapter 4, Section A.

[232] *Competence of the ILO in regard to International Regulation of the Conditions of Labour of Persons Employed in Agriculture, Advisory Opinion of 12 August 1922, P.C.I.J., Collection of Advisory Opinions, Series B*, pp. 39-41.

4.153. Considering the decades of steady development of the right to strike within the ILO before it started to be challenged by the employer's group – no other conclusion can reasonably be reached regarding the protection of the right to strike under Convention No. 87. This interpretation is further confirmed by the relevant treaty and customary law applicable to the States Parties, as shall now be demonstrated.

C. Applicable rules of international law, including treaties and customary international law, confirm that Convention No. 87 protects the right to strike

4.154. For purposes of treaty interpretation, Article 31(3) of the Vienna Convention on the Law of Treaties also requires interpreters to "tak[e] into account, together with the context […] (c) any relevant rules of international law applicable in the relations between the parties".[233]

4.155. Those relevant rules, found in human rights instruments, as interpreted and applied in decisions of regional human rights bodies and commissions all confirm that the "activities" "organise[d]" by workers' organisations "furthering and defending" the interests of workers referred to in Convention No. 87 include exercising the right to strike (Subsection 1). Beyond those treaties, the right to strike as a component of freedom of association has also emerged as a rule of customary international law (Subsection 2).

1. Universal and regional human rights instruments, as construed by supervisory bodies and courts, make explicit that the freedom of association includes the right to strike

4.156. The right to strike is an integral element of freedom of association for workers. As explained above, strikes are an essential means available to workers and their organisations to protect their rights and interests. For that reason, the right to strike ranks alongside the right to peaceful assembly and freedom of expression, as core elements of the fundamental human right to freedom of association.

4.157. This is featured both on the universal (a) and regional (b) scenes.

[233] This general category extends to other treaties binding the same contracting States parties. See generally *Jan Mayen Maritime delimitation, Judgment, I.C.J. Reports 1993, p. 38, para 46; Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010,* p. 14, paras. 54-63; *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece), Judgment of 5 December 2011, I.C.J. Reports 2011*, p. 644 paras. 104-112; *Oil Platforms (Zslamic Republic of Iran v. United States of America), Judgment, I.C.J. Reports 2003, p. 161,* para 41; F. BERMAN, "Treaty Interpretation in a Judicial Context", *Journal of International law,* vol. 29, 2004, p. 315

a. Universal instruments

4.158. In declaring that "[e]veryone has the right to freedom of peaceful assembly and association," Article 20 of the Universal Declaration of Human Rights of 1948 guarantees everyone "the right to form and join trade unions for the protection of his interests."[234] Article 22 of the International Covenant on Civil and Political Rights ("ICCPR"), adopted in 1966, further clarifies the relationship between these rights, announcing that "[…] the right to freedom of association with others, includ[es] the right to form and join trade unions for the protection of his interests."[235]

4.159. Article 8 of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), adopted the same year, goes further, expressly directing that "[t]he States Parties to the present Covenant undertake to ensure […] d) *[t]he right to strike,* provided that it is exercised in conformity with the laws of the particular country."

4.160. These foundational international human rights treaties both specifically refer to ILO Convention No. 87, the only multilateral convention expressly referenced in the two covenants.[236] After announcing that "[n]o restrictions may be placed on the exercise of the above rights other than those which are prescribed by law and which are necessary in a democratic society," the ICCPR specifically mandates that "[n]othing in this article shall authorize States Parties to [Convention No. 87] to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention."[237]

4.161. The Human Rights Committee and the Committee on Economic, Social and Cultural Rights, the expert bodies of the United Nations charged with construing these two fundamental

---

[234] Universal Declaration of Human Rights, 1948, Articles 20, 23 [Document 283].

[235] International Covenant on Civil and Political Rights, 1966, Article 22 [Document No. 285].

[236] International Covenant on Economic, Social and Cultural Rights, 1966, Article 8 [Document No. 284].

[237] *Ibid.,* art. 22.3

human rights instruments, have for decades recognised the right to strike as part of the freedom of association protected under both the ICCPR[238] and the ICESCR.[239]

4.162. In 2019, on the 100th anniversary of the ILO, the two committees issued a "joint statement on the basic principles of freedom of association common to both Covenants, in particular in relation to trade union rights, as also protected under the Universal Declaration of Human Rights and the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)." In paragraph 4, the two committees declared that

> "[f]reedom of association, along with the right of peaceful assembly, also informs the right of individuals to participate in decision-making within their workplaces and communities in order to achieve the protection of their interests. The Committees recall 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."[240]

---

[238] See, *e.g.*, HRC, CCPR/C/79/Add.104 (1999), Consideration of reports submitted by States parties under article 40 of the Covenant, para. 25 [Document No. 301]; HRC, CCPR/CO/80/LTU (2004), Consideration of reports submitted by States parties under article 40 of the Covenant, para. 18 [Document No. 302]; HRC, CCPR/C/EST/CO/3 (2010), Consideration of reports submitted by States parties under article 40 of the Covenant, para. 15 [Document No. 303]; HRC, CCPR/C/DOM/CO/6 (2017), Concluding observations on the sixth periodic report of the Dominican Republic, paras 31–32 [Document No. 304]; HRC, CCPR/C/EST/CO/4 (2019), Concluding observations on the fourth periodic report of Estonia, paras 31–32 [Document No. 305].

[239] CESCR, E/C.12/1/Add.68 (2001), Concluding observations, Germany, paras 22, 40 [Document No. 306]; CESCR, E/C.12/1/Add.81 (2002), Concluding observations, Slovakia, para. 27 [Document No. 307]; CESCR, E/C.12/GC/23 (2016), General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), para. 1 [Document No. 308]; CESCR, E/C.12/DEU/CO/6 (2018), Concluding observations on the sixth periodic report of Germany, paras. 44–45 [Document No. 309]; CESCR, E/C.12/MEX/CO/5-6 (2018), Concluding observations on the combined fifth and sixth periodic reports of Mexico, paras. 35–36 [Document No. 310]; CESCR, E/C.12/ESP/CO/6 (2018), Concluding observations on the sixth periodic report of Spain, paras. 28–29 [Document No. 311]; CESCR, E/C.12/EST/CO/3 (2019), Concluding observations on the third periodic report of Estonia, paras. 26–27 [Document No. 312]; CESCR, E/C.12/UZB/CO/3 (2022), Concluding observations on the third periodic report of Uzbekistan, paras. 36–37 [Document No. 313].

[240] Joint statement by the Committee on Economic, Social, and Cultural Rights and the Human Rights Committee, E/C.12/66/5-CCPR/C/127/4 (2019) [Document No. 301] (emphasis added).

4.163. The United Nations expert supervisory bodies charged with construing these two foundational human rights instruments have thus confirmed that joint interpretation by consistently recognising the right to strike as an integral part of freedom of association.[241]

b. Regional instruments

4.164. The deep connection between freedom of association and the right to strike is confirmed by the language of regional human rights treaties in Europe. Accordingly, Article 11(1) of the European Convention on Human Rights expressly recognises that "the right to [...] freedom of association with others, include[es] the right to form and to join trade unions for the protection of its interests."[242] Judgments of the European Court of Human Rights ("ECtHR") repeatedly affirmed that Article 11(1) of the European Convention of Human Rights protects the right to strike, referring to CEACR and CFA pronouncements for support.[243]

4.165. Even more explicitly, Article 6(4) of the European Social Charter protects "[t]he right of workers and employers, in the event of a conflict of interest, to take collective action, *including the right to strike,* without prejudice to any obligations that may arise from the collective bargaining agreements in force."[244] The European Committee of Social Rights, the Charter's monitoring body, concluded "that the exercise of the right to bargain collectively and the right to collective action, *guaranteed by [the same provision,] Article 6 §§ 2 and 4 of the*

[241] See, *e.g.*, UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report on Rights to freedom of peaceful assembly and of association, A/71/385 (2016), paras 54, 56 and 99(i) [Document No. 315].

[242] Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, Article 11 [Document No. 286].

[243] For recent examples, see ECtHR, *Ognevenko v. Russia* (2018) (para. 57 – "The Court has on several occasions held that strike action is protected by Article 11.") [Document No. 320]; ECtHR, *National Union of Rail, Maritime and Transport Workers v. the United Kingdom* (2014) (Para. 27 – "…both the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations … have progressively developed a number or principles on the right to strike, based on Articles 3 and 10 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87))," (Para. 97 – "The governments who took the floor during that discussion were reported as saying that the right to strike was 'well established and widely accepted as a fundamental right.'") [Document No. 319]; ECtHR, *Enerji Yapi-Yol Sen v. Turkey* (2009), para. 24 ("The Court also notes that the right to strike is recognised by the supervisory bodies of the International Labour Organization (ILO) as an intrinsic corollary of the right to organize protected by ILO Convention C87 on Freedom of Association and Protection of the Right to Organize [Document No. 318]; see also ECtHR, *Demir and Baykara v. Turkey* (2008), paras 140–170 (affirming fundamental right of civil servants to engage in collective bargaining and take collective action to that end) [Document No. 317].

[244] European Social Charter (Revised), 1996, Article 6 [Document No. 287].

Charter, represents an essential basis for the fulfilment of other fundamental rights guaranteed by the Charter."[245]

4.166. Similarly, Article 28 of the Charter of Fundamental Rights of the European Union, which forms part of the primary law of the European Union, provides that "[w]orkers and employers, or their respective organizations, in accordance with Community law and national laws and practices, have […] 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*."[246]

4.167. These commitments have been confirmed by rulings of the (then) Court of Justice of the European Communities, "recall[ing] 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 Organization."[247]

4.168. The right to strike is equally recognised in the key human rights treaties and labour agreements in the Americas. Article 45 (c) of the Charter of the Organization of American States (OAS) thus explicitly declares:

> "[e]mployers 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,* and recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with applicable laws".

---

[245] European Committee of Social Rights, Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden, Complaint No. 85/2012, Decision on the admissibility and merits of complaint (2012), para. 109 (emphasis added) [Document No. 316].

[246] Charter of Fundamental Rights of the European Union, 2000, Article 28 [Document No. 288] (emphasis added).

[247] CJEC, *Case C-438/05, International Transport Workers' Federation, Finnish Seamen's Union v. Viking Line ABP* (2007), [Document No. 321]; see also CJEC, Case C-341/05, *Laval Un Partneri Ltd v. Svenska Byggnadsarbetareförbundet* (2007), paras 90– 91 [Document No. 322] (emphasis added). See, also A.C.L. DAVIES, "One Step Forward, Two Steps Back? The Viking and Laval Cases in the ECJ", *Industrial L. J.* 37, 2008, p. 126.

4.169. Article 8(b) of the Additional Protocol to the American Convention on Human Rights in the Area of Economic Social and Cultural Rights, 1988 makes explicit that "[t]he States Parties shall ensure [*t*]*he right to strike*."[248]

4.170. In construing these provisions, an advisory opinion of the Inter-American Court of Human Rights concluded that "[t]he right to strike is one of the fundamental human rights of workers […] Otherwise, the negative dimension of freedom of association in the individual sense could be breached. It is also one of the leading rights of union organizations in general."[249]

4.171. Even while acknowledging that the right to strike is not recognised *in haec verba* in ILO Convention No. 87, the Inter-American Court called it "significant that Article 3 of Convention 87 on Freedom of Association and Protection of the Right to Organize […] recognizes the right of workers' organizations to 'organize […] their activities in full freedom and to formulate their program of action.'"[250] The Court noted the Committee on Freedom of Association's recognition of the importance of the right to strike as "an intrinsic corollary to the right to organize protected by Convention No. 87."[251]

4.172. Across the Americas, States Parties to Convention No. 87 have included requirements protecting the right to strike as part of the freedom of association guaranteed by free trade and labour cooperation agreements. By their terms, these agreements explicitly reference the right to strike and explain why the right to strike and freedom of association are inextricably interlinked.[252]

4.173. "[F]or greater certainty," the 2018 agreement between the USA, Mexico, and Canada, explains, "the right to strike is linked to the right of freedom of association, *which cannot be realized without protecting the right to strike*."[253]

---

[248] Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, 1988, article 8 [Document No. 290].

[249] IACtHR, Advisory Opinion OC-27/21, Right to freedom of association, right to collective bargaining and right to strike, and their relation to other rights, with a gender perspective (2021), paras 95– 105 [Document 323].

[250] IACtHR, *Case of the Former Employees of the Judiciary v. Guatemala* (2021), para. 107 [Document No. 324].

[251] *Ibid*. See also Advisory Opinion OC-27/21, Right to freedom of association, right to collective bargaining and right to strike, and their relation to other rights, with a gender perspective (2021), para. 96 [Document No. 323].

[252] Canada-Costa Rica Agreement on Labour Cooperation, 2001, Article 1 and annex 1 [Document No. 295]; Canada-Colombia Agreement on Labour Cooperation, 2008, Article 1 [Document No. 296]; Canada-Peru Agreement on Labour Cooperation, 2008, Article 1 [Document No. 297]; Canada-Jordan Agreement on Labour Cooperation, 2009, Article 1 [Document No. 298].

[253] Agreement between the USA, Mexico, and Canada, 2018, Article 23.3 [Document No. 300] (emphasis added).

4.174. The 2008 Agreement on Labour Cooperation concluded between Canada and Colombia —both having ratified Convention No. 87—provides in Article 1(1)(a) that:

> "Each Party shall ensure that its statutes and regulations, and practices thereunder, embody and provide protection for the following internationally recognized labour principles and rights: a) freedom of association and the right to collective bargaining (including protection of the right to organize *and the right to strike*); […]."[254]

4.175. The exact same wording, evidencing the inherent link between the right to strike and freedom of association, is found in Article 1(1) of the 2008 Canada-Peru agreement, both parties to Convention No. 87.[255]

4.176. Similar recognition of the right to strike may be found in human rights instruments and labour agreements in Africa. Elaborating the meaning of Article 15 of the African Charter on Human and Peoples' Rights on the right to work under equitable conditions,[256] the 2010 Guidelines on the Implementation of Economic Social and Cultural Rights in the African Charter list as a "minimum core obligation" of Member States 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."[257]

4.177. Similar language appears in treaties of the Southern African Development Community,[258] a regional economic organisation, all Member States of which have ratified Convention No. 87.[259] That language makes express and unequivocal mention of the right to strike as included in the "right to take collective action" consistent with Convention No. 87.

4.178. The same explicit recognition of the inherent relation between freedom of association and the right to strike is ensured among the Arab States by the Arab Charter of Human Rights.

---

[254] Canada–Colombia Agreement on Labour Cooperation, 2008 [Document No. 296] (emphasis added).

[255] Canada–Peru Agreement on Labour Cooperation, 2008, Article 1 [Document No. 297] (emphasis added).

[256] African Charter on Human and Peoples' Rights, 1981, Article 15 ("Every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work.") [Document No. 291].

[257] Paragraph 59(b) of the Guidelines on the Implementation of Economic Social and Cultural Rights in the African Charter [Document No. 292] (emphasis added).

[258] Charter of Fundamental Social Rights in the Southern African Development Community, 2003, Article 4 [Document No. 294]; Southern African Dev. Community Protocol on Employment and Labour, 2014, Article 6 [Document No. 299].

[259] Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, United Republic of Tanzania, South Africa, Seychelles, Zambia, Zimbabwe.

Article 35 of the Charter indeed provides that "[e]very 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" and that "[e]very State party to the present Charter *guarantees the right to strike* within limits laid down by laws in force."[260]

4.179. Therefore, the main universal and regional human rights instruments, as interpreted by their respective supervisory body or court, all conceive the right to strike as an inherent component of freedom of association. As *relevant rules of international law applicable in the relations between the parties* to Convention No. 87, they further confirm that the right to strike is protected by the convention, in application of the rule of interpretation found in Article 31(3)(c) VCLT. Beyond those instruments, the same conclusion can be reached on the basis of the customary status that the right to strike has achieved as an inherent component of freedom of association under international law.

2. The right to strike as an inherent component of freedom of association has achieved the status of customary international law

4.180. As an integral element of freedom of association for workers, the right to strike is now so widely accepted that it may be fairly said to have achieved the status of customary international law, which is supported by both general practice and *opinio juris* as explained below.

4.181. To begin, the recognition of the right to strike as an inherent component of freedom of association has achieved the widespread State practice around the globe necessary to satisfy recognition as a norm of customary international law. More than 90 countries now recognise the right to strike in their constitution, usually in connection with the freedom of association.[261] As noted in Section B above, national courts on four continents have found the right to strike as protected by Convention No. 87 and internalised it within their domestic legal frameworks.[262]

---

[260] Arab Charter on Human Rights, 2004, Article 35(1) and (3) [Document No. 293] (emphasis added).

[261] See J. S. VOGT, J. BELLACE *et al.*, *The Right to Strike in International Law*, Oxford, Hart Publishing, 2020, pp. 198-214 (reproducing language from constitutions in 92 countries recognising a right to strike. Recent examples include Morocco (2011), Kenya (2010), and Ecuador (2008)).

[262] See Compendium of Court Decisions, ITCILO, https://compendium.itcilo.org/en for decisions from Botswana, Brazil, Burkina Faso, Canada, Colombia, Fiji, Kenya, Nigeria, Peru, Senegal, and South Africa.

4.182. Moreover, the State practice respecting the right to strike as an inherent component of freedom of association has become so widespread that it reflects *opinio juris*, a genuine sense of obligation under international law. The Court had inferred *opinio juris* from widespread state conduct constituting 'evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it.'"[263] In the *Case of the Former Employees of the Judiciary v. Guatemala* (2021), the Inter-American Court of Human Rights "[…] note[d] that, in addition to being widely recognized in the international *corpus juris*, the right to strike has also been recognized in the constitutions and legislation of the OAS Member States. *In this sense, it can be considered as a general principle of international law*."[264]

4.183. This Court's cases provide standards for determining when a general State practice has come to enjoy *opinio juris*: a sense of acceptance that cause States to follow the norm out of a sense of legal obligation. The International Law Commission has further made clear that evidence of acceptance as law (*opinio juris*) "may take a wide range of forms," including but not limited to "official publications; government legal opinions; [and] decisions of national courts."[265] As detailed above, the foundation and structure of the ILO, the wording and interpretation of widely ratified human rights treaties and labour agreements; national constitutions and supreme court decisions;[266] government representations;[267] international and regional court rulings; domestic legislative and judicial decisions following international standards and practices, and the statements of U.N. officials and appointees[268] all demonstrate the existence of the requisite *opinio juris.*

---

[263] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3, para. 77; see also Restatement (Third) of the Foreign Relations Law of the United States, para. 102(2), (3) cmt. b (Am. L. Inst. 1987); J. CRAWFORD, *Brownlie's Principles of Public International Law*, 8th ed., Oxford, OUP, 2012, p. 39 and n. 46 (citing to nine ICJ decisions from 1969 to 2011, including *North Sea Continental Shelf* (1969); *Gulf of Maine* (1984); *Nicaragua* (1986); *Armed Activities on the Territory of the Congo* (2005); and *Pulp Mills on the River Uruguay* (2010)).

[264] IACtHR, *Case of the Former Employees of the Judiciary v. Guatemala* (2021), paras 106-107 [Document No. 324] (emphasis added).

[265] J. J. BRUDNEY, "The Right to Strike as Customary International Law", *Yale Journal of International Law,* vol. 46, no. 1, 2021, p. 28 and n. 155 (citing Int'l Law Commission Report on the Work of its Seventieth Session, ch.V: Identification of Customary International Law, U.N. Doc. A/73/10 at 117-27 (2018)).

[266] *Ibid*. See also J. VOGT, J. BELLACE *et al.*, *The Right to Strike in International Law*, Oxford, Hart Publishing, 2020, p.170.

[267] See *supra,* Section B.

[268] High UN officials have unambiguously stated that the right to strike is understood by its leaders as CIL. In 2018, the UN Spokesperson stated unequivocally that "We believe that the right to strike is part of customary international law." ("Daily Press Briefing by the Office of the Spokesperson for the Secretary-General", 16 March 2018, available at https://www.un.org/press/en/2018/db180316.doc.htm (last accessed on 7 May 2014)); the UN

4.184. As customary international law, the right to strike binds not just more than the 80 percent of ILO Member States that have ratified Convention No. 87, but also those ILO Members that have not.[269] The ILO Constitution expressly requires Member States to support freedom of association, without regard to whether a Member State has ratified Convention No. 87. After decades of recognition of the right to strike as protected under Convention No. 87, the ILO constituents adopted the 1998 Declaration on Fundamental Principles and Rights at Work which declares in paragraph 2(a)

> "that all Members, even if they have not ratified the Conventions in question, have an obligation *arising from the very fact of membership in the Organization* to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining […]."[270]

4.185. Because States have recognised the right to freedom of association as customary international law and have further recognised the right to strike as an inherent and essential component of freedom of association, the right to strike logically must be understood to be part of customary international law.

4.186. Relying on such reasoning, domestic courts even in countries that have not ratified Convention No. 87 - in addition to the decisions of courts within States Parties[271] - have held the right to strike to be part of customary international law. To take just two examples, in 2012, a Higher Labour Court in Brazil ordered the reinstatement of workers terminated for participating in a work stoppage, citing the employer's violation of freedom of association and the free exercise of the right to strike as among the "norms that define fundamental rights and guarantees [and] are directly applicable" under Brazil's Constitution.[272] In 2013, an Industrial

---

Special Rapporteur on the rights to freedom of peaceful and assembly and association stated: "The right to strike has been established in international law for decades, in global and regional instruments, and is also enshrined in the constitutions of at Least 90 countries. *The right to strike has, in fact become CIL."* (Report on Rights to freedom of peaceful assembly and of association, A/71/385 (2016), paras 54, 56 and 99(i) [Document No. 315] (emphasis added)).

[269] See generally sources cited in J. J. BRUDNEY, "The Right to Strike as Customary International Law", *Yale Journal of International Law,* vol. 46, no. 1, 2021.

[270] ILO Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022 [Document No. 128] (emphasis added).

[271] See *supra*, Section 2, paras. 4.130– 4.150.

[272] Higher Labour Court, Zavascki, *Roberto Antonio v. Companhia Minuano de Alimentos*, Brasilia (2012) [Document No. 334].

Court of Kenya ordered the reinstatement of five workers dismissed for participating in a strike and strike-related activities, reasoning —based not on Convention No. 87 (to which Kenya is not party) but Kenya's Constitution, ratification of Convention No. 98, general participation in the ILO, including "respect for International Labour Standards," and a report by the CEACR and decisions by the CFA—that freedom of association was a human rights standard that had risen to the level of accepted customary international law.[273]

4.187. In recent years, many States across the world have further evidenced their acceptance of the right by expanding their legislative protections for the right to strike after interactive dialogue with the CEACR urging changes in law.[274] The widespread adoption of protection of the right to strike in international trade and labour agreements, described above, provides further evidence that the right to strike as an inherent component of freedom of association has crystallised as a rule of customary international law.[275]

---

[273] Industrial Court of Kenya, *Universities Academic Staff Union v. Maseno University*, Case No. 814'N' (2013) [Document No. 338].

[274] See, *e.g.*, ILC, 109th Session, 2020, Report III (Part A) of the CEACR, Report on the application of International Labour standards, p. 83 (noting with satisfaction a legislative change by the government of Bulgaria extending freedom of association and right to strike protections to all civil servants except for managing senior civil servants); *id.* p. 77 (noting with satisfaction legislative changes by the government of Botswana deleting from the list of essential services a range of public sector occupations including teaching, government broadcasting, and immigration and customs) [Annex No.55]; ILC, 106th Session, 2017, Report III (Part 1A) of the CEACR, Application of International Labour Standards I, p. 78 (noting with satisfaction a provincial legislative change in Canada granting public employees freedom of association rights, including the right to engage in strike action, "in accordance with the Committee's previous request"); *id.* p. 81 (noting with satisfaction legislation by the government of Chile repealing prior provision that allowed for replacement of striking workers under certain conditions and deeming such replacements in the future a serious unfair practice warranting monetary sanctions); *id.* p. 95 (noting with satisfaction a legislative change by the government of Costa Rica establishing a lower numerical threshold of minimum support in order for a strike to be legal) [Annex No. 56]; ILC, 105th Session, 2016, Report III (Part 1A) of the CEACR, Application of International Labour Standards, pp. 105-106 (noting with satisfaction legislation by the government of Peru revising the required quorum or majority to call a strike so that it is fixed at a reasonable level) [Annex No. 57]; ILC, 104th Session, 2015, Report III (Part 1A) of the CEACR, Application of International Labour Standards I, p. 81 (noting with satisfaction three legislative changes made by the government of Georgia abrogating restrictions on strike action); *id.* p. 129 (noting with satisfaction a legislative change by the government of Swaziland (now Eswatini) deleting sanitary services from the list of essential services, granting them the right to strike); *id.* p. 131 (noting with satisfaction legislative changes by the government of Turkey (now Türkiye], removing a number of services from the previous strike prohibition and expanding protection for solidarity strikes and go-slows, also noting with satisfaction a recent Constitutional Court decision removing banking services and urban transportation services from the statutory list of essential services) [Annex No. 58].

[275] J. J. BRUDNEY, "The Right to Strike as Customary International Law", *Yale Journal of International Law,* vol. 46, no. 1, 2021, pp. 25-6 (noting widespread practice of including freedom of association/right to strike in trade agreements, including U.S. trade agreements, especially NAFTA which explicitly includes the right to strike and EU trade agreements that regularly include freedom of association principles).

4.188. Therefore, the customary protection of the right to strike as a component of freedom of association constitutes a *relevant rule of international law applicable in the relations between the parties* to Convention No. 87. Accordingly, all of this evidence points inescapably to the same conclusion: that when interpreted according to the customary rule of interpretation contained in Article 31 of the VCLT, the right to strike is internationally recognised as an inherent component of freedom of association under Convention No. 87. Insofar as necessary, the recourse to supplementary means of interpretation contained in Article 32 of the VCLT confirm this conclusion.

D. Supplementary means of interpretation confirm that Convention No. 87 protects the right to strike

4.189. Finally, contrary to the assertion of the employers' group, the supplementary means of interpretation further confirm the interpretation arrived at under Article 31, namely that freedom of association under Convention No. 87 includes the right to strike.

4.190. There appears to be no dispute that, subject to the general rule of treaty interpretation in Article 31, Article 32 of the VCLT permits recourse to supplementary means, but limits it to two circumstances: (1) in order to confirm an interpretation that has been correctly arrived at under Article 31;[276] or (2) to determine the meaning of the terms, but only when the Article 31 interpretation leaves the meaning ambiguous or obscure, or when it leads to a manifestly absurd or unreasonable result.

4.191. As explained in Sections A to C above, the interpretation under Article 31 does not leave the meaning of the terms in Convention No. 87 ambiguous or obscure. Nor does it lead to a manifestly absurd or unreasonable result; on the contrary, it would be unreasonable if strikes were not contemplated as an essential component of freedom of association in Convention No. 87. Therefore, the use of supplementary means is limited to confirming the meaning arrived through Article 31. Indeed, this aligns with the longstanding interpretive practices of this

[276] See Report of the International Commission on the Work of the Second Part of the Seventeeth Session, Monaco, January 3-28, 1966, UN Doc. A/6309/Rev.1, 2 *Yearbook of the International Law Commission,* p.169 at 354; J. ALVAREZ, *International Organizations as Law-Makers,* Oxford, OUP, 2006, p. 84.

Court,[277] the Permanent Court (when interpreting another international labour convention),[278] as well as the ILO.[279]

4.192. The supplementary means of treaty interpretation envisaged under Article 32 include the *travaux préparatoires*, but are not limited to them and may extend broadly to include the circumstances of the treaty's conclusion, written documents prepared in relation to the treaty, successive drafts of the treaty, the records of the negotiation, the minutes of the plenary meetings, questionnaires and government responses to questionnaires prepared in relation to the treaty; diplomatic exchanges between the parties and other interpretative statements made by the parties.[280]

4.193. As detailed below, the interpretation is confirmed by two supplementary means of interpretation: the historical context of the principle of freedom of association leading to its inclusion in Part XIII of the Treaty of Versailles of 1919 (Subsection 1), as well as the preparatory work of Convention No. 87 of 1948 (Subsection 2).

1. Historical context of the principle of freedom of association

4.194. In 1919, following a proposal by the United Kingdom delegation, the drafters of Part XIII of the Treaty of Versailles included the phrase "recognition of the principle of freedom of association" in its preamble. Both the legal and historical contexts and the statements by those who participated in the Paris Peace Conference make it clear that collective action in furtherance and defence of workers' rights was germane to freedom of association. In particular, strike action was increasingly recognised at the time as an essential means by which workers

---

[277] *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. 100, para. 89; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, ICJ Reports 2011 (I),* p. 128, para. 142, and pp. 129–130, para. 147; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, *Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1995*, p. 21, para. 40; *see also* M. FORTEAU, A. MIRON and A. PELLET, *Droit international public*, 9th ed., *LGDJ,* 2022, pp. 343–344; J J. CRAWFORD, *Brownlie's Principles of Public International Law*, 9th ed., Oxford, OUP, 2019, p. 369; H. THIRLWAY, *The Law and Procedure of the International Court of Justice: Fifty Years of Jurisprudence Volume II*, 2013, pp. 1252–1253.

[278] *Interpretation of the Convention of 1919 concerning Employment of Women during the Night*, *Advisory Opinion of 15 November 1932, P.C.I.J., Series A/B, No. 50*, p. 380.

[279] ILC, 100th Session, 2011, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 12 [Document. No. 101].

[280] A. AUST, *Modern Treaty Law and Practice,* Cambridge, CUP, 2023; see also *HICEE B.V.* v. *The Slovak Republic,* PCA Case No. 2009-11, Partial Award, 23 May 2011 (Sir Frank Berman President; Charles Brower; Judge Tomka, Members), para. 121.

and trade unions could achieve their objectives. It strains belief to argue, as the employers now do, that those drafting Part XIII would have divorced the freedom to associate from the freedom to achieve the purpose of association through collective action such as strike.

4.195. By way of historical context, whereas strikes and indeed the very association of workers for a common purpose had often been prohibited by municipal law, there had been a decisive shift in the decades preceding the Paris Conference. The analysis below focuses on the origin and development of the principle in the United Kingdom and the United States of America, which were the two main Powers behind the inclusion of the principle in its English version ("freedom of association") in Part XIII.

4.196. In the United Kingdom, from the 16th century onwards, successive legislation had prohibited the "combinations" of workers in trades and industries. These "combination laws" made it a criminal offence for workers to join together (or "combine", and thus form trade unions) to agree the minimum pay, terms and conditions on which they were prepared to work and, if necessary to take strike action to secure those terms.[281] Thus, not only were associations of workers prohibited, so were the means by which the objects of such associations could be given effect.

4.197. Even with the repeal of the Combination Acts in 1824, trade unions continued to be declared unlawful. It was argued that, given their objectives of securing minimum pay, terms and conditions of work, trade unions were in restraint of trade.[282] It was only with the Trade Union Act, 1871 that trade unions were legitimised. Even then, however, strike action remained severely restricted under the common law through various crimes and torts, notably conspiracy and inducement of breach of contract (which was inevitable in the organisation of a strike).[283] It took a further 35 years before the Trade Disputes Act, 1906 provided immunity to tortious liability due to strike action.

4.198. In short, in a decisive shift from – and indeed reaction to – the long-standing prohibition on combination and strike action (which nevertheless did not stop workers in practice from naturally resorting to strikes to defend their economic and social interests),by the time of the Peace Conference, it not only became lawful to form trade unions, but more crucially, it became

---

[281] See E. P. THOMPSON, *The Making of the English Working Class*, Pelican, 1968, pp. 546-565; J. V. ORTH, *Combination and Conspiracy: A Legal History of Trade Unionism 1721-1906*, Clarendon Press, 1991.
[282] *Hornby v Close* (1866-67) L.R. 2 Q.B. 153.
[283] Master and Servant Acts 1747 and 1823 (repealed in 1867).

lawful to achieve the union's objects through strike. Besides the legislative acts above, this shift is also amply seen in the vast volume of contemporary literature to this effect.[284]

4.199. Against this backdrop, it was clear that the UK delegates to the Paris Peace Conference were fully aware that strikes constitute a typical and ordinary activity and program of trade unions. They proposed the phrase "recognition of the principle of freedom of association" in the preamble to Part XIII with this same understanding.[285] Indeed, the key UK government delegate at the Paris Peace Conference – one of the four UK plenipotentiaries who signed the Treaty of Versailles – was George Barnes. Barnes was an influential figure in the trade union movement (himself a former secretary of one of most powerful British trade unions at the time, the Amalgamated Society of Engineers) and a former leader of the Labour Party. It was implausible that this UK delegation would have been in favour of a watered-down version of freedom of association under which unions were legal but strikes remained unlawful. It was even less likely that this delegation would have considered strikes as extraneous to the notion of freedom of association.

4.200. Similarly, in the United States of America, under the Sherman Antitrust Act of 1890, trade unions were held to be unlawful cartels or "combinations". Importantly, their collective activities in seeking to enforce minimum pay and other terms and conditions amongst members – particularly by strike action – rendered them in "restraint of trade". However, this was reversed by the Clayton Antitrust Act of 1914, which first used the phrase "labour is not a commodity". In other words, since the labour of human beings cannot be equated to a commodity or article of commerce, trade unions cannot be treated as cartels or combinations in restraint of trade. This is significant because the very first principle in Part XIII of the Treaty of Versailles was precisely that labour is not a commodity.

4.201. Indeed, it was unthinkable that the United States delegation would have understood the principle of "freedom of association" to only permit establishing and joining trade unions, while

---

[284] *E.g.* 'Report of the Committee on Trades' Societies on Trades' Societies and Strikes', Parker & Sons, 1860; "Eleventh and Final Report of the Royal Commissioners appointed to Inquire into the Organization and Rules of Trades Unions and Other Associations" 1868-1869, UK Parliamentary Papers vol xxxi; G. HOWELL, "The Conflicts of Capital and Labour historically considered being a History and Review of the Trade Unions of Great Britain", Chatto & Windus, 1878; S. and B. WEBB, "History of Trade Unionism", Longmans, 1894; S. and B. WEBB, "Industrial Democracy", 1902; M. FORTHERGILL ROBINSON, "The Spirit of Association", John Murray, 1913.

[285] J. SHOTWELL (ed.), *The Origins of the International Labor Organization,* New York, Columbia University Press, 1934, p. 126.

prohibiting the unions from organising collective actions such as strikes. This was the case of President Wilson, who participated personally in the Paris Conference. Since his election to the presidency in 1912, Wilson had supported the passage of the Clayton Act in 1914 to exempt unions from the Sherman Act, 1890 mentioned above. It was therefore no surprise that Wilson handpicked Samuel Gompers, a lifelong trade union leader in the United States, as the US labour delegate to the Labour Commission at the Paris Peace Conference. There is no doubt that Wilson was well acquainted with Gompers and his views[286] that strikes were an economic weapon used to increase the workers' power.[287] Indeed, Gompers took the view that the right to strike was an aspect of freedom of association and was opposed to government restrictions on striking, except during national emergencies where, in his view, workers should voluntarily forego the use of the right to strike.[288]

4.202. The representatives of two of the other "Principal Allied and Associated Powers" of the Treaty of Versailles, France and Italy also participated, fully aware of their national law and practice. In France, the Penal Code of 1810 had prohibited strikes. In 1864, however, the Loi Ollivier abolished this general prohibition. Only strikes carried out through violent or abusive means remained illegal. In Italy, strikes were almost generally criminalised until the last decade of the nineteenth century. In 1889, however, a new Penal Code was adopted, which decriminalised peaceful strike activity. Crucially, in the two decades preceding the adoption of the Treaty of Versailles, strikes had been frequent and common in the United Kingdom, the United States, France, and Italy.[289] For these reasons, it is not possible to argue that, during the negotiations of Part XIII, the notion of strikes would have appeared alien to freedom of association in the context of labour relations. On the contrary, the framers of the ILO Constitution in 1919 would have clearly understood that this freedom is not simply a right to form or join an organisation but is necessarily inclusive of the freedom to carry out the organisation's activities in order to advance the interests of its members, including to strike, when necessary. Simply stated, freedom of association without the means to achieve the objects of the association – association for association's sake – is one without substance or meaning.

[286] See E. McKillen, "Beyond Gompers: The American Federation of Labor, the Creation of the ILO, and US Labor Dissent" in J. Van Daele, G. Rodriguez, G. Van Goethem and M. van der Linden (eds.), *Essays on the International Labour Organization and Its Impact on the World During the Twentieth Century*, Bern, Peter Berg, 2010, p. 43.
[287] FC. Thorne, *Samuel Gompers – American Statesman,* New York, Philosophical Library, 1957, p. 69.
[288] *Ibid.*, p. 68.
[289] J. BELLACE, *The ILO and the right to strike*, International Labour Review, Vol. 153 (2014), No. 1, p. 35; See also S. Gallo and F. Loreto, *Storia del lavoro nell'Italia contemporanea*, Bologna, Il Mulino, 2023, p. 101.

As seen below, this understanding continued to be shared by the Parties to Convention No. 87 in 1948, even though the exact contours of that right remained contested.

2. Preparatory work of Convention No. 87

4.203. Contrary to what the employers' group has argued, the preparatory work of Convention No. 87 confirms that the ILO constituents contemplated the right to strike, without prejudice to its scope, specifically "the question of the right of [public] officials to strike".[290] The potential exclusion of the right to strike specifically by public officials clearly assumed the existence of a general right to strike in other cases.

4.204. The employers' group has argued that the "legislative history of C87 is indisputably clear that the right to strike was not overlooked but that the tripartite constituents who were the drafters of the Convention intentionally did not include the right to strike in any implicit or explicit way".[291] It has relied primarily on a 1948 report prepared by the International Labour Office, where the Office stated that:

> "[s]everal 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."

4.205. However, this is an incomplete and misleading account of the Office's 1948 report. Moreover, it is only a partial narrative that ignores the broader preparatory work as a whole. By way of background, from the beginning, the American Federation of Labor (AFL) had specifically recommended, in its March 1947 submission to the United Nations Economic and Social Council ("ECOSOC"):

---

[290] ILC, 30th Session, 1947, Report VII, Freedom of Association and Industrial Relations, p. 109 [Document No. 147].

[291] International Organisation of Employers (IOE), Position Paper – Do ILO Conventions 87 and 98 Recognize a Right to Strike?, October 2014, p. 10 [Annex No. 14], available at: https://www.ioe-emp.org/fileadmin/ioe_documents/publications/Policy%20Areas/international_labour_standards/EN/_2014-11-03__IOE_Paper_on_the_Right_to_Strike_in_Conventions_87_and_98__final_web_and_print_.pdf.

> "that the International Labour Organization take into early consideration the problem of trade union rights with reference to questions as follows:
> […]
> (G) To what extent are labour or trade union organizations free to deal with the employers of workers they represent and conclude collective agreements and participate in their formulation?
> (H) To what extent is the right of workers and of their organizations to resort to strikes recognized and protected?"[292]

4.206. In 1947, the World Federation of Trade Unions had indeed asked ECOSOC to consider guarantees relating to the exercise of trade union rights. The mandate of ECOSOC – which had been established in January 1946, shortly after the creation of the UN itself in June 1945 – seemingly overlapped to some extent with that of the ILO. ECOSOC referred the matter to the ILO in March 1947 and requested a report back by July 1947. The ILO Governing Body decided in June 1947 to commence drafting a standard on freedom of association as quickly as possible in order to ensure that ECOSOC would not move forward on its own to regulate matters so core to the ILO.

4.207. By early July 1947, the general principles on freedom of association that would form the basis of Convention No 87 had been agreed, and the proposed convention was placed on the agenda for the ILC in 1948. The discussion was guided by a preparatory paper written by the International Labour Office which surveyed Member States' labour legislation at the time. The preparatory paper suggested two possible ways to guarantee freedom of association. The first envisaged a list of detailed regulations and the second the recognition of essential principles and provide a sufficient guarantee for the free function of employers' and workers' organisations. The ILO constituents preferred the latter. The 1947 draft essentially became the text of Convention No. 87.

4.208. After reproducing the AFL's submission quoted above in the introduction,[293] the Office's 1947 background report reviewed the history of freedom of association at the ILO and

[292] Memorandum and Draft Resolution submitted by the American Federation of Labor to the Economic and Social Council on the Guarantees for the Exercise and Development of Trade Union Rights, 13 March 1947, UN doc. E/C.2/32, partly reproduced in dossier [Document No. 142], p. 142 and [Document No. 147], p. 6.

[293] ILC, 30th Session, 1947, Report VII, Freedom of Association and Industrial Relations, p. 6 [Document no. 147].

the failure in the past to reach agreement on an instrument in exhaustive detail.[294] In the report's survey of labour legislation on the "Protection of the Freedom of Association of Workers' Organizations", the Office observed that at times trade unions "are obliged to resort to economic pressure",[295] followed by a discussion of strikes as part of the process used in various countries to deal with labour conflict.[296]

4.209. When discussing the scope *ratione personae* of the right of association, the background report noted, as an example, that certain legal systems excluded civil servants from the right of association.[297] From this, the Office argued that the right of association of *public officials* does not imply their right to strike.[298] On this basis, in the conclusions and observations of the background report, the Office further asserted that the recognition of the right of association *of public servants* in no way prejudges the question of such officials to strike.[299] Thus, in the Office's view, in respect of civil servants, the concept of freedom of association potentially excluded the right to strike.

4.210. This, in turn, explains the formulation of the questionnaire that the Office circulated to the Member States in preparation for the 1948 Conference,[300] Question 3(c) of which asks:

> "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?"

4.211. Indeed, from the responses to the questionnaire, it was clear that the preoccupation of most governments concerned the possibility of strikes by civil servants. Of those who first responded to the questionnaire, (*a*) fifteen States agreed the Convention should not prejudge the right to strike for public officials,[301] (*b*) one State (Mexico) answered in the negative without explanation, and (*c*) only two States (the Netherlands and Sweden) stated that the right to strike

---

[294] *Ibid.*, pp. 13-36.

[295] *Ibid.*, p. 55

[296] See, *e.g.*, *Ibid.*, pp. 73-76.

[297] *Ibid.*, pp. 45-46.

[298] *Ibid.*, p. 46.

[299] *Ibid.*, p. 109.

[300] ILC, 31st Session, 1948, Report VII, Freedom of Association and Protection of the Right to Organise, pp. 15-17 [Document No. 158].

[301] Australia, Austria, Belgium, Bulgaria, Canada, Denmark, Ecuador, Finland, France, Hungary, India, Switzerland, South Africa, and United States (affirmative); United Kingdom (no objection if necessary); see ILC, 31st Session, 1948, Report VII, Freedom of Association and Protection of the Right to Organise, pp. 16 ff., 67 [Document No. 158].

should not be dealt with in the Convention.[302] Importantly, neither country rested its argument on the claim that the right to strike was generally excluded from freedom of association: the Netherlands explained that this was because "[q]uestions relating to the right to strike *have not yet been under consideration*",[303] whereas for Sweden it was because "the question of the *right of public officials to strike* does not appear to be directly connected with the right of association".[304]

4.212. Similarly, in later replies to the questionnaire, whereas eight States said yes (*i.e.*, agreed with a provision that the recognition of the right of association of public officials would not prejudge the question of their right to strike),[305] only two (Italy and Norway) said no.[306] In total, then, 23 Member States said yes, with several either expressly or implicitly recognising that the right to strike was protected by the right to freedom of association in their response, with possible limitation for public officials.[307]

4.213. Notwithstanding the view of the majority of responding Member States to Question 3(c) of the questionnaire, in its summary, the Office made the comment in its 1948 report as quoted above. Based on the context (*i.e.*, Question 3(c)), the Office's commentary in its 1948 report must be understood to refer the right to strike of *public officials*, but not the right to strike more generally.

4.214. The employers' group has further argued that its interpretation "was again confirmed during debates in plenary".[308] Curiously, it relied on the following statement during the 31st session:

---

[302] ILC, 31st Session, 1948, Report VII, Freedom of Association and Protection of the Right to Organise, pp. 19-20, 67 [Document No. 158].

[303] *Ibid.*, p. 19.

[304] *Ibid.*, p. 20.

[305] Bolivia, Chile, Cuba, Egypt, Greece, Iceland, Luxembourg, Pakistan, Poland; see ILC, 31st Session, 1948, Report VII (Supplement), Freedom of Association and Protection of the Right to Organise, pp. 8 ff [Document No. 159].

[306] ILC, 31st Session, 1948, Report VII (Supplement), Freedom of Association and Protection of the Right to Organise, pp. 10-11 [Document No. 159].

[307] *Ibid.*

[308] International Organisation of Employers (IOE), Position Paper – Do ILO Conventions 87 and 98 Recognize a Right to Strike?, October 2014, p. 10 [Annex No. 14], available at: https://www.ioe-emp.org/fileadmin/ioe_documents/publications/Policy%20Areas/international_labour_standards/EN/_2014-11-03__IOE_Paper_on_the_Right_to_Strike_in_Conventions_87_and_98__final_web_and_print_.pdf, p. 3

> "The Chairman stated that the Convention was not intended to be a 'code of regulations' for the right to organise, but rather a concise statement of certain fundamental principles."[309]

4.215. The employers' argument flies in the face of the record. To begin, the Chairman's statement, made during the discussion of Article 3, precisely confirms that Article 3 was to have a broad and not a narrow meaning, as it contains general principles on freedom of association. Indeed, at the conclusion of the Conference in 1947, the Conference unanimously adopted a resolution concerning freedom of association and protection of the right to organise and to bargain collectively, which defined "the fundamental principles on which freedom of association should be based."[310]

4.216. Given the context in which the adoption of an instrument on freedom of association was envisaged, this approach was preferred over one which set forth detailed regulations.[311] In light of the time pressure under which the process was conducted, the ILO constituents indicated that they were united in a strong desire to agree on a text to meet the deadline of the ILC, and acknowledged that what was produced did not, in all respects, meet their idea of a perfect statement on freedom of association.[312] Against this context, it was reasonable and pragmatic to take the view that a right to strike was implied in freedom of association generally, while no formal text on the right to strike was to be included, so as to avoid to have to delineate the exact contours of the right to strike, particularly with regard to public officials.

4.217. Contrary to what the employers' group asserts, the delegations continued to understand the right to strike as included in the general principles of freedom of association, with the potential exclusion of public officials' right to strike. For example, in the meeting of the Committee on Freedom of Association and Industrial Relations on 23 June 1947 at the 30th session, the delegation of India proposed a draft amendment to exclude the armed forces and the police from the scope of the Convention, taking the view that "the armed forces and the police could not be included in the field of application of freedom of association, because they

---

[309] ILC, 31st Session, 1948, Record of Proceedings, Appendix X, Freedom of Association and Protection of the Right to Organise, p. 478 [Document No. 164].
[310] ILC, 31st Session, 1948, Report VII, Questionnaire, Freedom of Association and Industrial Relations, p. 3 [Document No. 157].
[311] See ILC, 30th Session, 1947, Report VII, Freedom of Association and Industrial Relations, pp. 16-17 [Document No. 147].
[312] ILC, 31st Session, 1948, Record of Proceedings, Appendix X, Freedom of Association and Protection of the Right to Organise. p. 477 [Document No. 164].

were not authorised to take part in collective negotiations and had not the right to strike".[313] The reasoning of the Indian delegation clearly presupposed that freedom of association generally encompassed the rights to collective bargaining and to strike. Upon further discussion and modification in the 31st session in 1948, India's proposal was finally adopted in the form of Article 9 of Convention No. 87, as recorded and discussed earlier.[314] Similarly, the delegation of Portugal supported avoiding any drafting which implicitly prejudged the right to strike for public servants.[315]

4.218. In short, against the context that Convention No. 87 was intended to be a concise statement of general principles, the fact that it does not provide for a detailed *regulation* of the right to strike does not mean (and was never intended to mean) that the right was not *recognised* and to be subsequently developed by the ILO's supervisory system, as protected under Convention No. 87.

4.219. Indeed, the contemporaneous understanding of the drafters of Convention No. 87 is corroborated by the observations made by the CFA shortly afterwards. It is recalled that, as early as its second meeting in 1952, the original CFA held that "[t]he right to strike and that of organising union meetings are essential elements of trade union rights".[316] Notably, most members of this CFA were the respective employers' and workers' members at the 1947 and 1948 ILCs, namely employers members John Forbes Watson (United Kingdom), Julio Pons (Uruguay) and Pierre Waline (France), as well as workers members Léon Jouhaux (France) and Jean Mori (Switzerland). In fact, Léon Jouhaux had also been a member of the French delegation at the Paris Peace Conference in 1919 – the same delegation that supported the inclusion of the principle of freedom of association in the preamble to Part XIII.

4.220. It must also be remembered that only a small number of States became parties to Convention No. 87 before 1952. In particular, of the 158 States Parties that have ratified Convention No. 87,[317] 143 did so after the CFA's decision in 1952. Furthermore, 122 out of

[313] ILC, 30th Session, 1947, Record of Proceedings, Appendix X, Freedom of Association and Industrial Relations, p. 570 [Document. No. 152] (emphasis added).
[314] See ILC, 30th session, 1947, Record of Proceedings, p. 570 [Document No. 149] and ILC, 31st Session, 1948, Record of Proceedings, Appendix X, p. 478 [Document No. 164].
[315] See ILC, 31st Session, 1948, Record of Proceedings, p. 232 [Document No. 161].
[316] CFA, Case No. 28 (United Kingdom of Great Britain and Northern Ireland), Complaint date: 01-JUL-51, Definitive Report - Report No 2, 1952, para. 68. [Annex No. 15]
[317] See "Ratifications of fundamental instruments by country", ILO Normlex, website normlex.ilo.org (last accessed on 9 May 2024).

those 158 ratifications were made after the publication of the second general survey on freedom of association in 1959, in which the Committee of Experts observed that the prohibition of strikes other than for public officials acting in the name of the public powers "[m]ay run counter to" Article 8(2) of Convention No. 87 as discussed earlier. For these States Parties, the interpretations issued by the supervisory bodies must have been as relevant as – if not more than – the preparatory work *stricto sensu* of Convention No. 87. There can be little doubt that these States understood that the convention included a right to strike and ratified the Convention accepting that such a right existed.

4.221. Therefore, nothing in the travaux préparatoires read together with the contemporaneous observations of the CFA and CEACR supports the arguments put forward by the employers. To the contrary, the travaux préparatoires confirm, insofar as necessary, the unequivocal conclusion reached by application of the general rule of interpretation enshrined in Article 31 of the VCLT, namely that the right to strike, as an inherent component of freedom of association, is protected under Convention No. 87.

Conclusions and submissions

4.222. Based on the well-established principles of interpretation enshrined in Article 31, and insofar as necessary, Article 32 of the VCLT, all the elements detailed in this Written Statement point to an inescapable conclusion: the right to strike is an inherent and indispensable corollary of freedom of association and it has consistently been regarded as such. The right to strike is therefore protected under Convention No. 87 on Freedom of Association and Protection of the Right to Organise.

* * *

4.223. The ITUC therefore respectfully requests that the Court deliver an Advisory Opinion which confirms that:

(a) it has jurisdiction to respond to the request for an advisory opinion submitted by the ILO Governing Body in its Resolution of 10 November 2023 and no reason exists for the Court to decline to give the Advisory Opinion requested.

(b) the right to strike is protected under Convention No. 87 on Freedom of Association and Protection of the Right to Organise.

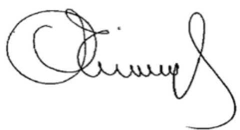
(c) by virtue of Article 31 of the ILO Constitution, the Advisory Opinion is authoritative and binding on the ILO and its constituents.

*

The International Trade Union Confederation (ITUC) has designated its General Secretary, Luc Triangle or his authorised representative, as its agent.

All communications relating to the participation of the ITUC in these proceeding should be sent to:

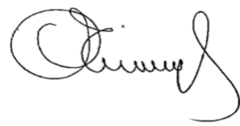
Luc Triangle
The General Secretary
International Trade Union Confederation (ITUC)
Boulevard du Jardin Botanique, 20,
1000 Brussels
Belgium.
Email : luc.triangle@ituc-csi.org



CERTIFICATION OF ANNEXES

I certify that the copies of the documents annexed to this Written Statement are true copies of the original documents referred to.

15 May, 2024



Luc Triangle
General Secretary, ITUC

LIST OF ANNEXES

Annex 1 GB.297/PV, Minutes of the 297th Session of the Governing Body, November 2006, paras 276-280.

Annex 2 International Trade Union Confederation. Constitution & Standing Orders (2023), available at: ituc_constitution_6th_congress_en.pdf (ituc-csi.org)

Annex 3 International Labour Organization, ILO Centenary Declaration (2019), available at: https://www.ilo.org/resource/ilc/108/ilo-centenary-declaration-future-work

Annex 4 Employers' Statement in the Committee on the Application of Standards of the International Labour Conference on 4 June 2012, available at: www.uscib.org/docs/2012_06_04_ioe_clarifications _statement.pdf.

Annex 5 GB.317/INS/4/1, "Matters arising out of the work of the International Labour Conference", Summary report concerning the informal tripartite consultations held on 19-20 February 2013, 317th Session of the Governing Body, available at: www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_206599.pdf.

Annex 6 International Trade Union Confederation, "The Right to strike and the ILO: the legal foundations", March 2014, p.69, available at: https://www.ituc-csi.org/the-right-to-strike-and-the-ilo?lang=en

Annex 7 2023 constitution of the Canadian Labour Congress (CLC, Canada), article 2(5), available at: https://documents.clcctc.ca/convention/Constitution-EN.pdf

Annex 8 2016 statutes of the Confédération Générale du Travail (CGT, France), article 1, available at : https://www.cgt.fr/statuts

Annex 9 9th quadrennial delegates congress (2012) of the Ghana Trades Union Congress (GTUC, Ghana), point 3.3

Annex 10 2015 acuerdos del XI congreso confederal Zaragoza, (CNT, Mexico), section 2, article 33(f), p. 31 available at: https://www.cnt.es/wp-content/uploads/anterior/acuerdos%20XI%20congreso_0.pdf

Annex 11 2023 constitution of the New Zealand Council of Trade Unions (NZCTU, New Zealand), point 1.2.2., available at: https://union.org.nz/wp-content/uploads/2024/02/NZCTU-Constitution-2023-final.pdf

Annex 12 2021 estatutos de la CS de CCOO (Confederación Sindical de Comisiones Obreras, Spain), anexos, pp.104-105, available at: https://comisionesobreras.congresos.ccoo.es/64ec9d64d94f6fbf6da5bbf8187d4162000057.pdf

Annex 13 2024 constitution of UNITE the Union (United Kingdom), Rule 2.1.2, available at: https://www.unitetheunion.org/media/4wvbk32a/final-unite-rule-book-amended-march-2024-v-1.pdf

Annex 14 International Organisation of Employers (IOE), Position Paper – Do ILO Conventions 87 and 98 Recognize a Right to Strike?, October 2014, pp. 3 and 10, available at: https://www.ioe-emp.org/fileadmin/ioe_documents/publications/Policy%20Areas/international_labour_standards/EN/_2014-11-03__IOE_Paper_on_the_Right_to_Strike_in_Conventions_87_and_98__final_web_and_print_.pdf

Annex 15 Committee on Freedom of Association (CFA), Case No 28 (United Kingdom of Great Britain and Northern Ireland), Complaint date: 01-JUL-51, Definitive Report - Report No 2, 1952, para. 68. Available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2898071

Annex 16 International Labour Conference, 109th Session, 2021, Government (Portugal), speaking on behalf of the European Union and its Member States, 8 July 2021, ILC.109/Record No.6C, pp. 10-11, available at: https://www.ilo.org/resource/record-proceedings/ilc/109/record-proceedings

Annex 17 Committee on Freedom of Association (CFA) Case No. 3422 (South Africa), Complaint date: 07-MARCH-2022, Definitive Report - Report No 404, October 2023, para. 100, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:4364406

Annex 18 Committee on Freedom of Association (CFA), Case No. 2288 (Niger), Complaint date: 17-JUN-03, Report in which the committee requests to be kept informed of development - Report No 333, March 2004, para. 822, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2908085

Annex 19 Committee on Freedom of Association (CFA), Case No. 2413 (Guatemala), Complaint date: 14-MAR-05, Interim Report - Report No 340, March 2006, para. 894, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2909393

Annex 20 Committee on Freedom of Association (CFA), Case No. 2897 (El Salvador), Complaint date: 05-JUL-11, Definitive Report - Report No 378, June 2016 para. 239, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3282086

Annex 21 Committee on Freedom of Association (CFA), Case No. 2486 (Romania), Complaint date: 22-MAY-06, Interim Report - Report No 344, March 2007, paras. 1192-1193, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2910091

Annex 22 Committee on Freedom of Association (CFA), Case No. 2841 (France), Complaint date: 17-FEB-11, Report in which the committee requests to be kept informed of development - Report No 362, November 2011, para 999, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2912582

Annex 23 Committee on Freedom of Association (CFA), Case No 2383 (United Kingdom of Great Britain and Northern Ireland), Complaint date: 20-AUG-04, Report in which the committee requests to be kept informed of development - Report No 336, March 2005, para. 741, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2909082

Annex 24 Committee on Freedom of Association (CFA), Case No 3439 (Republic of Korea), Complaint date: 19-DEC-22, Report in which the committee requests to be kept informed of development - Report No 405, March 2024, para. 540, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:4396599

Annex 25 Committee on Freedom of Association (CFA), Case No 3124 (Indonesia), Complaint date: 27-FEB-15, Report in which the committee requests to be kept informed of development - Report No 383, October 2017, para. 402, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3523600

Annex 26 Committee on Freedom of Association (CFA), Case No 3079 (Dominican Republic), Complaint date: 28-MAY-14, Definitive Report - Report No 376, October 2015, para. 399, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3254245

Annex 27 Committee on Freedom of Association (CFA), Case No 2587 (Peru), Complaint date: 10-JUL-07, Definitive Report - Report No 354, June 2009, para. 1053, available at https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2910936

Annex 28 Committee on Freedom of Association (CFA), Case No 2513 (Argentina), Complaint date: 30-JUL-06, Definitive Report - Report No 349, March 2008, para. 321, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2910321

Annex 29 Committee on Freedom of Association (CFA), Case No 2650 (Bolivia (Plurinational State of)) - Complaint date: 07-MAY-08, Definitive Report - Report No 353, March 2009 para. 408, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2911463

Annex 30 Committee on Freedom of Association (CFA), Case No 2770 (Chile), Complaint date: 27-MAR-10, Definitive Report - Report No 360, June 2011, para. 354, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2912313

Annex 31 Committee on Freedom of Association (CFA), Case No. 3111 (Poland), Complaint date: 14-JAN-15, Definitive Report - Report No 378, June 2016, para. 697, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:3282128

Annex 32 Committee on Freedom of Association (CFA), Case No. 2496 (Burkina Faso), Complaint date: 29-MAY-06, Report in which the committee requests to be kept informed of development - Report No 344, March 2007, para. 399 (emphasis added), available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2910179

Annex 33 Committee on Freedom of Association (CFA), Case No. 2088 (Venezuela (Bolivarian Republic of)), Complaint date: 01-MAY-00, Effect given to the recommendations of the committee and the Governing Body - Report No 348, November 2007, para. 170, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2905877

Annex 34 Second Supplementary Report; Report of the Commission of Inquiry established to examine the complaints concerning the observance by the Government of Zimbabwe of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), made by delegates to the 97th Session (2008) of the International Labour Conference under article 26 of the Constitution of the ILO (GB.308/6/2), 308th Session, June 2010, para. 103, available at : https://www.ilo.org/ongoing-and-forthcoming-meetings-and-events/ilo-governing-body/governing-body-sessions/previous-governing-body-sessions/308th-session-june-2010

Annex 35 ILC, 100th Session, 2011, Report of the Committee on the Application of Standards, p. 213, available at: https://webapps.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_151556.pdf

Annex 36 Report of the Commission of Inquiry established in accordance with article 26 of the ILO Constitution concerning the non-observance by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Forced Labour Convention, 1930 (No. 29), GB.349/INS/14, 349th Session, October-November 2023, p. 8 and Appendix "Reply from the military authorities dated 29 September 2023", para. 2, available at: https://www.ilo.org/resource/gb/349/report-commission-inquiry-established-accordance-article-26-ilo

Annex 37 Committee on Freedom of Association (CFA), Case No 1849 (Belarus), Complaint date: 31-AUG-95, Report in which the committee requests to be kept informed of development - Report No 302, March 1996, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2903618

Annex 38 Committee on Freedom of Association (CFA), Case No 2090 (Belarus), Complaint date: 16-JUN-00, Interim Report - Report No 324, March 2001 para. 174, available at:https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2905910

Annex 39 Governing Body, 294th Session, 339th Report of the Committee on Freedom of Association, GB.294/7/2, Geneva, November 2005, para. 4, available at: https://webapps.ilo.org/public/english/standards/relm/gb/docs/gb294/pdf/gb-7-2.pdf

Annex 40 Governing Body, 298th Session, 345th Report of the Committee on Freedom of Association, GB.298/7/2, Geneva, March 2007, para. 82, available at: https://webapps.ilo.org/public/english/standards/relm/gb/docs/gb298/pdf/gb-7-2.pdf

Annex 41 Governing Body, 303rd Session, 352nd Report of the Committee on Freedom of Association, GB.303/9/2, Geneva, November 2008, para. 58, available at: https://www.ilo.org/resource/conference-paper/gb/303/352nd-report-committee-freedom-association

Annex 42 Governing Body, 344th Session, 398th Report of the Committee on Freedom of Association, GB.344/INS/15/2, Geneva, March 2022, para. 39, available at: https://www.ilo.org/resource/gb/344/398th-report-committee-freedom-association

Annex 43 Governing Body, 347th Session, 402nd Report of the Committee on Freedom of Association, GB.347/INS/17/2, Geneva, 13–23 March 2023, para. 23, available at: https://www.ilo.org/resource/gb/347/402nd-report-committee-freedom-association

Annex 44 ILC, 111th Session, 2023, Resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Belarus, available at: https://www.ilo.org/resource/ilc/111/resolution-concerning-measures-recommended-governing-body-under-article-33

Annex 45 Committee on Freedom of Association (CFA), case No 2216 (Russian Federation), Complaint date: 12-AUG-02, Effect given to the recommendations of the committee and the Governing Body - Report No 334, June 2004 para. 54, available at:https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2907241

Annex 46 Committee on Freedom of Association (CFA), case No 2216 (Russian Federation), Complaint date: 12-AUG-02, Effect given to the recommendations of the committee and the Governing Body - Report No 337, June 2005, para. 149, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2907245

Annex 47 Supreme Court of Ireland, H. A. O'Neil Limited v. Unite the Union, Patrick James Goold, William Mangan and Damian Jones, Judgment of Mr. Justice O'Donnell, Chief Justice delivered on the 6th day of March 2024, paras. 59, 62-63. available at:https://www.courts.ie/view/judgments/433390f3-6d41-4259-9d5c-22cff7193175/dd26d364-75ea-4e56-99e9-a53db0110381/2024_IESC_8_(O'Donnell%20C.J).pdf/pdf

Annex 48 Committee on Freedom of Association (CFA), case No 2631 (Uruguay), Complaint date: 28-JAN-08, Definitive Report - Report No 353, March 2009, paras. 1349, 1352, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2911331

Annex 49 Committee on Freedom of Association (CFA), case No 1856 (Uruguay), Complaint date: 25-SEP-95, Report in which the committee requests to be kept informed of development - Report No 302, March 1996, para. 431, see also paras. 430, 434, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2903714

Annex 50 Committee on Freedom of Association (CFA), case No 1692 (Germany), Complaint date: 23-DEC-92, Definitive Report - Report No 291, November 1993, para. 217, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2902575

Annex 51 Supreme Court of Argentina, Orellano v el Correo Oficial de la República Argentina SA, 7 June 2016, CSJ 93/2013 (49-0)/CS1, para 11, available at: http://www.saij.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires-orellano-francisco-daniel-correo-oficial-republica-argentina-sa-juicio-sumarisimo-fa16000089-2016-06-07/123456789-980-0006-1ots-eupmocsollaf

Annex 52 Supreme Court of Justice (Colombia), Labour Cassation Chamber, SL1680-2020, Radicación n.° 81296, Acta 22, 24 June 2020, chapter 1.1, p. 11 and Chapter 2.a, pp. 26-29, available at: https://cortesuprema.gov.co/corte/wp-content/uploads/2020/07/SL1680-2020-81296.pdf

Annex 53 Committee on Freedom of Association (CFA), case No. 1719 (Nicaragua), Complaint date: 06-JUN-93, Report in which the committee requests to be kept informed of development - Report No 304, June 1996, para. 413, available at: https://normlex.ilo.org/dyn/normlex/en/f?p=1000:50002:0::NO:50002:P50002_COMPLAINT_TEXT_ID:2902718

Annex 54 Decision of the Tribunal Constitucional (Spain) 37/1.983, 11 May 1983 (ECLI:ES:TC:1983 :37), para. 2 of the section on “Fundamentos jurídicos”, available at: https://hj.tribunalconstitucional.es/ca/Resolucion/Show/165

Annex 55 International Labour Conference, 109th Session, 2020, Report III (Part A) of the CEACR, Report on the application of International Labour standards, pp. 77 and 83, available at: https://labordoc.ilo.org/discovery/delivery/41ILO_INST:41ILO_V2/1266929950002676

Annex 56 International Labour Conference, 106th Session, 2017, Report III (Part 1A) of the CEACR, Application of International Labour Standards, pp. 78, 81 and 95, available at: https://labordoc.ilo.org/discovery/delivery/41ILO_INST:41ILO_V2/1245409520002676 f

Annex 57 International Labour Conference, 105th Session, 2016, Report III (Part 1A) of the CEACR, Application of International Labour Standards, pp. 105-106, available at: https://webapps.ilo.org/public/libdoc/ilo/P/09661/09661(2016-105-1A).pdf

Annex 58 International Labour Conference, 104th Session, 2015, Report III (Part 1A) of the CEACR, Application of International Labour Standards, pp. 81, 129 and 131, available at: https://webapps.ilo.org/public/libdoc/ilo/P/09661/09661(2015-104-1A).pdf