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THE HAGUE

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de Justice

LA HAYE

YEAR 2025

Public sitting

held on Tuesday 7 October 2025, at 10.30 a.m., at the Peace Palace,

President Iwasawa presiding,

*on the Right to Strike under ILO Convention No. 87
(Request for advisory opinion submitted by the Governing Body of the International
Labour Office (ILO))*

VERBATIM RECORD

ANNÉE 2025

Audience publique

tenue le mardi 7 octobre 2025, à 10 heures 30, au Palais de la Paix,

sous la présidence de M. Iwasawa, président,

*sur le Droit de grève au regard de la convention n° 87 de l'OIT
(Demande d'avis consultatif soumise par le Conseil d'administration du Bureau
international du Travail (BIT))*

COMPTE RENDU

Present: President Iwasawa
Vice-President Sebutinde
Judges Tomka
Abraham
Xue
Bhandari
Nolte
Charlesworth
Brant
Gómez Robledo
Cleveland
Aurescu
Tladi
Hmoud

Registrar Gautier

Présents : M. Iwasawa, président
M^{me} Sebutinde, vice-présidente
MM. Tomka
Abraham
M^{me} Xue
MM. Bhandari
Nolte
M^{me} Charlesworth
MM. Brant
Gómez Robledo
M^{me} Cleveland
MM. Aurescu
Tladi
Hmoud, juges

M. Gautier, greffier

The Government of the Federative Republic of Brazil is represented by:

HE Mr Fernando Simas Magalhães, Ambassador of the Federative Republic of Brazil to the Kingdom of the Netherlands,

Mr Marcelo Marotta Viegas, Director, Department of International Organizations, Ministry of Foreign Affairs,

Mr Henrique Choer Moraes, Deputy Head of Mission, Embassy of the Federative Republic of Brazil in the Kingdom of the Netherlands,

Mr Frederico Bauer, Counsellor, Embassy of the Federative Republic of Brazil in the Kingdom of the Netherlands,

Mr Victor Thives dos Santos, Secretary, Embassy of the Federative Republic of Brazil in the Kingdom of the Netherlands.

The Government of the Kingdom of Spain is represented by:

HE Ms Consuelo Femenía Guardiola, Ambassador of the Kingdom of Spain to the Kingdom of the Netherlands,

Mr Santiago Ripol Carulla, Professor of International Public Law, Universitat Pompeu Fabra, Head of the International Legal Advisory Service, Ministry of Foreign Affairs, European Union and Cooperation,

Ms María José Ruiz Sánchez, State Attorney, Office of the Attorney General,

Ms María Dolores Casariego Artola, Deputy Director General of International Socio-Labor Relations, Ministry of Labor and Social Economy,

Mr Juan Almazán Fuentes, First Secretary and Legal Adviser, Embassy of the Kingdom of Spain in the Kingdom of the Netherlands.

The Government of the Republic of Indonesia is represented by:

HE Mr Mayerfas, Ambassador of the Republic of Indonesia to the Kingdom of the Netherlands,

Mr Laurentius Amrih Jinangkung, Director General of International Law and Treaties, Ministry of Foreign Affairs,

Ms Mariska Dwianti Dhanutirto, Deputy Chief of Mission, Embassy of the Republic of Indonesia in the Kingdom of the Netherlands,

Mr Haryo Budi Nugroho, Minister Counsellor, Embassy of the Republic of Indonesia in the Kingdom of the Netherlands,

Mr Andrea Albert Stefanus, Counsellor, Embassy of the Republic of Indonesia in the Kingdom of the Netherlands,

Ms I Gusti Agung Ayu Ratih Astary, Counsellor, Embassy of the Republic of Indonesia in the Kingdom of the Netherlands,

Le Gouvernement de la République fédérative du Brésil est représenté par :

- S. Exc. M. Fernando Simas Magalhães, ambassadeur de la République fédérative du Brésil auprès du Royaume des Pays-Bas,
- M. Marcelo Marotta Viegas, directeur du département des organisations internationales, ministère des affaires étrangères,
- M. Henrique Choer Moraes, chef de mission adjoint, ambassade de la République fédérative du Brésil au Royaume des Pays-Bas,
- M. Frederico Bauer, conseiller, ambassade de la République fédérative du Brésil au Royaume des Pays-Bas,
- M. Victor Thives dos Santos, secrétaire, ambassade de la République fédérative du Brésil au Royaume des Pays-Bas.

Le Gouvernement du Royaume d'Espagne est représenté par :

- S. Exc. M^{me} Consuelo Femenía Guardiola, ambassadrice du Royaume d'Espagne auprès du Royaume des Pays-Bas,
- M. Santiago Ripol Carulla, professeur de droit international public à la Universitat Pompeu Fabra, chef du service juridique international, ministère des affaires étrangères, de l'Union européenne et de la coopération,
- M^{me} María José Ruiz Sánchez, avocate de l'État, bureau du procureur général,
- M^{me} María Dolores Casariego Artola, directrice générale adjointe aux relations internationales en matière sociale et professionnelle, ministère du travail et de l'économie sociale,
- M. Juan Almazán Fuentes, premier secrétaire et conseiller juridique, ambassade du Royaume d'Espagne au Royaume des Pays-Bas.

Le Gouvernement de la République d'Indonésie est représenté par :

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- M. Laurentius Amrih Jinangkung, directeur général au droit international et aux traités, ministère des affaires étrangères,
- M^{me} Mariska Dwianti Dhanutirto, cheffe de mission adjointe, ambassade de la République d'Indonésie au Royaume des Pays-Bas,
- M. Haryo Budi Nugroho, ministre conseiller, ambassade de la République d'Indonésie au Royaume des Pays-Bas,
- M. Andrea Albert Stefanus, conseiller, ambassade de la République d'Indonésie au Royaume des Pays-Bas,
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Ms Aisyah Murtina Allamanda, First Secretary, Embassy of the Republic of Indonesia in the Kingdom of the Netherlands,

Ms Maulida Fitri Purliayu, Third Secretary, Embassy of the Republic of Indonesia in the Kingdom of the Netherlands,

Ms Yustisia Pratiwi Pramesti, Third Secretary, Directorate of Social and Cultural Law and Treaties, Ministry of Foreign Affairs.

M^{me} Puji Lestari, conseillère, ambassade de la République d'Indonésie au Royaume des Pays-Bas,

M^{me} Aisyah Murtina Allamanda, première secrétaire, ambassade de la République d'Indonésie au Royaume des Pays-Bas,

M^{me} Maulida Fitri Purliayu, troisième secrétaire, ambassade de la République d'Indonésie au Royaume des Pays-Bas,

M^{me} Yustisia Pratiwi Pramesti, troisième secrétaire, direction de la législation en matière sociale et culturelle et des traités, ministère des affaires étrangères.

The PRESIDENT: Please be seated. Good morning. The sitting is now open.

The Court meets this morning to hear the following participants on the question submitted to it by the Governing Body of the International Labour Organization, namely Brazil, Spain and Indonesia. I recall that each of the delegations has been allocated 30 minutes for its presentation. The Court will *not* observe a coffee break this morning.

I shall now give the floor to Mr Marcelo Marotta Viegas, speaking on behalf of Brazil. Sir, you have the floor.

Mr MAROTTA VIEGAS:

**ORAL STATEMENT BY THE GOVERNMENT OF THE FEDERATIVE
REPUBLIC OF BRAZIL**

1. Mr President of the International Court of Justice, Judge Yuji Iwasawa, distinguished Members of the Court, it is an honour to speak on behalf of Brazil before the International Court of Justice, the principal judicial organ of the United Nations.

2. This advisory opinion was requested by the International Labour Organization, pursuant to Article 37, paragraph 1, of the ILO Constitution, to provide an authoritative answer to the following question: “Is the right to strike of workers and their organizations protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)?”

3. As a founding member of the ILO, Brazil furnished a written statement to the Court on 30 May 2024, grounding its stance on the special constitutional protections enjoyed by the right to strike in Brazil and the priority conferred by the Brazilian Government to the affirmation of workers’ rights.

4. The written statement submitted by Brazil expresses the view that the Court has jurisdiction to issue the requested advisory opinion, in accordance with Article 65 (1) of its Statute. The Agreement between the ILO and the United Nations authorized the ILO to request advisory opinions to the Court on legal questions arising within the scope of its activities. In the present case, the opinion was requested by ILO’s Governing Body, acting in pursuance of an authorization by the Conference of the ILO, in accordance with Article IX of the Agreement, and the Resolution

concerning the Procedure for Requests to the International Court of Justice for Advisory Opinions adopted by the International Labour Conference on 27 June 1949.

5. As such, the ILO is duly authorized, under the Charter, to request advisory opinions from the Court; the opinion requested is on a legal question; and this question arises from within the scope of the activities of the ILO. Furthermore, Brazil considers that there is no compelling reason for the Court to use its discretionary power not to give its opinion to the International Labour Organization. There is, therefore, no reason, in our view, for the Court to refrain from issuing the requested advisory opinion.

6. Mr President, in essence, the issue before this Court today is a matter of human rights, the promotion of which is one of the three main pillars of the United Nations. This assertion can be drawn back to the Universal Declaration of Human Rights. Articles XX and XXIII of the Universal Declaration specifically protect the right of association and the right of workers to form and join trade unions for the protection of their interests. The International Covenant on Civil and Political Rights (ICCPR) enshrines similar protections in Articles 21 and 22, which safeguard the right of peaceful assembly and the right to freedom of association, including the right to form and join trade unions. The right to strike is also expressly covered by Article 8 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR).

7. The same can be said about Article 16 of the American Convention on Human Rights, as well as Article 8 of its Additional Protocol on Economic, Social and Cultural Rights, which enshrines the protection of the right to strike as an essential instrument for the exercise of the freedom of association and the freedom to unionize. In this regard, the Inter-American Court of Human Rights has repeatedly affirmed that the right to strike is a corollary to the right of unions to engage in collective negotiation.

8. This interconnectedness between the right to strike and the right of workers to freely organize is pervasive in international human rights law and can be easily demonstrated. Unions, as explicitly stated in the aforementioned human rights treaties, exist to defend the interests of workers. This defence is essentially carried out through collective bargaining between workers and their employers. Collective bargaining allows workers and their representatives to negotiate terms and conditions of employment, contributing to a more equitable distribution of resources and the

reduction of disparities in the workplace. Collective bargaining by workers' organizations plays a key role in promoting decent work; providing a platform for collaboration; understanding and consensus building between employers, workers and governments to address work-related challenges, promote fair working conditions and ensure the well-being of all stakeholders, thereby increasing productivity while reducing inequalities.

9. But this dynamic cannot properly function if there is no legally protected right to strike. In order to be fair, balanced and equitable, dialogue between employers and workers must play out on an even field — one that is not distorted by the structural asymmetry in work relations that arises from the economic power wielded by employers. The right to strike is the most effective remedy to compensate this asymmetry — enabling equitable participation of workers in decision-making processes and allowing for policymaking that responds to their needs and aspirations. In this regard, the right to strike functions as an indispensable means for the full realization of the right of workers to unionize in defence of their interests. Such defence would hardly be feasible if workers were deprived of the arguably single tool at their disposal to counterbalance the economic, social and political power held by employers and corporations.

10. Mr President, in Brazil's perspective, any proper interpretation of ILO Convention No. 87 must bear this interconnectedness in mind. In July 2023, Brazil was one of the first ILO constituents to officially support the proposal of the Workers' Group to discuss the right to strike at the Governing Body and to refer the dispute on the interpretation of Convention No. 87 to the International Court of Justice, in accordance with Article 37 of the ILO Constitution.

11. This interpretation must be carried out in accordance with the general rules provided in Article 31 of the Vienna Convention on the Law of Treaties. In other words, ILO Convention No. 87 must be interpreted in its context, in light of its object and purpose — which is to enshrine and protect workers' freedom of association and their right to organize. However, any interpretation of Convention No. 87 must also bear in mind the principles that govern the construction of human rights treaties, such as the principle of effectiveness and the *pro homine* principle.

12. Articles 2, 3 and 10 of ILO Convention No. 87 establish the scope of freedom of association and of the right to organize. They make it clear that this right does not depend on previous authorization and cannot be interfered with by public authorities. Furthermore, they explicitly allow

for an extensive construction of the term “organisation”, which, according to Article 10, means “any organisation of workers or of employers for furthering and defending the interests of workers or of employers”.

13. Brazil considers that, according to these provisions, in light of the treaty’s context, object and purpose, and in line with the principle of effectiveness and the *pro homine* principle, this right must be understood in the broadest of terms, granting workers freedom to act collectively in order to defend and further their common interests. This collective action is not limited to the establishment of trade unions, federations or confederations. It can and must also include the right to strike.

14. Strikes are, after all, essentially collective actions; it is impossible to conceive a strike that does not include a group of workers acting in some degree of co-ordination with a view to achieving certain goals of common interest. Second, as we have said before, strikes are one of the main instruments, if not the most powerful one, at the disposal of trade unions and similar organizations to engage in fair, equitable collective bargaining. Without a right to strike, the right to unionize is hollowed out of almost all practical meaning, depriving it of its *effet utile*. One right cannot properly exist without the other.

15. Article 3 of Convention No. 87 imposes on authorities the obligation to refrain from restricting or impeding the lawful exercise of the rights of workers’ organizations to draw up their constitutions and rules; to organize their administration and activities; and to formulate their programmes. In Brazil’s perspective, this provision includes the obligation to safeguard the right to strike, which derives from the workers’ right to freely associate and organize themselves.

16. After all, one of the main purposes of Convention No. 87 is to protect freedom of association from any interference that would restrict this right or impede its lawful exercise. Curtailing the right to strike would prevent workers from fully exercising their right to organize freely, depriving workers’ organizations from one of their main means of action. Therefore, a construction of Convention No. 87 that excises the right to strike from the freedom of association and the right to organize would hinder full achievement of the purposes of Convention No. 87. This interpretation would be incompatible with the object and purpose of such Convention.

17. Mr President, workers’ rights are human rights. Brazil believes that, within the boundaries of the legal text, human rights provisions must be construed extensively, so as to ensure the highest

and widest-reaching possible degree of protection. There is nothing in ILO Convention No. 87 that explicitly bars its application to the right to strike. Conversely, there are strong arguments for contending that it does protect this right.

18. Such arguments enjoy the support of a significant part of the ILO membership, as well as of the ILO supervisory bodies, which, according to the ILO's request for an advisory opinion, "have consistently observed that the right to strike is a corollary to the fundamental right to freedom of association". In this vein, it is Brazil's view that the Court should take into account this subsequent practice in the application of Convention No. 87 as an objective evidence of the understanding of the parties as to the interpretation of the treaty, as set out in Article 31 (3) of the Vienna Convention on the Law of Treaties.

19. For the reasons presented above, Brazil reaffirms the contents of its written statement and respectfully invites the Court to:

- (i) exercise its advisory jurisdiction in these proceedings;
- (ii) declare that the right to strike is protected under ILO Convention No. 87, of 1948, on the Freedom of Association and the Protection of the Right to Organise.

20. Thank you.

The PRESIDENT: I thank the representative of Brazil for his presentation. I now invite the delegation of Spain to address the Court and I call Ms María José Ruiz Sánchez to the podium. You have the floor, Madam.

Ms RUIZ SÁNCHEZ:

ORAL STATEMENT BY THE GOVERNMENT OF THE KINGDOM OF SPAIN

1. Mr President, esteemed Members of the Court, it is an honour to appear before this Court on behalf of the Kingdom of Spain.

2. Having received the communication from the Court in accordance with Article 66 of its Statute, Spain submitted a written statement on 14 May 2024.

3. Spain's oral statement today aims to expand on that written statement and to furnish the Court with some elements that, from our point of view, may be of help in rendering an advisory opinion in response to the request made by the Governing Body of the International Labour Office.

1. Jurisdiction

4. The competence of the Court to render the advisory opinion requested by the Governing Body of the International Labour Office, as decided in a resolution adopted at its Special Session of 10 November 2023, is based on Article 65, paragraph 1, of the Statute of the Court and Article 103 of the Rules of Court.

5. The Governing Body of the International Labour Office has requested that the International Court of Justice urgently render an advisory opinion on the following question: is the right to strike of workers and their organizations protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948?

6. This is a direct and general question which does not include any query about the scope of the right to strike, its modalities or its limits, in law or in practice. The question deals with the interpretation of an international treaty. Therefore, it is indeed a question of legal character. Additionally, the question arises within the scope of activities or areas of competence of the International Labour Organization (ILO). As per Article 37 of the ILO Constitution,

“[a]ny question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice”.

7. Therefore, Spain is of the view that the Court has indeed jurisdiction to render an advisory opinion as requested by the Governing Body of the International Labour Office.

2. General rule of interpretation

8. The question posed to the Court refers indeed to the interpretation of an international treaty, whose Articles, as is well known, do not expressly refer to the right to strike. This silence contrasts with the understanding of the ILO supervisory bodies and with practice in the interpretation of other international treaties that regulate the right to freedom of association.

9. We must therefore begin by considering Article 31 of the Vienna Convention on the Law of Treaties, pursuant to which “[a] treaty shall be interpreted in good faith in accordance with the

ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”.

10. This is the general rule of interpretation of treaties, thus expressed, in the singular form, in the aforementioned Article 31. In its commentaries on the draft articles on the law of treaties, the International Law Commission (ILC) explained that “by heading the article . . . in the singular”, the Commission

“intended to indicate that the application of the means of interpretation in the article would be a single combined operation. All the various elements, as they were present in any given case, would be thrown into the crucible, and their interaction would give the legally relevant interpretation. [T]he Commission desired to emphasize that the process of interpretation is a unity and that the provisions of the article form a single, closely integrated rule.”

11. There is, therefore, no hierarchy among the elements listed by the general rule of interpretation.

12. While Spain agrees that, as the Court has held, the interpretation of treaties is a complex and unique exercise in which all the elements listed in Article 31 must be applied, Spain wishes to make special reference to the rules or the criteria that, in its opinion, are most relevant for the interpretation of the content of Article 3 of ILO Convention No. 87, without forgetting that we are starting from the silence of the text. Those criteria are the object and purpose of the treaty: any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation (Article 31 (3) *(b)*); any relevant rules of international law applicable in the relations between the parties (Article 31 (3) *(c)*); and the effectiveness of the treaties.

13. Spain’s statement will have the following structure: I will now address the first of the four elements included in the general rule of interpretation, that is, the object and purpose of the treaty. An examination that will show us that the right to strike is part of the right to freedom of association. We will also show that this is the case under Spanish law, which I will refer to briefly, on the understanding that it might be of interest to the Court. In the second part, Mr Santiago Ripol Carulla, Head of the International Legal Advisory Service at the Ministry of Foreign Affairs, European Union and Cooperation, will examine the other mentioned elements of the general rule of interpretation.

3. Object and purpose of the treaty: Articles 2 and 3 of ILO Convention No. 87

14. We shall first examine the object and the purpose of the treaty.

15. Article 2 of the ILO Convention defines the right of freedom of association as the right of workers and employers, without distinction whatsoever, to establish and to join organizations of their own choosing without previous authorization.

16. Article 3 lists some of the rights of workers' and employers' organizations, including the right to organize their administration and their activities and to formulate their programmes.

17. In short, the recognition of the right to freedom of association has the specific purpose of enabling workers to defend their interests by means of collective action through organizations established precisely with that very purpose.

18. This is why the natural sphere of action of trade union organizations comprises those actions, such as strikes, which, because of their nature, can only be carried out collectively.

19. If associations established in the exercise of the right to freedom of association were not understood to be empowered to carry out the collective actions that they deem necessary to defend their interests, both the right to freedom of association recognized in Article 2, and the right of workers' and employers' organizations to organize their activities and to formulate their programmes, would be devoid of their content and these organizations could not achieve the purpose for which they were recognized.

4. Spanish law

20. Spain wishes to now briefly present the treatment of this issue under Spanish law, believing (1) that these considerations might be of interest to the Court, and (2) that the opinion that will be expressed by this Court shall undoubtedly greatly influence the Spanish administration and the high courts when they interpret or apply national law on the right to strike, as required by international law and by Articles 10 and 96 of our Constitution.

21. In Spain, action by the legislative and the judicial branches is based on the understanding that in international law the right to strike is an essential component of freedom of association, and that the two rights are indivisible.

22. The Spanish Constitution of 1978 enshrines both the right to strike and the right to freedom of association in its Article 28. They are recognized as complementary rights to achieve the purpose served by trade unions as per Article 7 of the Constitution, and that is defending and promoting the economic and social interests which they represent.

23. In multiple rulings — cited in our written statement — the Spanish Constitutional Court's interpretation of the rights recognized in Article 28 of the Constitution has remained unchanged. It has repeatedly held:

- First, that the right to strike is aligned with the purpose served by trade unions under Article 7 of the Constitution.
- Second, that the right to freedom of association allows the free exercise of trade union activity and use by trade unions of the means they consider appropriate to promote and defend the interests which they represent.
- Third, that the right to strike is an appropriate means available to trade unions to fulfil their constitutional duty to promote and defend the interests which they represent. It is, in fact, one of the most fundamental means at their disposal to fulfil this constitutional duty.
- Fourth, a trade union, which lacked the right to call a strike, would be stripped of its essence.

24. In short, in its case law, the Spanish Constitutional Court has consistently ruled that the right to strike is part of the right to freedom of association and considers this interpretation to constitute an international standard. The Court understands that true freedom of association would not exist without the right to strike, and that the right to strike is an essential and necessary component of the right to freedom of association, and it is indivisible from it, as it allows trade unions to follow their constitutional purpose.

25. This relationship, as reflected in the Constitution, has been emphasized by the Spanish Constitutional Court, particularly in its Ruling 11/1981, where it analysed whether the regulation of the right to strike included in Royal Decree-Law 17/1977 on labour relations, which was passed before the Constitution itself, was indeed constitutional.

26. The inclusion of the right to strike within the scope of freedom of association has been a constant in the Constitutional Court's case law. It includes the right to strike among the appropriate

means of action available to a trade union to fulfil its constitutional obligations to promote and defend the interests it represents.

27. Mr Ripol Carulla will now intervene, focusing on the consideration of the elements included in the general rule of interpretation related to practice. Mr President, I respectfully ask that you give him the floor. Thank you very much.

The PRESIDENT: I thank Ms Ruiz Sánchez for her presentation. I now give the floor to Dr Santiago Ripol Carulla. Sir, you have the floor.

Mr RIPOL CARULLA:

1. Mr President, esteemed Members of the Court, it is an honour to appear before this Court on behalf of the Kingdom of Spain.

2. Our examination thus far has allowed us to conclude that, despite the silence of ILO Convention No. 87, Articles 2 and 3 of the Convention make the right to strike part of the right to freedom of association. The same applies to Spanish law.

3. Let us now examine the other two elements of the general rule of interpretation that Spain wishes to highlight in particular for the interpretation of Article 3 of ILO Convention No. 87, namely the agreement of the parties regarding its interpretation; and any relevant rules of international law applicable in the relations between the parties. These two elements are closely related to practice and also to the nature of the Convention.

5. Subsequent practice: monitoring of compliance by constitutional bodies

4. Mr President, distinguished Members of the Court, the Convention concerning Freedom of Association and Protection of the Right to Organise is a prime example of the ILO's legislative function. This legislative function should be understood not only as the power to create standards, but also to ensure the effective and uniform application of these standards.

5. Pursuant to Article 19 of the ILO Constitution, the International Labour Conference may adopt international conventions or recommendations.

6. Besides, to promote effective and uniform compliance with international labour standards, the Organization has established a complex system for examining, supervising and also facilitating States' applications of labour standards.

7. Mr President, this supervision can be classified as unique in nature. The system is characterized by three features:

- (1) its constitutional nature, in the sense that such control is exercised by the organs of the Organization (not by bodies that have been created by the treaties), bodies of the organization which therefore act in the exercise of a constitutional mandate;
- (2) the system is characterized by its extensiveness (as it covers the conventions ratified by a State, the conventions to which a State is not party, conventions before and after their ratification, recommendations, and declarations); and finally;
- (3) the system is characterized by the thoroughness of the supervision carried out, as it enables the ILO to produce annual reports for each convention and for each State. It enables the ILO to be familiar with the practices followed and difficulties faced by each State in applying specific conventions. It enables the ILO to make technical observations and to produce annual reports and also special studies, and so on.

8. In this regard, it is important to recall that ILO Convention No. 87 is intended to be interpreted and modulated by the bodies of the Organization. This is a form of supervision that the ILO bodies carry out in fulfilment of their constitutional mandate.

9. This being the case, the silence of Article 3 on the right to strike as an expression of the right to freedom of association, this silence cannot simply be understood as reflecting the unwillingness of the signatory States to recognize or regulate the right to strike, with the understanding that the ILO bodies will foster the implementation of the provisions of the Convention through their doctrine and in direct collaboration with the States.

10. In fact, the practice followed by the ILO supervisory bodies demonstrates that, although the right to strike is not expressly set forth in Convention No. 87, it has long featured in ILO debates and action.

11. At its 30th session, held in 1947, the International Labour Conference, at the request of the United Nations Economic and Social Council, studied the question of *freedom of association and*

industrial relations, and analysed law and practice concerning strikes in relation to the conclusion of collective agreements. Later, other resolutions of the Conference itself, of regional conferences and sectoral committees have also referred to the right to strike.

12. Moreover, the ILO supervisory bodies — namely the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations — have made statements regarding the exact scope and meaning of Convention No. 87 as regards to the right to strike.

13. The Committee on Freedom of Association affirmed the principle of the right to strike as early as its second meeting, held in 1952, declaring it an “essential [element] of trade union rights”. The committee has maintained this assertion to date.

14. For its part, the Committee of Experts (since 1959) has gradually been developing a certain number of principles related to the right to strike. In essence, the committee has affirmed that the right to strike is an intrinsic corollary of the right to freedom of association protected by Convention No. 87, and therefore that the right to strike stems from the Convention¹.

15. Spain wishes to emphasize its respect for the mandate and independence of the Committee of Experts and its role within the ILO system. The interpretations of the Committee of Experts must be considered part of the agreement within the meaning of Article 31 (3) (b) of the Vienna Convention on the Law of Treaties.

6. Any relevant rules of international law applicable in the relations between the parties

16. Mr President, distinguished Members of the Court, the last element of the general rule of interpretation Spain wishes to highlight in particular comprises any relevant rules of international law applicable in the relations between the parties to the Convention.

17. As the previous one, this element deals with practice and also with the nature of the Convention. In examining this element, Spain has considered that ILO Convention No. 87 constitutes a human rights treaty. A treaty under which the States parties commit to protect the fundamental

¹ International Labour Conference, 81st Session, 1994. Freedom of association and collective bargaining: General Survey on the eight fundamental ILO Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008.

rights of the people living in their territories, without recognizing subjective reciprocal rights in the States parties to the treaty.

18. Precisely owing to the objective nature of human rights treaties, there are rules of interpretation that only apply thereto: the *pro homine* principle; the principle of consistent interpretation; the interpretation of treaties as “living instruments”; and so on.

19. On the other hand, dialogue between courts and supervisory bodies is also a characteristic feature of the interpretation of human rights law.

20. Various pronouncements of the International Court of Justice echo the practice of human rights bodies. In the case concerning *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, despite not reaching the same conclusion as the Human Rights Committee, the Court recognized that

“it should ascribe great weight to the interpretation adopted by this independent body [the Human Rights Committee] that was established specifically to supervise the application of that treaty. The point here is to achieve the necessary clarity and the essential consistency of international law” (*Merits, Judgment, I.C.J. Reports 2010 (II)*, p. 664, para. 66).

This affirmation was subsequently repeated in the case concerning the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, *Preliminary Objections, Judgment, I.C.J. Reports 2021*, p. 104, para. 101.

21. This affirmation proves particularly relevant in the case at hand.

22. Mr President, outside the ILO system there are several international treaties which expressly recognize the right to strike as a right autonomous of the right to freedom of association, such as Article 8 of the International Covenant on Economic, Social and Cultural Rights; Article 8 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights; Article 6 (4) of the European Social Charter; and Article 28 of the Charter of Fundamental Rights of the European Union; among others. The right to strike, as an autonomous right, is also recognized by case law of the Court of Justice of the European Union and case law of the European Court of Human Rights. The case law of the Strasbourg tribunal is interesting because, as in the present case, its starting-point is the lack of express recognition of the right to strike as an autonomous right in the Rome Convention of 1950.

23. In addition, both the Court of Justice of the European Union (in the case *International Transport Workers' Federation*) and the European Court of Human Rights (in the case *Enerji Yapi-Yol Sen v. Turkey*) have interpreted that ILO Convention No. 87 protects the right to strike.

24. In short, since 1948 when ILO Convention No. 87 was passed, an international standard has been progressively established through reports from ILO supervisory bodies, international treaties, case law of international courts, and practice by ILO Member States and by States parties to the Convention, like Spain. This standard recognizes the right to strike as indivisible from the right to freedom of association. Spain believes that this standard must be taken into account in the interpretation of Convention No. 87, thus maintaining the integrity and stability of the ILO's own supervisory system. Otherwise, Mr President, distinguished Members of the Court, the protection of the right of strike could be weakened at the international and national level, given the relevance of ILO Convention No. 87. This would lead to a new period of additional discussions among the ILO's constituents in order to assess the need for further regulatory action in this area, an action that Spain does not consider necessary as there is currently no legal gap in the protection and international regulation of the right of strike. Thank you very much.

The PRESIDENT: I thank the representatives of Spain for their presentation. I now invite the delegation of Indonesia to make its oral statement and I call upon His Excellency Ambassador Mayerfas to take the floor.

Mr MAYERFAS: Mr President, honourable judges of the Court.

ORAL STATEMENT BY THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

1. Honourable judges: with the utmost respect, I stand before you to present a submission on behalf of the Government of the Republic of Indonesia. This submission is made in response to the request for an advisory opinion to the Court concerning the right to strike under ILO Convention No. 87.

2. As a government, Indonesia would like to present its stance with a view to balancing the interests of the Group of Employers and the Group of Workers, as well as the States parties to Convention No. 87.

3. Our participation in this proceeding is to provide substantive contributions that may enrich the deliberations among the relevant parties involved in the event of the global norm-setting agenda. Let me reaffirm that Indonesia is committed to contributing to the global norm-setting agenda and fully supports the process of establishing international labour standards.

4. Even as we respect the authority of the Court to provide an opinion on the legal question submitted by the ILO, we encourage the Court to take a holistic view in addressing the request, considering the broader context beyond the specific legal matter.

5. Mr President, I wish to reaffirm our previous submission and offer our perspectives on the right to strike, both from an international and national standpoint.

6. While acknowledging the Court's authority to render an opinion based on Article 65 (1) of the Court's Statute, we encourage the Court to exercise its discretionary power upon the request submitted to it.

7. According to the Court's Opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, even if jurisdictional requirements are met, the Court is allowed to decline the request by considering the existence of compelling reasons.

8. Despite the rarity with which the Court declines to render an advisory opinion, we respectfully submit that, in the present matter, there are compelling reasons which require careful consideration by the Court. In our previous submission, Indonesia suggested the Court not to render an opinion based on three main considerations: (1) the question posed to the Court relates to an ongoing dispute between ILO constituents; (2) the binding character of the advisory opinion of the Court to the ILO and its constituents; and (3) rendering an advisory opinion would be contrary to the tripartite dispute resolution framework within the ILO. These three issues are the reasons why we consider the request by the ILO to the Court is rather premature and that the Court should not grant the ILO a decisive opinion.

9. Mr President, we would like to respectfully outline the three key considerations in turn.

1. The question posed to the Court relates to an ongoing dispute between ILO constituents

10. Indonesia noted with concern that the disagreement between ILO constituents on the interpretation of Convention No. 87 has been going on for decades. We firmly believe that such disagreement constitutes a “dispute” among ILO constituents.

11. Considering the long-standing dispute and the crisis that surfaced as a consequence of it, it is plausible that the dispute has the nature of an ideological conflict with a broader reach than just a legal question that requires an opinion from the Court. This matter entails broader topics within the ILO, involving the supervisory system of the Organization and the development of international labour standards. We respectfully ask the Court to see the bigger picture behind this request.

12. Indonesia is of the view that, based on that account, the appropriate mechanism to settle this dispute is by conducting extensive negotiations and by rebalancing the relation between the constituents of the ILO, rather than asking the Court to provide an opinion. As I will elaborate later, the Court opinion could be decisive to the current dispute which would make it depart from its essential rules of giving an advisory opinion.

13. Given the complexity of the circumstances, Indonesia respectfully suggests that the Court consider exercising its discretion by refraining from rendering an opinion and give a chance to extend the efforts of social dialogue within the ILO to resolve this dispute.

2. The binding character of the advisory opinion of the Court to the ILO and its constituents

14. Mr President, our second point concerns the implication of the Court’s advisory opinion, if it is rendered.

15. Even though the Court’s Statute provides that its advisory opinion does not entail a binding status, however, with regards to the ILO, that might not be the case.

16. According to Article 37, paragraph 2, of the ILO Constitution, the advisory opinion of the Court will bind the Organization through a tribunal established by the ILO.

17. Also, in the previous instances of requesting an advisory opinion, the ILO has repeatedly treated all six advisory opinions issued by the PCIJ as binding and promptly integrated them into practice. The PCIJ’s opinions were formally published in the ILO’s *Official Bulletin* and referenced

in the Director-General's report to the International Labour Conference (ILC) to decide and implement the necessary measures to give full effect to the judicial pronouncement.

18. Considering such circumstances, the opinion rendered by the Court might be treated as a binding decision by the ILO. Therefore, we respectfully ask the Court to carefully assess this request.

3. Rendering an advisory opinion would be contrary to the tripartite dispute resolution framework within the ILO

19. Mr President, Indonesia believes that the ongoing dispute between the employers and the workers should be dealt primarily through social dialogue within the ILO. I wish to reaffirm that tripartism has long stood as the cornerstone of the ILO's identity and legitimacy. It is through this unique structure — bringing together representatives of governments, employers and workers — that the ILO has built a robust and enduring framework for the development and supervision of international labour standards.

20. While the Organization faced a significant institutional challenge in 2012, when long-standing differences regarding the interpretation of the right to strike under Convention No. 87 culminated in a deadlock, social dialogue continued to function as a vital mechanism for engagement among its constituents. The ILO did not abandon its core principles; rather, it remained firmly committed to dialogue as the preferred path forward.

21. This commitment was clearly demonstrated in 2015, when the ILO convened a high-level tripartite meeting to address the dispute directly. Although the meeting did not result in a definitive resolution, it led to a *joint statement* by the Employers' and Workers' Groups — recognizing the relevance of the right to strike within the ILO framework and outlining a shared approach to overcome the impasse. More importantly, the 2015 process reaffirmed that even in periods of deep division, the ILO's tripartite constituents retain both the capacity and the willingness to engage constructively, seek compromise and work toward consensus through social dialogue.

22. This experience offers not only a precedent, but also a mandate for renewed effort. While the 2023 referral to this Court may provide clarity on certain legal questions, such judicial intervention cannot substitute the essential and democratic role that social dialogue plays within the ILO. Rather, it should serve to support and inform further engagement among the tripartite constituents.

23. There remains significant untapped potential to explore alternative mechanisms for dialogue — including the establishment of *technical working groups*, which could provide an inclusive platform for discussing the right to strike in a focused, tripartite setting before any formal deliberations at the International Labour Conference (ILC). Such an approach would allow for broader participation, deeper understanding and a more consensual path forward.

24. The use of working groups is neither unprecedented nor unfamiliar within the ILO's institutional practice. For example, the Tripartite Working Group on Options to Ensure Decent Work in Supply Chains and the Joint ILO/IMO Tripartite Working Group addressing seafarers' issues stand as successful models of collaborative problem-solving across complex and technical areas. These mechanisms demonstrate the ILO's flexibility in adapting its processes to evolving challenges while preserving the tripartite spirit.

25. Moreover, it is important to note that efforts to address the present dispute through formal dialogue at the ILC have not yet been fully pursued. At its 349th *bis* (special) Session, the Governing Body decided that the agenda for the 112th Session of the ILC in 2024 would not include a standard-setting item on the right to strike. This decision effectively deferred a key opportunity for comprehensive tripartite discussion within the most representative body of the ILO — the ILC, where all Member States and social partners are present and participate on equal footing.

26. In this context, we respectfully submit that the ILO's internal processes — particularly its capacity for social dialogue at the ILC — have not yet been exhausted. Dialogue remains the ideal and most appropriate avenue for resolving interpretative disputes within the ILO framework. It is especially within the ILC, as the Organization's highest decision-making body, that Member States, employers and workers come together to negotiate, adopt and develop international labour standards — including, crucially, those governing the right to strike.

27. Accordingly, we respectfully recommend that the Court consider refraining from issuing an advisory opinion at this time. Such an opinion may carry a decisive weight that could risk limiting the space for further dialogue among ILO constituents. In line with the Court's own jurisprudence, which has often exercised restraint in matters involving ongoing institutional processes, we believe it would be appropriate to allow the ILO's tripartite system the opportunity to fully explore all available avenues for resolution.

28. Mr President, in this opportunity, allow us to also share our point of view with regards to the right to strike from international standard and our national policy.

29. As we are all well aware, the right to strike is not set out explicitly under ILO conventions and recommendations, and we must admit that no such instrument exists dedicated to be a universally accepted reference on the right to strike. The establishment of this right, its application and the obligations of the relevant stakeholders to safeguard it remain ambiguous under international law.

30. Convention No. 87 as the instrument in question does not expressly provide for the right to strike. The *travaux préparatoires* of the Convention indicate that the exclusion of the right to strike was deliberate. At the time of the Convention's adoption, Member States of the ILO affirmed their support for the principle of freedom of association but expressly refrained from incorporating the right to strike within the scope of Convention No. 87.

31. As for the referral to the human rights instrument, the right to strike is guaranteed under Article 8 (1) (d) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), provided that it is exercised pursuant to the laws of the particular country.

32. On the other hand, although Convention No. 87 does not explicitly address the right to strike and ICESCR permits each country to regulate this right domestically, the Committee of Experts has interpreted that prohibiting the right to strike contravenes the provisions of Article 8, paragraph 2, of Convention No. 87. This interpretation by the Committee has since led to the disagreements among ILO constituents that persist to this day.

33. Mr President, before closing our statement, we would like to address how our national regulations protect the right to strike of workers.

34. We would like to highlight that Indonesia never objects to the existence of the right to strike. Indonesia has long guaranteed such right within our national labour system.

35. In Indonesia, the strike is regarded as the last resort when there is a dispute between employer and workers. According to Law No. 13 of 2003 concerning Manpower and the Minister of Manpower and Transmigration Decree No. 232 of 2003 concerning the Legal Consequences of Unauthorized Strikes, a strike can only be conducted after negotiation fails to resolve such dispute. Therefore, a strike based on sympathy is restricted in Indonesia since no dispute exists prior to such action.

36. However, the situation may differ in other countries, where sympathy strikes may be authorized. As highlighted in the submissions of several States, different jurisdictions have established varying regulations concerning the right to strike.

37. Therefore, given the current situation in which no international instrument governs the right to strike and national laws prevail, the issue cannot be swiftly resolved by the Court's opinion alone.

38. The States parties to Convention No. 87 regulate the right to strike differently in their jurisdictions, which may not necessarily refer to the Convention. The definition and limitation of lawful strike in every country may also vary as States are not bound by international labour standards on the right to strike under certain instruments.

39. Mr President, to close this statement, we strongly encourage all concerned stakeholders to uphold the tripartism within the ILO in resolving the ongoing and future disputes.

40. We believe that by giving a chance to the ILO's internal mechanism to restart constructing a social dialogue would preserve the ideology of the ILO without setting a precedent that may undermine the ILO's tripartism supremacy.

41. Finally, Indonesia reaffirms its respect for any decision the ICJ may render in providing an advisory opinion on the general right to strike. Indonesia further expresses its confidence that the ICJ will undertake a thorough and careful examination of the legal aspects of the right to strike, particularly in the context of ILO Convention No. 87.

42. I thank you. *Terima kasih.*

The PRESIDENT: I thank the representative of Indonesia for his presentation. This concludes this morning's sitting. The oral proceedings will resume this afternoon, at 3 p.m., in order for Mauritius, Mexico, Norway, Panama, the United Kingdom and Egypt to be heard on the question submitted to the Court. The sitting is closed.

The Court rose at 11.35 a.m.
