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**International Court
of Justice**

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**Cour internationale
de Justice**

LA HAYE

YEAR 2025

Public sitting

held on Tuesday 7 October 2025, at 3 p.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 15 heures, 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

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

The Court meets this afternoon to hear Mauritius, Mexico, Norway, Panama, the United Kingdom and Egypt on the question submitted to it by the Governing Body of the International Labour Organization. I recall that each of the delegations has 30 minutes at its disposal for its presentation. The Court will observe a short coffee break after Norway's presentation.

I shall now give the floor to the delegation of Mauritius. I call His Excellency Muhammad Reza Cassam Uteem to the podium. You have the floor, Sir.

Mr UTEEM:

I. EVOLUTION OF RIGHT TO STRIKE AND ITS LINK TO FREEDOM OF ASSOCIATION IN MAURITIUS

1. Introduction

1. Mr President, Madam Vice-President, distinguished Members of the Court, it is an honour and privilege to appear before this Court to present the oral statement of the Republic of Mauritius on whether the right to strike of workers and their organizations is protected under the Freedom of Association and Protection of the Right to Organise Convention (No. 87), of 1948 (the "Convention").

2. I shall begin by stating Mauritius's position on the question before the Court, then briefly trace the legal evolution of the right to strike in Mauritius and how this right is a necessary corollary to the freedom of association. Ms Ramjeeawon-Varma, Assistant Solicitor-General, will then elaborate on the legal reasoning in support of our position.

2. Position of Mauritius

3. It is the position of Mauritius that the right to strike of workers and their organizations is protected under the Convention. However, this right to strike is not absolute but is qualified by the law of the land of each Member State to the extent that such law does not impair the guarantees provided under the Convention.

3. Scope of the right to organize pursuant to the Convention

4. In our humble opinion, this interpretation of the Convention is in line with Article 31 of the Vienna Convention on the Law of Treaties 1969 which requires a treaty to be interpreted in good faith, in accordance with the ordinary meaning of its terms in the context and in the light of its object and purpose.

5. The object and purpose of the Convention is to allow workers to organize their administration and activities as a means of improving conditions of labour and establishing peace.

6. Is the right to strike consistent with the object and purpose of the Convention? It is humbly submitted that it is.

7. Article 3 of the Convention provides that workers' organizations have the right to organize their administration and activities. Does the term "activities" include carrying out "strike[s]"?

8. In addition to strike, workers also carry out other activities and collective action such as picketing, work-to-rule, go slow and overtime ban, to further and defend their interests. Is the right to carry out such activities excluded from the Convention simply because they are not specifically set out in the Convention?

9. Should Article 3 have expressly set out "strike" as one of the activities of trade unions for it to be protected under the Convention? Should the Convention then have set out an exhaustive list of all activities captured under the Convention?

10. In Article 10 of the Convention, the term "organisation" is defined as any organization of workers for furthering and defending the interests of workers.

11. It is humbly submitted that whenever workers get together to go on a strike to further and defend their interest, they are organizing themselves within the definition of "organisation" in Article 10 and they are carrying out an activity as provided under Article 3 of the Convention. Therefore, the right to strike follows naturally and logically from the right to organize guaranteed by the Convention.

4. The right to strike is a qualified right

12. It is humbly submitted that the right to strike is not an absolute right, but it is qualified and must be exercised while respecting the law of the land as provided in Article 8 of the Convention.

13. The right to strike can also be curtailed in relation to armed forces and the police as provided in Article 9 of the Convention.

5. Evolution of the right to strike in Mauritius

14. Mr President, distinguished Members of the Court, with your permission, I will now address you on the evolution of the law in Mauritius in relation to the right to strike and how it is linked to the freedom of association and the right to organize.

15. Industrial Associations Ordinance 1938:

- (1) The first legislation in Mauritius that referred to strike goes as far back as 1938, at a time when Mauritius was still a British colony.
- (2) The Industrial Associations Ordinance 1938 (hereinafter the “1938 Ordinance”) provided for the formation, registration and regulation of both employers’ and employees’ industrial associations.
- (3) The term “association” was defined as persons associating together for protecting and furthering their interests. That definition is very similar to the definition of “organisation” in Article 10 of the Convention.
- (4) In the same ordinance which allowed workers and employers to organize themselves, it also provided instances where a strike for employees — or a lock-out for employers — would be unlawful and would constitute an offence.
- (5) Now it is interesting to note that the 1938 Ordinance does not expressly state that a workers’ organization has the right to strike, just like it does not expressly provide that employers have the right to have recourse to lock-out. It only qualifies the right to strike or lock out. Why is that so?
- (6) It is humbly submitted that the only possible logical deduction is that the general rule, is that the right to strike, just like the right to lock out, implicitly flows from the right of association — and there is no need to expressly provide for such rights. It is only where that right to strike or to lock out is to be curtailed, that provision to that effect would be required to be made in legislation.
- (7) By analogy, in the Convention, the right to strike is naturally derived from the right of workers to organize themselves, and there is absolutely no need for this right to be expressly stipulated in the Convention. However, since this right to strike is not absolute, Articles 8 and 9 of the Convention provide instances where such right can be curtailed.

16. Trade Disputes Ordinances:

- (1) Coming back to Mauritius, after the 1938 Ordinance, there were three Trade Dispute Ordinances in 1947, 1954 and 1965 which further limited the right to strike, especially in essential services.
- (2) But again, there was no specific reference to the right to strike in these ordinances — only reference: where the strike could be unlawful.

17. Industrial Relations Act 1973:

- (1) Then came the Industrial Relations Act 1973 (IRA) which consolidated the laws relating to the organization of trade unions and limitation on their ability to go to strike.
- (2) Now this is a very important legislation because it was enacted after the general workers' strike that almost paralysed the country in 1971 and led to a state of public emergency.
- (3) Consequently, the Industrial Relations Act provided stringent procedural steps to be followed for lock-out or strike not to be unlawful. Extensive powers were given to the Minister to prevent unions from going on strike. Now interestingly, in 2001, at the request of the Mauritius Government, the ILO sent a senior legal expert to advise the ministry on the ratification of Convention No. 87. In her report, the expert stated that the ratification of Convention No. 87 would require certain amendments to be brought to the Industrial Relations Act. In particular, to ensure that the law of Mauritius does not impede or restrict the freedom of association: "this would imply a revision of the provision of the Industrial Relations Act regarding the right to strike". So already the ILO, in 2001, before Mauritius ratified the Convention — Mauritius ratified the Convention in 2005 — the ILO expert told Mauritius: if you are going to ratify Convention No. 87 you will have to amend your law to make it compatible with the Convention, in particular the right of strike.

18. Employment Relations Act 2008:

- (1) So accordingly, the Industrial Relations Act 1973 was repealed and replaced by the Employment Relations Act 2008 (ERA) which was drafted in consultation with experts from the International Labour Organization.
- (2) The Employment Relations Act for the first time explicitly and positively recognizes the right to strike. It sets out clear procedure to be followed before workers could go on strike, which were

less stringent than under the preceding Industrial Relations Act 1973. It also provided instances where the strike would be unlawful and constitute an offence.

- (3) Interestingly, the ERA also expressly provided that no member of the police force would have a right to strike. This is consistent with the limitation permitted under Article 9 (1) of the Convention which allows national laws to determine the application of freedom of association to armed forces and the police.
- (4) At the time Mauritius ratified the Convention in 2005, it was done on the basis that the right to strike was an integral part of the freedom of association protected under the Convention No. 87.

19. Constitution:

- (1) Mr President, distinguished Members of the Court, section 13 of the Mauritian Constitution guarantees freedom of assembly and association, including the right of a person to form or join trade unions and other associations for the protection of his interests.
- (2) This right is again not absolute but may be restricted in relation to public officers and in the interests of defence, public order, public morality, public health or the rights of others, provided that such restrictions are reasonably justifiable in a democratic society. It is humbly submitted that the right to strike in Mauritius is consistent with and protected by section 13 of the Constitution.
- (3) To a large extent, section 13 of the Constitution of Mauritius is similar to the Convention and both protect the rights of persons to form or belong to trade unions for the protection of their interests.
- (4) Just like the Convention, section 13 of the Mauritius Constitution does not expressly provide for a right to strike. However, it has always been understood in Mauritius that section 13 guarantees and protects the right to strike.

6. Conclusion

20. Mr President, distinguished Members of the Court, I would respectfully invite the Court to consider how in practice Mauritius has interpreted the constitutional right of a person to join a trade union to protect his right as including the right of a person to organize strikes within the limits

provided by law as reasonably justifiable in a democratic society, and apply the same analogy to the Convention as protecting the right to strike within the parameters set out in the Convention.

21. Mr President, I now kindly request you to invite Ms Ramjeeawon-Varma, Assistant Solicitor General, to elaborate on our legal reasoning and to conclude the oral statement on behalf of the Republic of Mauritius. Thank you.

The PRESIDENT: I thank His Excellency Reza Uteem for his presentation. I now call upon Ms Priya Veedu Ramjeeawon-Varma to take the floor. Madam, you have the floor.

Ms RAMJEEAWON-VARMA:

II. RIGHT TO STRIKE – A FUNDAMENTAL BUT QUALIFIED RIGHT

1. Introduction

1. Mr President, distinguished Members of the Court, it is an immense privilege for me to appear before you on behalf of the Republic of Mauritius. The Honourable Minister of Labour and Industrial Relations, Mr Reza Uteem, has aptly set out the position of Mauritius on the question which is before the Court today, and he has traced the historical development of the right to strike in our country.

2. With your leave, I shall now turn to the legal submissions that demonstrate why, as a matter of international law, ILO Convention No. 87 must be interpreted as encompassing the right to strike — not as an unfettered or absolute liberty, but as a qualified right, subject to legitimate restrictions which are reasonably justifiable in a democratic society.

2. Submissions

(i) ILO Convention No. 87 inherently protects the right to strike

3. Mauritius submits that ILO Convention No. 87 inherently protects the right to strike. A holistic reading of the text of the Convention supports this construction. While the Convention does not explicitly mention the right to strike, Article 3 confers on workers' organizations the right "to organise their administration and activities and to formulate their programmes". Properly understood, this provision necessarily englobes the right to take collective action. Collective action necessarily

entails the right to strike, as one of the most impactful means by which workers' organizations may pursue and defend the interests of their members.

4. Mr President, Article 3 should be read together with Article 10 of the Convention. Article 10 leaves no doubt that the very purpose of a workers' organization is to further and defend the interests of the workers. A workers' organization cannot, in the pursuit of this goal, be debarred from taking lawful strike action. Its right to organize activities and formulate programmes, under Article 3 of the Convention, needs to be given full effect and meaning.

5. Mauritius submits that the right to strike is naturally and logically included within the right to organize activities. It remains an essential tool for workers to achieve fair working conditions, negotiate with employers and protect themselves from exploitation. Without it, freedom of association would be rendered largely illusory.

6. As Article 31 (1) of the Vienna Convention on the Law of Treaties requires, the Convention must be interpreted in good faith, in accordance with ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. The preamble to Convention No. 87 forms part of this context, and sheds light on the object and purpose of the Convention. Notably, the preamble recalls the preamble to the Constitution of the International Labour Organization, declaring that "recognition of the principle of freedom of association" is a means to improve conditions of labour. The preamble also recalls the Declaration of Philadelphia, which affirms that freedom of association is essential to sustained progress.

7. No doubt, the object and purpose of Convention No. 87 is to secure effective freedom of association and the right to organize. Bearing in mind this objective and purpose, a combined reading of Articles 3 and 10 of the Convention compels the interpretation that the right to strike is protected under Convention No. 87. To interpret it otherwise would mean diluting the effectiveness of Articles 3 and 10, as well as the Convention as a whole.

8. Mauritius, therefore, advocates for a purposive interpretation of the Convention, one that gives real and effective meaning to the freedom of association that it enshrines.

(ii) Other instruments of international law

9. Mauritius further submits that Convention No. 87 calls for an interpretation which is in harmony with other international human rights instruments. In the *Namibia Advisory Opinion (I.C.J. Reports 1971)*, the Court emphasized that treaties and international instruments should not be read in isolation, but rather in their broader international context, taking into account subsequent developments in international law and practice. The key passage is at paragraph 53 of the Advisory Opinion, where the Court stated: “an international instrument has to be interpreted and applied within the framework of the entire legal system prevailing at the time of the interpretation”.

10. Mr President, the right to strike is expressly guaranteed in Article 8 (1) (d) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). It recognizes the right to strike, provided that the right is exercised in conformity with the laws of the particular country. Article 22 (1) of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of association, including the right to form and join trade unions for the protection of one’s interests. Though the right to strike has not been expressly prescribed in the ICCPR, it has been mentioned in concluding observations that the Committee has issued. For instance, in the concluding observations on the sixth periodic report of the Dominican Republic, the Committee highlighted the State party’s duty to “safeguard workers’ freedom of association in practice, including the right to organise, the right to collective bargaining and the right to strike”.

11. The European Convention on Human Rights, in Article 11, guarantees the freedom of association and assembly. It has been settled by the European Court of Human Rights that the right to strike is protected under Article 11.

12. Mauritius has ratified both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. In addition, section 13 of our Constitution is closely aligned, in substance, with Article 11 of the European Convention on Human Rights. Collectively, these instruments affirm that the right to strike is recognized and protected.

13. The supervisory bodies of the ILO have, over several decades, consistently affirmed that the right to strike is a fundamental corollary of Convention No. 87. Their authoritative reports, repeatedly endorsed by the International Labour Conference, constitute subsequent practice in the application of Convention No. 87, within the meaning of Article 31 (3) (b) of the Vienna Convention

on the Law of Treaties. The near-universal ratification of Convention No. 87, combined with State practice and supervisory consensus, demonstrate that the right to strike has acquired the character of a customary international law norm, as part of the corpus of international labour law.

14. Accordingly, Mauritius submits that Convention No. 87 cannot be interpreted in isolation. It must be interpreted within the broader framework of international human rights law, which consistently recognizes the right to strike as an indispensable component of freedom of association. Only such an integrated and purposive interpretation ensures that the Convention retains its *effet utile*, safeguarding workers' rights in a manner consistent with contemporary international legal standards.

(iii) The right to strike is not absolute

15. Mr President, Members of the Court, Mauritius submits that while fundamental, the right to strike is not absolute and unfettered.

16. The Convention itself recognizes, under Articles 8 and 9, the qualified nature of this right. Pursuant to Article 8, workers and their organizations are enjoined to respect the domestic laws of the Member States, so long as these laws do not impair the guarantees provided under the Convention. As regards armed forces and the police, Article 9 leaves it to the Member States to determine, by national laws or regulations, the extent to which the guarantees under the Convention shall apply to them.

17. ILO supervisory bodies have recognized that the right to strike can be restricted in "essential services", where a strike's interruption may endanger life, personal safety or health of the whole or part of the population.

18. Mauritius submits that this is the correct position. The domestic framework in Mauritius reflects this very conception of the right to strike. Our Constitution, which is the supreme law of the land, guarantees the freedom of assembly and association under section 13. Its text is comparable to Article 11 of the European Convention on Human Rights, the very provision under which the Strasbourg Court has read the right to strike. Akin to Article 11 of the ECHR, section 13 of our Constitution guarantees the freedom of assembly and association, whilst, at the same time, permitting restrictions which are reasonably justifiable in a democratic society.

19. Our Employment Relations Act gives effect to this balance. It recognizes the right to strike, but imposes procedural safeguards, such as exhaustion of conciliation and mediation, holding of strike ballots, prior notifications and the provision of minimum service in certain sectors. There is, however, prohibition on the members of the police force to strike. Hence, whilst Mauritius expressly recognizes the fundamental right to strike, it has regulatory measures designed to reconcile competing interests. Mauritius submits that this very principle should guide the interpretation of Convention No. 87 — namely that it includes the right to strike, but its exercise may be lawfully regulated.

(iv) Concluding remarks

20. Mauritius, therefore, respectfully concludes by submitting the following three points:

- (i) ILO Convention No. 87 inherently protects the right to strike as an indispensable component of freedom of association;
- (ii) this right, while fundamental, is not absolute — its exercise may be subject to legitimate and lawful restrictions, in accordance with democratic principles; and
- (iii) such interpretation is fully aligned with the object and purpose of the Convention, and ensures coherence with the wider body of international human rights law.

Mr President, Members of the Court, Mauritius is honoured to place these submissions before you. I thank you for your attention.

The PRESIDENT: I thank the representatives of Mauritius for their presentation. I now invite the delegation of Mexico to address the Court and I give the floor to Her Excellency Ambassador Carmen Moreno Toscano.

Ms MORENO TOSCANO:

I. INTRODUCTION

1. Mr President, Madam Vice-President, distinguished Members of the Court.
2. My name is Carmen Moreno Toscano, and it is an honour for me, as Ambassador of Mexico to the Kingdom of the Netherlands, to appear before the International Court of Justice on behalf of the United Mexican States in these advisory proceedings.

3. At the outset, allow me to stress that Mexico considers that the Court's jurisdiction to render the requested advisory opinion is fully established. The request was duly made by a specialized agency authorized by the General Assembly to seek advisory opinions under Article 96, paragraph 2, of the United Nations Charter and Article IX of the 1946 Agreement between the United Nations and the International Labour Organization. The question referred is undeniably of a legal nature, and it arises squarely within the scope of the ILO's mandate.

4. Furthermore, there are no compelling reasons for the Court to decline to exercise its advisory function. Indeed, as the written proceedings have shown, none of the States or organizations that submitted observations has challenged the Court's judicial function in this case.

5. Mr President, distinguished Members of the Court, the question submitted by the ILO is of particular significance to my country. For Mexico, the protection of the freedom of association, the right to organize and the right to strike are fundamental to the realization of social justice. The debate within the ILO concerning the right to strike has generated uncertainty for workers, employers and governments alike. It is therefore of the utmost importance for Mexico that this Court brings clarity through its authoritative interpretation of the Freedom of Association and Protection of the Right to Organise Convention (hereinafter "Convention No. 87").

6. With this in mind, and with the permission of this honourable Court, the statement of Mexico supporting the protection of the right to strike under Convention No. 87 will be delivered as follows:

- (a) First, the interpretation of Convention No. 87 under the general rule of treaty interpretation.
- (b) Second, the interpretation of Convention No. 87 by resorting to supplementary means.
- (c) Third, the views of Mexico regarding the content of the right to strike under Convention No. 87.
- (d) Fourth, our concluding remarks.

7. With the permission of this honourable Court, I would ask you now, Mr President, to invite Ms Patricia Pérez Galeana, Deputy Legal Adviser of the Mexican Ministry of Foreign Affairs, to present Mexico's interpretation of Convention No. 87 under the general rule of interpretation.

The PRESIDENT: I thank Ambassador Moreno Toscano for her presentation. I now invite Ms Patricia Pérez Galeana to the podium. Madam, you have the floor.

Ms PÉREZ GALEANA:

II. INTERPRETATION OF CONVENTION NO. 87 UNDER THE GENERAL RULE OF TREATY INTERPRETATION

1. Mr President, distinguished Members of the Court, it is a privilege to stand before you again today.

2. The question at the heart of these proceedings is straightforward: whether the right to strike of workers and their organizations is protected under Convention No. 87.

3. This is a matter of pure legal interpretation, with only two possible answers. The current controversy exists only because a minority of States have answered the question in the negative. In fact, only three States maintain that position in these proceedings, which, in our opinion, is incorrect. This Court is uniquely placed to disentangle the knot, and to provide clarity and certainty for the ILO, its members, workers and employers.

4. We are mindful that the advisory opinions of this Court carry great authority and that, in the particular case of the ILO, they have a special legal effect, as enshrined in Article 37 of its Constitution. The Court's reply will have a decisive weight in resolving this discussion.

5. To answer the question put forward to this Court, I will address the legal interpretation that Mexico supports under Article 31 of the Vienna Convention on the Law of Treaties (hereinafter the "Vienna Convention").

6. The answer to the question at hand must be given through the general rule of treaty interpretation, which as the Court has recognized, is codified in Article 31 of the Vienna Convention. In the *Kasikili/Sedudu Island* case¹, the Court applied this rule to a treaty predating the Vienna Convention, as it is the case now, thereby affirming its customary character.

7. According to Article 31 of the Vienna Convention, text, context and purpose work together.

8. The relevant provision that lies at the centre of the discussion on whether the right to strike is or not protected under Convention No. 87 is Article 3². Although this provision refers to workers'

¹ See *Kasikili/Sedudu Island (Botswana/Namibia)*, Judgment, *I.C.J. Reports 1999 (II)*, p. 1060, paras. 20 *et seq.*

² See International Labour Conference, 81st Session, 1994, Freedom of Association and Collective Bargaining: General Survey of the Reports on the Freedom of Association and the Right to Organize Convention (No. 87), 1948 and the Right to Organize and Collective Bargaining Convention (No. 98), 1949, Report III (Part 4 B), pp. 65-66, paras. 147-151; see also International Labour Conference, 69th Session, 1983, Freedom of Association and Collective Bargaining: General Survey, Report III (Part 4 B), pp. 58 and 62, paras. 180-181 and 199-201; Inter-American Court of Human Rights, Rights to freedom to organize, collective bargaining, and strike, and their relation to other rights, with a

and employers' organizations, the question put before the Court limits the required interpretation to the right of workers and their organizations to strike. Therefore, we will circumscribe our interpretation to the portion of the Convention regarding the rights and interests of workers.

9. From Article 3 it can be drawn in short that workers' organizations have the right to organize their activities. However, this is still too broad in meaning. To understand what kind of activities are covered, we should look at Article 10, which clarifies that an organization has the purpose of furthering and defending the interest of workers.

10. By virtue of the autonomy of workers' organizations, they have the right to organize any activity they deem relevant to promote and defend workers' interests. The right to strike is a fundamental tool for their protection. This principle has been clearly affirmed by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association (hereinafter the "UN Special Rapporteur"). In his 2016 report to the General Assembly, he underscored that strikes — alongside trade unions and collective bargaining — are traditional means through which workers can assert and defend their rights³.

11. Some have argued that the absence of explicit reference to the right to strike means that Convention No. 87 does not protect it. They have also argued that the object and purpose of the Convention is limited to the protection of freedom of association and the right to organize.

12. Nonetheless, the object and purpose of the Convention supports the view that the right to strike is also protected. The title of the Convention and its preamble clearly indicate that it intends to protect both freedom of association and the right to organize. But what is the purpose of this protection? The preamble and the text of the treaty clarify that it is for improving labour conditions and for defending the interests of workers' organizations. Without the possibility of engaging in collective action through strike, the protection of workers' interests would remain largely limited and ineffective.

gender perspective, Advisory Opinion OC-27/21 of 5 May 2021, Series A No. 27, p. 37, para. 96.

³ See United Nations, Report of the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, A/71/385, 29 August 2016, p. 4, para. 9.

13. The UN Special Rapporteur has also stated that trade unions and the right to strike are fundamental tools for achieving workers' rights, since they constitute mechanisms to defend their interests collectively, and engage with big business and government on a more equal footing⁴.

14. Statements by groups of States⁵ and practice at the national level⁶ build upon the understanding that Convention No. 87 protects the right to strike. The reasoning is that there is an intrinsic link between freedom of association and the right to strike, since the protection of the latter is necessary to fully realize the former.

15. This intrinsic link is also recognized in the United States-Mexico-Canada Agreement, which reaffirms the parties' commitment to uphold labour rights as set out by the ILO. The treaty expressly clarifies that, "[f]or greater certainty, the right to strike is linked to the right to freedom of association, which cannot be realized without protecting the right to strike".

16. In sum, without the right to strike, unions are effectively powerless to promote and protect their own interests and those of workers, which is the very purpose of those organizations.

17. Mexico highlights that this Court has treated broadly framed clauses in a manner that gives them effective operation considering their object and purpose. In the *Gabčíkovo-Nagymaros Project* case⁷, this Court held that Article 26 of the Vienna Convention, which embodies the obligation to perform treaties in good faith, implies that the purpose of a treaty and the intention of the parties concluding it should prevail over its literal application. Thus, the principle of good faith obliges States to apply treaties in a reasonable way and in such a manner that its purpose can be realized.

18. It is clear that the purpose of Convention No. 87 and the intention of States was to secure the autonomy of workers' organizations to carry out "activities" for "furthering and defending the

⁴ See United Nations, Report of the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, A/71/385, 29 August 2016, p. 14, para. 54.

⁵ See International Labour Organization, 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, TMFAPROC/2015/2 (23-25 February 2015), Appendix II: Government Group Statement, para. 4; International Labour Office, 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, "Final report of the Meeting", TMFAPROC/2015/4 (Geneva, 23-25 February 2015), para. 11.

⁶ See Botswana — *High Court of Lobatse, Botswana Public Employees' Union and others v. Minister of Labour and Home Affairs and others*, MAHLB-000674-11, 9 August 2012, p. 87, para. 250; Constitutional Court of Colombia, 3 September 2008, Decision No. C-858/08, pp. 17 *et seq.*; Arbitration Tribunal, *Fiji Electricity & Allied Workers Union v. Fiji Electricity Authority*, 9 May 2006, [2006] FJAT 62; FJAT Award 24 of 2006; 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, 23 June 2014, Case No. J99/14, p. 29, paras. 60-61.

⁷ See *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, *I.C.J. Reports 1997*, pp. 78-79, para. 142.

interests of workers”, as provided in Article 3 in relation to Article 10, which necessarily entails the protection of the right to strike. We call upon the Court to interpret Convention No. 87 so as to give the right to freedom of association a practical and effective meaning, including, *inter alia*, the right to strike to advance their interests.

19. In its Advisory Opinion on *Reparation for Injuries*, this Court inferred the United Nations capacity to bring claims on behalf of its agents as a necessary interpretation of the Charter to ensure the effective fulfilment of its functions⁸. Likewise, in *Airey v. Ireland*, applying the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights held that the intention of said Convention was to “guarantee not rights that are theoretical or illusory but rights that are practical and effective”⁹, which in the particular case required the implicit recognition of one right to achieve the realization of an explicit treaty provision.

20. By the same logic, the effective exercise of freedom of association by workers and their organizations entails protecting the means necessary to advance their members’ interests, including the resort to strike. To do otherwise would render the right to freedom of association ineffective.

21. Now, with the permission of the Court, I ask you, Mr President, to give the floor to Mr Pablo Arrocha, Legal Adviser of the Mexican Ministry of Foreign Affairs, to continue with the presentation of Mexico’s position in these proceedings. Thank you.

The PRESIDENT: I thank Ms Perez Galeana for her presentation. I now call upon Mr Pablo Arrocha to take the floor.

Mr ARROCHA OLABUENAGA:

III. SUPPLEMENTARY MEANS OF INTERPRETATION AND CONTENT OF THE RIGHT TO STRIKE UNDER CONVENTION NO. 87

1. Mr President, Your Excellencies, it is a great honour for me to appear again before this Court. I will address Mexico’s position regarding supplementary means of interpretation, and the content of the right to strike.

⁸ See *Reparations for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949*, p. 182.

⁹ ECtHR, *Airey v. Ireland*, no. 6289, Judgment of 9 October 1979, para. 24.

A. Supplementary means of interpretation

2. Since the general rule of interpretation leads to an affirmative answer to the question presented before this Court, Mexico maintains that it should not be necessary to have recourse to supplementary means of interpretation. Nonetheless, if this Court decides to resort to such means, we argue that these confirm the interpretation resulting from the previous exercise.

3. Article 32 of the Vienna Convention on the Law of Treaties (hereinafter the “VCLT”) establishes that supplementary means of interpretation may include the preparatory work of the treaty, which in this case suggests that the lack of an explicit reference to the right to strike was only a drafting choice, not an intention to exclude its protection.

4. During the process of drafting Convention No. 87, the ILO transmitted a questionnaire to governments asking whether it would be desirable to include a provision recognizing that the right of association of public officials by international regulation should in no way prejudice the question of the right of such officials to strike. Out of the 31 States that responded, only two expressed that there was no link between freedom of association and the right to strike¹⁰.

5. The majority of States did not intend to exclude completely any relationship between these rights, but to preserve their competence to regulate specific modalities. In the end, this provision was not included because this issue was left for States to regulate in their domestic law.

6. The mere fact that some States believed that Convention No. 87 should not prejudice the regulation of the right to strike under national law by no way means that they intended to exclude it from implicit protection.

7. Excellencies, supplementary means mentioned in Article 32 of the VCLT are non-exhaustive. As highlighted by Professor Charles Jalloh — ILC Special Rapporteur on subsidiary means for the determination of rules of international law — judicial and other decisions, when used to interpret treaties, may potentially operate in a dual capacity, both as supplementary means under Article 32 of the VCLT and also . . .

The PRESIDENT: Sorry, please speak slowly for the interpreter. Thank you very much.

¹⁰ See International Labour Conference, Freedom of Association and Protection of the Right to Organise: Seventh Item on the Agenda, Report VII, 31st Session, San Francisco, 1948, pp. 15-24; International Labour Conference, Freedom of Association and Protection of the Right to Organise: Seventh Item on the Agenda, Report VII (Supplement), 31st Session, San Francisco, 1948, pp. 8-12.

Mr ARROCHA OLABUENAGA: Of course, Mr President, and again I apologize to the interpreters if I was speaking too fast.

As I was saying, the supplementary means under Article 32 are also complementary to subsidiary means understood under Article 38, paragraph 1 (*d*), of the Statute of this Court¹¹.

8. With this in mind, Mexico considers that additional interpretative elements reinforce the conclusion that the right to strike finds harbour in Convention No. 87. The pronouncements of the ILO's supervisory bodies, though not binding, carry significant persuasive authority¹². Particularly, the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association have affirmed that the right to strike is protected under the Convention¹³. This interpretation of the Committee on Freedom of Association has also been upheld by the Inter-American Court of Human Rights in the case of *Former Employees of the Judiciary v. Guatemala*¹⁴.

9. Similarly, in *Enerji Yapı-Yol Sen v. Turkey*, the European Court of Human Rights interpreted Article 11 of the European Convention on Human Rights, which is silent on the right to strike, and held that strike action falls within the protection of freedom of association because “[s]trike action, which enables a union to make its voice heard, is an important aspect of protecting the interests of union members”¹⁵. Moreover, in the case of *Hrvatski Liječnički Sindikat v. Croatia*, the ECHR indicated that strike is “the most powerful instrument to protect occupational interests”¹⁶ of union members.

10. To support its decision, the European Court expressly relied on ILO Convention No. 87 and the practice of its supervisory bodies, treating strike as the inseparable corollary of freedom of association.

¹¹ See International Law Commission, Third report on subsidiary means for the determination of rules of international law, by Special Rapporteur Charles Chernor Jalloh, 29 January 2025, UN doc. A/CN.4/781, p. 83, para. 365.

¹² See *ibid.*, p. 39, draft conclusion 10.

¹³ See International Labour Conference, Giving Globalization a Human Face, 101st Session, 2012, doc. ILC.101/III/1B, Report III (Part 1B), p. 46, paras. 117-118; International Labour Organization, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, 5th ed., 2006, paras. 521, 523, 525.

¹⁴ See Inter-American Court of Human Rights, case of the *Former Employees of the Judiciary v. Guatemala*, Judgment of 17 November 2021, pp. 31-37, paras. 106-127.

¹⁵ ECHR, *Enerji Yapı-Yol Sen v. Turkey*, No. 68959/01, Judgment of 21 April 2009, para. 24.

¹⁶ ECHR, *Hrvatski Liječnički Sindikat v. Croatia*, No. 36701/09/ Judgment of 27 February 2015, para. 59.

11. On top of this, the Inter-American Court of Human Rights has recognized the right to strike as one of the fundamental rights of workers, which is a legitimate means for defending economic, social and occupational interests. Said Court also mentioned that, in addition to being broadly recognized in international *corpus juris*, the right to strike is a general principle of international law, embedded in the national constitutions and laws of 17 members of the Organization of American States, all of them parties to Convention No. 87¹⁷.

12. Therefore, both principal and supplementary means of interpretation reinforce the same conclusion that the right to strike is indeed protected by Convention No. 87.

B. Content of the right to strike under Convention No. 87

13. I now turn to the content of the right to strike. Despite the fact that the Court is not called upon to determine the content of this right, we consider that its guidance on this question would be of great assistance to the ILO and its members in giving effect to Convention No. 87.

14. This would also be relevant to avoid unreasonable interpretations. For instance, some States have contended that, because the Convention applies equally to workers and employers, any right protected under Article 3 must be recognized for both. However, a reasonable reading of Article 3 along with Article 10 leads to a clear distinction between activities that promote and defend workers' interests, on the one hand, and those that do the same for employers, on the other.

15. Consequently, Mexico respectfully suggests that three basic elements should be considered when determining its content.

16. First, the right to strike belongs to workers' organizations, as an essential component of their autonomy under Article 3 of the Convention. Thus, the Convention protects workers' rights to strike when it is exercised collectively by workers and under the auspices of their organizations.

17. Second, this right may be exercised to promote and defend workers' interests, as it is established in the purposes of workers' organizations under Article 10.

18. And third, in accordance with Article 8 of the Convention, the exercise of the right to strike would need to comply with domestic law, and such legislation should not impede its exercise.

¹⁷ See Inter-American Court of Human Rights, Rights to freedom to organize, collective bargaining, and strike, and their relation to other rights, with a gender perspective, Advisory Opinion OC-27/21 of May 5, 2021, Series A No. 27, pp. 36-37, paras. 95-97.

19. This understanding is supported both by treaty law and the ILO's supervisory bodies practice¹⁸. It enables the Court to clarify the protection of the right to strike, while respecting the diversity of national arrangements. As suggested by Judge Pinto de Albuquerque in his separate opinion in the aforementioned case of *Croatia* before the ECHR, the right to strike can also be derived from Convention No. 87, in light of a holistic interpretation of other ILO instruments.

20. Mexico's domestic law reflects the same logic. Our Constitution recognizes workers' freedom of association and expressly protects strikes. The Federal Labor Law defines strike as a collective, temporary suspension of work and specifies its legitimate aims, all of which relate to the defence and promotion of workers' interests.

21. In Mexico, the right to strike is the strongest tool to which workers can resort when defending and furthering their rights in a negotiation with employers. The Mexican Supreme Court of Justice has highlighted that the right to strike is conceived on the principle of social justice of achieving a balance between the factors of production, that is, the labour force, represented by associated workers, and the capital, held by the employer¹⁹.

22. These elements serve to reinforce that Convention No. 87 does protect the right to strike of workers and their organizations.

IV. CLOSING REMARKS

23. Mr President, distinguished Members of the Court, allow me to conclude with the following remarks.

24. The question placed before you is simple in form, but it is very deep in significance: whether the right to strike is protected under Convention No. 87. In answering, the Court is not asked to legislate, nor to innovate, but to interpret the Convention faithfully, applying the law as it stands.

25. Throughout our submissions, Mexico has shown that the general rule of interpretation under Article 31 of the VCLT leads to one conclusion: the text of Article 3 in relation to Article 10 of Convention No. 87 embraces strike action as a legitimate "activity" of workers' organizations.

¹⁸ See International Labour Conference, *Giving Globalization a Human Face*, 101st Session, 2012, doc. ILC.101/III/1B, Report III (Part 1B), p. 46, para. 122; International Labour Organization, *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, 5th ed., 2006, paras. 526 and 531.

¹⁹ See Mexico's Supreme Court of Justice, Second Chamber, Conflict of precedents 26/2016 (10 August 2016), pp. 33-34.

The context and the purpose of the Convention confirm that freedom of association, if it is to be effective, must include the ability to defend workers' interests through collective action. The application of supplementary means by virtue of Article 32 of the VCLT confirms this interpretation.

26. The law, when read in its fullness, points in one direction. To acknowledge that the right to strike is protected under Convention No. 87 is not to expand the treaty beyond its scope, but to ensure that its content is not deprived of substance. It is to read the Convention so that it breathes, not so that it suffocates. It is to affirm that international law safeguards not only the form of freedom of association, but its practical reality.

27. In this way, the Court's answer will contribute to the sound functioning of the ILO, to the coherence of international law and to the architecture of national law. It will demonstrate, once again, that international law has the capacity to strengthen institutions through clarity and to protect human dignity.

28. Mexico respectfully urges the Court to uphold an effective interpretation that prioritizes the rights of workers and social justice over private interests. Determining that the right to strike of workers and their organizations is indeed protected under Convention No. 87 would confirm existing law, allow its practical application and fulfil the Convention's purpose.

29. In the 1944 Declaration of Philadelphia, cited already by the delegation of Mauritius, the ILO stated that social justice is the foundation of international peace; that freedom of association and the right to collective bargaining are fundamental principles of the ILO; and that labour rights are inseparable from human rights. To reaffirm that today — that the right to strike is protected under Convention No. 87 — is to remain faithful to that legacy.

30. Excellencies, Mexico's Constitution and its nature as a social welfare State are the direct result of the working-class fight for its rights and freedoms. The right to strike is at the heart of this struggle. And it must therefore be understood and assessed in its full dimension, not merely as a legal modality but as a mechanism earned to guarantee the dignity and well-being of workers.

31. We invite the Court to address the question before it from this point of view, with the full acknowledgment that its opinion can and will have a real impact in the lives of workers across the world, and to see in these proceedings an opportunity to express the social conscience of the Court and to bring it closer to the people. Thank you.

The PRESIDENT: I thank the representatives of Mexico for their presentation. I now invite the delegation of Norway to address the Court and I give the floor to Mr Kristian Jervell.

Mr JERVELL:

I. INTRODUCTION

1. Mr President, distinguished Members of the Court, it is an honour to appear before you today on behalf of the Kingdom of Norway.

2. Norway supported the decision of the Governing Body of the ILO on 10 November 2023 to request the Court to render an advisory opinion on the question of whether ILO Convention No. 87 of 9 July 1948 (hereinafter the “Convention” or “Convention No. 87”) establishes and protects a right to strike for workers and their organizations.

3. Being mindful of the importance of promoting the effectiveness of international human rights and international labour standards, Norway has been concerned about the apparent institutional impasse within the ILO relating to this particular issue. Norway has therefore, since 2014, consistently supported proposals to refer the question to the ICJ, in accordance with Article 37, paragraph 1, of the ILO Constitution (hereinafter the “Constitution”).

4. Norway trusts that the Court’s examination of the question of whether the Convention provides a right to strike for workers and their organizations will contribute to resolving the institutional impasse within the ILO and thus assist the Organization and its Members in their future work.

5. Mr President, Norway submits that the Convention does establish a right to strike for workers and their organizations. In my statement today, I will explain that position. I will begin with brief remarks relating to questions concerning the jurisdiction of the Court and the legal status of its opinion in this case. I will thereafter explain the basis for our interpretation that Convention No. 87 does set forth a right to strike. Thereafter, I will present the views of Norway regarding the arguments made that a right to strike has crystallized as a rule of customary international law, before finally commenting on issues related to the scope of the protection established under the Convention.

**II. NORWAY IS SATISFIED THAT THE COURT HAS JURISDICTION
TO ISSUE AN ADVISORY OPINION**

6. I turn now to the question of the jurisdiction of the Court.

7. Norway is satisfied that the Court has jurisdiction to issue an advisory opinion on the question put to it by the Governing Body of the ILO. The Governing Body of the ILO is competent to request an advisory opinion from the Court on the question at issue, owing to the authorization given by the General Assembly of the United Nations, acting on its competence under Article 96, paragraph 2, of the Charter of the United Nations (cf. Article IX, paragraph 2, of the 1946 Agreement between the United Nations and the International Labour Organization). I mention this, since questions of jurisdiction and propriety have been raised by some participants in the proceedings.

8. The decision of the Governing Body of the ILO to request an advisory opinion from the Court was taken in performance of such authorization given by 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. The question posed, moreover, is indeed a legal question directly related to interpretation of the Convention, which the Court will be capable of answering by reference to applicable international law. The jurisdiction of the Court to offer an advisory opinion on the question at issue is therefore clearly established.

**III. NORWAY IS SATISFIED THAT AN OPINION BY THE COURT
ON THE QUESTION POSED TO IT WILL BE BINDING**

9. Norway is also satisfied that an opinion by the Court on the question posed to it in this case will be binding.

10. It follows from Article 37, paragraph 1, of the Constitution that “[a]ny question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice”.

11. The question posed to the Court by the Governing Body of the ILO is a legal question relating to the interpretation of the Convention, which was concluded by members of the ILO’s Governing Body in pursuance of the provisions of its Constitution. The term “decision”, which is used in the wording of the relevant provision in Article 37, paragraph 1, of the Constitution, signifies that the effect of the Court’s opinion will be binding for the Organization and its Members.

12. I make this point because, in the opinion of Norway, the binding character of the Court's decision on the matter is an important precursor in achieving a lasting settlement that may end the institutional impasse within the ILO relating to this issue.

**IV. NORWAY SUBMITS THAT ILO CONVENTION NO. 87 SETS FORTH A RIGHT
TO STRIKE BY WORKERS AND THEIR ORGANIZATIONS**

13. Mr President, I now turn to the opinion of Norway relating to the interpretation of the Convention.

14. Norway submits that ILO Convention No. 87 sets forth a right to strike by workers and their organizations. Strike action is among the general and adequate means available to workers and their organizations to safeguard key interests protected by the Convention. This view is the basis on which Norway implements its obligations under the Convention.

15. In line with the general principles of treaty interpretation, as reflected in Article 31 (1) of the Vienna Convention on the Law of Treaties, the terms of the Convention 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 light of its object and purpose.

16. The relevant provisions for the issue at hand are found in Articles 3 and 10 of the Convention, as also noted by a number of other interventions.

17. Article 3, paragraph 1, of the Convention provides that “[w]orkers’ and employers’ organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes”. Article 3, paragraph 2, of the Convention stipulates that “[t]he public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof”.

18. Article 10 provides that “the term ‘organisation’ means any organisation of workers or of employers for furthering and defending the interests of workers or of employers”.

19. The right of workers and their organizations under Article 3, paragraphs 1 and 2, of the Convention to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities, and to formulate their programmes without interference from public authorities is not merely a protection of a procedural nature. These provisions do not merely protect the ability to form an organization of some kind, without any bearing on the actual

nature of the substantive activities of that organization. The rights provided for under Article 3 include, in the opinion of Norway, a right for those entities concerned to undertake certain forms of activities which are closely linked to the object and purpose of the organization and the act of entering into an organized relationship amongst workers.

20. This is arguably what the terms of Article 3 speak of when stipulating that workers' organizations shall have the right to "organise their administration and activities". The term "activities" denote the actions undertaken by the relevant organizations.

21. Clearly, the fact that Article 3 protects activities of workers' organizations does not imply legal protection for any kind of activity simply because it is authored by a workers' organization, many of which are not unique to such organizations. What it does imply, however, is that those activities which are generally regarded to be a natural part of trade union activities for the furthering and defending of the interests of workers, and that have been so historically, shall enjoy legal protection under the Convention.

22. Article 10 provides an important part of the textual context of Article 3 and stipulates that the term "organisation" for the purposes of the Convention shall be taken to mean any organization of workers or employers "for furthering and defending the interests of workers or of employers". This formulation indicates that the Convention presumes that the steps regularly taken by those organizations for the furtherance and defence of workers' interests form a core of activities of the organizations referred to in Article 3.

23. Mr President, those specific activities could thus be considered to enjoy protection as part of the overall freedom to organize, guaranteed by the Convention.

24. In the opinion of Norway, negotiations backed up by the possibility of strike action are a natural part of the activities and programmes of trade union organizations, and they have been so historically. Strike action is a primary means by which workers and their organizations in the ultimate case may stimulate action on the part of an employer towards the improvement of the terms and conditions of workers. There is an underlying economic logic to such action. The dramatic step of workers of putting down their work places a cost on the employer that provides a clear incentive for the employer to enter into negotiations with workers to avoid this situation, by agreeing on relevant and reasonable improvements to the terms and conditions for work. The knowledge that a strike

represents a means available to workers and their organizations thus introduces the basis for a balance of power, a parity, between workers and employers, creating an incentive for the employers to negotiate with workers in good faith and avoid the possible escalation of a strike.

25. This link between strike action and the activities of workers' organizations, and its historical pedigree, suggests that a provision providing workers' organizations a right to organize "their . . . activities" and to formulate "their programmes" should today be interpreted to include a right to plan and organize strike action as part of those activities. Reference may, in this regard, be had to the increasing tendency in the practice of States and in public international law to consider strike action as a normal part of the activities of workers' organizations, and to interpretation of freedom of association standards in international law as including legal protection for certain core activities inherently related to the purpose of organizing workers.

26. Article 8 of the International Covenant on Economic, Cultural and Social Rights explicitly includes a right to strike as part of its stipulation of the right to freely form trade unions. This underscores the close link considered to exist between strike action and the activities of trade unions.

27. Moreover, although a right to engage in strike action has not yet been specifically recognized as an essential element of trade union freedom under the European Convention on Human Rights, there has been a development in the case law of the European Court of Human Rights to the effect that strike action is protected by Article 11 of that Convention. As with ILO Convention No. 87, the right to strike is not expressly mentioned in Article 11 of the European Convention on Human Rights.

28. In line with the principle of systemic interpretation of treaties, which is also given expression in Article 31, paragraph 3 (c), of the VCLT, the regulation of freedom of association under these instruments should be taken into account in the interpretation of the ILO Convention No. 87.

29. In Norway's opinion, the elements here referred to warrant an interpretation of the Convention under current circumstances according to which the planning for or organization of a strike is viewed as part of the "activities" in which workers' organizations shall have a right to engage pursuant to Article 3, paragraph 1, of the Convention. Moreover, it warrants that such action, or the plausible threat thereof, also constitutes one of the means generally applied by workers'

organizations for the furtherance and defence of the interest of workers, pursuant to Article 10 of the Convention.

30. We note that this confers with the position taken by the ILO Committee of Experts on the Application of Conventions and Recommendations (hereafter the “Committee of Experts”) since its first statement on the issue in 1959, and as further developed in general surveys in 1973, 1983, 1994 and in 2012. When finding that the Convention does not limit the right of States to prohibit strikes for public employees exercising public authority, the Committee of Experts presumed the existence of a more general right to strike. Likewise, the existence of a right to strike pursuant to the Convention has also been presumed by the Committee on Freedom of Association, a tripartite committee that has played a key role in developing the interpretation of the Convention.

31. Norway maintains that statements and recommendations issued by the Committees under the Convention are not legally binding and, consequently, neither governments nor the Court are required to model their interpretation of the Convention on that of the ILO’s supervisory bodies. I note, in this regard, that such statements and recommendations do not represent subsequent practice in the meaning of Article 31, paragraph 3 (*b*), of the VCLT, as the issuance of such opinions do not establish an agreement of the parties regarding the interpretation of the Convention. However, the practice of the ILO and its expert bodies may qualify as subsidiary means that may assist in the determination of the applicable rules to be drawn from this ILO Convention, as provided for under Article 38, paragraph 1 (*d*), of the Statute. Norway agrees with the observation of the International Law Commission that subsidiary means are not a source of international law but helpful means that may assist in the determination of the existence and content of rules of international law.

V. THE ALLEGED EXISTENCE OF A RIGHT TO STRIKE AS PART OF CUSTOMARY INTERNATIONAL LAW

32. It has been argued by some participants in these proceedings that a rule protecting the organization of strike has also been developed as part of customary international law. Norway would like to make two points in relation to those claims.

33. First, the Court has not been asked by the Governing Body of the ILO to opine on the question of whether the organization of strike is protected under customary international law. It should therefore refrain from doing so. The question referred to the Court asks for an examination

and interpretation of ILO Convention No. 87. The competence of the Governing Body of the ILO pursuant to Article 37, paragraph 1, of the Constitution, to request the binding decision of the Court, does not extend to general questions of customary international law.

34. Second, there is no evidence to support the argument that the right to strike has been established as part of customary international law binding on all States. The formation of customary international law depends on the existence of a general practice accepted as law. The phrase “accepted as law” here implies accepted as law on the grounds of constituting a rule of customary international law.

35. In line with the presumption of the International Law Commission in its draft conclusions on the identification of customary international law (cf. draft conclusion 11), the fact that a rule is set forth in a treaty instrument to which many States are parties does not mean that it is accepted as a rule of customary international law independent of that treaty rule. Moreover, the fact that strike action is protected under the domestic laws of many States does not mean that those protective standards are codified and applied based on a belief that the State has an obligation under customary international law to legislate and apply those standards.

36. Norway has never accepted that there is a rule of customary international law binding on all States according to which the organization of strikes by workers’ organizations enjoys legal protection. The clear impression is that no such rule has been explicitly or implicitly accepted by the international community of States as a rule of customary international law. Indeed, while many States consider that there is a right to strike set forth in ILO Convention No. 87 and other treaties, even this position remains disputed, which is the reason why the interpretation of the Convention is brought to the attention of the Court in the first place.

VI. THE COURT IS NOT ASKED IN THIS CASE TO DECIDE ON THE SCOPE OF THE RIGHT TO STRIKE ACTION THAT ENJOYS PROTECTION UNDER THE CONVENTION

37. Norway submits that the Court is not asked in this case to decide on the scope of a right to strike pursuant to the Convention. The question posed to the Court is a binary one; whether the right to strike is at all protected under the Convention, or not.

38. In the event that the Court were to conclude in the affirmative, the Court has not been asked to assess the precise scope of any right to strike, including limits with regard to measures taken

by States to regulate and restrict the use of strike. The Court should consequently avoid opining on that issue.

39. This has been Norway's interpretation of the question that has been posed to the Court and the basis upon which Norway has decided to consistently support the efforts to transmit the matter to the Court.

VII. THE PROTECTION OF STRIKE ACTION PURSUANT TO ILO CONVENTION NO. 87 DOES NOT PROHIBIT STATES PARTIES FROM REGULATING THE ORGANIZATION OF STRIKE

40. While we maintain that the Court is not asked to opine on the scope of a right to strike under the Convention, Norway would like to reiterate its consistent position that the Convention does not prohibit States parties from regulating the exercise of strike action and interfering with such activities for the protection of societal interests.

41. The protection offered under Article 3 offers a general protection against prohibitions in domestic legislation that would hinder any meaningful exercise of that type of activity. It does not prohibit States from regulating the exercise of strike action, including through the adoption of legislation permitting interference with strikes. This seems also to be recognized in the practice of the Committee on Freedom of Association.

42. A fundamental principle in the Norwegian collective bargaining system is that the labour market stakeholders are responsible for collective agreements and for upholding industrial peace. This includes a duty to conduct industrial action in a responsible manner. There is, nevertheless, broad agreement that the Government has an obligation to intervene if the industrial action poses a risk to life, health or safety, or leads to other serious societal consequences. In such cases, the Government will present a bill to Parliament, with a proposal for the strike in question to be prohibited and for the conflict to be resolved through compulsory arbitration by the National Wages Board, which is an independent and representative organ.

43. This system of compulsory arbitration has been practised in Norway historically and at no point has Norway accepted that the application of this system for the avoidance of serious societal consequences stemming from strike action would be contrary to its international obligations, including obligations under the Convention.

44. This conclusion was also drawn by the Norwegian Supreme Court in a case concerning the validity of a decision by the Government to interfere with an industrial strike, the so-called “OFS Case” that was decided in 1997 (case reference: HR-1997-24-A). As correctly referred to in the merits of the Supreme Court’s decision, both the Norwegian Parliament and the Government of Norway has, since the ratification of the Convention in 1949, consistently upheld that Norway has not accepted any international obligation that prohibits the continued application of the system for compulsory arbitration for the settlement of labour disputes — in Norwegian referred to as “*tvungen lønnsnemd*”.

45. The restrictive legal basis according to which this system of compulsory arbitration is structured, and its exceptional use, in itself underscores and highlights the centrality of the right to strike and its wide acceptance in Norwegian society as a legitimate measure organized by workers’ organizations for the defence of the interests of workers.

VIII. CLOSING

46. Mr President, honourable Members of the Court, in conclusion I will reiterate the main observations of Norway in relation to the question posed to the Court by the Governing Body of the ILO.

- (i) The Court has jurisdiction to issue an advisory opinion and the decision of the Court on the question posed to it will be binding on the Organization and its members.
- (ii) The freedom of organization set forth in Articles 3 and 10 of the Convention protects the right of workers’ organizations to organize strikes as part of the activities undertaken by them in the defence of the interests of workers.
- (iii) There is no rule of customary international law setting forth a right to strike, and the Court has not been asked to opine on this issue as it does not concern the interpretative issue that the Governing Body of the ILO has requested an answer to.
- (iv) The right to strike set forth in the Convention does not prohibit States from taking steps to regulate the exercise of strike action, but the Court has not been asked to decide on the scope of the right to strike action set forth by the Convention and should refrain from doing so.

47. Mr President, distinguished Members of the Court, this concludes our intervention. Thank you for your kind attention.

The PRESIDENT: I thank the representative of Norway for his presentation. Before I invite the next delegation to take the floor, the Court will observe a coffee break of 15 minutes. The hearing is suspended.

The Court adjourned from 16.25 p.m. to 16.45 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. I now invite the next participating delegation, Panama, to address the Court and I call His Excellency Javier Martínez-Acha Vásquez to the podium. You have the floor, Sir.

Mr MARTÍNEZ-ACHA VÁSQUEZ:

ORAL STATEMENT ON BEHALF OF THE REPUBLIC OF PANAMA

1. Good afternoon, Mr President, distinguished Members of the Court. It is my honour to appear before the Members of the International Court of Justice, the main judicial body of the United Nations, in representation of the Republic of Panama. On behalf of my Government, I would like to convey the high sense of responsibility with which the Republic of Panama approaches the legal question submitted by the International Labour Organization.

2. The Panamanian State appears before this Court motivated by the conviction that the consistent interpretation and application of international law — especially in the area of a fundamental labour right — provides legal certainty to States, employers' organizations and workers' organizations.

3. The Republic of Panama upholds before this Court a position based on history, law and international practice, always seeking to strike a balance between the protection of fundamental rights and State obligations. From this premise stems Panama's definitive conviction that Convention No. 87 does not regulate, neither expressly nor implicitly, the right to strike, which is exclusively a matter for the domestic law of States.

4. On 10 November 2023, within the framework of its Governing Body, the International Labour Organization requested this Court to issue an advisory opinion.

5. The resolution raises the following legal question before the Court: “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)?”

6. With regard to this Court’s jurisdiction to hear advisory requests, the Republic of Panama upholds that pursuant to Article 65 of the Statute of the Court, it is within its discretionary powers to accept or reject such requests and, where appropriate, to define the scope of the legal response as the Court deems it to be appropriate.

7. It is important to recall that the preamble to Convention No. 87 is based on a normative tradition that refers to the ILO Constitution of 1919 and the Declaration of Philadelphia of 1944. That Declaration proclaims, among other principles, “the affirmation of the principle of freedom of association” and that “freedom of expression and of association is essential to steady progress”. These historical and normative references constitute, according to Panama, a relevant interpretative context that the Court should take into account when examining such matters.

8. Respect for the sovereign consent of a State is a cornerstone of international law. Accepting a broad interpretation of Convention No. 87 would be tantamount to opening the door to unagreed obligations, which undermines legal certainty and erodes confidence in the multilateral system.

9. In Panama’s case, historical experience shows that strikes preceded freedom of association and its legal regulation. The historical constant has been the conception of strikes as a collective and concerted suspension of work for the purpose of asserting rights, without any rules or regulations to protect them in their beginnings.

10. Freedom of association refers to the right of workers and employers to organize. Strikes, on the other hand, are means of collective action with economic and political implications. Equating these two rights could imply an interpretation that does not reflect the express will of the States in adopting Convention No. 87.

11. The first strike in Panama dates back to the mid-nineteenth century, in the context of the development of capitalism in the isthmus. Among the events that illustrate these assertions are the

construction of the transisthmian railroad beginning in 1850 and the agro-industrial exploitation of bananas in the provinces of Chiriquí and Bocas del Toro.

12. In 1853, workers at the Pacific Mail Steam Ship Company, based on the island of Taboga, went on strike to demand higher wages; such action was repeated in 1855. Similar movements ensued: railroad workers went on strike in 1868 and 1869; tobacco workers in Panama City did it in 1880; and strikes on the railroad and docks took place in 1883 and 1895.

13. The Panamanian labour movement began to take on a more organic structure in the 1920s, with the creation of the Federación Obrera (Workers' Federation), the Sindicato General de Trabajadores (General Workers' Union) in 1924, and the emblematic tenants' strike of 1925. These collective actions mark a turning point toward the institutionalization of labour demands.

14. Since the founding of the Republic as an independent State, Panama has had four constitutions: those corresponding to the years 1904, 1941, 1946 and 1972. The Constitutions of 1941 and 1946 expressly recognized the right to strike, including the possibility of special restrictions when declared in public services, reserving the regulation of the exercise of this right to the law. In addition, both Constitutions recognized the right to unionize, both for employers and for workers and professionals.

15. The right to strike as enshrined in the 1946 Constitution has been preserved unchanged in the current Constitution of the Republic of Panama, adopted in 1972, and has remained so after being amended on four occasions: in 1978, 1983, 1994 and 2004.

16. The Labor Code of the Republic of Panama, in force since 1972, regulated the constitutionally established right to strike; it is the product of a legislative development that was markedly protective of collective labour disputes.

17. Mr President and distinguished Members of the Court: two key conclusions which are essential to our position arise from this historical development. First, in the Republic of Panama, strikes originated as a social and economic phenomenon that predated organized and legally recognized freedom of association. Second, their regulation was developed within Panamanian domestic law in response to national realities, not as a direct consequence of international law or ILO Convention No. 87.

18. The Panamanian State has ratified international instruments that reinforce this right, although they do not necessarily derive from Convention No. 87.

19. In 1966 and 1967, the Republic of Panama ratified ILO Conventions No. 98 and No. 87 on freedom of association and collective bargaining. In both cases it took due note of the fact that the text of Convention No. 87 does not expressly mention strikes, and it is, therefore, convinced that their regulation did not arise from that instrument, but such was the result of interpretations by the ILO supervisory bodies.

20. In 1976, Panama adopted the International Covenant on Economic, Social and Cultural Rights. In the regional context, it is also important to note that, in 1992, the Republic of Panama approved the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, known as the Protocol of San Salvador. Article 8 expressly establishes that the States parties shall guarantee the right to strike, exercised in accordance with the laws of each country.

21. It should be added that international human rights treaties and conventions ratified by the Panamanian State form part of the Constitutional Block, by virtue of the rulings handed down by the Plenary of the Supreme Court of Justice in exercising constitutional control throughout the country.

22. Mr President, distinguished Members of the Court, it is necessary to emphasize that the right to strike and its practice do not appear expressly regulated in the fundamental instruments of the ILO. This includes the ILO Constitution, the Declaration of Philadelphia, Conventions Nos. 87 and 98, as well as the 1998 and 2022 Declarations on Fundamental Principles and Rights at Work.

23. The Panamanian State holds that Convention No. 87 should not be given an interpretation different from the will expressly adopted by the States. It further holds that technical guidelines cannot be converted into binding legal obligations. In the view of the Republic of Panama, when directives are issued regarding the right to strike or when national provisions are assessed, such pronouncements do not create law but rather constitute interpretations intended to facilitate the application of the Convention. In the present case, those guidelines pertain to the right of association — a matter distinct from the right to strike — so that admitting the contrary would impair the principle of tripartism and the normative function that rests exclusively with the Member States.

24. The right to strike is part of the development of the domestic law of Member States, taking into account the particularities of each labour system. However, it does not reach the dimension of a universal commitment with the significance that an international treaty entails, as an authentic expression of the collective will of the members to bind themselves through such an instrument.

25. Convention No. 87 must be interpreted in light of its object and purpose, which are confined to freedom of association and to the protection of the right to associate. While the preparatory works of a convention may constitute a relevant interpretative source, they do not confer authority to expand its scope, nor to establish obligations that the States did not expressly adopt.

26. Consequently, Convention No. 87 protects freedom of association and the protection of the right to associate but cannot be considered to implicitly include the right to strike, without exceeding the original intention of the States in ratifying it, the principle of consent of the States, and the objectives and purposes of the Convention itself.

27. The position of the Panamanian State is that strikes, as a means of pressure in the hands of workers — whether organized or not — have legal, political and economic repercussions that go beyond simple association. For this reason, they cannot be understood as falling under Convention No. 87 concerning the right to associate.

28. Therefore, strike action is only regulated within the laws and particularities of each country, taking into account its cultural, economic and social conditions, and not through an extensive interpretation of an international legal instrument such as Convention No. 87.

29. In the Republic of Panama, the recognition and regulation of strikes have been essentially internal processes, embodied in the Constitution, the Labour Code and special laws.

30. Therefore, the legal basis of this right to strike in Panama rests mainly on national law and not on an extensive interpretation of ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise, 1948.

31. In light of the foregoing background and analysis, the Republic of Panama respectfully submits the following considerations:

- (1) Striking is an autonomous right, with its own history, effects and limitations, distinct from mere union membership or formation.

- (2) International legal certainty requires that States be bound only by what they have expressly accepted, in accordance with the principle of sovereign consent, recognized in international custom and in the Vienna Convention on the Law of Treaties (1969).
- (3) That interpreting Convention No. 87 in an extensive manner so as to infer the right to strike could impose obligations not agreed upon by the Member States, thereby undermining the literal, teleological and systematic interpretation of the Convention, and affecting the coherence and legal certainty of the international labour system.

32. Mr President, distinguished Members of the Court, the Republic of Panama concludes its intervention by recalling that the right to strike was originally a social phenomenon rather than a legal norm, and that its subsequent regulation arose from domestic law, not from international treaties. Consequently, the Republic of Panama reaffirms that Convention No. 87 does not expressly regulate the right to strike.

33. From a legal perspective, Panama asserts that respect for the principle of sovereign consent of States and the rules of treaty interpretation enshrined in the 1969 Vienna Convention requires that international obligations be expressly assumed. Recognizing the right to strike as implicit in Convention No. 87 would alter its scope and undermine international legal certainty.

34. At the legal level, Panama stresses that the strength and legitimacy of the international labour normative system lie in the tripartism of the ILO.

35. In view of the foregoing, the Republic of Panama respectfully requests this High Court to determine, definitively and unequivocally, that the right to strike is not implicit in Convention No. 87 and that its regulation corresponds solely to the domestic law of States. Such a pronouncement is indispensable to preserve the integrity of the Convention, to ensure the stability and legal security of the international system, to reaffirm the principle of sovereign consent of States and to safeguard the legitimacy of the normative system of the International Labour Organization.

36. Thank you very much, President.

The PRESIDENT: I thank the representative of Panama for his presentation. I now invite the next participating delegation, the United Kingdom, to address the Court and I call upon Mr Daniel Stilitz to take the floor.

Mr STILITZ:

I. INTRODUCTION

1. Mr President, Madam Vice-President, distinguished Members of the Court, I am honoured to appear before you on behalf of the United Kingdom.

2. For a decade, the Governing Body of the ILO has tried to resolve the dispute underlying the question before the Court. The United Kingdom supports the Court's role in answering this request for an advisory opinion. The Court plays a vital role in the international legal order by assisting organs and agencies, such as the ILO, in fulfilling their mandates in accordance with international law.

3. The United Kingdom is a strong supporter of the ILO and its role in bringing businesses, trade unions and governments together to develop and enhance international labour standards. The Government is committed to strengthening the partnership between businesses, trade unions and working people, and to ensuring that workers benefit from greater fairness and security at work while enhancing the competitive environment so businesses can flourish. The Government's continued commitment to improving and refining workers' rights is reflected in the Employment Rights Bill, currently before Parliament, and in its consultation on "Making Work Pay". Industrial relations based around good faith negotiation and collective bargaining can only enhance productivity.

4. More broadly, the United Kingdom is committed to upholding the highest standards of international law through good faith interpretations of international legal obligations. Adherence to the rule of law stimulates growth and enhances competitiveness.

5. The United Kingdom's submissions are in three parts. First, I will address the question before the Court. Second, Professor Webb will demonstrate that the right to strike is not absolute and the diversity of State practice on the contours of the right confirm that it is not customary international law. It should therefore be regulated at a national level. Third, I will submit that the relevant case law of the European Court of Human Rights reinforces the United Kingdom's argument that there is a diversity of state practice, even within one region, further undermining any claim to the right to strike being customary international law.

II. THE RIGHT TO STRIKE IS PROTECTED BY CONVENTION NO. 87

6. Mr President, the United Kingdom submits that the Court should answer the question before it in the affirmative. The right to strike of workers and their organizations is protected under Convention No. 87.

7. The United Kingdom believes that the right to strike, although not expressly laid down in Convention No. 87, is a corollary of the right of trade unions freely to organize their activities.

8. Article 10 of the Convention defines the term “organisation” as “any organisation of workers or of employers for furthering and defending the interests of workers or of employers”. Article 3 (1) provides that such organizations “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”. Article 3 (2) states that public authorities shall not interfere with the “lawful exercise” of that right. Article 11 requires each ILO Member “to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise”. Read together, these treaty provisions protect the right of organizations to form associations with the goal of regulating working conditions; these organizations are empowered to determine the lawful activities they wish to exercise to achieve this goal, which logically includes strike action.

9. The structure of Convention No. 87 links the rights to organize and to strike, recognizing that these freedoms are integral not only to empowered workers but also to flourishing businesses. When workers are secure in their rights, they are better able to engage actively in the economy, and to commit to their work with confidence. That sense of security encourages initiative and innovation, which in turn strengthens businesses and, ultimately, the wider economy.

10. Mr President, I now invite you to call Professor Webb to the podium.

The PRESIDENT: I thank Mr Stultz for his presentation. I now invite Professor Philippa Webb to the podium. You have the floor, Professor.

Ms WEBB:

III. THE RIGHT TO STRIKE IS NOT ABSOLUTE AND NOT CUSTOMARY INTERNATIONAL LAW

1. Mr President, Madam Vice-President, distinguished Members of the Court, I am honoured to continue the submissions of the United Kingdom.

2. I will make three points. *First*, the right to strike is not absolute; it is subject to a range of conditions that limit its scope. *Second*, the diversity of State practice on the contours of the right confirm that it is not customary international law. *Third*, the absence of settled practice on the scope and conditions means that the right should be regulated at the national level. As a result, the Court may wish to limit itself to answering the question before it regarding the protection under Convention No. 87 without expressing its views on how to define the scope and conditions of the right to strike. On a number of occasions, the Court has recognized that a right is protected under a treaty, without defining its parameters. In the *LaGrand* and *Avena* Judgments, the Court held that Article 36 (1) of the Vienna Convention on Consular Relations conferred individual rights directly on foreign nationals but did not comprehensively define the scope of those individual rights²⁰.

3. Turning to my first point. Like many rights, the right to strike is qualified in nature because its exercise may prejudice the rights of other groups in society. Strike action may prejudice: the economic and property rights of employers²¹; the economic rights of other workers; the rights and freedoms of clients, customers and business associates; and the rights and freedoms of service-users, including those vulnerable members of the community.

4. This is widely recognized by State and organization participants in these proceedings²². The CEACR and ITUC do not dispute that “the right to strike cannot be considered as an absolute right”²³.

²⁰ *Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, I.C.J. Reports 2004 (I), p. 35, para. 40.

²¹ Charter of Fundamental Rights of the European Union (2000/C 364/01, Art. 16).

²² Bangladesh Written Comments, para. 53, fn. 49; para. 54. See Written Statement of the ITUC, para. 4.92; Written Statement of Germany, para. 41; Written Statement of the IOE, para. 7; Written Statement of Canada, para. 9; Written Statement of Japan, para. 2; Written Statement of Tunisia, p. 3; Written Statement of Mexico, para. 27; Written Statement of Australia, paras. 19, 97; Written Statement of Norway, para. 2.7; Written Statement of Business Africa, para. 55; Written Statement of South Africa, para. 60; Written Statement of the Swiss Confederation, paras. 92-93; Written Statement of the Netherlands dated 16 May 2024, paras. 4.1-4.23, 5.20; Written Statement of Colombia, paras. 3.45, 3.114; Written Comments of the ITUC, para. 2.13; Written Comments of Japan, para. 5; Written Comments of Tunisia, p. 2; Written Comments of South Africa, para. 41; Written Comments of the Swiss Confederation, paras. 4, 6; Written Comments of the United States of America, para. 3.11; Written Comments of the IOE, paras. 42, 91, 97 (ii), 160; Written Comments of Business Africa, para. 7; Written Comments of Australia, para. 42.

²³ International Labour Conference, Eighty-first Session, Report III (Part 4 B), 1994, Freedom of Association and Collective Bargaining: General Survey by the Committee of Experts on the Application of Conventions and Recommendations (ICJ Dossier, Vol. 5, Doc. No. 235), p. 66, para. 151; Written Statement of the ITUC, para. 4.92.

5. Certain categories of workers, such as civil servants, may be limited or prohibited from striking²⁴. Varied procedural conditions may be imposed such as requirements for a ballot²⁵, a notice period, or prior recourse to mediation²⁶. Strikes often need to ensure minimum service levels²⁷, with different ways of defining “essential services”²⁸. The State may have the power to requisition workers. There are also limits on secondary or solidarity strikes and political strikes²⁹.

6. Mr President, I move to my second point that the right to strike, and its scope, are not customary.

7. The Court has not stated that there is a set number of States that can be said to constitute general or “settled practice”³⁰, but the practice must be widespread, representative and consistent³¹. Being party to a convention does not permit the inference to be drawn that States are acting pursuant to a rule of customary international law³². As the Court stated in the *Asylum* case, where a potential rule discloses “so much uncertainty and contradiction, so much fluctuation and discrepancy . . . it is not possible to discern . . . any constant and uniform usage, accepted as law”³³.

8. Even if the Court considers that the “core” of the right to strike is customary, this does not mean that the right’s penumbra of conditions, limitations and qualifications are customary. And as confirmed by the Court’s jurisprudence, even where the existence of a right might be clearly established, its application in particular situations might not be susceptible to a “definitive conclusion” “in view of the present state of international law”³⁴.

²⁴ B. Creighton et al., *Strike, Ballots, Democracy and Law* (2020), pp. 52-53.

²⁵ The Standards Initiative, Background document 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, GB.323/INS/5/Appendix III, 23-25 February 2015, revised March 2015 (ICJ Dossier, Vol. 3, Doc. No. 108), p. 41.

²⁶ B. Creighton et al., *Strike, Ballots, Democracy and Law* (2020), Chap. 2, pp. 55-56.

²⁷ C. Carrión-Crespo and T. Knäbe, “The Scope of Essential Services: Laws, Regulations and Practices”, *International Labour Office*, WP 334, 2019, p. 39.

²⁸ *Ibid.*, p. 9.

²⁹ A. Bogg, “The Right to Strike, Minimum Service Levels, and European Values” (WP, 2023), pp. 5-6. See also, generally, Bangladesh Written Statement, para. 56.

³⁰ *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 45, para. 79.

³¹ *Ibid.*, p. 42, para. 73.

³² *Ibid.*, pp. 43-44, para. 76.

³³ *Ibid.*, commentary to Conclusion 2, para. 3, citing *Asylum (Colombia/Peru), Judgment, I.C.J. Reports 1950*, p. 277.

³⁴ *Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 263, para. 97.

IV. THE RIGHT SHOULD BE REGULATED AT THE NATIONAL LEVEL

9. Mr President, that brings me to my third point. The great diversity of State practice on the right to strike reflects the nature of the right. The scope and conditions will depend on the industrial relations practices and traditions of each State, economic circumstances and political choices. The exercise of the right must therefore be regulated at the national level. This position is endorsed by various participants, including Australia³⁵, Bangladesh³⁶, the Business Africa Employers' Confederation³⁷ and the International Organisation of Employers³⁸. In its Statement adopted at the 2015 Tripartite Meeting, the Government Group (consisting of 32 governments) noted "the multi-faceted regulations" that frame the right to strike in various States and concluded that the scope and conditions of the right "are regulated at the national level"³⁹. The ITUC also notes that 150 States regulate the terms of strike actions⁴⁰.

10. To take one important example of the diversity of State practice: the right to strike and minimum service levels and essential services⁴¹. In a survey of 39 jurisdictions conducted by the

³⁵ Australia, Written Comments, para. 40.

³⁶ Bangladesh, Written Comments, para. 55.

³⁷ Business Africa, Written Comments, paras. 7-8.

³⁸ IOE, Written Comments, paras. 136-137.

³⁹ GB.323/INS/5/Appendix I, Ann. II (23 Feb. 2015), para. 35 (5). See also Japan Written Comments, paras. 35-40.

⁴⁰ ITUC, Written Comments, paras. 5.28-5.29.

⁴¹ C. Carrión-Crespo and T. Knäbe, "The Scope of Essential Services: Laws, Regulations and Practices", *International Labour Office*, WP 334, 2019, pp. 9, 39; B. Creighton et al., *Strike, Ballots, Democracy and Law* (2020), Chap. 2, p. 53; The Standards Initiative, Background document 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, GB.323/INS/5/Appendix III, 23-25 February 2015, revised March 2015 (ICJ Dossier, Vol. 3, Doc. No. 108), p. 42; B. Waas (ed.), *The Right to Strike: A Comparative View* (Kluwer, 2014), p. 274; P. Briòne and K. Zaidi, "Strikes on minimum service laws in Europe" (House of Commons Library, March 2023); National Employment Law (Argentina), No. 24.013, 1991 (NEL); Labour Regime Decree No. 276/06 (Argentina); Fair Work Act 2009 (Australia), s. 424; EPSU and ETUI, *Right to strike country factsheet — Austria* (updated 2021); Act of 29 November 2017 (Belgium); Act of 19 August 1948 (Belgium); Act Concerning Public Interest Services in Peacetime Act of 19 August 1948 (Belgium); Law of 23 March 2019 on the Organisation of Prison Services and the Prison Staff Regulations (Belgium); Law No. 7783 of 28 June 1989 (Brazil); Law No. 7.783 of 28 June 1989 (Brazil); Law on Settlement of Collective Labour Disputes, No. 21 of 13 March 1990 (Bulgaria); Government of Canada, Treasury Board of Canada Secretariat, "Essential services"; Canadian Financial Administration Act 1985; Canadian Labour Code 1985; People's Police Law of the People's Republic of China (Presidential Order No. 40 of 1995), Article 22; Substantive Code of Labour, Decree Law No. 3.743 (1951) (Colombia), Art. 450; Constitution of Colombia 1991 (reversed 2015), Art. 56; Colombian Constitutional Court, Judgment C-349-09 of 20 May 2009; EPSU and ETUI, *Right to strike country factsheet — Cyprus* (updated 2021); EPSU and ETUI, *Right to strike country factsheet — Czech Republic* (updated 2021); Collective Labour Disputes Resolution Act 1993 (Estonia); EPSU and ETUI, *Right to strike country factsheet — Estonia* (updated 2021); Trade Disputes Act (Fiji), Cap 97; EPSU and ETUI, *Right to strike country factsheet — France* (updated 2021); Basic Law for the Federal Republic of Germany (as last amended by Act of 19 December 2022); Federal Labour Court (Germany) of 31 January 1995 — 1 AZR 142/94; Law No. 1264/1982 (Greece), Art. 21 (1); EPSU and ETUI, *Right to strike country factsheet — Hungary* (updated 2021); Civil Servants' Collective Agreements Act (No. 94/1986) (Iceland); EPSU and ETUI, *Right to strike country factsheet — Iceland* (updated 2021); Supreme Court of India, *Bhagawati Park v. State of Bihar* (2004); EPSU and ETUI, *Right to strike country factsheet — Ireland* (updated 2021); EPSU and ETUI, *Right to strike country factsheet — Italy* (updated 2021); Law No. 25, Labour Relations Adjustments Act 1946 (Japan); US

United Kingdom from nearly every region of the world: 20 jurisdictions permit strikes in essential services if minimum service levels are maintained⁴².

11. The definition of essential services varies from State to State. Research by the International Labour Office in 2019 observes: “What is meant by essential services in the strict sense of the term depends to a large extent on the particular circumstances prevailing in a country.”⁴³ A State may define essential services as being limited to “indispensable” medical and hospital services or services at prisons⁴⁴, while others may have a significantly broader definition, including any transport service for the carriage of passengers or goods by air, and any postal, telegraph or telephone service⁴⁵. In other jurisdictions, essential services can extend to university academics⁴⁶.

12. In some States, employees in essential services are generally prevented from striking but minimum service levels can be agreed to allow workers to take part in strikes⁴⁷. Another approach is simply to prohibit strikes in essential services with no minimum service level protections⁴⁸.

13. In the United Kingdom, there were no legal requirements for staff to provide a minimum level of service in any sector until the Strikes (Minimum Service Levels) Act 2023. The Employment Rights Bill, upon Royal Assent, will repeal that legislation, reversing the position in the United Kingdom to what it was prior to 2023. However, there remain certain categories of essential workers, such as the armed forces and police, for whom strike action is prohibited.

14. Thank you, Mr President, Members of the Court, for your kind attention. I request that you please call Mr Stilitz back to the podium to conclude the submissions of the United Kingdom.

Department of State, *2022 Country Reports on Human Rights Practices: Lebanon* (produced by the Bureau of Democracy, Human Rights and Labour); Federal Labour Law (July 2019) (Mexico); Federal Law of Workers at the Service of the State 1963 (Mexico); Executive Order (LRCT), approving a single ordered text of the Law on Collective Employment Relationships No. 010-2003-TR of 5 October 2003 (Peru); Collective Labour Dispute Resolution Act 1993 (Poland); Labour Code 2003 (Romania); Collective Bargaining Act (No. 2/1991) (Slovak Republic); Civil Servants Act 2002 (Slovenia); Somalia Constitution 2012; Labour Relations Act 1995 (South Africa); Royal Decree Law 5/2015 approving Revised Text of the Basic Statute of the Public Employee 2015 (Spain); Employment Act 2006 (Uganda); The Strikes (Minimum Service Levels) Act 2023 (United Kingdom); Labor Management Relations Act, 1947, 29 USC, Chap. 7, para. 176 (United States of America).

⁴² Argentina; Austria; Belgium; Brazil; Bulgaria; Croatia; Cyprus; Czech Republic; Estonia; France; Greece; Hungary; Iceland; Italy; Japan; Mexico; Peru; Romania; Slovenia; Spain.

⁴³ C. Carrión-Crespo and T. Knäbe, “The Scope of Essential Services: Laws, Regulations and Practices”, *International Labour Office*, WP 334, 2019, p. 9.

⁴⁴ Albanian Code of Labour (No. 7961, 12 July 1995), s. 197/5 (2).

⁴⁵ Indian Industrial Disputes Act (No. 14) 1947, s. 2 (n) (i).

⁴⁶ Australian Fair Work Commission, *Monash University v. NTEU* [2013] FWCFB 5982.

⁴⁷ Australia, South Africa and Canada.

⁴⁸ Brunei, Colombia, India and Poland.

The PRESIDENT: I thank Professor Webb for her presentation. I now give the floor again to Mr Stilitz. You have the floor, Sir.

Mr STILITZ:

V. RELEVANT CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

1. Thank you. Mr President, my final submission is that the relevant case law of the European Court of Human Rights on the scope of the right to strike reinforces the United Kingdom's position on the legal implications of the question before the Court.

2. Article 11 (1) of the European Convention on Human Rights protects “the right to freedom of . . . association with others, including the right to form and to join trade unions for the protection of his interests”. Under Article 11 (2), that right may be subject to such restrictions “as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others”. The test of justification under Article 11 (2) recognizes that the regulation of trade union rights involves the balancing of competing interests between different individuals, organizations and groups in society. Moreover, Article 11 (2) provides that Article 11 “shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State”.

3. The European Court has recognized that Article 11 of the European Convention on Human Rights protects the right to strike, but it has not recognized it as an essential element of the right to freedom of association protected by Article 11⁴⁹.

4. The European Court has also recognized that, in the context of industrial relations, States enjoy a wide margin of appreciation⁵⁰. This reflects “the sensitive character of the social and political

⁴⁹ *Association of Academics v. Iceland* (2018) 67 EHRR SE4, para. 24; *RMT v. United Kingdom* (2015) 60 EHRR 10, para. 84 and *Humpert v. Germany* (*App Nos. 59433/18, 59477/18, 59481/18, 59494/18*) (2023) [2024] IRLR 222, para. 103.

⁵⁰ *Sindicalul 'Pastorul cel Bun' v. Romania* [2014] 58 EHRR 10, para. 133; *Unite the Union v. United Kingdom* [2017] IRLR 438, para. 55.

issues involved in achieving a proper balance between the respective interests of labour and management” and “the high degree of divergence between the domestic systems in this field”⁵¹.

5. The Strasbourg Court has made determinations on the scope of States’ wide margin of appreciation in respect of most of the limitations. In respect of the union’s democratic mandate required to approve industrial action, Article 11 does not secure any particular treatment of trade unions or their members. In *RMT*, a challenge to statutory ballot-notice requirements was held to be manifestly without foundation and ruled inadmissible⁵².

6. As regards the position of civil servants, in finding a prohibition on striking to be justified, the Strasbourg Court noted that

“strike action is not the only means by which trade unions can protect the relevant occupational interests and Contracting States are in principle free to decide what measures they wish to take in order to ensure compliance with Article 11 as long as they thereby ensure that trade union freedom does not become devoid of substance”⁵³.

7. While restrictions may be imposed on the right to strike of workers providing essential services, the Strasbourg Court has held that a complete ban requires robust reasoning from the State to justify its necessity⁵⁴. In *Ognevenko*, the Court also appeared to accept that minimum service levels may be capable of being compatible with Article 11 but indicated that any alleged violation of Article 11 will turn on the particular facts of the case⁵⁵.

8. Finally, restrictions on secondary strike action are likely to constitute an interference with Article 11 (1) requiring justification under Article 11 (2)⁵⁶. Whether that restriction can be justified will, again, turn on the facts of the particular case, which informs the margin of appreciation enjoyed by the State in question. In finding in *RMT* that the ban on secondary action in the UK legislation was justified, the Strasbourg Court considered the “varied comparative picture” which “reveals a spectrum of national positions, ranging from a broadly permissive stance in countries such as Greece, Finland, Norway and Sweden, to those that do not recognise or permit it”⁵⁷. Having expressly

⁵¹ *Sindicatul ‘Pastorul cel Bun’ v. Romania* [2014] 58 EHRR 10, para. 133.

⁵² *RMT v. United Kingdom* (2015) 60 EHRR 10, para. 45.

⁵³ *Humpert v. Germany* (*App nos. 59433/18, 59477/18, 59481/18, 59494/18*) (2023); (2024) IRLR 222, para. 144.

⁵⁴ *Ognevenko v. Russia* (2019) 69 EHRR 9, paras. 72-73.

⁵⁵ *Ibid.*, para. 77.

⁵⁶ *RMT*, para. 75.

⁵⁷ *Ibid.*, para. 91.

acknowledged the diversity of “the deep structural and cultural differences among European States in the field of industrial relations”, the Strasbourg Court found that the fact that the United Kingdom was one of a small group of European States to adopt this stance did not, in itself, “mean that the domestic authorities have stepped outside their legitimate margin of appreciation in regulating this aspect of trade union activity”⁵⁸. Having considered the context and history of the legislation, the European Court concluded that the ban “did not disclose an unjustified interference” with Article 11, since the applicants were still able to exercise the essential elements of the right in representing their members by negotiating on their behalf. The Court concluded that, “[i]n this legislative area of recognised sensitivity, the respondent State enjoys a margin of appreciation broad enough to encompass the existing statutory ban on secondary action”⁵⁹.

VI. CONCLUSION

9. Mr President, the United Kingdom submits that the right to strike is protected under Convention No. 87. It is not unqualified and it is for each State to regulate the right at the national level, enjoying a wide margin of appreciation. But it is a key part of the framework for protecting the fundamental rights of workers. It not only provides security for workers, but leads to greater, not less, economic prosperity overall.

10. Thank you, Mr President, Members of the Court, for your kind attention. This concludes the submissions on behalf of the United Kingdom.

The PRESIDENT: I thank the representatives of the United Kingdom for their presentation. I now invite the next participating delegation, Egypt, to address the Court and I call upon Ms Jasmine Moussa to take the floor.

⁵⁸ *Ibid.*, para. 91.

⁵⁹ *Ibid.*, para. 104.

Ms MOUSSA:

ORAL STATEMENT ON BEHALF OF THE ARAB REPUBLIC OF EGYPT

1. Thank you, Mr President. Distinguished Members of the Court, it is an honour and a privilege to appear before you again on behalf of the Arab Republic of Egypt in this important advisory opinion, in which the Governing Body of the International Labour Organization (ILO) seeks the Opinion of the Court to clarify whether the “right to strike” is protected under the ILO’s Freedom of Association and Protection of the Right to Organise Convention, also known as Convention No. 87⁶⁰.

2. There is no doubt that the right to peaceful strike exists under international law and is a fundamental aspect of trade union freedom as well as a tool for achieving the social and economic rights of workers.

3. Under Article 8 of the International Covenant on Economic, Social and Cultural Rights, which Egypt ratified in 1982, the States parties undertake to ensure “the right to strike, provided that it is exercised in conformity with the laws of the particular country”.

4. Throughout its history, Egypt has honoured the role and contribution of labour to society. Article 15 of Egypt’s 2014 Constitution enshrines that “peaceful strike is a right regulated by law”. Under Article 8, “society is based on social solidarity”, while Article 13 of the Constitution provides that “the State shall protect workers’ rights and strive to build balanced work relationships between both parties to the production process”. The State “shall ensure means for collective negotiations . . . and prohibit unfair dismissal, as regulated by Law”.

5. Egypt continues to strive for a fair and balanced relationship between workers and employers for the benefit of society and social justice. The newly adopted Labour Law (Law No. 14 of 2025), which only entered into force on 1 September 2025, after extensive societal dialogue and consultation with the social partners as well as with the ILO, provides a comprehensive legal framework for the protection of workers’ rights, including by regulating the right to strike and establishing labour courts to settle disputes.

⁶⁰ Egypt ratified the Freedom of Association and Protection of the Right to Organise Convention on 6 November 1957. Ratifications for Egypt available at https://normlex.ilo.org/dyn/nrmlx_en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312232:NO.

6. Distinguished Members of the Court, Egypt strongly believes that international recognition of the right to strike establishes a fair balance between the parties in industrial relations, strengthens social peace and constitutes an essential guarantee for achieving social justice in an increasingly challenging and uncertain global environment. Denying this right would undermine trade union freedoms and weaken workers' ability to advance their legitimate interests.

7. Today, this august Court is called upon to pronounce itself on the specific question of whether the “the right to strike of workers and their organizations [is] protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)”. The question is therefore not whether the “right to strike” is protected under general international law, but rather under the terms of this particular Convention. The matter does not concern the “right to strike” in the abstract or in general, but whether the broad, extensive and detailed interpretations of the scope and limits of this right, as adopted by the relevant expert bodies, may be considered part of ILO Convention No. 87, and thus monitored under the relevant mechanisms.

8. Referring this matter to the esteemed Court is important to clarify the legal obligations of States that are parties to the Convention.

9. Egypt respectfully submits that this question is a matter that is regulated under the principles of the law of treaties, specifically the core principles of treaty interpretation enunciated under Articles 31 and 32 of the Vienna Convention on the Law of Treaties (VCLT).

10. In order to avoid repeating what has already been presented by other parties in these proceedings, Egypt's submission will therefore focus on clarifying the relevant methodology for treaty interpretation, as enunciated under the VCLT. The present statement will therefore focus on the following:

- First, I will elaborate on the interpretative rule established under Article 31 of the VCLT.
- Second, I will clarify the meaning of “subsequent practice” and its relevance to treaty interpretation and the role of expert bodies in this regard.

11. Mr President, first, with respect to the general rule of interpretation. According to Article 31 (1) of the VCLT, “[a] treaty shall be interpreted in good faith in accordance with the

ordinary meaning to be given to the terms of the treaty, in the context and in the light of its object and purpose” (emphasis added). This rule reflects customary international law⁶¹.

12. But how exactly is this interpretive rule to be applied?

13. Egypt acknowledges that, as confirmed by the International Law Commission (ILC), “the legally relevant interpretation” of a text is uncovered “through a single combined operation” in which all means of interpretation in Article 31 should be “thrown into the crucible”. Egypt respectfully submits that it is generally accepted that the classical approach to treaty interpretation is based on the “ordinary meaning” of the text, a fundamental principle that has long existed as a norm of customary international law.

14. The ILC has stressed that the text of a treaty “must be presumed to be the authentic expression of the intention of its parties” and that “in law there is only one treaty — one set of terms accepted by the parties and one common intention with respect to those terms”⁶². The starting-point, therefore, is always the elucidation of the meaning of the text⁶³ as intended by the treaty’s parties. The intention of the parties is presumed to have the meaning reflected in the text, which is to be determined in the context of the treaty, and in light of its object and purpose.

15. It follows from this that “to adopt an interpretation which [runs] counter to the clear meaning of the terms [of a treaty] would not be to interpret but to revise the treaty”⁶⁴. It is thus self-evident that interpretation should not go beyond what is either expressed or *necessarily* to be implied in the terms of the treaty⁶⁵.

16. This august Court, in its Advisory Opinion on the *Competence of the General Assembly for the Admission of a State to the United Nations* has stated:

“The Court considers it necessary to say that the first duty of a tribunal which is called upon to interpret and apply the provisions of a treaty, is to endeavour to give effect to them in their natural and ordinary meaning in the context in which they occur. If the relevant words in their natural and ordinary meaning make sense in their context, that is an end of the matter.” (*I.C.J. Reports 1950*, p. 8.)

⁶¹ See Villiger, “The Rules on Interpretation: Misgivings, Misunderstandings, Miscarriages? The ‘Crucible’ Intended by the International Law Commission”, p. 109.

⁶² *Ibid.*, p. 225. See *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*.

⁶³ Draft articles on the Law of Treaties with Commentaries, *YILC*, 1966, Vol. II, p. 220.

⁶⁴ *Ibid.*, p. 219.

⁶⁵ *Ibid.*

17. Mr President, interpretation of the terms of a treaty does not take place in a vacuum, but rather in their context, which is defined under Article 31 (2) of the VCLT to comprise the treaty's text, its preamble, its annexes and any agreement or instrument between its parties, or accepted by them, in connection with the treaty.

18. This means that all provisions of a treaty, together with agreements and instruments concluded in connection with the treaty and accepted by its parties, must be read as a unitary whole, and must be considered as significant in expressing the intended meaning.

19. In addition, the VCLT provides that any subsequent agreement between the parties, or any subsequent practice in the application of the treaty establishing an agreed interpretation shall also be "taken into account", together with the context. The language of the VCLT on this point is instructive. According to the International Law Commission's 2018 conclusions on subsequent agreements and subsequent practice, notwithstanding the authenticity of such agreements and practice, "they are not necessarily legally binding". The commission justified this because, according to the VCLT, "subsequent agreements and subsequent practice [are] only [to] '*be taken into account*', in the interpretation of a treaty"⁶⁶ as opposed to other means of interpretation.

20. Subsequent practice, therefore, is legally binding and decisive of the meaning to be attached to a treaty only "when it is consistent and embraces all the parties" and when it "indicates that the parties consider the interpretation to be binding upon them"⁶⁷.

21. The Commission also opined that subsequent agreements and subsequent practice are expressions of the understanding of the treaty *by the States parties themselves*, and it thus emphasized that the intention and will of the collectivity of States parties is paramount.

22. Notably, the ILC distinguished between "subsequent practice" establishing the agreement of the parties as an "authentic" means of interpretation under Article 31, and subsequent practice by one or more (but not all) of the parties to a treaty. The latter may be relevant under Article 32 as a supplementary means of interpretation. As such, the Commission found that it cannot constitute an

⁶⁶ Draft conclusions on subsequent agreements and subsequent practice in relation to the interpretation of treaties, with commentaries, *YILC*, 2018, Vol. II, Part Two, p. 24; emphasis added.

⁶⁷ *Ibid.*, p. 25.

“authentic” interpretation of a treaty by all of its parties and thus will not possess the same weight for the purpose of interpretation.

23. Distinguished Members of the Court, the question before the Court today invites an inquiry into whether the subsequent conduct of the parties to ILO Convention No. 87 confirms an agreed interpretation that the said Convention protects the “right to strike” and whether the opinions and recommendations of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) can be considered a subsequent practice within the meaning of Article 31 of the VCLT, or a supplementary means of interpretation under Article 32.

24. In this context, it must be emphasized that the International Law Commission has stated that “[t]he relevance of a pronouncement of an expert treaty body for the interpretation of a treaty is subject to the applicable rules of the treaty” itself⁶⁸. The Commission also took a State-centric approach by clarifying that the opinions of expert bodies may give rise to subsequent practice, where the parties *expressly accept* such an interpretation and in this context it is quite notable that the conclusions of the ILC clearly state that “[s]ilence by a party *shall not be presumed* to constitute subsequent practice”⁶⁹.

25. Mr President, a number of parties participating in these proceedings have relied on interpretive techniques that give precedence to what they consider to be the Convention’s “object and purpose”. On this matter, the Court has stated in the case concerning *Rights of Nationals of the United States of America in Morocco*:

“In these circumstances, the Court cannot adopt a construction by implication of the provisions of the Madrid Convention which would go beyond the scope of its declared purposes and objects. Further, this contention would involve radical changes and additions to the provisions of the Convention. The Court, in its Opinion — Interpretation of Peace Treaties (Second Phase) (*I.C.J. Reports 1950*, p. 229) — stated: ‘It is the duty of the Court to interpret the Treaties, not to revise them.’”⁷⁰

26. Distinguished Members of the Court, I now turn to the supplementary means of interpretation.

⁶⁸ *Ibid.*, p. 106.

⁶⁹ *Ibid.*; emphasis added.

⁷⁰ *Rights of Nationals of the United States of America in Morocco (France v. United States of America)*, Judgment, *I.C.J. Reports 1952*, p. 196.

27. Article 32 of the VCLT provides that recourse may be had to the treaty's *travaux préparatoires* and the circumstances of its conclusion, but only as a supplementary means and in order to “confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable”. If the meaning of the text is clear, then there is no room to rely on supplementary means of interpretation.

28. Conversely, in the case of ambiguity, the “ordinary meaning” may be clarified by reference to the *travaux préparatoires* as a supplementary means of interpretation⁷¹.

29. In the present case, were the Court to find that the application of the rules set out in Article 31 VCLT leaves the meaning of the text ambiguous, the Court may then refer to the supplementary means under Article 32. In addition, the Court may have recourse to supplementary means, including the *travaux préparatoires* “to confirm the meaning resulting from the application of Article 31”. The guiding principle in this endeavour is the good faith effort to uncover the common intention of the parties⁷², and this is no easy task given the wealth of evidence submitted to the Court.

30. Mr President, in conclusion, the “right to strike” is a human right protected under international law, whose scope, limits, conditions and parameters are regulated under national legislation. It is a right deserving of recognition and respect by all States, as an inseparable component of the broader framework of fundamental rights and freedoms upon which justice is founded.

31. The question of whether the “right to strike” is included in the ambit of ILO Convention No. 87 is a matter to be determined by reference to the general rule of interpretation enunciated under Article 31 VCLT, and where the matter is still unclear, then by reference to the supplementary means under Article 32. The interpretive process is intended to elucidate the States parties’ intention and consent, and is exclusively applicable to the present Convention in light of the particular circumstances, evidence and practice presented to the Court in relation to this advisory opinion.

⁷¹ ILC Summary Records, 16th Session, *YILC*, 1964, Vol. I, pp. 274 *et seq.*; Dupuy, *Evolutionary Interpretation of Treaties: Between Memory and Prophecy*, p. 128.

⁷² Article 32 VCLT; see Report of the ILC, 18th Session, *YILC*, 1966, Vol. II, pp. 224-225.

32. Egypt believes that a sound and consistent methodological approach by the Court that is faithful to its own jurisprudence and in which the tools of treaty interpretation are used to shed light on the terms of the Convention, would be of much value in clarifying the parties' obligations in light of the Convention's text, its context and its evident object and purpose. Egypt looks forward to this esteemed Court's pronouncement, which will be of utmost importance to clarify the legal obligations of States, provide legal certainty, preserve the integrity of treaty law and thus promote adherence to international law on the important matter of the legal protection of workers.

33. I hereby conclude my statement, and thank you very much, Mr President.

The PRESIDENT: I thank the representative of Egypt for her presentation. This concludes this afternoon's sitting. The oral proceedings will resume tomorrow at 10 a.m., in order for the Court to hear the oral presentations of Uruguay, Somalia, Switzerland, Vanuatu, the International Cooperative Alliance and Business Africa.

The sitting is closed.

The Court rose at 5:40 p.m.
