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Summary
Unofficial

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21 May 2026

Right to Strike under ILO Convention No. 87

Summary of the Advisory Opinion of 21 May 2026

Chronology of the procedure (paras. 1-25)

The Court begins by recalling that on 10 November 2023, the Governing Body of the International Labour Office (Governing Body), acting in accordance with Article 37, paragraph 1, of the Constitution of the International Labour Organization (ILO) and Article IX, paragraph 2, of the Agreement between that Organization and the United Nations, adopted a resolution by which it decided, pursuant to Article 65 of the Statute of the Court, to request the Court to render an advisory opinion.

The operative part of the resolution reads as follows:

> "The Governing Body,
>
> . . . . . .
>
> Decides, in accordance with article 37, paragraph 1, of the Constitution of the International Labour Organization,
>
> 1. To request the International Court of Justice to render urgently an advisory opinion under Article 65, paragraph 1, of the Statute of the Court, and under Article 103 of the Rules of Court, on the following question:
>
> *Is the right to strike of workers and their organizations protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)?*"

I. JURISDICTION AND DISCRETION (PARAS. 26-37)

A. Jurisdiction (paras. 27-32)

The Court first addresses the question of whether it has jurisdiction to give the advisory opinion requested. It recalls Article 96, paragraph 2, of the Charter of the United Nations in particular and notes that three conditions must be satisfied to found the jurisdiction of the Court when a request for an advisory opinion is submitted to it by a specialized agency: the agency requesting the opinion

must be duly authorized by the General Assembly, under the Charter, to request opinions from the Court; the opinion requested must be on a legal question; and this question must be one arising within the scope of the activities of the requesting agency.

The Court observes in this regard that the ILO, a specialized agency, has been duly authorized to request advisory opinions of the Court under Article IX, paragraph 2, of the Agreement governing the relationship between the United Nations and the ILO, and that the Governing Body of the International Labour Office has been authorized to request advisory opinions of the Court by an International Labour Conference resolution of 27 June 1949.

The Court then notes that since the question constituting the subject of the request concerns the interpretation of treaty provisions, it is indeed a legal question.

Since the question posed relates to the interpretation of a "fundamental" convention of the ILO, the Court further notes that the opinion requested undoubtedly falls within the scope of the activities of the requesting organ. In addition, the Court considers that the question at the heart of the present proceedings does not concern the "mutual relationships of the [ILO] and the United Nations or other specialised agencies", which are excluded under Article IX, paragraph 2, of the Agreement governing the relationship between the ILO and the United Nations and by the International Labour Conference resolution of 27 June 1949.

In view of the foregoing, the Court concludes that the request meets the conditions set out in the Charter and in the Statute of the Court, and that it therefore has jurisdiction to give the opinion sought.

B. Discretion (paras. 33-37)

The Court next recalls that only compelling reasons may lead it to refuse to give its opinion in response to a request falling within its jurisdiction. It notes that in the present proceedings, one of the participants has argued that responding to the request would be tantamount to deciding an ongoing dispute between ILO constituents — more specifically, between employers and workers — without having first obtained their consent to that end, and that the dispute should be resolved using the mechanisms specifically provided for within the ILO.

In this respect, the Court considers in particular that it is precisely because the Governing Body was conscious that there is serious and persistent disagreement within the tripartite constituency of the ILO on the interpretation of Convention No. 87 that it decided to request an advisory opinion from the Court. It recalls that "[it] cannot speculate about the effects of its opinion" (*Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem, Advisory Opinion, I.C.J. Reports 2024 (III)*, p. 775, para. 40) and that it is not for the Court to engage in conjecture about the possible effects of an advisory opinion on the ongoing discussions between the ILO constituents. The Court further states that the instruments in force do not require certain internal procedures within the ILO to be exhausted before a request for an advisory opinion is made.

The Court concludes that there is no compelling reason for it to decline to give the opinion requested by the Governing Body of the International Labour Office.

II. CONTEXT OF THE REQUEST FOR AN ADVISORY OPINION (PARAS. 38-54)

A. Purpose and structure of the ILO (paras. 38-46)

The Court next addresses the purpose and structure of the ILO, recalling that the latter was founded in 1919 for the promotion of social justice and the improvement of conditions of labour. In

1945, it became the first specialized agency of the United Nations. At present, it has 187 Member States. In accordance with its tripartite structure, representatives of governments, employers and workers are involved in its activities.

The Court observes that the ILO is made up of three main organs: the International Labour Conference, the Governing Body and the International Labour Office. It notes that the ILO adopts international labour standards which may take the form of international labour conventions and protocols that can be ratified by Member States or non-binding international labour recommendations. Since its establishment in 1919, the ILO has adopted 192 conventions — including 10 "fundamental" conventions —, 6 protocols and 209 recommendations.

The Court notes that in order to ensure compliance and accountability with regard to these instruments, the ILO has in place a system of regular supervision discharged by two permanent supervisory bodies, namely the Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts or CEACR) and the Conference Committee on the Application of Standards (Committee on Standards).

The supervisory system also involves special supervisory procedures, in particular by means of the mechanisms provided for in Articles 24, 26, 29 and 33 of the ILO Constitution. The Fact-Finding and Conciliation Commission and the Committee on Freedom of Association were set up to examine "complaints" relating to alleged infringements of trade union rights.

B. History of the disagreement regarding Convention No. 87 (paras. 47-54)

The Court recalls that the present request for an advisory opinion originates in a disagreement within the ILO over the interpretation of Convention No. 87 and, more specifically, over the question of whether the right to strike of workers' organizations or trade unions is protected under that Convention.

The Court examines how that disagreement evolved from 1952 onwards until, in 2012, the divergence of views between the workers' group and the employers' group regarding the interpretation of Convention No. 87 led the International Labour Office and other participants to refer to it as an "institutional crisis" at the 101st Session of the International Labour Conference.

The Court then notes that, following various unsuccessful attempts to resolve the disagreement over the interpretation of Convention No. 87 through negotiations within the ILO, in 2023 the Governing Body decided to submit the question to the Court.

III. Scope and meaning of the question put by the Governing Body (paras. 55-60)

After recalling the content of the question posed by the Governing Body, the Court notes that some participants in the proceedings have argued that the question put to the Court is too narrow, in that it does not adequately reflect the discussions within the ILO which gave rise to the institutional deadlock.

The Court, for its part, considers that the question posed in the present advisory proceedings by the Governing Body is both circumscribed and specific in so far as it asks the Court to determine whether the right to strike is protected under Convention No. 87. Since there is no ambiguity in either the question or its terms, the Court considers that there is no need to reformulate the question referred to it. The Court further considers that it need not broaden the scope of the question put to it and that its task consists solely in responding to that question as to whether the right to strike is protected under Convention No. 87.

IV. WHETHER THE RIGHT TO STRIKE IS PROTECTED UNDER CONVENTION NO. 87 (PARAS. 61-141)

A. Applicable rules for interpretation of Convention No. 87 (paras. 62-65)

The Court recalls that although the 1969 Vienna Convention on the Law of Treaties is not applicable to treaties concluded before its entry into force, it is well established that Articles 31 to 33 of that instrument reflect rules of customary international law applicable to such treaties.

However, the Court states that it is not persuaded by the argument put forward by some participants that the tripartite structure of the ILO has given rise to a specific practice of ascribing particular importance to the *travaux préparatoires* of Convention No. 87.

Consequently, the Court states that it will apply the general rule of interpretation as reflected in Article 31 of the Vienna Convention on the Law of Treaties and the rule on supplementary means of interpretation as reflected in Article 32 of the same instrument.

B. Interpretation of Convention No. 87 (paras. 66-138)

After recalling the wording of paragraphs 1, 2 and 3 of Article 31 of the Vienna Convention, the Court states that these means of interpretation are to be considered by way of a single combined operation. The Court further states that it will interpret Convention No. 87 pursuant to Article 31, commencing with Article 31, paragraph 1.

1. Ordinary meaning to be given to the terms of Convention No. 87 in their context and in light of its object and purpose (Article 31, paragraph 1, of the Vienna Convention on the Law of Treaties) (paras. 67-74)

The Court first observes that Convention No. 87 does not contain an explicit reference to the right to strike. However, in view of its jurisprudence on the subject, the Court considers that the absence of an express treaty provision governing a certain issue does not necessarily mean that the issue is excluded from that treaty.

The Court then recalls that Article 2 of Convention No. 87 provides that "[w]orkers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing". Article 3, paragraph 1, further 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". The Court considers that the wording of this provision indicates ways in which the rights accorded to workers' and employers' organizations are exercised. This includes not only internal negotiation and adoption of constitutions and rules, and the election of representatives, but also broader powers enabling workers' and employers' organizations to decide on matters relating to their administration, as well as to activities to be performed and programmes to be formulated and implemented in both internal and external contexts. Article 10 defines the term "organisation" as "any organisation of workers or of employers for furthering and defending the interests of workers or of employers".

The Court is of the opinion that reading these three provisions together, in good faith and in accordance with their ordinary meaning, suggests that, under Convention No. 87, workers and employers have the right to create and join organizations for the purpose of furthering and defending their respective interests, including to organize their activities and programmes to pursue that purpose.

The Court then notes that Convention No. 87 does not include definitions of the terms "activities" and "programmes", both of which are referred to in Article 3, paragraph 1. The ordinary meaning of the term "activities", which generally encompasses any action taken to pursue an objective, and of the term "programmes", which generally means a set of planned actions pursued to achieve a result, is broad and encompasses the various dimensions of the activities and programmes of workers' organizations. The term "strike" generally means an activity consisting of a temporary work stoppage or slowdown wilfully effected by one or more groups of workers with a view to enforcing or resisting demands or expressing or supporting grievances. Consequently, the Court considers that when Article 3, paragraph 1, is read in conjunction with Articles 2 and 10, it suggests that strike action is capable of falling within the ordinary meaning of the term "activities" and, thus, within the scope of Convention No. 87.

The Court also observes that strike action itself is not explicitly excluded under Convention No. 87. Having noted that Convention No. 87 sets out certain rights and related limitations, the Court considers, in line with its jurisprudence, that the terms of the Convention, in their context and in light of the object and purpose of the Convention, do not allow the inference that other rights, such as the right to strike, are excluded.

Regarding the object and purpose of the Convention, the Court states that it may be concluded from an analysis of the Convention's preamble and the texts referred to therein that the object and purpose of Convention No. 87 is to guarantee freedom of association as a means of improving labour conditions and achieving sustained progress. The Court notes that strike action is one of the main activities engaged in and tools used by workers and their organizations to promote their interests and improve conditions of labour, thereby ensuring the effective exercise of the freedom of association protected under Convention No. 87. At the same time, freedom of association is instrumental in facilitating workers' organizations to take collective action to further and defend the interests of their members, including through the exercise of the right to strike. Therefore, the Court considers that the protection of the right to strike is in line with the object and purpose of Convention No. 87.

The Court concludes from the foregoing analysis that the ordinary meaning of the relevant terms of the Convention, read in good faith, in their context and in light of the object and purpose of the treaty, indicates that protection of the right to strike is encompassed in the protection of the freedom of association provided for in Convention No. 87.

2. Subsequent practice which establishes the agreement of the parties (Article 31, paragraph 3 *(b)*, of the Vienna Convention on the Law of Treaties) (paras. 75-89)

Before examining the subsequent practice of the parties aimed at establishing the existence of a common understanding of the parties regarding the meaning to be given to a treaty, the Court notes that, since there has been no subsequent agreement between the States parties to Convention No. 87 regarding the interpretation or the application of its provisions, Article 31, paragraph 3 *(a)*, of the Vienna Convention on the Law of Treaties is not applicable in the present circumstances.

The Court then turns to the subsequent practice of the parties within the meaning of Article 31, paragraph 3 *(b)*, of the Vienna Convention. Such practice consists of any conduct of the parties in the application of the treaty, after its conclusion, which establishes their agreement regarding its interpretation. It may be manifested in the conduct of a State party, as reflected both in official acts that serve to apply the treaty and in official statements expressing its interpretation thereof.

It recalls that it is relevant to distinguish the subsequent practice of the parties depending on whether it is considered under Article 31, paragraph 3 *(b)*, or under Article 32 of the Vienna Convention on the Law of Treaties. Subsequent practice within the meaning of Article 31, paragraph 3 *(b)*, constitutes an authentic means of interpretation aimed at establishing the existence of a common understanding of the parties regarding the meaning to be given to a treaty. On the other

hand, when considered under Article 32 of the Vienna Convention, subsequent practice serves as a supplementary means of interpretation and, as such, does not require evidence of the common understanding of all the parties regarding a given interpretation.

The Court notes that in support of their respective arguments, participants cited various manifestations of the States parties' conduct. These include, in particular, reactions to pronouncements of the different ILO supervisory bodies on the relationship between the right to strike and Convention No. 87, as well as legislative and constitutional provisions adopted at the national level and domestic court decisions relating to the right to strike.

In this context, the Court notes that the ILO supervisory bodies have progressively recognized the right to strike as being protected under Convention No. 87. While the Court may give particular consideration to the pronouncements of treaty supervisory bodies, such pronouncements do not in themselves constitute subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation. The Court therefore considers that it must determine whether the interpretations adopted by ILO supervisory bodies have elicited any relevant reactions from the States parties to Convention No. 87 and whether such reactions establish the agreement of the parties.

In this respect, the Court observes that in the context of discussions within the ILO, while a significant majority of States parties to Convention No. 87 have accepted or endorsed the interpretation of the supervisory bodies that Convention No. 87 protects the right to strike, a number of States parties have, over the years, occasionally challenged that interpretation. The Court also notes that, during the present proceedings, certain States either expressly objected to the view that the right to strike is protected under Convention No. 87 or, at the very least, expressed some reservations in this regard.

In the Court's view, the fact that a number of States parties have expressed clear opposition to the interpretation according to which Convention No. 87 protects the right to strike precludes the conclusion that there exists subsequent practice which establishes the agreement of the parties on this point within the meaning of Article 31, paragraph 3 *(b)*, of the Vienna Convention on the Law of Treaties.

The Court then notes that the participants have submitted examples concerning the States parties' conduct at the national level regarding the application of Convention No. 87, particularly in the exercise of their legislative and judicial functions. In the present case, however, the Court considers that the examples brought to its attention do not enable it to draw any conclusions as to the existence of subsequent practice in the application of Convention No. 87 which establishes the agreement of the parties regarding its interpretation.

The Court concludes that, taken as a whole, the foregoing elements cannot constitute subsequent practice in the application of Convention No. 87, within the meaning of Article 31, paragraph 3 *(b)*, of the Vienna Convention.

3. Relevant rules of international law (Article 31, paragraph 3 *(c)*, of the Vienna Convention on the Law of Treaties) (paras. 90-99)

Pursuant to the customary rule reflected in Article 31, paragraph 3 *(c)*, of the Vienna Convention, "[a]ny relevant rules of international law applicable in the relations between the parties" shall be taken into account when interpreting a treaty. In the view of the Court, Article 31, paragraph 3 *(c)*, does not necessarily require all parties to the treaty under interpretation to be bound by the "relevant rules of international law" in order for those rules to be taken into account. A rule may be "applicable in the relations between the parties" if it expresses their common understanding regarding certain provisions of the treaty under interpretation.

The Court notes that with respect to the right to strike, there is no relevant rule of international law in any other treaty that is binding upon all the parties to Convention No. 87. It states, however, that the two 1966 Covenants, namely the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) contain relevant rules of international law that concern the right to strike, in particular Article 8 of the ICESCR and Article 22 of the ICCPR.

In the Court's view, a high degree of overlap between the States bound by the treaty under interpretation and those bound by the relevant rules of international law may indicate the existence of a common understanding of the parties regarding certain provisions of the treaty under interpretation. There is a high degree of overlap between the States parties to Convention No. 87 and States parties to both the ICESCR and the ICCPR. The ICESCR has 173 States parties and only 8 States parties to Convention No. 87 are not parties to the ICESCR, while the ICCPR has 175 States parties and only 7 States parties to Convention No. 87 are not parties to the ICCPR. Four States parties to Convention No. 87 are neither parties to the ICESCR nor parties to the ICCPR. The Court examines the conduct of the four States concerned and notes that all of these elements suggest that these four States, under the circumstances, understand that the right to strike is protected under Convention No. 87.

The Court finally notes that of the few reservations regarding Article 8, paragraph 1 *(d)*, of the ICESCR, most concern restrictions on the right to strike of public officials or essential services. While one State (Kuwait) has made a reservation that excludes the application for this State of Article 8, paragraph 1 *(d)*, it has never objected to the interpretation that the right to strike is protected under Convention No. 87. The Court notes that, of the four States participating in the present proceedings that opposed the view that the right to strike is protected under Convention No. 87, two (Costa Rica and Switzerland) have not made any reservation or declaration regarding Article 8 of the ICESCR. The other two (Bangladesh and Japan) have formulated reservations or declarations regarding that provision. However, Japan's reservation does not purport to exclude the right to strike as such, while Bangladesh's declaration merely states that it will apply Article 8 "under the conditions and in conformity with the procedures established in the Constitution and the relevant legislation of Bangladesh".

The Court concludes that an interpretation taking into account the relevant rules of international law contained in the ICESCR and the ICCPR indicates that the protection of the right to strike is encompassed in the protection of the freedom of association provided by Convention No. 87.

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Overall, the interpretation of Convention No. 87 applying the general rule reflected in Article 31 of the Vienna Convention on the Law of Treaties leads to the conclusion that the right to strike is protected by Convention No. 87.

4. Supplementary means of interpretation (Article 32 of the Vienna Convention on the Law of Treaties) (paras. 100-137)

The Court recalls that it may have recourse to supplementary means of interpretation provided for in Article 32 of the Vienna Convention on the Law of Treaties in order to confirm the meaning resulting from the application of Article 31. It states that it will examine, in this regard, the *travaux préparatoires* of Convention No. 87, the subsequent practice of the parties, the pronouncements of

the ILO supervisory bodies, and the relevant regional instruments and related jurisprudence of regional courts, as well as pronouncements by other regional bodies.

(a) Travaux préparatoires *of Convention No. 87* (paras. 104-111)

The Court observes that the *travaux préparatoires* of Convention No. 87 indicate that, although the right to strike in general was briefly mentioned at the very beginning of the preparatory work, the discussions during the preparation of Convention No. 87 negotiations appear to have focused on the right to strike of public officials. Therefore, the intention of the drafters of Convention No. 87 with respect to the right to strike in general is unclear and the question was left open. Therefore, in the view of the Court, the analysis of the *travaux préparatoires* leads to an inconclusive result.

(b) *Subsequent practice of the parties as a supplementary means of interpretation* (paras. 112-115)

According to the Court, the fact that a significant majority of States parties to Convention No. 87 considers that the Convention protects the right to strike, as reflected by the subsequent practice of those States parties, is an element that must be taken into account as a supplementary means of interpretation. Indeed, it confirms the conclusion already reached by the Court under Article 31 of the Vienna Convention on the Law of Treaties.

(c) *Pronouncements of ILO supervisory bodies* (paras. 116-119)

Having carefully examined the pronouncements of the supervisory bodies that monitor the application of Convention No. 87, the Court recalls that those bodies have progressively converged in recognizing the right to strike as protected under that Convention. The Court observes that it may ascribe "great weight" to the pronouncements of ILO supervisory bodies, as a supplementary means of interpretation of Convention No. 87. The Court nevertheless deems it important to recall that it is "in no way obliged, in the exercise of its judicial functions, to model its own interpretation [on that of those bodies]". It considers that these pronouncements confirm the conclusion reached by the Court on the basis of Article 31 of the Vienna Convention on the Law of Treaties.

(d) *Regional instruments* (paras. 120-137)

The Court then turns to regional human rights instruments, since these reflect the position of the States parties to those instruments regarding the relationship between the protection of the right to strike and the protection of the freedom of association. Furthermore, the Court states that the pronouncements of human rights courts or bodies established by these instruments are also relevant for the interpretation of such instruments.

It is clear from the Court's analysis of the African, Arab, European and inter-American legal frameworks that a large majority of States parties to Convention No. 87 are parties to the various regional instruments examined. These instruments reveal a shared view of those States parties that the protection of the right to strike is encompassed in the protection of the freedom of association. This view, which is supported by the relevant regional jurisprudence and pronouncements, further confirms the interpretation reached by the Court in applying the general rule reflected in Article 31 of the Vienna Convention on the Law of Treaties that the protection of the freedom of association under Convention No. 87 encompasses the protection of the right to strike.

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In view of the above, the Court considers that, with the exception of the *travaux préparatoires* of Convention No. 87, whose examination leads to an inconclusive result, the supplementary means of interpretation taken into consideration by the Court in accordance with Article 32 of the Vienna Convention on the Law of Treaties confirm the conclusion reached by it through its interpretation based on Article 31, namely that the right to strike is protected under Convention No. 87.

C. Conclusion (paras. 139-141)

In light of the foregoing, the Court concludes that, in accordance with the customary rules of interpretation reflected in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, the right to strike is protected under Convention No. 87. The Court's conclusion that the right to strike is protected by Convention No. 87 does not entail any determination on the precise content, scope or conditions for the exercise of that right.

The Court is therefore of the opinion that the question of 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, 1948 (No. 87)" is to be answered in the affirmative.

OPERATIVE CLAUSE (PARA. 142)

The full text of the operative clause (para. 142) of the Advisory Opinion reads as follows:

For these reasons,

THE COURT,

(1) Unanimously,

Finds that it has jurisdiction to give the advisory opinion requested;

(2) Unanimously,

Decides to comply with the request for an advisory opinion;

(3) By ten votes to four,

Is of the opinion that 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).

IN FAVOUR: *President* Iwasawa; *Vice-President* Sebutinde; *Judges* Bhandari, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Judges* Tomka, Abraham, Xue, Hmoud.

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President IWASAWA appends a separate opinion to the Advisory Opinion of the Court; Vice-President SEBUTINDE appends a declaration to the Advisory Opinion of the Court; Judges TOMKA, ABRAHAM and XUE append dissenting opinions to the Advisory Opinion of the Court; Judge BHANDARI appends a declaration to the Advisory Opinion of the Court; Judges NOLTE and GÓMEZ ROBLEDO append separate opinions to the Advisory Opinion of the Court;

Judge CLEVELAND appends a declaration to the Advisory Opinion of the Court; Judge TLADI appends a separate opinion to the Advisory Opinion of the Court; Judge HMOUD appends a dissenting opinion to the Advisory Opinion of the Court[1].

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[1] Summaries of declarations and opinions written by Members of the Court in English are appended to the English version of the Summary of the Advisory Opinion.

Separate opinion of President Iwasawa

In his opinion, President Iwasawa addresses three topics.

1. President Iwasawa agrees that, for a rule in an external treaty to be taken into account, Article 31, paragraph 3 *(c)*, of the Vienna Convention does not necessarily require all parties to the treaty under interpretation to be bound by the external treaty. In his view, a rule of international law needs to be taken into account in the interpretation of a treaty, if the rule reflects the "common understanding" of the parties to the treaty.

He points out that, on the other hand, under Article 31, paragraph 3 *(b)*, subsequent practice must establish the "agreement" of *all* parties in order for it to be taken into account in the interpretation of the treaty. Since what is required under paragraph 3 *(c)* is a "common understanding" — not an "agreement" — the silence of a party carries more weight under paragraph 3 *(c)* than under paragraph 3 *(b)*. Thus, President Iwasawa considers that the threshold is lower under paragraph 3 *(c)* than under paragraph 3 *(b)*.

In this connection, President Iwasawa discusses the concept of "authentic interpretation". In the context of international law, authentic interpretation means the interpretation agreed upon by all parties to a treaty. He points out that authentic interpretation is often understood to possess the same force as the rule being interpreted, to be legally binding and to take precedence over other interpretations. He explains that while subsequent agreements under Article 31, paragraph 3 *(a)*, constitute explicit authentic interpretation, subsequent practice under paragraph 3 *(b)* may be characterized as authentic interpretation through practice. President Iwasawa points out that the function of paragraph 3 *(c)* is not the same as that of *(a)* and *(b)*. In his view, it is questionable whether an interpretation arrived at under Article 31, paragraph 3 *(c)*, has the same legal force as "authentic" interpretation as one reached under subparagraphs *(a)* and *(b)*.

2. President Iwasawa agrees that the subsequent practice of the parties, the pronouncements of ILO supervisory bodies, and regional instruments and jurisprudence may be taken into account in the interpretation of Convention No. 87 as supplementary means of interpretation under Article 32 of the Vienna Convention.

In his view, since regional human rights instruments are geographically limited, they should not be perceived as relevant rules of international law under Article 31, paragraph 3 *(c)*. President Iwasawa, however, considers that the Court can have recourse to regional instruments and jurisprudence as a supplementary means of interpretation under Article 32 to confirm the meaning resulting from the application of Article 31.

3. While President Iwasawa agrees with the Court that the *travaux préparatoires* are inconclusive, he provides additional explanation to the Court's analysis. In his view, a background report prepared by the International Labour Office in 1947 before it circulated the questionnaire, and the replies given by States to question 3, paragraph *(c)* of the questionnaire indicate that it was decided not to provide for the right to strike *of public officials* in Convention No. 87. However, the summary of the results of the questionnaire drafted by the Office in 1948 suggests that it was decided not to include in Convention No. 87 a provision on the right to strike *in general*.

President Iwasawa points out that by concluding that the right to strike is protected under Convention No. 87 in this Opinion, the Court is not suggesting that the right is absolute. He emphasizes that the Court does not express a view on the scope of the right, in particular on the question whether or to what extent Convention No. 87 requires that the right to strike be guaranteed for public officials.

Declaration of Vice-President Sebutinde

The question put to the Court can be answered in the affirmative by applying to Convention No. 87 the general rule of interpretation reflected in Article 31 (1) of the Vienna Convention on the Law of Treaties. The ordinary meaning of the relevant provisions of Convention No. 87, read in good faith, in their context and in the light of the Convention's object and purpose, supports the conclusion that protection of the right to strike falls within the scope of the freedom of association guaranteed by that Convention. There is no need for the Court to refer to supplementary means of interpretation under Article 32 thereof.

Dissenting opinion of Judge Tomka

In his dissenting opinion, Judge Tomka expresses disagreement with the Court's conclusion that Convention No. 87 of the International Labour Organization encompasses a right to strike. While acknowledging the importance of the issues addressed and the role of strikes in labour relations, he considers that the majority's interpretation is not supported by the applicable rules of treaty interpretation and risks extending the Convention beyond the limits agreed by its States parties.

Judge Tomka recalls that the task before the Court is a legal one: to ascertain whether Convention No. 87, as adopted, protects a right to strike. Applying the general rule of interpretation codified in the Vienna Convention on the Law of Treaties, he concludes that neither the text of the Convention nor its context, object and purpose point to such a result. The Convention does not refer to strikes, and its provisions are primarily concerned with safeguarding the formation, autonomy and internal administration of workers' and employers' organizations, rather than with guaranteeing specific forms of collective economic action.

In this respect, Judge Tomka expresses concern about the majority's reliance on teleological reasoning. He recalls that modern treaty interpretation deliberately gives primacy to the text as the authentic expression of the parties' intent, with object and purpose playing a supporting, but not overriding, role. In his view, invoking effectiveness or purpose cannot justify implying into a treaty a right that was consciously left unaddressed by its drafters.

The dissent places significant weight on the historical record. Drawing on the preparatory works of Convention No. 87 and related contemporaneous materials, Judge Tomka shows that the question of the right to strike was raised during the negotiations but treated as a separate matter, to be addressed in another instrument. Leading trade union actors and States alike focused on protecting freedom of association against State interference, not on establishing an international guarantee of strike action. For Judge Tomka, this history confirms that the absence of a right to strike in Convention No. 87 reflects a deliberate choice rather than an unintended omission.

Turning to subsequent agreement and subsequent practice, Judge Tomka agrees with the majority that no agreement among all States parties exists regarding the interpretation in question. He parts company, however, with the majority's effort to rely on non-universal State practice, supervisory pronouncements or silence, as substitutes for the common understanding required by the Vienna Convention. In his view, practice that is contested, partial, or not attributable to all parties, cannot alter the meaning of the treaty.

Judge Tomka traces the evolution of their views over several decades, noting that early pronouncements did not consider the right to strike to be protected by Convention No. 87 and that more expansive formulations emerged only gradually. While recognizing the expertise and valuable contributions of these bodies, he emphasizes that they do not possess formal interpretive authority under the Convention, and that their statements have been repeatedly questioned by States. He therefore cautions against according such pronouncements decisive weight without independent judicial scrutiny.

Judge Tomka also addresses the majority's reliance on other international instruments as "relevant rules of international law". He notes that treaties such as the International Covenant on Economic, Social and Cultural Rights do provide for a right to strike but observes that these instruments do not bind all parties to Convention No. 87. In his view, rules that are not applicable between all parties cannot, without more, be treated as expressing a common understanding for the purpose of interpreting that Convention.

In his concluding remarks, Judge Tomka emphasizes that his disagreement does not diminish the significance of the right to strike as such, nor does it deny that this right may be protected under other international instruments. Rather, his concern is institutional: to ensure that treaty interpretation remains anchored in the consent of States and in the methods agreed upon for giving meaning to treaty texts. For Judge Tomka, adherence to these principles is essential to maintaining the integrity and predictability of the international legal order.

Dissenting opinion of Judge Xue

In her dissenting opinion, Judge Xue first clarifies that the present request for an advisory opinion by the ILO is strictly limited in scope. The Court is not asked whether the right to strike is protected under international law but whether Convention No. 87 extends its guarantees to the right to strike. The majority's response to the request, in her view, largely reflects an exercise of human rights advocacy rather than treaty interpretation. Instead of focusing on the text of the Convention and the intention of the drafters at the time of its conclusion, the Opinion draws its conclusions largely from States' undertakings under the two human rights Covenants and pronouncements of human rights treaty monitoring bodies and the ILO supervisory bodies. In doing so, she points out, it dilutes the specificity of Convention No. 87 as an international labour standard and blurs the boundaries between distinct treaty régimes.

Judge Xue considers that, based on a good faith interpretation of the Convention in accordance with the rules as reflected in Article 31, paragraph 1, of the Vienna Convention on the Law of Treaties (VCLT), the right to strike is not covered under Convention No. 87. She notes that Convention No. 87 contains no express provision on the right to strike, nor does the term "strike" appear anywhere in the treaty. Although this absence does not necessarily mean that the right to strike is excluded from Convention No. 87, she insists, any affirmative conclusion upholding this right under Convention No. 87 must be based on a rigorous exercise of treaty interpretation. Unless the documents submitted to the Court disclose a clear intention of the drafters to include the right to strike in Convention No. 87, an obligation to protect such a right should not be presumed to arise under that Convention. She considers that, read together with Articles 8 and 10, the term "activities" under Article 3, paragraph 1, of the Convention cannot lead to the conclusion that the right to strike falls within the scope of Convention No. 87, contrary to the view expressed in the Opinion.

With regard to the Court's view that Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 22 of the International Covenant on Civil and Political Rights (ICCPR) constitute the "relevant rules of international law" that shall be taken into account in interpreting Convention No. 87 in accordance with Article 31, paragraph 3 *(c)*, of the VCLT, Judge Xue expresses her disagreement. She considers that the human rights Covenants and Convention No. 87 differ in subject-matter and pursue distinct objects and purposes: the former establishes substantive individual rights within the framework of international human rights law, whereas the latter regulates industrial relations. Moreover, she notes, Article 8 of the ICESCR does not support the presumed "common understanding", as suggested by the Court. The provision sets out individual rights to form and join trade union and to strike, which are to be guaranteed by States parties through national laws and practices. It neither establishes a general rule governing the relationship between the right to strike and freedom of association in international law, nor determines whether the right to strike falls within the protection of freedom of association guaranteed under Convention No. 87.

Judge Xue considers that the preparatory work confirms that the right to strike was consciously separated from the scope of Convention No. 87.

Lastly, Judge Xue recalls the principle of tripartism and its role in the ILO standard-setting process. She regrets that the Court does not give adequate consideration to the positions of the tripartite constituents on the question of the right to strike. Referring to the Government Group statement issued at the 2015 Tripartite Meeting on Convention No. 87, she observes that the said statement reveals that the relation between Convention No. 87 and the right to strike is a continuing unresolved issue in the ILO. While States generally recognize the close link between the right to strike and freedom of association, they all share the view that the right to strike is not absolute; its scope and conditions are presently regulated at the national level. International standards governing the right to strike have yet to be developed.

Judge Xue considers that the Court has unduly ascribed "great weight" to the pronouncements of the ILO supervisory bodies, regional human rights instruments, and related pronouncements of regional courts and other bodies, as relevant supplementary means of interpretation of Convention No. 87. In doing so, the Court fails to address the essential issue whether those bodies have the competence to modify or change the terms of Convention No. 87 through treaty interpretation.

In conclusion, Judge Xue underscores that the question whether the right to strike is protected under Convention No. 87 directly concerns States parties' international obligations and responsibilities for the effective implementation and observance of labour standards. A good faith interpretation of Convention No. 87 requires due recognition of the historical development of international labour standards and of the proper role of the supervisory system established under the constitutional framework of the ILO.

Declaration of Judge Bhandari

In his declaration, Judge Bhandari supports the Court's conclusion that the right to strike is protected under Convention No. 87 and agrees with the reasoning by which the Court reaches that conclusion. He appends a declaration, however, to clarify certain aspects of the interpretative method employed by the Court.

First, Judge Bhandari emphasizes that the ordinary meaning of treaty terms cannot be reduced to dictionary definitions. Under Article 31, paragraph 1, of the Vienna Convention on the Law of Treaties, terms must be read in their context and in the light of the treaty's object and purpose. The Court was therefore correct not to rely on linguistic dictionaries in interpreting the terms "activities" and "programmes" in Article 3 of Convention No. 87.

Secondly, Judge Bhandari agrees that Article 31, paragraph 3 *(c)*, permits the Court to take account of relevant rules of international law, including provisions of the two human rights covenants. He stresses, however, that systemic integration must be applied cautiously and consistently with the principle of State consent. External rules may assist interpretation where they reflect a common understanding of the parties, not where they are imported without sufficient consent.

Thirdly, Judge Bhandari agrees that the preparatory work of ILO conventions does not enjoy special interpretative weight by reason of the ILO's tripartite structure. Article 5 of the Vienna Convention does not displace the ordinary distinction between Article 31 and Article 32, in the absence of a specific organizational rule to that effect. The preparatory work of Convention No. 87 is, in his view, inconclusive as to the right to strike, but not inconsistent with the Court's interpretation.

Judge Bhandari further considers that the Court need not have relied so extensively on regional instruments and jurisprudence, given their uneven availability across regions and their limited relevance to the specific terms of Article 3 of Convention No. 87. Finally, he considers that the views of ILO supervisory bodies may be given interpretative significance, but that the more appropriate formulation may be "due weight" rather than "great weight", having regard to their institutional character, expertise and the degree of consensus underlying their pronouncements.

Separate opinion of Judge Nolte

In his separate opinion, Judge Nolte agrees with the Court's conclusion that the right to strike is protected under Convention No. 87 but disagrees with significant parts of the reasoning by which the Court reaches that conclusion.

In his view, the interpretation of Convention No. 87 under Article 31 of the Vienna Convention on the Law of Treaties leaves the meaning of the Convention ambiguous as to whether freedom of association encompasses the right to strike. He considers that the ordinary meaning of Article 3 of the Convention, read in its context and in light of the object and purpose of the Convention, may reasonably support both an expansive interpretation encompassing strike action as well as a narrower interpretation that is limited to the internal organization and functioning of workers' organizations. He further considers that neither the Convention's object and purpose nor Articles 8 and 10 resolve this ambiguity.

Judge Nolte also considers that no subsequent practice establishing the agreement of the parties within the meaning of Article 31, paragraph 3 *(b)*, of the Vienna Convention has emerged, given the persistent opposition of certain States parties. While accepting in principle that relevant rules of international law that are applicable in the relations between the parties under Article 31, paragraph 3 *(c)*, need not formally bind all parties, he cautions against an interpretation of that provision that would dilute the principle of consent underlying the "authentic means of interpretation" under Article 31.

In Judge Nolte's view, since an interpretation under Article 31 does not yield a clear result, recourse must be had to supplementary means of interpretation under Article 32. He finds that the *travaux préparatoires* of Convention No. 87 reveal a deliberate "constructive ambiguity" concerning the right to strike, whereas the subsequent practice of an overwhelming majority of States parties, as well as developments under the 1966 human rights Covenants, support a recognition of the right to strike as part of the freedom of association under Convention No. 87. Applying all relevant means of interpretation together in a "single combined operation", Judge Nolte finds that the balance ultimately tips in favour of recognizing that Convention No. 87 protects the right to strike. He emphasizes, however, that this determination is not based on an evolutive interpretation of the Convention.

Judge Nolte concludes by making some general observations on the Vienna Convention's rules of interpretation.

Declaration of Judge Cleveland

Judge Cleveland agrees with the opinion of the Court and writes separately to address the relationship between freedom of association and the right to strike under ILO Convention No. 87 and other international instruments. In her view, a strike is an associational activity through which workers seek to improve their conditions of work within the meaning of Convention No. 87. Reading the Convention as protecting only the internal activities of worker organizations would exclude collective bargaining and other activities that workers ordinarily pursue to advance their interests.

Nor is there any basis in the Convention for protecting those external activities, while excluding the right to strike.

In the view of Judge Cleveland, the negotiating history of the Convention, while ultimately inconclusive, confirms that the Convention was deliberately framed in broad terms and does not show any intention to exclude the right to strike. Although the international and regional instruments relied upon by the Court frame the issue in various ways, they are properly understood as recognizing the right to strike as part of freedom of association in the workplace. Given the widespread recognition of the right to strike in both international and domestic law, a compelling case also can be made for its status as a principle of customary international law.

Judge Cleveland observes that an international instrument is to be interpreted and applied within the framework of the entire legal system prevailing at the time of interpretation and that all the above considerations support the conclusion that Convention No. 87 protects the right to strike.

Dissenting opinion of Judge Hmoud

Judge Hmoud appends a dissenting opinion affirming that the Court's Advisory Opinion, when read as a whole, suggests that the majority appears to have inverted the judicial process, starting from a conclusion and, thereafter, assembling its reasoning to support it. He explains that the customary rules of interpretation as codified in Articles 31 and 32 of the Vienna Convention on the Law of Treaties (VCLT), when applied holistically, do not merit a conclusion that the right to strike is protected under the 1948 Freedom of Association and Protection of the Right to Organise Convention.

Concerning the ordinary meaning of the terms of the Convention in their context and in light of the Convention's object and purpose under Article 31, paragraph 1, of the VCLT, Judge Hmoud suggests that strike action is not considered an essential or indispensable tool that is necessary to realize the object and purpose of Convention No. 87, which is to improve the labour conditions, to ensure peace and to guarantee the lawful exercise of workers and employers of their rights, without any interference by the State party in such an exercise. Concerning subsequent agreement and practice under Article 31, paragraph 3 *(a)* and *(b)*, of the VCLT, Judge Hmoud considers that there has been no agreement nor subsequent practice which establishes the agreement of the parties to an interpretation that includes strike action in the protection of Convention No. 87.

Concerning Article 31, paragraph 3 *(c)*, of the VCLT, Judge Hmoud notes that the majority superimposes external treaty obligations onto Convention No. 87 by relying on rules drawn from distinct treaty régimes that are not binding on all the States parties to Convention No. 87. He argues that this novel approach is contrary to the rule contained in Article 31, paragraph 3 *(c)*, of the VCLT, both in terms of the methodology of interpretation employed by the Court and its identification of the "relevant rules" applicable and binding on all States parties as their "common understanding".

Finally, with regards to Article 32 of the VCLT, Judge Hmoud suggests that the Court has relied too heavily on the practice of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA) to draw conclusions as regards the practice of States parties, especially when a party is silent or does not react to such practice and considering that those supervisory bodies do not have a mandate to interpret the relevant terms in Convention No. 87. Whether the right to strike is protected under Convention No. 87 was a question left open in the *travaux préparatoires*. In addition, he argues that the majority selectively and inadequately overlooked the divergent approaches reflected in diverse regional instruments to reach the conclusion that the right to strike is protected under Convention No. 87. By

doing so, the Court ultimately abandoned the rigorous methodology expected from it when employing the means of interpretation under international law.

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