
A D V I S O R Y O P I N I O N

The Right to Strike under ILO Convention No. 87

*The International Court of Justice's
Advisory Opinion of 21 May 2026*



INTERNATIONAL
LAWYERS ASSISTING
WORKERS NETWORK

How the question reached The Hague

2012



Employers' Group withdraws acceptance of the right-to-strike interpretation at the ILO; supervisory crisis begins

Nov 2023



ILO Governing Body requests an advisory opinion under Article 37(1) of the ILO Constitution

2024–25



Written and oral proceedings; submissions from States, the ILO and (in expert capacity) the social partners

21 May 2026



ICJ delivers Advisory Opinion (10–4)



Fourteen years from the eruption of the 2012 supervisory crisis to a final, binding interpretive resolution.

What the Court decided



The right to strike of workers and their organizations is protected under the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).



Definitive

An authoritative judicial determination by the principal judicial organ of the United Nations.



Long-awaited

Resolves the interpretive dispute that has paralysed the ILO supervisory machinery since 2012.



Foundational

Confirms the interpretive competence of the CEACR and the CFA, with broader doctrinal reach.

Articles 31 and 32 of the VCLT

The Court interpreted Convention No. 87 by reference to the customary rules of treaty interpretation reflected in the Vienna Convention on the Law of Treaties.

Art. 31(1)

Ordinary meaning, context, object & purpose

“Activities” and “programmes” in Article 3, read with Articles 2 and 10, encompass strike action.

Art. 31(3)(c)

Other relevant rules of international law

ICESCR Article 8 and ICCPR Article 22 as a converging cross-instrumental reading.

Art. 32

Supplementary means

Travaux préparatoires are “inconclusive”; no affirmative exclusion of the right to strike in the negotiating history.

Ascribes “great weight” to the pronouncements of ILO supervisory bodies as a supplementary means of interpretation.

Ordinary meaning, context, object & purpose

Structural reading of the Convention

- Article 2 — right to form and join organizations
- Article 3 — right to organise “activities” and “programmes” without public-authority interference
- Article 10 — purpose of such organizations: furthering and defending workers' and employers' interests
- Strike action is “capable of falling within the ordinary meaning of the term ‘activities’”
- Not “explicitly excluded” by the Convention's two express limitations



OBJECT & PURPOSE

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.

Cross-instrumental reading with the ICCPR and the ICESCR

ICESCR Article 8

Express right to strike, “in conformity with the laws of the particular country”

Convention No. 87

Article 3

Interpreted in the light of relevant rules of international law applicable between the parties

ICCPR Article 22

Freedom of association; Human Rights Committee practice over 25 years

Significance:

The cross-instrumental reading is particularly useful before regional and domestic fora — and especially in the small number of jurisdictions that have not ratified Convention No. 87, where the ICCPR/ICESCR pathway remains available.

“Great weight” to the ILO supervisory bodies

The Diallo extension

In *Ahmadou Sadio Diallo*, the Court accorded “great weight” to the views of the UN Human Rights Committee.

The CEACR and the CFA are not treaty bodies of the conventional kind, but they perform a functionally equivalent role within the ILO supervisory system.

Their pronouncements may accordingly be ascribed “great weight” as a supplementary means of interpretation.

WHY IT MATTERS

- CEACR has read Article 3 to protect the right to strike since 1959.
- CFA has done so for nearly as long.
- The Employers' Group challenge to the supervisory bodies' mandate is comprehensively rejected.
- **The endorsement extends beyond the right to strike to the interpretive competence of the supervisory system as a whole.**

A shared view across the regional systems



African framework

The African Commission reads the right to strike into the freedom of association under Article 10 of the African Charter; the SADC instruments protect it expressly. (51 States parties)



Arab framework

Article 35 of the Arab Charter on Human Rights guarantees the right to strike alongside the right to form trade unions, reflecting their close connection. (13 States parties)



European framework

The European Court reads ECHR Article 11 to protect the right to strike — in *Demir and Baykara*, by reference to Convention No. 87; the European Social Charter protects it expressly. (43 States parties)



Inter-American framework

The OAS Charter and the San Salvador Protocol protect the right expressly; in Opinion OC-27/21 the Inter-American Court held it indivisible from freedom of association, citing Convention No. 87. (32 States parties)

What the drafting history did not establish



The Employers' argument

The drafters of Convention No. 87 affirmatively decided to exclude the right to strike from the scope of the Convention; the silence of the final text is dispositive evidence of that exclusion.



The Court's finding

- Drafting history is “inconclusive” at best.
- Debate was largely confined to whether public officials enjoyed the right — not to the right in general.
- *Silence of the final text does not sustain an affirmative exclusion.*

Judge Sarah Cleveland (United States)

“

Given the breadth of recognition of the right to strike in numerous overlapping international and regional instruments, as well as in bilateral and trade agreements, the constitutional protection of the right to strike in at least 97 States and its legislative protection in more than 150 others, a compelling case can be made that protection of the right to strike is a principle of customary international law.

97

States protecting the right to strike at the constitutional level

150+

States protecting the right at the legislative level

Many

Overlapping international, regional, bilateral and trade instruments

The Four Dissents

10 – 4

Agreement on the result, sharp disagreement on method — all four would have held the Court strayed beyond the consent-based limits of VCLT treaty interpretation.

1 Judge Tomka

Rejects the Court's “second bite at the apple” — practice that fails the Art. 31(3)(b) common-understanding test cannot re-enter under Art. 32. Faults the majority for treating State consent as an obstacle to overcome.

2 Judge Abraham

Challenges the systemic-integration move under Art. 31(3)(c): a State's acceptance of an explicit ICESCR obligation does not contradict its rejecting the same obligation under a Convention silent on it.

3 Judge Xue

The most pointed dissent: the majority's reasoning “largely reflects an exercise of human rights advocacy rather than treaty interpretation,” not a faithful reading of Convention No. 87.

4 Judge Hmoud

Sets a higher threshold for Art. 31(3)(c): a relevant rule must be one of general international law binding all parties to Convention No. 87 — the Covenants do not qualify.

Where the opinion creates new leverage



Domestic litigation

National regimes prohibiting or disproportionately restricting strike action may now be challenged on the strength of the ICJ's confirmation, not only of CEACR practice.



Regional human rights systems

Existing strike-protective jurisprudence of the African Commission, the Inter-American Court and the ECtHR is vindicated; these fora become attractive for further doctrinal development.



Constitutional and statutory construction

Domestic courts construing freedom-of-association provisions in light of Convention No. 87 now have an authoritative international determination to cite.



Beyond the right to strike

The interpretive method — VCLT 31(3)(c) with the ICCPR/ICESCR, plus deference to ILO supervisory bodies — is a template for other contested ILO instruments.

What was really at stake

The 2012 crisis, when the employers at the ILO denied the existence of a right to strike under Convention 87, was, at root, a challenge to whether the supervisory system could be trusted to mean what it said.

➔ **That challenge has been resolved — in the supervisory system's favour — by the only body whose word on the question could carry final weight.**

⚠ *But the contest is not over. The Court's holding does “not entail any determination on the precise content, scope or conditions for the exercise of [the right to strike].”*

The next round of doctrinal contest

The Court resolved the threshold question of whether the right exists; it left to others the substantive questions of scope, content and limits.

Sympathy & solidarity action

Including supply-chain and secondary action across employer and jurisdictional lines.

Essential services & minimum service

The expanding use of essential-services designations as a containment device.

Algorithmic & platform contexts

Mass log-off, account deactivation, and competition-law treatment of collective self-employed action.

Political & protest strikes

And the boundary with strikes over public-policy and just-transition demands.

Procedural & sanctions regimes

Notice periods, ballots, injunctions, damages and personal liability of officers.

Institutional competence

Who decides — Conference, supervisory bodies, an Article 37(2) tribunal, or national legislators?

Binding on the ILO and its supervisory system



The view of the Office

Under Article 37(1) of the ILO Constitution, the Court alone gives a Convention's authoritative interpretation — and the Office has long treated such an opinion as binding the Organization and its supervisory system.



Governments

Have long pointed to Article 37(1) as the route to a binding ruling, urging that the Court settle Convention No. 87 once and for all.



Employers

Built their challenge on the premise that only the Court may give a definitive interpretation — a premise now resolved against them.



Workers

Accepted that the experts' interpretations stood subject to a final and definitive ruling by the Court.

Authoritative for ratifying States

Convention No. 87 binds every State that has ratified it. By settling what the Convention requires, the Court's determination fixes the content of that obligation — protection of the right to strike now forms part of a commitment those States have already accepted.



IN CLOSING

A chapter closes, the work continues...

As workers' rights are under attack worldwide, the legal and moral clarity of the Court's opinion is a very welcome development. The CEACR and the CFA will resume the unfinished work of defining the precise scope of the right and its permissible limitations — as they have been entrusted to do.