

INTERNATIONAL COURT OF JUSTICE

**REQUEST  
FOR ADVISORY OPINION**

transmitted to the Court pursuant  
to the resolution of the Governing Body  
of the International Labour Organization  
of 10 November 2023

**RIGHT TO STRIKE UNDER  
ILO CONVENTION No. 87**

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COUR INTERNATIONALE DE JUSTICE

**REQUÊTE  
POUR AVIS CONSULTATIF**

transmise à la Cour en vertu  
de la résolution du Conseil d'administration  
de l'Organisation internationale du Travail  
du 10 novembre 2023

**DROIT DE GRÈVE AU REGARD  
DE LA CONVENTION N° 87 DE L'OIT**

I. THE DIRECTOR-GENERAL OF THE INTERNATIONAL  
LABOUR ORGANIZATION TO THE PRESIDENT  
OF THE INTERNATIONAL COURT OF JUSTICE

13 November 2023.

I have the honour to inform you that, in accordance with Article 37, paragraph 1, of the Constitution of the International Labour Organi[z]ation (ILO), Article 96, paragraph 2, of the Charter of the United Nations, Article IX, paragraph 2, of the Agreement between the United Nations and the ILO, and the Resolution concerning the Procedure for Requests to the International Court of Justice for Advisory Opinions adopted by the International Labour Conference on 27 June 1949, the ILO Governing Body, at its 349th *bis* (Special) Session held on 10 November 2023, adopted a resolution (33 votes in favour, 21 against, 2 abstentions), by which it decided to request the International Court of Justice to render urgently an advisory opinion on the following question:

“Is the right to strike of workers and their organizations protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)?”

Certified true copies of the resolution, in English and French, are enclosed.

As instructed by the Governing Body, I respectfully request that the Court allow for the participation in the advisory proceedings of the employers' and workers' organizations that enjoy general consultative status with the ILO and also that the Court consider possible steps to accelerate the procedure, in accordance with Article 103 of the Rules of Court.

At present, the following six organizations have been granted general consultative status by the Governing Body: International Organisation of Employers (IOE); International Trade Union Confederation (ITUC); World Federation of Trade Unions (WFTU); International Cooperative Alliance (ICA); Organization of African Trade Union Unity (OATUU); Business Africa.

The International Labour Office is preparing pursuant to Article 65 of the Statute of the Court, a dossier containing all relevant documents on the question, which will be transmitted to the Court as soon as possible.

I have appointed Mr George Politakis, ILO Legal Adviser and Director of the Office of Legal Services, as my representative for the further proceedings.

*(Signed)* Gilbert F. HOUNGBO,  
Director-General  
of the International Labour Organization.

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II. RESOLUTION ADOPTED BY THE GOVERNING BODY  
AT ITS 349TH *BIS* (SPECIAL) SESSION  
ON 10 NOVEMBER 2023

The Governing Body,

Conscious that there is serious and persistent disagreement within the tripartite constituency of the International Labour Organization (ILO) on the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), with respect to the right to strike,

Recalling that at the origin of the dispute is a disagreement among the Organization's tripartite constituents concerning whether the right to strike is protected under Convention No. 87,

Noting that ILO supervisory bodies have consistently observed that the right to strike is a corollary to the fundamental right to freedom of association,

Seriously concerned about the implications that this dispute has on the functioning of the ILO and the credibility of its system of standards,

Affirming the necessity of resolving the dispute consistent with the Constitution of the ILO,

Recalling that under article 37, paragraph 1, of the ILO Constitution, “[a]ny question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice”,

Recalling the consensual decision of the 320th Governing Body in March 2014, welcoming “the clear statement by the Committee of Experts of its mandate as expressed in the Committee’s 2014 report”:

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

Noting that, despite protracted attempts, no consensus has been reached through tripartite dialogue,

Emphasising that Article 37.1 of the Constitution establishes that any referral to the International Court of Justice is for decision on the question or dispute referred,

Expressing the hope that, in view of the ILO's unique tripartite structure, not only the governments of ILO Member States but also the international employers' and workers' organizations enjoying general consultative status in the ILO would be invited to participate directly and on an equal footing in the written proceedings and any oral proceedings before the Court,

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)?*

2. Instructs the Director-General to:
  - (a) transmit this resolution to the International Court of Justice, accompanied by all documents likely to throw light upon the question, in accordance with article 65, paragraph 2, of the Statute of the Court;
  - (b) respectfully request that the International Court of Justice allow for the participation in the advisory proceedings of the employers' and workers' organizations that enjoy general consultative status with the ILO;
  - (c) respectfully request that the International Court of Justice consider possible steps to accelerate the procedure, in accordance with Article 103 of the Rules of Court, so as to render an urgent answer to this request;
  - (d) inform the United Nations Economic and Social Council of this request, as required under article IX, paragraph 4, of the Agreement between the United Nations and the International Labour Organization, 1946.

Geneva, 13 November 2023.

(Signed) Georges POLITAKIS,  
Legal Adviser  
of the International Labour Office.

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