

# Workers' Rights at the ICJ: The Upcoming Advisory Opinion on the Right to Strike

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Whether the right to strike is protected under international labour law has been a point of contention among the tripartite constituents of the International Labour Organization (ILO) for many years. The issue reached a fever pitch at the 101st session of the International Labour Conference (ILC) in June 2012, when [a group of employers' representatives interrupted usual proceedings](#) within the Committee on the Application of Standards with a dramatic challenge to the right to strike. Not only did the employers' representatives refuse to shortlist for discussion any case on freedom of association where the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) had made observations relating to the right to strike, but they also sought to undermine a longstanding view of the CEACR that the right to strike is inherent to the [Convention concerning Freedom of Association and the Protection of the Right to Organise 1948](#) (Convention No 87). Although a tenuous peace was ultimately reached, the categorical refusal of the employers' representatives to even participate in discussions relating to the right to strike raised significant concern for many workers' representatives and government delegates at the ILC, and left an important question of international law seemingly unsettled.

In an attempt to finally resolve the matter, and following almost a decade of pressure from workers' representatives and some governments to do so, on 10 November 2023 the ILO took the unprecedented step of transmitting [a request for an advisory opinion](#) to the International Court of Justice (ICJ) following a resolution by its Governing Body. The request was made pursuant to article 96(2) of the Charter of the United Nations, an infrequently-used provision which allows specialised agencies and organs of the UN to request an advisory opinion from the ICJ. This is [only the sixth time in the Court's history](#) that a specialised agency of the UN has invoked this provision, and the first time a request of this kind has been made by the ILO.

Attached to the request is a copy of the [Governing Body's resolution](#), in which reference is made to "serious and persistent disagreement" among the organisation's tripartite constituents on the interpretation of Convention No 87, and serious concerns are expressed about the potential implications of this disagreement for "the functioning of the ILO and the credibility of its system of standards". Noting that article 37(1) of the ILO Constitution requires any question or dispute relating to the interpretation of any international labour convention to be referred to the ICJ for determination, the request seeks that the ICJ urgently render an advisory opinion under article 65 of the ICJ Statute addressing the question of whether Convention No 87 protects the right to strike of workers and their organisations. The Governing Body's request also asks that the Court make arrangements for three employers' organisations - the International Organisation of Employers, the International Cooperative Alliance and Business Africa - and three workers' organisations - the International Trade Union Confederation, the World Federation of Trade Unions and the Organization of African Trade Union Unity - with general consultative status at the ILO to participate in the proceedings.

Following receipt of the ILO's request, the Court made an [order organising the proceedings](#) on 16 November 2023, in which it fixed 16 May 2024 and 16 September 2024 as the final dates for the submission of written statements and written comments on those statements respectively. In response to the Governing Body's call for tripartite participation in the proceedings, in addition to the ILO itself and [any State party to Convention No 87](#), the ICJ's orders explicitly invite written contributions from the six employers' and workers' organisations nominated in the Governing Body's request. This is an unusual move for the Court, with article 66 of the ICJ Statute only contemplating the provision of written contributions by States and international organisations in advisory proceedings, but one that the Court's orders explain as having been deemed necessary in light of the particular tripartite structure of the ILO.

As at 16 September 2024, being the final deadline for the filing of written materials by State parties and concerned organisations, [31 written statements](#) and [15 written comments](#) in response to those statements had been filed in the proceeding. In addition to written statements from 24 States and two international organisations, contributions were submitted by five of the six employers' and workers' organisations nominated by the ILO in its request. These written contributions complement a [four-part dossier](#) of documents relevant to the request compiled by the International Labour Office (the secretariat of the ILO) and forwarded to the Court on 14 December 2023. Precisely how long the ICJ will take to consider these materials and formulate its opinion is unclear at

present. However, in light of the ILO's request for an urgent determination, it can be reasonably expected that the Court will deliver its opinion in a timely manner, most likely sometime in 2025.

The importance of the ICJ's opinion cannot be overstated. The decision will have wide-ranging implications - with 158 State parties at present, Convention No 87 is one of the ILO's most widely-ratified international labour standards. In addition, the convention has been designated as one of the ILO's eleven fundamental instruments, and as such, its content is incorporated in the [ILO's Declaration on Fundamental Principles and Rights at Work](#) - which all ILO member States have an obligation to respect and promote, whether or not they have ratified the relevant conventions. Though persuasive arguments can be - and indeed, [have been](#) - made for other sources of protection for the right to strike within international law, the ILO's system of international labour standards - and particularly Convention No 87 - is the obvious and most compelling choice.

A finding by the ICJ that the right to strike is inherent to Convention No 87 would conclusively settle the matter and dispel any ongoing dispute within the ILO, and in this way would represent a major victory for workers and their organisations across the globe. On the other hand, if the Court were to adopt a more restrictive interpretation of the convention and conclude that it contains no such protection, this would offer legitimacy to persistent - and [often dangerous](#) - efforts by some corporate and government actors in countries around the world to stifle industrial action and labour activism, and would deprive workers of an invaluable avenue for vindicating their rights and securing fair and favourable conditions of work.

*Georgia Greville is a researcher in labour exploitation and human rights at BIICL. This blog post is part of BIICL's work in the context of the [Platform for Organising by Workers for Empowerment and Recognition \(GLP-POWER\)](#) project. For more information about BIICL's work on labour rights, see [here](#).*

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