



International  
Labour  
Organization

► **Interpretation of the ILO Freedom of Association and the Protection of the Right to Organise Convention, 1948 (No. 87) with respect to the right to strike**

**Request for advisory opinion**

Collection of documents



## ▶ INTRODUCTORY NOTE

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### THE REQUEST FOR AN ADVISORY OPINION

1. In a letter dated 12 July 2023 to the Director-General of the International Labour Office (the “Office”), the Worker Vice-Chairperson of the Governing Body formally requested that the long-standing dispute over the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike be referred urgently to the International Court of Justice (the “Court”) for decision, in accordance with article 37(1) of the ILO Constitution. To this end, the Worker Vice-Chairperson requested the Office to take all necessary steps to place an item on the agenda of the 349th Session of the Governing Body (October–November 2023), for discussion and decision, regarding the request to the Court for an advisory opinion on the following two questions:
  - (a) 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)?
  - (b) Is the Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the ILO competent to:
    - (i) determine that the right to strike derives from the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and
    - (ii) in examining the application of that Convention, specify certain elements concerning the scope of the right to strike, its limits and the conditions for its legitimate exercise?
2. Following the request of the Workers’ group, the Director-General received similar letters on behalf of the Governments of the Member States of the European Union and Iceland and Norway, and from the Governments of Angola, Argentina, Barbados, Brazil, Colombia, Ecuador and South Africa requesting that the matter be discussed urgently at the next session of the Governing Body with a view to deciding on whether to refer the case to the Court for an advisory opinion.
3. By circular letter dated 17 July 2023, the Director-General informed all Member States of the communications received thus far and indicated that the request for an item to be placed on the agenda of the next Governing Body session regarding the possible referral to the Court of the interpretation dispute concerning Convention No. 87 in relation to the right to strike had been transmitted to the Officers of the Governing Body for confirmation.
4. By letters dated 18 July and 2 August 2023, the Employer Vice-Chairperson of the Governing Body expressed her group’s opposition to the request of the Workers’ group indicating that the standard procedure for fixing the agenda of the Governing Body session had not been observed.
5. At the meeting of the Officers of the Governing Body held on 9 August 2023, the Chairperson of the Governing Body determined that the conditions of article 7, paragraph 8, of the ILO Constitution, which provided that “a special meeting shall be held if a written request to that effect is made by at least sixteen of the representatives on the Governing Body” had been met, thus rendering continued discussion over process unnecessary. On the same day, the Chairperson received a letter signed by the 14 regular Worker members of the Governing Body requesting him to convene a special meeting, in accordance with paragraph 3.2.2 of the Standing Orders of the Governing Body, which provided that “the Chairperson [...] shall be bound to convene a special meeting on receipt of a written request to that effect signed by [...] twelve members of the Workers’ group”.

6. At the meeting of the tripartite screening group held on 13 September 2023, the Chairperson of the Governing Body received a letter signed by the 14 regular Employer members requesting a special meeting under paragraph 3.2.2 of the Standing Orders for the urgent inclusion of a standard-setting item on the right to strike in the agenda of the 112th Session of the International Labour Conference (June 2024).
7. It was subsequently decided that a special 349th *bis* Session would be held on 10 November 2023, to consider action to be taken on the referral request submitted by the Workers' group and supported by 36 governments, followed by a special 349th *ter* Session on 11 November to consider action to be taken on the request of the Employers' group concerning a standard-setting exercise on the right to strike.
8. At its 349th Session (October–November 2023), the Governing Body decided that the two Special Sessions would be convened, in part, as a Committee of the Whole, in accordance with article 4.3 of the Standing Orders, to permit a broad exchange of views with the participation of governments which were not represented in the Governing Body.
9. On 10 November 2023, in the context of the 349th *bis* (Special) Session, the Governing Body **adopted** by 33 votes in favour, 21 votes against and 2 abstentions, a resolution by which it decided to request the International Court of Justice to render urgently an advisory opinion on whether the right to strike of workers and their organizations was protected under Convention No. 87.
10. On 11 November 2023, in the context of the 349th *ter* (Special) Session, the Governing Body **decided** not to place a standard-setting item on the right to strike on the agenda of the 112th Session (2024) of the International Labour Conference and that after having received the advisory opinion of the International Court of Justice, it would consider appropriate follow-up action.
11. The full text of the resolution referring the question on the interpretation of Convention No. 87 in relation to the right to strike to the Court is as follows:

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.
12. The certified true copies of the resolution, in English and in French, were transmitted to the Court under cover of a letter dated 13 November 2023 by the Director-General to the President of the Court. In the same letter, the Director-General also informed the President of the Court that, pursuant to Article 65, paragraph 2, of the Statute of the Court, the Office was preparing a dossier containing all relevant documents, which would be transmitted to the Court as soon as possible.

## STRUCTURE AND CONTENT OF THE DOSSIER

13. The Dossier, prepared pursuant to the Order of the Court dated 16 November 2023 and Article 65, paragraph 2, of the Statute of the Court, contains the documents that in the view of the Office are likely to throw light upon the question on which the advisory opinion of the Court is requested. The documents are numbered consecutively and identified by title, author and date of publication. When only extracts of documents are reproduced, the cover page of the publication is included together with the referenced page(s) or paragraph(s). Hyperlinks are embedded to those references that correspond to documents available online. Key passages in certain documents are yellow-marked for ease of reference.
14. The Dossier is divided into four Parts. **Part I** (documents 1-53) contains materials relating to the request of the ILO Governing Body for an advisory opinion arranged in four sections. The first section contains the texts that empower the Organization to seek authoritative legal guidance from the Court including article 37(1) of the Constitution – originally article 423 of the Treaty of Versailles – that stipulates that any dispute relating to the interpretation of any international labour Convention “shall be referred for decision to the International Court of Justice”. The second section lists documents (official correspondence, circular letters to Member States, Office documents and explanatory notes, and minutes of Governing Body sessions) in chronological order as from the date the referral request of the Workers’ group was communicated to the ILO Director-General in July 2023 up to the adoption of the Governing Body resolution on 10 November 2023. The third section provides further elements of context, in particular ILO documents relating to the institutional debate over the last ten years around the advisability, legal framework and practical arrangements of a possible referral to the Court. The fourth section seeks to provide insight into the tripartite specificity of the Organization, which supports the full and autonomous participation of certain international employers’ and workers’ organizations in the advisory proceedings, as confirmed by the Court’s Order of 16 November 2023.
15. **Part II** (documents 54-117) contains materials offering an overview of the ILO’s elaborate processes of adopting international labour standards and supervising their application, and is organized into three sections. The first section includes statutory texts and manuals concerning ILO’s standard-setting techniques. The second section seeks to provide detailed information on

the supervisory system and the statutory organs entrusted with the supervision of standards based on either periodic reporting of ratifying countries (regular supervision) or ad hoc procedures activated through complaint mechanisms (special procedures). Particular emphasis is placed on documents shedding light on the functions and responsibilities of the ILO's Committee of Experts on the Application of Conventions and Recommendations ("CEACR") insofar as the Committee's comments and guidance around the right to strike under Convention No. 87 are at the centre of the interpretation dispute now before the Court. The third section lists documents that reflect recurrent discussions on the interpretation of standards, including the interpretative functions of the CEACR and of the Office, in the absence of having recourse to the Court in accordance with article 37(1) of the Constitution or to an in-house tribunal as provided for in article 37(2) of the Constitution.

16. **Part III** (documents 118-282) contains materials relating specifically to the question put to the Court and consists of three sections. The first section contains documents on freedom of association as a foundational principle of the Organization enshrined in several international labour standards and solemnly reaffirmed on numerous occasions by the International Labour Conference. The documents listed in the second section throw light on the legislative history of Convention No. 87, including the 1948 Conference discussions that led to its adoption. The third section highlights the 'jurisprudence' of different ILO supervisory organs with respect to the right to strike, its status, scope and limitations. In particular, the selection of observations of the CEACR and individual cases examined by the tripartite Conference Committee on the Application of Standards ("CAS") aims at illustrating the different aspects and modalities of strike action on which the two Committees have been providing guidance in the context of the institutional dialogue with Member States bound by Convention No. 87 and in accordance with their respective mandates.
17. **Part IV** (documents 283-342) is composed of four sections and contains legal instruments and other documents from non-ILO sources concerning the recognition of the right to strike in international human rights law. The first section lists universal and regional human rights instruments expressly referring to freedom of association and the right to take industrial action. The second section contains a selection of bilateral trade and labour agreements linking respect for fundamental principles and rights at work, including freedom of association, with trade facilitation. The third section offers a compilation of comments of expert bodies, such as the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, bearing on the international recognition of the right to strike. The fourth section contains a non-exhaustive list of decisions of international and national courts that make direct reference to Convention No. 87 and/or the comments of ILO supervisory organs in relation to the right strike.
18. The annex to the Dossier contains a selected bibliography listing academic writings on international labour standards, freedom of association and the right to strike.

## LIST OF ABBREVIATIONS

CAS	Committee on the Application of Standards
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CESCR	Committee on Economic, Social and Cultural Rights
CFA	Committee on Freedom of Association
CJEC	Court of Justice of the European Communities
ECtHR	European Court of Human Rights
GB	Governing Body
HRC	Human Rights Committee
IACtHR	Inter-American Court of Human Rights
ICJ	International Court of Justice
ILC	International Labour Conference
ILO	International Labour Organization
IOE	International Organisation of Employers
ITUC	International Trade Union Confederation
PCIJ	Permanent Court of International Justice





## PART I. THE REFERRAL REQUEST

Part I contains materials concerning the jurisdictional basis for the ILO's request for an advisory opinion (*Section A*); the process that led to the adoption of the Governing Body resolution requesting the advisory opinion (*Section B*); earlier ILO Governing Body discussions on possible referral under article 37(1) of the ILO Constitution (*Section C*); the question of the participation of international employers' and workers' organizations in ICJ advisory proceedings (*Section D*).

### A. Legal basis for requesting an advisory opinion

19. *This section contains documents relating to the titles of jurisdiction on which the ILO request for an advisory opinion draws upon, namely the dispute settlement clause or "compromissory clause" of article 37(1) of the ILO Constitution, the Agreement of 1946 between the United Nations and the International Labour Organization, article IX of which authorizes the ILO to refer legal questions arising within its scope of activities to the Court, and the resolution of 1949 by which the International Labour Conference authorized the ILO Governing Body to request advisory opinions of the International Court of Justice.*
20. [Constitution of the ILO](#), article 37, paragraph 1 [**Document No. 1**].
21. [Agreement between the United Nations and the ILO](#), 1946, article IX [**Document No. 2**].
22. United Nations General Assembly resolution 50(I) of 14 December 1946 [**Document No. 3**].
23. ILC, 32nd Session, 1949, Resolution concerning the Procedure for Requests to the International Court of Justice for Advisory Opinions, *Official Bulletin*, vol. XXXII, 1949, pp. 338–339 [**Document No. 4**].

### B. Consideration of the referral request and decision-making

24. *This section contains Office documents and communications covering the period from 12 July 2023, date of the Worker's group's communication requesting the Governing Body to consider referral of the interpretation dispute to the Court under article 37(1) of the Constitution, to 11 November 2023, date on which the two special Governing Body sessions were concluded, notably with the adoption of the resolution requesting the Court to render urgently an advisory opinion on the interpretation of Convention No. 87 with respect to the right to strike.*
25. Letter of the Worker Vice-Chairperson of the ILO Governing Body to the ILO Director-General, dated 12 July 2023 [**Document No. 5**].
26. Letter of the Permanent Representative of Spain to the International Organizations in Geneva to the ILO Director-General transmitting a letter on behalf of the EU Member States and Iceland and Norway, dated 14 July 2023 [**Document No. 6**].
27. Letter of the Minister of Labor and Employment of Brazil to the ILO Director-General, dated 13 July 2023 [**Document No. 7**].
28. Letter of the Minister of Employment and Labour of the Republic of South Africa to the ILO Director-General, dated 14 July 2023 [**Document No. 8**].

29. Letter of the Minister of Labour, Employment and Social Security of Argentina to the ILO Director-General, dated 14 July 2023 **[Document No. 9]**.
30. Letter of the Employer Vice-Chairperson of the ILO Governing Body to the ILO Director-General, dated 2 August 2023 **[Document No. 10]**.
31. Letter of the Ambassador and Permanent Representative of Barbados to the United Nations Office at Geneva to the ILO Director-General, dated 4 August 2023 **[Document No. 11]**.
32. Letter of the Minister of Labour of Colombia to the ILO Director-General, dated 10 August 2023 **[Document No. 12]**.
33. Letter of the Minister of Labour of Ecuador to the ILO Director-General, dated 25 August 2023 **[Document No. 13]**.
34. Note Verbale No. 185/MP-ANG/GEN/2023 of the Permanent Mission of the Republic of Angola, dated 6 September 2023 **[Document No. 14]**.
35. Letter of the Swiss Federal Councillor and Head of the Federal Department of Economic Affairs, Education and Research to the ILO Director-General, dated 6 September 2023 **[Document No. 15]**.
36. Letter signed by 14 regular Employer members of the ILO Governing Body to the Chairperson of the Governing Body, dated 12 September 2023 **[Document No. 16]**.
37. Note Verbale Z-2023/62441669/36640282 of the Permanent Mission of the Republic of Türkiye, dated 22 September 2023 **[Document No. 17]**.
38. ILO, [Note concerning special Governing Body sessions – Past practice](#), September 2023 **[Document No. 18]**.
39. ILO, [Note concerning special Governing Body sessions – Origin and evolution of applicable rules](#), September 2023 **[Document No. 19]**.
40. ILO, [Note concerning the binding legal effect of ICJ advisory opinions](#), September 2023 **[Document No. 20]**.
41. ILO, [Note concerning the legal basis for requesting an advisory opinion](#), September 2023 **[Document No. 21]**.
42. [Comments of the Employers’ Secretariat concerning the Office notes](#), October 2023 **[Document No. 22]**.
43. IOE, [Comments to the background report prepared by the Office titled “Action to be taken on the request of the Workers’ group and 34 governments to urgently refer the dispute on the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No 87\), in relation to the right to strike to the International Court of Justice for decision in accordance with article 37\(1\) of the Constitution”](#), dated 6 October 2023 **[Document No. 23]**.
44. ITUC, [Comments on the Office background report regarding the request of the Workers’ group to urgently refer the dispute on the interpretation of Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No 87\), in relation to the right to strike to the International Court of Justice for decision in accordance with article 37\(1\) of the Constitution](#), dated 6 October 2023 **[Document No. 24]**.

45. IOE, Comments to the background report prepared by the Office titled “Action to be taken on the request of the Employers’ group to urgently include a standard-setting item on the right to strike on the agenda of the 112th Session of the International Labour Conference”, dated 24 October 2023 [**Document No. 25**].
46. ITUC, Comments to the Office background report on “Action to be taken on the request of the Employers’ group to urgently include a standard-setting item on the right to strike on the agenda of the 112th Session of the International Labour Conference”, dated 27 October 2023 [**Document No. 26**].
47. GB.349/INS/18/5(Rev.1), Fifth Supplementary Report of the Director-General: Arrangements for the 349th *bis* and 349th *ter* Special Sessions of the Governing Body, November 2023 [**Document No. 27**].
48. Draft Minutes of the 349th Session of the Governing Body, paras 686-737 [**Document No. 28**].
49. GB.349bis/INS/1/1, Action to be taken on the request of the Workers’ group and of 36 governments to urgently refer the dispute on the interpretation of Convention No. 87 in relation to the right to strike to the International Court of Justice for decision in accordance with article 37(1) of the Constitution – Office background report, September 2023 [**Document No. 29**].
50. GB.349bis/INS/1/2, Action to be taken on the request of the Workers’ group and of 36 governments to urgently refer the dispute on the interpretation of Convention No. 87 in relation to the right to strike to the International Court of Justice for decision in accordance with article 37(1) of the ILO Constitution – Summary of the comments received from constituents, October 2023 [**Document No. 30**].
51. Draft Minutes of the 349th *bis* (Special) Session of the Governing Body, November 2023 [**Document No. 31**].
52. GB.349ter/INS/1, Action to be taken on the request of the Employers’ group to urgently include a standard-setting item on the right to strike on the agenda of the 112th Session of the International Labour Conference, October 2023 [**Document No. 32**].
53. Draft Minutes of the 349th *ter* (Special) Session of the Governing Body, November 2023, [**Document No. 33**].

### C. Earlier discussions on possible referral under article 37(1)

54. *This section includes documents (Office papers and Minutes of proceedings) relating to Governing Body discussions held over the past ten years on the implementation of the constitutional procedure set out in article 37(1) with a view to ensuring legal certainty, including the legal nature of article 37, the relevance of past practice, the legal effect of the Court’s “decision”, the initiation, length and cost of advisory proceedings, and the establishment of a procedural framework.*
55. GB.322/INS/5, The standards initiative: Follow-up to the 2012 ILC Committee on the Application of Standards, October 2014 [**Document No. 34**].
56. Minutes of the 322nd Session of the Governing Body, October–November 2014, paras 47–209 [**Document No. 35**].
57. GB.323/INS/5, The Standards Initiative, March 2015 [**Document No. 36**].

58. [Minutes](#) of the 323rd Session of the Governing Body, March 2015, paras 51–84 [**Document No. 37**].
59. [GB.344/INS/5](#), Work plan on the strengthening of the supervisory system: Proposals on further steps to ensure legal certainty and information on other action points in the work plan, February 2022 [**Document No. 38**].
60. Minutes of the 344th Session of the Governing Body, March 2022, paras 136–199 [**Document No. 39**].
61. [GB.347/INS/5](#), Work plan on the strengthening of the supervisory system: Proposals on further steps to ensure legal certainty, February 2023 [**Document No. 40**].
62. Minutes of the 347th Session of the Governing Body, March 2023, paras 228–345 [**Document No. 41**].

#### **D. Participation of international employers' and workers' organizations in the advisory proceedings**

63. *This section contains documents relating to the possibility of international employers' and workers' organizations, such as the International Organisation of Employers and the International Trade Union Confederation that traditionally provide the secretaries of the Employers' and the Workers' group respectively, being invited to participate in the advisory proceedings in view of the Organization's tripartite structure, in line with the ILO experience in the period 1922–32 and the practice of the Permanent Court of International Justice in this regard.*
64. PCIJ, Designation of the Workers' Delegate for the Netherlands at the Third Session of the International Labour Conference, Advisory Opinion No. 1, 31 July 1922, pp. 9, 11 [**Document No. 42**].
65. PCIJ, Competence of the ILO in regard to International Regulation of the Conditions of the Labour of Persons Employed in Agriculture, Advisory Opinion No. 2, 12 August 1922, pp. 9, 11 [**Document No. 43**].
66. PCIJ, Competence of the ILO to Regulate Incidentally the Personal Work of the Employer, Advisory Opinion No. 13, 23 July 1926, p. 8 [**Document No. 44**].
67. PCIJ, Interpretation of the Convention of 1919 concerning Employment of Women during the Night, Advisory Opinion, 15 November 1932, pp. 367–368 [**Document No. 45**].
68. PCIJ, Revision of the Rules of Court, Acts and Documents concerning the Organization of the Court, Series D, Addendum to No. 2, pp. 223–228 [**Document No. 46**].
69. Letter of the PCIJ Registrar to the ILO Director, dated 26 March 1926 [**Document No. 47**].
70. Minute of the ILO Legal Adviser, Jean Morellet, dated 10 April 1926 [**Document No. 48**].
71. PCIJ, Third annual report (15 June 1926 – 15 June 1927), Series E – No. 3 [**Document No. 49**].
72. Introductory note to the Standing Orders of the ILO Governing Body, para. 23 [**Document No. 50**].
73. ILO, Explanatory note on the role of international employers' and workers' organizations enjoying general consultative status at the ILO, 17 April 2023 [**Document No. 51**].

- 74. IOE, Statutes, Articles 2, 6–8 **[Document No. 52]**.
- 75. ITUC, Constitution, Aims **[Document No. 53]**.

## PART II. THE ILO SYSTEM OF STANDARDS

Part II contains materials concerning the ILO system of standards, which are at the core of the Organization's mission and mandate and which seek to promote social justice as the basis of a universal and lasting peace. From inception to adoption, standard-setting is an entirely tripartite function and responsibility (*Section A*). The system of standards is backed by an elaborate supervisory machinery that consists of independent expert bodies and tripartite/political organs (*Section B*). Questions of interpretation of this *corpus juris* are exclusively entrusted to the Court and, for those not warranting referral to the Court, to an in-house tribunal that has not as yet been set up (*Section C*). Full information on international labour standards may be accessed at the dedicated database [NORMLEX](#).

### A. Adoption of international labour standards

- 76. *This section contains documents concerning the preparation and adoption of international labour standards, either in the form of treaties subject to ratification by Member States, known as international labour Conventions, or in the form of instruments providing non mandatory guidance, known as international labour Recommendations. International labour standards are negotiated and adopted by the International Labour Conference, in which the 187 ILO Member States are represented each by a tripartite delegation. To date, the ILO has adopted 191 Conventions, 208 Recommendations (either accompanying a Convention or as stand-alone instruments) and six Protocols (partially revising or supplementing an existing Convention). The body of standards, also known as the International Labour Code, covers all aspects of the ILO's 'decent work agenda' and four strategic objectives, i.e. employment, social protection, social dialogue and tripartism, and fundamental principles and rights at work.*
- 77. [Constitution of the ILO](#), articles 19–21 **[Document No. 54]**.
- 78. [Standing Orders of the International Labour Conference](#), articles 44–52 **[Document No. 55]**.
- 79. [Standing Orders of the Governing Body](#), articles 5.1–5.4 **[Document No. 56]**.
- 80. United Nations Conference on the Law of Treaties, Official Records, First Session, 1968, Meetings of the Committee of the Whole, Seventh Meeting, Statement of the Observer for the International Labour Organisation, pp. 36–37 **[Document No. 57]**.
- 81. ILC, 70th Session, 1984, Report of the Director-General, pp. 3–70 **[Document No. 58]**.
- 82. ILO, [Handbook of procedures relating to international labour Conventions and Recommendations](#), 2019 **[Document No. 59]**.
- 83. ILO, [Rules of the Game: An introduction to the standards-related work of the International Labour Organization](#), 2019 **[Document No. 60]**.

## B. Supervision of international labour standards

84. *The implementation by Member States of international labour Conventions in law and in practice is monitored through a comprehensive set of supervisory procedures provided for in the ILO Constitution and numerous decisions of the International Labour Conference and the Governing Body. A distinction is drawn between standing, permanent procedures based on the regular submission of reports (regular supervision) and ad hoc supervisory mechanisms activated by the submission of complaints (special procedures).*
85. [Constitution of the ILO](#), articles 22–34 [**Document No. 61**].
86. [GB.301/LILS/6\(Rev.\)](#), Improvements in the standards-related activities of the ILO: Initial implementation of the interim plan of action to enhance the impact of the standards system, March 2008, paras 42–79 [**Document No. 62**].
87. [GB.326/LILS/3/1](#), The Standards Initiative: Joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association, February 2016 [**Document No. 63**].
88. [GB.329/INS/5](#), The Standards Initiative: Follow-up to the joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association - Consolidating tripartite consensus on an authoritative supervisory system, March 2017 [**Document No. 64**].
89. [Minutes](#) of the 329th Session of the Governing Body, March 2017, paras 95-148, 192-200 [**Document No. 65**].
90. [GB.335/INS/5](#), The Standards Initiative: Overall review of its implementation, March 2019 [**Document No. 66**].
91. [Minutes](#) of the 335th Session of the Governing Body, March 2019, paras 199-304 [**Document No. 67**].

### 1. Regular supervision

92. *Regular supervision involves the examination of periodic reports submitted by governments, under article 22 of the Constitution and after consulting representative employers' and workers' organizations, to detail the steps taken in law and practice to implement ratified Conventions. It also consists in the examination of reports submitted under article 19 of the Constitution and at the request of the Governing Body, to indicate measures taken to give effect to the provisions of certain unratified Conventions or obstacles preventing or delaying their ratification. The examination of these reports is carried out successively by two bodies: (a) the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and (b) the Conference Committee on the Application of Standards (CAS).*
- (a) Committee of Experts on the Application of Conventions and Recommendations**
93. *The CEACR is composed of 20 members who are selected by the Governing Body from among highly qualified experts from all regions of the world and who serve in a personal capacity. The CEACR meets annually in November–December and its main task is to assess the compatibility of domestic legislation*

*of Member States with the requirements of ratified Conventions. The Committee's comments take the form of either observations (raising issues of compliance) or direct requests (on matters calling for further clarification). Only observations are published in the Committee's annual report. In addition, the CEACR prepares a General Survey, that is a global law and practice report, on a specific standard or set of standards as designated by the Governing Body.*

94. ILO, *The Committee of Experts on the Application of Conventions and Recommendations: Its dynamic and impact*, 2003, pp. 1–17 [**Document No. 68**].
  95. ILO, *Monitoring compliance with international labour standards – The key role of the ILO Committee of Experts on the application of Conventions and Recommendations*, 2019 [**Document No. 69**].
- (i) Establishment and mandate of the CEACR
96. *No explicit provision is made of the CEACR in the ILO Constitution. In 1926, the International Labour Conference adopted a resolution establishing a Conference Committee to meet on an annual basis and requesting the Governing Body to appoint a technical committee which would be responsible for drawing up a report for the Conference. The CEACR was tasked with making the best and fullest use of the information arising from the reports submitted by governments. Its mandate was broadened in 1947 and has since remained unchanged. Nevertheless, its working methods have developed considerably, in particular as regards the interpretation of international labour Conventions. The interpretative function of the CEACR has come under scrutiny notably in the CAS. In 2013, the CEACR adopted a formal 'understanding' of its mandate, which has since become a standard paragraph of the Committee's annual report.*
  97. Part XIII of the Treaty of Peace of Versailles, 1919 [**Document No. 70**].
  98. ILC, 8th Session, 1926, Record of Proceedings, Committee on Article 408 of the Treaty of Versailles, pp. 238–260 [**Document No. 71**].
  99. ILC, 8th Session, 1926, Record of Proceedings, Appendix V: Article 408 of the Treaty of Versailles, pp. 393–408 [**Document No. 72**].
  100. ILC, 8th Session, 1926, Record of Proceedings, Appendix VII: Resolution concerning the methods by which the Conference can make use of the reports submitted under Article 408 of the Treaty of Versailles, p. 429 [**Document No. 73**].
  101. Minutes of the 103rd Session of the Governing Body, December 1947, Questions Arising out of the Examination of the Annual Reports on the Application of Conventions and Extension of Terms of Reference of the Committee of Experts, pp. 56–59 [**Document No. 74**].
  102. Minutes of the 103rd Session of the Governing Body, December 1947, Questions Arising out of the Examination of the Annual Reports on the Application of Conventions and Extension of Terms of Reference of the Committee of Experts, pp. 167–173 [**Document No. 75**].
  103. ILC, 73rd Session, 1987, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, paras 37–49 [**Document No. 76**].
  104. ILC, 77th Session, 1990, Report of the Committee on the Application of Standards, paras 20–35 [**Document No. 77**].
  105. ILC, 78th Session, 1991, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, paras 8–13 [**Document No. 78**].

- 106. ILC, 78th Session, 1991, Report of the Committee on the Application of Standards, paras 13–37 **[Document No. 79]**.
- 107. ILC, 90th Session, 2002, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, paras 21-26 **[Document No. 80]**.
- 108. ILC, 91st Session, 2003, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, paras 4-6 **[Document No. 81]**.
- 109. ILC, 102nd Session, 2013, Conference Committee on the Application of Standards, pp. 59–72 **[Document No. 82]**.
- 110. [GB.320/LILS/4](#), The Standards Initiative: Follow-up to the 2012 ILC Committee on the Application of Standards, March 2014 **[Document No. 83]**.
- 111. [Minutes](#) of the 320th Session of the Governing Body, March 2014, paras 572-599 **[Document No. 84]**.
- 112. ILC, 103rd Session, 2014, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 1–11 **[Document No. 85]**.

**(b) Conference Committee on the Application of Standards**

- 113. *The mandate of the CAS is set forth in article 10 of the Standing Orders of the International Labour Conference. It is a standing tripartite committee consisting of Conference delegates representing governments, employers and workers. Following the independent, technical examination of periodic reports carried out by the CEACR, the CAS examines at each session of the Conference the manner in which governments fulfil their obligations deriving from the Conventions they have ratified, and more generally, their standards-related obligations arising from the Constitution. In addition, the CAS discusses the General Survey prepared by the CEACR.*
- 114. [Standing Orders of the International Labour Conference](#), article 10 **[Document No. 86]**.
- 115. ILO, *The Committee on the Application of Standards of the International Labour Conference: A dynamic and impact built on decades of dialogue and persuasion*, 2011, pp. 5–21 **[Document No. 87]**.

**2. Special procedures**

**(a) Representations under article 24 of the Constitution**

- 116. *The procedure set out in articles 24 and 25 of the ILO Constitution grants an industrial association of employers or of workers the right to present to the ILO Governing Body a representation against any Member State which, in its view, has failed to secure the effective observance within its jurisdiction of any Convention to which it is a party. According to detailed procedural rules established by the Governing Body, a three-member tripartite committee may be set up to examine the legal and practical aspects of the representation and draw up a report with conclusions and recommendations.*
- 117. [Compendium of rules applicable to the Governing Body of the International Labour Office, Annex I, Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization](#) **[Document No. 88]**.



## **(b) Complaints under article 26 of the Constitution**

- 118.** *The complaint procedure is governed by articles 26 to 34 of the ILO Constitution. A complaint against a Member State for not complying with a ratified Convention may be filed by another Member State having ratified the same Convention, or by a delegate to the International Labour Conference. The Governing Body may decide to appoint a Commission of Inquiry to consider the complaint. Members of a Commission of Inquiry are selected among eminent personalities who serve in their individual capacity. Each Commission performs its task with complete objectivity, impartiality and independence. The Commission's recommendations often involve three types of action: legislative measures to bring domestic laws in line with the Convention in question; other positive actions to ensure compliance with the Convention; and ceasing violations in practice. The government concerned must notify within three months whether it accepts the Commission's recommendations, or otherwise, whether it proposes to refer the Commission's report to the International Court of Justice. To date, 14 Commissions of Inquiry have been established. When a government fails to implement the recommendations of a Commission of Inquiry, the Governing Body may recommend to the International Labour Conference appropriate measures to secure compliance.*
- 119.** [List of complaints/ Commissions of Inquiry \(1934-to date\) \[Document No. 89\].](#)

## **(c) Complaints alleging violation of freedom of association**

- 120.** *Freedom of association and collective bargaining are among the founding principles of the ILO. In 1950 and in agreement with the Economic and Social Council of the United Nations (ECOSOC), the ILO established a procedure for the examination of allegations concerning the infringement of trade union rights, including a new supervisory body, the Fact-Finding and Conciliation Commission on Freedom of Association. It was also agreed that all allegations regarding infringements of trade union rights received by the United Nations against ILO Member States would be forwarded by ECOSOC to the Governing Body. In 1951, the Governing Body went on to establish the Committee on Freedom of Association (CFA), which soon became the main body responsible for examining allegations of violations of the principle of freedom of association brought against a Member State by employers' and workers' organizations irrespective of whether the Member State has ratified the Freedom of Association and the Protection of the Right to Organise Convention, 1948 (No. 87). It is composed of an independent chairperson and three representatives each of governments, employers and workers. Over the past 70 years, the CFA has examined more than 3,300 cases.*
- 121.** [Compendium of rules applicable to the Governing Body of the International Labour Office, Annex II, Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association \[Document No. 90\].](#)

## **C. Interpretation of international labour standards**

- 122.** *This section contains documents detailing the discussion that occurred within the framework of the Organization concerning the principles and procedures relating to the interpretation of international labour Conventions. Under article 37 of the ILO Constitution there are two complementary possibilities to address disputes or questions relating to the interpretation of ILO Conventions: a referral to the International Court of Justice or a referral to a permanent in-house tribunal that would be set up by the Governing Body for the expeditious determination of such disputes or questions. To date, the in-house tribunal has not been established. In practice, the ILO supervisory bodies, notably the CEACR, have*

*occasionally engaged in interpretation of standards in the discharge of their responsibilities. Moreover, Member States occasionally solicit the informal views of the Office on the meaning and scope of provisions of Conventions they are considering ratifying.*

## 1. General

123. Paris Peace Conference, Commission on International Labour Legislation, Sitting of 27 February 1919, *La Paix de Versailles*, pp. 377–379 **[Document No. 91]**.
124. ILC, 3rd Session, 1921, Report of the Director-General, paras 164–167 **[Document No. 92]**.
125. ILO, Note on the possibility of instituting a special procedure for the interpretation of conventions, 1931 **[Document No. 93]**.
126. ILO, Note on the application of article 423 of the Treaty of Peace (Consultation of the Court), 1931 **[Document No. 94]**.
127. Minutes of the 57th Session of the Governing Body, April 1932, Report of the Standing Orders Committee, pp. 151–153 **[Document No. 95]**.
128. [GB.256/SC/2/2](#), Article 37, paragraph 2, of the Constitution and the interpretation of international labour Conventions, May 1993 **[Document No. 96]**.
129. ILO, Non-paper on interpretation of international labour Conventions, 2010 **[Document No. 97]**.

## 2. The Committee of Experts on Application of Conventions and Recommendations

130. ILC, 63rd Session, 1977, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 32 **[Document No. 98]**.
131. ILC, 77th Session, 1990, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 7 **[Document No. 99]**.
132. ILC, 80th Session, 1993, Report of the Committee on the Application of Standards, paras 9–25 **[Document No. 100]**.
133. ILC, 100th Session, 2011, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, paras 10–12 **[Document No. 101]**.
134. ILC, 100th Session, 2011, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, General Observation on the Indigenous and Tribal Peoples Convention, 1989 (No. 169), p. 783 **[Document No. 102]**.
135. ILO, Information paper on the history and development of the mandate of the Committee of Experts on the Application of Conventions and Recommendations, February 2013 **[Document No. 103]**.
136. ILC, 102nd Session, 2013, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, paras 8–36 **[Document No. 104]**.
137. ILC, 103rd Session, 2014, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, paras 8–31 **[Document No. 105]**.
138. [GB.323/INS/5/Appendix I](#), The Standards Initiative, Outcome 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, March 2015 **[Document No. 106]**.

139. [GB.323/INS/5/Appendix II](#), The Standards Initiative, Final report 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, March 2015 **[Document No. 107]**.
140. [GB.323/INS/5/Appendix III](#), The Standards Initiative, Background document for 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 (revised) (Geneva, 23–25 February 2015), March 2015 **[Document No. 108]**.
141. ILC, 111th Session, 2023, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 33 **[Document No. 109]**.

### 3. Office informal opinions

142. *Office unofficial ‘interpretations’ have always been considered part of administrative assistance that governments of Member States could expect to receive from the ILO secretariat, subject to the understanding that the Constitution does not confer upon it any special competence to interpret international labour Conventions. Office opinions seek principally to establish the drafters’ intention and the context in which a specific provision was introduced in an international labour Convention by tracing its negotiating history. Until 2002, Office informal opinions were communicated to the Governing Body and published in the Official Bulletin – 147 in total – but this practice has since been discontinued.*
143. *Office informal opinions have no binding legal effect, remain of a purely administrative nature and are without prejudice to the views of the ILO supervisory bodies. Since 1952, the Office has decided that it would be inappropriate to express an opinion on the interpretation of Convention No. 87 owing to the existence of a special procedure for dealing with complaints concerning alleged infringements of freedom of association. This section contains internal circulars on preparing Office informal opinions and a sample of four such opinions provided by the Office over the past seven years.*
144. ILO, Director-General’s Instruction No. 45, 1952, Procedure concerning requests for interpretations of Conventions and Recommendations **[Document No. 110]**.
145. ILO, Director-General’s Instruction No. 337, 1968, Procedure concerning requests for interpretations of Conventions and Recommendations **[Document No. 111]**.
146. ILO, Circular No. 40, 1987, Procedure concerning requests for interpretations of Conventions and Recommendations **[Document No. 112]**.
147. ILO, IGDS Number 565 (Version 1), 2020, Office informal opinions on international labour standards **[Document No. 113]**.
148. ILO, Office informal opinion on the Maritime Labour Convention, 2006, as amended (MLC, 2006), dated 29 July 2016 **[Document No. 114]**.
149. ILO, Office informal opinion concerning the Seafarers’ Identity Documents Convention (Revised), 2003, as amended (No. 185), dated 22 December 2020 **[Document No. 115]**.

- 150. ILO, Office informal opinion concerning the Occupational Safety and Health Convention, 1981 (No. 155), dated 31 January 2022 **[Document No. 116]**.
- 151. ILO, Office informal opinion concerning the Minimum Wage Fixing Convention, 1970 (No. 131), dated 26 July 2023 **[Document No. 117]**.

## PART III. FREEDOM OF ASSOCIATION, CONVENTION NO. 87 AND THE RIGHT TO STRIKE

Part III contains primary sources on the interpretation dispute now before the Court: ILO binding and non-binding normative texts on the freedoms to associate and to bargain collectively as fundamental rights (*Section A*); materials concerning the *travaux préparatoires* of Convention No. 87 (*Section B*); and selected comments of the various ILO supervisory organs with respect to the protection of the right to strike under Convention No. 87 (*Section C*).

### A. Normative texts relating to freedom of association

- 152. *This section lists international labour standards (Conventions and Recommendations) and resolutions adopted by the International Labour Conference addressing freedom of association, the protection of the right to organize and collective bargaining. The Conference resolutions span from the 30th session (1947) to the 73rd session (1987) and cover topics such as safeguarding freedom of association, abolishing anti-trade union legislation, protecting trade union rights, addressing colonial oppression and promoting human rights.*

#### 1. Conventions and Recommendations

- 153. [Constitution of the ILO](#), Preamble and Annex, Declaration concerning the aims and purposes of the International Labour Organization (Declaration of Philadelphia) **[Document No. 118]**.
- 154. [Right of Association \(Agriculture\) Convention](#), 1921 (No. 11) **[Document No. 119]**.
- 155. [Freedom of Association and Protection of the Right to Organise Convention](#), 1948 (No. 87) **[Document No. 120]**.
- 156. [Right to Organise and Collective Bargaining Convention](#), 1949 (No. 98) **[Document No. 121]**.
- 157. [Abolition of Forced Labour Convention](#), 1957 (No. 105) **[Document No. 122]**.
- 158. [Rural Workers' Organisations Convention](#), 1975 (No. 141) **[Document No. 123]**.
- 159. [Labour Relations \(Public Service\) Convention](#), 1978 (No. 151) **[Document No. 124]**.
- 160. [Collective Bargaining Convention](#), 1981 (No. 154) **[Document No. 125]**.
- 161. [Voluntary Conciliation and Arbitration Recommendation](#), 1951 (No. 92) **[Document No. 126]**.
- 162. [Private Employment Agencies Recommendation](#), 1997 (No. 188) **[Document No. 127]**.

## 2. Declarations and resolutions of the International Labour Conference

163. Declaration on Fundamental Principles and Rights at Work (1998), as amended in 2022 [Document No. 128].
164. Declaration on Social Justice for a Fair Globalization (2008), as amended in 2022 [Document No. 129].
165. ILC, 30th Session, 1947, Resolution concerning Freedom of Association and Protection of the Right to Organise and to Bargain Collectively [Document No. 130].
166. ILC, 30th Session, 1947, Resolution concerning International Machinery for Safeguarding Freedom of Association [Document No. 131].
167. ILC, 38th Session, 1955, Resolution concerning the Protection of Trade Union Rights [Document No. 132].
168. ILC, 40th Session, 1957, Resolution concerning the Abolition of Anti-Trade Union Legislation in the States Members of the International Labour Organisation [Document No. 133].
169. ILC, 45th Session, 1961, Resolution concerning Freedom of Association and the Protection of the Right to Organise, Including the Protection of Representatives of Trade Unions at All Levels [Document No. 134].
170. ILC, 48th Session, 1964, Resolution concerning Freedom of Association [Document No. 135].
171. ILC, 54th Session, 1970, Resolution concerning Trade Union Rights and Their Relation to Civil Liberties [Document No. 136].
172. ILC, 57th Session, 1972, Resolution concerning the Policy of Colonial Oppression, Racial Discrimination and Violation of Trade Union Rights Pursued by Portugal in Angola, Mozambique and Guinea (Bissau) [Document No. 137].
173. ILC, 63rd Session, 1977, Resolution concerning the Promotion, Protection and Strengthening of Freedom of Association, Trade Union and Other Human Rights [Document No. 138].
174. ILC, 73rd Session, 1987, Resolution concerning the 40th anniversary of the adoption of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) [Document No. 139].
175. Ratification status of Convention No. 87, as at 7 December 2023 [Document No. 140].

## B. Convention No. 87 – Travaux préparatoires

176. *This section contains documents on the legislative history of Convention No.87, including documents pertaining to the inclusion of the question of freedom of association and the right to organize on the agenda of the 31st session (1948) of the International Labour Conference, all Office preparatory reports and relevant extracts from the Conference record of proceedings.*

## 1. Legislative history prior to the 31st Session of the ILC

177. Draft Resolution submitted by the World Federation of Trade Unions to the Economic and Social Council on Guarantees for the Exercise and Development of Trade Union Rights, 1947 **[Document No. 141]**.
178. Memorandum and Draft Resolution submitted by the American Federation of Labor to the Economic and Social Council on the Guarantees for the Exercise and Development of Trade Union Rights, 1947 **[Document No. 142]**.
179. Economic and Social Council, 4th Session, 1947, Official Records, Discussion of the resolution submitted by the World Federation of Trade Unions on guarantees for the exercise and development of trade union rights and memorandum submitted by the American Federation of Labor **[Document No. 143]**.
180. Economic and Social Council, 4th Session, 1947, Resolution 52 (IV) on Guarantees for the exercise and development of trade unions **[Document No. 144]**.
181. Agreement between the United Nations and the International Labour Organization, 1946, article III **[Document No. 145]**.
182. Minutes of the 102nd Session of the Governing Body, June-July 1947, Appendix III, Relations with Other International Organisations **[Document No. 146]**.
183. ILC, 30th Session, 1947, Report VII, Freedom of Association and Industrial Relations **[Document No. 147]**.
184. Economic and Social Council, 5th Session, 1947, Official Records, Annex 15f, Trade union rights (freedom of association), Decisions adopted unanimously by the International Labour Conference in July 1947 **[Document No. 148]**.
185. ILC, 30th Session, 1947, Record of Proceedings, Report of the Committee on Freedom of Association, pp. 299–308 **[Document No. 149]**.
186. ILC, 30th Session, 1947, Record of Proceedings, Record vote on Resolution to place on the agenda of the next session of the Conference: (1) the questions of freedom of association and of the protection of the right to organise, with a view to the adoption of one or several Conventions at that session, and (2) the questions of the application of the principles of the right to organise and to bargain collectively, of collective agreements, of conciliation and arbitration and of cooperation between the public authorities and employers' and workers' organisations, for first discussion, p. 319 **[Document No. 150]**.
187. ILC, 30th Session, 1947, Record of Proceedings, Report of the Committee on Freedom of Association, pp. 322–329 **[Document No. 151]**.
188. ILC, 30th Session, 1947, Record of Proceedings, Appendix X, Freedom of Association and Industrial Relations, pp. 561–578 **[Document No. 152]**.
189. ILC, 30th Session, 1947, Resolution concerning the Agenda of the 1948 session of the International Labour Conference **[Document No. 153]**.
190. Economic and Social Council, 5th Session, 1947, Resolution 84 (V) on Trade union rights (freedom of association) **[Document No. 154]**.

- 191. United Nations General Assembly Resolution 128 (II) on Trade union rights (Freedom of association), 1947 **[Document No. 155]**.
- 192. Minutes of the 103rd Session of the Governing Body, December 1947, Fourth Supplementary Note, Freedom of Association (Trade Union Rights), pp. 123–125 **[Document No. 156]**.

## 2. Conference proceedings

- 193. ILC, 31st Session, 1948, Questionnaire, Freedom of Association and Protection of the Right to Organise **[Document No. 157]**.
- 194. ILC, 31st Session, 1948, Report VII, Freedom of Association and Protection of the Right to Organise **[Document No. 158]**.
- 195. ILC, 31st Session, 1948, Report VII (Supplement), Freedom of Association and Protection of the Right to Organise **[Document No. 159]**.
- 196. ILC, 31st Session, 1948, Report VII (Appendix), Freedom of Association and Protection of the Right to Organise **[Document No. 160]**.
- 197. ILC, 31st Session, 1948, Record of Proceedings, First report of the Committee on Freedom of Association and Industrial Relations, pp. 229–235 **[Document No. 161]**.
- 198. ILC, 31st Session, 1948, Record of Proceedings, Second report of the Committee on Freedom of Association and Industrial Relations, p. 259 **[Document No. 162]**.
- 199. ILC, 31st Session, 1948, Record of Proceedings, Final record vote on the Convention concerning Freedom of Association and Protection of the Right to Organise, pp. 268–269 **[Document No. 163]**.
- 200. ILC, 31st Session, 1948, Record of Proceedings, Appendix X, Freedom of Association and Protection of the Right to Organise, pp. 473–488 **[Document No. 164]**.

## C. Comments of the ILO supervisory bodies

- 201. *This section contains a selection of documents reflecting the views taken by the ILO supervisory organs in relation to Convention No. 87 and the right to strike. It includes observations by the CEACR regarding the application of Convention No. 87 as well as comments contained in General Surveys, discussions in the CAS concerning individual cases, reports of Commissions of Inquiry established under article 26, reports of tripartite committees set up under article 24, and decisions of the CFA.*

### 1. Committee of Experts on the Application of Conventions and Recommendations

- 202. *This section contains a selection of comments of the CEACR addressing different aspects of the right to strike. Beyond the main position that the right to strike derives from Convention No. 87, the CEACR has expressed views on specific conditions for its legitimate exercise. It has often stated that the right to strike is not an absolute and unlimited right and that restrictions are permitted in relation (i) to certain categories of public servants “exercising authority in the name of the State”; (ii) essential services in the strict sense of the term, namely those “the interruption of which would endanger the life, personal safety or health of the whole of part of the population”; and (iii) situations of acute national or local crisis, although only for a limited period and solely to the extent necessary to meet the requirements of the situation. In these cases, compensatory guarantees should be provided for the workers who are thus*

*deprived of the right to strike. The CEACR has also expressed views on a negotiated minimum service in situations where a substantial restriction or total prohibition of strike action would not appear to be justified.*

**(a) Observations addressed to Member States regarding the application of Convention No. 87**

**(i) On right to strike as a fundamental workers' right**

- 203.** ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 147-149 (German Democratic Republic) **[Document No. 165]**.
- 204.** ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 206-209 (Colombia) **[Document No. 166]**.
- 205.** ILC, 83rd Session, 1996, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 146-147 (Chad) **[Document No. 167]**.
- 206.** ILC, 99th Session, 2010, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 56-58 (Australia) **[Document No. 168]**.
- 207.** ILC, 100th Session, 2011, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 186-188 (United Kingdom) **[Document No. 169]**.
- 208.** ILC, 102nd Session, 2013, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 156 (Russian Federation) **[Document No. 170]**.

**(ii) On strike as legitimate means to defend workers' occupational and economic interests**

- 209.** ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 104 (Egypt) **[Document No. 171]**.
- 210.** ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 129-133 (Colombia) **[Document No. 172]**.
- 211.** ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 136-137 (Denmark) **[Document No. 173]**.
- 212.** ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 142-145 (Ethiopia) **[Document No. 174]**.
- 213.** ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 219-222 (Kuwait) **[Document No. 175]**.
- 214.** ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 238-240 (Syrian Arab Republic) **[Document No. 176]**.
- 215.** ILC, 83rd Session, 1996, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 151 (Jamaica) **[Document No. 177]**.
- 216.** ILC, 109th Session, 2021, Report III/Addendum (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 91-99 (Belarus) **[Document No. 178]**.



(iii) On limitations to right to strike

217. ILC, 59th Session, 1974, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 141 (Guatemala) **[Document No. 179]**.
218. ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 99 (United Republic of Cameroon) **[Document No. 180]**.
219. ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 103-104 (Dominican Republic) **[Document No. 181]**.
220. ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 110 (Jamaica) **[Document No. 182]**.
221. ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 111-112 (Liberia) **[Document No. 183]**.
222. ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 119-121 (Philippines) **[Document No. 184]**.
223. ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 127-128 (Cameroon) **[Document No. 185]**.
224. ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 152-155 (Guatemala) **[Document No. 186]**.
225. ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 179-182 (Philippines) **[Document No. 187]**.
226. ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 182-184 (Poland) **[Document No. 188]**.
227. ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 198-200 (Uruguay) **[Document No. 189]**.
228. ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 225-226 (Norway) **[Document No. 190]**.
229. ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 226-230 (Pakistan) **[Document No. 191]**.
230. ILC, 83rd Session, 1996, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 162 (Swaziland) **[Document No. 192]**.
231. ILC, 83rd Session, 1996, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 163-164 (Syrian Arab Republic) **[Document No. 193]**.
232. ILC, 109th Session, 2021, Report III/Addendum (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 130-132 (Chile) **[Document No. 194]**.
233. ILC, 109th Session, 2021, Report III/Addendum (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 181-185 (Fiji) **[Document No. 195]**.
234. ILC, 110th Session, 2022, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 97-98 (Albania) **[Document No. 196]**.

235. ILC, 111th Session, 2023, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 307–309 ([United Kingdom of Great Britain and Northern Ireland](#)) [**Document No.197**].

(iv) On voting thresholds

236. ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 170-172 (Nicaragua) [**Document No. 198**].

237. ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 218-219 ([Honduras](#)) [**Document No. 199**].

238. ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 223-225 ([Nicaragua](#)) [**Document No. 200**].

239. ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 240-241 ([Trinidad and Tobago](#)) [**Document No. 201**].

240. ILC, 109th Session, 2021, Report III/Addendum (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 70–72 ([Armenia](#)) [**Document No. 202**].

241. ILC, 111th Session, 2023, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 266 ([Seychelles](#)) [**Document No. 203**].

(v) On suspension of strikes

242. ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 100-101 (Chad) [**Document No. 204**].

243. ILC, 111th Session, 2023, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 290–294 ([Türkiye](#)) [**Document No. 205**].

(vi) On right to strike in the public service

244. ILC, 59th Session, 1974, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 136 (Costa Rica) [**Document No. 206**].

245. ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 138-140 (Ecuador) [**Document No. 207**].

246. ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 140-142 (Egypt) [**Document No. 208**].

247. ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 158-160 (Japan) [**Document No. 209**].

248. ILC, 83rd Session, 1996, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 160-161 ([Rwanda](#)) [**Document No. 210**].

249. ILC, 109th Session, 2021, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 73–74 ([Benin](#)) [**Document No. 211**].

250. ILC, 110th Session, 2022, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 195–200 ([Japan](#)) [**Document No. 212**].

(vii) On compulsory arbitration

251. ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 104-106 (Gabon) **[Document No. 213]**.
252. ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 113 (Mauritania) **[Document No. 214]**.
253. ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 118 (Paraguay) **[Document No. 215]**.
254. ILC, 71st Session, 1985, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 155-156 (Haiti) **[Document No. 216]**.
255. ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 204 (Antigua and Barbuda) **[Document No. 217]**.
256. ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 217-218 (Guyana) **[Document No. 218]**.
257. ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 225 (Nigeria) **[Document No. 219]**.
258. ILC, 110th Session, 2022, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 240–241 (Malta) **[Document No. 220]**.
259. ILC, 111th Session, 2023, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 179–181 (Madagascar) **[Document No. 221]**.

(viii) On sanctions for strike action

260. ILC, 67th Session, 1981, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 109 (Ireland) **[Document No. 222]**.
261. ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 242-249 (United Kingdom) **[Document No. 223]**.
262. ILC, 83rd Session, 1996, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 149-150 (Guatemala) **[Document No. 224]**.
263. ILC, 111th Session, 2023, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 104–105 (Bahamas) **[Document No. 225]**.
264. ILC, 111th Session, 2023, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 128–133 (Ecuador) **[Document No. 226]**.

(ix) On minimum service

265. ILC, 79th Session, 1992, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 212-213 (Ecuador) **[Document No. 227]**.
266. ILC, 109th Session, 2020, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 85 (Burkina Faso) **[Document No. 228]**.
267. ILC, 110th Session, 2022, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 188–190 (Hungary) **[Document No. 229]**.

268. ILC, 111th Session, 2023, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, p. 148 (Guinea) [Document No. 230].

#### (b) General Surveys

269. ILC, 40th Session, 1957, Report III (Part IV), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 161–173 [Document No. 231].

270. ILC, 43rd Session, 1959, Report III (Part IV), Report of the Committee of Experts on the Application of Conventions and Recommendations, pp. 101–129 [Document No. 232].

271. ILC, 58th Session, 1973, Report III (Part 4B), Freedom of Association and Collective Bargaining, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, pp. 43–47 [Document No. 233].

272. ILC, 69th Session, 1983, Report III (Part 4B), Freedom of Association and Collective Bargaining, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, pp. 58–70 [Document No. 234].

273. ILC, 81st Session, 1994, Report III (Part 4B), Freedom of Association and Collective Bargaining, General Survey by the Committee of Experts on the Application of Conventions and Recommendations, pp. 61–78 [Document No. 235].

274. ILC, 101st Session, 2012, Report III (Part 1B), Giving globalization a human face, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, pp. 46–65 [Document No. 236].

#### (c) General report

275. ILC, 102nd Session, 2013, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, General report, para. 31 [Document No. 237].

276. ILC, 107th Session, 2018, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, General Report, para. 17 [Document No. 238].

277. ILC, 108th Session, 2019, Report III (Part A), Report of the Committee of Experts on the Application of Conventions and Recommendations, General Report, paras 28-29 [Document No. 239].

## 2. Committee on the Application of Standards

278. *This section contains a selection, in chronological order, of discussions at the CAS. References to the right to strike prior to 1990 are scarce. From 1990 to 2010 and based on the observations addressed to Member States by the CEACR regarding the application of Convention No. 87, the CAS discussed frequently the conditions of, or limitations to, the exercise of the right to strike at the national level. These discussions revealed the profound disagreement among constituents regarding the interpretation of Convention No. 87 in relation to the scope and modalities of implementation of the right to strike. In 2012, the controversy prevented the two non-governmental groups from agreeing on the list of individual cases to be examined by the CAS, and since 2013, the Committee has discontinued examining cases of application of Convention No. 87 in relation to the right to strike.*

**(a) Discussion of individual cases**

- 279.** ILC, 58th Session, 1973, Report of the Committee on the Application of Standards, pp. 556-557 (Mauritania) **[Document No. 240]**.
- 280.** ILC, 64th Session, 1978, Report of the Committee on the Application of Standards, pp. 29/28-29/29 (Ethiopia) **[Document No. 241]**.
- 281.** ILC, 65th Session, 1979, Report of the Committee on the Application of Standards, pp. 36/35-36/36 (Ireland) **[Document No. 242]**.
- 282.** ILC, 68th Session, 1982, Report of the Committee on the Application of Standards, pp. 31/45-31/46 (Uruguay) **[Document No. 243]**.
- 283.** ILC, 69th Session, 1983, Report of the Committee on the Application of Standards, pp. 31/36-31/38 (Uruguay) **[Document No. 244]**.
- 284.** ILC, 71st Session, 1985, Report of the Committee on the Application of Standards, pp. 30/50-30/52 (United Kingdom) **[Document No. 245]**.
- 285.** ILC, 72nd Session, 1986, Report of the Committee on the Application of Standards, pp. 31/32-31/34 (Syrian Arab Republic) **[Document No. 246]**.
- 286.** ILC, 78th Session, 1991, Report of the Committee on the Application of Standards, pp. 24/37-24/40 (Colombia) **[Document No. 247]**.
- 287.** ILC, 78th Session, 1991, Report of the Committee on the Application of Standards, pp. 24/42-24/44 (Dominican Republic) **[Document No. 248]**.
- 288.** ILC, 78th Session, 1991, Report of the Committee on the Application of Standards, pp. 24/47-24/48 (Guatemala) **[Document No. 249]**.
- 289.** ILC, 78th Session, 1991, Report of the Committee on the Application of Standards, pp. 24/50-24/51 (Nigeria) **[Document No. 250]**.
- 290.** ILC, 78th Session, 1991, Report of the Committee on the Application of Standards, pp. 24/52-24/55 (Panama) **[Document No. 251]**.
- 291.** ILC, 79th Session, 1992, Report of the Committee on the Application of Standards, pp. 27/48-27/52 (Colombia) **[Document No. 252]**.
- 292.** ILC, 79th Session, 1992, Report of the Committee on the Application of Standards, pp. 27/58-27/59 (Honduras) **[Document No. 253]**.
- 293.** ILC, 79th Session, 1992, Report of the Committee on the Application of Standards, pp. 27/59-27/60 (Kuwait) **[Document No. 254]**.
- 294.** ILC, 79th Session, 1992, Report of the Committee on the Application of Standards, pp. 27/62-27/63 (Panama) **[Document No. 255]**.
- 295.** ILC, 85th Session, 1997, Report of the Committee on the Application of Standards, pp. 19/74-19/78 (Bangladesh) **[Document No. 256]**.
- 296.** ILC, 85th Session, 1997, Report of the Committee on the Application of Standards, pp. 19/83-19/87 (Costa Rica) **[Document No. 257]**.

- 297. ILC, 85th Session, 1997, Report of the Committee on the Application of Standards, pp. 19/93-19/97 (Swaziland) **[Document No. 258]**.
- 298. ILC, 87th Session, 1999, Report of the Committee on the Application of Standards, pp. 23/106-23/109 (Canada) **[Document No. 259]**.
- 299. ILC, 90th Session, 2002, Report of the Committee on the Application of Standards, pp. 28 Part 2/30-28 Part 2/33 (Swaziland) **[Document No. 260]**.
- 300. ILC, 95th Session, 2006, Report of the Committee on the Application of Standards, pp. 24 Part 2/14-24 Part 2/17 (Zimbabwe) **[Document No. 261]**.
- 301. ILC, 97th Session, 2008, Report of the Committee on the Application of Standards, pp. 19 Part II/63-19 Part II/67 (Zimbabwe) **[Document No. 262]**.
- 302. ILC, 98th Session, 2009, Report of the Committee on the Application of Standards, pp. 16 Part Two/64-16 Part Two/68 (Swaziland) **[Document No. 263]**.
- 303. ILC, 99th Session, 2010, Report of the Committee on the Application of Standards, pp. 16 Part II/42-16 Part II/48 (Swaziland) **[Document No. 264]**.

**(b) General questions**

- 304. ILC, 69th Session, 1983, Report of the Committee on the Application of Standards, paras 61-62 **[Document No. 265]**.
- 305. ILC, 80th Session, 1993, Report of the Committee on the Application of Standards: Submission, discussion and adoption, pp. 28/7-28/17 **[Document No. 266]**.
- 306. ILC, 99th Session, 2010, Report of the Committee on the Application of Standards, paras 74-78 **[Document No. 267]**.
- 307. ILC, 101st Session, 2012, Report of the Committee on the Application of Standards, paras 82-236 **[Document No. 268]**.
- 308. ILC, 106th Session, 2017, Report of the Committee on the Application of Standards, paras 37, 39, 43 **[Document No. 269]**.
- 309. ILC, 107th Session, 2018, Report of the Committee on the Application of Standards, paras 46, 51 **[Document No. 270]**.
- 310. ILC, 111th Session, 2023, Report of the Committee on the Application of Standards, paras 44, 93, 147-148 **[Document No. 271]**.

**3. Tripartite committees set up to examine representations (article 24)**

- 311. **Case No. 1304** (Costa Rica), Representation made by the Confederation of Costa Rican Workers (CTC), the Authentic Confederation of Democratic Workers (CATD), the Unity Confederation of Workers (CUT), the Costa Rican Confederation of Democratic Workers (CCTD) and the National Confederation of Workers (CNT) alleging the failure by Costa Rica to implement several international labour conventions including Conventions Nos 11, 87, 98 and 135, *Official Bulletin*, vol. LXVIII, 1985, paras 95-102 **[Document No. 272]**.
- 312. **Case No. 1364** (France), Representation against the Government of France made by the General Federation of Labour; Complaint against the Government of France presented by the Trade

Unions International of Textile, Clothing, Leather and Fur Workers, *Official Bulletin*, vol. LXX, 1987, paras 138–142 [**Document No. 273**].

313. [Cases Nos 1810 and 1830](#) (Turkey), Representation made by the Confederation of Turkish Trade Unions (TURK-IS) alleging non-observance by Turkey of Convention No. 87; Complaint against the Government of Turkey presented by the Confederation of Progressive Trade Unions of Turkey (DISK), *Official Bulletin*, vol. LXXIX, 1996, paras 61–63 [**Document No. 274**].
314. [Case No. 1971](#) (Denmark), Representation against the Government of Denmark presented by the Association of Salaried Employees in the Air Transport Sector (ASEATS) and the Association of Cabin Crew at Maersk Air (ACMA) alleging non-observance by Denmark of Conventions Nos 87 and 98, *Official Bulletin*, vol. LXXII, 1999, paras 52–61 [**Document No. 275**].

#### 4. Commissions of Inquiry appointed to examine complaints (article 26)

315. Report of the Commission of Inquiry appointed under article 26 of the Constitution to examine the complaints concerning the observance by Greece of Conventions Nos 87 and 98 made by a number of delegates to the 52nd Session of the International Labour Conference, *Official Bulletin*, vol. LIV, 1971, paras 260–261 [**Document No. 276**].
316. Report of the Commission instituted under article 26 of the Constitution to examine the complaint on the observance by Poland of Conventions Nos 87 and 98 presented by delegates at the 68th Session of the International Labour Conference, *Official Bulletin*, vol. LXVII, 1984, paras 517, 552–557 [**Document No. 277**].
317. Report of the Commission of Inquiry appointed under article 26 of the Constitution to examine the observance by Nicaragua of Conventions Nos 87, 98 and 144, *Official Bulletin*, vol. LXXIV, 1991, paras 500–509 [**Document No. 278**].
318. Trade Union Rights in Belarus, Report of the Commission of Inquiry appointed under article 26 of the Constitution to examine the observance by the Government of the Republic of Belarus of Conventions Nos 87 and 98, *Official Bulletin*, vol. LXXXVII, 2004, paras 622–627 [**Document No. 279**].
319. Truth, reconciliation and justice in Zimbabwe, Report of the Commission of Inquiry appointed under article 26 of the Constitution to examine the observance by the Government of Zimbabwe of Conventions Nos 87 and 98, *Official Bulletin*, vol. XCIII, 2010, paras 572–575 [**Document No. 280**].
320. Towards Freedom and Dignity in Myanmar, Report of the Commission of Inquiry established in accordance with article 26 of the ILO Constitution concerning the non-observance by Myanmar of Conventions Nos 87 and 29, 4 August 2023, paras 585–586 [**Document No. 281**].

#### 5. Committee on Freedom of Association

321. ILO, *Compilation of decisions of the Committee on Freedom of Association*, sixth edition, 2018, pp. 143–182 [**Document No. 282**].

## PART IV. INTERNATIONAL RECOGNITION OF THE RIGHT TO STRIKE

Part IV contains materials concerning freedom of association and the international recognition of the right to strike from non ILO sources, including human rights law instruments at the universal and regional levels (*Section A*); other relevant treaty texts such as free trade and labour cooperation agreements (*Section B*); comments of international supervisory bodies (*Section C*); and case law of international and national courts (*Section D*). Many of the referenced instruments, comments of expert bodies and judicial decisions make express reference to Convention No. 87 or other relevant ILO standards in relation to freedom of association and the right to strike. Most of the judicial decisions may be accessed at the dedicated database [Compendium of Court Decisions](#). Part IV does not include national constitutions and legislative or regulatory texts protecting the right to strike at the national level.

### A. Human rights instruments

322. *This section contains global and regional human rights instruments that make explicit reference to freedom of association or the right to strike. These texts, together with relevant ILO Conventions and Recommendations, reflect the state of international law on the question of freedom of association and the right to strike and may be deemed to inform on the subsequent practice of ILO Member States in this area.*
323. [Universal Declaration of Human Rights](#), 1948, article 20 **[Document No. 283]**.
324. [International Covenant on Economic, Social and Cultural Rights](#), 1966, article 8 **[Document No. 284]**.
325. [International Covenant on Civil and Political Rights](#), 1966, article 22 **[Document No. 285]**.
326. [Convention for the Protection of Human Rights and Fundamental Freedoms](#), 1950, article 11 **[Document No. 286]**.
327. [European Social Charter \(Revised\)](#), 1996, article 6 **[Document No. 287]**.
328. [Charter of Fundamental Rights of the European Union](#), 2000, article 28 **[Document No. 288]**.
329. [American Convention on Human Rights](#), 1969, article 16 **[Document No. 289]**.
330. [Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights](#), 1988, article 8 **[Document No. 290]**.
331. [African Charter on Human and Peoples' Rights](#), 1981, article 15 **[Document No. 291]**.
332. [Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights](#), 2010, para. 59 **[Document No. 292]**.
333. [Arab Charter on Human Rights](#), 2004, article 35 **[Document No. 293]**.
334. [Charter of Fundamental Social Rights in the Southern African Development Community](#), 2003, article 4 **[Document No. 294]**.



## B. Free trade and labour cooperation agreements

335. *Free trade agreements and labour cooperation agreements increasingly contain clauses (often entire chapters or annexes) incorporating by reference ILO standards, fundamental principles and rights at work or internationally recognized labour principles and rights, including freedom of association. Among the numerous bilateral or multilateral instruments drawing linkages between trade facilitation and respect of fundamental workers' rights, this section highlights those that contain an explicit reference to the right to strike.*
336. [Canada–Costa Rica Agreement on Labour Cooperation](#), 2001, article 1 and annex 1 [**Document No. 295**].
337. [Canada–Colombia Agreement on Labour Cooperation](#), 2008, article 1 [**Document No. 296**].
338. [Canada–Peru Agreement on Labour Cooperation](#), 2008, article 1 [**Document No. 297**].
339. [Canada–Jordan Agreement on Labour Cooperation](#), 2009, article 1 [**Document No. 298**].
340. [Southern African Development Community Protocol on Employment and Labour](#), 2014, article 6 [**Document No. 299**].
341. [Agreement between the United States of America, the United Mexican States, and Canada](#), 2018, article 23.3 [**Document No. 300**].

## C. UN expert bodies and other supervisory organs

342. *This section contains a selection of observations and comments by international supervisory bodies, and in particular the Human Rights Committee and the Committee on Economic Social and Cultural Rights on the right to strike under international law and, more specifically, the two 1966 Covenants and Convention No. 87. This section also contains other pronouncements of UN supervisory bodies and experts on the status of the right to strike under international law.*

### 1. Human Rights Committee

343. HRC, [CCPR/C/79/Add.104](#) (1999), Consideration of reports submitted by States parties under article 40 of the Covenant, para. 25 [**Document No. 301**].
344. HRC, [CCPR/CO/80/LTU](#) (2004), Consideration of reports submitted by States parties under article 40 of the Covenant, para. 18 [**Document No. 302**].
345. HRC, [CCPR/C/EST/CO/3](#) (2010), Consideration of reports submitted by States parties under article 40 of the Covenant, para. 15 [**Document No. 303**].
346. HRC, [CCPR/C/DOM/CO/6](#) (2017), Concluding observations on the sixth periodic report of the Dominican Republic, paras 31–32 [**Document No. 304**].
347. HRC, [CCPR/C/EST/CO/4](#) (2019), Concluding observations on the fourth periodic report of Estonia, paras 31–32 [**Document No. 305**].

### 2. Committee on Economic, Social and Cultural Rights

348. CESCR, [E/C.12/1/Add.68](#) (2001), Concluding observations, Germany, paras 22, 40 [**Document No. 306**].

- 349. CESCR, [E/C.12/1/Add.81](#) (2002), Concluding observations, Slovakia, para. 27 **[Document No. 307]**.
- 350. CESCR, [E/C.12/GC/23](#) (2016), General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), para. 1 **[Document No. 308]**.
- 351. CESCR, [E/C.12/DEU/CO/6](#) (2018), Concluding observations on the sixth periodic report of Germany, paras 44–45 **[Document No. 309]**.
- 352. CESCR, [E/C.12/MEX/CO/5-6](#) (2018), Concluding observations on the combined fifth and sixth periodic reports of Mexico, paras 35–36 **[Document No. 310]**.
- 353. CESCR, [E/C.12/ESP/CO/6](#) (2018), Concluding observations on the sixth periodic report of Spain, paras 28–29 **[Document No. 311]**.
- 354. CESCR, [E/C.12/EST/CO/3](#) (2019), Concluding observations on the third periodic report of Estonia, paras 26–27 **[Document No. 312]**.
- 355. CESCR, [E/C.12/UZB/CO/3](#) (2022), Concluding observations on the third periodic report of Uzbekistan, paras 36–37 **[Document No. 313]**.
- 356. Joint statement by the Committee on Economic, Social, and Cultural Rights and the Human Rights Committee, [E/C.12/66/5-CCPR/C/127/4](#) (2019) **[Document No. 314]**.

### 3. UN Special Rapporteur on the rights to freedom of peaceful assembly and of association

- 357. Report on Rights to freedom of peaceful assembly and of association, [A/71/385](#) (2016), paras 54, 56 and 99(i) **[Document No. 315]**.

### 4. Other

- 358. European Committee of Social Rights, [Swedish Trade Union Confederation \(LO\) and Swedish Confederation of Professional Employees \(TCO\) v. Sweden, Complaint No. 85/2012](#), Decision on the admissibility and merits of complaint (2012), para. 110 **[Document No. 316]**.

## D. Case law

359. *This section contains case law on freedom of association and the right to strike of the European Court of Human Rights, the Court of Justice of the European Communities and the Inter-American Court of Human Rights. The jurisprudence, often relying on international labour standards and the work of ILO supervisory bodies, reflects the state of the law on the right to strike under regional instruments. This section also includes eighteen judgments of national courts on the right to strike, examining States' obligations under international instruments such as Convention No. 87 and analysing the work of ILO supervisory bodies in this respect.*

### 1. International courts

- 360. ECtHR, [Demir and Baykara v. Turkey](#) (2008), paras 140–170 **[Document No. 317]**.
- 361. ECtHR, [Enerji Yapi-Yol Sen v. Turkey](#) (2009), paras 17–24 **[Document No. 318]**.

362. ECtHR, *National Union of Rail, Maritime and Transport Workers v. the United Kingdom* (2014), paras 26–33, 75–78 and 83–106 [**Document No. 319**].
363. ECtHR, *Ognevenko v. Russia* (2018), paras 20–23 and 54–59 [**Document No. 320**].
364. CJEC, *Case C-438/05, International Transport Workers' Federation, Finnish Seamen's Union v. Viking Line ABP* (2007), paras 43–44 [**Document No. 321**].
365. CJEC, *Case C-341/05, Laval Un Partneri Ltd v. Svenska Byggnadsarbetareförbundet* (2007), paras 90–91 [**Document No. 322**].
366. IACtHR, *Advisory Opinion OC-27/21*, Right to freedom of association, right to collective bargaining and right to strike, and their relation to other rights, with a gender perspective (2021), paras 95–105 [**Document No. 323**].
367. IACtHR, *Case of the Former Employees of the Judiciary v. Guatemala* (2021), paras 106–127 [**Document No. 324**].

## 2. National courts

368. Constitutional Court of the Russian Federation, On the case concerning the verification of constitutionality of article 12 of the Law of the USSR of 9 October 1989 “On the Order of Settlement of Collective Labour Disputes (Conflicts)” (1995) [**Document No. 325**].
369. Constitutional Court of South Africa, *South African National Defence Union v. Minister of Defence*, Case No. CCT 27/98 (1999) [**Document No. 326**].
370. Constitutional Court of Colombia, Fourth Appellate Supervisory Chamber, *Sindicato de las Empresas Varias de Medellín v. Ministry of Labour and Social Security, the Ministry of Foreign Relations, the Municipio of Medellin and Empresas Varias de Medellín E.S.P.*, T-568/99 (1999) [**Document No. 327**].
371. Constitutional Court of South Africa, *NUMSA v. Bader Bop*, Case No. CCT 14/02 (2002) [**Document No. 328**].
372. Constitutional Court of Peru, *Juan José Gorriti and more than 5,000 citizens v. Congress of the Republic of Colombia*, Case No. 008-2005-PI/TC (2005) [**Document No. 329**].
373. Bobo – Dioulasso Appeal Court, Social Chamber, *Messrs Karama and Bakouan v. Société Industrielle du Faso (SIFA)*, No. 035 (2006) [**Document No. 330**].
374. Arbitration Tribunal, *Fiji Electricity & Allied Workers Union v. Fiji Electricity Authority*, FJAT 62; FJAT Award 24 (2006) [**Document No. 331**].
375. Constitutional Court of Colombia, Decision No. C-858/08 (2008) [**Document No. 332**].
376. High Court of Lobatse, *Botswana Public Employees' Union and others v. Minister of Labour and Home Affairs and others*, MAHLB-000674-11 (2012) [**Document No. 333**].
377. Higher Labour Court, Zavascki, *Roberto Antonio v. Companhia Minuano de Alimentos, Brasilia* (2012) [**Document No. 334**].
378. Supreme Court of Justice of Colombia, Employment Appeals Chamber (Sala de Casación Laboral), *Carbones de la Jagua S.A. v. National Union of Mining and Power Industry Workers (SINTRAMIENERGETICA)*, Case No. 57731 (2013) [**Document No. 335**].

379. Supreme Court of Justice of Colombia, Employment Appeals Chamber (Sala de Casación Laboral), *CBI Colombiana S.A v. Petroleum Industry Workers' Trade Union (USO)*, Case No. 59420 (2013) **[Document No. 336]**.
380. Constitutional Council of Senegal, Case No. 2/C/2013 (2013) **[Document No. 337]**.
381. Industrial Court of Kenya, *Universities Academic Staff Union v. Maseno University*, Case No. 814'N' (2013) **[Document No. 338]**.
382. Supreme Court of Justice of Colombia, *R y R. asociados S.A. v. National trade union of workers in the cork, plastics, polyethylene, polyurethane, synthetics, components and derivatives processing industry* (2014) **[Document No. 339]**.
383. Industrial Court of Nigeria, *Aero Contractors Co. of Nigeria Limited v. the National Association of Aircrafts Pilots and Engineers, the Air Transport Senior Staff Association of Nigeria and the National Union of Air Transport Employees*, Case No. NICN/LA/120/2013 (2014) **[Document No. 340]**.
384. 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*, Case No. J99/14 (2014) **[Document No. 341]**.
385. Supreme Court of Canada, *Saskatchewan Federation of Labour v. Saskatchewan*, Case No. 2015 CSC 4 (2015) **[Document No. 342]**.



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