

## Preserving and Enhancing the International Right to Strike



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**Abstract:** This essay examines the current scope of international protection of the right to strike. It analyses the need to preserve aspects of that protection, highlighted by current proceedings before the International Court of Justice. It also argues that international norms must also be enhanced to address concerns arising in contemporary global labour markets.

**Keywords:** Strike – Trade union activity – International Court of Justice – Justifications – Scope

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**SUMMARY:** 1. International legal protection of the right to strike. – 2. Preserving protection. – 3. Enhancing protection. – 4. Conclusion.

## 1. International legal protection of the right to strike

A strike can be simply defined as collective withdrawal of labour to promote and defend shared interests (Novitz 2003, p.6; Vogt 2020, p. vii). However, the sources and scope of international legal protection of the right to strike are currently the subject of active dispute.

There is an important defensive exercise underway to maintain the protections that have been previously established under international instruments and institutions. There is a campaign to preserve basic norms and their application at the International Labour Organization (ILO), discussed here with respect to recent proceedings heard at the International Court of Justice (ICJ). This endeavour is outlined here. However, this is not the full story.

It has also become apparent that labour markets are evolving locally and globally in ways that enable those who hire labour to evade domestic labour laws and international labour standards. These changes are prompting attention to who is entitled to engage in strikes, the permissible reasons for that action, and when such action can and should be restricted. Indeed, there is a compelling argument for enhancing the scope of international legal protections, if they are to remain relevant and credible. In other words, it is not only defence of the international right to strike that is a pressing concern, but also its improvement.

This first part of this essay sets out the current international legal mechanisms for protection of the right to strike, and their connection to the human right to freedom of association. The second part examines how that protection at the ILO has been threatened, documenting efforts made to secure its preservation and the case being put forward to that effect. The third part argues for further enhancement of the international right to strike to ensure ongoing relevance to the actual circumstances of labour across the world today.

### *The international right to strike at the ILO*

Protection of the international right at the ILO has been derived from the express provision made for freedom of association in the Organization's constitutional documents, such as Part XIII of the Treaty of Versailles 1919<sup>1</sup> and

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<sup>1</sup> Article 427, Part XIII of the Treaty of Versailles 1919, *Official Bulletin*, April 1919 to August 1920 (Geneva, ILO, 1923), p. 332.

Article 1(b) of the [Declaration of Philadelphia 1944](#) (now appended to the ILO Constitution). That institutional commitment to freedom of association was further manifested in two “fundamental” ILO Conventions: No 87 (Freedom of Association and Protection of the Right to Organize Convention, 1948) and No. 98 (Right to Organize and Collective Bargaining Convention, 1949), alongside a variety of other [ILO Conventions and Recommendations](#). In particular, the recognition of the importance of the “activities” of workers and their organisations under Convention No. 87 has been seen as a key source of the international right to strike.

Accordingly, both tripartite and expert-led ILO supervisory bodies have recognized that a right to strike follows from the guarantees of freedom of association found in ILO constitutional documents and ILO Convention No 87 (discussed at length in Vogt et al. 2020, and in Vogt et al. 2026). The tripartite ILO Governing Body Committee on Freedom of Association (CFA), which hears complaints relating to violation of the ILO constitutional guarantee of freedom of association, regards the right to strike as «one of the essential means through which workers and their organizations may promote and defend their economic and social interests»<sup>2</sup> and «an intrinsic corollary to the right to organize protected by Convention No. 87»<sup>3</sup>. Operating in parallel is the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR), which is responsible for scrutiny of State compliance with ratified ILO conventions, such as Convention No. 87. The CEACR likewise links the right to strike to «the right of workers’ and employers’ organizations to organize their activities and to formulate their programmes for the purposes of furthering and defending the interests of their members (Articles 3, 8 and 10 of Convention No. 87)»<sup>4</sup>.

This interpretation has also been adopted by ILO Commissions investigating freedom of association breaches in particular countries, even though a right to strike is not specifically mentioned in the ILO Constitution or ILO Convention No. 87<sup>5</sup>. It is the determination to do so that has spurred re-

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<sup>2</sup> ILO, *Compilation of Decisions on Freedom of Association of the ILO Committee on Freedom of Association (CFA)* (2018), para. 753.

<sup>3</sup> *Ibid.*, para. 754.

<sup>4</sup> ILO Committee of Experts on Conventions and Recommendations (CEACR), *General Survey on Freedom of Association* (1994), p. 66. Note also the *General Survey on the Fundamental Conventions Concerning Rights at Work in the Light of the ILO Declaration on Social Justice for a Fair Globalization 2008* (2012), p. 46 ff.

<sup>5</sup> For e.g. Report of the Commission Of Inquiry instituted to examine the complaint on the observance by Poland of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No 98) (1984); Report of the Fact-Finding Conciliation Commission on Freedom of Association concerning the Republic of South Africa (Geneva, ILO, 1992); and Report of the

sistance from the employers' group at the ILO, outlined further in Part 2 of this essay.

That said, the right to strike, as interpreted and applied by ILO supervisory bodies is not unqualified. Various restrictions can and have been imposed by States (Waas 2025). These include restrictions regarding who may call and participate in a strike and how they may do so, concerning the suitable aims of a strike, and responding to the consequences of a strike<sup>6</sup>.

Altogether, ILO supervisory findings, drawing on shared tripartite concerns and expert evaluations, have in the past had a detectable influence on national laws and their application (discussed for e.g. in Vogt et al. 2020, pp. 136-139, and 170-173). These findings have also influenced international human rights instruments and institutions.

### ***International human rights protections***

In the Universal Declaration of Human Rights (UDHR) 1948, there are two separate provisions which are relevant for our purposes. Article 20 recognises «the right to freedom of peaceful assembly and association», while Article 23(4) states the right of a worker «to form and join trade unions for the protection of his interests».

Article 22 of the International Covenant on Civil and Political Rights (ICCPR) 1966 fuses these two entitlements, establishing that «the right to freedom of association» is to be understood as «including the right to form and join trade unions for the protection of his interests». More specifically, Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 requires that states who are parties to the Covenant «undertake to ensure ... [t]he right to strike», if it is exercised in conformity with national laws.

Both the ICCPR and ICESCR state that nothing in Article 22 of ICCPR or Article 8 of the ICESCR authorises states party to ILO Convention No. 87 «to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention». In this way, the ILO remains the guide for other United Nations (UN) human

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Commission of Inquiry established to examine the complaint concerning the observance by the Republic of Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No 98) (2004); followed by the 2023 International Labour Conference Resolution on Measures recommended by the Governing Body under article 33 of the Constitution to secure compliance by the Government of Belarus with the recommendations of the Commission of Inquiry in respect of Conventions Nos 87 and 98.

<sup>6</sup> ILO Compilation of Decisions of the CFA (2018), paras 791, 779 and 830. See also ILO CEACR General Survey (1996), pp. 68-72.

rights institutions when applying freedom of association and the right to strike to the situation of workers; while the findings of ILO supervisory bodies can offer clarity as to how the guarantees should be interpreted.

At a regional level, protection of freedom of association and the right to strike are also evident in regional human rights instruments and institutions. Explaining the content of the Article 15 of the African Charter on Human and Peoples' Rights on the right to work under equitable conditions<sup>7</sup>, the 2010 Guidelines on the Implementation of Economic Social and Cultural Rights in the African Charter list the "minimum core obligation" to ensure «the right to freedom of association, including the rights to collective bargaining, to strike and other related organisational and trade union rights»<sup>8</sup>. In a similar fashion, the Arab Charter of Human Rights, Article 35 states that «[e]very individual has the right to freely form trade unions or to join trade unions and to freely pursue trade union activity for the protection of his interests' and that '[e]very State party to the present Charter guarantees the right to strike within limits laid down by laws in force»<sup>9</sup>.

Like the ICCPR, Article 11(1) of the European Convention on Human Rights 1950 (ECHR)<sup>10</sup> expressly links freedom of association to «the right to form and to join trade unions». On this basis, the European Court of Human Rights has found that the right to strike can be protected as an aspect of freedom of association in Article 11(1) ECHR, with reference to the findings of ILO supervisory bodies.<sup>11</sup> Article 6(4) of the European Social Charter goes further by expressly protecting: «The right of workers and employers, in the event of a conflict of interest, to take collective action, including the right to strike ...» This approach established by the Council of Europe is reflected in Article 28 of the Charter of Fundamental Rights of the European Union, which also recognises the right of workers «to take collective action to defend their interests, including strike action».

Article 45(c) of the Charter of the Organization of American States 1948 declares that: «Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike ...» The American Convention on Human Rights (ACHR) establishes in

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<sup>7</sup> African Charter on Human and Peoples' Rights, 1981, Article 15 («Every individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work»)

<sup>8</sup> Paragraph 59(b) of the Guidelines on the Implementation of Economic Social and Cultural Rights in the African Charter.

<sup>9</sup> Arab Charter on Human Rights, 2004, Article 35(1) and (3).

<sup>10</sup> See the [European Convention on Human Rights as amended](#)

<sup>11</sup> See for e.g. App n. 44873/09 *Ognevenko v Russia*, judgment of 20.11.2018.

Article 16 the right to associate for labour as well as other purposes, while Article 26 offers a wider safeguard for social rights<sup>12</sup>. The right to strike is further assured explicitly in Article 8(1)(b) of the Additional “Salvador” Protocol to the ACHR in the Area of Economic Social and Cultural Rights 1988<sup>13</sup>. Indeed, the right to strike has in recent years been energetically promoted and protected by the Inter-American Court of Human Rights, apparently undeterred by concerns expressed by the ILO employers’ group, offering even more extensive protections for those at work than ILO supervisory bodies<sup>14</sup>.

## 2. Preserving protection

ILO supervisory jurisprudence establishing that there is a right to strike has spanned several decades<sup>15</sup>, but became the subject of increasing challenge from the employers’ group towards the end of the Cold War (La Hovary 2013, Novitz and La Hovary 2013). In 2012, as tensions rose, the employers’ group assisted by the International Organization of Employers (IOE) staged a walk-out from the annual International Labour Conference Committee on the Application of Standards. The IOE claimed that CEACR reports relating to breaches of the right to strike, which were expected to feed into that tripartite Committee’s deliberative processes, were illegitimate and that the CEACR’s previous findings had been unduly influential in national and international fora (Bellace 2014)<sup>16</sup>.

It is this event which generated a series of responses designed to maintain protection of the right to strike at the ILO. For example, the International Trade Union Confederation (ITUC) issued a 122 page [legal opinion](#) on *The Right to Strike and the ILO*, advocating placing the matter placed before the ICJ for an advisory opinion, a course of action that the employers (through the IOE) rejected, subsequently posting their [thinner briefing](#) (of 13 pages) (Vogt et al. 2020, p. 72).

<sup>12</sup> See [American Convention on Human Rights](#).

<sup>13</sup> See the [Additional Protocol to the ACHR](#).

<sup>14</sup> See I/A Court HR, *Case of Former Employees of the Judiciary v. Guatemala* Preliminary Objections, Merits and Reparations, judgment of 17.11.2021. Series C No 445, para 109; *Rights to Freedom to Organize, Collective Bargaining, and Strike, and their Relation to other Rights, with a Gender Perspective* Advisory Opinion OC-27/21 of 05.07.2021. Series A n. 27, para. 95.

<sup>15</sup> See the early Case n. 28 (United Kingdom of Great Britain and Northern Ireland), Complaint 01.07.1951, Definitive Report - Report n. 2, 1952, para. 68; and adoption of the CFA position in CEACR *General Survey on Freedom of Association and Collective Bargaining* (1973), pp. 44–45, esp. para. 107-109.

<sup>16</sup> Report of the ILO Conference Committee on the Application of Standards, International Labour Conference Record of Proceedings (2012), Part I/13 and Part I/19.

The dispute at the ILO did appear to be settled in a tripartite meeting in 2015, when the employers' and workers' groups agreed in a joint statement that «the right to take industrial action by workers and employers in support of their legitimate industrial interests is recognised by the constituents of the International Labour Organisation»<sup>17</sup>. At the same time, the ILO governments' group recognized «that without protecting a right to strike, Freedom of Association, in particular the right to organize activities for the purpose of promoting and protecting workers' interests, cannot be fully realized»<sup>18</sup>.

Nevertheless, even after 2015, the IOE continued to dispute the entitlement of ILO supervisory bodies to assert that the right to strike merited protection under ILO Convention No. 87. The IOE repeatedly raised this issue in national and European legal proceedings to detract from the influence of earlier established ILO principles (documented in Novitz 2020). Moreover, the employers' group continued to block reference of cases to the ILO International Labour Conference, which had been identified by the CEACR as involving breach of the right to strike, denying that such cases were covered by Convention No. 87 (Vogt et al. 2020, pp. 183-190). Strikes are, in their view, only to be regulated at the national level (Hornung-Draus 2020).

Finally, in November 2023, the ILO Governing Body adopted a resolution seeking an urgent advisory opinion from the ICJ<sup>19</sup>. The majority reflected the strong support of the ILO workers' group (and the ITUC) as well as many government representatives, but they were opposed by a minority of governments and the employers' group. The question agreed upon in the resolution for referral to the ICJ was as follows: «Is the right to strike of workers and their organisations protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)?» This is a narrow question, which only requires consideration of whether the right to strike is protected under Convention No. 87, i.e. its status as an entitlement of workers under that instrument, rather than more generally at the ILO or under international law, although its answer may have wider implications.

It is at this point that further defensive mobilisation emerged to preserve an international right to strike, manifesting in the written and oral statements submitted in proceedings before the ICJ. At the time of writing (in February 2026), the ICJ proceedings have formally concluded, with both written statements from interested parties (and replies) being made and the oral

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<sup>17</sup> ILO, Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, [Outcome of the Meeting, 23–25.2.2015](#), Annex I.

<sup>18</sup> *Ibid.*, Annex II, para. 4.

<sup>19</sup> ILO, Minutes of the 347th Session of the Governing Body of the International Labour Office, GB347/PV(Rev.) (2023) p. 62.

statements heard<sup>20</sup>. The ICJ is now deliberating on what will be its findings. It is impossible to predict accurately when the World Court’s advisory opinion will be delivered, but this could be as early as April or May 2026.

It emerged from the submissions made by the ITUC<sup>21</sup> that there is a convincing case for defence of the right under the Vienna Convention on the Law of Treaties (VCLT), which is outlined here in brief.

Article 31(1) VCLT requires that Convention No. 87 be interpreted «*in good faith* in accordance with the *ordinary meaning* to be given to the terms [...] in their *context* and in the light of its *object and purpose*» (my emphasis). Utilising such a purposive approach to interpretation of Convention No. 87, it becomes apparent that a right to strike at the ILO is certainly defensible. That interpretation can be bolstered by other factors such as *subsequent agreement, state practice and relevant rules of international law* that shall be taken into account under Article 31(3) VCLT. It is also consistent with the *travaux préparatoires*, which would become relevant in the event of any ambiguity under Article 32 VCLT.

### **Ordinary meaning**

Article 3(1) of Convention No. 87 provides that «workers’ and employers’ organisations shall have the right [...] to organise their administration and activities and to formulate their programmes». Article 3(2) states that: «The public authorities shall refrain from any interference which would restrict this right» or “impede” its “lawful exercise”. Article 10 further explains that the term “organisation” [for workers] means «any organisation of workers [...] for furthering and defending the interests of workers».

It is, on the literal “ordinary” meaning of these terms, hard to see why the right to strike should be excluded from the “activities” of workers’ organisations, as the employers’ group argues. Or why the right to strike should not be part of the “programme” of activities aimed at furthering and defending workers’ interests. Indeed, there is a considerable danger globally if “freedom of association” and the “right to organise” are defined in such narrow terms that workers’ activities cannot include strikes.

After all, without the potential for access to the penalty of collective action – such as the right to strike – there would be little leverage to bring employers to the bargaining table. As the saying goes, without the right to strike, collective bargaining could be reduced to collective begging (Tucker 2014, p.

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<sup>20</sup> The “[Latest Developments](#)” regarding the case have been made available on the ICJ website.

<sup>21</sup> [Written statement of the ITUC](#), 15.07.2024. Oral Statement (ITUC), [record of public sitting](#) 10am, 06.10.2025. This author was one of a large legal team contributing to those submissions, which are obviously presented in a highly abridged form here.

456). Moreover, we can presume that this is precisely why the ILO employers' group, through the IOE, is making this argument – to reduce (and certainly not enable) workers' capacity for effective collective representation and bargaining.

If the broad term “activities” were *not* to include the right to strike, we might expect this to be expressly excluded from Convention No. 87. After all, there are certain express limitations on workers' (and employers') collective activities in the Convention. For example, such activities must respect «the law of the land» under Article 8(1), although «[t]he law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention» (under Article 8(2)). Also, the police and armed forces are expressly excluded from Article 3 entitlements under Article 9. Notably, there is no specific exclusion of strike action from workers' legitimate activities. In the absence of express exclusion, we can presume that the ordinary meaning of “activities” prevails with respect to strikes.

There is also an analogy to be drawn with a much earlier case decided by the ICJ's predecessor, the Permanent Court of International Justice (PCIJ). The PCIJ found in an Advisory Opinion of 1922 on the *Competence of the ILO in regard to International Regulation of the Conditions of Persons Employed in Agriculture* that, even though the word “agriculture” was not explicitly mentioned in the first ILO Constitution, Part XIII of the Treaty of Versailles, this was a matter which came within the sphere of ILO competence under that treaty. Given the “*general wording*” of the relevant provisions in Part XIII, that inclusion was regarded by the Court as obvious. There was no real ambiguity in that instance<sup>22</sup>; nor is there ambiguity in the present case in the dispute concerning Convention No. 87.

### ***Object and purpose – and good faith***

Article 31 VCLT further requires attention to the object and purpose of the international instrument. This is set out in the preamble to Convention No. 87, which refers in turn to «the Preamble to the Constitution of the International Labour Organisation». That Preamble declares «recognition of the principle of freedom of association» to be a means of «improving conditions of labour and of establishing peace». Once again, it is hard to see how conditions of labour can be improved without any potential recourse to strike action. Employers then have little incentive to bargain. Indeed, a good faith interpretation surely entails giving effectiveness to the right to organise established by Convention No. 87, being aware that workers' ability to bring an

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<sup>22</sup> PCIJ, *Competence of the ILO in regard to International Regulation of the Conditions of Persons Employed in Agriculture*, [Advisory Opinion n. 2, 12.8.1922](#).

employer to the bargaining table will be extremely limited where a strike is not a protected activity.

### ***Subsequent agreement, state practice and relevant rules of international law***

Under Article 31(3)(a) VCLT, any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions becomes relevant. Here we might think of the tripartite agreement concluded at the ILO in 2015, outlined above<sup>23</sup>.

Also relevant under Article 31(3)(b) is “state practice”. It is evident that there is widespread state practice, evident in domestic law, demonstrating that the right to strike is almost universally regarded as an integral element of freedom of association for workers, and as such can be argued to have achieved the status of customary international law (Brudney 2021). For example, more than 90 countries now recognise the right to strike in their constitution, usually in connection with freedom of association (Vogt et al. 2020, pp 198 – 214). This is consistent with the recognition of the right to strike at the ILO in 2015, both in the joint statement by worker and employer representatives and perhaps more significantly by the governments’ group<sup>24</sup>.

Also, there is extensive state practice in support of a right to strike recognised at the ILO. Examples include:

- The ILO Voluntary Conciliation and Arbitration Recommendation No. 92 adopted by the tripartite International Labour Conference in 1951 explicitly states at paragraph 7 that «[n]o provision of this Recommendation may be interpreted as limiting, in any way whatsoever, the right to strike»; and
- Article 1 of ILO Convention No. 105, the Abolition of Forced Labour Convention 1957, provides that States Parties are not «to suppress and not to make use of any form of forced or compulsory labour ... in particular [(d)] as a punishment for having participated in strikes».

It is evident that these ILO instruments were framed in these ways on the assumption of state actors that the right to strike arose by virtue of freedom of association protected by the ILO Constitution and Convention No.<sup>25</sup>

Another aspect of state practice is the participation of governments in the CFA and their cooperation with ILO Commissions of Inquiry and the Fact Finding and Conciliation Commissions on Freedom of Association. Indeed, the tripartite CFA has through consensus involving government, worker and

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<sup>23</sup> See, ILO, Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, [Outcome of the Meeting, 23-25.02.2015](#), Annex I.

<sup>24</sup> ILO, Tripartite Meeting (2015) (above).

<sup>25</sup> See ILO International Labour Conference, 40<sup>th</sup> Session, 1957, [Record of Proceedings](#).

employer representatives agreed on the labour standards expected of states that can be derived from the constitutional principle of freedom of association – and these have in turn guided the CFA and the CEACR when assessing compliance with Convention No. 87. The CFA «always endeavors to reach unanimous decisions»<sup>26</sup>; and the CEACR has been guided by CFA findings (documented in Novitz 2003, p. 200). Protection of the right to strike was not invented, as the IOE has suggested, illegitimately by a group of experts somehow detached from the realities of employment relations, but over decades, in conjunction with tripartite agreement, namely with full employer and more importantly in the context of the Vienna Convention, state participation in the form of government representation.

This brings us to “any relevant rules of international law”, as prompted by Article 31(3)(c) VCLT. Here we have a wealth of examples, in terms of human rights instruments under which the right to strike has been protected, where it is notable that other human rights supervisory bodies recognise that the guarantee of freedom of association encompasses protection of the right to strike. As observed above (in Part 1), examples include:

- the Human Rights Committee’s interpretation of Article 22 ICCPR,
- the European Court of Human Rights’ application of Article 11 ECHR; and even more emphatically
- the Inter-American Court of Human Rights treatment of Article 16 ACHR.

Indeed, the Human Rights Committee under the ICCPR and the Committee on Economic, Social and Cultural Rights under the ICESCR have concluded together in a “joint statement” that the right to strike is «corollary to the effective exercise of the right to form and join trade unions»<sup>27</sup>. It is alarming that the thoughtfully established jurisprudence of these bodies would seem to be challenged if the ICJ does not accept, as all these other international supervisory bodies have done, that the right to strike follows from protection of freedom of association. One must be hopeful that the World Court would not allow this to happen – that there will be suitable deference both to ILO supervisory institutions and these other human rights mechanisms.

What remains regardless is the express recognition of the right to strike in provisions such as Article 8 of the ICESCR, Article 6 of the European Social Charter, and Article 8 of the San Salvador Protocol to the ACHR. The interna-

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<sup>26</sup> 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, para. 11.

<sup>27</sup> *Freedom of Association, Including the Right to Form and Join Trade Unions*, Joint statement by the Committee on Economic, Social and Cultural Rights and the Human Rights Committee, 23.10.2019, E/C.12/2019/3-CCPR/C/2019/1.

tional right to strike cannot be lost while these human rights instruments concerned specifically with socio-economic rights remain. However, it would be very odd if that international right were no longer recognised as protected at the ILO, which is more accessible for many and where, for example workers' organisations in African countries tend to bring their concerns and complaints (Emudainohwo 2023, Olivier 2022).

### *Travaux préparatoires*

Finally, if the meaning of Convention No. 87 is ambiguous then, by virtue of Article 32 VCLT, the *travaux préparatoires* (the preparatory materials relating to the drafting of the instrument) become relevant. These materials also suggest that the absence of a specific reference in the text of Convention No. 87 of a right to strike should not lead to the conclusion that this entitlement was not intended to be protected, as had been asserted by the IOE.

As the Chairman of the drafting committee said, during the 31<sup>st</sup> session debate in 1947, Convention No. 87 was not intended to be a detailed “code of regulations” (specifying precise mechanisms for collective bargaining or exercise of the right to strike). Instead, the Chairman recognised that C87 was «a concise statement of fundamental principles» to be derived from freedom of association and the right to organise, which could then be elaborated in the context of its application. This is consistent with evidence that those engaged in the drafting process did assume that the general terms of Convention No. 87 entailed protection of the right to strike.

For example, the Indian delegation sought an exception for the armed forces and police «because they were not authorised to take part in collective negotiations and had not the right to strike [in India]»<sup>28</sup>. This proposal was adopted and incorporated in what is now Article 9 of ILO Convention No. 87, apparently in response to the assumption that the right to strike followed from the other provisions set out in the instrument. Indeed, the contemporaneous understanding of the drafters of Convention No. 87 is corroborated by the observations made by the CFA shortly afterwards, as early as its second meeting in 1952, finding that «[t]he right to strike and that of organising union meetings are essential elements of trade union rights»<sup>29</sup>.

### *Predicting the response of the ICJ*

It is to be hoped that the protective endeavour which I have outlined above, which has sought to reassert the validity of the source of the right to strike at

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<sup>28</sup> ILC, 30th Session, 1947, Record of Proceedings, Appendix X, Freedom of Association and Industrial Relations, p. 570.

<sup>29</sup> ILO CFA, Case No. 28 (1951).

the ILO, will be successful at the ICJ. However, until the advisory opinion is delivered by the World Court the outcome cannot be taken for granted.

One possibility remains that the ICJ finds that the right to strike is indeed worthy of protection under Convention No. 87, but that ILO supervisory findings relating to scope and content of an international right to strike are not to be regarded as binding on state parties. This is the line that the current UK Government has taken in its oral submissions to the ICJ, arguing that on the one hand «[t]he structure of Convention No. 87 links the rights to organize and to strike», but that the right to strike «should be regulated at the national level»<sup>30</sup>. It is a view promoted by the IOE, which in its Written Statement posed the question «whether the ILO standards supervisory bodies are competent to supervise implementation of the right to strike for State parties to C87»<sup>31</sup>.

The ILO Governing Body consciously decided not to refer the status of the ILO Committee of Experts' reports and other supervisory bodies to the ICJ, which was an option considered earlier. Instead, the assumption seems to have been that if the right to strike was protected under Convention No. 87, the legitimacy of the ILO supervisory bodies' findings would be self-evident. That said, as the International Labour Office made clear in its written statement: «The legal value of the guidance of the Committee of Experts on the right to strike is not directly linked to the question put to the Court, but the Court's authoritative determination will necessarily have an impact on the role and functions of the ILO supervisory bodies concerning the interpretation of Convention No. 87»<sup>32</sup>.

The decision not to refer the status of ILO supervisory findings to the ICJ has since been criticised on the basis that explicit referral of this matter could and should have led to affirmation of the role of the CEACR and the Committee's jurisprudence (Zhou 2025), which may not now be forthcoming. Certainly, if this issue is the subject of judicial comment in the ICJ, it will be interesting to see what form this might take and whether Zhou's concern that the matter was not more fully rehearsed before the ICJ is justified.

### 3. Enhancing protection

A difficulty is that rearguard concerns with protecting the existence of a right to strike under ILO Convention 87 can serve as a distraction from the need to

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<sup>30</sup> See Oral Statement (UK), [record of public sitting 3pm 07.10.2025](#), p. 46 and pp 49-50.

<sup>31</sup> [Written Statement of the IOE, 16.05.2024](#), p.4.

<sup>32</sup> [Written Statement of the International Labour Office, May 2024](#), para. 416.

enhance its content in response to the realities of working lives across the world. It is well-documented that labour markets and the conditions for hire of world have evolved since the first statement of the principles elaborated on by ILO supervisory bodies in the wake of the Second World War. International legal protection of the right to strike needs to address workers' needs to respond collectively to the rapid global extension of commercial supply chains which rely on low-paid, precarious and often dangerous work hired on the basis that those supplying their labour are independent contractors and not subject to standard labour law protections (Kuruvillea 2021, Marshall et al. 2023).

There is an irony that as employers and the hiring of labour has become more transnational in character, there seems to be ever greater resistance to establishing cohesive international norms which would constrain corporate conduct. Instead, opportunism is enabled through optional compliance with transnational collective agreements or corporate codes (a trend identified by Lo Faro 2012). There is also a call for an international right to strike to be formulated in ways that enable resistance to the rise of illiberal authoritarian governments and repressive regimes that prevent protest, including through strikes and other forms of worker-led collective action (ITUC 2025, pp. 10 and 24-26).

A collaborative project led by the ITUC and the International Lawyers Assisting Workers (ILAW) network established by the Solidarity Center (assisted by the University of Bristol Centre for Law at Work) has sought to explore what would be the appropriate contours of a contemporary internationally recognised right to strike (Novitz et al. 2025, Vogt et al. 2026). Our argument is that we need to revisit ILO norms and build upon these to ensure that they serve the needs of working people today in contemporary labour markets, and not merely those of yesteryear. For example, we recommend extension of those who can lawfully participate in strike, enlarging the legitimate aims of strikes and the scope of solidarity action, as well as narrowing the scope of acceptable exceptions. Moreover, we recommend campaigning for these changings across the world, nationally, transnationally and in international institutions. These recommendations would enhance the protection that an internationally recognised strike offers and are set out below.

### ***Who can call and participate in strikes***

We are currently at a juncture where not only the vast majority of those who work in the so-called “Global South”<sup>33</sup>, as well as an increasing number of those whose labour is hired in the “Global North”, are not formally speaking hired under a standard employment contract or even under terms that would give rise to an “employment relationship” as envisaged by ILO Recommendation No. 198<sup>34</sup>. In the South, these issues are exemplified by the situation of street vendors (Von Broembsen 2025) and waste pickers (Rosaldo 2024), while the vulnerability of platform workers is an issue which spans the globe (as documented by ILO 2021).

ILO supervisory bodies do envisage that rights to freedom of association, including collective bargaining and a right to strike, should be able to be claimed by “self-employed workers” (as detailed by De Stefano 2021, and Novitz 2023), but this view has not had universal traction. In the European Court of Human Rights, the scope of “workers” entitled to protection under Article 11 ECHR has been defined more narrowly with reference to ILO Recommendation No. 198 (rather than the findings of the ILO supervisory bodies)<sup>35</sup>, with significant repercussions for example in the UK regarding “gig” work performed by platform delivery riders<sup>36</sup>. In these circumstances, there may be doubts also as to whether membership-based organisations which represent those deemed not to be “workers” can lawfully call strikes in defence of their interests, so as to attract the statutory protections applicable to “trade unions” (Bogg 2021).

By way of contrast, the Inter-American Court recognises precarious and informal labour, including that performed by women, as a “vulnerable group” (Pucheta and Kalil 2025) covered by ACHR protection of the right to strike<sup>37</sup>. This seems to be the best example of good practice and demonstrates what may be achievable through human rights mechanisms.

It follows that any internationally protected right to strike now needs to make more explicit the wide range of those entitled to its exercise, and prompt changes to national laws to enable all working people to be represented by membership-based organisations which can call strikes. The ILO

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<sup>33</sup> Despite a problematic binary divide, the “Brandt line” formula is used here, due to the difficulty of finding an appropriate inclusive term for a fuller variety of low-income and middle-income countries. Cf. Brandt 1980.

<sup>34</sup> [ILO Employment Relationship Recommendation, 2006 \(No. 198\)](#).

<sup>35</sup> App no. 2330/09 *Sindicatul “Pastorul Cel Bun” v Romania*, judgment of 09.07.2013.

<sup>36</sup> *Independent Workers Union of Great Britain v Central Arbitration Committee* [2023] UKSC 43 concerning the employment status of Deliveroo riders and their ability to be represented by a trade union.

<sup>37</sup> Advisory Opinion OC-27/21 (above), para. 62.

CFA response to a recent complaint presented by the Independent Workers Union of Great Britain offers a useful starting point for this clarification<sup>38</sup>, at least as regards platform workers, even though the findings do not specifically address the right to strike. The aim is to ensure that those most vulnerable and in need of access to lawful strikes have such recourse.

### *Lawful aims and objectives*

The ILO CFA already envisages that the «occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers»<sup>39</sup>. Similarly, the ILO CEACR has observed that workers and their organisations should «be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living»<sup>40</sup>. However, neither supervisory body has yet accepted that “purely political” strikes are acceptable<sup>41</sup>.

The difficulty lies in preserving such a dividing line in a context where, as Angela Cornell and Ruth Dukes have observed, «the right to strike is fundamental to the development and maintenance of democratic forms of government» (Cornell and Dukes 2025, p. 289). Trade unions have, exercising the principle of solidarity, been significant allies for other social movements in fights for democratic change alongside social justice and economic redistribution of wealth (Medearis 2020, Vogt et al. 2026, chapter 7). Trade unions and their organisation of protest strikes have, for example, played a role in securing political change in countries such as Poland and South Africa (see respectively Kubow 2013, and Hirschsohn 1998). Strikes were influential in securing civil rights in the US (Cornell and Dukes 2025, p. 300) and today are used to campaign for issues such as access to healthcare and education in what has been termed “societal bargaining” (Schmidt and Müller 2024).

Further, it is becoming evident that a crucial and useful function of strikes may be to pursue environmental protections and resist climate change. While “climate change strikes” emerged as an initiative taken by school children, their parents and other workers have followed this example to seek a reduc-

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<sup>38</sup> ILO CFA Case No 3455 (*United Kingdom of Great Britain and Northern Ireland*), Complaint 28.02.2024, [Definitive Report - Report No 409, March 2025](#).

<sup>39</sup> ILO Compilation of Decisions of the CFA (2018), para 758.

<sup>40</sup> ILO CEACR General Survey (1994), para 165.

<sup>41</sup> *Ibid.*, and ILO Compilation of Decisions of the CFA (2018), paras 760-61.

tion in greenhouse gas emissions, as well as more directly reduction of air, ground and water pollution by their employers. This is an issue that has direct impact on the members of trade unions and on workers in general, and might therefore be seen as defensible under existing ILO supervisory standards. Nevertheless, more direct recognition of the legitimacy of such action would be helpful (Vogt and Subasinghe 2025).

### ***Sympathetic and secondary action in solidarity***

The objectives of strikes have always been bound up with forms of solidarity, namely the collective logic of trade unions, which is that the more workers who combine, the more effective their voice and bargaining power may be (López López 2022). This aspect of the function of collective action has become more relevant and acute in the context of global supply chains and their implications for workers across the world (Kuruvilla 2021).

The right to strike as initially conceived was concerned with employers, which might operate on a large industrial scale, but which did so largely within the confines of single nation state. The scale of transnational corporate entities, their subsidiaries, franchisees and other forms of contracting across borders has fostered work within supply chains, where lead firms can make exorbitant profits at both a geographical and legal distance from those who provide their labour for less than subsistence income and notoriously poor working conditions. This can be achieved without these commercial entities being deemed the “employer” in this fissured economic structure (Prassl 2015, Weil 2014).

The ability of workers to combine in solidarity to resist these developments have been limited by rules relating to what is often termed “sympathy” or “secondary” action. An example is the finding of the European Court of Human Rights that so-called “secondary action” is not necessarily protected under Article 11 of the ECHR<sup>42</sup>. The need to address this regulatory gap has been flagged repeatedly, for example in the context of platform work (Fudge and Shamir 2025) and in the maritime sector (Bogg 2025) and is emerging as a widespread endemic problem (Vogt et al. 2026, Chapter 6).

Current ILO CFA decisions suggest that sympathy action should be permitted, but apparently only where the initial strike that the striking workers are supporting is itself lawful<sup>43</sup>. This is problematic to the extent that the statement of this principle does not demonstrate appreciation of the paucity of labour laws in certain countries which do not protect primary strikes. More-

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<sup>42</sup> App no 31045/10 *The National Union of Rail, Maritime and Transport Workers (RMT) v UK*, judgment of 08.04.2014.

<sup>43</sup> ILO Compilation of Decisions of the CFA (2018), para. 770.

over, while the Committee does consider that sympathy and secondary action is important for the conclusion of “multi-employer agreements”<sup>44</sup>, no attention is paid to the specific need today for such agreements to be concluded across borders. This jurisprudence still has the potential to evolve to be more relevant to contemporary circumstances.

### ***Permissible restrictions on strikes***

The right to strike has been subjected to various exceptions, under national laws, in regional regulation, and also at the international level. A range of these restrictions operative in European countries have now been thoughtfully and capably documented in an edited collection of studies compiled by Bernd Waas (2025). These include procedural preconditions and more substantive constraints, reflecting an appreciation that access to strike action may be limited when this adversely affects others. The classic formulation applied by the ILO CFA is that the right to strike may be restricted or prohibited: in respect of «public servants exercising authority in the name of the State»; in «essential [...] the interruption of which would endanger the life, personal safety or health of the whole or part of the population»; and in national emergencies<sup>45</sup>. There is perhaps a case for there to be specific acknowledgement of harms not only to people but the environment in this context (Vogt et al. 2026, Chapters 8 and 9).

Issues clearly also arise as to who makes the determination that a particular strike should be prohibited, subjected to a “minimum service” or otherwise be restricted and the procedures that should be followed. Recent financial crises (from 2008 onwards and following the Covid pandemic) have led to increased restrictions by states, but also a shift in certain countries to more draconian forms of illiberal government has had effects as well (Vogt et al. 2026, Chapter 7). McCrystal and Herzfeld Olsson (2025) have further highlighted the dangers of elevating the ambition of preserving industrial peace and overlooking that the public interest can also be served by a labour relations system which recognises the legitimate interests of workers. These concerns merit greater attention at the international level.

<sup>44</sup> *Ibid.*, 771.

<sup>45</sup> *Ibid.*, para. 830.

## 4. Conclusion

As Harold Koh, one of the counsels for the ITUC before the ICJ told the Court: «However you rule, workers will still strike»<sup>46</sup>. It is true that the designation of a strike as “illegal”, or even just not protected under labour legislation, does not necessarily prevent that action from taking place and even extracting concessions from an employer. After all, strikes originated as extra-legal tactics for workers to collectively exercise influence, and regardless of the findings of the ICJ or even the parameters of national labour laws, the use of strikes will not vanish. Tucker (2025) has offered an example of Canadian and US strikes in the education sector which were not permissible but in their appeal to wider societal interests did extract considerable concessions; while Buendia and Bogg (2022) and Forsyth (2022) have shown how platform workers have been able to utilise effective forms of strike (and other economic disruption) to achieve bargaining objectives. Nevertheless, as Koh also explains, depriving workers of the protection of the right to strike under ILO Convention No. 87 certainly has significance. It «will affect every worker in the world», potentially eroding international, regional and national legal protections<sup>47</sup>.

If ILO supervisory bodies are diminished as an avenue for asserting global standards for protection of a right to strike, it is unlikely that protection for this right will simply vanish. Human rights protections established by other instruments and institutions will remain. For example, we might then expect workers and their organisations to pursue protection of the right to strike through other human rights mechanisms as a constraint on the conduct of national governments. However, as we have seen, these mechanisms have to date been profoundly influenced by what happens at the ILO, so may also be challenged by a World Court finding that the established linkage between freedom of association and the right to strike can be broken. Moreover, the specialist and tripartite expertise of the ILO supervisory bodies will no longer have the influence, which would be a significant loss. In this sense, the endeavour to preserve the international right to strike is both important and worthy and we should be able to expect that it has been successful.

Yet to assert this is not to deny the value of further efforts to enhance international protection of the right to strike, being a project that is also underway. This essay has explained how arguments are being made to extend the scope of those who entitled to exercise a right to strike, broaden the law-

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<sup>46</sup> Oral Statement (ITUC), record of public sitting 10am, 06.10.2025 (above), p. 55.

<sup>47</sup> *Ibid.*, 53-56.

ful objectives of strikes, enable participation in more extensive solidarity action across borders, and challenge certain exceptions to a right to strike.

This is not an exhaustive list of issues. There remains scope for example to consider further how the right to strike could be enhanced in the light of digitally performed and monitored work, especially in light of the need to address pervasive algorithmic management and surveillance (Aloisi and De Stefano 2022, Forsyth 2022; Gyulavári and Menegatti 2022). How the right to strike will be protected in the context of greater militarisation and building defence capabilities may also be a matter ripe for debate, highlighted currently by Ukrainian dilemmas (Simutina 2024). Indeed, more prompts for standard-setting on the right to strike are likely to arise and will continue to merit our attention.

Finally, while this essay has advocated both preserving and enhancing the right to strike, it should be observed that this is not a “top down” exercise that falls to the ILO, the ICJ or UN human rights institutions. Indeed, this may be best simultaneously pursued on multiple levels, as an interconnected and reflexive exercise. For example, the ITUC provides regular reportage of “bottom up” national level [initiatives and developments](#)<sup>58E</sup>, and together with [ILAW](#) is constructing a website with resources for lawyers all over the world to lobby for legislative change and pursue litigation relating to the right to strike. This is further complemented by the efforts of the European Trade Union Confederation (ETUC)<sup>48</sup>, With multiple sites of legal engagement and collective resistance, there remains hope that the right to strike will endure and even be enhanced.

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<sup>48</sup> See the [country factsheets](#) produced in combination with the [European Public Service Union](#) (EPSU).

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