PSI Executive Board EB-167
2-3 December 2025
ILO, Geneva, Switzerland

PUBLIC SERVICES INTERNATIONAL

Item 6: Attacks on multilateralism: implication for UN, ILO, WHO and other agencies, including the Right to Strike

Brief 2: ICJ case on the Right to Strike

Purpose of the discussion:
1 – To alert EB to the serious threat posed to public services unions from the upcoming ICJ decision
2 – To recommend the creation of a task force on the Right to Strike to monitor, assess and rapidly respond to any threat that emerge from the pending decision on public services unions and workers right to strike.

At the International Labour Conference (ILC), in June **2012**, the Employer members objected to the interpretation by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) of Convention 87 and the right to strike in its General Survey of 2012, and indicated that "they could not accept the supervision of Convention 87 cases that included interpretations by the CEACR regarding the right to strike". As a result, the Employers blocked the adoption of and discussion on the list of cases of non-compliance to be examined by the Conference Committee on the Application of Standards (CAS). It was the 1st time since the establishment of the CAS in 1926.

This was interpreted as a response to Guy Ryder's May election as ILO Director-General, which broke the unwritten rule that DGs come from governments and, in the Employers' view, created an imbalance in the tripartite organization. The crisis has prolonged for 13 years, and the ILO was dragged into a crisis that undermined the functioning and credibility if its supervisory mechanisms and its ability to guide constituents in the application and implementation of ILO standards. What follows is (a) a short timeline of the events that deepened the crisis and the discussions aimed at resolving it, (b) the process that led to the referral to the ICJ for decision, (c) why this decision is crucial for public sector, and (d) a summary of the arguments put forward by the workers and employers before the ICJ.

A. Timeline of events

- 2012, May: Guy Ryder is elected as ILO Director-General
- 2012: the Employers blocked the discussion to the individual list of cases at the CAS.
- 2013: a note was inserted in the conclusions of all individual cases examined by the CAS in relation to the application of C87 indicating that "the Committee did not address the right to strike in this case as the Employers do not agree that there is a right to strike recognized in Convention 87".
- 2014: the CAS was unable to adopt conclusions in 19 of 25 individual cases.
- 2015: the Workers' and Employers' groups adopted a joint statement in which they recognize the mandate of the CEACR and agree on essential elements of the working methods of the CAS (adoption of the list and of conclusions). The "truce" leads to a patchy normality within the functioning of the ILO supervisory mechanisms.
- 2017: the Employers' and Workers' groups reaffirmed the commitment of their Joint Statement of 2015.
- 2019: debate on the *legal certainty* of ILO standards resurface and the Office was requested to prepare options, including the referral of disputes to the ICJ or an in-house tribunal, under Article 37 of the ILO Constitution.

- 2020: discussions delayed during the Covid 19 pandemic.
- 2022: Gilbert Houngbo is elected ILO DG with PSI support and ultimately support of the workers group, with early advocacy from PSI. During his campaign he promised to tackle the issue of the right to strike. Fresh discussions on leveraging Article 37 of the ILO Constitution.
- 2023: the Office prepared a procedural framework for ICJ referral, but discussions at the GB revealed deep divisions among constituents. The debate was ultimately adjourned *sine die*.

B. Referral to the ICJ

Considering the indefinite suspension of the debate and the possibility that this could perpetuate the crisis, the Workers' Group requested, by letter dated **12 July 2023**, the Director-General that the dispute be referred urgently to the ICJ for decision. Governments submitted similar requests and the GB screening group decided accordingly.

In a desperate move to derail the referral to the ICJ, the Employers requested a special meeting on the urgent inclusion of a standard-setting item on the right to strike on the agenda of the June 2024 session of the ILC. Its purpose would be to pave the way for the adoption of a Protocol to Convention 87 on the right to strike, which would authoritatively determine the scope and limits of the right to strike in the context of Convention 87 and would thus settle the ongoing dispute.

On 10 November 2023, the GB held a special session in which adopted, by 33 votes in favour, 21 votes against and 2 abstentions, a resolution requesting the ICJ to render urgently an advisory opinion on the following question:

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

On the Employers' proposed standard-setting on the right to strike, a significant number of governments were of the view that, following the decision to refer the dispute to the ICJ, it was premature to discuss the question, and the GB decided it would consider appropriate follow-up action after having received the advisory opinion of the ICJ.

The ILO Director-General submitted to the ICJ the GB resolution requesting the advisory opinion and, on **16 November 2023**, the ICJ informed about the initiation of proceedings. By 16 May 2024, 30 written *statements* were filed[1] and subsequently, by **16 September 2024**, 15 written *comments* were received at the court[2]. These stages of the proceedings were strictly confidential.

Between **6 and 8 October 2025**, the ICJ held public hearings – 18 States and 5 international organizations presented oral statements[3], while all previous written filings were made public. Afterwards, the court adjourned for deliberations. Its advisory opinion will be delivered at a public sitting, the date of which will be announced in due course – within 6 to 12 months after the oral hearings.

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While we hope for a favourable decision, there's no such a thing as going "back to normal" at the ILO – 13 years of questioning the ILO supervisory mechanisms take their toll and, more importantly, the Employers will continue attacking it – for instance, they will insist with a Protocol on C87 that, if adopted, will take precedence over the non-binding recommendations of the ILO supervisory bodies. On the other hand, if the decision goes

against 70 years of ILO “jurisprudence”, the consequences will be devastating. In any case, it is imperative to anticipate the response and prepare for what comes after the court's decision.

C. Why is this crucial for the public sector?

Given the lack of specific wording regarding the right to strike in C87, the ILO supervisory bodies have developed several “principles” – a detailed framework of permissible restrictions and exceptions, the vast majority of which apply exclusively or mostly to public sector workers – which for years guided government policy and action, as we well as the adoption of national legislation. Most notably, a very precise and narrow definition of “essential services”, which otherwise would have resulted on a blanket ban on strike actions for the entire public sector, and of “minimum services”, which otherwise would have reduced strike actions to an ineffective tool.

Both a “yes” or "no" answer to the question referred for decision to the ICJ decision will pose challenges and possibly a chilling effect on union activities. Potential outcomes of the decision could include deregulation, denunciations by countries of C87, fragmented standards.

It is recommended that EB:
1 - Note the brief and serious threat to public services unions form the pending ICJ decision
2 – Establish a task force on the Right to Strike to Strike to monitor, assess and rapidly respond to any threat that emerge from the pending decision on public services unions and workers right to strike. comprised of interested affiliates and affiliates with legal resources that could be used in response to the decision.
3 – Call for affiliates to urgently identify resources in 2026 that could be rapidly mobilised in response to a bad decision for public services unions.

Summary of main arguments, both for and against, regarding the interpretation that the “right to strike” is protected under Convention 87

Viena Convention	**Workers**	**Employers**[4]
Good Faith (art. 31) *Ordinary Meaning of Terms*	The right to strike is inherent in the ordinary meaning of "organise their […] activities and […] formulate their programmes” in Article 3(1), and read together with Article 10 (“furthering and defending” workers' interests). Strikes are essential actions unions organize to defend members' interests – without this, the terms lack meaning. The absence of explicit "strike" wording does not preclude this, as the C87 uses broad language.	The ordinary meaning of “organise their […] activities” in Article 3(1) and "furthering and defending" in Article 10 focuses on internal union formation, rules, and administration, not external actions like strikes. No mention of “strike” or related terms (e.g., limits on strikes) indicates it is outside the scope – interpreting it to include strikes stretches the text beyond regular use.
Context	Context includes the full text of C87, its preamble, the ILO Constitution, and the 1944 Declaration of Philadelphia, emphasizing union autonomy from public authorities. This supports strikes as protected “activities” unions organize independently. The French	Context of C87, preamble, and adoption process shows focus on basic associational rights (e.g., forming unions, electing representatives), not strikes. No extrinsic agreements or instruments from the conclusion of C87 reference strikes – the Convention’s structure excludes detailed

	term “syndical(e)” reinforces union-specific actions like strikes.	regulation of contentious issues like strikes, which require limits not present in C87. Despite the use of the word *syndicale* in the French version of C87, the text of the Convention leaves no doubt as to its intention to guarantee the freedom of association of workers AND employers in exactly the same way – C87 applies to employers AND workers, and so a reasonable meaning ought to have equal value and applicability to both workers’ and employers’ organisations. The right to strike is plainly not such a right, since it is for the benefit of only one group.
Object and Purpose	The object and purpose (to recognize freedom of association as a means to improve labor conditions and defend workers' interests) necessitate the right to strike as an essential tool. Denying this would render the convention ineffective and contradict good faith interpretation.	The object and purpose (to codify freedom of association for better working conditions and peace) does not encompass strikes, as the preamble and text emphasize general principles without referencing industrial action. To include strikes would exceed the “concise statement of fundamental principles” intended, leading to absurdity without defined limits.
Subsequent Agreements	Collective state practice in ILO bodies (e.g., CFA conclusions, CEACR findings endorsed in conferences) and individual government positions confirm agreement that strikes are protected under Convention 87. The 2015 tripartite meeting and ILC discussions reinforce this.	No subsequent agreement exists on strikes in C87 – the 2015 Government Group statement notes strikes are regulated nationally, not in C87. Conclusions on subsequent agreements and subsequent practice do not apply to bodies that have the status of an organ of an international organization (such as CEACR and CFA), thus they do not qualify as agreements among all parties, and many governments have disputed or ignored them.
Subsequent Practice	State practice collectively (e.g., CFA and CEACR endorsements, ILC acceptance) and individually (e.g., governments aligning laws with ILO guidance, national constitutions recognizing strikes as part of association) establishes agreement that strikes are inherent in Convention 87. Customary practice confirms this.	No consistent practice establishing agreement - a significant number of states ignore or reject CEACR guidance on strikes, with laws predating or contradicting it. CFA recommendations apply irrespective of C87 ratification, so not “in the application” of C87. National courts and governments often deny strikes derive from C87.
Relevant Rules of International Law	Universal (ICCPR, ICESCR) and regional instruments (e.g., European Social Charter, IACHR) explicitly link strikes to freedom of association. The right to strike has achieved customary international law status, applicable between C87 parties.	Only ICESCR mentions strikes but defers to national laws – no customary rule matches CEACR's detailed scope/limits. Other instruments (e.g., ICCPR) do not imply strikes in C87. Customary International Law on strikes is vague and national, not imposing obligations via C87.
Special Meaning	Not explicitly addressed in the *written statement*, but *wrriten comments* express that while Article 10 of C87 is definitional in nature and does not expressly bestow on trade unions a right to strike, the Parties clearly intended to give a special meaning to a workers’ “organisation”, whose defined	No evidence that parties intended a special meaning for “activities” or other terms to include strikes – terms reflect general organizational rights, not specialized actions like strikes.

	mandate is “for furthering and defending the interests of workers”. Under the principle of *effet utile* and good faith, C87 must be interpreted to give effect to the Parties’ specific intention behind Article 10.	
Supplementary Means (art. 32) Historical context	Historical context (e.g., origins of ILO Constitution) shows freedom of association includes strikes. Moreover, the overwhelming majority of States Parties of C87 (143 out of 158) ratified the convention after 1952, when the CFA expressly confirmed that the scope of the Convention included the right to strike.	Not explicitly addressed in the *written statement*, but *written comments* express that ITUC’s historical context is unconvincing, partial and incomplete, and it also contradicts key aspects of its case elsewhere.
Preparatoy work	Preparatory work of C87 does not contradict this inclusion – some discussions support strikes as part of defending interests, confirming the Article 31 interpretation.	Preparatory work explicitly shows no intent to include strikes in C87 – it was deferred to separate standards on conciliation/arbitration. Government responses and ILC discussions at the time confirm strikes were outside C87 scope, corroborating exclusion – response of most countries was that the right to strike was not relevant to the proposed Convention.

[1] International Cooperative Alliance, ILO, France, Vanuatu, OACPS, Spain, Italy, ITUC, WFTU, UK, Colombia, Bangladesh, Germany, Poland, Business Africa, the IOE, South Africa, Canada, Switzerland, Norway, Tunisia, USA, Australia, Japan, Costa Rica, Indonesia, Mexico, Somalia, the Netherlands, and Belize. On 3 June 2024, the ICJ authorized Brazil to participate in the advisory proceedings.
[2] ILO, ITUC, IOE, South Africa, Germany, Australia, Bangladesh, Colombia, Brazil, Spain, Indonesia, Mauritius, Mexico, Norway, Panama, the UK, Egypt, Uruguay, Somalia, Switzerland, Vanuatu, the International Cooperative Alliance, and Business Africa.
[3] ILO, ITUC, IOE, South Africa, Germany, Australia, Bangladesh, Colombia, Brazil, Spain, Indonesia, Mauritius, Mexico, Norway, Panama, the UK, Egypt, Uruguay, Somalia, Switzerland, Vanuatu, the International Cooperative Alliance, and Business Africa.
[4] Support from Japan, Switzerland, Costa Rica, Bangladesh, Belize, and UK (later withdrew its statement and comments).