



WHAT THE INTERNATIONAL COURT OF JUSTICE SETTLED,
AND LEFT OPEN, ON THE RIGHT TO STRIKE

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Abstract: This article examines the advisory opinion of the International Court of Justice of 21 May 2026 on the right to strike under ILO Convention No. 87. It focuses on the reasoning by which the Court reached its conclusion, distinguishes the issues that the Opinion settles from those it leaves open, and considers the consequences for states such as Uzbekistan that have ratified the Convention and have recently established a statutory strike regime.

Keywords: right to strike, ILO Convention No. 87, International Court of Justice, advisory opinion, treaty interpretation, ILO supervisory bodies, Uzbekistan.

Convention No. 87 of 1948 on Freedom of Association and Protection of the Right to Organise does not contain the word “strike”. For more than half a century, that omission caused little difficulty in practice. From the early 1950s, the ILO Committee on Freedom of Association and, later, the Committee of Experts on the Application of Conventions and Recommendations treated the right to strike as an intrinsic consequence of the right of workers’ organisations to organise their activities. On that basis, the supervisory bodies developed a substantial body of principles concerning the scope and limits of strike action [5]. Governments continued to debate particular restrictions, but the existence of the right itself was rarely the central issue.



The consensus broke in June 2012. At the International Labour Conference, the Employers' group in the Committee on the Application of Standards challenged the Committee of Experts' authority to interpret the Convention as protecting the right to strike. The Committee was unable to adopt conclusions in a number of cases, and the ILO's supervisory machinery was consequently affected [6]. A tripartite statement in 2015 reduced the immediate tension but did not resolve the underlying disagreement: the Government group stated that freedom of association could not be fully realised without protection of the right to strike, while also stressing that the right was not absolute and could be regulated at the national level. After further disagreement, the Governing Body decided in November 2023 to refer the question to the International Court of Justice under Article 37(1) of the ILO Constitution, a procedure that had not been used since 1932 [3; 10].

On 21 May 2026, the Court delivered its Opinion. By ten votes to four, it found that “the right to strike of workers and their organizations is protected under ILO Convention No. 87” [1; 2]. The reasoning leading to that conclusion is particularly important. Rather than relying on the general authority of the ILO supervisory bodies, which had been at the centre of the Employers' objection, the Court began with the treaty text and applied the ordinary rule of interpretation in Article 31 of the Vienna Convention on the Law of Treaties. Read together, Articles 2, 3 and 10 of Convention No. 87 protect the ability of workers' organisations “to organise their administration and activities and to formulate their programmes” for the purpose of “furthering and defending the interests of workers”. The Court considered strike action to be one of the principal means by which organisations pursue that purpose; the absence of an express reference to strikes therefore did not exclude the right [2].



Two points in the Court's method are especially important. First, the Court declined to rely on subsequent practice under Article 31(3)(b) of the Vienna Convention. Because some states parties had expressly disagreed with the supervisory bodies' position, the Court found that the degree of agreement among the parties required by that provision was absent [2]. Second, it considered supplementary and contextual material, including Article 8(1)(d) of the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, regional human rights systems, and the work of the ILO supervisory bodies [2]. Commentators have understood this approach as a way of assessing the weight of expert treaty-body output: such material does not bind states in itself, but may confirm an interpretation reached by ordinary treaty interpretation [4]. In the author's view, this is one of the Opinion's most significant methodological points. It neither treats the Committee of Experts as a judicial body nor disregards decades of supervisory practice.

The Opinion also leaves several issues unresolved. The Court confirmed the existence of the right but did not define its full content. It did not determine who may strike, whether particular forms of industrial action such as political, solidarity or mid-contract strikes fall within the protected sphere, how essential services should be identified, or which institution should have the final word on particular limits [3]. The Court also stressed that the rights protected by Convention No. 87 are not absolute. Article 8 requires workers and their organisations to respect the law of the land, while at the same time requiring national law not to impair the guarantees provided by the Convention [3]. The four dissenting judges, as reported, maintained the textual position that a right not expressly named by the drafters, and not accepted by them at the time of adoption, could not be read into the Convention [7].



Some criticism of the Opinion focuses on this restraint: states now have a recognised right to strike, but its precise legal boundaries remain unsettled. A different assessment is possible. A detailed strike regime applicable to 158 states with very different systems of industrial relations would have placed the Court in a quasi-legislative role. The Opinion instead settles the threshold question and leaves the regulation of restrictions to the existing international supervisory system and to national legal orders. The practical consequence is that the central question has changed. The issue is no longer whether Convention No. 87 protects a right to strike, but which restrictions remain compatible with that protection. On that point, the principles developed by the Committee on Freedom of Association remain difficult to disregard. A state may contest their application in a particular case, but it can no longer argue that they concern a right lying wholly outside the Convention.

For Uzbekistan, the timing is especially significant. The country ratified Convention No. 87 in 2016 [8]. Law No. O'RQ-1150, which introduced a comprehensive strike procedure into the Labour Code, was approved by the Senate on 8 April 2026, signed on 11 June 2026, and entered into force on 12 September 2026 [9]. The new national regime therefore took effect only a few months after the international legal basis of the right had been clarified. Three practical consequences are apparent.

First, the new statutory regime will be considered by the ILO supervisory bodies against a background in which the legal protection of the right is no longer itself disputed. Certain features of the Uzbek framework therefore merit close examination. These include the absolute exclusion of medical and communications workers, the requirement that the decision to call a strike be taken at least one month in advance, and the criminal liability connected with leading an unlawful strike [9].



Second, the Opinion strengthens the role of national courts. Under Uzbekistan's legal framework, ratified international treaties form part of the legal system, while the new strike provisions contain open-ended expressions such as “real threat” and “public order” and refer to violations of the requirements of the Labour Code. The ICJ's interpretation of Convention No. 87, read together with the supervisory principles that the Court considered relevant, gives national courts additional material for interpreting such terms in a manner consistent with the protected right.

Third, the Opinion makes clear that the more difficult task lies in designing restrictions that protect public interests without depriving the right of practical effect. For Uzbekistan, the next stage of reform should therefore focus less on the formal recognition of the right and more on the proportionality and practical effect of the limits placed upon it. A restriction is easier to reconcile with the Opinion where it regulates the manner in which workers' organisations exercise the right; it becomes more difficult to justify where, in practice, it prevents meaningful collective action.

Conclusion

The advisory opinion of 21 May 2026 closes the long dispute over whether the right to strike is protected under Convention No. 87, but it does not settle the detailed conditions for exercising that right. The Court reached its conclusion through treaty interpretation rather than by treating the ILO supervisory bodies as a source of independent judicial authority, while also recognising the relevance of their accumulated practice. For national systems that have only recently established strike procedures, including Uzbekistan, the Opinion is therefore better understood as a starting point for the next stage of legal development. The principal question now is how restrictions are designed and applied so that they regulate industrial action without emptying the recognised right of its substance.



REFERENCES

1. International Court of Justice. Right to Strike under ILO Convention No. 87 (Request for Advisory Opinion). Advisory Opinion of 21 May 2026.
2. Karsu Ö. ICJ Recognizes Right to Strike under Convention No. 87 // ASIL International Law in Brief. 2026. URL: <https://asil.org/ilib/icj-recognizes-right-to-strike-under-convention-no-87/>
3. International Court Confirms a “Right to Strike” but Leaves Open Key Questions
// Fasken. June 2026. URL: <https://www.fasken.com/en/knowledge/2026/06/international-court-confirms-a-right-to-strike-but-leaves-open-key-questions>
4. A Framework for the Weight of Treaty Body Output: The ICJ’s Right to Strike Advisory Opinion // EJIL: Talk! 2026. URL: <https://www.ejiltalk.org/a-framework-for-the-weight-of-treaty-body-output-the-icjs-right-to-strike-advisory-opinion/>
5. Gernigon B., Odero A., Guido H. ILO Principles Concerning the Right to Strike // International Labour Review. 1998. Vol. 137, No. 4. P. 441–481.
6. La Hovary C. Showdown at the ILO? A Historical Perspective on the Employers’ Group’s 2012 Challenge to the Right to Strike // Industrial Law Journal. 2013. Vol. 42, No. 4. P. 338–368.
7. Understanding Convention No. 87 and the Right to Strike // Newswise. 2026. URL: <https://www.newswise.com/articles/understanding-convention-no-87-and-the-right-to-strike>



8. Uzbekistan Ratifies ILO Convention No. 87 // Gazeta.uz. 27.10.2016. URL: <https://gazeta.uz/en/2016/10/27/ilo>
9. Law of the Republic of Uzbekistan No. O'RQ-1150 of 11 June 2026 "On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan in Connection with Strengthening Guarantees of Citizens' Labour Rights". URL: <https://lex.uz/docs/-8263187>
10. Vogt J., Bellace J., Compa L., Ewing K.D., Hendy J., Lörcher K., Novitz T. The Right to Strike in International Law. Oxford: Hart Publishing, 2020.

