



Bern, 6 September 2023

Dear Director-General,

Switzerland wishes to thank you for your letters dated 17 July, 4 August and 10 August 2023, informing us that you had received a number of communications regarding the outstanding issue of 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. We have taken due note of the request submitted by the Workers' representative and of the reply sent by the Employers' representative, as well as of the positions adopted by several governments.

Switzerland has followed the debate on the interpretation of Conventions of the International Labour Organization (ILO) and on the transposition of article 37 of the ILO Constitution very closely over the past 15 years. Questions of interpretation are of institutional importance. The ILO possesses a number of specific features. While respecting the request formally lodged by the Workers' group, Switzerland has consistently reiterated its preference for the approach set out in article 37, paragraph 2 of the Constitution for questions of interpretation. Switzerland also recalls that no procedural framework was adopted with regard to article 37, paragraph 1, at the Governing Body Session that took place in March 2023.

In preparation for a future discussion by the Governing Body of the possible referral of the question of interpretation to the International Court of Justice (ICJ), we would like to highlight the following points:

- The procedure cannot be separated from the question or questions of interpretation to be asked. Yet, at this stage, it is doubtful whether the questions submitted, as formulated, are truly questions of interpretation and whether they are admissible before the ICJ.
- The International Labour Conference (ILC) should approve the referral to the Court as well as the question(s) of interpretation, following an in-depth analysis by the Governing Body. Steps should be taken to ensure that all interested governments can take part in these discussions, in compliance with the rules of procedure. The Governing Body may meet in plenary session or as a Committee of the Whole, with all Member States having the right to speak. The discussion may also be referred and submitted to the Conference.

Mr Gilbert Hounbo
Director-General
International Labour Office
Geneva



- Deliberations and negotiations should be open to all Member States that are not represented on the Governing Body. All Member States should be able to take part in the discussions and decision-making process regarding the referral of disputes to the Court, and the efficiency and fairness of the process should be ensured.

It is imperative that the signatory States of Convention No. 87 be involved in the discussions on the substance of the question of interpretation to be submitted to the ICJ. Signatory States are indeed the first concerned. Furthermore, the ICJ has consistently held that it must ensure it has all the necessary information. To this end, the ICJ may invite all signatory States to participate actively in the proceedings. The involvement of these States in the drafting of the question is therefore essential to ensure continuity and consistency.

The question's content or, at the very least, the decision whether or not to refer the question(s) to the ICJ must be approved by the ILC. Convention No. 87 is regarded as fundamental and embodies a fundamental principle and right which all Member States must respect, promote and uphold. Moreover, the resolution giving the Governing Body the authority to submit requests for advisory opinions was adopted in 1949. The composition of the ILO today is not comparable to that of 1949. Back then, the ILO had 62 Member States. At that time, the Governing Body was much more representative of its membership. In the interest of fairness and inclusion, the ILC must therefore be involved in discussions and decisions on the content and/or referral of the matter to the ICJ.

The Swiss Government accordingly requests the Officers of the Governing Body to schedule a discussion at the Governing Body in the form of a Committee of the Whole and to make arrangements for the approval of the question(s) by the International Labour Conference in due course.

I thank you for taking due note of these remarks.

Yours sincerely,

Guy Parmelin
Federal Councillor