

Compilation of statements concerning the legal effect of advisory opinions requested under art. 37(1) of the ILO Constitution

I. Governments

In 1922, during the discussions at the Council of the League of Nations concerning the possible referral to the PCIJ of the question on *Agricultural Production*, the representative of **France** stated that *"it would remove all possible difficulty if a formal decision was obtained from the Court"* ([Official Bulletin, 1922, Vol. VI, No. 11](#), p. 384).

In 1931, the representative of **Poland** stated before the PCIJ in the context of the *Free City of Danzig and ILO* advisory proceedings that it *"awaits with deference the advisory opinion of the Court. In the light of the reply given to the question put by the Council of the League, Poland will take the necessary steps to meet the situation thus created"* ([Official Bulletin, 1931, vol. XVI](#), No. 2, p. 239).

In 1932, in the context of the advisory proceedings on the *Interpretation of the Convention of 1919 concerning employment of women during the night*, the representative of **Great Britain** stated that *"it became apparent that different interpretations were being placed by different States ..., and in these circumstances His Majesty's Government moved the Governing Body to invite the Council to obtain an authoritative ruling from the Court"* ([Official Bulletin, 1933, vol. XVIII](#), No. 2, p. 84).

In 1989, the Government member of the **Netherlands** in the CAS stressed *"the necessity of close co-ordination between the lawyers of the Office and national jurists (because) their interpretation of ILO standards might differ widely, although neither of them was authoritative since, as was known, only the International Court of Justice was competent in this regard"* ([ILC, Record of Proceedings, 1989](#), p. 26/4, para. 12).

In 1990, the Government member of **Finland**, speaking on behalf of the **Nordic governments**, stated in the CAS that *"according to the ILO Constitution, the competence for giving definitive interpretations of Conventions ... was vested in the ICJ"* ([ILC, Record of Proceedings, 1990](#), p. 27/8, para. 31).

In 1991, the Government member of **France** stated in the CAS that *"the International Court of Justice provided the final recourse for the interpretation of the Constitution and of Conventions"* ([ILC, Record of Proceedings, 1991](#), p. 24/5, para. 21).

In 2010, the Government member of **Venezuela**, speaking on behalf of **GRULAC**, expressed the view that *"the Committee of Experts interpreted Conventions which was delegated to the International Court of Justice in the Constitution"* (ILC, Record of Proceedings, 2010, [Provisional Record No. 16, Report of the CAS, Part I](#), para. 64).

In 2014, the Government delegate of **Venezuela** stated in the ILC plenary that *"article 37(1) of the Constitution of the International Labour Organisation clearly and categorically puts forward a solution in this regard. The issue must be referred to the International Court of Justice, so that, once and for all, the Court can interpret Convention No. 87 and issue a binding opinion in that regard"* (ILC, [Record of Proceedings, 2014](#), pp. 17/11-12).

II. Employers

In 1926, the representative of the International Organization of Industrial Employers before the PCIJ in the *Personal Work of Employers* (1926) advisory proceedings, noted that *"it is futile to say that a Court can give only an Advisory Opinion. It is clear that here as in other spheres the Court*

exercises a judicial function which consists in interpreting the law, and its judgments must be considered as a statement of the law in force" ([Official Bulletin, 1926, vol. XI](#), No. 5, p. 223).

In 1989, the Employer member of Sweden in the CAS stated that *"only one body – the International Court of Justice – could make authoritative interpretations of international labour Conventions. Recourse to it had seldom been sought, probably because there had been considerable satisfaction with the way the system functioned. Nonetheless, the role of the International Court of Justice as the ultimate arbiter should always be borne in mind"* (ILC, [Record of Proceedings, 1989](#), p. 26/6, para. 21).

In 1992, the Employers' spokesperson in the CAS affirmed that *"under the ILO Constitution only the International Court of Justice may give a definitive interpretation of a Convention"* (ILC, [Record of Proceedings, 1992](#), p. 27/4, para. 17).

In 1993, the Employers' spokesperson observed that *"every supervisory body examining whether a State was fulfilling its obligations under a Convention had to undertake the task of interpretation, although only one – the International Court of Justice – could do so with binding authority"* (ILC, [Record of Proceedings, 1993](#), p. 25/4, para. 19).

In 1994, the Employers' spokesperson stated that *"only the International Court of Justice may give binding interpretations"* (ILC, [Record of Proceedings, 1994](#), p. 25/8, para. 21).

In 1998, the Employers' spokesperson stated that *"according to the ILO Constitution, only the International Court of Justice was empowered to give definitive interpretations"* (ILC, [Record of Proceedings, 1998](#), p. 18/8, para. 17).

In 1999, the Employers' spokesperson indicated that *"it was therefore small consolation that the only binding interpretation of legal texts could be made by the International Court of Justice. In view of the absence of any decision by that Court, there was therefore no generally binding interpretation of the two Conventions"* (ILC, [Record of Proceedings, 1999](#), p. 23/37, para. 114).

In 2001, the Employers' spokesperson in the CAS expressed the view that the Committee of Experts *"should not develop jurisprudence, and it should certainly not assume responsibility for issuing binding interpretations of standards. Under article 37 of the ILO Constitution, that is a power reserved for the International Court of Justice"* (ILC, [Record of Proceedings, 2001](#), p. 22/4).

In 2002, the Employers' spokesperson in the CAS stated that *"only the International Court of Justice had the authority to make binding interpretations of Conventions and Recommendations, which clearly derived from article 37 of the ILO Constitution"* (ILC, Record of Proceedings, 2002, [Provisional Record No. 28, Report of the CAS, Part I](#), p. 28/13, para. 45).

In 2006, the Employers' representative to the Selection Committee stated that *"an advisory opinion by the ICJ was a result which could be obtained in a relatively short time, and it would be a binding ruling that could be enforced through the UN Security Council"* (ILC, [Record of Proceedings, 2006, Provisional Record No. 3-2, Second Report of the Selection Committee](#), p. 3-2/4).

In 2012, the Employers' spokesperson in the CAS stated that *"under article 37 of the ILO Constitution, only the International Court of Justice (ICJ) could give a definitive interpretation of international labour Conventions"* (ILC, Record of proceedings, 2012, [Provisional Record No. 19\(Rev.\), Report of the CAS, Part I](#), para. 82).

III. Workers

In 1932, in the context of the advisory proceedings concerning the *Night Work of Women*, the representative of the International Confederation of Christian Trade Unions stated that what he

expected from the court was « *la vérité juridique sur le texte en question, plus encore: la méthode d'interprétation des conventions qui sera le guide des Etats, de l'Organisation internationale du Travail et des organisations professionnelles dans tout le domaine des conventions* » ([Official Bulletin, 1933, vol. XVIII](#), No. 2, p. 147).

In 1991, the Workers' spokesperson in the CAS considered "*that neither the assessments of the present Committee nor the views expressed by the Committee of Experts had the force of law, although the opinion of the Committee of Experts was generally accepted in view of the Committee's composition and working methods, subject to a definitive interpretation by the International Court of Justice*" (ILC, [Record of Proceedings, 1991](#), p. 24/4, para. 16).

In 1992, the Worker member of Finland in the CAS stated that "*until recently the established interpretations made by the Committee of Experts have been considered binding by member States until the International Court makes a final decision*" (ILC, [Record of Proceedings, 1992](#), p. 27/5, para. 19).

IV. Committee of Experts

In 1977, the Committee of Experts stated that its "*terms of reference do not require it to give interpretations of Conventions, competence to do so being vested in the International Court of Justice by article 37 of the Constitution.*" ([ILC, 1977, Report III](#), Part 4A, para. 32).

The Committee reiterated this statement in 1987, 1990, 2006 and 2013 ([ILC, 1987, Report III](#), Part 4A, para. 21; [ILC, 1990, Report III](#), Part 4A, para. 7; [ILC, 2006, Report III](#), Part 1A, p. 2; [ILC, 2013, Report III](#), Part 1A, para. 26).

In 1991, the Committee noted that "*It is essential for the ILO system that the views that the Committee is called upon to express in carrying out its functions, in the conditions recalled above, should be considered as valid and generally recognised, subject to any decisions of the International Court of Justice which is the only body empowered to give definitive interpretations of Conventions*" ([ILC, 1991, Report III](#), Part 4A, para. 12).

V. The Office

In 1922, in the framework of the very first advisory opinion requested by the ILO, the Director-General stated that "*it appeared to our Organisation and to our Governments that there was no authority more highly placed or in whose judgement more reliance could be reposed than the PCIJ for the purpose of settling disputes of this nature*" ([Official Bulletin, 1922, vol. VI](#), pp. 72-73).

In 1922, in the Office memorandum concerning the *Competence of the ILO in regard to International Regulation of the Conditions of the Labour of Persons Employed in Agriculture*, it was noted that "*until the creation of the Permanent Court of International Justice and the acceptance of its obligatory jurisdiction, the right of giving to any international convention an official interpretation, having the same binding force as the instrument itself, to which it is assimilated, belonged exclusively to the signatory States*" ([Official Bulletin, 1922, vol. VI](#), p. 325).

Following the advisory opinion of the Court, a letter was sent to several Governments by which they were informed that the "*controversy was closed by the advisory opinion given by the Permanent Court of International Justice*" ([Official Bulletin, 1923, Vol. VIII](#), Nos 1-2, p. 2).

In 1926, in the Office Memorandum concerning the *Personal Work of Employer*, it was noted that "*Of course, the preamble accompanying the question submitted to the Court is not intended to be taken as in any way prejudicing the opinion the Court is invited to give. There is no need to say that on*

the contrary the Governing Body of the International Labour Office will bow to the decision of the Court" ([Official Bulletin, 1926, Vol. XI](#), No. 5, p. 180).

In 1930, in the Office Memorandum concerning the *Free city of Danzig and the ILO* it was stated that *"The International Labour Office does not consider itself qualified to form any conclusion on the subject, and awaits with respect the answer of the Court, with which the attitude of the International Labour Organisation will not fail to comply"* ([Official Bulletin, 1931, vol. XVI](#), No. 2, p. 104).

In 1932, in his oral statement in the context of the *Night Work (Women)* case the ILO representative stated: *"The object of the present proceedings before the Court is to secure an authentic interpretation. Once such an interpretation is given in whatever sense, it will lead ipso facto to the disappearance of all divergences and inequalities, for States bound by the Convention will be under an obligation to take the necessary measures to give effect to the interpretation laid down by the Court"* ([Official Bulletin, 1933, vol. XVIII](#), No. 2, p. 116).

In 1969, the representative of the Legal Adviser explained to the members of the Committee on Youth Schemes that, *"according to article 37 of the Constitution, only the International Court of Justice could authoritatively interpret Conventions"* (ILC, [Records of Proceedings, 1969](#), p. 694, para. 59).

In 1978, the Legal Adviser of the Conference gave an opinion on the possible admission of Namibia as a member of the ILO and stated that *"the International Court of Justice is, in accordance with article 37, paragraph 1 of the Constitution, alone competent to give an authoritative answer"* on any question or dispute regarding the interpretation of the Constitution (ILC, [Record of Proceedings, 1978](#), p. 24/20).

In his report to the 70th Session of the ILC in 1984, the Director-General recalled the position of the Committee of Experts that *"competence to give interpretations of Conventions is vested in the International Court of Justice by article 37 of the Constitution. While, on account of the standing and expertise of the members of the Committee of Experts, the Committee's views merit the closest attention and respect and in the great majority of cases find acceptance from the governments concerned, they do not have the force of authoritative pronouncements of law. The Committee is not a court able to give decisions binding upon member States"* (ILC, [Report of the Director-General, 1984](#), p. 30).

In 1990, the representative of the Secretary-General to the CAS indicated that the opinions of the Committee of Experts *"are not authoritative as concerns interpretations to which they may give rise, [and that] this authority attaches exclusively to the International Court of Justice"* (ILC, [Record of Proceedings, 1990](#), p. 27/9, para. 35).

In 2010, the representative of the Secretary-General to the CAS noted that the ICJ is *"the only body at present competent to provide the authoritative interpretation set forth in article 37(1) of the ILO Constitution"* (ILC, Record of Proceedings, 2010, [Provisional Record No. 16, Report of the CAS, Part I](#), para. 33).