



Governing Body

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Legal Issues and International Labour Standards Section
Legal Issues Segment

LILS

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FIRST ITEM ON THE AGENDA

Legal protection of the International Labour Organization in its member States, including the status of its privileges and immunities: Update

Purpose of the document

This document provides an update to GB.313/LILS/1 (March 2012) and invites the Governing Body to review the status of the ILO's legal protection in its member States, including its privileges and immunities and further consider measures to secure legal protection where needed (see draft decision in paragraph 16).

Relevant strategic objective: Cross-cutting.

Policy implications: Promotion of the ILO's legal protection in its member States, including the immunities of Workers and Employers in their functions as members of the Governing Body.

Legal implications: Reaffirming the importance of multilateral and bilateral frameworks for legal protection of the ILO in relation to its member States.

Financial implications: None.

Follow-up action required: See paragraph 16.

Author unit: Office of the Legal Adviser (JUR).

Related documents: GB.313/LILS/1; GB.313/PV, para. 451; GB.304/LILS/1; GB.304/9/1; GB.301/LILS/1; GB.301/11(Rev.).

I. Introduction

1. The Governing Body has recently undertaken several reviews of the status of the privileges and immunities and other legal protections of the ILO in its member States, and the measures undertaken to promote such protection based on a strategy endorsed at its 301st Session.¹ On these occasions, the Governing Body has reaffirmed the importance of the legal protection of the ILO and invited all member States that have not done so to accede to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (1947 Convention) and to apply its Annex I concerning the ILO. The Governing Body has also requested the Office to continue its efforts to promote the ILO's legal protection through various measures presented.
2. The present document summarizes developments since the last report (March 2012),² and provides an opportunity for the Governing Body to offer guidance to ILO Members and the Office on the subject.

II. Current situation

3. Since the last report, five Members have acceded to the 1947 Convention and accepted Annex I. They are as follows (in chronological order):
 - Angola 9 May 2012
 - Honduras 16 August 2012
 - Switzerland 25 September 2012
 - Portugal 8 November 2012
 - San Marino 21 February 2013

With these developments, 119 of the ILO's 185 member States have committed to ensuring respect for the ILO's privileges and immunities on an equal basis among States through this primary multilateral framework Convention (see Appendix I). To date six Members have instruments of accession pending with the UN Secretary-General owing to reservations.³ While the new accessions in the past year are helpful, 66 Members still remain outside the multilateral framework despite repeated requests of the Governing Body and the Director-General.

4. A number of Members have also committed to standing bilateral agreements with the ILO that address issues specific to the ILO's in-country presence and operations such as intellectual property, officials' dependants, a clause for indemnification of the ILO in

¹ GB.301/LILS/1, GB.301/11(Rev.), GB.304/LILS/1 and GB.313/LILS/1.

² GB.313/LILS/1.

³ Armenia, Azerbaijan, Colombia, El Salvador, Qatar and Saudi Arabia. The ILO continues its efforts to resolve these matters, with the States and the UN specialized agencies objecting to the reservations concerned. The reservations concern such issues as military service, treatment of nationals, immunities of funds and assets, and inviolability of the ILO's diplomatic pouch. The proposed reservation of Portugal, which concerned treatment of nationals and residents and was mentioned in the last report, was withdrawn, leading to its accession on 8 November 2012.

certain situations and sharing of information on the impact of cooperation. These accords also normally include a commitment to apply the provisions of the 1947 Convention. Since the last report, a number of Members have entered into discussion with the ILO on a Framework Agreement for Cooperation, the ILO's model accord for in-country partnerships.⁴ In some cases, a Memorandum of Understanding (MOU) accompanying a Decent Work Country Programme temporarily provides protection for in-country activities.

5. However, as a matter of priority, 28 Members remain which do not recognize the ILO's status, privileges and immunities or other legal protection in any standing legal framework, whether multilateral or bilateral.⁵ In these countries, unless an ad hoc legal arrangement specific to a particular activity is put in place, the ILO is faced with the prospect of operating in a situation which both risks its independence and ability to deliver its services effectively, and affords insufficient protection for its property, assets and officials and for the trust funds of any donors concerned. Basic legal protections are necessary for such practical arrangements as opening bank accounts, securing visas, processing tax exemptions or reimbursements and ensuring the immunity of the ILO's property and assets, as well as the inviolability of its premises, archives and communications. For such reasons, as a matter of due diligence, basic legal protection necessary to fulfilling the ILO's purposes is a requirement for in-country activities in member States.⁶
6. In addition to those Members which have yet to agree to the Convention or standing bilateral frameworks for legal protection, the ILO also faces certain gaps in the implementation of its privileges and immunities, even among States parties to the 1947 Convention, or those with bilateral accords applying the Convention's provisions to the ILO.
7. In several member States, the ILO has faced national court claims, which by their very nature violate the Organization's jurisdictional immunity and involve costly interventions at diplomatic level to seek resolution. These cases, primarily brought by locally recruited nationals, frequently concern claims under national labour laws that do not apply to the ILO, given its own terms and conditions of employment and grievance system approved by the Governing Body. Furthermore, the International Labour Conference established the ILO Administrative Tribunal to ensure equal treatment to all ILO officials regardless of their duty station and avoid recourse to national courts. The self-asserted jurisdiction of national courts is often grounded in misunderstanding of the theory of limited immunity, which is accepted under international law for States but not for international organizations.

⁴ For the model version currently under review, see GB.313/LILS/1, Appendix II. In this regard, the Government of South Sudan and the ILO recently concluded a Framework Agreement for Cooperation.

⁵ While national laws afford some protection, they do not provide the ILO with the same level of legal guarantee as an international agreement.

⁶ This proposal follows the Governing Body's approach in March 2008, in which it approved amendments to the *Rules for Regional Meetings*, confirmed by the Conference at its 97th Session (June 2008) so that a Member offering to host a Regional Meeting is expected, as a corollary, to guarantee at least the level of protection afforded under the 1947 Convention, including its Annex I.

8. Recently, in a grave and unprecedented disregard for the ILO's immunities, one Member seized funds in an ILO bank account to satisfy a domestic court judgment on behalf of a national formerly under contract with the ILO, despite a judgment in favour of the Organization in the same grievance brought by the national to the ILO Administrative Tribunal.⁷ Another member State has recently embargoed ILO assets at the request of the social security agency despite the separate social security arrangements for ILO staff members approved by the ILO Governing Body. In the event that bilateral measures for recovery do not prove fruitful, the ILO may need to explore other legal means of redress.⁸
9. Practical as well as legal obstacles to implementation may arise even in States parties to the 1947 Convention, particularly where the ILO has no country office but only delivers technical cooperation. Difficulties may be encountered, for example, in obtaining exemptions or reimbursements of certain taxes and duties, as well as government recognition of ILO officials' exemption from national social security obligations.⁹

III. Measures to secure legal protection where needed

10. Since the last report, the Office has continued its campaign to ensure the ILO's legal protection, including in direct engagement with member States to promote the 1947 Convention, as evidenced by the accessions noted above, and bilateral accords for in-country cooperation where needed. To assist coordination across the Office in partnership development and implementation, continued use has been made of the recently developed information resource materials and the online database on legal protection maintained by the Office of the Legal Adviser.¹⁰ The Office also liaises with governments, through the Office of the Legal Adviser, to resolve the legal and practical instances in which the status, privileges and immunities, and special legal regime of the ILO face challenges.
11. Building on the activities undertaken in the past two years with the Members described in the last report, further intensive discussions with governments in the remaining countries of priority (see paragraph 5) are envisaged, subject to available funds. The Office plans to seek the further support of national employers' and workers' organizations in its efforts. Further promotional and educational initiatives will focus on reservations to accession to the Convention and the practical and legal obstacles, discussed above (see paragraphs 6 to 9).
12. In addition to the above, it may be useful to consider a specific measure to reinforce implementation of the Convention and, in particular, its Annex I which provides Employer and Worker members of the Governing Body with privileges and immunities equivalent to those accorded to representatives of Members. This provision extends to them immunity of jurisdiction for official acts, inviolability of all papers and documents and the same

⁷ See GB.313/LILS/1, note 12.

⁸ Under the Convention, "differences arising out of the interpretation or application ... shall be referred to the International Court of Justice" for an advisory opinion.

⁹ The ILO has its own social security system under the Staff Regulations approved by the Governing Body.

¹⁰ *Legal protection of the International Labour Organization in its member States: An introductory guide* is published in five languages in hard copy and online at http://www.ilo.org/public/english/bureau/leg/stat_oit.htm, and the Legal Protection database can be accessed through <http://www.ilo.org/dyn/legprot/en/>.

immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.¹¹

13. Representatives of member governments often prove their status through the use of diplomatic or service passports of their State of nationality. ILO officials, who enjoy protection under the same Convention, use UN-authorized laissez-passer documents, which under the Convention are reserved exclusively for those officials. In addition, the Employer and Worker members of the Governing Body are issued with a special identity document by Switzerland¹² as the country in which Governing Body sessions are held. However, this document is not a travel document, nor does it replace the requirement for a visa to enter Switzerland.
14. Building upon these precedents, it may be useful to explore the issuance of a separate ILO identification document for Employer and Worker Governing Body members. This document would be recognized by all 118 member States that have acceded to the 1947 Convention and apply Annex I to the ILO and by other States that agree, through bilateral accords with the ILO, to apply the provisions of the Convention and its Annex I. This document could be issued at the start of each three-year mandate of the Governing Body members, and would not only identify its bearer, but also quote the relevant provisions of the 1947 Convention. Like other such documents, it would expire once the full term has been served, or be returned in the event of early termination of their mandate. While national passports and, as applicable, an entry or transit visa would still be required, the new identification document could be used when the Governing Body members exercise their functions to attest to those privileges and immunities specified for them by Annex I.
15. Should the Governing Body agree to this proposal in principle, the Office could prepare a more elaborate proposal for the October 2013 session, including an estimate of the cost of production, issuance and control of such a document. In its March 2012 discussion, the Governing Body identified a separate question concerning the privileges and immunities of the secretariats of the Employers' and Workers' groups of the Governing Body. The study of this question will be submitted, as requested in March 2012, to the Governing Body at its 319th Session.

Draft decision

16. *The Governing Body:*

- (a) *reaffirms the importance of legal protection in the ILO's relations with member States and, in particular, its privileges and immunities recognized in the 1947 Convention on the Privileges and Immunities of the Specialized Agencies and Annex I relating to the ILO;*
- (b) *urges ILO Members which have yet to do so, and in particular those represented on the Governing Body, to accede to the 1947 Convention and apply its Annex I and urges all Members to give full effect to the ILO's privileges and immunities;*

¹¹ The text of the relevant provisions is reproduced in Appendix II.

¹² This document is based on the Headquarters Agreement of the ILO in Switzerland and is signed by the Chief of the Host Country Division in the Swiss Permanent Mission and the ILO Director-General.

- (c) requests the Director-General to continue efforts to promote the legal protection of the ILO through the measures indicated, and to report periodically on the legal situation of the ILO in its member States, with a view to taking further measures as necessary;*
- (d) affirms the necessity of ensuring for the ILO basic legal protection essential for the fulfilment of its purposes in the context of in-country activities with the member States concerned; and*
- (e) requests the Office to prepare a more detailed proposal relating to a possible identity document for Worker and Employer members of the Governing Body, to be submitted to its 319th Session (October 2013).*

Appendix I

Member State	1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)	Annex I (ILO) to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)
Afghanistan	–	–
Albania	15 December 2003	4 October 2007
Algeria	25 March 1964	25 March 1964
Angola	9 May 2012	9 May 2012
Antigua and Barbuda	14 December 1988	14 December 1988
Argentina	10 October 1963	10 October 1963
Armenia ¹	–	–
Australia	9 May 1986	9 May 1986
Austria	21 July 1950	21 July 1950
Azerbaijan ¹	–	–
Bahamas	17 March 1977	17 March 1977
Bahrain	17 September 1992 ²	17 September 1992
Bangladesh	–	–
Barbados	19 November 1971	19 November 1971
Belarus	18 March 1966 ²	18 March 1966
Belgium	14 March 1962	14 March 1962
Belize	–	–
Benin	–	–
Bolivia, Plurinational State of	–	–
Bosnia and Herzegovina	1 September 1993	1 September 1993
Botswana	5 April 1983	5 April 1983
Brazil	22 March 1963	22 March 1963
Brunei Darussalam	–	–
Bulgaria	13 June 1968 ²	13 June 1968
Burkina Faso	6 April 1962	6 April 1962
Burundi	–	–
Cambodia	15 October 1953	2 July 2007
Cameroon	30 April 1992	30 April 1992
Canada	–	–
Cape Verde	–	–
Central African Republic	15 October 1962	15 October 1962
Chad	–	–

Member State	1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)	Annex I (ILO) to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)
Chile	21 September 1951	21 September 1951
China	11 September 1979 ²	9 November 1984
Colombia ¹	–	–
Comoros	–	–
Congo	–	–
Costa Rica	–	–
Côte d'Ivoire	8 September 1961	28 December 1961
Croatia	12 October 1992	12 October 1992
Cuba	13 September 1972 ²	13 September 1972
Cyprus	6 May 1964	6 May 1964
Czech Republic	22 February 1993 ²	22 February 1993 ¹
Democratic Republic of the Congo	8 December 1964	8 December 1964
Denmark	25 January 1950	25 January 1950
Djibouti	–	–
Dominica	24 June 1988	24 June 1988
Dominican Republic	–	–
Ecuador	8 June 1951	8 June 1951
Egypt	28 September 1954	28 September 1954
El Salvador ¹	–	–
Equatorial Guinea	–	–
Eritrea	–	–
Estonia	8 October 1997	8 October 1997
Ethiopia	–	–
Fiji	21 June 1971	21 June 1971
Finland	31 July 1958	31 July 1958
France	2 August 2000 ²	2 August 2000
Gabon	29 June 1961 ²	30 November 1982
Gambia	1 August 1966	1 August 1966
Georgia	18 July 2007	18 July 2007
Germany	10 October 1957 ²	10 October 1957
Ghana	9 September 1958	9 September 1958
Greece	21 June 1977	21 June 1977
Grenada	–	–
Guatemala	30 June 1951	30 June 1951

Member State	1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)	Annex I (ILO) to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)
Guinea	1 July 1959	29 March 1968
Guinea-Bissau	–	–
Guyana	13 September 1973	13 September 1973
Haiti	16 April 1952	16 April 1952
Honduras	16 August 2012	16 August 2012
Hungary	2 August 1967 ²	2 August 1967
Iceland	17 January 2006	17 January 2006
India	10 February 1949	10 February 1949
Indonesia	8 March 1972 ²	8 March 1972
Iran, Islamic Republic of	16 May 1974	16 May 1974
Iraq	9 July 1954	9 July 1954
Ireland	10 May 1967	10 May 1967
Israel	–	–
Italy	30 August 1985 ²	30 August 1985
Jamaica	4 November 1963	4 November 1963
Japan	18 April 1963	18 April 1963
Jordan	12 December 1950	23 August 2007
Kazakhstan	–	–
Kenya	1 July 1965	1 July 1965
Kiribati	–	–
Korea, Republic of	13 May 1977	22 March 2006
Kuwait	13 November 1961	7 February 1963
Kyrgyzstan	–	–
Lao People's Democratic Republic	9 August 1960	9 August 1960
Latvia	19 December 2005	19 December 2005
Lebanon	–	–
Lesotho	26 November 1969	26 November 1969
Liberia	–	–
Libya	30 April 1958	30 April 1958
Lithuania	10 February 1997 ²	10 February 1997
Luxembourg	20 September 1950	20 September 1950
Madagascar	3 January 1966 ²	3 January 1966
Malawi	2 August 1965	2 August 1965
Malaysia	29 March 1962	29 March 1962

Member State	1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)	Annex I (ILO) to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)
Maldives, Republic of	26 May 1969	–
Mali	24 June 1968	24 June 1968
Malta	27 June 1968	27 June 1968
Marshall Islands	–	–
Mauritania	–	–
Mauritius	18 July 1969	18 July 1969
Mexico	–	–
Moldova, Republic of	12 September 2011	12 September 2011
Mongolia	3 March 1970 ²	3 March 1970
Montenegro	23 October 2006	23 October 2006
Morocco	28 April 1958	10 June 1958
Mozambique	6 October 2011	6 October 2011
Myanmar	–	–
Namibia	–	–
Nepal	23 February 1954	11 September 1996
Netherlands	2 December 1948 ²	2 December 1948
New Zealand	25 November 1960 ²	25 November 1960
Nicaragua	6 April 1959	6 April 1959
Niger	15 May 1968	15 May 1968
Nigeria	26 June 1961	26 June 1961
Norway	25 January 1950 ²	25 January 1950
Oman	–	–
Pakistan	23 July 1951 ²	15 September 1961
Palau	–	–
Panama	–	–
Papua New Guinea	–	–
Paraguay	13 January 2006	13 January 2006
Peru	–	–
Philippines	20 March 1950	20 March 1950
Poland	19 June 1969 ²	19 June 1969
Portugal	8 November 2012	8 November 2012
Qatar ¹	–	–
Romania	15 September 1970 ²	15 September 1970
Russian Federation	10 January 1966 ²	10 January 1966
Rwanda	15 April 1964	15 April 1964

Member State	1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)	Annex I (ILO) to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)
Saint Kitts and Nevis	–	–
Saint Lucia	2 September 1986	–
Saint Vincent and the Grenadines	–	–
Samoa	–	–
San Marino	21 February 2013	21 February 2013
Sao Tome and Principe	–	–
Saudi Arabia ¹	–	–
Senegal	2 March 1966	2 March 1966
Serbia	12 March 2001	12 March 2001
Seychelles	24 July 1985	24 July 1985
Sierra Leone	13 March 1962	13 March 1962
Singapore	18 March 1966	18 March 1966
Slovakia	28 May 1993 ²	28 May 1993
Slovenia	6 July 1992	6 July 1992
Solomon Islands	–	–
Somalia	–	–
South Africa	30 August 2002 ²	30 August 2002
South Sudan	–	–
Spain	26 September 1974	26 September 1974
Sri Lanka	–	–
Sudan	–	–
Suriname	–	–
Swaziland	–	–
Sweden	12 September 1951	12 September 1951
Switzerland	25 September 2012	25 September 2012
Syrian Arab Republic	–	–
Tajikistan	–	–
Tanzania, United Republic of	29 October 1962	29 October 1962
Thailand	30 March 1956	19 June 1961
The former Yugoslav Republic of Macedonia	11 March 1996	11 March 1996
Timor-Leste	–	–
Togo	15 July 1960	–
Trinidad and Tobago	19 October 1965	19 October 1965
Tunisia	3 December 1957	3 December 1957
Turkey	–	–

Member State	1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)	Annex I (ILO) to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)
Turkmenistan	–	–
Tuvalu	–	–
Uganda	11 August 1983	11 August 1983
Ukraine	13 April 1966 ²	13 April 1966
United Arab Emirates	11 December 2003	11 December 2003
United Kingdom	16 August 1949 ²	16 August 1949
United States	–	–
Uruguay	29 December 1977	29 December 1977
Uzbekistan	18 February 1997	18 February 1997
Vanuatu	2 January 2008	2 January 2008
Venezuela, Bolivarian Republic of	–	–
Viet Nam	–	–
Yemen	–	–
Zambia	16 June 1975	16 June 1975
Zimbabwe	5 March 1991	5 March 1991

¹ Accession pending owing to reservations that have not been accepted.

² Declarations or reservations accepted as compatible with the Convention.

Appendix II

Provisions of the 1947 Convention and Annex I relevant to a proposed identity document for Worker and Employer members of the Governing Body

Article V

REPRESENTATIVES OF MEMBERS

Section 13

Representative of members at meetings convened by a specialized agency shall, while exercising their functions and during their journeys to and from the place of meeting, enjoy the following privileges and immunities:

- (a) Immunity from personal arrest or detention and from seizure of their personal baggage, and in respect of words spoken or written and all acts done by them in their official capacity, immunity from legal process of every kind;
- (b) Inviolability for all papers and documents;
- ...
- (d) Exemption in respect of themselves and their spouses from immigration restrictions, aliens' registration or national service obligations in the State which they are visiting or through which they are passing in the exercise of their functions;
- (e) The same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign Governments on temporary official missions;
- (f) The same immunities and facilities in respect of their personal baggage as are accorded to members of comparable rank of diplomatic missions.

Section 14

In order to secure for the representatives of members of the specialized agencies at meetings convened by them complete freedom of speech and complete independence in the discharge of their duties, the immunity from legal process in respect of words spoken or written and all acts done by them in discharging their duties shall continue to be accorded, notwithstanding that the persons concerned are no longer engaged in the discharge of such duties.

Section 15

Where the incidence of any form of taxation depends upon residence, periods during which the representatives of members of the specialized agencies at meetings convened by them are present in a member State for the discharge of their duties shall not be considered as periods of residence.

Section 16

Privileges and immunities are accorded to the representatives of members, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the specialized agencies. Consequently, a member not only has the right but is under a duty to waive the immunity of its representatives in any case where, in the

opinion of the member, the immunity would impede the course of justice, and where it can be waived without prejudice to the purpose for which the immunity is accorded.

Section 17

The provisions of sections 13, 14 and 15 are not applicable in relation to the authorities of a State of which the person is a national or of which he is or has been a representative.

...

Article VII

ABUSES OF PRIVILEGE

...

Section 25

1. Representatives of members at meetings convened by specialized agencies, while exercising their functions and during their journeys to and from the place of meeting, and officials within the meaning of section 18, shall not be required by the territorial authorities to leave the country in which they are performing their functions on account of any activities by them in their official capacity. In the case, however, of abuse of privileges of residence committed by any such person in activities in that country outside his official functions, he may be required to leave by the Government of that country provided that:

2. (I) Representatives of members, or persons who are entitled to diplomatic immunity under section 21, shall not be required to leave the country otherwise than in accordance with the diplomatic procedure applicable to diplomatic envoys accredited to that country.

...

Annex I

INTERNATIONAL LABOUR ORGANISATION

In their application to the International Labour Organisation the standard clauses shall operate subject to the following provisions:

1. Article V (other than paragraph (c) of section 13) and section 25, paragraphs 1 and 2 (I), of article VII shall extend to the employers' and workers' members and deputy members of the Governing Body of the International Labour Organisation and their substitutes, except that any waiver of the immunity of any such person member under section 16 shall be by the Governing Body.

...