

**FOR INFORMATION**

THIRD ITEM ON THE AGENDA

The status of privileges and immunities of the International Labour Organization in member States

1. At its 295th Session (March 2006), the Governing Body provided for a review of the status of privileges and immunities of the International Labour Organization in member States. The question is relevant to the capacity of the ILO to support the efforts of constituents in the context of decent work country programmes. The results of the present review reveal that the status of privileges and immunities of the ILO in some member States does not facilitate the effective functioning of the Organization and potentially exposes its officials, delegates and experts to considerable personal risk. The United Nations General Assembly recently called upon all States to undertake the obligations necessary to recognize and accord to the United Nations and its specialized agencies the privileges and immunities essential to the fulfilment of their mandate.¹
2. Moreover, in the face of increased security and related concerns and restrictions, the question of the status of the ILO and its officials, experts and delegates can arise in any of the 179 member States in which the Organization seeks to carry out its functions effectively. In addition to ILO headquarters in Geneva, the Organization has five regional offices,² a number of offices in more than 45 countries including some 15 subregional offices, and national correspondents in more than ten other countries. Furthermore, the Organization has a presence in more than 100 countries where, without having a permanent office, it carries out significant technical cooperation activities and convenes meetings.

¹ UNGA, A/RES/59/211 (2005), para. 6, calling upon all States to consider becoming parties to and to respect fully their obligations under the two Conventions on privileges and immunities of the United Nations and the Convention on Privileges and Immunities of the Specialized Agencies, ratified so far by 148 and 108 States, respectively.

² Abidjan (Africa) – provisionally transferred to Addis Ababa; Bangkok (Asia and the Pacific); Beirut (Arab States); Geneva (Europe); and Lima (Latin America and the Caribbean).

Basis for ILO privileges and immunities

3. The founders of the ILO recognized the essential nature of privileges and immunities in the functioning of the Organization. Article 40 of the Constitution of the International Labour Organisation provides that the ILO “shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes” and similarly that “[d]elegates to the Conference, members of the Governing Body and the Director-General and officials of the Office shall likewise enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization”.³
4. Under the ILO Constitution, the necessary privileges and immunities to be given in the territory of the member States were to “be defined in a separate agreement with a view to its acceptance by the States Members”.⁴ The Convention on the Privileges and Immunities of the Specialized Agencies and its Annex I relating to the ILO serve as the separate agreement that defines those privileges and immunities within the meaning of the ILO Constitution. The International Labour Conference has thus invited all member States to accede to the Convention and undertake to apply it to the ILO.⁵
5. The Convention on the Privileges and Immunities of the Specialized Agencies and its Annex I relating to the ILO provide a uniform basis by which States undertake to recognize and act in accordance with the privileges and immunities considered essential to the fulfilment of the ILO’s purposes and the independently exercised functions of its officials and others acting in connection with the ILO. The Convention recognizes privileges and immunities that are accorded to the specialized agencies, their officials, and representatives of their members, while its various annexes relate to specific privileges and immunities applicable to different specialized agencies.⁶ In addition, Annex I identifies for the ILO the immunities and exemptions accorded to Employers and Workers members and deputy members of the Governing Body and their substitutes at meetings convened by the ILO, and those accorded to experts serving on committees of, or performing missions for, the ILO.

³ ILO Constitution, art. 40, paras. 1 and 2.

⁴ ILO Constitution, art. 40, para. 3.

⁵ Following its adoption by the General Assembly in 1947, the Convention on the Privileges and Immunities of the Specialized Agencies was submitted to the specialized agencies for acceptance and to every member of the United Nations and every other State Member of one or more of the specialized agencies for accession. At its thirty-first Session (June-July 1948), the International Labour Conference adopted a resolution accepting, on behalf of the ILO, the standard provisions of the Convention and its Annex relating to the privileges and immunities of the International Labour Organization, and inviting all member States to accede to the Convention and undertake to apply its provisions to the ILO. For a text of the resolution and the Convention, see <http://www.ilo.org/intranet/english/bureau/leg/immunities/resolutions.htm> (web site of the Office of the Legal Adviser). As noted in the resolution, the Convention provides the framework for defining the necessary privileges and immunities “within the meaning of paragraph 3 of article 40 of the Constitution”. See ILC resolution, preamble para. 8. See also GB.107, Appendix IV, paras. 35-39 (1949) and Minutes of the eighth sitting of the 107th Session, 8-11 December 1948, fourth item on the agenda, p. 89 (English version), taking note of action taken in pursuance of the resolution concerning the privileges and immunities of the International Labour Organisation, adopted by the 31st International Labour Conference on 10 July 1948.

⁶ A separate Convention similarly addresses the privileges and immunities of the United Nations and its officials. The principles reflected in this Convention and its counterpart for specialized agencies are also given independent legal effect as customary international law.

6. A State may undertake to apply the Convention to the ILO at the same time as it becomes a party to the Convention, or at any time thereafter. It may do so by indicating in its instrument of accession to the Convention, or thereafter, in a notification undertaking to apply the provisions of the annex relating to the ILO. Since 1948, when the ILC accepted the standard clauses of the Convention and approved the annex concerning the ILO, the ILO has invited all member States to become parties to the Convention. While a majority has done so, a significant number have not yet taken such action (see paras. 13-15).

Content of ILO privileges and immunities

7. In the context of the ILO, the term “privileges and immunities” covers several different sets of immunities and exemptions that are referred to in the Convention: (i) those necessary for the Organization to exercise its mandate effectively and independently from national authorities; (ii) those granted to ILO staff members in the exercise of their official duties for the same reasons and not for their personal benefit; (iii) those extended to representatives of Members, including Employers and Workers members and deputy members of the Governing Body and their substitutes at meetings convened by ILO; and (iv) those granted to experts serving on committees of, or performing missions for, the Organization.
8. In the first category, privileges and immunities of the Organization itself include: immunity from jurisdiction for the Organization, its property and assets; inviolability of premises and archives; immunity from financial controls, regulations or moratoria; freedom of communications; and exemption from direct taxes, customs duties, and prohibitions and restrictions on imports and exports in respect of articles for official use or its publications.
9. In the second category, privileges and immunities of ILO officials vary depending on their status within the Organization and on the laws of member States.⁷ As a minimum, these privileges and immunities include immunity from jurisdiction in respect of acts performed in their official capacity; immunity from immigration restrictions and alien registration; exemption from national service obligations and from taxation in respect of salaries and emoluments received from the ILO; the right to import free of duty furniture and effects upon first taking up their post; and certain exchange and repatriation facilities.
10. Those persons in the third category enjoy privileges and immunities while exercising their functions and during their journeys to and from the place of meeting. These privileges and immunities include, for example, immunity from personal arrest or detention and from seizure of their personal baggage, and immunity from legal process of every kind in respect of words spoken or written and all acts done by them in their official capacity; inviolability for all papers and documents; exemption for themselves and immediate family members from immigration restrictions, aliens’ registration or national service obligations in the State they are visiting or through which they are passing in the exercise of their functions; and some facilities in respect to currency exchange and their personal baggage.
11. Finally, experts serving on ILO committees or performing missions for the ILO also enjoy a limited set of privileges and immunities necessary for the effective exercise of their functions.

⁷ A number of facilities and privileges that are not considered vital to the effective exercise of the ILO’s functions are granted as a courtesy to certain international civil servants and thus are not discussed in this paper.

12. In relation to persons, privileges and immunities are granted in the interests of the Organization and not for the personal benefit of the persons themselves. The Organization has the right and the duty to waive the immunity of any official or expert in any case where, in its opinion, the immunity would impede the course of justice, and where it can be waived without prejudice to the interests of the Organization. Similarly, waiver of the immunity of persons in the third category falls to the Governing Body or the Member represented, as applicable.

Current situation and proposals for next steps

13. To date, 106 out of 179 ILO member States have acceded to the Convention on the Privileges and Immunities of the Specialized Agencies and accepted its Annex I relating to the International Labour Organization (see paragraph 5). One non-member State (Tonga) has also done so. For a list of those States by region, see the Appendix. In a few member States, the Convention is in force but Annex I has not yet been accepted.⁸
14. In some countries, sources of law other than the Convention provide for privileges and immunities of the ILO and its officials. In certain countries which are not parties to the Convention, host country agreements concluded with the ILO serve as an independent source for privileges and immunities. Moreover, in some situations where such agreements are concluded with countries that are parties to the Convention, the host country agreements recognize certain privileges and immunities in addition to those provided by the Convention. In addition, in certain member States, privileges and immunities of the ILO and its officials are recognized by national law.
15. While all member States have an obligation, arising from the very fact of membership in the ILO, to ensure such privileges and immunities as are necessary for the fulfilment of the ILO's purposes, 61 member States have not yet become parties to the Convention nor do they have host agreements or national law concerning privileges and immunities of the Organization and its officials and representatives. In these countries, the ILO's privileges and immunities operate only on the basis of the ILO Constitution and on principles recognized in general international law. This situation creates some cause for concern, in particular in relation to technical cooperation and to the organization of meetings at which ILO officials and others act in connection with the ILO. It entails an unnecessary risk for the Organization and can also lead to inefficiency and delays arising from the need to negotiate specific bilateral agreements with those States regarding particular projects or programmes. When the Organization does not receive a level of protection in relation to privileges and immunities necessary for its effective operation in some member States, its ability to provide the best possible services for constituents as a whole is undermined.
16. Similar situations arise in relation to meetings that ILO organizes in member States in which there is no legal framework of privileges and immunities beyond the ILO Constitution and general international law. Where participants and ILO officials would not enjoy the necessary independence at ILO meetings due to lack of recognition of their privileges and immunities in a proposed host State, the preparations for such meetings can provide an opportunity to draw a country's attention to a legal gap that might be easily filled. If not, the ILO may need to reconsider the situation in order to ensure an adequate environment within which to fulfil its purposes effectively and independently.

⁸ These member States are Albania, Cambodia, Jordan, Saint Lucia and Togo.

- 17.** A minimum consistent level of privileges and immunities across all member States would strengthen the efforts of the ILO and its constituents to achieve the Decent Work Agenda. The best way to realize this would be to ensure that all member States undertake to become parties to the Convention and its annex relating to the ILO. This would enhance the cost-effective delivery of technical cooperation and the organization of other ILO activities while minimizing risk to those involved.
- 18.** Accordingly, various efforts could be taken to improve the situation described above, including:
- (a) renewing the invitation to States that have not yet acceded to the Convention and accepted Annex I relating to the ILO, to do so;
 - (b) inviting those member States that have acceded to the Convention but not yet accepted its application to the ILO to do so by notifying the Secretary-General of the United Nations of their willingness to apply to the ILO the provisions of the Convention and Annex I; and
 - (c) calling on the Office to report periodically on the situation of privileges and immunities in the member States, and in particular in the context of decent work country programmes.

Geneva, 26 September 2006.

Submitted for information.

Appendix

States parties to the Convention on the Privileges and Immunities of the Specialized Agencies, which have undertaken to apply to the International Labour Organisation the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies and its Annex I ¹

Country (by region)

Africa

Algeria	Ghana	Nigeria
Botswana	Guinea	Rwanda
Burkina Faso	Kenya	Senegal
Cameroon	Lesotho	Seychelles
Central African Republic	Libyan Arab Jamahiriya	Sierra Leone
Côte d'Ivoire	Madagascar	South Africa
Democratic Republic of Congo	Malawi	Tunisia
Egypt	Mali	Uganda
Gabon	Mauritius	United Republic of Tanzania
Gambia	Morocco	Zambia
	Niger	Zimbabwe

Americas

Antigua and Barbuda	Cuba	Jamaica
Argentina	Dominica	Nicaragua
Bahamas	Ecuador	Paraguay
Barbados	Guatemala	Trinidad and Tobago
Brazil	Guyana	Uruguay
Chile	Haiti	

Europe

Austria	Greece	Russian Federation
Belarus	Hungary	Serbia
Belgium	Iceland	Slovakia
Bosnia and Herzegovina	Ireland	Slovenia
Bulgaria	Italy	Spain
Croatia	Latvia	Sweden
Cyprus	Lithuania	The former Yugoslav Republic of Macedonia
Czech Republic	Luxembourg	Ukraine
Denmark	Malta	United Kingdom
Estonia	Netherlands	Uzbekistan
Finland	Norway	
France	Poland	
Germany	Romania	

¹ Source: <http://www.untreaty.org>.

Asia and the Pacific

Australia
Bahrain
China
Fiji
India
Indonesia
Iran, Islamic Republic of
Iraq

Japan
Korea, Republic of
Kuwait
Lao People's Democratic
 Republic
Malaysia
Mongolia
Nepal

New Zealand
Pakistan
Philippines
Singapore
Thailand
Tonga ²
United Arab Emirates

² Not an ILO member State.