



Governing Body

317th Session, Geneva, 6–28 March 2013

GB.317/LILS/PV/Draft

Legal Issues and International Labour Standards Section

LILS

Warning: this document is a draft and may contain omissions or errors. It is made available solely for the purpose of verification and correction. Persons referred to in this document are not to be regarded as bound by statements attributed to them. The ILO declines all responsibility for any errors or omissions which this document may contain, or for any use which may be made of it by third parties.

DRAFT MINUTES

Legal Issues and International Labour Standards Section

Contents

	<i>Page</i>
Legal Issues Segment	1
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 (GB.317/LILS/1(Rev.))	1
Second item on the agenda	
Promotion of the ratification of the Instrument for the Amendment of the Constitution of the International Labour Organisation, 1986 (GB.317/LILS/2).....	5
International Labour Standards and Human Rights Segment	7
Third item on the agenda	
Choice of Conventions and Recommendations on which reports should be requested under article 19 of the Constitution in 2014 (GB.317/LILS/3).....	7

1. The Legal Issues and International Labour Standards Section was held on Monday, 18 March 2013. It was chaired by Mr Corres (Government, Argentina), as appointed by the Chairperson of the Governing Body. Ms Horvatic and Mr Cortebeeck were the Employer and Worker spokespersons respectively.

Legal Issues Segment

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 (GB.317/LILS/1(Rev.))

2. *The Worker spokesperson* welcomed the new accessions by member States to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies as a result of the campaign and activities of the Office and called upon the remaining Members to follow the same steps. He also welcomed the new bilateral agreements concluded in relation to the ILO's presence and operations at the national level but regretted that 28 Members still did not recognize the ILO's status, privileges and immunities or other legal protection in any standing legal framework, whether multilateral or bilateral. Moreover, all Members were called upon to fully respect their international obligations in order to guarantee the proper functioning of the ILO in the countries where it operated, and he was concerned about the situations where such guarantees were not fulfilled. The Workers' group encouraged the Office to continue its efforts to secure legal protection by promoting accession to the 1947 Convention or, subsidiarily, through bilateral agreements, and asked for information on how the support of national employers' and workers' organizations would be sought. It supported the initiative regarding the creation of an identification document for Worker and Employer members of the Governing Body and agreed with the draft decision.
3. *The Employer spokesperson* expressed appreciation for measures taken by the Office, such as the Framework Agreement for Cooperation (FAC) and the access to information resources. The Employers' group welcomed the fact that, as a result of those endeavours, in the space of one year five countries had acceded to the 1947 Convention and accepted its Annex I. They hoped that the 66 countries that had not yet done so would consider accession or comparable alternative protection as a matter of urgency. The ILO should intensify its direct engagement with the governments of the 28 countries that did not afford the ILO adequate legal protection with a view to removing any obstacles to such protection. Clauses for the legal protection of the ILO's privileges and immunities should be indispensable elements of technical cooperation arrangements with such Members. Clear strategies should be set up to deal with the practical implementation problems noted. Attempts to impose income tax on nationals, for example, were contrary to the Convention and should be strongly contested. Situations such as those reported in paragraph 8 of the document were also unacceptable and the ILO should consider suspending operations until the issues had been resolved. The Employers' group requested additional information on the measures to secure legal protection referred to in paragraphs 10 and 11 of the document and looked forward to the discussion at the next session of the study concerning the privileges and immunities of the secretariats of the Employers' and Workers' groups of the Governing Body, since the secretariats played important roles in the world of social and labour relations, in the ILO institutional framework and in the Governing Body. The Employers' group agreed with the draft decision and suggested introducing a new

subparagraph into paragraph 16 that would read: “requests the Director-General to prepare proposals for strategies on how to respond to infringements of the ILO’s immunities or privileges by a member State”.

4. *Speaking on behalf of the member States of the Group of Latin American and Caribbean Countries (GRULAC) represented on the Governing Body,*¹ the Government representative of Colombia recalled GRULAC’s detailed comments on the subject at the 313th Session of the Governing Body, when the group had expressed views and concerns regarding the FAC, which had not been presented for approval by the Governing Body, and had submitted suggestions for improvement. She encouraged the Office to further examine the text, and remained available for any follow-up consultations. One issue that raised particular legal concerns for her group was the provision whereby a government would agree to give effect to the provisions of the 1947 Convention even though it had not acceded to the Convention at multilateral level, as that would represent a breach of the accession procedures set out under national law. Instead, her group believed that the goal should be formal accession to the 1947 Convention and acceptance of its Annex I. It regretted the situations described in paragraphs 7 and 8 of the document but was unable to comment given the lack of specific information provided. The group also considered that the Office should strengthen its efforts in relation to the priority countries mentioned in paragraph 11 to secure their accession to the Convention or, subsidiarily, their conclusion of agreements affording the ILO the required legal protection. Her group supported points (a), (b), (c) and (d) of the draft decision as well as the request for a detailed proposal in relation to an identity document for the Employer and Worker members of the Governing Body set out in paragraph 16 of the paper, but she specified that such a document could only be issued for any period during which the members exercised their functions. She looked forward to the detailed legal study by the Office requested in March 2012 that would examine the possible privileges and immunities of the Employers’ and Workers’ secretariats, recalling that its scope should be limited to situations where the secretariats participated in official ILO missions defined in a tripartite manner. Moreover, she stressed that while officials of the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) exercised an important function in relation to the work of the Governing Body, they were not ILO officials.
5. *Speaking on behalf of the member States of the Africa group represented on the Governing Body,*² a Government representative of Botswana welcomed the five new accessions to the 1947 Convention but regretted that, despite repeated requests by the Governing Body and the Director-General, 66 Members, including some members of the Governing Body, had not yet acceded to the Convention, and she urged those States to do so. Her group supported the draft decision and commended the Office for its continued campaign to promote the ILO’s legal protection in its member States, including the immunities of Workers and Employers in the Governing Body.
6. *Speaking on behalf of the member States of the group of industrialized market economy countries (IMEC) represented on the Governing Body,*³ a Government representative of Canada supported the measures to secure the ILO’s legal protection in its member States on the basis of the 1947 Convention and its Annex I, and asserted that those rights could

¹ Argentina, Brazil, Colombia, Costa Rica, Cuba, El Salvador, Mexico, Panama, Trinidad and Tobago, Uruguay, Bolivarian Republic of Venezuela.

² Algeria, Angola, Botswana, Congo, Egypt, Ghana, Kenya, Niger, Sudan, United Republic of Tanzania, Togo, Zambia, Zimbabwe.

³ Australia, Bulgaria, Canada, Cyprus, Denmark, France, Germany, Hungary, Italy, Japan, Republic of Korea, Lithuania, Malta, Netherlands, Romania, Switzerland, United Kingdom, United States.

also be provided by bilateral agreements according equivalent protection. Measures were most needed in those States that did not grant legal protection to the ILO under any standing legal framework. The IMEC group agreed to consider ways to reinforce the implementation of the Convention and in particular of its Annex I. A proposal for an identification document for Employer and Worker members of the Governing Body would pose little difficulty. However, it could not be an “identity document”, it could only have declaratory value as personal identity could only be proven by a national identity document. Neither could the document have the same value as the UN laissez-passer. As the paper presented did not describe in detail the difficulties linked to the lack of identification cards, it was difficult to assess whether the additional administrative work and costs entailed were warranted, particularly as such cards would not address the problem of countries that had not acceded to the Convention. Regarding the study on a possible extension of privileges and immunities to the secretariats of the Employers’ and Workers’ groups, her group believed that that would call for an amendment of Annex I, which was not a realistic scenario. The IMEC group supported the draft decision subject to three amendments: in point (b), after “urges ILO Members”, it proposed adding the words “which do not provide equivalent legal protection and”; in point (c), after “measures indicated”, it proposed adding the words “in paragraphs 10 and 11”; and in point (e), it proposed replacing “identity” by “identification” and, after “Governing Body”, adding the words “as described in paragraph 14”.

7. *A representative of the Director-General (Deputy Legal Adviser)*, in response to the points raised, explained that the content of point (b) of the draft decision was based on a 1948 International Labour Conference (ILC) resolution that invited Members to accede to the Convention, without any mention of the possibility of replacing the Convention by according equivalent protection in a different way. Moreover, it would be difficult to ascertain whether protection through a bilateral agreement could be considered equivalent to protection under a multilateral framework. Point (c), if adopted with the proposed amendment, would be understood not to impede the Director-General from providing more information relating to the identification document as envisaged in the draft decision before the Governing Body, or as requested by the Governing Body in its March 2012 decision. With regard to the 28 countries in which the ILO enjoyed no standing legal protection, priority was being given to their situation through a number of measures, including bilateral discussions in capital cities and legal protection workshops. Concerning the FAC, the Office welcomed again GRULAC’s invitation, which had already been followed up after March 2012, and reiterated again its availability to meet. It looked forward to discussing any concerns with the group as a whole, having already held some discussions on a country-specific basis. The Deputy Legal Adviser stressed that some clauses in the FAC, such as the clause on privileges and immunities, were essential. Regarding the ability to commit bilaterally to applying the provisions of the Convention without accession to the Convention at multilateral level, such a situation was entirely compatible with international law. There was a long and consistent member State practice of doing so – 35 of the 66 States that had not yet acceded to the Convention had agreed bilaterally to apply its provisions to the ILO – and a similar practice had been followed by States in relation to other United Nations agencies and programmes, such as the United Nations Development Programme (UNDP) and its Standard Basic Assistance Agreement. It was possible for a member State to provide such protection in that way in so far as it was decided by a national authority with the power to do so and was compatible with the national constitutional order. With regard to paragraphs 6–9 of the document, the Office had been asked to identify practical difficulties in giving full effect to legal protection frameworks, and it had outlined cases of particular concern that breached the ILO’s immunities from jurisdiction and execution in relation to national courts and other authorities; some of those cases had proceeded at national level even though they had been dealt with by the ILO’s own dispute resolution system. Regarding the identification cards, the Deputy Legal Adviser clarified that they would indeed not be like the UN laissez-

passer but rather would provide a practical means for assisting States in recognizing the immunities already in place under the Convention as it applied to the ILO. Concerning the questions of issuance and period of validity of the card, particularly in relation to the immunities granted with respect to the acts performed in an official capacity, she further explained that, while the card would not be renewed when membership ended, section 14 of the Convention incorporated by reference into Annex I guaranteed ongoing immunity for acts performed in an official capacity during the members' mandate, and ensuring such immunity for Worker and Employer Governing Body members was essential to the functioning of the Governing Body. With regard to the Employers' suggested amendment concerning proposals for responding to infringements, she understood that it related to difficulties in implementation of legal protection and that, if the amendment was adopted, the Director-General would prepare proposals in due course as needed.

8. Consensus was achieved in relation to all the proposed amendments except the one concerning point (b). The Workers' group did not agree with that proposal, recalling that the objective of accession to the 1947 Convention was one of universal ratification. The Employers' group also disagreed with the proposed amendment to point (b) as it was not in line with the 1948 ILC resolution that had specifically called for Members to accede to the 1947 Convention.

Decision

9. The Governing Body:

- (a) reaffirmed 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) urged ILO Members which had 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 urged all Members to give full effect to the ILO's privileges and immunities;*
- (c) requested the Director-General to continue efforts to promote the legal protection of the ILO through the measures indicated in paragraphs 10 and 11 of document GB.317/LILS/1(Rev.), 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) affirmed 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;*
- (e) requested the Director-General to prepare proposals for strategies on how to respond to infringements of the ILO's immunities or privileges by a member State; and*
- (f) requested the Office to prepare a more detailed proposal relating to a possible identification document for Worker and Employer members of the Governing Body as described in paragraph 14 of document GB.317/LILS/1(Rev.), to be submitted to its 319th Session (October 2013).*

(GB.317/LILS/1(Rev.), paragraph 16, as amended.)

Second item on the agenda

Promotion of the ratification of the Instrument for the Amendment of the Constitution of the International Labour Organisation, 1986 (GB.317/LILS/2)

10. *A representative of the Director-General (Deputy Legal Adviser)* announced that, since the publication of the Office paper, Myanmar had also ratified the 1986 Instrument of Amendment. Consequently, there were 100 ratifications to date, of which two were from Members of chief industrial importance. Thus, a further 24 ratifications were still needed for the Amendment to come into force, of which three were still required from Members of chief industrial importance. She noted that another 85 Members had not yet ratified the 1986 Amendment (not 61 as stated in paragraph 6 of the document). Those changes did not affect the draft decision.
11. *The Employer spokesperson* was satisfied with the Office report and requested the Office to continue reporting to the Governing Body at regular intervals on the matter until the entry into force of the 1986 Amendment. Her group supported the draft decision in paragraph 7.
12. *The Worker spokesperson* welcomed the five new ratifications of the 1986 Amendment but noted that 24 more ratifications, including at least three from Members of chief industrial importance, were still required, despite the lapse of 27 years since the adoption of the Amendment. In his view, there was undue delay in the ratification and entry into force of the Amendment, which was in open contradiction to the principle of tripartism and conveyed a negative image of the Organization's capacity to adapt its structures. The Workers' group urged States that had not yet done so, in particular the remaining eight Members of chief industrial importance and the remaining Governing Body members, to ratify the Amendment in the near future. Following the example of the information session at the 15th Asia and the Pacific Regional Meeting in 2011, similar sessions could be held in the context of the Conference, regional meetings and the Governing Body. The Workers' group supported the draft decision.
13. *Speaking on behalf of the member States of the Africa group represented on the Governing Body*, the Government representative of Botswana commended the five new ratifications, four of which came from African countries. Recognizing with acclaim that India and Italy had ratified the Amendment in 1988 and 1989 respectively, the group regretted the absence of further ratifications by Members of chief industrial importance and appealed to them and to other Members that had not yet ratified the Amendment to do so. Considering that the Amendment enhanced equity, transparency and democracy, her group commended the Office's promotional measures and called for them to be continued. She invited the Office to hold a special information session during the Ninth European Regional Meeting in April 2013, similar to the one held during the Asia and the Pacific Regional Meeting in 2011. The group supported the draft decision in paragraph 7.
14. *A Government representative of Switzerland* recalled that her country had ratified the Amendment some 25 years ago, in 1987. Welcoming the new ratifications, Switzerland encouraged particularly the Members of chief industrial importance and the other 13 members of the Governing Body that had not yet ratified the Amendment to seriously consider doing so. Her delegation supported the draft decision.

15. *A Government representative of Ghana*, supporting the statement of the Africa group, added that the principal objective of the Amendment was to make the Governing Body more representative in light of the various geographic, economic and social interests of its constituent groups. Recalling that her country had ratified the Amendment in 1988, she emphasized that the renewed promotional campaign was timely as the Organization was in the process of restructuring to better respond to the needs of its constituents, drawing on its principles of social justice and fairness.
16. *A Government representative of Zimbabwe*, supporting the statement of the Africa group, added that, in his Government's view, the democratization of the governing structures of the ILO that the Amendment would represent was long overdue.
17. *A Government representative of Algeria* considered the question of the 1986 Amendment crucial for his State as a developing African country and for the other developing countries. Furthermore, the ongoing reform process of the Organization would not have its full effect without the entry into force of the Amendment, which reinforced the transparent and democratic character of the Organization. Algeria requested the Office to continue its promotional efforts in all relevant forums.
18. *A Government representative of Niger*, supplementing the statement of the Africa group, requested the Office to further reinforce its measures for a more intensive ratification campaign.
19. *A Government representative of Kenya*, endorsing the statement of the Africa group, added that the Office should explore new strategies to promote ratification of the Amendment, particularly vis-à-vis Members of chief industrial importance.

Decision

20. *The Governing Body:*

- (a) welcomed the new ratifications of the 1986 Amendment of the Constitution of the International Labour Organisation;*
- (b) again invited the Members that had not yet ratified the 1986 Amendment, and in particular the eight remaining Members of chief industrial importance and the other 13 Members represented on the Governing Body through their governments, to do so;*
- (c) encouraged ILO constituents to intensify efforts at the national and regional levels aimed at further ratifications of the 1986 Amendment, by the Members that had not yet ratified it;*
- (d) requested the Director-General to continue efforts to promote the ratification of the 1986 Amendment, and to report periodically to the Governing Body on new activities and ratifications; and*
- (e) invited the Director-General to follow the guidance in respect of action aimed at the promotion of the ratification of the 1986 Amendment, that the Governing Body provided during its debate.*

(GB.317/LILS/2, paragraph 7.)

International Labour Standards and Human Rights Segment

Third item on the agenda

Choice of Conventions and Recommendations on which reports should be requested under article 19 of the Constitution in 2014 (GB.317/LILS/3)

21. *A representative of the Director-General* (Director, International Labour Standards Department (NORMES)) said that since the 2012 General Survey had dealt with the eight fundamental Conventions, the Office was now proposing a limited number of instruments dealing with the right of association in agriculture and rural workers' organizations to be the subject of the next General Survey, considering that their examination could, in a way, complete the law and practice review of all the related instruments dealing with fundamental principles and rights at work.
22. *The Worker spokesperson* welcomed the proposal to carry out a General Survey on Conventions Nos 11 and 141, and on Recommendation No. 149, which he deemed necessary and opportune, as it could shed light on the plight of rural and agricultural workers in respect of freedom of association. Quoting from the 2008 report on the promotion of rural employment for poverty reduction, he referred to the legal impediments and practical challenges, notably poverty, informality, dependency on the employer, the large number of women workers in agriculture and the often atypical employment relationships, such as migrant, seasonal or casual workers, faced by rural workers in order to assert their right to freedom of association. He also drew attention to the numerous complaints before the Committee on Freedom of Association related to issues affecting agricultural workers, such as violence, harassment, the non-recognition of trade unions and the dismissal of trade union officials. He underlined the importance of effectively promoting the right to organize and the right to collective bargaining in that area to guarantee full and effective protection against anti-union discrimination and to allow agricultural workers to improve their working conditions. He noted that since agriculture was largely dependent on seasonal and temporary workers, a large number of whom were migrants, governments should adopt the measures necessary to ensure that they were not prevented from exercising their right to freedom of association. A General Survey on that subject could also shed light on examples of legislation and measures aimed at facilitating the establishment and development of strong and independent organizations of rural workers, and on the obstacles to the ratification and application of the Conventions in question. Furthermore, given that the rural economy featured among the areas of critical importance in the programme and budget proposals, he considered that such a Survey could also be useful to the Office as it carried out activities in that area. He expressed his desire for the discussion that would follow the creation of the General Survey to also allow the shortcomings of labour inspection in rural areas, as well as the pressing need to strengthen it, to be addressed, and measures to guarantee the ratification and application of Convention No. 129 to be adopted. His group supported the draft decision in paragraph 13.

23. *The Employer spokesperson* said that her group supported the selection of Conventions Nos 11 and 141 and Recommendation No. 149 for the General Survey to be submitted to the ILC in 2015. The Employers' group agreed with the rationale behind the choice of the proposed standards, as set out in paragraphs 6–12 of the document, considering that agriculture was a significant sector of the world of work, which deserved more attention than it usually received. Also, the report form adequately reflected the contents of the instruments in question, as required by article 19 of the ILO Constitution. The Employers therefore agreed with the draft decision in paragraph 13.
24. *Speaking on behalf of the member States of the Africa group represented on the Governing Body*, a Government representative of Botswana acknowledged that General Surveys were an important source of information on the law and practice of member States and could highlight their needs and the areas to be targeted by ILO technical assistance. While several General Surveys had been carried out in the area of freedom of association and collective bargaining, only one had specifically examined the global picture of law and practice in relation to rural workers' organizations under Convention No. 141. The Africa group thus deemed it appropriate that governments be requested to submit reports under article 19 of the ILO Constitution on Conventions Nos 11 and 141 and on Recommendation No. 149, and also agreed with the report form concerning the right of association and the instruments on rural workers' organizations proposed in Appendix I. The Africa group therefore agreed with the draft decision in paragraph 13.
25. *A Government representative of Kenya* said that his Government aligned itself with the statement made on behalf of the Africa group, acknowledging that General Surveys added greater value to the review of instruments both in law and in practice. Since agricultural and rural workers were persistently denied the right to associate and bargain collectively, it was only fair to focus on that category of workers, who not only suffered from a deficit of freedom of association but were, in most cases, beyond the reach of labour inspection services. In that regard, he considered that the role of labour inspection in agriculture and the rural sector should be promoted and sustained to create an integrated and standardized approach, and that, for example, minimum working conditions (including occupational safety and health and wages), which provided a basis for collective bargaining in the first instance, should be addressed from a holistic perspective. Furthermore, a strategy whereby the social partners worked in partnership with already existing structures (such as cooperatives, farmers' associations and others), would add value and reap maximum benefits. The gender dimension was also critical in that respect, as in many countries the majority of rural workers were women. The Government representative of Kenya therefore supported the draft decision in paragraph 13.

Decision

26. Against this background, the Governing Body:

- (i) ***requested governments to submit reports for 2014, under article 19 of the Constitution, on the Right of Association (Agriculture) Convention, 1921 (No. 11), the Rural Workers' Organisations Convention, 1975 (No. 141), and the Rural Workers' Organisations Recommendation, 1975 (No. 149); and***
- (ii) ***approved the report form concerning the right of association and rural workers' organizations instruments which is contained in Appendix I to document GB.317/LILS/3.***

(GB.317/LILS/3, paragraph 13.)