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Legal Issues and International Labour Standards Section
Legal Issues Segment

LILS

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SECOND ITEM ON THE AGENDA

Privileges and immunities of the International Labour Organization: Follow-up

Question of privileges and immunities in relation to officials of the secretariats of the Employers' and Workers' groups of the Governing Body

Purpose of the document

This document responds to the Governing Body's request in March 2012 to present an analysis of the legal protection available to members of the secretariats of the Employers' and Workers' groups in the execution of official missions of the ILO, under the framework of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies and its Annex I relating to the ILO (see draft decision in paragraph 8).

Relevant strategic objective: Cross-cutting.

Policy/Legal implications: Reaffirms the importance of the legal protection available to members of the secretariats of the Employers' and Workers' groups in their execution of official ILO missions.

Financial implications: None.

Follow-up action required: See paragraph 8.

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

Related documents: GB.313/LILS/1; GB.313/PV, para. 451.

Executive summary

The Governing Body at its 313th Session requested the Office to undertake an analysis of the question of immunities and privileges for officials of the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) in the execution of official missions of the ILO defined in a tripartite manner in the context of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (the 1947 Convention) and its Annex I relating to the ILO. The Office was asked to propose possible legal approaches at the 319th Session of the Governing Body.¹ This document concludes that, under the existing provisions of the 1947 Convention and its Annex I, IOE and ITUC officials when acting as members of the secretariats of the Employers' and Workers' groups enjoy certain privileges and immunities in their execution of official ILO missions as "experts on mission".

¹ GB.313/PV, para. 451.

I. The role of Employers' and Workers' secretariats within the ILO

1. As a result of the tripartite nature of the Organization, employers and workers organize themselves through autonomous groups assisted by dedicated secretariats. The secretariats, traditionally provided by the IOE and the ITUC, play a fundamental institutional role in the operation of the ILO. Employer and Worker representatives attending the different bodies and official meetings of the Organization rely on such secretariats to support and coordinate their work. Their existence also arises from the fact that Employer and Worker representatives need an organizational structure to support them in the preparation of their ILO-related work, just like Government representatives have, in particular through their permanent missions.
2. At the International Labour Conference, pursuant to article 71 of its Standing Orders, Employers and Workers elect their respective secretaries from among persons outside the group – traditionally officials from the IOE for the Employers and the ITUC for the Workers – who, assisted by other individuals from those organizations, form the secretariats. During Regional Meetings, Employers and Workers equally exercise their group autonomy and rely on such secretariats to assist them and help prepare their participation.¹ The same applies to sectoral and other ILO meetings.² Similarly, at the Governing Body these two groups designate their own secretaries, traditionally provided by the IOE and the ITUC, to perform a wide variety of important tasks, which include policy advice and background research for Governing Body members relating to items on the agenda; membership of the tripartite screening group that determines the agenda of each session of the Governing Body,³ and support to Governing Body members in official missions. In the discharge of their functions the Employers' and Workers' secretariats thus make a key contribution to the preparatory work for discussions and decisions of ILO organs and meetings. By furnishing support and advisory services to their constituent groups, the Employers' and Workers' secretariats contribute decisively to the operation of tripartism in the ILO's bodies and meetings and thus to the proper functioning of the ILO as a whole. It is therefore of importance that the members of the secretariats enjoy adequate legal protection to ensure they can perform their ILO functions independently and in the best interests of the Organization.

II. Protection of members of Employers' and Workers' secretariats as experts on mission

3. The 1947 Convention does not contain a specific category of protection for officials of employers' and workers' organizations or of other non-governmental organizations. Officials of the IOE and the ITUC are thus not entitled, by the sole fact of being representatives of non-governmental international employers' or workers' organizations, to enjoy any privileges and immunities under the 1947 Convention. However, when they act as members of the secretariats of the Employers' or Workers' groups in the ILO, they are acting for the ILO and therefore benefit from the privileges and immunities accorded to

¹ See article 14 of the Rules for Regional Meetings.

² See article 16 of the Standing Orders for Sectoral Meetings.

³ See paragraphs 19, 23 and 28 of the Introductory note to the Compendium of rules applicable to the Governing Body.

individuals entrusted with official missions. In this regard, Annex I of the 1947 Convention provides that experts serving on committees of or performing missions for the Organization – commonly referred to as “experts on mission” – shall be accorded a series of facilities, privileges and immunities for the effective exercise of their functions (see appendix).

The status of “experts on mission”

4. Experts on mission have long been appointed by the United Nations and its specialized agencies to undertake a wide variety of tasks.⁴ As concerns the ILO, while the Organization’s need for privileges and immunities to protect experts on mission was initially envisaged for three main scenarios (members of commissions of inquiry, members of the Committee of Experts and participants in missions for the purpose of rendering technical assistance to governments),⁵ the practice of the Organization has been broader. It is thus recognized that the Director-General may appoint as experts on mission external collaborators whose task warrants such designation. To facilitate the recognition of their status as experts on mission, attestations are issued where necessary. For example, when experts on mission are expected to travel for the ILO, the Director-General issues them a formal certificate stating that they are appointed as an expert on mission by the ILO and requesting authorities to grant them the privileges, immunities and facilities provided for in the 1947 Convention.
5. The status of experts on mission has been the subject of an extensive body of international practice as well as an advisory opinion of the International Court of Justice (ICJ),⁶ from which it is possible to summarize the essential traits of this category as follows. Experts on mission are individuals who, while not being officials nor representatives of member States, are entrusted with the performance of specific and important tasks for an international organization. The term “mission” does not require travel and the essence of the matter lies not in the administrative position of the expert but in the nature of the mission. In the discharge of their duties experts on mission are accountable to the Organization and may neither seek nor accept instructions from any government or other external source.
6. Members of the secretariats of the Employers’ and Workers’ groups are entrusted with the execution of official ILO missions. In order to safeguard their independence, members of the secretariats may, in and during the performance of these tasks, enjoy the status of experts on mission in accordance with the abovementioned criteria. For members of the secretariats to be considered experts on mission they need to be entrusted with a particular ILO task by an organ of the ILO. For example, the secretaries of the Employers’ and Workers’ groups are nominated by the Conference groups, which are bodies of the International Labour Conference provided for in article 70 of the Conference Standing Orders. The procedure is similar for the Governing Body, in accordance with the practice

⁴ Experts on mission are provided for in the 1946 Convention on the Privileges and Immunities of the United Nations (covering the United Nations and all its funds and programmes) as well as in the 1947 Convention (covering the specialized agencies, ten of which have annexes to the 1947 Convention providing special protection for experts on mission).

⁵ Minutes of the 104th Session of the Governing Body, March 1948, Appendix XI: Report of the Standing Orders Committee, p. 158.

⁶ See ICJ 1989 Advisory Opinion on the Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, ICJ Reports 1989, p. 177.

referred to in the Introductory note to its Standing Orders⁷ and for other meetings such as Regional Meetings and sectoral meetings. In the case of other missions (such as tripartite high-level missions or technical cooperation missions), the nomination of the IOE or ITUC officials to perform the official task (for example accompanying the respective Employer and Worker members) may be made by the IOE and ITUC under the delegated authority of the ILO organ which decided on the mission. In the performance of their duties, the IOE or ITUC officials concerned are accountable respectively to the Employers' or Workers' groups, and through them to the Organization itself. Since the legal protection afforded to them is founded on the need to safeguard their independence in carrying out the mission for the ILO, they can neither seek nor accept instructions from external sources.

Recognition of legal protection

7. Protection of the privileges and immunities of members of the secretariats of the Employers' and Workers' groups as experts on mission requires in the first place that there is a corresponding legal commitment of Members to respect those privileges and immunities through accession to the 1947 Convention with regard to the ILO or, at least, their acceptance of the application of the Convention's provisions through a bilateral agreement with the ILO.⁸ In order for the experts on mission who are required to travel to prove that they are entitled to privileges and immunities, the Director-General could issue them a certificate following the model that has been used in the past for members of commissions of inquiry and other high-level missions. To enable the Director-General to certify the status of the expert on mission and claim the corresponding privileges and immunities for them, it is most important that the decision entrusting the secretariat members with their mission is sufficiently explicit, and that their individual nomination is officially recorded so that there can be no doubt about their identity. Where a nomination is made under the delegated authority of the organ (the nomination of Regional Meeting group secretariat members other than the Secretary, for instance) it is recommended that the names of the secretariat members be published in a meeting document.

Draft decision

8. *The Governing Body:*

- (a) *takes note of the legal protection available under the Convention on the Privileges and Immunities of the Specialized Agencies and its Annex I for members of the secretariats of Employers' and Workers' groups entrusted with the execution of an official mission for the Organization;*
- (b) *requests the Director-General to take the necessary measures to facilitate implementation of this legal protection in relation to official missions; and*
- (c) *in order to ensure the effective recognition of such legal protection, again urges ILO Members that have yet to do so to accede to the Convention on the Privileges and Immunities of the Specialized Agencies and apply its Annex I or otherwise provide the same level of legal protection.*

⁷ See para. 23.

⁸ See GB.317/LILS/1(Rev.) and GB.317/PV, para. 495.

Appendix

Relevant excerpts from the 1947 Convention

Standard clauses of the Convention

Section 29

Similar facilities to those specified in section 28¹ shall be accorded to experts and other persons who, though not the holders of United Nations laissez-passer have a certificate that they are travelling on the business of a specialized agency.

Annex I

INTERNATIONAL LABOUR ORGANISATION

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

...

3. (i) Experts (other than officials coming within the scope of article VI) serving on committees of, or performing missions for, the Organisation shall be accorded the following privileges and immunities so far as is necessary for the effective exercise of their functions, including the time spent on journeys in connection with service on such committees or missions:

- (a) Immunity from personal arrest or seizure of their personal baggage;
- (b) In respect of words spoken or written or acts done by them in the performance of their official functions, immunity of legal process of every kind, such immunity to continue notwithstanding that the persons concerned are no longer serving on committees of, or employed on missions for, the Organisation;
- (c) The same facilities in respect of currency and exchange restrictions and in respect of their personal baggage as are accorded to officials of foreign Governments on temporary official missions;
- (d) Inviolability of their papers and documents relating to the work on which they are engaged for the Organisation.

(ii) In connection with (d) of 3(i) above, the principle contained in the last sentence of section 12 of the standard clauses shall be applicable.

¹ Section 28 reads as follows:

“Applications for visas, where required, from officials of specialised agencies holding United Nations laissez-passer, when accompanied by a certificate that they are travelling on the business of a specialised agency, shall be dealt with as speedily as possible. In addition, such persons shall be granted facilities for speedy travel.”

(iii) Privileges and immunities are granted to the experts of the Organisation in the interests of the Organisation and not for the personal benefit of the individuals themselves. The Organisation shall have the right and the duty to waive the immunity of any expert in any case where in its opinion the immunity would impede the course of justice, and it can be waived without prejudice to the interests of the Organisation.