



## Governing Body

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GB.332/LILS/1

Legal Issues and International Labour Standards Section  
*Legal Issues Segment*

**LILS**

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### FIRST ITEM ON THE AGENDA

## Follow-up to the discussion on the protection of Employers' and Workers' delegates to the International Labour Conference and members of the Governing Body in relation to the authorities of a State of which they are a national or a representative

#### Purpose of the document

This document proposes a revised draft Conference resolution amending Annex I of the 1947 Convention on the Privileges and Immunities of the Specialized Agencies based on prior discussions at the 325th (October–November 2015), 326th (March 2016) and 328th (October–November 2016) Sessions of the Governing Body. The aim of revising Annex I is to grant limited immunities to Employers' and Workers' delegates to the International Labour Conference and Regional Meetings, as well as to Employer and Worker members of the Governing Body with a view to protecting their independence and the unhindered discharge of their official functions in the ILO in relation to the authorities of a State of which they are nationals or of which they are or have been representatives. The Governing Body is invited to approve the draft resolution in Appendix I for submission to the next session of the International Labour Conference (see the draft decision in paragraph 11).

**Relevant strategic objective:** Cross-cutting.

**Main relevant outcome/cross-cutting policy driver:** Effective and efficient governance of the Organization.

**Policy implications:** None.

**Legal implications:** Possible referral to the International Labour Conference of a draft resolution amending Annex I of the Convention on the Privileges and Immunities of the Specialized Agencies.

**Financial implications:** None.

**Follow-up action required:** Submit the draft resolution to the Conference for possible adoption.

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

**Related documents:** GB.325/LILS/1; GB.325/PV; GB.326/LILS/1; GB.326/PV; GB.328/LILS/1; GB.328/PV.



## Introduction

1. It is recalled that this agenda item has been examined by the Governing Body at its 325th (October–November 2015), 326th (March 2016) and 328th (October–November 2016) Sessions. At its 328th Session, the Governing Body took note of the revised draft resolution concerning the revision of Annex I to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies (“1947 Convention”) and decided to defer further consideration of the item until its 331st Session (October–November 2017), having regard in particular to the request made by several governments for additional time to carry out consultations at the national level. The tripartite screening group subsequently decided to further postpone the discussion and place the item on the agenda of this session for discussion.
2. Pursuant to the decision of the screening group, which is likely to have afforded sufficient time for national consultations to take place, this document presents a draft resolution in Appendix I further amended to take into account the views expressed so far in the Governing Body. To facilitate its consideration, the Office has prepared in Appendix II the additional information requested by governments as regards clarification on the criteria and procedure for waiving.

## Summary of the discussions

3. At its 325th Session (October–November 2015), the Governing Body examined a document <sup>1</sup> containing a detailed analysis of the origin of the question and the current legal situation. It described, in particular, the gap in protection left by the provisions of the 1947 Convention and its Annex I relating to the International Labour Organization (ILO), and the different ways in which the Organization had addressed it, including the adoption of the *Resolution concerning freedom of speech of non-governmental delegates to ILO meetings*, by the Conference at its 54th Session (1970).
4. The document proposed two options, the first of which would consist in amending Annex I to the 1947 Convention so as to provide for certain privileges and immunities for Employer and Worker representatives in respect of their own States, which could be inspired by parliamentary immunities. Alternatively, the Conference could adopt a further resolution on the issue, recalling the 1970 Conference Resolution and reinforcing it, including by providing for more detailed privileges and immunities. The option of amending Annex I to the 1947 Convention was supported by the Employers’ and Workers’ groups and was considered a viable, although not unproblematic, option by the Group of Latin American and Caribbean Countries (GRULAC). Other governments mainly expressed doubts in this regard. The alternative option involving a new Conference resolution received practically no support. <sup>2</sup>
5. At its 326th Session (March 2016) the Governing Body examined a document <sup>3</sup> proposing specific amendments to Annex I of the 1947 Convention. Under the amended Annex I, Employers’ and Workers’ delegates and advisers to the Conference and regular, deputy and substitute members of the Governing Body, would enjoy, in relation to the authorities of a

<sup>1</sup> [GB.325/LILS/1](#).

<sup>2</sup> [GB.325/PV](#), paras 587–596.

<sup>3</sup> [GB.326/LILS/1](#).

State of which they are nationals or of which they are or have been representatives, the following four types of immunities: (i) immunity from legal process in respect of words spoken or written and acts performed in their official capacity, both during and subsequent to the discharge of their duties in connection with the ILO; (ii) immunity from personal arrest or detention while exercising their functions at a meeting of the International Labour Conference or the Governing Body and during their journeys to or from the place of meeting; (iii) exemption from any administrative or other restrictions on their free movement in connection with their attendance at the meeting concerned; and (iv) inviolability for all their papers and documents while exercising their functions at the meetings concerned and during their journeys to or from the place of meeting.

6. Both the Employers' and Workers' groups were supportive of the proposed amendments to Annex I, but considered that the privileges and immunities should also apply to Regional Meetings, in addition the International Labour Conference and the Governing Body. While governments generally recognized the need to protect the freedom of speech of employers and workers at ILO meetings, concerns were expressed in particular with respect to the proposed immunity from personal arrest or detention and the fact that it was modelled on parliamentary immunity. The group of industrialized market economy countries (IMEC) was, nevertheless, prepared to support the proposed amendments to Annex I subject to a number of specific changes and clarification on the envisaged criteria and procedure for waiving immunity.<sup>4</sup>
7. At its 328th Session (October–November 2016), the Governing Body examined a further document,<sup>5</sup> which contained new proposals of a reduced scope and an Explanatory Note. More concretely, the privileges and immunities granted to Employers' and Workers' Conference delegates and Governing Body members in relation to the authorities of their own State were limited to immunity from legal process in respect of words spoken or written and acts performed in their official capacity, instead of the four immunities granted in the previous draft while the personal scope of the immunity was extended to cover Employers' and Workers' delegates and advisers to ILO Regional Meetings.
8. The Workers' group considered that the protection granted under the new proposals was insufficient in several respects. The protection of the human right to freedom of speech should be accompanied by protection against arrest or detention and the exemption from any administrative or other restriction on their free movement in connection with their attendance at a meeting, to prevent possible acts of retaliation against Workers representatives. In addition, the limitation of the protection of freedom of speech to words written and spoken inside the meeting premises was not in line with the 1970 Conference Resolution. The Employers' group regretted the reduced scope of the proposed immunities but was prepared to support the proposals if they helped address concerns raised by governments at earlier discussions. On the government side, IMEC supported the proposals whereas other governments expressed concerns regarding the difficulty to distinguish between official acts and acts in a private capacity, the possible impact on the jurisdiction of a sovereign State, and accordingly requested additional time for internal consultations.<sup>6</sup>

<sup>4</sup> [GB.326/PV](#), paras 441–458.

<sup>5</sup> [GB.328/LILS/1](#).

<sup>6</sup> [GB.328/PV](#), paras 553–567.

## Substance of the revised proposals

9. The revised proposals reflect the various suggestions expressed in previous discussions, in particular as regards the material and personal scope of the proposed immunities. Accordingly, the proposed immunities would cover: (i) the Employers' and Workers' delegates and advisers at the International Labour Conference; (ii) Employers' and Workers' delegates and advisers to ILO Regional Meetings; and (iii) the Employer and Worker regular members and deputy members of the Governing Body, as well as their substitutes. These immunities would be limited to: (i) immunity from legal process both during and subsequent to the discharge of their duties in respect of words spoken or written and acts performed in their official capacity at meetings of the International Labour Conference, regional conferences or the Governing Body or of any of their committees, subcommittees or other bodies; (ii) immunity from personal arrest or detention while exercising their functions at a meeting of the International Labour Conference or the Governing Body and during their journeys to or from the place of meeting; and (iii) exemption from any administrative or other restrictions on their free movement in connection with their attendance at the meeting concerned. Finally, the proposed immunities would not apply in case the person concerned is caught in the act of committing an offence (*in flagrante delicto*) and could always be lifted by the Governing Body or the Conference in accordance with an established procedure.
10. In resuming discussion on this matter, a number of key elements of the proposed amendment to Annex I of the 1947 Convention should be borne in mind:
  - The proposed immunity serves to protect the freedom of expression and independence of non-governmental delegates to the Conference and Regional Meetings and of non-governmental members of the Governing Body. Freedom of opinion and speech is key to meaningful social dialogue and tripartism. By protecting the immunity of Employers' and Workers' delegates to the Conference and Employer and Worker members of the Governing Body, the ILO enhances and guarantees the independence, transparency and stability of the Organization's main deliberative and executive organs. The proposed immunity does not seek to protect individual persons but the body to which they belong by safeguarding the autonomy and integrity of their statutory role and functions vis-à-vis the ILO.
  - The 1947 Convention in its section 17 renders the privileges and immunities of non-governmental representatives of member States inapplicable in relation to the authorities of their home country. Since a complete protection of Conference delegates' and Governing Body members' freedom of speech does not seem possible if it may be disregarded in their own country, the 1947 Convention needs to be adapted to follow the Conference's understanding of article 40 expressed in the 1970 resolution. The way to do this is by amending Annex I of the Convention, which is the instrument that allows the ILO to adapt the 1947 Convention to its particular needs.
  - The proposed immunity for Employers' and Workers' delegates to the Conference and members of the Governing Body mirrors the widely-accepted principle of "parliamentary privilege" or parliamentary "non-accountability" in that it offers protection only with respect to words spoken and acts performed in the exercise of official ILO functions, which is a concept recognized in most democracies around the world. On the contrary, it does not cover the "inviolability" form of parliamentary immunity, which confers special legal protection for parliamentarians – typically against arrest, detention and prosecution – for acts undertaken outside the exercise of their parliamentary function for as long as they are in office. The proposed immunity of non-governmental delegates to the Conference (often referred to as world parliament of labour) and members of the Governing Body seeks to uphold the integrity and

autonomous operation of the tripartite structure of the Organization by protecting the representatives of employers and workers from undue pressure and interference.

- The proposed immunity from legal process offers protection against judicial proceedings or any other legal action in respect of opinions expressed (orally or in writing), acts performed and votes cast by non-governmental delegates at the Conference or Regional Meetings and Governing Body members in the exercise of their functions. The immunity would apply, for instance, to statements and speeches, written reports, initiatives such as filing of complaints and votes cast but should not extend to private statements and behaviour not directly related to their functions as Employer and Worker representatives.
- The proposed immunity is limited to statements made and acts performed within the premises hosting the session of the Conference, the Governing Body or a Regional Meeting (for instance, the UN *Palais des Nations*, the ILO headquarters building, or a conference centre hosting a Regional Meeting). This includes words or votes recorded at plenary sittings, group meetings, meetings of committees and subsidiary bodies such as working groups, and other official places of work used for the purposes of the Conference, the Governing Body or Regional Meeting but does not include statements made on the occasion of the meeting or session, to the press or social media, televised or radio debates, interviews and political meetings.
- The proposed immunity from legal process for views expressed or votes cast by the persons concerned during their appointment as Conference delegates or advisers, members of the Governing Body or delegates or advisers of a Regional Meeting continues to apply in respect of those acts even after the end of the appointment.
- The proposed immunity from personal arrest or detention while exercising their functions at an ILO meeting and during the journey to or from the place of the meeting as well as the exemption from any administrative restriction on their free movement in connection with their attendance at an ILO meeting intends to address the situation where Employer or Worker representatives are prevented from discharging their ILO mandate by being arbitrarily arrested or detained, or prevented from attending sessions of the annual Conference, the Governing Body or a Regional Meeting for administrative reasons related, for instance, to the availability of a valid passport or permission to leave the country.
- The proposed immunities do not apply when the persons concerned are found in the act of committing an offence (*in flagrante delicto*) and can always be lifted by the Governing Body or the International Labour Conference, as the case may be, by applying the same rules that presently member States apply when they have to make similar decisions under section 16 of the 1947 Convention, which is reproduced textually in the revised Annex I. Possible elements of a procedure for waiving immunities of Conference delegates or Governing Body members are set out in Appendix II. Such a procedure could be adopted as a new annex to the Compendium of rules applicable to the Governing Body and would also be reflected in the Standing Orders of the International Labour Conference.
- If approved by the Governing Body, the proposed amendment to Annex I will be transmitted to the Conference in the form of a draft resolution for consideration and possible adoption. If adopted by the Conference, the revised annex will be transmitted by the Office to the UN Secretary-General and it would become binding on those member States that would address a notification of acceptance to the Secretary-General in accordance with sections 38 and 47(1) of the 1947 Convention. This will be the first time the ILO will propose a revised annex. However, other specialized agencies, such as the World Health Organization (WHO), the International Maritime

Organization (IMO) and the Food and Agriculture Organization (FAO) have amended their respective annexes several times in order to extend the coverage of privileges and immunities to certain categories of persons. Finally, it should be noted that any Member ratifying the 1947 Convention after the adoption of the revised annex will not be automatically bound by that annex and may still choose to be bound only by the original 1948 version of Annex I by making a corresponding declaration.

## **Draft decision**

- 11. *The Governing Body approves the draft resolution in Appendix I for submission to the next session of the International Labour Conference.***





## Appendix I

### **Draft resolution concerning the revision of Annex I to the Convention on the Privileges and Immunities of the Specialized Agencies (1947)**

The General Conference of the International Labour Organization, meeting in its 107th Session, June 2018,

Noting that, in accordance with article 40 of the Constitution of the Organisation, delegates to the Conference and members of the Governing Body shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization;

Recalling the resolution concerning freedom of speech of non-governmental delegates to ILO meetings adopted by the International Labour Conference at its 54th Session (1970), which emphasized the fundamental importance to the ILO and to the performance of the work of the ILO that Employers' and Workers' delegates to the Conference and members of the Governing Body may freely express their views, the views of their groups, and the views of their organizations, on questions within the competence of the International Labour Organization, and may freely keep members of their organizations in their countries informed of the views so expressed,

Reaffirming the importance it attaches to the application of article 40 of the Constitution of the International Labour Organisation in such manner that the right of Employers' and Workers' delegates to the Conference and members of the Governing Body to express themselves freely on questions within the competence of the International Labour Organization is completely safeguarded;

Decides to revise Annex I to the Convention on the Privileges and Immunities of the Specialized Agencies by inserting in the said annex as new paragraph 1bis the following provisions:

“1bis. (i) Notwithstanding section 17 of Article V, Employers' and Workers' delegates and advisers to the International Labour Conference or to regional conferences convened under article 38 of the Constitution of the International Labour Organisation, and Employer and Worker members and deputy members of the Governing Body and their substitutes, shall enjoy, in relation to the authorities of a State of which they are nationals or of which they are or have been representatives:

- (a) immunity from legal process both during and subsequent to the discharge of their duties in respect of words spoken or written and acts performed in their official capacity at meetings of the International Labour Conference, regional conferences or the Governing Body or of any of their committees subcommittees or other bodies;
- (b) immunity from personal arrest or detention while exercising their functions at a meeting of the International Labour Conference, a regional conference or the Governing Body and during their journeys to or from the place of meeting, except when they are found in the act of committing an offence; and
- (c) exemption from any administrative or other restrictions on their free movement in connection with their attendance to the meeting concerned.

(ii) Privileges and immunities under this paragraph are accorded not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connection with the International Labour Organization. Consequently, the Organisation shall have the right and the duty to waive, through the International Labour Conference or the Governing Body as the case may be, the immunity of any Employer or Worker representative in any case where in its opinion the immunity would impede the course of justice, and it can be waived without prejudice to the purpose for which the immunity is accorded.”

Requests the Director-General to transmit to the Secretary-General of the United Nations the revised Annex I in accordance with section 38 of the Convention;

Invites Members, parties to the Convention, to notify to the Secretary-General their acceptance of this revised annex in accordance with Article XI, section 47(1), and pending such notification to apply, to the extent possible, its provisions as modified;

Invites Members not parties to the Convention to accede thereto, and pending such accession to apply, to the extent possible, the provisions of the Convention and of the Annex, as modified, in their territories.

## **Appendix II**

### **Possible elements of a procedure for waiving immunity**

#### ***General***

1. The procedure for examining requests of member States for the waiving of the immunity of Employers' and Workers' delegates to the Conference and members of the Governing Body who are their nationals shall be governed by a set of clear procedural rules, possibly adopted as a separate annex of the Compendium of rules applicable to the Governing Body, based on the following main principles:
  - (i) the right of non-governmental delegates to the Conference and members of the Governing Body to express themselves freely is paramount in application of article 40 of the ILO Constitution;
  - (ii) a request for waiver of immunity shall be rejected if there is a well-founded suspicion that legal proceedings have been instituted with the sole purpose of preventing the delegate or the member of the Governing Body concerned from discharging their duties and responsibilities on behalf of the ILO;
  - (iii) the impartiality and timeliness of the procedure shall be ensured at all times;
  - (iv) any request for waiver of immunity must be supported by substantial evidence;
  - (v) no action may be taken against the person whose immunity is sought to be lifted for as long as the request for waiver is being examined by the competent ILO organ;
  - (vi) the decision taken by the Organization shall state clearly the grounds on which it has been reached.

#### ***Legal basis***

2. The possibility for member States to file a formal request for lifting the immunity of non-governmental delegates to the Conference or Regional Meetings or Governing Body members who are their nationals shall be expressly provided for in the revised Annex I to the 1947 Convention.

#### ***Filing a request***

3. Any initiative for filing a formal request for lifting the immunity from legal process of an Employers' or Workers' delegate to the Conference or a Regional Meeting or of an Employers' or Workers' member of the Governing Body would have to come from the government of the State of which the person concerned is a national or is, or has been, a representative. At the origin of the request for a waiver may be a national court before which immunity from legal process is pleaded or a diplomatic communication by the Office asserting the immunity on behalf of the Conference or Regional Meeting delegate or Governing Body member concerned. A fully-reasoned request for waiver would have to be sent through the ordinary diplomatic channels to the ILO Director-General, who would submit it to the competent body for consideration and decision.

#### ***Procedure***

4. With the exception of requests for waiver of the immunity of Conference delegates that may be received when the Conference is in session and for which the Conference shall be

responsible, all requests shall be submitted and considered by the Governing Body (that is, requests concerning Governing Body members and delegates to Regional Meetings as well as Conference delegates when the Conference is not in session). Consideration could be given to introducing the possibility for the Governing Body to delegate certain functions to its Officers – under specific conditions to be determined by the Governing Body – with a view to expediting the process, for instance as regards urgent requests received by the Office between sessions.

5. Upon receiving the request for a waiver of immunity from the government of a member State, the Director-General shall seek to collect, to the extent necessary and possible, all relevant information, including documents or other evidence, from the government, the person concerned and the secretariat of the group concerned. The Director-General shall prepare and submit in a timely fashion a report containing all background information to serve as a basis of the deliberations of the Governing Body or the Conference, as the case may be.
6. The procedure shall be different depending on whether the request is submitted to the Governing Body or the Conference. Neither the member State nor the delegate or the Governing Body member concerned shall participate in the decision-making process.
7. If the Governing Body is seized of the request, the Director-General's Report shall be first submitted, on a strictly confidential basis, to the Officers of the Governing Body, who shall report to the Governing Body on their findings and recommendations, under conditions to be determined by the Governing Body. The request for waiver shall be considered in a private sitting in the INS Section and the decision shall be taken in accordance with normal decision-making rules and practice.
8. If the request for waiver concerns a Conference delegate and the annual Conference is in session, the request shall be referred, in the first instance, to the Selection Committee, which could decide to refer the matter to a tripartite subcommittee for preliminary examination. Upon receiving the report and recommendations of the subcommittee, the Selection Committee shall decide whether to transmit the question to the Conference for final decision. As per usual practice, the Conference shall adopt its decision, in principle, by consensus or failing consensus, by simple majority vote. If the Conference is not in a position to complete the examination of the request for waiver in time, it may decide to defer the matter to the Governing Body.
9. Based on the facts and considerations contained in the Director-General's Report or the report of the subcommittee of the Selection Committee, as the case may be, the Governing Body or the Conference shall examine:
  - (1) whether the member State concerned has accepted the revised Annex I to the 1947 Convention which grants immunity to non-governmental Conference delegates and Governing Body members vis-à-vis the authorities of the State of which they are nationals;
  - (2) whether the alleged incriminating conduct of the person concerned falls within the personal and material scope of the immunity conferred by the revised Annex I;
  - (3) whether immunity from jurisdiction would impede the course of justice and whether it can be waived without prejudice to the purpose for which the immunity is accorded.
10. If the answer to all three questions is positive, the request should be granted. If the answer to any of the three questions is negative, the request should be rejected.
11. The Director-General shall inform the Government of the member State concerned of the fully-motivated decision of the Governing Body or of the Conference, as the case may be.
12. If the Government of the member State concerned disagrees with the decision of the Governing Body or the Conference, it may decide to pursue the question through the

procedure provided under Article VII, section 24, of the 1947 Convention concerning abuse of privilege.