



## Governing Body

334th Session, Geneva, 25 October–8 November 2018

GB.334/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 Regional Meetings 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), 328th (October–November 2016) and 332nd (March 2018) Sessions of the Governing Body and a consultation process requested by 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, in relation to the authorities of a State of which they are nationals or of which they are or have been representatives, with a view to protecting their independence and the unhindered discharge of their official functions in the ILO. 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 9).

**Relevant strategic objective:** All.

**Policy implications:** Effective and efficient governance of the Organization.

**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; GB.332/LILS/1; GB.332/PV.

## Introduction

1. 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 332nd Session (March 2018), when the discussions were to resume, the Governing Body considered that the time available for comprehensive analysis of document GB.332/LILS/1 had been too short and postponed the item to its 334th Session (October–November 2018) with a view to the submission of a draft resolution to the following session of the International Labour Conference. It requested the Office to recirculate the document to member States and to schedule a consultation process including informal tripartite consultations in order to find a viable approach.<sup>1</sup> The document was recirculated on 22 March 2018 inviting governments, through the regional coordinators, to provide comments. The Office received comments from four governments. Two of them (Austria and Finland) indicated that the draft resolution in Appendix I of the document was acceptable, another government (Australia) indicated that the draft resolution did not raise particular concern, and yet another government (New Zealand) indicated that it was not in a position to provide any comments as national tripartite consultations were on-going. Tripartite consultation meetings took place on 11 July and 25 September 2018.
2. As governments did not indicate any changes to the proposed resolution that would facilitate their acceptance of the proposed revised Annex to the 1947 Convention, the text of the resolution in Appendix I is identical to that proposed at the 332nd Session of the Governing Body, except that the words “administrative or other” in paragraph 1bis(i)(c) of revised Annex I to the 1947 Convention have been deleted. The Office considered that this latter change was necessary to avoid an interpretation that would exclude restrictions of judicial origin from the scope of the provision.
3. In preparation of the consultations of 25 September, the Office prepared an explanatory note on the proposed resolution in a questions and answers format, which appears in Appendix II. Appendix III reproduces the possible elements of a procedure for waiving immunity that were already presented to the Governing Body at its 332nd Session.

## Purpose of the proposal

4. The proposed revised Annex I to the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947 (“1947 Convention”) contained in Appendix I of this document addresses the specific question of privileges and immunities coverage of Employers’ and Workers’ delegates to the International Labour Conference and Regional Meetings and Employers’ and Workers’ members of the Governing Body in relation to the authorities of a State of which they are nationals or representatives. It seeks to complement the protection those representatives already enjoy in relation to the authorities of all other States.
5. The purpose of the revised Annex is to close the “protection gap” in the coverage of the 1947 Convention and its Annex I with respect to the Employers’ and Workers’ representatives to the ILO’s main executive and deliberative organs. While the exclusion of privileges and immunities in relation to the authorities of the representatives’ home State, as provided for under Article V, section 17, of the Convention, may be appropriate for Government representatives, it is not so for Employers’ and Workers’ representatives, since

<sup>1</sup> GB.332/PV, para. 525.

tripartism can only function properly if their independence from governments – including their own – is fully guaranteed.

6. Situations relevant to the proposed additional protection have been brought to the attention of different bodies of the ILO and addressed by them in multiple ways since the early days of the Organization. These included cases of arrest and imprisonment of protected representatives, sometimes for reasons directly linked to statements made in the ILO, as well as the inability for representatives to attend meetings due to non-issuance of travel documents, or confiscation of such documents, or due to express prohibition to leave their country. However, the procedures currently available – mainly complaints to the Credentials Committee of the Conference and complaints to the Committee on Freedom of Association of the Governing Body – are respectively too limited in scope and not reactive enough to address those urgent situations effectively and efficiently.
7. The advantage of the proposed additional protection is that the privileged status of the representatives concerned can be asserted by the Office on behalf of the Organization, when required, thus offering a more agile and, where necessary, discrete way to resolve difficulties as compared to the existing procedures before ILO bodies.
8. By establishing a strong, yet clearly circumscribed, protection for the Employers' and Workers' representatives concerned in relation to the authorities of their home State, the proposed revised Annex I to the 1947 Convention would reinforce the genuine tripartism of the International Labour Conference, the Governing Body and Regional Meetings and will thus strengthen the capacity of the ILO's key governance organs to fulfil their respective mandates in conditions of enhanced independence, integrity and transparency. This is timely and fully consistent with the objectives of the Governance Initiative, one of the seven ILO Centenary Initiatives.

## **Draft decision**

9. *The Governing Body approved the draft resolution in Appendix I of document GB.334/LILS/1 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 108th Session, June 2019,

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 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 Organisation. 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

### Questions and answers

#### 1. *Whom does the proposed revised Annex seek to cover?*

The new provisions would benefit firstly the Employers' and Workers' delegates and advisers at the ILC as referred to in article 3 of the Constitution. Based on the numbers of delegates and advisers registered at the last five sessions of the Conference, and bearing in mind that member States would only have to apply the new provisions to their own Conference delegations, this would concern on average about six persons per member State (taking into account, however, that the actual size of delegations varies widely). Secondly, the privileges and immunities would apply to the Employer and Worker regular members (28 persons) and deputy members (38 persons) of the Governing Body, as well as to their substitutes. This represents not more than two persons per member State, in most cases less. Thirdly, as regards Regional Meetings, which are also composed of tripartite national delegations as the Conference, the new provisions would concern on average between three to four persons per member State.

#### 2. *What does the proposed additional protection consist in?*

The revised Annex recognizes that the Employers' and Workers' representatives concerned should enjoy:

- (a) immunity from legal process in respect of words spoken or written and acts performed in their official capacity;
- (b) immunity from personal arrest or detention while exercising their functions at a meeting covered and during their journeys to or from the place of meeting;
- (c) exemption from any restrictions on their free movement in connection with their attendance to the meeting concerned.

This protection will apply to the Employers' and Workers' representatives concerned only in relation to the authorities of a State of which they are nationals or of which they are or have been representatives. In all other cases, which involve the authorities of States other than their own home State, Employers' and Workers' representatives are fully protected under existing Article V, section 13(a), and paragraph 1 of Annex I of the Convention on the Privileges and Immunities of the Specialized Agencies (1947 Convention). As the purpose of the new provisions is therefore to complement the existing protection, their scope and wording follows as closely as possible that of the existing provisions.

##### 2.1. What does immunity from legal process cover?

The proposed immunity from legal process will protect the freedom of speech of the covered representatives. It will offer 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 Conference/Regional Meeting delegates 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.

It should not extend, however, to private statements and behaviour not directly related to their functions as Employer and Worker representatives. By means of example, a Worker or an Employer delegate to the Conference/Regional Meeting who might be charged by the

authorities of his/her own country for having signed an article 26 complaint against that country would be immune from legal process.

*Where do the words have to be spoken and the acts to be performed in order to be covered by the immunity from legal process?*

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.

It does not include, however, statements made on the occasion of the meeting or session, to the press or social media, televised or radio debates, interviews, political meetings or in writing, even if such statements practically reproduce statements delivered or views expressed at ILO meetings. By way of example, a Worker or Employer member of the Governing Body could not invoke immunity from legal process if legal action were to be taken in his/her own country for having given an interview on Swiss television while in Geneva for the March session of the Governing Body in which he/she denounced the legislative reforms in that country and called for an international embargo against the Government. However, the same Governing Body member would be protected for having delivered the same message within the ILO premises during a Governing Body session or in the context of another official meeting. In the same vein, the Governing Body member would not be covered by the proposed immunity if he/she were to publish an article in the newspapers of his/her home country reproducing the speech he/she delivered at the Governing Body. Nonetheless, legal action could not be taken against him/her if the speech was published, or otherwise reported, by a third party.

*How long does the immunity from legal process last?*

The proposed immunity prevents any type of judicial proceedings 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. However, it continues to apply in respect of those acts even after the end of the appointment. For example, an Employer Governing Body member having delivered a speech at a sitting of the November 2017 session would be immune from any legal action on grounds related to that speech, even if that action were initiated five or ten years later, well after the end of his/her term of office as Governing Body member.

## 2.2. What does immunity from personal arrest or detention cover?

The proposed immunity protects the Employers' and Workers' delegates and Governing Body members from personal arrest or detention, while exercising their functions at a Conference/Regional Meeting or Governing Body session or during their journeys to or from the place of meeting.

As the proposed immunity applies only in relation to the authorities of a State of which they are nationals or of which they are or have been representatives, its scope is in effect very narrow: it prevents that the Employers' and Workers' representatives are arrested or detained when leaving their country to attend one of the ILO meetings concerned or when they are returning. During the meeting, the additional protection is practically relevant only for the nationals and representatives of the host country of the meeting (normally Switzerland for the Conference and the Governing Body). Moreover, the immunity does not

apply when the representatives are found in the act of committing an offence (in flagrante delicto). For instance, if an employer or worker delegate accredited to the International Labour Conference is taken in custody for alcohol-related violence by the authorities of the airport from which he/she is supposed to leave for the Conference, such delegate will not be protected by the proposed revised Annex to the 1947 Convention.

***How long does the immunity from personal arrest or detention last?***

Immunity applies only from the start of the journey to the meeting of the Conference, Governing Body or Regional Meeting until the representative's return. During that time, any civil or criminal procedure may nevertheless continue as long as it does not prevent the representative's attendance at the meeting. The immunity may end prematurely if the representative is caught in the act of committing an offence justifying his or her arrest or detention.

**2.3. What does the exemption from any restrictions on the free movement cover?**

This immunity covers any restriction on free movement that is less than arrest or detention (covered in the preceding clause of Annex I). It covers, for example, restrictions concerning the availability of a valid passport to travel to the place of the meeting. This does not mean that Employers' and Workers' representatives should be permitted to travel to a meeting without a valid passport, but they should be exempted from any restrictions of an administrative nature preventing the timely issuance of a valid passport to them, or from any measure involving the confiscation of their passport.

***Does the exemption cover judicial as well as administrative restrictions on the free movement?***

Yes. An important example in this regard is the case of a prohibition to leave the country during civil or criminal proceedings, preceded or not by the rejection of a request for permission to leave the country. Employers' and Workers' representatives must be exempted from such a prohibition where it would prevent them from attending the Conference, the Governing Body or a Regional Meeting.

As judicial restrictions appear to be as relevant as administrative restrictions in the context of the protection of the free movement of Employers' and Workers' representatives, paragraph 1bis(i)(c) of revised Annex I has been slightly modified (by deleting the words "administrative or other") to avoid any unintended interpretation, including due to the fact that a similar provision exists in the Protocol No. 7 to the Treaty on the Functioning of the European Union, but in a different regulatory context.

***How long does the exemption from any restrictions on the free movement last?***

Given its scope, this immunity applies as from the time when a person who is appointed as an Employers' and Workers' representative to the Conference, the Governing Body or a Regional Meeting starts preparing his or her travel to the meeting. It ends upon their return from the meeting.

**3. *Why is the proposed additional protection needed?***

The proposed immunities reinforce the existing protection of the tripartite composition of the Conference, Governing Body and Regional Meetings of the Governing Body and the



freedom of expression and independence of non-governmental delegates or members to those main ILO governance organs, which is key to meaningful social dialogue and tripartism.

They close a gap that has remained in the protection of Employers' and Workers' delegates to the Conference and Regional Meetings and Employer and Worker members of the Governing Body under the 1947 Convention and its Annex I as a consequence of its Article V, section 17. This provision excludes the application of the privileges and immunities granted to the representatives of Members in relation to the authorities of a State of which the person concerned is a national or of which he is or has been a representative. This exclusion is not justified with respect to Employers' and Workers' representatives, who are expected to act independently from any government, including their own, as an essential precondition for the meaningful functioning of ILO tripartite meetings.

Cases for which the proposed privileges and immunities would be relevant have arisen since the early days of the ILO until today. They concerned situations of imprisonment of delegates of Governing Body members, in certain cases in connection with statements made at ILO meetings in other cases for other reasons. Cases of non-delivery or confiscation of passports preventing the attendance of Employers' and Workers' representatives have also been reported from 1925 until recently. Situations involving a prohibition to leave the country have appeared in recent years, but only some concerning delegates at the International Labour Conference could be resolved through its Credentials Committee which has specific powers in this respect. References of past cases can be found in document GB.325/LILS/1.

By reinforcing the privileges and immunities of Employers' and Workers' delegates to the Conference/Regional Meetings 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 immunities seek to protect principally the body to which those delegates and representatives belong by safeguarding the autonomy and integrity of their statutory role and functions vis-à-vis the ILO.

#### **4. *Are the Employers' and Workers' delegates and Governing Body members not protected otherwise?***

Under the 1947 Convention, a "protection gap" exists for the Employers' and Workers' representatives concerned only in relation to the authorities of a State of which they are nationals or representatives. They are nevertheless partly protected through different means. Firstly, as the participation in meetings organized by the ILO is considered as a fundamental trade union right, they can lodge a complaint with the Committee on Freedom of Association. But since such a complaint can be dealt with only a certain time after the facts (on average nine months or more depending on urgency and caseload), it cannot facilitate an immediate resolution. Secondly, the Credentials Committee of the Conference is competent to hear complaints regarding "an act or omission of a government by which an accredited delegate or adviser has been prevented from attendance at the Conference". Very recently, it has helped resolve a case of a Workers' delegate prevented from leaving his country. However, this procedure does not help in situations that are best addressed in advance of the Conference and no similar procedure exists for the Governing Body and Regional Meetings.

The advantage of privileges and immunities is that they provide a protection that is the same for all Conference delegates, Governing Body members and Regional Meeting delegates and that can be asserted by the Office on behalf of the Organization through the diplomatic channels (i.e. usually through the Permanent Missions of Members in Geneva) immediately when issues arise.

Employers' and Workers' delegates and Governing Body members may in many countries be satisfactorily protected under national laws guaranteeing freedom of speech and

freedom of association. However, the international obligations that the proposed revised Annex I to the 1947 Convention would complement serve precisely to address situations in which national legal systems fail to provide the necessary protection. Even where national systems implement international standards, those will typically not take into account the particular situation of Employers' and Workers' representatives at ILO meetings.

## **5. How do the proposed immunities compare to parliamentary immunity?**

The comparison of the proposed immunities with parliamentary immunities is logical, as parliamentary immunities are the most common case where a State grants immunities to some of its nationals. Another comparable aspect is that they both serve to protect the independence and integrity of supreme governance organs through the immunity of their members. Nevertheless, even though the International Labour Conference is sometimes referred to as the "World Parliament of Labour", the proposed immunities differ from parliamentary immunities in some respects.

Protection of members of parliament for acts performed in official capacity is a concept recognized in most democracies around the world. It is referred to as "parliamentary privilege", "non-accountability" or "freedom of speech". In the great majority of countries, parliamentarians enjoy absolute immunity for opinions expressed and votes cast in the performance of their parliamentary duties and this principle is guaranteed by national constitutions. Such protection applies from the moment of their election, or from the moment they take the parliamentary oath, and does not end at the expiration of the mandate or at the dissolution of parliament but remains in force for their action during the exercise of the mandate.

The proposed immunity from legal process ensuring freedom of speech for Employers' and Workers' delegates to the Conference and members of the Governing Body mirrors this widely-accepted principle of parliamentary privilege in that it offers protection only with respect to words spoken and acts performed in the exercise of official ILO functions. If the parliamentary privilege is based on the need to protect the principles of representative democracy and separation of powers, the proposed immunity of non-governmental delegates to the Conference 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 arrest and detention can be compared to parliamentary immunity in the narrow sense (also known as "inviolability") which confers special legal protection for parliamentarians – typically at least against arrest, detention and prosecution, but sometimes more generally against civil or criminal proceedings. The extent to which such immunity is granted to parliamentarians varies widely between member States. It is, however, always temporary and applies only as long as the members of parliament are in office mandate. It may be waived and does usually not cover cases in which a parliamentarian is caught in the act of committing a crime (in flagrante delicto).

As compared to parliamentary immunity, the immunities granted in the revised Annex I to the 1947 Convention are restricted in scope and duration. The representatives concerned enjoy only immunity from arrest and detention and exemption from other restrictions on their freedom of movement while civil or criminal proceedings may otherwise continue. Moreover, whereas parliamentary immunity often applies throughout the term of office of parliamentarians, the proposed immunities of Employers' and Workers' representatives apply only during the meetings and the journey to and from the meetings, even in the case of Governing Body members notwithstanding the fact that they are elected for a three-year term.

**6. *How would the proposed immunity be lifted and who would make this decision?***

It would be for the International Labour Conference or the Governing Body, as the case may be, to make a decision on waiving immunity and in making this decision these organs would apply the same rules that presently member States apply when they have to make similar decisions under section 16 of the 1947 Convention. The proposed revised Annex I reproduces textually the wording of section 16 without adding or removing anything. Possible elements of a procedure for waiving immunity are set out in document GB.332/LILS/1, Appendix II.

**7. *When ratifying the revised Annex I, do Members need to adopt implementing legislation?***

Implementing the provisions of the revised Annex I would call for some action, legislative or otherwise, depending on the legal system, procedures and practices of the ratifying Member. It may be assumed that in most countries, some form of legal instrument such as an act, ordinance or regulation would be required before the proposed immunities could be effectively applied in the domestic legal order.

**8. *Why is an amendment to Annex I to the 1947 Convention required?***

According to a 1970 Conference resolution, article 40 of the ILO Constitution should be applied in a manner that fully protects the freedom of speech of Conference delegates and Governing Body members on questions concerning the ILO. Yet, the 1947 Convention in its section 17 renders their privileges and immunities under the Convention inapplicable vis-à-vis the authorities of a State of which they are nationals or representatives. Since a meaningful protection of the freedom of speech of Conference/Regional Meeting delegates and Governing Body members does not seem possible if it may be disregarded by their own country, the 1947 Convention needs to be adapted to follow the Conference's understanding of article 40. 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.

**9. *What is the procedure for amending Annex I?***

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 (see appendix). 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 Articles 38 and 47(1) of the 1947 Convention.

**10. *Has the ILO ever adopted other amendments to Annex I of the 1947 Convention?***

No, this would be the first time the ILO would adopt a revised Annex. However, other specialized agencies, such as the WHO, IMO and FAO have amended their respective annexes several times in order to extend the coverage of privileges and immunities to additional categories of persons.

**11. *Will any Member ratifying the 1947 Convention after the adoption of the revised Annex be automatically bound by that Annex?***

No, according to United Nations practice as depository of the Convention, a member State may still choose to be bound only by the original 1948 version of Annex I by making a corresponding declaration.

## Appendix III

### 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.