



Governing Body

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Legal Issues and International Labour Standards Section

LILS

Legal Issues Segment

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First item on the agenda

Possible options that could allow employers' and workers' representatives from Myanmar to contribute to the work of future sessions of the International Labour Conference

Purpose of the document

This document was requested by the Governing Body at its 351st Session (June 2024), following an invitation from the Credentials Committee of the 112th Session (June 2024) of the Conference for the Governing Body to urgently consider possible options that could allow employers' and workers' representatives from Myanmar to contribute to the work of future sessions of the Conference (see the draft decision in paragraph 30).

Relevant strategic objective: All.

Main relevant outcome: Outcome 2: Strong, representative and influential tripartite constituents and effective social dialogue.

Policy implications: None.

Legal implications: None.

Financial implications: None.

Follow-up action required: Decision by the Conference at its 113th Session (June 2025).

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

Related documents: [GB.351/PV](#); [ILC.112/Record No. 3A](#).

► Introduction

1. At the 112th Session (June 2024) of the International Labour Conference, the Credentials Committee of the Conference examined for the fourth consecutive year the question of the representation of Myanmar, as the secretariat had received two competing sets of credentials, one from the military authorities that took power in 2021 and one from the “National Unity Government” (NUG).
2. As at the previous sessions, after noting that the Credentials Committee of the United Nations General Assembly had decided once again to postpone its consideration of the competing credentials of Myanmar, the Committee decided that no delegates for Myanmar would be accredited at that session of the Conference. It expressed regret over the continued ambiguity on the matter of the representation of Myanmar, which precluded the participation of employers and workers of Myanmar in the Conference, and noted that in the absence of guidance from the United Nations General Assembly, it may need to make its own determination in due course so as to enable the tripartite constituents of Myanmar to resume active participation in the work of the annual sessions of the Conference. It added: “In the meantime, the Committee wishes to invite the Governing Body, through the Conference, to urgently consider possible options that could allow employers’ and workers’ representatives from Myanmar to contribute to the work of future sessions of the Conference”.¹
3. At its 351st Session (June 2024), the Governing Body decided to add to the agenda of its 352nd Session (October–November 2024) an item on “Possible options that could allow employers’ and workers’ representatives from Myanmar to contribute to the work of future sessions of the Conference, based on the recommendation of the Credentials Committee of the 112th Session of the International Labour Conference”.²
4. The Governing Body is accordingly asked to examine ways to allow employers and workers of Myanmar to participate, in some form, in the Conference, to the extent that such participation would be compatible with the Credentials Committee’s decision, based on the position of the United Nations, not to accept credentials from either the military authorities or the NUG. Under these conditions, it appears that the only possibility for permitting such participation would be through international non-governmental organizations, in particular international employers’ and workers’ organizations, which would include employers’ or workers’ representatives from Myanmar in their delegations. This option does not rely on credentials issued by a Member State, given that international employers’ and workers’ organizations are invited by the Governing Body to attend the Conference and are entirely free as to the persons they nominate as their representatives. Moreover, it does not require any change to the Standing Orders of the Conference or other rules. In fact, this option is already being used currently, but the participation rights of employers and workers of Myanmar through international non-governmental organizations could be enhanced.

¹ ILO, [First report of the Credentials Committee](#), ILC.112/Record No. 3A, International Labour Conference, 112th Session, 2024, para. 23.

² GB.351/PV, para. 39.

The matter of the representation of Myanmar before the Credentials Committee of the Conference

5. The matter of the representation of Myanmar first came before the Credentials Committee at the 109th Session (June 2021) of the Conference, following the military coup of February 2021 in Myanmar. The secretariat had received two competing sets of credentials, one from the Permanent Mission of Myanmar in Geneva for the military authorities and one from the NUG.
6. It is recalled that credentials of the tripartite delegations to the International Labour Conference are submitted by the governments of Member States for the tripartite delegation (article 3(8) of the ILO Constitution) and are “subject to scrutiny by the Conference” (article 3(9)). Examination of these credentials is carried out on behalf of the Conference by its Credentials Committee (articles 8 and 31 of the Standing Orders of the Conference). When different authorities claim to represent the government of a Member State and submit competing credentials, the decision to accept one set of credentials effectively requires the Credentials Committee to determine which entity is internationally recognized as representing the government of the Member State in the ILO. In such cases, accreditation is not a procedural formality but a substantive question with political implications.
7. The question of recognition of governments and representation in the ILO is considered a political matter in relation to which the Organization should be guided by the United Nations (UN) General Assembly. According to resolution 396(V) adopted by the General Assembly in 1950, “whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations, ... the attitude adopted by the General Assembly ... concerning any such question should be taken into account in other organs of the United Nations and in the specialized agencies”.³ The purpose, which follows from the preamble of the resolution, is to centralize the examination of such questions in the General Assembly, which due to its composition and mandate is best suited to deal with them, and thus avoid a situation where the various UN bodies and agencies might reach conflicting decisions on them. Although the ILO is not legally bound by the 1950 resolution, which is formulated as a recommendation, it has complied with it as a matter of constant practice, from its adoption⁴ until now in the case of Myanmar.
8. With respect to Myanmar, the Credentials Committee of the UN General Assembly was also faced with competing credentials from the same two authorities claiming to represent the Government of Myanmar. In December 2021, at the 76th Session of the General Assembly, it decided to “defer its decision on the credentials pertaining to the representatives of Myanmar” to the following session of the General Assembly.⁵ It took, in essence, the same decision at the 77th Session in December 2022 and at the 78th Session in December 2023.⁶
9. Based on resolution 396(V), precedents of competing credentials at the International Labour Conference, the decision of the UN General Assembly’s Credentials Committee to defer its decision on the credentials of Myanmar and the position taken in several bodies and conferences of other international organizations in the UN system, the Credentials Committee

³ United Nations General Assembly, Recognition by the United Nations of the representation of a Member State, [resolution 396\(V\)](#) of 14 December, 1950.

⁴ For example, in the case of China in 1951. See International Labour Conference, 34th Session (1951), [Record of Proceedings, Appendix I](#), pp. 499–500.

⁵ UN General Assembly, 76th Session, Report of the Credentials Committee, [A/76/550](#), para. 9.

⁶ [A/77/600](#), para. 11, and [A/78/605](#), para. 9.

of the Conference decided in 2021 that “no delegates for Myanmar [would] be accredited at the 109th Session of the Conference”.⁷

10. Faced with the same competing credentials for Myanmar at the 110th Session (2022) of the Conference and no change in the position of the UN General Assembly, the Credentials Committee reached the same conclusions as in 2021. It added that it hoped that the General Assembly would “soon be in a position to make a determination as regards the representation of Myanmar as the current situation affects not only the representation of the Government of Myanmar at the International Labour Conference but also precludes the participation of the employers and workers of Myanmar in the Conference”.⁸ The following year, at the 111th Session (2023), the Conference reinforced its conclusions and stated that “in view of this situation, which is specific to the ILO because of its unique tripartite structure, the Committee believes that, in the continued absence of guidance from the United Nations General Assembly, it may in due course consider making a determination which would enable the tripartite constituents of Myanmar to resume active participation in the work of the Organization”.⁹ It reiterated this conclusion in similar terms at the 112th Session (2024) before inviting the Governing Body to consider possible options that could allow employers’ and workers’ representatives from Myanmar to contribute to the work of the Conference.¹⁰

► Participation through invited international employers’ and workers’ organizations

11. In order not to conflict with the decisions of the Credentials Committee, themselves based on the position of the UN General Assembly, any option that could be seen as a recognition by the Organization or by one of its organs of one of the two competing authorities as the legitimate government of Myanmar should be avoided.
12. The possible participation in the Conference of employers’ and workers’ representatives from Myanmar through international non-governmental organizations thus appears to be the only viable option. The fact that those organizations nominate their representatives freely means that the Organization would not be involved in the choice of representative or that there would be any link with the competing credentials. This assumes, however, that such international employers’ and workers’ organizations would be willing to implement this option by nominating employers and workers from Myanmar among their representatives and permitting them to address the Conference and its committees. This is already taking place in practice. Workers’ representatives from the Confederation of Trade Unions of Myanmar (CTUM; formerly the Federation of Trade Unions of Burma (FTUB)) have long been included in the delegation of the International Trade Union Confederation (ITUC) and have been able to

⁷ As the 109th Session of the Conference was exceptionally divided into two parts, which took place respectively in June and December 2021, the ILO position was established through two rounds of discussion at the Credentials Committee, the second of which benefited from the United Nations position. See Second report of the Credentials Committee, [ILC.109/Record No. 3B](#), and Fourth report of the Credentials Committee, [ILC.109/Record No. 3E](#), para. 13.

⁸ ILO, First report of the Credentials Committee, [ILC.110/Record No. 2A](#), para. 29.

⁹ ILO, First report of the Credentials Committee, [ILC.111/Record No. 2A\(Rev.1\)](#), para. 29.

¹⁰ ILO, First report of the Credentials Committee, [ILC.112/Record No. 3A](#), para. 23.

speak in the Committee on the Application of Standards on matters concerning Myanmar.¹¹ It may be recalled that, in the years before the military coup in Myanmar, the Employers' delegate always came from the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) and the Workers' delegate from the CTUM.

13. In accordance with article 2(j) and (k) of the Standing Orders of the Conference, there are two categories of international non-governmental organizations that may participate in the Conference. The first currently consists of six organizations¹² with which the ILO has established consultative relationships and standing arrangements for representation at the Conference in accordance with a Governing Body resolution of 1948.¹³ The second category comprises other international non-governmental organizations invited, at their request, by the Governing Body – or, in practice, by its Officers¹⁴ – to be represented at any given session of the Conference in accordance with article 2(3) of the Standing Orders of the Conference. This group is usually made up of between 60 and 80 international employers' and workers' organizations and civil society organizations.
14. Apart from the fact that the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) act as the secretariat for, respectively, the Employers' and Workers' group of the Conference – a function that is separate from their representation as an organization at the Conference – all international non-governmental organizations have the same rights at the Conference, which, with respect to the plenary, follow from article 14(9) of the Standing Orders of the Conference:

The President may, in agreement with the Vice-Presidents, permit representatives of international non-governmental organizations with which the Organization has established consultative relationships and with which standing arrangements for representation at the Conference have been made, and representatives of other international non-governmental organizations which have been invited to be represented at the Conference, to make or circulate statements for the information of the Conference on subjects which are being considered by the Conference other than administrative and financial questions. If agreement cannot be reached the matter shall be referred to the Conference for decision without discussion.

15. In the committees of the Conference, international non-governmental organizations have analogous rights in accordance with article 36(6) of the Standing Orders under one additional condition, namely, that they have been invited by the Conference to be represented at the committee concerned.
16. As noted in paragraph 12 above, international non-governmental organizations are entirely free as to the persons they nominate as their representatives. The Credentials Committee has stated several times when examining communications received from the military authorities of Myanmar concerning the inclusion of CTUM representatives in the ITUC delegation: "The Constitution and the Standing Orders do not provide for a procedure to challenge the nomination of other participants to the Conference, such as representatives from non-

¹¹ See, for example ILO, Report of the Committee on the Application of Standards, [Part II, ILC.110/Record No. 4B/P.II](#), p. 441; Report of the Committee on the Application of Standards, Part II, [Provisional Record 16 Part II](#), International Labour Conference, 99th Session (2010), p. 39.

¹² International Organisation of Employers; International Trade Union Confederation; World Federation of Trade Unions; Business Africa; Organization of African Trade Union Unity; International Cooperative Alliance.

¹³ Resolution adopted by the Governing Body at its 105th Session (June 1948), [Compendium of Rules applicable to the Governing Body](#), Annex V.

¹⁴ Under their delegated authority in accordance with para. 2.3.1(d) of the Standing Orders of the Governing Body.

governmental international organizations with which standing arrangements for their participation in the Conference have been made" ¹⁵ Regarding the number of representatives that can be nominated by each organization for a session of the Conference, while the six organizations enjoying general consultative status are not subject to any limitations, other organizations are in practice permitted to nominate only a maximum of one representative for each technical item on the agenda of the session and an additional representative for the plenary. ¹⁶

Enhancing participation rights

17. As noted above, it is already possible, under the Standing Orders of the Conference, for employers' and workers' representatives of Myanmar to participate in the Conference as representatives of an international non-governmental organization. However, limited use has been made of that possibility to date, and it has mainly been in connection with the Committee on the Application of Standards. In this regard, it would be possible to enhance the exercise of participation rights of Myanmar's employers' and workers' representatives without amending the Standing Orders.
18. To ensure that the granting of enhanced rights achieves, but does not exceed, its objective of enabling employers and workers from Myanmar to contribute to the work of the Conference, it is proposed to apply two conditions. Firstly, enhanced participation rights would be granted only where the employers' and workers' representatives from Myanmar speak on behalf of an international employers' or workers' organization – as opposed to any other civil society organization – given that the former have been invited to the Conference on the understanding that they represent the legitimate interests of employers and workers respectively. Secondly, enhanced participation rights would be justified only where an organization speaks on matters specifically concerning the situation in Myanmar. Otherwise, employers and workers from Myanmar would have greater rights than Employers' or Workers' delegates or committee members, who normally do not speak as they are represented by the spokesperson of their group.

Plenary

19. Employers and workers from Myanmar could, as representatives of an international employers' or workers' organization, be permitted to speak in the plenary on subjects specifically concerning Myanmar. This would not prevent another representative of the same organization from speaking on the same subject. To that end, the Officers of the Conference would have to grant an exception from the rule applied in practice that international non-governmental organizations may speak only once. ¹⁷

General Affairs Committee

20. While international non-governmental organizations were excluded from participating in the former Selection Committee, this is not the case in its successor body since 2022, the General

¹⁵ ILO, Second report of the Credentials Committee, [ILC.111/Record No. 2B\(Rev.\)](#), para. 140.

¹⁶ See, for example, most recently [GB.350/INS/20\(Rev.1\)](#), para. 8.

¹⁷ The provisions regulating the right to speak in plenary – article 14(3) for general items (for example the adoption of committee reports) and article 23(3) for the discussion on the Reports of the Chairperson of the Governing Body and of the Director-General – do not apply to international non-governmental organizations, except arguably the prohibition of multiple statements by the same speaker.

Affairs Committee. Under article 36(6) of the Standing Orders, such organizations may be given the floor in committees.¹⁸ Therefore, employers' and workers' representatives from Myanmar could, as representatives of an international employers' or workers' organization, be permitted to speak in the General Affairs Committee on subjects specifically concerning the situation in Myanmar. While in committees, international non-governmental organizations are usually given the floor only once at a fixed time, these limitations would not apply in this case, and workers and employers from Myanmar could fully participate in the discussion as representatives of the respective organization.

Committee on the Application of Standards

21. As noted above, workers' representatives of Myanmar have in the past regularly spoken at the Committee on the Application of Standards as ITUC representatives on matters concerning Myanmar. A possible enhancement of their rights would be to grant them, in the discussion of individual cases concerning Myanmar, the same speaking time as Employer and Worker members of the Committee from other countries speaking on an individual case concerning their country, namely ten minutes, under the recent working methods of the Committee.¹⁹

Other committees and group meetings

22. In the standard-setting, recurrent discussion and general discussion committees of the Conference, it is unlikely that questions specifically concerning the situation in Myanmar would arise. Therefore, there would normally be no enhanced participation rights for employers' or workers' representatives from Myanmar.
23. However, they may be permitted to participate in all meetings of the respective groups, in which group positions are discussed. As in accordance with article 5 of the Standing Orders, the Employers' and Workers' groups control their own procedure, it would be for them to decide, fully autonomously, whether and to what extent employers' and workers' representatives of Myanmar may participate in their meetings.

Practical implementation

Conference decision

24. According to articles 14(9) and 36(6) of the Standing Orders of the Conference, the right of representatives of international non-governmental organizations to take the floor in the plenary and in committees is always subject to a unanimous favourable decision of the respective Officers. As the Standing Orders do not contain criteria to guide the Officers in their decision-making, their decision is entirely discretionary. Both provisions provide, however, that if agreement cannot be reached among the Officers, the matter will be referred to the Conference or the Committee for decision.
25. To avoid such situations, the Conference could take a decision at its opening sitting to limit the Officers' discretion with respect to statements by employers' and workers' representatives of Myanmar. Specifically, the Conference could request its Officers and the Officers of the General Affairs Committee and the Committee on the Application of Standards that, if they receive a

¹⁸ In accordance with article 7(3) of the Standing Orders, the only provision of the Standing Orders that does not apply to the General Affairs Committee is article 42(3) on the weighting of votes.

¹⁹ ILO, Work of the Committee on the Application of Standards, [ILC.112/CAN/D.1](#), para. 40.

request from an international employers' or workers' organization under article 14(9) or 36(6) of the Standing Orders to make a statement on a matter specifically concerning the situation in Myanmar through a representative of employers or workers of Myanmar, they approve the request and permit the statement to be made under conditions analogous to those granted to Employers' or Workers' delegates or committee members, as the case may be, save in exceptional circumstances. It is proposed not to refer in this decision to the possibility, also provided for in articles 14(9) and 36(6) of the Standing Orders of the Conference, of permitting international non-governmental organizations to circulate written statements in the plenary or committees. The Officers would thus retain full discretion with respect to the decision on whether to permit the circulation of such statements.

26. Considering the autonomy enjoyed by the Committee on the Application of Standards as to its working methods, the proposal to grant employers or workers from Myanmar speaking through an international employers' or workers' organization longer speaking times than previously would require a corresponding decision by the Committee itself, prepared through the usual prior consultation process.
27. If adopted, these arrangements would apply at the 113th Session (2025) and would be renewed at each future session of the Conference, if necessary.

Attendance

28. As the Conference has returned to a fully in-person format, it is understood that to make statements on behalf of an international non-governmental organization, employers' and workers' representatives of Myanmar would have to attend the session in person. In this regard, the ILO's host country agreement and related arrangements with the Swiss authorities permit employers and workers from Myanmar who are included in a delegation of an international non-governmental organization to obtain the necessary entry visas into Switzerland, with the support of the Office as necessary.

Records of proceedings

29. When employers' and workers' representatives from Myanmar speak as representatives of an international non-governmental organization, in accordance with normal practice their statements are reported as having been made by "an observer representing" that organization.²⁰ In order to ensure transparency and give more visibility to the contribution of Myanmar employers and workers, speakers would have to state clearly at the beginning of their statement that they are speaking as an employers' or workers' representative of Myanmar, so that it can be recorded as such in the report or minutes.²¹

► Draft decision

30. The Governing Body:

- (a) **invited international employers' and workers' organizations represented at the Conference to nominate employers' and workers' representatives from Myanmar**

²⁰ For example, Report of the Committee on the Application of Standards, Part II, [Provisional Record 18, part II/29](#).

²¹ See, for example, Report of the Committee on the Application of Standards, Part II, [ILC.110/Record No. 4B/P.II](#), p. 441.

among their representatives and permit them to speak on their behalf on subjects specifically concerning Myanmar;

- (b) recommended that the Conference, at its 113th Session (June 2025), request its Officers and, through the respective committees, the Officers of the General Affairs Committee and of the Committee on the Application of Standards to approve any request from an international employers' or workers' organization to make a statement on a question specifically concerning the situation in Myanmar through representatives of employers or workers of Myanmar, and permit the statement to be made under conditions analogous to those granted to Employers' or Workers' delegates or committee members, as the case may be;
- (c) recommended that the Conference Committee on the Application of Standards grants to international employers' or workers' organizations wishing to make a statement on an individual case concerning Myanmar through representatives of employers or workers of Myanmar, the same speaking rights as Employer and Worker members of the Committee speaking on an individual case concerning their own country;
- (d) recommended that the Conference and the Committee on the Application of Standards renew the arrangements proposed in (b) and (c) until further decision by the Credentials Committee.