

Democratization in the ILO's governance and update on the status of ratification of the 1986 Instrument for the Amendment of the Constitution of the ILO (GB.353/INS/6)

Additional information

On 12 March 2025, during the Governing Body's discussion on Democratization in the ILO's governance and update on the status of ratification of the 1986 Instrument for the Amendment of the Constitution of the ILO (GB.353/INS/6), members of the Governing Body raised several questions, not all of which could be answered by the Office owing to lack of time. This note provides additional information on the main legal aspects the Office has identified in relation to the outstanding questions.

1. The number of Members of chief industrial importance provided for in the Constitution and the appointment of the ten persons referred to in article 7(2) of the Constitution

Article 7(1) of the Constitution provides that the Governing Body shall consist of "fifty-six persons", of whom 28 represent governments, 14 represent the employers and 14 represent the workers. Article 7(2) states that of the 28 persons representing governments, "ten shall be appointed by the Members of chief industrial importance, and eighteen shall be appointed by the Members selected for that purpose by the Government delegates to the Conference, excluding the delegates of the ten Members mentioned above" (emphasis added).¹ According to article 7(3), the Governing Body "shall as occasion requires determine which are the Members of the Organization of chief industrial importance [...]" (emphasis added). Article 36 of the Constitution provides that amendments to the Constitution "shall take effect when ratified or accepted by two thirds of the Members of the Organization including five of the ten Members which are represented on the Governing Body as Members of chief industrial importance in accordance with the provisions of paragraph 3 of article 7 of this Constitution" (emphasis added).

The provisions referred to above clearly confirm that the Constitution requires ten Member States of chief industrial importance and that each of them is entitled to one regular member seat in the Governing Body. It would therefore not be possible, other than through a constitutional amendment, to adopt a system whereby the ten non-elective seats would be filled by governments other than those of the ten Members of chief industrial importance.

The reference in article 7 of the Constitution to "persons" reflects the fact that Governing Body membership was originally conceived as individual and nominative, not only for employers and workers, but also for governments.² A Government member was thus the person whom the government would appoint as its delegate to the Governing Body. Over time, it is the governments as such, represented by their regular delegate or any of their substitutes, that have in effect become the Governing Body members. This development can be observed from the way the minutes of Governing Body meetings refer to the speakers. Until 1975, the minutes referred to the speakers only by their name without mentioning the government that appointed them. Then, from 1975 until 2001, the minutes specified the name of the representative and the

¹ See also Article 54(1) of the Standing Orders of the Conference, which provides: "Subject to the provisions of article 13(4) of the Constitution and of Part 8 of these Standing Orders, the Government electoral college shall consist of the Government delegates of all Members except those of the ten Members of chief industrial importance." (emphasis added).

² In the [1919 preparatory works of the ILO Constitution](#), the Commission on International Labour Legislation initially reviewed a British proposal which contained a different version of article 7. In this version, the term "persons" was originally written as "members", and the phrase "Members which are of the chief industrial importance" was first drafted as "High Contracting Parties which are of the chief industrial importance". The Commission later amended the term "High Contracting Parties" to clarify that these States were, in fact, Members of the Organization. However, this revision resulted in the word "members" appearing twice within the same line of article 7. To avoid redundancy, the Commission replaced the first instance of "members" with "persons".

government. Since November 2001, the minutes have only mentioned the name of the government ("A Government representative of..."). In 2021, this change was reflected in the new Conference Standing Orders, under article 54(3) of which, the Government electoral college elects "Members whose governments shall be regular Government members of the Governing Body".

2. The concept of "Members of chief industrial importance" in the current ILO context

As indicated in the Note circulated on 13 January 2025, while the Constitution provides for the existence and the number of Members of chief industrial importance, it does not provide a definition for that concept. It delineates a process of determination in general terms: (i) the Governing Body makes the determination "as occasion requires"; and (ii) the Governing Body takes a decision after an impartial committee has considered all questions relating to the selection of the Members of chief industrial importance (cf. art. 7(3) of the Constitution). The Constitution refers to rules to be made by the Governing Body, which were adopted in 1948. In adopting these rules - currently enshrined in article 1.3 of its Standing Orders - the Governing Body decided to refrain from regulating how the criteria should be set or whether they could be altered from one determination to the next. The aim of this approach was to maintain "flexibility" in the procedure by enabling the Officers and the impartial committee to exercise discretion. In this context, criteria are determined anew each time the list of Members of chief industrial importance is reviewed.

The constitutional and regulatory framework was shaped to ensure that it would enable the concept of Members of chief industrial importance to be applied with the required degree of flexibility, through a process affording the necessary guarantees and with the possibility for the Conference to have the final say.³ So far, in all the selection processes undertaken since 1946, all impartial committees have underlined that the determination of these Members is anchored on economic criteria. Some of these committees have explicitly interpreted their task as being to examine the economic importance of Member States.

3. Possibility for the Governing Body to adopt a constitutional amendment without the approval of the Members of chief industrial importance

As provided for in article 36 of the Constitution, amendments thereto are adopted by the Conference by a majority of two thirds of the votes cast by the delegates present and shall take effect when ratified or accepted by two-thirds of the Members of the Organization, including five of the ten Members which are represented on the Governing Body as Members of chief industrial importance. Pursuant to article 66 of the Standing Orders of the Conference, the role of the Governing Body is to decide on the inclusion in the agenda of the Conference of proposed amendments to the Constitution and to define the question or questions in respect of which the amendments are proposed.

As a result, the Governing Body does not have the authority to adopt, itself, a constitutional amendment; only the Conference has such power. A corresponding decision by the Governing Body would therefore not be legally valid. Nevertheless, the Governing Body has a fundamental role to play in the initiation and framing of an amendment process through its power to include a proposed constitutional amendment on the Conference agenda and to define its scope. Second, while concurring votes of the Members of chief industrial importance are not required for the adoption of a constitutional amendment by the Conference, the amendment would not enter into force without ratification or acceptance by five such Members.

³ Any Member may appeal the decision of the Governing Body and the appeal shall be examined by the Conference; the appeal does not suspend the application of the decision of the Governing Body ([article 7\(3\) of the ILO Constitution](#)). The Conference decides by a simple majority. To date, no such appeal has been made.

4. Submission of a dispute to the International Court of Justice by the Governing Body or the International Labour Conference

There are two legal bases in the ILO for referring a matter to the International Court of Justice (ICJ); the first is in article 37(1) of the Constitution and the second in article IX(2) of the 1946 Agreement between the United Nations and the International Labour Organization (also known as the "UN-ILO relationship agreement"). Article 37(1) of the Constitution provides that any question or dispute relating to the interpretation of the Constitution or of an international labour Convention shall be referred for decision to the ICJ. Article IX(2) of the UN-ILO relationship agreement provides access for the ILO to the advisory jurisdiction of the ICJ. Either the Conference or the Governing Body, pursuant to the 1949 authorization by the Conference, may request an advisory opinion on a legal question arising within the scope of the ILO's activities.

For the ICJ to have jurisdiction, it must, first, receive a question directly related to the activities of the requesting organization. This would not be problematic if the Governing Body or the Conference were to formulate a question arising from a dispute relating to the interpretation of the Constitution under article 37(1) of the Constitution. Second, the question put to it would have to be legal in nature. It should be noted that the ICJ may reformulate or interpret the question, as it may deem appropriate, for the purposes of rendering its opinion. However, at this time, it remains unclear what such a question or dispute could be that might be submitted to the ICJ.

5. Possibility to fundamentally change the Constitution if it is considered by the majority of Members to no longer serve its purpose

Constitutions of international organizations are treaties of a particular type, as their object is to create new subjects of law.⁴ A constitution of an international organization establishes a permanent international legal entity and its proper legal order. Therefore, as in national constitutions, the requirements for the amendment thereof are often stringent and subject to particular procedures. This reflects the permanent character of international organizations and the ensuing need for stability and predictability, and the fact that amendments, once in force, will become binding on all Members of the organization, including those that had not agreed to their adoption or ratified them. The ILO Constitution may only be amended as provided for in article 36 of the Constitution (see point 3 above).

It is recalled that the amended article 36 under the [1986 constitutional amendment](#) establishes significant safeguards as regards the amendment of provisions which are critical to the institutional identity, structure and functioning of the Organization, namely: fundamental purposes, permanent establishment, composition and functions of its collegiate organs, appointment and responsibilities of the Director-General, constitutional provisions relating to international labour Conventions and Recommendations, and the provisions of article 36 of the Constitution. A higher majority is required to amend these provisions, namely three-fourths of the votes cast for adoption, and ratification or acceptance by three-quarters of the Members, in order to come into effect.

Constitutional amendments under article 36 may concern any part or parts of the Constitution. However, any constitutional amendment, as sweeping as it may be, would still need to be adopted and come into force in accordance with the provisions of the current Constitution and, therefore, under the conditions of the current article 36.

17 March 2025

⁴ ICJ, *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, Advisory Opinion of 8 July 1996, I.C.J. Reports 1996, para. 19.