



FIRST ITEM ON THE AGENDA

**The status of privileges and immunities
of the International Labour Organization
in member States: Update**

1. This is a revised version of a document¹ which the Committee on Legal Issues and International Labour Standards deferred for discussion during the 300th Session (November 2007) of the Governing Body.²
2. The status of privileges and immunities of the International Labour Organization in its member States is relevant to the ability of the Office to properly deliver technical cooperation activities and to support the efforts of constituents. The reviews contained in prior documents³ reveal that effective functioning is particularly affected in member States where the only basis for the Organization's privileges and immunities is the Constitution of the International Labour Organization.⁴ Officials, delegates and experts as well as the Office are potentially exposed to risk.
3. A resolution⁵ adopted by the United Nations General Assembly (UNGA) in 2005 calls upon States to consider becoming parties to and to respect fully their obligations under the Convention on the Privileges and Immunities of the Specialized Agencies ("the

¹ GB.300/LILS/3(Rev.).

² GB.300/13.

³ GB.297/LILS/3 and GB.300/LILS/3(Rev.).

⁴ Article 40 of the ILO Constitution provides that: "1. The International Labour Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes. 2. Delegates to the Conference, members of the Governing Body and the Director-General and officials of the Office shall likewise enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization. 3. Such privileges and immunities shall be defined in a separate agreement to be prepared by the Organization with a view to its acceptance by the States Members."

⁵ UNGA, A/RES/59/211 (2005), para. 6.

Convention”). This Convention, which recently marked its 60th anniversary,⁶ remains relevant in today’s environment. The Organization carries out significant technical cooperation activities and convenes meetings in more than 100 countries without necessarily being permanently present.⁷ In certain situations, a specific legal framework is lacking. In others, the Organization’s activities are covered by privileges and immunities only when the ILO acts as an Executing Agency of the United Nations Development Programme (UNDP) or when a host country agreement has been concluded. The social partners benefit from protection under the Convention and Annex I relating to the ILO; this is not necessarily the case under host country agreements.

4. At present, 69 of the 181 member States that comprise the International Labour Organization have yet to ratify or accede to the Convention and apply its Annex I relating to the ILO.

Preliminary strategy

5. In view of the importance of the issue in the context of risk management, the Office has developed the following preliminary strategy aimed at motivating member States to take the necessary steps to ratify or accede to the Convention and apply its Annex I:

- (a) sending a letter from the Director-General (in 2007)⁸ to member States calling on them to ratify or accept the Convention and apply its Annex I relating to the ILO;⁹
- (b) developing materials in the necessary languages to respond to information requests;
- (c) involving the regions (in particular the office directors, standards specialists and employer and worker specialists), as well as properly briefing headquarters units undertaking missions;
- (d) reporting to the Governing Body on the situation of privileges and immunities in the member States;¹⁰
- (e) collecting examples showing where the ILO has experienced difficulties in relation to privileges and immunities; and

⁶ On 21 November 1947, the UNGA approved a Convention on the Privileges and Immunities of the Specialized Agencies that was adopted on 10 July 1948 by the International Labour Conference.

⁷ The field offices list totals 68, including national correspondents, liaison officers, etc.

⁸ GB.297/LILS/3.

⁹ Invitations to ratify or accede to the Convention and apply Annex I were sent to Afghanistan, Angola, Armenia, Azerbaijan, Bangladesh, Belize, Benin, Bolivia, Burundi, Canada, Cape Verde, Chad, Colombia, Comoros, Congo, Costa Rica, Djibouti, Dominican Republic, El Salvador, Eritrea, Ethiopia, Equatorial Guinea, Georgia, Guinea-Bissau, Honduras, Israel, Kazakhstan, Kiribati, Kyrgyzstan, Lebanon, Mauritania, Mexico, Republic of Moldova, Mozambique, Myanmar, Namibia, Oman, Panama, Papua New Guinea, Peru, Portugal, Qatar, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Solomon Islands, Somalia, Sri Lanka, Sudan, Suriname, Swaziland, Switzerland, Syrian Arab Republic, Tajikistan, Timor-Leste, Turkey, Turkmenistan, United States, Vanuatu, Bolivarian Republic of Venezuela, Viet Nam and Yemen. Invitations to apply Annex I relating to the ILO, solely, were sent to Albania, Cambodia, Jordan and Togo.

¹⁰ GB.297/LILS/3.

- (f) targeting countries where ratification appears to be the most urgent or most likely and working with other United Nations specialized agencies.

Progress

(a) Response to the Director-General's letter

6. In response to the Director-General's May 2007 invitation to ratify sent to concerned member States, Georgia and Vanuatu have acceded to the Convention. Albania, Cambodia, and Jordan have now extended application of the Convention to the ILO. Jordan did so under a pledge made in its agreement with the ILO concerning its Decent Work Country Programme (DWCP). Thus, the total number of ILO member States that are parties to the Convention and have accepted Annex I is 112 out of 181.¹¹
7. The Director-General's invitation also yielded the following information:
 - Canada has taken the view that its Privileges and Immunities (International Labour Organization) Order provides adequately for the granting of privileges and immunities to the ILO. It recalls that it is a party to the Convention on the Privileges and Immunities of the United Nations and that its Foreign Missions and International Organizations Act provides that designated organizations have privileges and immunities in accordance with that Convention. Canada also extends privileges and immunities to the ILO and its staff, delegates of member States attending ILO meetings in Canada and ILO-designated experts on mission in Canada.
 - Panama has indicated that the matter has been submitted to its National Assembly for consideration.
 - Switzerland, recalling that an Agreement between the Swiss Federal Council and the International Labour Organization concerning the legal status of the Organization in Switzerland was concluded on 27 May 1946 (prior to the adoption of the Convention and its Annex I relating to the ILO), considers that the Headquarters' Agreement accords treatment to the ILO as favourable as that contained in the Convention and its Annex I.

(b) Development of materials

8. Requests for information regarding the steps to ratify or accede to the Convention with its Annex I have been received from several member States. The Office has been in contact with the Treaty Section of the Office of Legal Affairs of the United Nations and has received and translated a model form of accession that is available to interested member States.
9. In addition, the Office is currently reviewing a draft training module on privileges and immunities which has been prepared by the Office of Legal Affairs of the United Nations, with a view to adapting it for ILO use.

¹¹ In addition, one non-member State (Tonga) is also a party to the Convention. See the appendix for the current situation in each member State.

(c) Involving the regions as well as properly briefed headquarters units

10. The ILO directors in the regions have been briefed on the topic, and the privileges and immunities situation is being incorporated into the ongoing review of the field structure.¹² In December 2007, during a subregional workshop for the Pacific Island member States, the Office provided further information on the Director-General's invitation to ratify the Convention.

(d) Reporting to the Governing Body

11. The value of having the necessary privileges and immunities in place has been revealed in the context of "Delivering as One UN" pilot countries. Five of the eight pilot countries, Albania, Pakistan, Rwanda, United Republic of Tanzania and Uruguay, have acceded to the Convention and accepted Annex I. In Cape Verde and Mozambique the basis for the ILO's privileges and immunities is thus far limited to general provisions in the Constitution of the ILO and in some cases specific protection through the UNDP Standard Basic Assistance Agreement. In December 2007, the Office undertook a mission to Mozambique which included discussions with the Government and the UNDP on this issue. In the eighth pilot country, Viet Nam, a host country agreement outlining privileges and immunities was signed on 4 February 2002 establishing an ILO office in Hanoi.
12. Of the 23 member States for which a DWCP has been published, 13 have ratified or accepted the Convention and applied its Annex I. The revised version of the DWCP guidebook will provide guidance on this issue.

(e) Collecting examples of real case scenarios

13. Drawing from actual occurrences over recent years, relevant practical implications of an insufficient framework for the respect of privileges and immunities in member States include:
- non-respect by national authorities of official immunity from legal process in respect of words spoken or written or acts performed by officials in their official capacity (e.g. arrest and detention, commencement of lawsuits);
 - delays in commencing technical cooperation programmes due to the necessity of negotiating, for each new technical cooperation project in a concerned member State, the application of the protections of the Convention and its Annex I;
 - difficulties relating to ILO events, including issuing visas for constituents and officials, and respect for the inviolability of premises used as venues;
 - office documentation and media materials destined for meetings being refused free entry or being searched, or customs duties being requested by national authorities;
 - non-respect by national judicial authorities of contracts that make provision for the settlement of disputes through arbitration or referral to the Administrative Tribunal of the ILO;

¹² GB.298/PFA/6(Rev.), para. 7.

- national authorities requesting officials, irrespective of their nationality, to register with tax inspectorates or social security offices and to provide information regarding their remuneration received from the Office;
 - national authorities imposing taxes on remuneration received by officials from the Office that may result in the Office reimbursing the official (and the Office in turn arranging for reimbursement from the concerned member State; if this does not occur the other member States subsidize it).
14. The above examples serve to illustrate some of the difficulties that arise from the lack of a minimum coherent and transparent legal regime, which leads to disparities in terms of facilities, privileges and immunities afforded to the ILO in the different member States, as well as sometimes between officials across the UN system who serve in the same duty station.¹³

(f) Targeting countries for ratification efforts

15. The appendix lists member States that have ratified the separate Convention on the Privileges and Immunities of the United Nations. Although it contains similar provisions to the Convention applicable to the ILO, it does not cover the ILO. Since these Members have already accepted a similar instrument, they may be promising targets for ratification efforts by the Office.
16. In addition, this legal lacuna is of special concern where the Office is requested to intervene rapidly in post-crisis situations¹⁴ or is called upon to support the efforts of constituents in countries for which the United Nations Department for Security and Safety (UNDSS) has issued a travel advisory.¹⁵
17. The fact that an ILO member State is not a party to the Convention and does not apply Annex I to the ILO requires the Office to address this important topic during negotiations and ideally before it starts work in the country. Indeed of the 69 member States that are not yet a party to the Convention, 15 are in partial or complete security Phase III and above.¹⁶ Although protection of privileges and immunities does not guarantee physical security, its absence aggravates a difficult situation for the ILO, its operations, officials, delegates and experts. Consideration could be given to limiting the Office's involvement in such situations.
18. The value of privileges and immunities was demonstrated through the recent tragedy of the attack on United Nations and ILO staff, experts and premises in Algeria – which is a party to the Convention and applies Annex I to the ILO. The Director-General's rapid decision

¹³ See also, JIU/REP/2006/4, *A second review of the implementation of headquarters agreements concluded by UN system organizations: Provisions of HQ premises and other facilities by host countries* (Geneva, 2006).

¹⁴ Examples include countries emerging from armed conflict or after suffering a natural disaster, economic and financial downturn, or undergoing a difficult social and political transition.

¹⁵ Security phases are as follows: Phase I – Precautionary; Phase II – Restricted movement; Phase III – Relocation; Phase IV – Emergency operations; Phase V – Evacuation.

¹⁶ As of 17 January 2008, Afghanistan, Azerbaijan, Burundi, Chad, Colombia, Congo, Eritrea, Ethiopia, Israel, Lebanon, Liberia, Somalia, Sri Lanka, Sudan and Yemen are in partial or complete Phase III and above. (Information obtained from the UNDSS.)

to dispatch an official mission from headquarters was facilitated immediately by the Government. A lack of privileges and immunities could have proven to be an impediment to such a timely mission.

Future course of action

19. The invitation to ratify sent by the Director-General was a first step in recalling the importance of this subject. Further measures could be considered to remind member States of their commitment to ratify, which was undertaken 60 years ago with the adoption of a resolution during the 31st Session (June–July 1948) of the International Labour Conference. The constituents could themselves call upon their ministries of foreign affairs, under whose jurisdiction the matter falls, to act.
20. Other measures could include: increasing consultations with social partners and other United Nations specialized agencies to benefit from their own ideas and initiatives; using the adapted training module (once available); utilizing relevant events organized by the ILO (e.g. International Labour Conference, Regional Meetings, Governing Body sessions) – as well as appropriate public events that have provided opportunities for discussions with governments – as occasions to highlight the importance of ratification of the Convention and application of Annex I relating to the ILO or to obtain information as to specific obstacles regarding ratification; targeting member States that have ratified the separate Convention on the Privileges and Immunities of the United Nations; and provision of other assistance on how to ratify or accept the Convention and its Annex I.
21. *In light of the above, the Committee may wish to recommend to the Governing Body that it request the Director-General to:*
 - (a) *renew the invitation, on its behalf, to concerned member States to ratify or accede to the Convention on the Privileges and Immunities of the Specialized Agencies and apply Annex I relating to the ILO in the very near future;*
 - (b) *instruct the Office to continue to report periodically on the situation of privileges and immunities in the member States, and in particular in the context of Decent Work Country Programmes, the “Delivering as One UN” pilot countries and the field structure review; and*
 - (c) *consider further measures to address, from the perspective of risk assessment and risk reduction, the lack of recognition of privileges and immunities in those member States that are not yet a party to the Convention on the Privileges and Immunities of the Specialized Agencies or have not applied Annex I relating to the ILO.*

Geneva, 29 January 2008.

Point for decision: Paragraph 21.

Appendix

Member State	Convention on the Privileges and Immunities of the United Nations (does <i>not</i> cover ILO) (date of accession/succession)	Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)	Annex I (ILO) to the Convention on the Privileges and Immunities of the Specialized Agencies (date of application/succession)
Afghanistan	05 September 1947	–	–
Albania	02 July 1957	15 December 2003	04 October 2007
Algeria	31 October 1963	25 March 1964	25 March 1964
Angola	09 August 1990	–	–
Antigua and Barbuda	25 October 1988	14 December 1988	14 December 1988
Argentina	12 October 1956	10 October 1963	10 October 1963
Armenia	29 April 2004	–	–
Australia	02 March 1949	09 May 1986	09 May 1986
Austria	10 May 1957	21 July 1950	21 July 1950
Azerbaijan	13 August 1992	–	–
Bahamas	17 March 1977	17 March 1977	17 March 1977
Bahrain	17 September 1992	17 September 1992	17 September 1992
Bangladesh	13 January 1978	–	–
Barbados	10 January 1972	19 November 1971	19 November 1971
Belarus	22 October 1953	18 March 1966	18 March 1966
Belgium	25 September 1948	14 March 1962	14 March 1962
Belize	14 September 2005	–	–
Benin	–	–	–
Bolivia	23 December 1949	–	–
Bosnia and Herzegovina	01 September 1993	01 September 1993	01 September 1993
Botswana	–	05 April 1983	05 April 1983
Brazil	15 December 1949	22 March 1963	22 March 1963
Brunei and Darussalam	–	–	–
Bulgaria	30 September 1960	13 June 1968	13 June 1968
Burkina Faso	27 April 1962	06 April 1962	06 April 1962
Burundi	17 March 1971	–	–
Cambodia	06 November 1963	15 October 1953	02 July 2007
Cameroon	20 October 1961	30 April 1992	30 April 1992
Canada	22 January 1948	–	–
Cape Verde	–	–	–
Central African Republic	04 September 1962	15 October 1962	15 October 1962
Chad	–	–	–
Chile	15 October 1948	21 September 1951	21 September 1951
China	11 September 1979	11 September 1979	09 November 1984
Colombia	06 August 1974	–	–

Member State	Convention on the Privileges and Immunities of the United Nations (does <i>not</i> cover ILO) (date of accession/succession)	Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)	Annex I (ILO) to the Convention on the Privileges and Immunities of the Specialized Agencies (date of application/succession)
Comoros	–	–	–
Congo	15 October 1962	–	–
Costa Rica	26 October 1949	–	–
Côte d'Ivoire	08 December 1961	08 September 1961	28 December 1961
Croatia	12 October 1992	12 October 1992	12 October 1992
Cuba	09 September 1959	13 September 1972	13 September 1972
Cyprus	05 November 1963	06 May 1964	06 May 1964
Czech Republic	22 February 1993	22 February 1993	22 February 1993
Democratic Republic of the Congo	08 December 1964	08 December 1964	08 December 1964
Denmark	10 June 1948	25 January 1950	25 January 1950
Djibouti	06 April 1978	–	–
Dominica	24 November 1987	24 June 1988	24 June 1988
Dominican Republic	07 March 1947	–	–
Ecuador	22 March 1956	08 June 1951	08 June 1951
Egypt	17 September 1948	28 September 1954	28 September 1954
El Salvador	09 July 1947	–	–
Equatorial Guinea	–	–	–
Eritrea	–	–	–
Estonia	21 October 1991	08 October 1997	08 October 1997
Ethiopia	22 July 1947	–	–
Fiji	21 June 1971	21 June 1971	21 June 1971
Finland	31 July 1958	31 July 1958	31 July 1958
France	18 August 1947	02 August 2000	02 August 2000
Gabon	13 March 1964	29 June 1961	30 November 1982
Gambia	01 August 1966	01 August 1966	01 August 1966
Georgia	–	18 July 2007	18 July 2007
Germany	05 November 1980	10 October 1957	10 October 1957
Ghana	05 August 1958	09 September 1958	09 September 1958
Greece	29 December 1947	21 June 1977	21 June 1977
Grenada	–	–	–
Guatemala	07 July 1947	30 June 1951	30 June 1951
Guinea	10 January 1968	01 July 1959	29 March 1968
Guinea-Bissau	–	–	–
Guyana	28 December 1972	13 September 1973	13 September 1973
Haiti	06 August 1947	16 April 1952	16 April 1952
Honduras	16 May 1947	–	–
Hungary	30 July 1956	02 August 1967	02 August 1967
Iceland	10 March 1948	17 January 2006	17 January 2006

Member State	Convention on the Privileges and Immunities of the United Nations (does <i>not</i> cover ILO) (date of accession/succession)	Convention on the Privileges and Immunities of the Specialized Agencies (date of accession/succession)	Annex I (ILO) to the Convention on the Privileges and Immunities of the Specialized Agencies (date of application/succession)
India	13 May 1948	10 February 1949	10 February 1949
Indonesia	08 March 1972	08 March 1972	08 March 1972
Iran, Islamic Republic of	08 May 1947	16 May 1974	16 May 1974
Iraq	15 September 1949	09 July 1954	09 July 1954
Ireland	10 May 1967	10 May 1967	10 May 1967
Israel	21 September 1949	–	–
Italy	03 February 1958	30 August 1985	30 August 1985
Jamaica	09 September 1963	04 November 1963	04 November 1963
Japan	18 April 1963	18 April 1963	18 April 1963
Jordan	03 January 1958	12 December 1950	23 August 2007
Kazakhstan	26 August 1998	–	–
Kenya	01 July 1965	01 July 1965	01 July 1965
Kiribati	–	–	–
Korea, Republic of	9 April 1992	13 May 1977	22 March 2006
Kuwait	13 December 1963	13 November 1961	07 February 1963
Kyrgyzstan	28 January 2000	–	–
Lao People's Democratic Republic	24 November 1956	09 August 1960	09 August 1960
Latvia	21 November 1997	19 December 2005	19 December 2005
Lebanon	10 March 1949	–	–
Lesotho	26 November 1969	26 November 1969	26 November 1969
Liberia	14 March 1947	–	–
Libyan Arab Jamahiriya	28 November 1958	30 April 1958	30 April 1958
Lithuania	09 December 1993	10 February 1997	10 February 1997
Luxembourg	14 February 1949	20 September 1950	20 September 1950
Madagascar	23 May 1962	03 January 1966	03 January 1966
Malawi	17 May 1966	02 August 1965	02 August 1965
Malaysia	28 October 1957	29 March 1962	29 March 1962
Mali	28 March 1968	24 June 1968	24 June 1968
Malta	27 June 1968	27 June 1968	27 June 1968
Marshall Islands	–	–	–
Mauritania	–	–	–
Mauritius	18 July 1969	18 July 1969	18 July 1969
Mexico	26 November 1962	–	–
Moldova, Republic of	12 April 1995	–	–
Mongolia	31 May 1962	03 March 1970	03 March 1970
Montenegro	23 October 2006	23 October 2006	23 October 2006
Morocco	18 March 1957	28 April 1958	10 June 1958
Mozambique	08 May 2001	–	–

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Myanmar	25 January 1955	–	–
Namibia	17 July 2006	–	–
Nepal	28 September 1965	23 February 1954	11 September 1996
Netherlands	19 April 1948	02 December 1948	02 December 1948
New Zealand	10 December 1947	25 November 1960	25 November 1960
Nicaragua	29 November 1947	06 April 1959	06 April 1959
Niger	25 August 1961	15 May 1968	15 May 1968
Nigeria	26 June 1961	26 June 1961	26 June 1961
Norway	18 August 1947	25 January 1950	25 January 1950
Oman	–	–	–
Pakistan	22 September 1948	23 July 1951	15 September 1961
Panama	27 May 1947	–	–
Papua New Guinea	04 December 1975	–	–
Paraguay	02 October 1953	13 January 2006	13 January 2006
Peru	24 July 1963	–	–
Philippines	28 October 1947	20 March 1950	20 March 1950
Poland	08 January 1948	19 June 1969	19 June 1969
Portugal	14 October 1998	–	–
Qatar	–	–	–
Romania	05 July 1956	15 September 1970	15 September 1970
Russian Federation	22 September 1953	10 January 1966	10 January 1966
Rwanda	15 April 1964	15 April 1964	15 April 1964
Saint Kitts and Nevis	–	–	–
Saint Lucia	27 August 1986	02 September 1986	–
Saint Vincent and the Grenadines	–	–	–
Samoa	–	–	–
San Marino	–	–	–
Sao Tome and Principe	–	–	–
Saudi Arabia	–	–	–
Senegal	27 May 1963	02 March 1966	02 March 1966
Serbia	12 March 2001	12 March 2001	12 March 2001
Seychelles	26 August 1980	24 July 1985	24 July 1985
Sierra Leone	13 March 1962	13 March 1962	13 March 1962
Singapore	18 March 1966	18 March 1966	18 March 1966
Slovakia	28 May 1993	28 May 1993	28 May 1993
Slovenia	06 July 1992	06 July 1992	06 July 1992
Solomon Islands	–	–	–
Somalia	09 July 1963	–	–

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South Africa	30 August 2002	30 August 2002	30 August 2002
Spain	31 July 1974	26 September 1974	26 September 1974
Sri Lanka	19 June 2003	–	–
Sudan	21 March 1977	–	–
Suriname	–	–	–
Swaziland	–	–	–
Sweden	28 August 1947	12 September 1951	12 September 1951
Switzerland	–	–	–
Syrian Arab Republic	29 September 1953	–	–
Tajikistan	19 October 2001	–	–
Tanzania, United Republic of	29 October 1962	29 October 1962	29 October 1962
Thailand	30 March 1956	30 March 1956	19 June 1961
The former Yugoslav Republic of Macedonia	18 August 1993	11 March 1996	11 March 1996
Timor-Leste	–	–	–
Togo	27 February 1962	15 July 1960	–
Trinidad and Tobago	19 October 1965	19 October 1965	19 October 1965
Tunisia	07 May 1957	03 December 1957	03 December 1957
Turkey	22 August 1950	–	–
Turkmenistan	–	–	–
Uganda	09 July 2001	11 August 1983	11 August 1983
Ukraine	20 November 1953	13 April 1966	13 April 1966
United Arab Emirates	02 June 2003	11 December 2003	11 December 2003
United Kingdom	17 September 1946	16 August 1949	16 August 1949
United States	29 April 1970	–	–
Uruguay	16 February 1984	29 December 1977	29 December 1977
Uzbekistan	–	18 February 1997	18 February 1997
Vanuatu	–	2 January 2008	2 January 2008
Venezuela, Bolivarian Republic of	21 December 1998	–	–
Viet Nam	06 April 1988	–	–
Yemen	23 July 1963	–	–
Zambia	16 June 1975	16 June 1975	16 June 1975
Zimbabwe	13 May 1991	05 March 1991	05 March 1991