



MC/2390

IOM International Organization for Migration
OIM Organisation Internationale pour les Migrations
OIM Organización Internacional para las Migraciones

Original: English
17 October 2013

COUNCIL

CONSEIL

CONSEJO

103RD SESSION

**IMPROVING THE PRIVILEGES AND IMMUNITIES
GRANTED TO THE ORGANIZATION BY STATES –
WITH DRAFT RESOLUTION**

**IMPROVING THE PRIVILEGES AND IMMUNITIES
GRANTED TO THE ORGANIZATION BY STATES –
WITH DRAFT RESOLUTION**

Background

1. The Standing Committee on Programmes and Finance (SCPF), at its Twelfth Session on 13 and 14 May 2013, discussed the current situation regarding the privileges and immunities the Organization enjoys in Member States, Observer States and other States where it has activities.
2. The Administration submitted a background paper (SCPF/96)¹ for that discussion in which it outlined the rationale for granting various privileges and immunities to intergovernmental organizations, the range of privileges and immunities other intergovernmental organizations enjoy, how many States have granted similar privileges and immunities to IOM and the consequences of the absence of such privileges and immunities.
3. SCPF/96 recalls that it is widely recognized that intergovernmental organizations need privileges and immunities granted to them and their staff to ensure their independent and effective functioning. An underlying principle is that intergovernmental organizations, serving all their member States equally, need to be shielded from undue interference by individual States. The concept of equity among the member States of an intergovernmental organization requires that no State should have a disproportionate impact on the workings of the organization. For example, a host State would be placed in an unduly favourable position if it could tax an intergovernmental organization and its staff, given that all its member States contribute to its budget. When privileges and immunities are in place on a multilateral basis, organizations and States also benefit from consistency and lower transactional and financial costs in managing similar situations and activities across States and organizations.
4. SCPF/96 points out that Article 28 of the IOM Constitution provides that the Organization shall enjoy such privileges and immunities as are necessary for the exercise of its functions and that they shall be defined in agreements between IOM and the States concerned.
5. There are three multilateral conventions that accord privileges and immunities to intergovernmental organizations, none of which the Organization benefits from. Not being part of the United Nations, IOM does not qualify under the multilateral Convention on the Privileges and Immunities of the United Nations (1946) to which 160 States are parties. Also, not being a specialized agency of the United Nations, IOM is not included in the Convention on the Privileges and Immunities of the Specialized Agencies (1947) to which 123 States are parties. The International Atomic Energy Agency, which is a related organization and thus does not benefit from the previous two conventions either, has its own multilateral agreement based on the two conventions, to which 84 States are parties. These three multilateral agreements are substantially consistent.
6. Consequently, as SCPF/96 points out, IOM has to conclude privileges and immunities agreements with each State on a bilateral basis. This results in a large variation between the

¹ IOM had, at the time of preparing the statistics in that paper, 149 Member States (currently 151), 12 Observer States and activities in 14 other States that are neither members nor observers, making a total of 175 States relevant for that paper. The same statistics are referred to in the present paper.

privileges and immunities granted by different States as well as large gaps in privileges and immunities compared with the standard privileges and immunities granted to other intergovernmental organizations under the three multilateral conventions referred to above. IOM benefits only in 78 of the 175 States where it has activities from the same privileges and immunities as other intergovernmental organizations. This has multiple negative consequences. It undermines equity and fairness among States, both in terms of the limiting effect some States have on the independent and effective functioning of IOM and of the unequal burden carried by other States to create an enabling situation for IOM in respect of such independent and effective functioning. It also creates additional transactional costs for States in dealing with IOM and is inconsistent with how they deal with other intergovernmental organizations. For IOM, it leads to higher costs and has an impact on its effectiveness and value for money for the donors and beneficiaries, and thus its competitiveness. The high transactional effort required to manage this, including negotiating agreements on a case-by-case basis, adds to the burden of the overstretched core structure of IOM. It also has a negative impact on the Organization's ability to interact effectively with other actors in the humanitarian field, including United Nations country teams.

7. SCPF/96 suggests that Member States may wish to consider three options to deal with the matter, namely: take the situation into account in discussions on IOM's overstretched core structure; adopt a Council resolution calling on all States to bring the privileges and immunities they granted to IOM in line with those to which other intergovernmental organizations are entitled; and consider developing and adopting a multilateral agreement consistent with the existing multilateral agreements granting privileges and immunities to intergovernmental organizations, for subsequent ratification by Member States, Observer States and other States in which IOM has activities.

8. In the discussions during the SCPF, many delegations agreed that IOM should be granted the privileges and immunities it needed to function smoothly as an intergovernmental organization, and that the current situation added substantially to the burden on the overstretched core structure, thus having an impact on the Organization's effectiveness and therefore on the value for money obtained by the donors and the beneficiaries. There have been instances where IOM has been unable to present a competitive project proposal and the project had, as a result, been entrusted to another organization. It was stated that a unified system would place all Member States on an equal footing and would give the Organization the same status as other intergovernmental organizations, as this would lend coherence to IOM's situation in each State. A unified system would reduce the administrative burden on the Organization and lead to greater efficiency. It was also stated that the matter should be considered by the Working Group on Budget Reform and that a resolution on the matter might emerge from the Working Group's deliberations. A number of delegations expressed support for the option of a Council resolution on the matter. Some delegations suggested that the three proposed options were all useful, although a multilateral agreement would require more time and involve higher costs.

Consideration by the Working Group on Budget Reform

9. During its meeting on 15 May 2013, the Working Group on Budget Reform noted that additional measures could assist IOM in addressing the problems regarding its overstretched core functions which included improving the privileges and immunities granted by States where the Organization has activities. In accordance with the views expressed in the SCPF and the Working Group, a background document and a draft resolution were presented for the Working Group's consideration during its meeting on 28 June 2013.

10. The draft resolution commences with a preamble summarizing the background on the matter. It has four operative paragraphs in which the Council: first, calls on States to grant the Organization privileges and immunities substantively similar to those enjoyed by the United Nations specialized agencies; second, requests the Director General to engage with States which do not grant the Organization such privileges and immunities with a view to concluding agreements that do so and calls on States to cooperate fully with the Director General in this regard; third, requests the Director General to evaluate the long-term possibility of developing a multilateral agreement consistent with the Convention on the Privileges and Immunities of the Specialized Agencies (1947); and fourth, requests the Director General to report annually to the Council, through the SCPF, on the implementation of the resolution.

11. At the Working Group meetings on 28 June 2013 and 26 July 2013, the draft resolution was considered and the text revised.

12. During the Working Group meeting on 23 September 2013, it was noted that the resolution would facilitate concluding bilateral agreements with Member States. There were no further comments on the text. The Chairperson concluded that there appeared to be a consensus on this resolution. The discussion on the draft resolution was closed.

Consideration by the Standing Committee

13. This paper presents the draft resolution on improving the privileges and immunities granted to the Organization by States (see annex) so that the SCPF may consider the resolution and recommend that it be submitted to the Council for approval and adoption.

Annex

DRAFT RESOLUTION No. _____

(Submitted by the Secretariat to the Council at its xx meeting on xx November 2013)

**IMPROVING THE PRIVILEGES AND IMMUNITIES
GRANTED TO THE ORGANIZATION BY STATES**

The Council,

Recognizing the need for the Organization and its staff to be granted privileges and immunities to ensure the independent and effective functioning of the Organization,

Emphasizing the need for equity and fairness among States in creating an enabling situation for the Organization to function in such manner, and that no State should be placed in an unduly favourable position in this regard,

Noting the provisions of Articles 27 and 28* of the Organization's Constitution and the fact that the Organization concludes agreements on privileges and immunities with States on a bilateral basis,

Aware that the Organization does not benefit from existing multilateral conventions granting privileges and immunities to the United Nations, its specialized agencies and related organizations,

Concerned about the inconsistency between, and often absence of, the privileges and immunities the Organization enjoys in the different Member States, Observer States and other States where it has activities and the consequential difficulties to exercise its functions and fulfil its purposes,

Conscious of the high transactional effort and cost for both States and the Organization and the additional burden this places on the core structure of the Organization during a particularly challenging period,

1. *Calls on* Member States, Observer States and other States where the Organization has activities to grant the Organization privileges and immunities substantively similar to those that the United Nations specialized agencies are entitled to in accordance with the Convention on the Privileges and Immunities of the Specialized Agencies (1947);

2. *Requests* the Director General to engage with all Member States, Observer States and other States where the Organization has activities which do not grant the Organization privileges and immunities substantively similar to those that the United Nations specialized

* It should be noted that these references will change to Articles 22 and 23 should the amendments to the Constitution (Resolution No. 997 of 24 November 1998) enter into force before this draft resolution is put to the Council, in which case the reference will be updated after the Council's action thereon.

agencies are entitled to in accordance with the Convention on the Privileges and Immunities of the Specialized Agencies (1947), with a view to concluding agreements that provide for the granting of such privileges and immunities to the Organization and calls on States to cooperate fully with the Director General in this regard;

3. *Further requests* the Director General to evaluate the long-term possibility of developing a multilateral agreement consistent with the Convention on the Privileges and Immunities of the Specialized Agencies (1947);

4. *Also requests* the Director General to report annually to the Council, through the Standing Committee on Programmes and Finance, on the implementation of this resolution.