

**STANDING COMMITTEE ON PROGRAMMES AND FINANCE**

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**NINTH ANNUAL REPORT OF THE DIRECTOR GENERAL  
ON IMPROVEMENTS IN THE PRIVILEGES AND IMMUNITIES  
GRANTED TO THE ORGANIZATION BY STATES**



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### **Background**

1. The IOM Constitution establishes that the Organization “shall enjoy such privileges and immunities as are necessary for the exercise of its functions and the fulfilment of its purposes”. It further provides that the representatives of Member States and IOM officials shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions.

2. On 26 November 2013, the Council adopted Resolution No. 1266 on improving the privileges and immunities granted to the Organization by States. The Council called upon “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)”.

3. In adopting Resolution No. 1266, the Council recognized that the granting of privileges and immunities was necessary to “ensure the independent and effective functioning of the Organization”. The Council emphasized the “need for equity and fairness among States in creating an enabling situation for the Organization to function”. The Council also expressed concerns about inconsistency in the privileges and immunities enjoyed by the Organization in different States and noted the high cost, including transactional cost, of undertaking activities in the absence of full recognition of the Organization’s privileges and immunities.

4. In 2016, the Agreement concerning the Relationship between the United Nations and the International Organization for Migration was approved by the Council and the United Nations General Assembly, and signed by the IOM Director General and the United Nations Secretary-General. On the basis of this Agreement, IOM is considered to be a related organization of the United Nations.

5. Since 2014, IOM has presented an annual report on improvements in the privileges and immunities granted to the Organization. While the number of States and places recognizing the privileges and immunities of the Organization has steadily increased over the years, IOM continues to face significant challenges in securing full recognition of its privileges and immunities. These challenges have meant that, in certain States, IOM staff members are treated less favourably than staff members of other United Nations organizations working at the same duty station or IOM staff members working in other parts of the world. These challenges have meant that the Organization has also been required to pay direct and indirect taxes, when it should be exempt from taxation altogether, and to execute judgements, when it should be immune from the jurisdiction of national courts and execution of national judgements.

### **Current situation**

6. The present report covers the period from 1 September 2021 to 31 August 2022 (“reporting period”). IOM currently enjoys privileges and immunities meeting the criteria contained in Resolution No. 1266 in 102 of the 185 Member States, observer States, and other States and places where IOM has activities (“relevant States and places”). This means that 83 relevant States and places do not grant IOM privileges and immunities meeting the criteria contained in the Resolution.

7. During the reporting period, one agreement (with the Lao People's Democratic Republic) meeting the criteria in Resolution No. 1266 entered into force.

8. This section of the report explores in greater detail the specific privileges and immunities set forth in the 1947 Convention, the extent to which they have been accorded to IOM and the challenges that have emerged as a consequence of non-recognition. These challenges arise not only in States where IOM has not concluded an agreement, but also in States that have concluded a satisfactory agreement with IOM but where difficulties nevertheless persist. The discussion below does not cover all privileges and immunities, but only those that have presented particular challenges for IOM.

### ***Privileges and immunities relating to property, funds and assets of the Organization***

9. Article III of the 1947 Convention addresses privileges and immunities relating to the property, funds and assets of the specialized agencies.

#### *Immunity from legal process*

10. Article III, Section 4 of the 1947 Convention provides for immunity from "every form of legal process" unless immunity has been waived in a particular case. The term "legal process" encompasses not only judicial proceedings, but also other processes before national authorities of an administrative or executive nature.

11. To ensure that immunity from legal process does not impede access to justice, specialized agencies have a corresponding obligation under Article IX, Section 31 of the 1947 Convention to provide for "appropriate modes of settlement" for two types of dispute: (a) contractual disputes or other disputes of private character; and (b) disputes involving any official of a specialized agency whose immunity has not been waived. Contracts and agreements concluded by IOM with external parties provide for an alternative mechanism of dispute resolution, typically binding arbitration. Moreover, in employment matters, IOM provides for an administration of justice system for staff members and former staff members who wish to challenge administrative decisions (through a request for review before the IOM Joint Administrative Review Board and the International Labour Organization Administrative Tribunal).

12. Article III, Section 4 of the 1947 Convention further provides that "no waiver of immunity shall extend to any measure of execution". Immunity from execution precludes the subsequent execution of any judgement through the seizure of assets, or comparable measures.

13. IOM's immunity from legal process, including immunity from execution, is not recognized in 37 of the 185 relevant States and places. While IOM provides for internal mechanisms to resolve employment disputes, IOM staff members have, on occasion, filed cases against IOM before national courts. During the reporting period, IOM received court summons in relation to over 20 employment-related claims filed by current or former IOM staff members against the Organization before the local courts of at least nine States.

#### *Inviolability of premises and archives*

14. Article III, Section 5 of the 1947 Convention provides for the inviolability of the premises of the specialized agencies. Such inviolability means that the property and assets of the specialized agencies are immune from search, requisition, confiscation, expropriation and any other form of interference. Further, Article III, Section 6 of the 1947 Convention provides for the inviolability of archives, rendering all documents inviolable wherever they are located.

15. The inviolability of IOM's premises and archives is not recognized in 37 of the 185 relevant States and places. As IOM's responsibilities frequently involve the collection of the personal details of migrants, the Organization's ability to fulfil its responsibilities to protect and assist migrants is undermined in those States and places where the inviolability of IOM's premises, documents and archives is not recognized.

#### *Immunity from taxation*

16. Article III, Section 9 of the 1947 Convention provides that the specialized agencies and their assets, income and other property shall be exempt from direct taxation (except charges for public utility services). The same article also includes an exemption from customs duties on items imported for official use, as well as an exemption from duties on publications. The exemption from direct taxation includes, but is not limited to, exemption from mandatory contributions for national social security schemes (e.g. health-care and pension contributions) with respect to staff members of the specialized agencies.

17. Article III, Section 10 of the 1947 Convention further provides for exemption from indirect taxation, which includes, but is not limited to, taxes related to the sale of immovable or movable property. According to the United Nations Juridical Yearbook (1986), tax is considered to be indirect if it is "paid by the manufacturer or vendor and then passed on to the purchaser as part of the price to be paid".

18. IOM is not exempt from direct taxation in 37 of the 185 relevant States and places, nor is it exempt from indirect taxation in 50 of the 185 relevant States and places. The payment of taxes not only diverts IOM funds into the treasuries of the taxing States, but also has concrete negative consequences for IOM staff members. For example, IOM staff members may be required to make contributions to both national and IOM social security systems with respect to health benefits, which may impose a heavy financial burden. IOM's memorandum of understanding with the United Nations Joint Staff Pension Fund excludes IOM personnel from participation in the Pension Fund if they participate in national social security schemes. Consequently, in States where IOM is compelled to make mandatory contributions to national social security schemes, the IOM staff members in respect of whom such contributions are made are denied the opportunity to participate in the Pension Fund.

#### ***Privileges and immunities accorded to officials of the Organization***

19. Article VI of the 1947 Convention addresses the privileges and immunities applicable to officials.

#### *Immunity of officials from legal process*

20. Article VI, Section 19(a) of the 1947 Convention provides for the immunity of officials from legal process in respect of all acts performed by them in their official capacity. Such immunity is an essential condition for the officials to carry out their official functions in an independent manner.

21. IOM officials are not granted immunity from legal process for official activities in 33 of the 185 relevant States and places. This absence of immunity potentially exposes IOM staff members and the activities they perform in fulfilment of IOM's mandates and functions to scrutiny by national authorities in accordance with national laws, thereby undermining the independent functioning of the Organization.

*Immunity from taxation on the salaries and emoluments paid to staff members*

22. Article VI, Section 19(b) of the 1947 Convention provides that officials of specialized agencies are exempt from taxation in respect of the salaries and emoluments paid to them. The justification for this immunity is articulated in United Nations General Assembly resolution 13(I) of 13 February 1946, which states that “there is no alternative to the proposition that exemption from national taxation for salaries and allowances paid by the Organization is indispensable to the achievement of equity among its Members and equality among its personnel”.

23. Internationally recruited IOM staff members are not exempt from taxation on their salaries and emoluments in 34 of the 185 relevant States and places. The figure is even higher for locally recruited IOM staff, who do not enjoy such exemption in 61 of the 185 relevant States and places. Salaries of IOM staff members are determined in accordance with the salary scales used by the United Nations. The United Nations salary scales reflect two amounts: a net salary to which an amount of staff assessment determined in accordance with a rate approved by the United Nations General Assembly is added to arrive at the gross salary.

24. In a number of countries where IOM staff members do not enjoy exemption from taxation on their salaries and emoluments, they are paid at the gross, rather than net, salary rate with the expectation that they will pay their national taxes themselves. This approach means that a portion of funds intended for the fulfilment of IOM’s mandate are paid into the treasuries of the taxing States. At the same time, if IOM staff members were paid at the net salary rate, and subject to national taxation without reimbursement by the Organization, they would effectively be paid lower salaries than their counterparts in other United Nations system organizations. Such a situation significantly undermines the ability of IOM to attract the best-qualified candidates when other United Nations system organizations extend more favourable conditions of service.

*Immunity from immigration restrictions*

25. Article VI, Section 19(c) of the 1947 Convention provides for the immunity of officials, together with their spouses and dependent relatives, from immigration restrictions. Article VIII, Section 28 further obliges States to issue visas to officials, where required, “as speedily as possible”.

26. IOM staff members are not immune from immigration restrictions in 41 of the 185 relevant States and places. In one State, the Organization is granted short-term visas, requiring frequent renewals for varying periods and creating difficulties in the issuance of visas. This situation undermines the ability of IOM and its staff members to plan and carry out their work in a predictable environment.

**Future work on strengthening recognition of the Organization’s privileges and immunities**

27. The Director General acknowledges with appreciation the constructive efforts made by a number of States during the reporting period to develop bilateral agreements with a view to recognizing the privileges and immunities of the Organization in accordance with Resolution No. 1266. The continued engagement of the Council regarding improvements in the privileges and immunities of the Organization is critical to achieving progress on this issue. It is therefore important for the Council to remain seized of the matter and reiterate its call for Member States, observer States, and other States and places where the Organization has activities to grant the Organization privileges and immunities meeting the criteria contained in Resolution No. 1266.