

STANDING COMMITTEE ON PROGRAMMES AND FINANCE

Thirty-third Session

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

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

Introduction

1. This annual report is issued almost ten years since the Council adopted Resolution No. 1266 of 26 November 2013 on improving the privileges and immunities granted to the Organization by States. The occasion of this report provides a key opportunity to take stock of the progress made and the challenges remaining in this area.

Background

2. Before adopting Council Resolution No. 1266, the Member States considered the issue of the privileges and immunities granted to IOM at the Twelfth Session of the Standing Committee on Programmes and Finance (13–14 May 2013). In the document it submitted to the Standing Committee, entitled Privileges and immunities (SCPF/96), the Administration noted that, as IOM benefitted from neither the 1946 Convention on the Privileges and Immunities of the United Nations nor the 1947 Convention on the Privileges and Immunities of the Specialized Agencies, the Organization concluded bilateral agreements on the privileges and immunities granted to it. This had resulted in a “large variation in the privileges and immunities granted by States, as well as large gaps compared with the standard privileges and immunities granted to other intergovernmental organizations”.¹

3. At the time, many Member States acknowledged that IOM needed to have “protection from undue interference and immunity from legal process and taxation”. They also noted that insufficient privileges and immunities “added substantially to the burden on the core structure and made it difficult for the Organization to perform basic tasks such as hiring local staff, opening bank accounts and renting office space. It had an impact on IOM’s effectiveness and its value-for-money for donors and beneficiaries”.²

4. The issue of IOM’s privileges and immunities was subsequently discussed in meetings of the Working Group on Budget Reform (15 May, 28 June, 26 July and 23 September 2013). The Working Group noted that improving IOM’s privileges and immunities was a measure “which could assist IOM in addressing the problems regarding its overstretched core functions”.³ It further noted that the “lack of appropriate host country agreements presented obstacles to operating in a cost-effective manner and created inequities between the Member States” and that “improving host country agreements creates efficiencies by providing tax exemptions which reduce IOM’s costs in a given country”.⁴

5. Further to those discussions, the Council adopted Resolution No. 1266. In the preamble, the Council emphasized the “need for equity and fairness among States in creating an enabling situation for the Organization” and stated that “no State should be placed in an unduly favourable position”. The Council also expressed concern as to the difficulties for the Organization to exercise its functions and fulfil its purposes in the absence of the consistent application of privileges and immunities and

¹ IOM, Council, Improving the privileges and immunities granted to the Organization by States – with draft resolution (MC/2390 of 17 October 2013), paragraphs 5 and 6.

² IOM, Executive Committee, Report of the Standing Committee on Programmes and Finance on the Twelfth Session (MC/EX/729 of 3 June 2013), paragraph 48.

³ IOM, Working Group on Budget Reform, Improving the privileges and immunities granted to the Organization by States – with draft resolution (revised) (sixteenth meeting, 26 July 2013), paragraph 10.

⁴ IOM, Standing Committee on Programmes and Finance, Report of the Chairperson – Working Group on Budget Reform (SCPF/110 of 17 October 2013), paragraphs 11 and 12.

noted 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”.

6. The first operative paragraph of Resolution No. 1266 expresses the Council’s clear determination that the most appropriate solution for improving IOM’s privileges and immunities would be for “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 in accordance with the Convention on the Privileges and Immunities of the Specialized Agencies (1947)”.

7. Article 23, paragraph 1 of the Constitution provides that IOM “shall enjoy such privileges and immunities as are **necessary** for the exercise of its functions and the fulfillment of its purposes” (emphasis added). Resolution No. 1266 is significant in that it reflects the Council’s assessment that “necessary” privileges and immunities are those that are “substantively similar” to those in the 1947 Convention. Significantly, the Council considered that IOM should be granted privileges and immunities “substantively similar” to those in the 1947 Convention even before the conclusion of the Agreement concerning the Relationship between the United Nations and the International Organization for Migration and its approval by the Council and the United Nations General Assembly in 2016. The current status of IOM as a related organization of the United Nations further reinforces the importance of ensuring that IOM enjoys the same level of privileges and immunities as the other organizations of the United Nations system.

Current situation

8. This report covers the period from 1 September 2022 to 31 August 2023. During that reporting period, IOM concluded two new agreements, with Barbados and Suriname, which meet the criteria set out in Council Resolution No. 1266.

9. Additionally, in September 2022, a new basis governing the status and operations of the United Nations in Denmark was established through the conclusion of a new Agreement between the United Nations and the Kingdom of Denmark Concerning the Status of the Offices of the United Nations in the Kingdom of Denmark. Significantly, the Agreement applied *mutatis mutandis* to other Offices of the United Nations system, including specialized agencies and related organizations, upon the conclusion of a separate exchange of letters. In October 2022, IOM and Denmark concluded an exchange of letters permitting the application of the Agreement to IOM. The Agreement reflects a welcome recognition that related organizations of the United Nations should be treated in the same manner as the United Nations and the specialized agencies, an approach that is at the core of Council Resolution No. 1266.

10. When Council Resolution No. 1266 was adopted in 2013, IOM enjoyed privileges and immunities meeting the criteria set out therein (“full privileges and immunities”) in 78 States. At the time of writing, IOM enjoys full privileges and immunities in 104 Member States, observer States and other countries and places where it has activities (“relevant States and places”). This means that 82 relevant States and places did not grant IOM privileges and immunities meeting the criteria set out in the Resolution.

11. The absence or incomplete application of the following privileges and immunities present particular operational and financial difficulties for IOM.

(a) *Immunity from legal process.* Under Article III, Section 4 of the 1947 Convention, specialized agencies, their property and assets, wherever located and by whomsoever held, enjoy immunity from

every form of legal process, unless expressly waived in a particular case. Immunity from legal process protects the ability of the Organization to carry out its functions independently. It also permits the Organization to carry out its official functions without being embroiled in litigation before the national courts. Such matters are typically time-consuming in nature, require specialist litigation advice according to the laws and traditions of different national legal systems, and divert limited IOM resources from mandated programmes and projects. IOM's immunity from legal process is not recognized in 36 of the 186 relevant States and places.

(b) *Inviolability of premises and archives.* 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. The inviolability of IOM's premises and archives is not recognized in 36 of the 186 relevant States and places.

(c) *Exemption from taxation.* 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 and from duties on publications. Article III, Section 10 of the 1947 Convention further provides for the remission or return of indirect taxes on important purchases for official use. IOM is not exempt from direct taxation in 36 of the 186 relevant States and places, nor from indirect taxation in 49 of the 186 relevant States and places.

(d) *Immunity of officials from legal process.* 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. IOM officials are not granted immunity from legal process for official activities in 32 of the 186 relevant States and places.

(e) *Immunity from taxation on salaries and emoluments.* 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. Internationally recruited IOM staff members are not exempt from taxation on their salaries and emoluments in 33 of the 186 relevant States and places, and locally recruited IOM staff members do not enjoy such exemption in 60 of the 186 relevant States and places.

(f) *Immunity from immigration restrictions.* 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". IOM staff members are not immune from immigration restrictions in 40 of the 186 relevant States and places.

Recurring challenges for IOM's privileges and immunities

12. The Director General wishes to highlight certain ongoing challenges and issues regarding the Organization's privileges and immunities that have arisen in national jurisdictions and in negotiations on bilateral agreements.

Exercise of national jurisdiction over employment claims filed by IOM staff members

13. Under Article 14 of the IOM Constitution, the IOM Director General appoints staff members in accordance with the staff regulations adopted by the IOM Council. The IOM Unified Staff Regulations came into effect on 1 March 2011 for all IOM staff members worldwide, independent of their nationality, residency status, category or type of contract.

14. In Chapter 11 of the Unified Staff Regulations, the IOM Council has established an internal justice system whereby employment claims filed by staff members are reviewed by internal mechanisms and in accordance with internal processes rather than by national courts. In the first instance, staff members may appeal administrative actions, decisions or omissions by filing a request for review. In the second instance, staff members may further file an appeal with the Joint Administrative Review Board. Finally, staff members may file a claim with the Administrative Tribunal of the International Labour Organization. The Tribunal is composed of seven judges of different nationalities, with high moral regard, impartiality and integrity, and with qualifications required to be appointed to the highest judicial function in their countries.

15. Notwithstanding the availability of an internal justice system for IOM staff members, IOM was involved in over 28 employment-related claims instituted by former IOM staff members before national courts in at least 14 States during the reporting period.

Seizure of IOM funds notwithstanding immunity from legal process and interference

16. Article III, Section 4 of the 1947 Convention provides that the specialized agencies, their property and assets "shall enjoy immunity from every form of legal process". Immunity from legal process includes immunity from measures of execution and, as a consequence, court orders may not be executed through the seizure of an organization's assets or other comparable measures. This principle is reinforced in the last sentence of Article III, Section 4 of the 1947 Convention, which specifies that no waiver of immunity shall extend to any measures of execution. Article III, Section 5 of the 1947 Convention further provides that the property and assets of the specialized agencies "shall be immune from search, requisition, confiscation, expropriation, and any other form of interference, whether by executive, administrative, judicial, or legislative action".

17. During the reporting period, IOM funds were seized from IOM bank accounts pursuant to the orders of two national courts in Member States where IOM enjoys immunity from legal process and from interference in respect of its property and assets.

(a) In one Member State, two former IOM staff members filed labour lawsuits in national courts against IOM, claiming employment-related payments under national law. Although IOM asserted its immunity from jurisdiction and execution, and the Ministry of Foreign Affairs intervened to defend that immunity, the national court nevertheless ordered the freezing and seizure of IOM funds in the sum of USD 256,800 for payment to the two former staff members. IOM was informed in November 2022 that the IOM funds had been transferred to the former staff members.

(b) In another Member State, a service provider filed a claim in a national court against IOM, seeking payment for services which were not in fact provided to IOM. Pursuant to court orders, approximately USD 1,500 were seized from IOM's bank account in the country. IOM has requested the assistance of the Ministry of Foreign Affairs to facilitate the return of the funds.

18. In two additional Member States where IOM enjoys immunity from legal process, courts have ordered the seizure of amounts from IOM bank accounts. IOM continues to engage with the ministries of foreign affairs in those States, and the amounts have not been seized to date.

Taxation on staff salaries and emoluments

19. Pursuant to Article VI, Section 19(b) of the 1947 Convention, "officials" shall "[e]njoy the same exemptions from taxation in respect of the salaries and emoluments paid to them by the specialized agencies and on the same conditions as are enjoyed by officials of the United Nations". In accordance with United Nations General Assembly resolution 76(l) of 7 December 1946 and the practice of the United Nations and its specialized agencies, the term "officials" includes all staff members, whether recruited internationally or locally. The rationale for exempting salaries from taxation is to ensure equality in conditions of service, irrespective of nationality or permanent residence. Moreover, the principle of equality among States entails that no State should derive a national financial advantage from the presence of IOM staff on its territory.⁵

20. Currently, internationally recruited staff members are not exempt from taxation on their salaries and allowances in 33 out of 186 relevant States and places, and locally recruited staff members are not exempt in 60 out of 186 relevant States and places.

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

21. While there has been incremental and steady progress in improving the legal basis for IOM's privileges and immunities over the past decade, a significant number of relevant States and places still do not grant IOM the full privileges and immunities envisaged by the Council in Resolution No. 1266. IOM will continue to work with States to develop bilateral agreements with a view to securing privileges and immunities in accordance with Resolution No. 1266. In this regard, the Director General acknowledges with appreciation the constructive and ongoing efforts made by a number of States to develop satisfactory agreements during the reporting period.

22. The Director General considers that the recurring challenges identified in the present report (exercise of national jurisdiction over labour claims filed by IOM staff members, seizure of IOM funds notwithstanding immunity from legal process, and taxation of staff salaries and emoluments) could benefit from more in-depth discussion at the technical level between the Administration and Member States. The Director General recalls that the Working Group on IOM Partnerships, Governance and Organizational Priorities is authorized to "[r]eview and exchange views on current and future organizational priorities and initiatives". The Director General proposes that the Standing Committee request the Working Group to consider the recurring challenges faced by IOM with respect to its privileges and immunities, with a view to identifying options for consideration by the Standing Committee.

⁵ This principle was recognized in United Nations General Assembly resolution 78(1) of 7 December 1946, according to which, "[i]n order to achieve full application of the principle of equity among Members and equality among personnel of the United Nations, Members which have not yet completely exempted from taxation salaries and allowances paid out of the budget of the Organization are requested to take early action in the matter".