

**NOTE ON THE LEGAL STATUS OF THE
INTERNATIONAL BUREAU OF WEIGHTS AND MEASURES (BIPM)**

This note summarizes the legal status of the BIPM, based on the Headquarters Agreement (*Accord de siège*) (1969) and its review by the French authorities in the subsequent amendments of 2005 and 2008 (§1). It also addresses the subjects of the legal personality of the BIPM (§2) and the legal representatives of the BIPM (§3). Information about the review of the legal status of the BIPM by other intergovernmental organizations is also provided (§4).

1. OFFICIAL DOCUMENTATION DESCRIBING THE LEGAL STATUS OF THE BIPM

1.1 The Headquarters Agreement (or “Accord de siège”) of 25 April 1969

This document¹ is the agreement concluded with the French Government defining the conditions under which the BIPM operates on the French territory through its organs and agents to which/whom are granted functional privileges and immunities for this purpose. By way of this document, the French Government also recognizes the legal capacity of the BIPM and its jurisdiction immunity.

Article 1: legal personality and capacity

“The Government of the French Republic recognizes the personality of the International Bureau of Weights and Measures, hereinafter named the Bureau, and its capacity to contract, to acquire or dispose of movable or immovable property necessary to its operation, and to be a party to legal proceedings”².

Article 10: facilitation of the admittance and stay on the French territory of persons involved in the work of the BIPM

“The French Government undertakes to authorize, unless a reason of public order prevents it, with no visa fee or deferment, admittance and stay on the French territory during the time of their functions or missions with the Bureau:

- a) Of Representatives of the States Parties to the Metre Convention to the session of the General Conferences on Weights and Measures;
- b) Of the members of the International Committee for Weights and Measures;
- c) Of advisers and experts invited in a consultative capacity by the International Committee for Weights and Measures;
- d) Of the staff members of the Bureau and of their family”².

Article 4: jurisdiction immunity

“The property and assets of the Bureau are immune from seizure, confiscation, requisition and expropriation or from any other form of administrative or judicial measure of constraint.”²

The jurisdiction immunity can only be waived by decision of the BIPM. This was the case in the context of the dispute between the BIPM and *Électricité de France* (EDF), during which the BIPM sued EDF in the French tribunals³.

¹ Full title: « *Accord du 25 avril 1969 relatif au siège du Bureau international des poids et mesures et à ses privilèges et immunités sur le territoire français* »

² Our translation, see annex 1 for the original text in French

³ This case was resolved amicably (with EDF settling a total amount of around 240 k€ to the BIPM) and the grievance deposited at the French Tribunal was therefore withdrawn.

1.2 Amendments to the Headquarters Agreement of 2005 and 2007 and review by the French authorities

When the 1969 Agreement was amended to update and complete the provisions (to include inviolability of BIPM Archives, jurisdiction and execution immunities in 2005 and exceptions to the jurisdiction immunity in 2007), the legal status of the BIPM was reviewed by the French Government and Parliament during the ratification process.

The French Government (through the Minister of Foreign Affairs) presented the legal status of the BIPM to the French Parliament (*Sénat*) on 21 May 2008 as follows:

“The Government of the French Republic and the International Committee for Weights and Measures signed, on 7 June 2005, an amending agreement to the agreement of 25 April 1969 concerning the seat of the International Bureau of Weights and Measures and its privileges and immunities on the French territory. The International Bureau of Weights and Measures (BIPM) is an international organization created by the Metre Convention in 1875 to ensure worldwide uniformity of measurements and their traceability within the international system of units. France is the depositary of the Metre Convention and host State, the seat of the [B]ureau being located in Sèvres, within the *Parc de Saint-Cloud*”⁴ (underlining added).

The topic was also discussed by the Parliament (*Assemblée nationale*), through a report issued by its Committee on Foreign Affairs, which presented the legal status of the BIPM as follows:

“The International Bureau of Weights and Measures (BIPM) is an intergovernmental organization in charge of ensuring uniformity of measurements. Created by the Metre Convention, signed in Paris by 17 States on 20 May 1875, it is one of the oldest international organization still in existence after the Central Commission for the Navigation of the Rhine, created following the Congress of Vienna in 1815, or the International Telecommunications Union and the Universal Postal Union, instituted in 1865 and 1874 respectively. The Metre Convention currently includes 51 Member States, including the main industrialized countries, as well as 27 States and Associate organizations, whose delegates meet every four years in Paris for the General Conference on Weights and Measures (CGPM). Under the latter’s authority, the International Committee for Weights and Measures (CIPM) directs and supervises the activities of the BIPM”⁵ (underlining added).

⁴ Our translation, see annex 2 for the original text in French

⁵ Our translation, see annex 3 for the original text in French

2. LEGAL PERSONALITY

Legal personality is defined as the “ability to be entitled to have rights and obligations”⁶. Legal personality is therefore what defines a legal person, capable of holding and enforcing legal rights and duties.

The notion of legal personality of intergovernmental organizations is well documented in legal academic literature. Intergovernmental organizations have a legal personality which, if it does not result from explicit provisions of the constitutive treaty, may be inferred from the powers or purposes of the intergovernmental organization (for example capacity to acquire buildings).

It can only be the intergovernmental organization as a whole that possesses such personality. In some very rare cases, individual organs may also possess such personality⁷. There is no case of an intergovernmental organization in which an organ possesses legal personality but the organization itself does not.

This was reflected in 1876 when the French Government granted the status of *établissement d'utilité publique* to the BIPM. The text of the *Décret* of 28 October 1876 (a unilateral act from the French Government), explicitly names the beneficiary as the BIPM:

“The President of the French Republic,

[...]

Decrees:

Art. 1: Is recognized as a an *établissement d'utilité publique* the International Bureau of Weights and Measures established in Paris in accordance with the Convention signed on 20 May 1875 between Germany, Austria-Hungary, Belgium, Brazil, the Argentinian Confederation, Denmark, Spain, the United States of America, France, Italy, Peru, Portugal, Russia, Sweden-Norway, Switzerland, Turkey and Venezuela”⁸.

Only an entity possessing legal personality (whether governed by private or public law, national or international law) can enjoy the status of *établissement d'utilité publique* in administrative law.

The French Government now recognizes the legal personality of the BIPM through the terms of the Headquarters Agreement. For example, Article 1 states:

“The Government of the French Republic recognizes the personality of the International Bureau of Weights and Measures, hereinafter named the Bureau, and its capacity to contract, to acquire or dispose of movable or immovable property necessary to its operation, and to be a party to legal proceedings”⁹.

⁶ Our translation of *Dictionnaire de droit international public*, J. Salmon, 2001: « *aptitude à être titulaire de droits et assujetti à des obligations* »

⁷ This covers very complex legal and administrative situations such as that the European Investment Bank (EIB), which itself is an organ of European Union.

⁸ Our translation, see annex 5 for the original text in French

⁹ Our translation, see annex 1 for the original text in French

3. LEGAL REPRESENTATIVES OF THE BIPM

As for any legal person (for example a commercial company, a State, etc.), an IGO exercises its rights and duties through “representatives” who are physical persons because the IGO itself has no physical existence.

A representative is defined as “one who stands for or acts on behalf of another”¹⁰.

There are two types of representatives:

- *Ex officio* representatives, who are entitled to represent the legal person (and therefore commit that legal person, for example to sign a legal act on its behalf such as a contract or agreement) as a result of their capacity within the framework of the legal person, and
- Other representatives, whether from within or outside the framework of the legal person, designated on a specific occasion by way of a specific legal act: power of attorney, proxy, credentials, etc.

As an example, for States:

- *Ex officio* representatives are the Head of State, the Head of Government and the Minister of Foreign Affairs. These three legal persons are entitled to sign an international agreement, or treaty, on behalf of the State;
- Other representatives designated on a specific occasion by way of a specific legal act, are, for example Delegates to international conferences designated by way of credentials.

For IGOs in general:

- *Ex officio* representatives are the Executive Head of the IGO (Secretary General, etc.), the Chair of the governing body and the Chair of the supreme body (although this is not the case for the BIPM, given the specific status of the CGPM Chair, being external to the structure of the organization, i.e. the then current President of the Paris Academy of Sciences);
- Representatives designated on a specific occasion by way of a specific legal act, are, for example internal or external counsel representing the Organization or members of staff designated to conduct customs or banking transactions.

In the framework of the BIPM, the CIPM is the governing body within the structure of the organization, and therefore the CIPM President is an *ex officio* physical representative. He may, in particular, represent the BIPM officially with no need for credentials and sign treaties and agreements on behalf of the BIPM (for example the Headquarters Agreement (1969) and the 2005 and 2008 amendments). Certain CGPM resolutions grant him powers and duties (for example to liaise with the Committee for CIPM Election (CEC) for the election of CIPM members etc.). He also has certain responsibilities from the Metre Convention and Annexed Regulations (for example to provide a report to each meeting of the CGPM and to hold one of the three keys to the depository of international prototypes).

In parallel, the BIPM Director, being the Head of the scientific and administrative organ (and hence Executive Head within the Organization), is also an *ex officio* physical representative. He may, in particular, represent the BIPM officially with no need for credentials and sign agreements and contracts. He maintains contacts with the NMIs and liaises with other intergovernmental organizations and international bodies. The CIPM have granted him powers necessary for the operation of the organization through the “BIPM Financial Regulations” (for example to sign commercial contracts and to undertake financial commitments etc.) and the “Regulations, Rules and Instructions applicable to BIPM Staff Members” (the RRI) (for example to appoint staff). Certain CGPM resolutions grant him powers (for example to receive applications from States or Economies wishing to become an Associate of the CGPM (CGPM Resolution 3 (1999))).

¹⁰ Black’s Law Dictionary, Third Edition, 2006

He also has certain duties from the Metre Convention and Annexed Regulations (for example he holds one of the three keys to the depository of international prototypes).

He has certain privileges granted by the French Republic under the terms of the Headquarters Agreement (1969) (for example diplomatic immunity). In addition, some powers are granted to both the CIPM (represented physically by its President) and the BIPM Director, including the power to waive the BIPM privileges and immunities:

“The privileges and immunities provided for in the present Agreement are granted to their beneficiaries in the interest of the sound operation of the Bureau. The International Committee or the BIPM Director will agree to the lifting of the immunity granted to one of the beneficiaries if it may lead to impeding the course of justice and if it can be lifted without damaging the interests of the Bureau”¹¹.

The signature of the Headquarters Agreement in 1969 and its amendments exemplifies the issue of physical representatives. This is an agreement concluded between two international legal persons:

- The French Republic, represented by a physical person: the *Directeur des Conventions administratives et des Affaires consulaires* (Gilbert de Chambrun, explicitly designated as plenipotentiary, i.e. in possession of due credentials and therefore designated on this specific occasion from the Ministry of Foreign Affairs); and
- The BIPM, represented by the Chair of the Governing body (in this case, the President of the CIPM: José María Otero Navascues).

In parallel, the 2005 and 2007 amendments were concluded between the successive *Directeurs des Nations Unies et des Organisations internationales* of the Ministry of Foreign Affairs, Sylvie Bermann and Jean-Maurice Ripert and the President of the CIPM, in both cases Ernst Göbel.

4. REVIEW OF THE LEGAL STATUS OF THE BIPM BY OTHER INTERGOVERNMENTAL ORGANIZATIONS

4.1 Recognition of the jurisdiction of the ILO Administrative Tribunal (ILOAT) by the BIPM

Pursuant to the 2005 amendment of the Headquarters Agreement, the BIPM is under the obligation to take appropriate measures for the judicial settlement of disputes with its staff members concerning their conditions of employment. Consequently, the BIPM has recognized the jurisdiction of the ILOAT, which is an international tribunal specializing in staff disputes in intergovernmental organizations. It may set aside a decision of any organ of the BIPM if it finds it unlawful. Its judgments are final and without appeal. Should the BIPM not have recognized this jurisdiction, it would have breached its obligation as *per* the Headquarters Agreement and would have left the BIPM staff in a “*legal vacuum*”, possibly leading to national jurisdictions stepping in and declaring themselves competent to hear staff dispute cases.

4.1.1. Conditions and procedure

- *Article II of the ILOAT Statute:*

“1. The Tribunal shall be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office, and of such provisions of the Staff Regulations as are applicable to the case. [...]

¹¹ Our translation, see annex 1 for the original text in French

5. The Tribunal shall also be competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations of any other international organization meeting the standards set out in the Annex hereto which has addressed to the Director-General a declaration recognizing, in accordance with its Constitution or internal administrative rules, the jurisdiction of the Tribunal for this purpose, as well as its Rules, and which is approved by the Governing Body.”

- *Annex to the statute of the ILOAT*

“To be entitled to recognize the jurisdiction of the Administrative Tribunal of the International Labour Organization in accordance with paragraph 5 of article II of its Statute, an international organization must either be intergovernmental in character, or fulfil the following conditions:

- (a) it shall be clearly international in character, having regard to its membership, structure and scope of activity;
- (b) it shall not be required to apply any national law in its relations with its officials, and shall enjoy immunity from legal process as evidenced by a headquarters agreement concluded with the host country; and
- (c) it shall be endowed with functions of a permanent nature at the international level and offer, in the opinion of the Governing Body, sufficient guarantees as to its institutional capacity to carry out such functions as well as guarantees of compliance with the Tribunal’s judgments.”

4.1.2. Recognition of the ILOAT by the BIPM

The legal status of the BIPM was examined by the ILO and presented to the ILO Governing Body in Document GB.301/PFA/18/4 (March 2008), following an application submitted by the then BIPM Director, Andrew Wallard:

“2. Established in 1875 by the Metre Convention, the BIPM is an international organization of universal scope which currently has 51 member States and 26 associates. The BIPM is active in the field of global metrology and its mission is to provide the basis for a single coherent system of measurements throughout the world traceable to the International System of Units (SI). [...]

4. The headquarters of the BIPM is in Sèvres (France). To determine its status in the host country, the BIPM concluded with the Government of the French Republic on 25 April 1969 an agreement on the headquarters of the BIPM and its privileges and immunities on the French territory. The agreement recognizes the legal personality of the BIPM, including its capacity to contract, to acquire and dispose of movable or immovable property and to institute legal proceedings. By virtue of this agreement, the BIPM enjoys immunity of jurisdiction and enforcement, unless it explicitly waives such immunity. [...]

6. In order to be eligible for approval under article II, paragraph 5, of the Tribunal’s Statute, the BIPM must be considered either to be an intergovernmental organization or to fulfil certain criteria set out in the annex to the Statute. According to the information available, the BIPM is an international intergovernmental organization established by treaty. Furthermore, its objectives respond to the interests of all of its Members and its functions are of a permanent nature. In addition, the BIPM is not required to apply any national law in its relations with its officials and, as noted above, it enjoys immunity from legal process in its host country. Finally, it has a rolling fund which guarantees the stability of its budgetary resources” (underlining added).

4.2 Protection of the BIPM logo by the World Intellectual Property Organization (WIPO)

4.2.1 Conditions and procedure

Art. 6ter (1) (a) and (b) of the Paris Convention for the Protection of Industrial Property, concerning armorial bearings, flags, other emblems, abbreviations, and names, of intergovernmental organizations:

“(1) (a) The countries of the Union agree to refuse or to invalidate the registration, and to prohibit by appropriate measures the use, without authorization by the competent authorities, either as trademarks or as elements of trademarks, of armorial bearings, flags, and other State emblems, of the countries of the Union, official signs and hallmarks indicating control and warranty adopted by them, and any imitation from a heraldic point of view.

(b) The provisions of subparagraph (a), above, shall apply equally to armorial bearings, flags, other emblems, abbreviations, and names, of international intergovernmental organizations of which one or more countries of the Union are members, with the exception of armorial bearings, flags, other emblems, abbreviations, and names, that are already the subject of international agreements in force, intended to ensure their protection”¹² (underlining added).

This protection is only granted to IGOs and this status is therefore checked by WIPO prior to any granting.

4.2.2 Application to the BIPM

By letter of 7 January 2000, the WIPO Deputy Director General informed the then BIPM Director, Terry Quinn, that the protection of the BIPM name, acronym and emblems was granted as *per* Art. 6ter of the Paris Convention:

“I acknowledge receipt of your letter of 26 November 1999 requesting protection, under Art. 6ter of the Paris Convention for the Protection of Industrial Property, name, acronym and emblems of the International Bureau of Weights and Measures.

In accordance with your request, the said name, acronym and emblems have been communicated to the States Parties to the Convention as well as to the Members of the World Trade Organization (WTO) who are not Parties to the Convention [...]”¹³.

5. CONCLUSION

As an intergovernmental organization, the BIPM depends on its Host State for access to financial (for example banking) and contractual (for example purchasing, employment) activities. These all depend on the recognition by the Host State of the legal status of the BIPM as an intergovernmental organization, as documented in the Headquarters Agreement.

The Headquarters Agreement also documents the legal personality and the jurisdiction immunity that every intergovernmental organization benefits from. Whilst immune from national jurisdictions, the BIPM cannot operate in a “*legal vacuum*”. Hence, as described above, the BIPM provides legal remedy (such as arbitration clauses to contractors and recognition of the jurisdiction of the ILOAT for staff).

The above elements confirm the basis for the legal status of the BIPM, as reviewed by various national and international expert authorities, which is that of the intergovernmental organization created by the Metre Convention.

¹² http://www.wipo.int/article6ter/en/legal_texts/article_6ter.htm

¹³ Our translation, see annex 4 for the original text in French

Extracts from the Headquarters Agreement

Article 1^{er}.

Le Gouvernement de la République française reconnaît la personnalité civile du Bureau international des poids et mesures ci-après appelé le Bureau et sa capacité de contracter, d'acquérir et d'aliéner les biens mobiliers et immobiliers nécessaires à son activité, et d'ester en justice.

Article 10.

Le Gouvernement français s'engage à autoriser, sauf si un motif d'ordre public s'y oppose, sans frais de visa ni délai, l'entrée et le séjour en France pendant la durée de leurs fonctions ou missions auprès du Bureau :

- a) Des représentants des Etats Parties à la Convention du mètre aux sessions des Conférences générales des poids et mesures ;
- b) Des membres du Comité international des poids et mesures ;
- c) Des conseillers et experts convoqués à titre consultatif par le Comité international des poids et mesures ;
- d) Des membres du personnel du Bureau et de leur famille.

Article 13.

Les privilèges et immunités prévus par le présent Accord sont consentis à leurs bénéficiaires dans l'intérêt du bon fonctionnement du Bureau. Le Comité international ou le directeur du Bureau consentira à la levée de l'immunité accordée à l'un de ces bénéficiaires si celle-ci risque de gêner l'action de la justice et qu'elle peut être levée sans porter préjudice aux intérêts du Bureau.

Extract from Senate bill authorizing the approval of an agreement relating to the International Bureau of Weights and Measures and to its privileges and immunities on the French territory, presented on behalf of Mr François Fillon, Prime Minister, by Mr Bernard Kouchner, Minister for Foreign and European Affairs

21 May 2008

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Le Gouvernement de la République française et le Comité international des poids et mesures ont signé, le 7 juin 2005, un accord portant amendement de l'accord du 25 avril 1969 relatif au siège du Bureau international des poids et mesures et à ses privilèges et immunités sur le territoire français. Le Bureau international des poids et mesures (BIPM) est une organisation internationale, créée par la convention du mètre en 1875, afin d'assurer l'uniformité mondiale des mesures et leur traçabilité au sein du système international d'unités. La France est dépositaire de la convention du mètre et État hôte, le siège du bureau étant situé à Sèvres, dans l'enceinte du Parc national de Saint-Cloud.

Cet accord a pour objet d'étendre le champ des privilèges et immunités dont bénéficie le BIPM.

Extract from report registered at the office of the President of the National Assembly, given on behalf of the Committee on Foreign Affairs on:

- the bill adopted by the Senate authorizing the approval of an agreement relating to the seat of the Bureau international des poids et mesures and its privileges and immunities on the French territory,
and
- the bill adopted by the Senate authorizing the approval of the agreement between the French Government and the CIPM amending the agreement of 25 April 1969 relating to the seat of the Bureau and its privileges and immunities on the French territory,

By Mr Jean-Jacques Guillet, Member of Parliament

15 July 2008

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I. – MISSION ET SIÈGE DU BUREAU INTERNATIONAL DES POIDS ET MESURES

Le Bureau international des poids et mesures (BIPM) est une organisation intergouvernementale chargée d'assurer l'uniformité des mesures. Créé par la Convention du Mètre, signée à Paris par 17 Etats le 20 mai 1875, il est une des plus anciennes organisations internationales existantes après la Commission Centrale pour la Navigation du Rhin, créée à la suite du Congrès de Vienne en 1815, ou encore l'Union internationale des télécommunications et l'Union postale universelle, instituées en 1865 et 1874 respectivement. La Convention du Mètre regroupe actuellement 51 Etats membres, y compris les principaux pays industrialisés, ainsi que 27 Etats et organisations associés, dont les délégués se réunissent tous les quatre ans à Paris pour la Conférence générale des poids et mesures (CGPM). Sous l'autorité de celle-ci, le Comité international des poids et mesures (CIPM) dirige et supervise les activités du BIPM.

Letter dated 7 January 2000 from the WIPO Deputy Director General to the BIPM Director on the protection of the BIPM name, acronym and emblems as *per* Art. 6ter of the Paris Convention

<p>WORLD INTELLECTUAL PROPERTY ORGANIZATION</p> <p>世界知识产权组织</p> <p>ORGANIZACIÓN MUNDIAL DE LA PROPIEDAD INTELECTUAL</p>		<p>ORGANISATION MONDIALE DE LA PROPRIÉTÉ INTELLECTUELLE</p> <p>المنظمة العالمية للملكية الفكرية</p> <p>ВСЕМИРНАЯ ОРГАНИЗАЦИЯ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ</p>
-55.1		Le 7 janvier 2000
<p>Monsieur le Directeur,</p> <p>J'accuse réception de votre lettre du 26 novembre 1999 demandant la protection, en vertu de l'article 6ter de la Convention de Paris pour la protection de la propriété industrielle, de la dénomination, du sigle et des emblèmes du Bureau international des poids et mesures.</p> <p>Selon votre demande, lesdits dénomination, sigle et emblèmes ont été communiqués aux pays parties à la Convention de Paris ainsi qu'aux membres de l'Organisation mondiale du commerce (OMC) qui ne sont pas parties à ladite Convention, mais qui sont ou seront tenus de l'appliquer en vertu de l'Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce (Accord sur les ADPIC) du 14 mai 1999.</p> <p>Veuillez agréer, Monsieur le Directeur, l'assurance de ma considération distinguée.</p>		
		 Shozo Uemura Vice-directeur général
<p>Monsieur T.J. Quinn Directeur Bureau international des poids et mesures</p>		

Official Journal of the French Republic, 29 October 1876, Decree of 28 October 1876 by the President of the French Republic granting the status of *établissement d'utilité publique* to the BIPM

