



RESEARCH PAPER 05/31
6 APRIL 2005

The International Organisations Bill [HL]

HL Bill 2 of 2004-05; HC Bill 69 of 2004-05

The *International Organisations Bill* confers privileges and immunities on certain international bodies and their staff. In most cases this is in order to meet international obligations which the Government has accepted in respect of those organisations. In some cases it is to meet political undertakings.

The Bill had its first reading in the Lords on 24 November 2004. It received its second reading on 16 December 2004, and the committee stage was on 11 January 2005. Report was on 7 February 2005 and Third Reading was on 28 February 2005.

It was introduced in the Commons on 1 March 2005 and remaining stages are due to be taken on 7 April 2005.

It extends to the whole of the United Kingdom.

The Bill, and the Explanatory Notes, are available at:

<http://www.publications.parliament.uk/pa/cm200405/cm200405069/2005069.htm>

Further information, including links to the Lords debates, is available at:

<http://hcl1.hclibrary.parliament.uk/parliament/bips/0405/hlbill002.asp>

Paul Bowers

INTERNATIONAL AFFAIRS AND DEFENCE SECTION

HOUSE OF COMMONS LIBRARY

Recent Library Research Papers include:

List of 15 most recent RPs

05/16	The <i>Drugs (Sentencing and Commission of Inquiry) Bill</i> [Bill 21 of 2004-05]	23.02.05
05/17	Economic Indicators [includes article: Debt relief for developing countries]	01.03.05
05/18	<i>Health and Safety (Directors' duties) Bill</i> [Bill 22 of 2004-05]	01.03.05
05/19	The <i>Sexual Offences Act 2003 (Amendment) Bill</i> [Bill 26 of 2004-05]	02.03.05
05/20	The <i>Education Bill</i> [HL] [Bill 77 of 2004-05]	09.03.05
05/21	The <i>Inquiries Bill</i> [HL] [Bill 70 of 2004-05]	10.03.05
05/22	The <i>Smoking in Public Places (Wales) Bill</i> [Bill 23 of 2004-05]	14.03.05
05/23	Unemployment by Constituency, February 2005 16.03.05	
05/24	The Caspian Basin, energy reserves and potential conflicts	16.03.05
05/25	The <i>Disability Discrimination Bill</i> [HL] [Bill 71 of 2004-05]	16.03.05
05/26	The <i>Public Services Ombudsman (Wales) Bill</i> [HL] [Bill 76 of 200-405]	23.03.05
05/27	Direct taxes: rates and allowances 2005-06	24.03.05
05/28	The <i>Equality Bill</i> [Bill 72 of 2004-05]	24.03.05
05/29	The Middle East Peace Process: prospects after the Palestinian Presidential Elections	29.03.05
05/30	The Quango Debate	05.04.05

Research Papers are available as PDF files:

- *to members of the general public on the Parliamentary web site,
URL: <http://www.parliament.uk>*
- *within Parliament to users of the Parliamentary Intranet,
URL: <http://hcl1.hclibrary.parliament.uk>*

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. Any comments on Research Papers should be sent to the Research Publications Officer, Room 407, 1 Derby Gate, London, SW1A 2DG or e-mailed to PAPERS@parliament.uk

Summary of main points

Privileges and immunities, such as immunity from legal jurisdiction or from tax, are granted to international organisations on the argument that they are necessary to protect the independence of the organisation and to allow it to carry out its work effectively. Many organisations already have privileges and immunities in the UK.

Over time the Government has entered into various agreements to give new privileges and immunities to international organisations, their staff and family members, or to modify existing arrangements. Some of these agreements are legally binding, others are political undertakings.

The *International Organisations Bill [HL] 2004-05* makes provision for these new or modified privileges and immunities in UK law.

The organisations covered are:

- the Commonwealth Secretariat and Commonwealth Secretariat Arbitral Tribunal
- the Organisation for Security and Cooperation in Europe
- bodies created under Titles V or VI of the *Treaty on European Union*
- the International Criminal Court
- the European Court of Human Rights
- the International Tribunal for the Law of the Sea

CONTENTS

I	Principle of the Bill	7
	A. The Bill itself	7
	B. Privileges and immunities in general	7
II	Clauses	9
	A. Commonwealth Secretariat and Commonwealth Secretariat Arbitral Tribunal	9
	B. Organisation for Security and Cooperation in Europe	11
	C. Bodies established under the Treaty on European Union	12
	D. International Criminal Court	13
	E. European Court of Human Rights	14
	F. International Tribunal for the Law of the Sea	14
	G. Extent, commencement and financial implications	15
III	Human rights	15
IV	Debates in the Lords	16

I Principle of the Bill

A. The Bill itself

The *International Organisations Bill* confers privileges and immunities on certain international organisations, their staff and in some cases members of the families of those staff. For some these are the first privileges and immunities they have been given in the UK, for others they are variations of existing privileges and immunities.

The Bill allows the UK to meet international obligations which the Government has accepted in respect of some of these organisations, to meet obligations it might accept in the future, and, in some cases, to act on political undertakings which the Government and its predecessors have given.

The organisations covered are the Commonwealth Secretariat and Commonwealth Secretariat Arbitral Tribunal, the Organisation for Security and Cooperation in Europe, bodies created under Titles V or VI of the *Treaty on European Union*, the International Criminal Court, the European Court of Human Rights and the International Tribunal for the Law of the Sea.

On second reading in the Lords, Baroness Symons cast the Bill as a sign of commitment to the organisations concerned:

by enabling us to confer privileges and immunities on them, this Bill will confirm our support for the work of these organisations and will be a clear demonstration that the United Kingdom is meeting its international commitments.¹

There is no special reason why the various different organisations covered by the Bill have been grouped together. It is an omnibus measure, bringing practice up to date in respect of a number of separate organisations.

B. Privileges and immunities in general

Privileges and immunities are a way of removing the beneficiaries from legal jurisdiction, taxation and the like. They are granted to many international organisations, and their staff and family members, as they are to diplomats and consuls. However, they are not conferred in a uniform way.

¹ HL Deb 16 December 2004, c1464.

The arrangements for international organisations are separate from those for diplomats and consuls. The latter are closely related to state immunity, the doctrine that one state may not take jurisdiction over another. Nevertheless, they evolved by analogy to diplomatic immunities.²

Diplomatic immunity arose at a time when privilege was a normal feature of the social order. It was very extensive. By the 19th century some writers regarded it as outmoded and reflecting a royalist, prerogative-based culture. They argued that immunities should be functional, a way of allowing the beneficiary to carry out important functions free from politically motivated interference. This implied a restricted range of immunities, in particular “functional immunities,” those which are restricted to official acts. Today, the privileges and immunities of diplomats, consuls, international organisations and the officers and staff of those organisations represent a mixture of function and tradition.

The arguments in favour of privileges and immunities for international organisations are different than for diplomats, drawing more heavily on the functional idea. The usual arguments are that they are necessary in order to protect the independence of the organisation, in order to make it easier for it to do its work and to some extent as an extension of state immunity, or at least on the basis of state equality.

The independence from jurisdiction allows the organisation to carry out its business, theoretically on behalf of all its members, without interference from the one in whose territory it happens to operate. In addition, tax exemption and other fiscal privileges are allowed in order to prevent the host state imposing taxes on the contributions made by other states to the budget of the organisation. However, some senior officers are accorded privileges and immunities of a much more extensive nature, and which, for practical purposes, are indistinguishable from diplomatic privileges. Whereas the very full nature of diplomatic privilege derives from state immunity, in the case of senior officers of international organisations it is more a question of prestige and the embarrassment that might be caused to the organisation if such persons were subject to legal proceedings or were called as witnesses.

In contrast to embassies and diplomats, international organisations and their staff do not enjoy privileges and immunities through customary law,³ but only under specific treaties or other agreements, for instance, the treaty that sets up the organisation. They specify a set of privileges and immunities, which need not be identical from one organisation to another (although in practice there is a limited range of typical sets). Subsequent agreements might extend the privileges and immunities (for instance if the organisation

² The history is discussed in L Frey and M Frey, *The history of diplomatic immunity*, 1999, pp539ff.

³ Although there are treaties covering diplomatic and consular privileges and immunities, these are codifications of pre-existing customary law. Non-parties to those treaties would still be expected to observe certain basic courtesies towards diplomats.

sets up an office in a new country, or takes on new roles), or modify them for operational or political reasons.

There are also distinctions based on seniority, as noted above. For instance, the highest officers of international organisations (eg, the UN Secretary-General) usually enjoy full immunity from civil and criminal jurisdiction for both public and private acts, as do their deputies and some other senior officers. Other staff typically enjoy immunity only in matters arising from the conduct of their official business.

II Clauses

The Bill has eleven clauses and a schedule. It extends to the whole of the UK. The different organisations covered by the Bill are dealt with in separate clauses.

The Bill, and the Explanatory Notes, are available on-line at:

<http://www.publications.parliament.uk/pa/cm200405/cmbills/069/2005069.htm>

A. Commonwealth Secretariat and Commonwealth Secretariat Arbitral Tribunal

a. Overview

Clauses 1 – 3 cover the Commonwealth Secretariat,⁴ the main organ of the Commonwealth, and its Arbitral Tribunal (CSAT). CSAT was set up in 1995 to resolve disputes over written contracts between the Secretariat and its staff or any other contractor.

The existing privileges and immunities of the Commonwealth Secretariat are established under the *Commonwealth Secretariat Act 1966*, which itself implemented an agreement of the previous year setting up the Secretariat.

The existing arrangements are modified in three ways by the Bill, such that the Commonwealth Secretariat gains full immunity in respect of written contracts, as covered by CSAT, the President and members of CSAT gain immunities, and CSAT staff are exempt from income tax so long as the Secretariat introduces an internal levy.

⁴ Further information on the Commonwealth Secretariat is available at: <http://www.thecommonwealth.org/HomePage.asp?NodeID=20593>.

b. Full immunity in respect of written contracts

The Bill removes part of the limited jurisdiction which the UK courts have over CSAT's activities. At present, this is one of three exceptions to the immunity of the Secretariat from the jurisdiction of the UK courts.

The three exceptions concern cases in which the Commonwealth Secretary-General waives immunity, those concerning motor accidents or motor traffic offences, and those concerning arbitration proceedings in respect of a written contract with the Secretariat.

The courts interpret the third of these as allowing them to exercise supervisory jurisdiction, under the *Arbitration Act 1996*, over CSAT. **Clause 1** of the Bill removes this exception to immunity by means of amendments to the *Commonwealth Secretariat Act 1966* and the *Arbitration Act 1996*. It does not affect contracts entered into before its entry into force.⁵ Whereas the rest of the Bill will come into force two months after it is passed, Clauses 1, 2 and 3 come into force on days to be set by the Secretary of State in an order made by statutory instrument.⁶

c. Immunity for President and members of CSAT

Clause 2 gives the President and members of CSAT the same immunity from legal process in respect of their official activities as is enjoyed by staff of the Commonwealth Secretariat.⁷ It does this by amending the *Commonwealth Secretariat Act 1966*. It also allows the Secretary of State to make provision for equivalent immunity to be conferred on a successor body to CSAT, should one arise.⁸ S/he would do this by means of an order made by statutory instrument to amend "in whatever way he considers appropriate" the *Commonwealth Secretariat Act 1966*. This statutory instrument would be subject to the affirmative procedure.⁹

d. Income tax

Clause 3 exempts the staff of the Commonwealth Secretariat from income tax on the salaries and emoluments received by them.¹⁰ It does this by amending the Schedule to the *Commonwealth Secretariat Act 1966*.

⁵ Clause 1 (3).

⁶ Clause 11 (4).

⁷ Clause 2 (2) and 2 (3).

⁸ Clause 2 (4).

⁹ Clause 2 (5).

¹⁰ Clause 3 (b), inserting paragraph 5A (1).

At present the Commonwealth Secretariat itself is exempt from income tax, but this Clause extends the exemption to all staff. It does not apply to pensions and annuities paid to former members of staff,¹¹ nor to income other than that resulting from employment by the Commonwealth Secretariat.¹²

The exemption is contingent on the Commonwealth Secretariat introducing an internal tax system for its own benefit, and it will come into effect once this internal tax becomes operative.¹³ This system is used in a number of other international organisations.

B. Organisation for Security and Cooperation in Europe

a. Background

Clause 4 covers the Organisation for Security and Cooperation in Europe (OSCE),¹⁴ the successor to the former Conference on Security and Cooperation in Europe (CSCE). OSCE works mainly in the areas of conflict prevention, crisis management, democracy building and post-conflict rehabilitation, and it is particularly active in the former Communist states in Central and Eastern Europe, the Caucasus and Central Asia.

OSCE has 55 participating states, drawn from Europe, Central Asia and North America. Its structures are similar to those of an international organisation, but it has no international legal personality separate from its participating states, and as a result it is not regarded as an international organisation in formal terms. In part this has to do with its origins in the former CSCE, which was the result of a political agreement, the *Helsinki Final Act* of 1975, rather than a binding treaty. OSCE has taken on a much more elaborate institutional form since then, including major developments under the *Charter of Paris 1990*, but again this was not a treaty. The OSCE states still work together on a consensual, rather than obligatory, basis. They regard themselves as participants in a mechanism, rather than as members of an organisation.

As a result of this lack of international legal personality OSCE is not an “organisation” in the terms of the *International Organisations Act 1968*, under which legal capacity and privileges and immunities are given to a number of international organisations.¹⁵ However, the UK has a political commitment dating from the early 1990s to confer such capacity, privileges and immunities on OSCE.

¹¹ New paragraph 5A (3).

¹² New paragraph 5A (1), “in that capacity.”

¹³ New paragraph 5A (2).

¹⁴ Further information on OSCE is available at: <http://www.osce.org/>.

¹⁵ Though not, for instance, the UN, the Commonwealth or the EU, which are covered by other legislation.

In 1993, at its meeting in Rome, the CSCE Council of Ministers (now the Ministerial Council of OSCE) adopted a set of decisions, including on legal capacity and on privileges and immunities.¹⁶ The UK is not legally bound by these provisions, but as a member of the Council of Ministers it made a political commitment to them at the time.

b. Detail

Clause 4 provides that OSCE be treated as an international organisation of which the UK is a member for the purposes of section 1 of the *International Organisations Act 1968*, thus allowing the UK to confer the legal capacity and the privileges and immunities envisaged in the 1993 Rome decision.¹⁷ It does this by providing, in Clause 4 (1), that if OSCE is not an organisation of which the UK and at least one other state are members it shall be treated as such for the purposes of the 1968 Act. This reflects the fact that OSCE is not an organisation with members, but a process or mechanism with participants.

Clause 4 (2) provides that agreements with other states relating to OSCE be treated as agreements with OSCE for the purposes of the 1968 Act. Once again, this is in recognition of the peculiar status of OSCE, so that agreements that would, for a true organisation, be between it and the member states are in fact agreements between the participants themselves.

C. Bodies established under the Treaty on European Union

Clause 5 concerns bodies established under Title V or Title VI of the Maastricht Treaty (the Treaty on European Union). Title V covers the common foreign and security policy (CFSP) and Title VI covers police and judicial cooperation in criminal matters (PJCC).

Clause 5 provides that legal capacity and privileges and immunities may be conferred on bodies created under Titles V and VI, subject to various conditions. It does this by inserting a new section 4B into the *International Organisations Act 1968*.

New section 4B (1) makes the provisions contingent on the UK having obligations in relation to the body in question, which arise from an instrument under the Maastricht Treaty or from an agreement into which the UK has entered. This means that the body will have been subject to an instrument or agreement that it should enjoy legal capacity or privileges and immunities.

New section 4B (2) sets out what may be conferred on these bodies, and how this can be done. It allows the Government, by Order in Council, to confer the legal capacity of a body corporate and/or such privileges and immunities as it considers appropriate “having

¹⁶ *Decisions of the Rome Council Meeting*, Rome, 1993, part VII, para 11, pp16-17, at: <http://www.osce.org/docs/english/1990-1999/mcs/4rome93e.pdf>.

¹⁷ Clause 4 (1).

regard to the obligations” mentioned in new section 4B (1) (ie, the international instrument under which the privileges and immunities arise).

The Government may also confer privileges and immunities on the officers, staff and other persons connected with the body, and on members of their families living with them.¹⁸ Again, this is subject to the Government’s assessment of what it is appropriate to confer, having regard to the obligations under 4B (1).

On second reading in the Lords the Minister, Baroness Symons, gave three examples of bodies to which these provisions would apply. These were ATHENA, a financing mechanism for EU peacekeeping missions, set up because the EU budget cannot be used for military operations, the EU Satellite Centre, and the Institute for Security Studies, which “adds academic analysis and strategic thinking to the development of common foreign and security policy.”¹⁹ The UK already has commitments under CFSP and JPCC measures to confer legal capacity and privileges and immunities on a number of bodies.

D. International Criminal Court

The UK has been a party to the International Criminal Court (ICC)²⁰ since it was set up, following the entry into force of its statute in July 2002. The ICC has jurisdiction over individuals for genocide, war crimes and crimes against humanity.

The legislation under which the UK meets its various obligations in respect of the ICC is the *International Criminal Court Act 2001*. However, in 2002 the states parties to the Rome Statute, under which the Court was set up, concluded an *Agreement on the Privileges and Immunities of the International Criminal Court*,²¹ and the UK signed this on 10 September 2002.

Under the 2002 Agreement states parties are obliged to confer legal capacity on the ICC itself and privileges and immunities on two groups of people. The first includes senior staff of the ICC (judges, prosecutor, deputy prosecutors and registrar), counsel, experts, witnesses, victims and others involved in proceedings. The second includes family members of the senior staff who form part of the household of those staff, during their period of residence in the UK, state representatives to the Assembly of States Parties (a body which reviews the workings of the ICC) and its subsidiaries, and representatives of intergovernmental organisations attending such meetings. This second category cannot be covered by orders made under the *International Criminal Court Act 2001* as it presently stands.

¹⁸ New section 4B (2) (c) and 4B (3).

¹⁹ HL Deb 16 December 2004, c1462.

²⁰ Further information on the ICC is available at: <http://www.icc-cpi.int/home.html&l=en>.

²¹ [http://www.un.org/law/icc/apic/apic\(e\).pdf](http://www.un.org/law/icc/apic/apic(e).pdf).

Clause 6 amends the 2001 Act to allow the Secretary of State to confer by Order the necessary privileges and immunities on these family members and representatives of states and organisations. The senior staff and those involved in proceedings were covered in the *International Criminal Court (Immunities and Privileges) Order 2004*, because there is scope under the Act as it stands for such an Order to be made.

If the Bill passes and the 2001 Act is amended, the privileges and immunities will not apply until they have been conferred by a further Order in Council.

E. European Court of Human Rights

The European Court of Human Rights is an international court set up under the European Convention on Human Rights²² to hear cases of alleged infringement of the rights protected under that Convention. It is part of the Council of Europe, which was set up in 1949 and which has 46 member states.²³

The Sixth Protocol 1996 to the *General Agreement on the Privileges and Immunities of the Council of Europe 1949* confers privileges and immunities on judges of the Court and their family members.²⁴ This measure was designed to cover the transition from the old Commission and Court of Human Rights to the new, unitary European Court of Human Rights in 1998. It consolidated the relevant provisions of the existing Fourth and Fifth Protocols, but it also increased the privileges for judges and extended them to cover their families. It is these privileges and immunities relating to the families of judges that are covered by the present Bill. They are extensive, being the same as for diplomats.

The UK ratified the Protocol in 2001, but it made a reservation in respect of Article 1 to exclude family members of judges. **Clause 7** provides that the relevant Section of the *International Organisations Act 1968* will apply to the family members of a judge of the European Court of Human Rights as it applies to the judges themselves. This will allow the UK to withdraw its reservation to the Protocol.

F. International Tribunal for the Law of the Sea

The International Tribunal for the Law of the Sea (ITLOS)²⁵ was established by the *UN Convention on the Law of the Sea 1982* (UNCLOS) to hear disputes under UNCLOS or under any other specific agreement that confers jurisdiction on it. The UK became a party to UNCLOS in 1997. There is an *Agreement on the Privileges and Immunities of*

²² In full, *The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950*.

²³ Further information on the Council of Europe and on the European Court of Human Rights is available at: <http://www.coe.int/DefaultEN.asp>.

²⁴ <http://conventions.coe.int/Treaty/EN/Treaties/Html/162.htm>.

²⁵ Further information on ITLOS is available at: <http://www.itlos.org/>.

the International Tribunal on the Law of the Sea 1997.²⁶ The UK has signed this Agreement, but it cannot ratify it because there is no suitable provision in UK law under which the necessary privileges and immunities may be conferred.

Clause 8 brings ITLOS within the scope of the *International Organisations Act 1968*. This will allow the Secretary of State to confer the necessary privileges and immunities by Order in Council, and this will allow the UK to ratify the Agreement.

G. Extent, commencement and financial implications

The Bill extends to the whole of the United Kingdom. It comes into force two months after it is passed, with the exception of the parts covering the Commonwealth Secretariat (clauses 1 – 3). As noted above, these will come into force on a day chosen by the Secretary of State, embodied in an order made by statutory instrument. S/he may choose different days for different provisions.

According to the Explanatory Notes “the financial implications of the Bill are minimal.” In particular, the Foreign and Commonwealth Office currently refunds to the Commonwealth Secretariat the income tax on Secretariat staff.

III Human rights

Baroness Symons made the relevant declaration under the Human Rights Act 1998 that the Bill was compatible with the rights set out in the European Convention on Human Rights. Jack Straw did likewise on the Bill’s introduction in the Commons.

The Joint Committee on Human Rights considered the Bill in its fourth report of 2004-05.²⁷ It drew attention to the rights under Article 6 of the European Convention to have disputes concerning civil rights and obligations determined by a competent tribunal. This means, for instance, that it should be possible to bring employment disputes before the courts. There are some exceptions to this, and the European Court of Human Rights has accepted that the need for international organisations to have immunity from suit may allow interference with Article 6 rights. However, according to the Joint Committee,

Any restriction of Article 6 rights arising from immunities from suit requires justification on the basis that it pursues a legitimate aim and is proportionate, and must be assessed in light of the particular circumstances of the case.²⁸

²⁶ http://www.itlos.org/start2_en.html.

²⁷ HL 26/HC 224, 24 January 2005.

<http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/26/2602.htm>.

²⁸ Para 3.6.

In particular, the restriction on Article 6 rights should not “impair the very essence of the right of access to court.” There is case law to indicate that where the restriction derives from a rule of international law (ie, the immunity of the organisation is obligatory under treaty or customary law) it is considered legitimate, and that so long as an alternative mechanism is available to protect the claimant’s rights (eg, an independent appeals board) it is considered not to impair the essence of the right of access to court.

The Joint Committee argued that in respect of the Commonwealth Secretariat, CSAT and OSCE there did not appear to be any international legal obligation to confer immunity from suit.

The Committee stated that:

3.12 We have written to the Foreign and Commonwealth Office asking for confirmation of whether it is considered that each of the immunities conferred by the Bill is required by a rule of international law; and in any cases where there is no such requirement, the reasons why the department considers that the interference with Article 6 rights pursues a legitimate aim.

3.13 We have also asked the Minister for clarification as to whether sufficient alternative avenues of redress are available to satisfy Article 6 rights of effective access to court in respect of each of the organisations dealt with in the Bill, and how these alternative mechanisms ensure that the very essence of the right of access to court is not impaired.

IV Debates in the Lords

As this Paper has been written under considerable pressure of time, it has not been possible to analyse the debates in the Lords. However, the relevant debates may be found below. The Bill went through the Lords unamended in substance. A privilege amendment was made, however, to take account of the privilege of the Commons in respect of public funds, and this is Clause 11 (6).

Second reading:

http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds04/text/41216-11.htm#41216-11_head0

Committee stage (Grand Committee off the floor of the House):

http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds05/text/50111-32.htm#50111-32_head1

Report:

http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds05/text/50207-03.htm#50207-03_head1

Third reading:

http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds05/text/50228-04.htm#50228-04_head1