SEWEL MEMORANDUM

INTERNATIONAL ORGANISATIONS BILL

Motion : That the Parliament recognises the need for the United Kingdom to implement the international obligations for which the International Organisations Bill makes provision, and agrees that those provisions in the Bill that fall within the legislative competence of the Scottish Parliament and have the effect of conferring functions on the Scottish Ministers, should be considered by the UK Parliament.

Background

The International Organisations Bill, which was introduced in the House of Lords on 24 November, is a general Bill dealing with the conferral of privileges and immunities on organisations and bodies and certain categories of individuals connected with them. The Bill covers the Commonwealth Secretariat/Commonwealth Secretariat Arbitral Tribunal, the Organisation for Security and Co-operation in Europe (OSCE), the International Criminal Court (ICC), the European Court of Human Rights, the International Tribunal for the Law of the Sea (ITLOS), and bodies established under Title V or Title VI of the Treaty on European Union (TEU). This is a short, technical Bill which will enable the UK to fulfil certain outstanding commitments which it has agreed to in respect of these organisations and bodies.

Background to the Bill

The Bill as introduced extends to 11 clauses (and a short repeals schedule) and deals with the organisations and bodies named above. A brief description of the background to these organisations and bodies is set out in the Annex to this Memorandum. Clause 10 provides that clauses 4, 5, 7 and 8 are to be regarded as pre-commencement enactments, for the purposes of the Scotland Act.

Purpose of the Bill

The purpose of the Bill is to confer and to enable the UK to confer certain privileges and immunities on certain organisations and bodies and persons connected with those organisations and bodies.

Privileges and immunities are conferred on organisations and bodies to ensure that they are able to carry out their functions without being impeded. The general policy of the UK, which goes back to the 1980s, is that privileges and immunities should be granted primarily on the basis of functional need. The scope of the privileges and immunities conferred will be dependent on the UK's international obligations ie the UK will only confer those privileges and immunities that it is committed to.

The Annex to this Memorandum contains a brief summary of how the Bill amends the law in relation to each of the organisations concerned.

Devolved Issues

While foreign affairs, including international relations, is reserved under the Scotland Act (Schedule 5, Part 1, paragraph 7(1)), this reservation does not reserve the observing and implementing of international obligations and the purpose of this Bill is to implement and enable the implementation of various international obligations.

In relation to the Commonwealth Secretariat Arbitral Tribunal, the OSCE, the bodies established under the TEU, the ICC and ITLOS, many of the privileges and immunities which will be conferred are reserved (for example exemption from customs and excise requirements), but there are others (those which confer immunity from suit and legal process and relief from local taxation) which are within devolved competence.

These privileges and immunities are normally conferred by Orders in Council and, although the Bill would amend the *enabling* powers on a UK basis, the provision at clause 10 making clauses 4, 5, 7 and 8 pre-commencement enactments, ensures that the Scottish Parliament will have an opportunity for scrutiny of the Orders in Council, as laid by the Scottish Ministers.

This Bill will amend the International Criminal Court Act 2001 to enable the conferral of privileges and immunities, by Order in Council, on those categories of persons which are not covered by the Act at the moment. Any such Order in Council will concern both reserved and devolved matters and will be laid and approved by both the Westminster Parliament and the Scottish Parliament as required by the 2001 Act.

Parliament agreed to this approach in 2001 because it was recognised that there was a complex mix between reserved and devolved provision in relation to the conferral of privileges and immunities. For example, certain of the immunities from legal process, arrest and detention are within devolved competence, while exemption from immigration restrictions and taxation are reserved. Rather than attempt to divide up these provisions and then to replicate some of them in a separate Scottish Order, the Parliament agreed at that time that it made sense to deal with the issue on a UK wide basis with appropriate scrutiny of Orders laid by the Scottish Ministers, in the Scottish Parliament. There was also the consideration that these are obligations, on which there is no obvious scope for adopting a different general approach in Scotland. The Executive believes that it would be sensible to continue to deal with the issue of privileges and immunities on a UK wide basis.

If Parliament does not wish for the Bill to deal with the devolved privileges and immunities it will be necessary to legislate to implement those privileges and immunities which fall within devolved competence to fully implement the international obligations concerned.

The UK Government is legislating at this time so as to fulfil the obligations upon the UK, as set out in the Annex. There is no suitable legislative opportunity available (or in prospect) in the Scottish Parliament to make equivalent provision, in Scotland, for matters which are within devolved competence. Accordingly, the Executive proposes that provisions for Scotland should be included in the UK Bill, with the Parliament's agreement. Without such provisions, the situation could arise whereby a failure on behalf of the UK to implement these obligations would exist, but in relation to Scotland only.

ANNEX

INTERNATIONAL ORGANISATIONS BILL

The Commonwealth Secretariat (CS). The CS has the function of facilitating and promoting consultation between Commonwealth Governments on matters of common concern. The Commonwealth Secretariat is based in London, and further to an Agreed Memorandum in 1965, the UK Government undertook to accord its staff (and their families) certain privileges and immunities.

Clauses 1 to 3 amend the Commonwealth Secretariat Act 1966. At present by operation of section 1 of the 1966 Act the Commonwealth Secretariat and specified persons connected with it have certain privileges and immunities. These include immunity from suit and legal process with three exceptions. These exceptions are in respect of civil action for damage alleged to have been caused by a motor vehicle belonging to or operated by the Secretariat; in respect of a road traffic offence involving such a vehicle; and in respect of arbitration proceedings relating to any written contract entered into by or on behalf of the Secretariat.

Clause 1 removes the exception to the general rule of immunity from suit and legal process in respect of arbitration proceedings.

Clauses 2 and 3 extend the classes of person who have privileges and immunities under the 1966 Act to include the President and members of the CSAT.

The Organisation for Security and Co-operation in Europe (OSCE), previously known as the Conference on Security and Co-operation in Europe (CSCE). The OSCE operates in the field of security, economics and human rights. The UK are committed to implement arrangements on capacity, privileges and immunities as set out in the Council Decision made by the CSCE Council of Ministers in Rome on 1 December 1993.

Clause 4 amends the International Organisations Act 1968 to make clear that the OSCE remains an organisation for the purposes of section 1 of the 1968 Act even at times when it does not meet the condition set out in section 1 of the 1968 Act (ie it is not an organisation of which the United Kingdom and at least one other sovereign power/the Government of such a power are members). This is necessary in implementation of the said Decision made in December 1993.

The International Criminal Court (ICC). The ICC, established by the Rome Statute of 1998 (to which the UK is a State Party), was inaugurated in March 2003. It was established as a permanent institution to exercise jurisdiction over persons for the most serious crimes of international concern ie genocide, war crimes and crimes against humanity. The UK legislated through the International Criminal Court Act 2001 to enable it to fulfil its international commitments to the ICC, including those in respect of immunities and privileges. Certain privileges and immunities required by the Rome Statute have already been provided through the ICC (Immunities and Privileges) Order 2002, done under the International Criminal Court Act. Further provision in relation to devolved aspects of the

obligations of the UK, in connection with offences and assistance to the ICC, was made by the International Criminal Court (Scotland) Act 2001.

Clause 6 amends the International Criminal Court Act 2001. Under the 2001 Act, her Majesty may by Order in Council provide that certain persons shall have such privileges and immunities as are required to give effect to the Rome statute or any other related agreement to which the United Kingdom is party. These include immunity from personal arrest or detention and immunity from legal process.

Clause 6 enables implementation of the Agreement on the Privileges and Immunities of the ICC of 2002. The 2001 Act is not wide enough to include the persons required by Article 13 of that 2002 Agreement. Thus it is necessary to amend the 2001 Act in order to permit a new Order in Council to be drafted to fulfil all outstanding obligations.

European Court of Human Rights (ECtHR): The ECtHR was established following the adoption in 1950 of the European Convention on Human Rights as an international court providing a means by which compliance with the Convention could be made effective. The European Agreement relating to persons participating in proceedings of the ECtHR of 1996 was agreed to accord certain privileges and immunities to persons taking part in proceedings before the Court. It replaced a previous Agreement of 1969, required due to certain restructuring of the ECtHR. The restructuring made it necessary to amend and consolidate into one text the Fourth and Fifth Protocols to the General Agreement on Privileges and Immunities of the Council of Europe of 1949, into the Sixth Protocol.

Clause 7 extends the classes of person on whom may be conferred various privileges and immunities to include members of the family of a judge of the European Court of Human Rights.

The International Tribunal for the Law of the Sea (ITLOS), ITLOS is an international court consisting of 21 judges elected by States Parties to the 1982 United Nations Convention on the Law of the Sea (UNCLOS). The UK is a State Party. The UK is required to provide certain privileges and immunities in connection with the court under the 1997 Agreement on the Privileges and Immunities of ITLOS.

Clause 8 amends the International Organisations Act 1968 to bring ITLOS within the scope of the 1968 Act. This clause is designed to implement the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea 1997.

The Bill also deals with bodies established (or as may be established) under **the Treaty on European Union**. The bodies to which the provisions apply are those established under Title V (common foreign and security policy) and Title VI (police and judicial co-operation in criminal matters).

Clause 5 provides that by Order in Council, officers and staff of those bodies may have conferred upon them certain privileges and immunities as are considered appropriate. The Order in Council may also confer upon such bodies the legal capacities of a body corporate.

In relation to the European Court of Human Rights, again most of these privileges and immunities are reserved, but those which confer immunity from and legal process and from criminal jurisdiction are within areas of devolved competence.