EXPLANATORY MEMORANDUM TO THE

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (IMMUNITIES AND PRIVILEGES) ORDER 2005

2005 No. 2047

1. This explanatory memorandum has been prepared by the Foreign and Commonwealth Office and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The United Kingdom signed the Agreement on the Privileges and Immunities of the International Tribunal for the Law of the Sea ("the Agreement") on 3rd December 1997. The Agreement obliges the United Kingdom to confer legal capacity and privileges and immunities on the International Tribunal for the Law of the Sea ("ITLOS"); and to confer privileges and immunities on specified categories of individuals connected with the ITLOS:-

(i) members of the Tribunal;

(ii) the Registrar;

(iii) officials of the Tribunal;

(iv) experts appointed under article 289 of the United Nations Convention on the Law of the Sea;

(v) agents, counsel and advocates before the Tribunal;

(vi) witnesses before the Tribunal;

(vii) experts on missions for the Tribunal; and

(viii) persons performing missions by order of the Tribunal.

2.2 The draft Order confers legal capacity and privileges and immunities on the ITLOS; and confers privileges and immunities on the categories of individuals referred to in paragraph 2.1.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 It is proposed that the above Order should be made under sections 1 and 5 of the International Organisations Act 1968 ("the 1968 Act") and section 8 of the International Organisations Act 2005 ("the 2005 Act"). Section 10 of the 1968 Act provides that no recommendation shall be made to Her Majesty to make an Order in Council under any provision (other than section 6) of the 1968 Act, unless a draft has been laid before Parliament and approved by a resolution of each House.

4.2 The table attached to this explanatory memorandum sets out, in relation to each article of the draft Order, the relevant provisions in the Agreement, as well as the power in the 1968 Act which provides for the making of that particular provision in the draft Order.

4.3 The privileges and immunities conferred by the draft Order are no greater in extent than those required by the Agreement or those authorised by the 1968 Act as read with section 8 of the 2005 Act.

4.5 Article 1 of the draft Order provides that it will come into force on the date on which the Agreement enters into force in respect of the United Kingdom, which date shall be notified in the London, Edinburgh and Belfast Gazettes.

4.6 The draft Order revokes the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 1996.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention of Human Rights

Lord Triesman has made the following statement regarding Human Rights:

In my view the provisions of the International Tribunal for the Law of the Sea (Immunities and Privileges) Order 2005 are compatible with the Convention rights.

7. Policy Background

7.1 The ITLOS is an independent judicial body established by the United Nations Convention on the Law of the Sea to adjudicate disputes arising out of the interpretation and application of that Convention. Under the Agreement the Tribunal and specified categories of individuals connected with the Tribunal are to enjoy privileges and immunities to allow them to carry out their functions effectively and without undue external interference, in the interests of good administration of justice.

7.2 Since the Tribunal is based in Hamburg, and is unlikely to move to the United Kingdom, the practical implications of the Agreement for the United Kingdom are limited.

7.3 UK implementation of the Agreement is unlikely to be controversial. Little public or media interest is envisaged.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 Any loss of revenue to the Exchequer in respect of the relief from taxes and other exemptions provided for in the Agreement will be small.

9. Contact

Peter Baldwin at the Foreign and Commonwealth Office [Tel: 020 7008 0997 or e-mail: Peter.Baldwin@fco.gov.uk] can answer any queries regarding the instrument.

ARTICLE IN DRAFT ORDER	ARTICLE IN AGREEMENT	INTERNATIONAL ORGANISATIONS ACT 1968
Article 3	Article 2	Section 1(2)(a)
Article 4	Article 5(1)	Section 1(2)(b); Schedule 1, Part I, para.1
Article 5	Articles 3 and 6	Section 1(2)(b); Schedule 1, Part I, para.2
Article 6	Article 9(1)	Section 1(2)(b); Schedule 1, Part I, para.3(1)
Article 7	Article 9(1)	Section 1(2)(b); Schedule 1, Part I, para.3(2)
Article 8	Article 9(2) and 9(3)	Section 1(2)(b); Schedule 1, Part I, para.4
Article 9	Article 9(2) and 9(3)	Section 1(2)(b); Schedule 1, Part I, para.5
Article 10	Article 10(1)	Section 1(2)(b); Schedule 1, Part I, para.6
Article 11	Article 10(1)	Section 1(2)(b); Schedule 1, Part I, para.7
Article 12	Article 10(1)	Section 1(2)(b); Schedule 1, Part I, para. 3(1)
Article 13	Articles11, 13(1), 13(2), 13(3), 13(6), 13(7), 18 and 20	Section 5
Article 14	Articles 11, 14(1)18 and 20	Section 5

ARTICLE IN DRAFT ORDER	ARTICLE IN AGREEMENT	INTERNATIONAL ORGANISATIONS ACT 1968
Article 15	Articles 11, 14(2), 18 and 20	Section 5
Article 16	Articles 15, 18 and 20	Section 5 and Section 1(2)(c); Schedule 1, Part II, paras. 9 and 11
Article 17	Articles 16, 18 and 20	Section 5
Article 18	Articles 17, 18 and 20	Section 5 and Section 1(2)(c); Schedule 1, Part II, paras. 9 and 11