

**立法會**  
**Legislative Council**

LC Paper No. CB(2) 1479/99-00  
(These minutes have been seen by  
the Administration)

Ref : CB2/BC/36/98

**Minutes of the second meeting of the  
Bills Committee on International Organizations (Privileges and Immunities) Bill  
held on Tuesday, 4 January 2000 at 10:45 am  
in Conference Room B of the Legislative Council Building**

**Members Present** : Hon James TO Kun-sun (Chairman)  
Hon Cyd HO Sau-lan  
Hon LEE Cheuk-yan  
Hon Gary CHENG Kai-nam, JP  
Hon Ambrose LAU Hon-chuen, JP

**Public Officers Attending** : Mr LEUNG Pak-chung  
Deputy Director of Administration

Mr Jonathan Daw  
Legal Adviser, Legislative Affairs

Mrs Apollonia LIU  
Assistant Director of Administration

Mr CHENG Kim-fung  
Senior Assistant Law Draftsman

Mr Frank POON Ying-kwong  
Deputy Principal Government Counsel (International Law)

**Clerk in Attendance** : Mr LAW Wing-lok  
Chief Assistant Secretary (2) 5

**Staff in Attendance** : Mr KAU Kin-wah  
Assistant Legal Adviser 6

Miss Mary SO  
Senior Assistant Secretary (2)8

**I. Confirmation of minutes of meeting held on 22 March 1999**

*(LC Paper No. CB(1) 522/99-00)*

The minutes were confirmed.

**II. Meeting with the Administration**

*(LC Paper No. CB(1) 383/99-00 (01) - already issued on 11 November 1999)*

2. The Chairman welcomed representatives of the Administration to the meeting.
3. The Administration introduced the paper which detailed the Administration's response to queries/concerns raised by members at the last Bills Committee meeting held on 22 March 1999. Further queries/concerns raised by members and the Administration's clarifications were set out in the ensuing paragraphs.
4. Deputy Director of Administration (DD of Adm) said that in the light of the concern expressed by members at the last Bill Committee meeting on the disapplication of section 34 of the Interpretation and General Clauses Ordinance (Cap.1), the Administration would move a Committee Stage amendment (CSA) to remove clause 3(2) of the Bill, so that section 34 of Cap.1 would apply to orders made by the CE in Council under clause 3(1) of the Bill.
5. In reply to the Chairman's enquiry about the power of LegCo in amending the orders to be made by the CE in Council, Legal Adviser, Legislative Affairs (LA (LA)) said that as section 34 of Cap. 1 already provided that LegCo might amend subsidiary legislation only "in any manner whatsoever consistent with the power to make such subsidiary legislation", LegCo could not therefore amend such orders in a way which could not have been made by the CE in Council.
6. Referring to the last paragraph of the Administration's paper which mentioned that the Administration would move a CSA to remove clause 3(2) of the Bill if the Bills Committee shared the Administration's understanding regarding the effect of section 34(2) of Cap. 1, the Chairman said that such precondition was unreasonable and should be removed. DD of Admin raised no objection to the Chairman's request.
7. Miss Cyd HO asked whether the Administration had briefed the relevant Panels of the Council on the Bill prior to the Bill's introduction into the Council on 24 February 1999. DD of Adm replied in the negative. LA(LA) added that the Bill was merely for the purpose of domestic housekeeping and did not seek to break any new policy grounds.
8. The Chairman queried the need for introducing the Bill to give effect in Hong

Action

Kong to the Host Country Agreement between the Government of the People's Republic of China and the BIS relating to the establishment of a Representative Office of the BIS in the HKSAR (the Host Country Agreement), having regard to the fact that privileges and immunities of the Representative Office were already given effect in Hong Kong by the Regulations of the People's Republic of China Concerning Diplomatic Privileges and Immunities (the PRC Regulations) and by the International Organizations and Diplomatic Privileges Ordinance (Cap. 190).

9. DD of Adm replied that while the privileges and immunities provided in the Host Country Agreement had been given the force of law in Hong Kong by way of the PRC Regulations, the approach taken in the national legislation where treaties were self-executing was not suited to the HKSAR which remained a common law jurisdiction. Therefore, it was necessary for the HKSAR Government to introduce local legislation to implement the relevant privileges and immunities conferred upon international organizations by international agreements.

10. DD of Adm further said that although Cap. 190 was the principal Ordinance in the HKSAR giving effect to the privileges and immunities accorded to international organizations by international agreements as well as diplomatic privileges and immunities, the Administration nevertheless considered it more neat and tidy to have separate legislation dealing with these two types of privileges and immunities, i.e. Cap. 190 to continue to give effect to diplomatic privileges and immunities and the Bill to give effect to the privileges and immunities accorded to international organizations by international agreements. DD of Adm added that under Cap. 190, only the privileges and immunities set out in the First Schedule of Cap. 190 might be accorded to an international organization and its personnel. This had proved to be unduly restrictive and had created technical and drafting problems in a number of cases since some of the privileges and immunities that needed to be granted to an international organization in accordance with the international agreement did not correspond exactly to those set out in the First Schedule.

11. The Chairman opined that as the Bill was intended to serve as a vehicle for the proper implementation in Hong Kong of the privileges and immunities of international organizations and of persons connected with such organizations under international agreements, it would be preferable if the provisions of the international agreements concerned and that of the orders to be made by the CE in Council under clause 3(1) of the Bill were made known to the public. In reply to the Chairman and Miss Cyd HO's enquiry as to who would be vested with the power of interpreting the provisions for implementing in Hong Kong the privileges and immunities conferred upon international organizations by international agreements in cases where there were discrepancies between the provisions in the international agreements and that of the orders made to implement such provisions in Hong Kong, Deputy Principal Government Counsel (International Law) (DPGC) said that although Article 153 of the Basic Law already determined the ways in which international agreements should be applied to the HKSAR, the power of interpreting the municipal law in relation to

Action

the international agreements was nevertheless vested in the courts of the HKSAR.

12. Mr LEE Cheuk-yan enquired whether LegCo could propose amendments to the orders to be made by the CE in Council under clause 3(1) of the Bill seeking to reduce the scope of privileges and immunities conferred upon international organizations under international agreements, for example, requiring the personnel of these organizations to join the Mandatory Provident Fund Scheme.

13. DPGC replied that it would be ultra vires for LegCo to propose any amendments to the orders if such amendments had the effect of altering the provisions in the international agreements concerned. LA(LA) supplemented that the courts of the HKSAR would determine whether LegCo had acted ultra vires if it amended the orders.

14. Mr LEE further enquired whether amendments seeking to expand the scope of privileges and immunities conferred upon international organizations under international agreements in Hong Kong could be proposed by LegCo. DPGC replied in the negative.

15. In reply to Mr LEE's further enquiry, DD of Adm said that the Host Country Agreement which had been recently concluded between the Central People's Government (CPG) and the BIS concerning the establishment of a regional office of the BIS in the HKSAR was the only international agreement regarding privileges and immunities for international organizations that had been applied to Hong Kong since the reunification.

16. In reply to the Chairman's enquiry on how the provisions of international agreements would be transformed into domestic legislation, DPGC said that generally speaking the other parties to the agreements were not concerned as to how the privileges and immunities were given effect in Hong Kong so long as Hong Kong honoured its international obligations. DPGC further referred members to clause 3(1)(a) of the Bill and pointed out that not all provisions in the international agreements needed to be legislated, as some of them could be given effect through administrative means. Senior Assistant Law Draftsman added that as provided for under clause 3(1)(b) of the Bill, the CE in Council might make supplementary provision for carrying into effect the relevant provisions of the international agreements.

17. Miss Cyd HO said that the views of the Panel on Administration of Justice and Legal Services and of the Panel on Constitutional Affairs on the Bill should be sought, having regard to the fact that the Bill involved the transformation of international agreements concluded by the CPG, which was a civil law jurisdiction, onto the domestic legal plane which practiced common law. The Chairman responded that there was no need to do so, as Members should have apprised of the content of the Bill

Action

upon the introduction of the Bill into the Council in February 1999.

18. Referring to paragraph 2 of Article 5 of the Host Country Agreement which mentioned that the BIS, including the Representative Office, should enjoy, with some exceptions, immunity from every form of legal processes in the People's Republic of China, including the HKSAR, Mr Gary CHENG enquired what these exceptions were. DPGC replied that examples of such exceptions might include civil litigation in respect of agreements concerning real estate, commercial transaction relating to the normal operation of the Bank's businesses and any civil action brought by a third party for damage resulting from an accident caused by a motor vehicle belonging to the Bank.

19. The Chairman enquired about what constituted "flagrant instances of criminal offence" referred to in paragraph (a) of Article 13 of the Host Country Agreement which stated that personnel of the BIS would be immune from arrest or imprisonment from inspection or seizure of personal baggage, except in flagrant instances of criminal offence.

20. Assistant Director of Administration replied that the term of "grave crime" under the Consular Relations Ordinance (Cap. 259) should be construed as meaning any offence punishable, on a first conviction, with imprisonment for a term that might extend to five years or with a more severe sentence. Such interpretation could be used as a reference for interpreting flagrant instances of criminal offence under paragraph (a) of Article 13 of the Host Country Agreement.

21. In reply to Miss Cyd HO's enquiry as to whether the HKSAR Government could conclude an international agreement on privileges and immunities which was applicable to the HKSAR on its own, DPGC said that the HKSAR Government could do so with the permission of the CPG.

22. Members then proceeded to examine the Bill clause-by-clause.

23. Members did not raise any queries on the clauses of the Bill.

24. The Chairman suggested that subject to the CSA to be moved by the Administration to remove clause 3(2) from the Bill, a report would be made to the House Committee on 28 January 2000 recommending that the Bill be supported. Members agreed. The Chairman further suggested that the Second Reading debate on the Bill be resumed on 23 February 2000. DD of Adm agreed.

[Post-meeting note: The Administration subsequently submitted a notice to resume Second Reading debate on the Bill on 1 March 2000.]

25. There being no other business, the meeting ended at 12:27 pm.

Action

Legislative Council Secretariat  
24 March 2000