

立法會
Legislative Council

LC Paper No. CB(1) 898/02-03

(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/01/2

**Bills Committee on
Chemical Weapons (Convention) Bill**

**Minutes of eighth meeting held on
Tuesday, 21 January 2003 at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Cyd HO Sau-lan (Chairman)
Hon HUI Cheung-ching, JP
Hon LAU Kong-wah
Dr Hon LO Wing-lok
Hon Audrey EU Yuet-mee, SC, JP

Member absent : Hon James TO Kun-sun

**Public officers
attending** : Ms Ellen CHOY
Principal Assistant Secretary for Commerce,
Industry and Technology (Commerce and Industry)

Miss Amy CHAN
Assistant Secretary for Commerce,
Industry and Technology (Commerce and Industry)

Ms Vivian SUM
Assistant Director-General
Trade and Industry Department

Ms Doris CHAN
Principal Trade Officer
Trade and Industry Department

Mr Andrew WONG
Head of Trade Controls
Customs and Excise Department

Mr Paul SIT
Principal Trade Controls Officer
Customs and Excise Department

Mr Geoffrey FOX
Senior Assistant Law Draftsman
Department of Justice

Ms Marie SIU
Senior Government Counsel
Department of Justice

Clerk in attendance : Miss Salumi CHAN
Chief Assistant Secretary (1)5

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Cindy CHENG
Senior Assistant Secretary (1) 4

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I. Meeting with the Administration

Matters arising from previous meetings

(LC Paper No. CB(1)638/02-03(01) — "Follow-up to the sixth meeting on 13 December 2002" prepared by the Legislative Council Secretariat

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- LC Paper No. CB(1)762/02-03(01) — "Follow-up to the seventh meeting on 9 January 2003" prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)762/02-03(02) — Administration's response to the issues of concern raised by members on clause 6(1))

Clause-by-clause examination of the Bill

- (LC Paper No. CB(3)10/01-02 — The Bill
Ref: CIB CR14/46/6/1 — The Legislative Council Brief issued by the Commerce and Industry Bureau
- LC Paper No. CB(1)1510/01-02 — Marked-up copy of the proposed consequential amendments to the Organized and Serious Crimes Ordinance (Cap. 455) and the Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap. 526)
- LC Paper No. LS9/02-03 — List of drafting issues raised by the Legal Service Division of the Legislative Council Secretariat
- LC Paper No. CB(1)762/02-03(03) — Draft proposed Committee Stage Amendments provided by the Administration (Fourth draft))

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**.)

Follow-up actions to be taken by the Administration

Admin 3. As requested by the Bills Committee, the Administration undertook to take the follow-up actions listed below:

- (a) Clauses 15, 16, 21, 22 and 23

The Bills Committee noted that clauses 15, 16, 21, 22 and 23 empowered the Commissioner of Customs and Excise (the Commissioner) to seize, detain and forfeit articles, vessels and vehicles, and to release seized vessels and vehicles prior to hearing. While members appreciated the need for the Commissioner to seize, detain and forfeit articles, vessels and vehicles, they considered that the exercise of the relevant functions and powers on "seizure", "detention" and "forfeiture" should be clearly set out in the Bill

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and that the Commissioner should follow procedures prescribed in the provisions and interests of the owners of the seized articles, vessels and vehicles should be safeguarded. In this connection, the Administration was requested to consider the following points and make appropriate amendments to the relevant clauses:

- (i) The Administration was requested to restructure the relevant provisions in the Bill to set out clearly the procedures and the circumstances under which the powers of "seizure", "detention" and "forfeiture" would be exercised by the Commissioner, and the time limit for detention. The Administration was requested to make reference to the relevant provisions in the Karaoke Establishments Ordinance (Cap. 573);
- (ii) The Administration was requested to state the reason in the notice of seizure (clause 21(3)), and serve such notice to the owner concerned irrespective of whether he had been present or not when his article, vessel or vehicle was seized. A receipt handed to the owner upon seizure was not sufficient to protect the owner's interest. Clause 21(4)(a) should be deleted;
- (iii) Clause 21(2) provided that the Commissioner might, within 30 days of the seizure, restore the seized article, vessel or vehicle to the owner concerned. It seemed to imply that the Commissioner might or might not do so. It was however not clear whether the Commissioner had the power to further detain the seized article, vessel or vehicle after 30 days of the seizure when a decision on forfeiture had yet to be made. If the Commissioner had such power, the Administration was requested to set it out clearly in the Bill. The Administration was also requested to specify in the Bill that the Commissioner had to decide, within 30 days of the seizure, whether he would exercise this power. If the Commissioner decided to exercise this power, he had to inform the owner concerned of the reason for the further detention. If the Commissioner decided not to exercise this power, he must restore the seized article, vessel or vehicle to the owner concerned within 30 days of the seizure;
- (iv) If the Commissioner decided to forfeit the seized article, vessel or vehicle, he had to inform the owner concerned of the reason for forfeiture and that the owner might claim that the article, vessel or vehicle was not liable to forfeiture;

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- (v) In connection with item (iv) above, the Administration was requested to consider whether it was fair to require the owner concerned to give the notice of claim within 30 days beginning on the date of the seizure (clause 21(7)); and
- (vi) Clause 23 provided that the court might, upon payment into court by way of security of a sum of money not less in amount than the value of the seized vessel or vehicle, release the vessel or vehicle prior to the hearing of the application for its forfeiture. The sum of money involved could be substantial. Members considered it unfair to the owner concerned, having regard to the fact that the seizure of the vessel or vehicle might have already affected their business and that they might not afford to pay the substantial sum of money for the release of the seized vessel or vehicle prior to the hearing. If they could not afford to pay, the seized vessel or vehicle might be detained for two years (the time limitation for criminal proceedings under clause 37). The Administration was requested to consider how this problem could be addressed.

(b) Clause 26

As the text of the Convention would be deleted from the Bill, the Administration was requested to consider whether it was necessary to introduce amendments to clause 26.

(c) Clause 27

Clause 27(1) empowered the Commissioner to issue authorizations in respect of the three kinds of inspection specified in clause 26. Under clause 27(4), an authorization should have the effect of authorizing one or more than one in-country escort to accompany the inspection team. The term "in-country escort" seemed to refer to Mainland officials. Given the implementation of the "one country, two systems" in the Hong Kong Special Administrative Region (HKSAR) and the Administration's advice given at the meeting that the agreed arrangement between the Central People's Government and the HKSAR Government was that the escort would be appointed by the HKSAR Government, members considered that "in-country escort" should be amended to reflect that the escort was a HKSAR official. Members also requested the Administration to provide a paper to advise whether or not the implementation of the Convention was regarded

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as "foreign affairs" or "defence" referred to in Articles 13 and 14 of the Basic Law.

(*Post-meeting note:* Referring to the agreed arrangement between the Central People's Government and the HKSAR Government mentioned in paragraph 3(c) above, the Chairman of the Bills Committee directed after the meeting that the Administration be requested to clarify whether the agreement was in verbal or written form, and if it was in written form, to provide a copy of the agreement for reference of the Bills Committee.)

Issues to be referred to the Panel on Security

4. At the last meeting on 9 January 2003, the Bills Committee noted from the Administration's response (LC Paper No. CB(1)486/02-03(03)) that "there is no mechanism to check regularly which and how many permanent residents of the HKSAR would have lost permanent resident status under the conditions specified in paragraph 7 of Schedule 1 to the Immigration Ordinance. However, when a person applies for any facility or exercises his right by virtue of his permanent resident status, e.g. applying for a permanent identity card, or requesting not to have a deportation order made against him, etc., the Administration is obliged to verify whether he would have lost permanent resident status under paragraph 7 of Schedule 1". The Bills Committee then requested the Administration to advise whether a mechanism was in place for the bureau or department concerned to make the verification with the Immigration Department, and whether the personal data and privacy of the persons concerned would be protected during the verification process.

5. At this meeting, the Bills Committee noted from the Administration's response (LC Paper No. CB(1)762/02-03(02)) that "whether a particular person has lost his permanent resident status pursuant to Paragraph 7 of Schedule 1 to the Immigration Ordinance can only be determined having regard to all relevant facts including whether and when he ceases to have ordinarily resided in Hong Kong. It is a question of fact as to whether a person has ceased to have ordinarily resided in Hong Kong which may only be decided on the particular circumstances of a case. The Immigration Department therefore would not have ready information on whether or not a person has lost his permanent resident status pursuant to Paragraph 7 of Schedule 1 to the Immigration Ordinance, and each case would have to be considered on its own merit if such a need arises". Members considered the Administration's response unclear. They were concerned about the operational arrangement for the Administration to verify whether a permanent resident of the HKSAR would have lost permanent resident status under the conditions specified in paragraph 7 of Schedule 1 to the Immigration Ordinance, and the measures for protecting the personal data and privacy of the persons concerned during the

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verification process.

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Clerk 6. The Bills Committee agreed that the issues of concern mentioned in paragraph 5 above be referred to the Panel on Security for follow-up action.

Date of next meeting

7. Members agreed that the next meeting be held on Monday, 17 February 2003 at 8:30 am.

II. Any other business

8. There being no other business, the meeting ended at 10:40 am.

Council Business Division 1
Legislative Council Secretariat
12 February 2003

Appendix

**Proceedings of the eighth meeting of the
Bills Committee on Chemical Weapons (Convention) Bill
on Tuesday, 21 January 2003 at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000555	Chairman ALA Mr HUI Cheung-ching Dr LO Wing-lok Ms Audrey EU	Date of next meeting	
000556-000637	Chairman	Outstanding issues awaiting Administration's written response	
000638-001137	Administration	Briefing by the Administration on its response to issues relating to the loss of permanent resident status (Clause 6) (LC Paper No. CB(1)762/02-03(02))	
001138-001228	Mr HUI Cheung-ching Administration	Whether the provision in paragraph 7 of Schedule 1 to the Immigration Ordinance had been challenged in court (Clause 6) (LC Paper No. CB(1)762/02-03(02))	
001229-001440	Ms Audrey EU Chairman Administration	Clarification on the operational arrangement for the verification of permanent resident status (Clause 6) (LC Paper No. CB(1)762/02-03(02))	Clerk to refer the issue to the Panel on Security for follow-up action
001441-001448	Chairman	Request for Administration's early	Admin to

Time marker	Speaker	Subject(s)	Action Required
	Ms Audrey EU Administration	written response to the issues raised by members on clause 5 at previous meetings	provide written response for discussion at the next meeting
001449-003011	Chairman Administration Mr LAU Kong-wah Ms Audrey EU	Time limit and circumstances for detention of seized articles, vessel or vehicle (Clauses 21(2) and 37)	
003012-005650	Mr LAU Kong-wah Chairman Administration Ms Audrey EU	<ul style="list-style-type: none"> (a) Whether the Commissioner of Customs and Excise (the Commissioner) should state the reasons in the notice of seizure and serve such notice to the owner concerned irrespective of whether the owner was present or not when the article, vessel or vehicle was seized, and whether clause 21(4)(a) should be deleted (b) Whether the Commissioner had the power to further detain the seized article, vessel or vehicle after 30 days of the seizure, and whether such power should be set out clearly in the Bill (c) Whether it should be specified in the Bill that the Commissioner had to decide, within 30 days of the seizure, whether he would exercise his power to further detain the seized article, vessel or vehicle (d) Whether it should be specified in the Bill that when the 	Admin to consider items (a) to (e) and to make appropriate amendments to the relevant clauses

Time marker	Speaker	Subject(s)	Action Required
		<p>Commissioner decided to exercise his power, he should inform the owner concerned of the reasons for further detention and if he decided not to exercise the power, he must restore the seized article, vessel or vehicle to the owner</p> <p>(e) Whether the Commissioner had to inform the owner concerned of the reason for forfeiture and that the owner might claim that the article, vessel or vehicle was not liable to forfeiture</p> <p>(Clauses 15, 16, 21 and 23)</p>	
005651-010225	Mr LAU Kong-wah Administration Chairman	<p>(a) Procedures and circumstances under which the powers of "seizure", "detention" and "forfeiture" under clauses 15, 16, 21, 22 and 23 would be exercised by the Commissioner</p> <p>(b) Whether the Commissioner had the power to further detain the seized article, vessel or vehicle after 30 days of the seizure, and whether such power should be set out clearly in the Bill</p> <p>(c) Clarification on the time limit implied by the term "within 30 days beginning from the date of the seizure" in clause 23</p> <p>(Clauses 15, 16, 21, 22 and 23)</p>	<p>On item(a), Admin to restructure the relevant provisions in the Bill to set out clearly the procedures and circumstances under which the powers of "seizure", "detention" and "forfeiture" would be exercised by the Commissioner and the time limit for detention; to make reference to relevant provisions in</p>

Time marker	Speaker	Subject(s)	Action Required
			Karaoke Establishments Ordinance (Cap. 573) On item (c), Admin to consider whether it was fair to require the owner of the seized article, vessel or vehicle to give notice of claim within 30 days beginning on the date of the seizure
010226-010649	Chairman Administration	Meaning of "some other person who, though not the claimant, was, or would have been, entitled to make a claim" in clause 22(5) (Clauses 21(7) and 22(5))	
010650-011218	Chairman Administration	Whether the hearing of an application under clause 22(1) would be held if the summons or the notice of the hearing was not served (Clause 22)	
011219-012145	Mr LAU Kong-wah Chairman Administration Mr HUI Cheung-ching	(a) Commissioner's powers of seizure, detention and forfeiture (b) Commissioner's power to release seized vessels or vehicles prior to the hearing (c) Payment to court as security for the release of seized vessels or	On item (c), Admin to consider whether it was fair to require the owner concerned to pay the substantial sum

Time marker	Speaker	Subject(s)	Action Required
		<p>vehicles prior to the hearing</p> <p>(d) Detention of seized vessels or vehicles for a maximum of two years</p> <p>(Clauses 23 and 37)</p>	of security payment prior to the hearing and how to address the problem that if the owner could not afford to pay, the seized vessel or vehicle might be detained for two years
012146-012446	Chairman Administration	<p>Disposal of a chemical weapon which posed immediate threat to the health or safety of the public</p> <p>(Clause 24(4))</p>	
012447-012608	Chairman	<p>Stay of order on appeal</p> <p>(Clause 25(1))</p>	
012609-013206	Administration Chairman Mr LAU Kong-wah	<p>(a) Routine inspection, challenge inspection and assistance inspection</p> <p>(b) Inspection aims and procedures</p> <p>(Clause 26)</p>	Admin to consider introducing amendments to clause 26 as the text of the Convention would be deleted from the Bill
013207-015131	Chairman Mr LAU Kong-wah Administration Mr HUI Cheung-ching	<p>(a) Meaning of the term "in-country escort"</p> <p>(b) Agreed arrangement between the Central People's</p>	On items (a) and (b), Admin to consider amending the "in-country

Time marker	Speaker	Subject(s)	Action Required
		<p>Government and the HKSAR Government that the escort would be appointed by the HKSAR Government</p> <p>(c) Whether the implementation of the Convention was regarded as "foreign affairs" or "defence" referred to in the Basic Law (Clause 27)</p>	<p>escort" to reflect that the escort was a HKSAR official</p> <p>On item (c), Admin to advise whether or not the implementation of the Convention was regarded as "foreign affairs" or "defence" referred to in Articles 13 and 14 of the Basic Law</p>
015132-015453	Chairman Administration	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
12 February 2003