

立法會
Legislative Council

LC Paper No. CB(1)1031/02-03
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/01/2

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

**Minutes of ninth meeting held on
Monday, 17 February 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
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon James TO Kun-sun
Dr Hon LO Wing-lok

**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

Action

I. Confirmation of minutes of meetings

- | | | |
|------------------------------|---|--|
| (LC Paper No. CB(1)837/02-03 | — | Minutes of seventh meeting held on 9 January 2003 |
| LC Paper No. CB(1)898/02-03 | — | Minutes of eighth meeting held on 21 January 2003) |

The minutes of the seventh and eighth meetings held on 9 January 2003 and 21 January 2003 respectively were confirmed.

II. Meeting with the Administration

(Matters arising from the 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
- LC Paper No. CB(1)908/02-03(02) — Administration's response to the issues of concern raised by members on clauses 2, 5, 29 and 38
- 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)908/02-03(03) — Administration's response to the issues of concern raised by members on clauses 8, 9, 30 and other clauses
- LC Paper No. CB(1)908/02-03(01) — "Follow-up to the eighth meeting on 21 January 2003" prepared by the Legislative Council Secretariat

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)2206/01-02(02) — Full text of the Chemical Weapons (Prohibition) Act 1994 of the Commonwealth of Australia
- LC Paper No. CB(1)2206/01-02(03) — Full text of the Chemical Weapons Act 1996 (C.6) of the United Kingdom
- 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

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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) Clause 5(f)

While the Administration maintained its view that clause 5(f) should be retained to replicate in full the prohibitions prescribed in paragraph 1(d) of Article I of the Convention (LC Paper No. CB(1)908/02-03(02)), members considered it not necessary to retain clause 5(f) if the acts prohibited were already covered under existing laws, i.e. section 89 of the Criminal Procedure Ordinance (CPO) (Cap. 221). Given that the Convention was not tailor-made for common law jurisdictions, members did not see the need to copy the exact wording from the Convention. In this connection, members noted that the Chemical Weapons Act 1996 of the United Kingdom (UK) did not have a provision similar to clause 5(f).

Members noted the Administration's advice that the word "*assist*" in clause 5(f) overlapped totally with the words "*aids*" and "*abets*" in section 89 of CPO, and that the Administration was unable to find any judicial interpretation which indicated complete overlap of the words "*encourage*" and "*induce*" in clause 5(f) with the words "*counsels*" and "*procures*" in section 89 of CPO. On the other hand, members noted the Assistant Legal Adviser's advice that the meaning of the word "*encourage*" might not be precise enough. A man might unwittingly encourage another by his presence, by misinterpreted words, or gestures, or by his silence but a mere passive spectator of a crime would not commit a criminal offence (R v. Coney [1882] as cited in R v. LEE Chi Wai and Others [1993] (HKCA 197) by Chief Justice T L YANG).

The Administration was requested:

- (i) to set out clearly the acts prohibited under clause 5(f);

Action

- (ii) to examine whether the acts prohibited under clause 5(f) were covered under section 89 of CPO -
 - if yes, to delete clause 5(f);
 - if not, to consider whether it was appropriate to use the words "*assist*", "*encourage*" and "*induce*" in clause 5(f), having regard to the fact that they were not commonly used in common law legislation and the judicial interpretation that the word "*encourage*" could cover unintentional act. The Administration was requested to refer to a court ruling in 1993 quoted by the Assistant Legal Adviser and any other court rulings in the past ten years, and advise on the judicial interpretation of the word "*encourage*"; and
 - to make reference to the approach adopted by UK, a common law jurisdiction. Its Chemical Weapons Act 1996 did not have a provision similar to clause 5(f).

(b) Clauses 5 and 29(2)

The Bills Committee noted from the Administration's written response (LC Paper No. CB(1)908/02-03(02)) that contravention of any provision in clause 5 should be an offence of strict liability, but under clause 29(2), it was a defence for the person charged with the offence to prove that he neither knew nor suspected that the article was a chemical weapon. Other than this, it remained the responsibility of the prosecution to prove beyond reasonable doubt the guilt of the accused. The Administration was requested to advise on the elements constituting the offence that the prosecution needed to establish before instituting the proceedings and the onus of proof on the prosecution.

(c) Clause 27

On the term "in-country escort" in clause 27, the Administration was requested:

- (i) to consider adding a definition of the term in clause 2 (Interpretation);

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- (ii) to clarify whether the term referred to a Mainland official or a Hong Kong Special Administrative Region Government (HKSARG) official, or both. The drafting of clause 27(4)(b) seemed to imply that the "in-country escort" was not a HKSARG official; and
- (iii) to set out the departments of the Central People's Government or HKSARG from which the "in-country escort" would be appointed.

(Post-meeting note: The English and Chinese versions of the Administration's response to the issues of concern raised by members on clauses 5 and 29 (LC Paper No. CB(1)1011/02-03(02)) were circulated to members on 28 February 2003 and 1 March 2003 respectively.)

Date of next meeting

- 4. The Chairman reminded members that the next meeting would be held on Monday, 3 March 2003 at 4:30 pm.

III. Any other business

- 5. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
1 March 2003

Appendix

**Proceedings of the ninth meeting of the
Bills Committee on Chemical Weapons (Convention) Bill
on Monday, 17 February 2003 at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000359	Chairman	Confirmation of minutes of seventh and eighth meetings (LC Paper Nos. CB(1)837/02-03 and CB(1)898/02-03)	
000400-001639	Administration	Briefing by the Administration on its response to the issues of concern raised by members on clauses 2, 5, 29 and 38 (LC Paper No. CB(1)908/02-03(02))	
001640-001738	Chairman	Inviting members' views on the Administration's response to the issues of concern on clauses 2 and 38 (LC Paper No. CB(1)908/02-03(02)) (Clauses 2 and 38)	
001739-010237	Chairman Ms Audrey EU Administration Mr HUI Cheung-ching	(a) Whether clause 5(f) should be retained to replicate in full the prohibitions prescribed in paragraph 1(d) of Article I of the Convention (b) Whether the acts prohibited under clause 5(f) were already covered by section 89 of the Criminal Procedure Ordinance (CPO) (Cap.221) (c) Whether it was appropriate to	Admin to set out clearly the acts prohibited under clause 5(f) and examine whether the acts prohibited were covered under section 89 of CPO, and if so, to delete clause 5(f); if not, to consider whether it was

Time marker	Speaker	Subject(s)	Action Required
		<p>use the words "<i>assist</i>", "<i>encourage</i>" and "<i>induce</i>" in clause 5(f) given that they were not commonly used in common law legislation</p> <p>(d) Judicial interpretation of the word "<i>encourage</i>" cited in a court ruling in 1993 showing that the legal meaning of the word might not be precise enough</p> <p>(e) The approach adopted by other common law jurisdictions such as the United Kingdom (UK)</p> <p>(f) Whether UK had been censured for not including a similar provision in its Chemical Weapons Act 1996</p> <p>(LC Paper No. CB(1)486/02-03(04)) (LC Paper No. CB(1)908/02-03 (02)) (Clause 5(f))</p>	<p>appropriate to use the words "<i>assist</i>", "<i>encourage</i>" and "<i>induce</i>" in clause 5(f), and to advise on the judicial interpretation of the word "<i>encourage</i>" by referring to the court ruling in 1993 and any other court rulings in the past ten years.</p> <p>Admin to make reference to the approach adopted by UK.</p>
010238-010743	Administration	<p>Briefing by the Administration on its response to issues of concerns raised by members at the seventh meeting of the Bills Committee</p> <p>(LC Paper No. CB(1)908/02-03(03)) (Clauses 8, 9, 30 and other clauses)</p>	
010744-011100	Ms Audrey EU Chairman Administration ALA 2	<p>Effect of the proposed amendments to clauses 8 and 30</p> <p>(LC Paper No. CB(1)908/02-03(03)) (LC Paper No. CB(1)2206/01-02(02)) (Clauses 8 and 30)</p>	
011101-011104	Chairman	Outstanding issues awaiting	

Time marker	Speaker	Subject(s)	Action Required
		Administration's written response	
010112-012643	Chairman ALA 2 Administration Ms Audrey EU	(a) Need to define the term "in-country escort" in the Bill (b) Whether the term "in-country escort" referred to a Mainland official or a HKSARG official or both (c) Whether the implementation of the Convention was regarded as "foreign affairs" (d) Whether the "in-country escort" would be appointed from departments of the Central People's Government or HKSARG (Clause 27)	On item (a), Admin to consider adding a definition of the term in clause 2 (Interpretation). On items (b) and (d), Admin to provide the relevant information.
012644-013043	Chairman Administration	Whether the "court" provided in clause 27(8) referred to a court in the HKSAR or in the Mainland (Clause 27(8), (9), (10) and (11))	
013044-013219	Chairman Administration	Whether clause 28 was modelled on the relevant provisions of the Chemical Weapons Act 1996 in UK (Clause 28) (LC Paper No. CB(1)2206/01-02(03))	
013220-015017	Chairman Administration Ms Audrey EU ALA2	(a) Life imprisonment for offence under clause 5(f) (b) Proposed amendments to clause	On item (e), Admin to provide the relevant information.

Time marker	Speaker	Subject(s)	Action Required
		<p>29(2) to provide a defence for a person charged with an offence under clause 5(e) or 5(f)</p> <p>(c) Relevant defence provisions in the Chemical Weapons Act 1996 in UK</p> <p>(d) Interpretation of "strict liability offence"</p> <p>(e) Elements constituting the offence that the prosecution needed to establish before instituting the proceedings and the onus of proof on the prosecution</p> <p>(LC Paper No. CB(1)908/02-03(02)) (Clause 5 and 29(2))</p>	
015018-015217	Chairman	Date of next meeting	