

立法會  
*Legislative Council*

LC Paper No. CB(1)1224/02-03  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/01/2

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

**Minutes of tenth meeting held on  
Monday, 3 March 2003 at 4:30 pm  
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

**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**

***(Part A: Matters arising from the eighth and ninth meetings)***

- 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
- LC Paper No. CB(1)1011/02-03(01) — "Follow-up to the ninth meeting on 17 February 2003" prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1011/02-03(02) — Administration's response to the issues of concern raised by members on clauses 5 and 29
- LC Paper No. CB(1)1011/02-03(03) — Administration's response to members'

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concern on whether the implementation of the Convention in Hong Kong falls under the ambit of "foreign affairs" or "defence" referred to in Articles 13 and 14 of the Basic Law

***Part B: 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)1011/02-03(04) | — | Draft proposed Committee Stage Amendments provided by the Administration (6th draft))  |

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

Discussion on whether the implementation of the Convention in Hong Kong fell under the ambit of "foreign affairs" or "defence" referred to in Articles 13 and 14 of the Basic Law

2. Responding to the Chairman's enquiries on the Administration's written response (LC Paper No. CB(1)1011/02-03(03)), the Administration advised that the Convention required each State Party to the Convention to adopt the necessary measures to implement its obligations under the Convention. The People's Republic of China, as a State Party to the Convention, was therefore obliged to implement its obligations under the Convention. As the application of the Convention was extended to the Hong Kong Special Administrative Region (HKSAR) under Article 153 of the Basic Law, the Central People's Government requested the HKSAR Government to implement the Convention in HKSAR. Such implementation would be done through the enactment of legislation in HKSAR, i.e. through the enactment of the Chemical Weapons (Convention) Ordinance. In the Administration's view, the implementation of the Convention in HKSAR (at the level or in

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the sense of international treaty obligations) fell within the ambit of "foreign affairs" under Article 13 of the Basic Law and related to "defence" under Article 14 of the Basic Law. As regards the concrete measures taken by the HKSAR Government to implement the Convention, such as the implementation of a permit system to control chemical weapons, they did not fall within the ambit of "foreign affairs" under Article 13 of the Basic Law and of "defence" under Article 14 of the Basic Law.

3. The Chairman noted that under Article 19 of the Basic Law, "[t]he courts of the Hong Kong Special Administrative Region shall have no jurisdiction over acts of state such as defence and foreign affairs. The courts of the Region shall obtain a certificate from the Chief Executive on questions of fact concerning acts of state such as defence and foreign affairs whenever such questions arise in adjudication of cases. This certificate shall be binding on the courts. Before issuing such a certificate, the Chief Executive shall obtain a certifying document from the Central People's Government". The Chairman requested the Administration to confirm whether the courts of HKSAR would have jurisdiction over cases involving offences under the Chemical Weapons (Convention) Ordinance (if enacted), and whether the mechanism provided in Article 19 of the Basic Law needed to be triggered off for the courts of HKSAR to adjudicate such cases. The Administration advised that the Chemical Weapons (Convention) Ordinance, if enacted, would be a piece of local legislation and that the courts of HKSAR would have jurisdiction over cases involving offences under the Ordinance. The Administration also considered that the concrete measures to implement the Convention in HKSAR contained in the Ordinance were not "acts of state" referred to in Article 19 of the Basic Law.

Date of next meeting

4. The Chairman reminded members that the eleventh and twelfth meetings would be held on Monday, 31 March 2003 at 8:30 am and Monday, 14 April 2003 at 2:30 pm respectively.

**II. Any other business**

5. There being no other business, the meeting ended at 5:50 pm.

Council Business Division 1  
Legislative Council Secretariat  
27 March 2003

## Appendix

**Proceedings of the tenth meeting of the  
Bills Committee on Chemical Weapons (Convention) Bill  
on Monday, 3 March 2003 at 4:30 pm  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-001212	Chairman Mr LAU Kong-wah Mr HUI Cheung-ching	Internal Discussion	
001213-001537	Administration	Briefing by the Administration on its response to the issues of concern raised by members on whether the implementation of the Convention in Hong Kong fell under the ambit of "foreign affairs" or "defence" referred to in Articles 13 and 14 of the Basic Law  (LC Paper No. CB(1)1011/02-03(03))	
001538-003250	Chairman Administration ALA 2	(a) Whether the concrete measures taken by the HKSAR Government to implement the Convention fell within the ambit of "foreign affairs" under Article 13 of the Basic Law and of "defence" under Article 14 of the Basic Law  (b) Whether the courts of HKSAR would have jurisdiction over cases involving offences under the Chemical Weapons (Convention) Ordinance (if enacted), and whether the mechanism provided in Article 19 of the Basic Law needed to	

Time marker	Speaker	Subject(s)	Action Required
		<p>be triggered off for the courts of HKSAR to adjudicate such cases</p> <p>(c) Whether the concrete measures to implement the Convention in HKSAR contained in the Ordinance were "acts of state" referred to in Article 19 of the Basic Law</p> <p>(LC Paper No. CB(1)1011/02-03(03)) (Clause 27) (Articles 13, 14 and 19 of the Basic Law)</p>	
003251-004512	Administration	<p>Briefing by the Administration on its response to issues of concerns raised by members on clauses 5 and 29</p> <p>(LC Paper No. CB(1)1011/02-03(02)) (Clauses 5 and 29)</p>	
004513-010651	<p>Ms Audrey EU ALA 2 Chairman Mr HUI Cheung-ching Administration</p>	<p>(a) Whether clause 5 was an exact copy of paragraph 1(d) Article I of the Convention</p> <p>(b) Whether it was appropriate to use the words "assist", "encourage" and "induce" in clause 5(f)</p> <p>(c) Reference to the approach adopted by other common law jurisdictions, including the United Kingdom, Canada, Singapore and New Zealand</p> <p>(d) Whether clause 5(f) should be deleted</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		(e) Whether it was necessary for the Administration to review the provisions of clause 5 a certain period after the enactment of the Chemical Weapons (Convention) Ordinance  (LC Paper No. CB(1)1011/02-03(02)) (Clauses 5 and 29)	
010652-010942	Chairman	Date of eleventh and twelfth meetings	

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