

立法會
Legislative Council

LC Paper No. CB(1)1433/02-03
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/01/2

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

**Minutes of eleventh meeting held on
Monday, 31 March 2003 at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Cyd HO Sau-lan (Chairman)
Hon James TO Kun-sun
Hon HUI Cheung-ching, JP
Hon LAU Kong-wah
Hon Audrey EU Yuet-mee, SC, JP

**Public officers
attending** : Miss Clara TANG
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 Angela LIU
Acting 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)1031/02-03 — Minutes of ninth meeting held on
17 February 2003
LC Paper No. CB(1)1224/02-03 — Minutes of tenth meeting held on
3 March 2003)

The minutes of the ninth and tenth meetings held on 17 February 2003 and 3 March 2003 respectively were confirmed.

Action

II. Meeting with the Administration

(Matters arising from previous 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)1234/02-03(01) — Administration's response to the issues of concern raised by members on clauses 15, 16, 21, 22 and 23
- LC Paper No. CB(1)1155/02-03(01) — Administration's response to the issues of concern raised by members on clause 27

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)

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

Follow-up actions to be taken by the Administration

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

Action

(a) Clauses 5 and 29

The Administration was requested to consider replacing the word "*encourage*" in clause 5(f) by the word "*incite*".

The Administration was also requested not to add clause 5(e) and 5(f) to clause 29(2).

(b) Clauses 15, 16, 21, 22 and 23

The Bills Committee noted from the Administration's written response (LC Paper No. CB(1)1234/02-03(01)) that the Commissioner of Customs and Excise (the Commissioner) would issue, within 30 days of the seizure, a "Notice of Seizure" to the owner concerned or his authorized agent, listing out all seized articles which were liable for forfeiture. The seized articles not listed in the "Notice of Seizure" might need to be retained for a longer period of time for enforcement and would be returned on conclusion of the investigations/proceedings. Members were concerned that the owner would have no idea of when the seized articles not listed in the "Notice of Seizure" would be returned to him and that there was no channel for him to appeal against the Commissioner's decision to further detain the seized articles. Members noted the Administration's advice that a great majority of the seized articles were documents, copies of which could be made for the owner, if necessary. Members considered it essential to set out clearly in the "Notice of Seizure" all seized articles (including document, vehicle, vessel and aircraft), the status of each of the seized articles (e.g. further detention, liable for forfeiture), reasons for seizure and further detention/liable for forfeiture, and the channels for the owner to appeal against the Commissioner's decision. The Administration was requested to amend the relevant clauses to give effect to the arrangements proposed by members. The Administration was also requested to make reference to the Criminal Justice and Police Act 2001 of the United Kingdom (UK) which provided for the power of seizure, return and detention of the seized property, and application to the appropriate judicial authority for the return of the whole or a part of the seized property. The relevant provisions in this Act were also applicable to the Chemical Weapons Act 1996 of UK.

Members also noted that clause 15(4) and (5) provided the time limits, and the extension of such time limits, for the detention of vessel and aircraft, but not for the detention of vehicle. The Administration was requested to

Action

consider amending clause 15(4) and (5) to cover the detention of vehicle and other types of seized articles.

(Post-meeting note: The relevant provisions of the Criminal Justice and Police Act 2001 of UK tabled at the meeting by the Assistant Legal Adviser was issued to members vide LC Paper No. CB(1)1299/02-03 on 1 April 2003.)

(c) Clause 23

Clause 23 provided that where an application had been made for forfeiture of a vessel or vehicle, a 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, order that the vessel or vehicle be delivered to the claimant thereof upon the condition that the vessel or vehicle be re-delivered into the custody of the Commissioner before the date of hearing of the application for forfeiture. The Bills Committee noted that the Administration considered it inappropriate to lower the minimum level of payment into court by way of security by the owner, as it would in effect compromise the deterring effect of the Bill (LC Paper No. CB(1)1234/02-03(01)). Members were concerned that if the owner could not afford to pay the "sum of money not less in amount than the value of the seized vessel or vehicle" for the release of the seized vessel or vehicle prior to the hearing, his business might be duly affected by the seizure. If the owner could afford to pay the sum of money, he might purchase a new vessel or vehicle, instead of getting back the seized vessel or vehicle. Members therefore considered it more appropriate to provide the court with the discretionary power to determine the level of payment after taking into account the circumstances of each case, including the views of the Commissioner. The Administration was requested to consider amending clause 23 accordingly.

(d) Clause 27

The Bills Committee noted from the Administration's written response (LC Paper No. CB(1)1155/02-03(01)) that the term "in-country escort" in clause 27 might refer to an officer of the Central People's Government (CPG) or an officer of the Hong Kong Special Administrative Region Government (HKSARG). The Administration was requested to confirm whether a public officer, such as an officer of a Government advisory body, might be nominated as an "in-country escort".

Action

(e) Clause 42

The Administration was requested to confirm whether it could prescribe fees under clause 42; if so, to consider amending clause 42 to reflect this point.

(f) Schedule 2 (Consequential amendment to the Organized and Serious Crimes Ordinance (OSCO) (Cap. 455)

If the word "*encourage*" in clause 5(f) was replaced by "*incite*", the Administration was requested to amend the proposed amendment to OSCO accordingly.

(*Post-meeting note:* The Administration's response was issued to members vide LC Paper No. CB(1)1431/02-03(02) on 11 April 2003.)

Admin 4. At the request of the Chairman, the Administration undertook to provide the Bills Committee with the revised draft proposed Committee Stage Amendments as soon as possible.

Issue to be referred to the Panel on Administration of Justice and Legal Services and the Panel on Constitutional Affairs

5. The Bills Committee noted from the Administration's response (LC Paper No. CB(1)1155/02-03(01)) that there was a written agreed arrangement between CPG and HKSARG for specifying officers as "in-country escorts" and that the relevant documents were for internal use only. The Administration considered it inappropriate to release the written agreement to persons outside the Administration, including the Bills Committee. While the Administration claimed that this was a general practice governing the handling of the HKSARG's correspondence with all other governments, members considered that the relationship between HKSARG and CPG should be different from that between HKSARG and other governments. Given the implementation of the "one-country, two systems" in the HKSAR and the need for Legislative Council Members to monitor the issues arising from the agreed arrangement between CPG and HKSARG, members did not accept the Administration's view that it was inappropriate to release the written agreement to the Bills Committee. Members agreed that this issue of concern be referred to the Panel on Administration of Justice and Legal Services and the Panel on Constitutional Affairs for follow-up action.

Clerk

Action

Date of next meeting

6. The Chairman reminded members that the twelfth meeting would be held on Monday, 14 April 2003 at 2:30 pm.

7. Members agreed that the thirteenth meeting would be held on Monday, 5 May 2003 at 4:30 pm.

III. Any other business

8. There being no other business, the meeting ended at 10:15 am.

Council Business Division 1
Legislative Council Secretariat
11 April 2003

Appendix

**Proceedings of the eleventh meeting of the
Bills Committee on Chemical Weapons (Convention) Bill
on Monday, 31 March 2003 at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000315	Chairman	Confirmation of minutes of the ninth and tenth meetings (LC Paper Nos CB(1)1031/02-03 and CB(1)1244/02-03)	
000316-000541	Chairman	Outstanding issues awaiting Administration's written response	
000542-001306	Administration	Briefing by the Administration on its response to the issues of concern on clauses 15, 16, 21, 22 and 23 (LC Paper No. CB(1)908/02-03 (01)) (LC Paper No. CB(1)1234/02-03(01)) (Clauses 15,16, 21, 22 and 23)	
001307-001537	Chairman Administration	When the draft proposed Committee Stage Amendments (CSAs) would be ready for discussion by the Bills Committee (LC Paper No. CB(1)1234/02-03(01)) (Clauses 15,16, 21, 22 and 23)	Admin to make available the proposed CSAs to the Bills Committee as early as possible.
001537-002219	Chairman Mr James TO Administration	The level of payment into court by way of security by the owner for getting back the seized vessel or vehicle prior to the hearing of the application for its forfeiture	Admin to consider amending clause 23 to provide the court with the

Time marker	Speaker	Subject(s)	Action Required
		<p>(LC Paper No. CB(1)1234/02-03(01)) (Clause 23)</p>	<p>discretionary power to determine the level of payment after taking into account the circumstances of each case, including the views of the Commissioner</p>
002200-005807	<p>Administration Ms Audrey EU Chairman ALA 2</p>	<p>(a) Status of the seized articles not listed in the "Notice of seizure"</p> <p>(b) The need to inform the owner of the status of each of the seized articles, including document, vehicle, vessel and aircraft (e.g. further detention, liable for forfeiture), reasons for seizure and further detention / liable for forfeiture and whether appeals could be made against the decision of the Commissioner of Customs and Excise</p> <p>(c) Relevant provisions in the Criminal Justice and Police Act 2001 of UK which was also applicable to the Chemical Weapons Act 1996 of UK</p> <p>(d) Time limits and the extension of time limit for the detention of vehicle</p> <p>(LC Paper No. CB(1)1234/02-03(01)) (LC Paper No. CB(1)1299/02-03(01))</p>	<p>(a) Admin to set out clearly in the "Notice of Seizure" all seized articles, the status of each of the seized articles, reasons for seizure and further detention/ liable for forfeiture, and the channels for the owner to appeal against the decision of the Commissioner of Customs and Excise</p> <p>(b) Admin to amend the relevant clauses to give effect to the arrangements</p>

Time marker	Speaker	Subject(s)	Action Required
		(Clauses 15, 16, 21, 22 and 23)	<p>proposed by members</p> <p>(c) Admin to make reference to the Criminal Justice and Police Act 2001</p> <p>(d) Admin to consider amending clause 15(4) and (5) to cover the detention of vehicle and other types of seized articles</p>
005808-010038	Administration	<p>Briefing by the Administration on its response to issues of concerns raised by members on clause 27</p> <p>(LC Paper No. CB(1)1155/02-03(01)) (Clause 27)</p>	
010039-010310	Mr HUI Cheung-ching Administration Chairman	<p>Whether a public officer, such as an officer of a Government advisory body, might be nominated as an "in-country escort"</p> <p>(LC Paper No. CB(1)1155/02-03(01)) (Clause 27)</p>	<p>Admin to confirm whether a public officer, such as an officer of a Government advisory body, might be nominated as an "in-country escort"</p>

Time marker	Speaker	Subject(s)	Action Required
010311-010729	Chairman Administration	Whether the agreed arrangement between the Central People's Government and the HKSAR Government for specifying officers as "in-country escort" should be released to the Bills Committee (LC Paper No. CB(1)1155/02-03(01)) (Clause 27)	Clerk to refer the issue to the Panel on Administration of Justice and Legal Services and the Panel on Constitutional Affairs for follow-up action
010730-012158	Chairman ALA 2 Ms Audrey EU Administration Mr HUI Cheung-ching	(a) Whether the word " <i>encourage</i> " should be replaced by the word " <i>incite</i> " (b) Whether it was appropriate to add clause 5(e) and 5(f) to clause 29(2) (Clauses 5 and 29)	(a) Admin to consider replacing the word "<i>encourage</i>" in clause 5(f) by the word "<i>incite</i>" (b) Admin not to add clause 5(e) and 5(f) to clause 29(2)
012159-012307	Chairman	Part 2 offences (Chemical weapons) (Clause 29)	
012308-012521	Chairman	(a) Onus of proof of the <i>mens rea</i> in clause 30(1)(b) (b) Deletion of clause 30(6) (Clause 30)	On items (a) and (b), Admin to prepare CSAs accordingly
012522-012553	Chairman	Part 4 offences (Notifications and reports in respect of facilities) (Clause 31)	

Time marker	Speaker	Subject(s)	Action Required
012554-012608	Chairman	Part 5 offences (Powers of investigation) (Clause 32)	
012609-012628	Chairman	Part 7 offences (International inspections) (Clause 33)	
012629-012632	Chairman	Part 8 offence (Disclosure of information) (Clause 34)	
012633-012654	Chairman	Adding the word "wilfully" before the word "obstructs" (Clause 35)	Admin to prepare CSAs accordingly
012655-012715	Chairman	False or misleading statements, etc (Clause 36)	
012716-012740	Chairman	Time limitation for criminal proceedings (Clause 37)	
012741-012832	Chairman Ms Audrey EU Administration	Appeals be made to the Chief Executive in Council instead of the Chief Executive (Clause 38)	Admin to prepare CSAs accordingly

Time marker	Speaker	Subject(s)	Action Required
012833-012625	Chairman Administration	(a) Power of Director to specify forms (b) Whether the forms would be specified in the subsidiary legislation (Clause 39)	
012626-012933	Chairman	Power to amend Schedule 1 (Clause 40)	
012934-012949	Chairman	Services of notices (Clause 41)	
012950-013320	Chairman ALA2 Administration Ms Audrey EU	Whether the Administration could prescribe fees under clause 42 (Clause 42)	Admin to confirm whether it could prescribe fees under clause 42; if so, to consider amending clause 42 to reflect this point
013321-013412	Chairman	Transitional provisions (Clause 43)	
013413-013500	Chairman Administration	Consequential amendments (LC Paper No. CB(1)1510/01-02) (Clause 44)	

Time marker	Speaker	Subject(s)	Action Required
013501-013620	Chairman	Consequential amendments to the Organized and Serious Crimes Ordinance (Schedule 2)	If the word "encourage" in clause 5(f) is replaced by "incite", Admin to amend the proposed amendment to the Organized and Serious Crimes Ordinance accordingly
013621-013710	Chairman	Consequential amendments to the Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Schedule 2)	
013711-013726	Chairman	Explanatory Memorandum (Schedule 2)	
013727-013800	Chairman Administration	Outstanding issue awaiting the Administration's response	Admin to provide the written response on the staffing resources required for processing the applications
013801-014234	Chairman Administration Ms Audrey EU	Dates of the twelfth and thirteenth meetings	