

立法會
Legislative Council

LC Paper No. CB(1)292/02-03
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/01/2

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

**Minutes of fourth meeting held on
Thursday, 24 October 2002 at 10:45 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

Member absent : Dr Hon LO Wing-lok

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

Miss Hinny LAM
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 K H NG
Principal Trade Controls Officer
Customs and Excise Department

Mr S Y KWAN
Chief Chemist
Government Laboratory

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. Meeting with the Administration**
- (LC Paper No. CB(1)1722/01-02(04) — Implications of the Chemical Weapons (Convention) Bill for the general public and establishments that need to acquire or use chemicals
- LC Paper No. CB(1)2206/01-02(01) — Comparison of the Chemical Weapons (Convention) Bill to the Australia Chemical Weapons (Prohibition) Act 1994 and the UK Chemical Weapons Act 1996

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- LC Paper No. CB(1)2206/01-02(02) — The full text of the Chemical Weapons (Prohibition) Act 1994 of the Commonwealth of Australia
- LC Paper No. CB(1)2206/01-02(03) — The full text of the Chemical Weapons Act 1996 (C.6) of the United Kingdom
- LC Paper No. CB(1)59/02-03(02) — "Follow-up to the second meeting on 16 July 2002" prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)59/02-03(03) — Reply dated 16 October 2002 from the Administration to the Clerk to Bills Committee
- LC Paper No. CB(1)1511/01-02(02) — First letter dated 1 November 2001 from the Assistant Legal Adviser to the Administration
- LC Paper No. CB(1)1511/01-02(03) — Reply dated 24 November 2001 from the Administration to the Assistant Legal Adviser
- LC Paper No. CB(1)59/02-03(04) — Second letter dated 24 April 2002 from the Assistant Legal Adviser to the Administration
- LC Paper No. CB(1)59/02-03(05) — Reply dated 12 October 2002 from the Administration to the Assistant Legal Adviser
- LC Paper No. CB(1)59/02-03(06) — Third letter dated 6 August 2002 from the Assistant Legal Adviser to the Administration
- LC Paper No. CB(1)98/02-03(01) — "Follow-up to the third meeting on 18 October 2002" prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)98/02-03(02) — Reply dated 22 October 2002 from the Administration to the Clerk to Bills Committee)

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

Follow-up actions to be taken by the Administration

Admin 2. As requested by the Bills Committee, the Administration undertook to take the follow-up actions listed below:

(a) Clause 5(e)

Clause 5(e) provided that "no person shall engage in military

preparations, or in preparations of a military nature, intending to use a chemical weapon." As the relevant provision in the Convention only covered "military preparations", the Administration was requested to consider whether it was appropriate to add "preparations of a military nature" in clause 5(e).

(b) Clause 5(f)

Clause 5(f) provided that "no person shall assist, encourage or induce, in any way, anyone to engage in any activity prohibited under the Convention." While this subclause was modelled on the relevant provision in the Convention, the Administration was requested to consider the need for including this subclause in the Bill as offences like aiding and abetting had already been covered by existing laws.

(c) Clause 6(1)

Clause 6(1) provided that "Section 5 applies to acts done in Hong Kong, and acts done outside Hong Kong by Chinese nationals who are Hong Kong permanent residents." In this connection, the Administration was requested to advise whether there was any existing mechanism for a person to give up the status of Chinese national or that of Hong Kong permanent resident and if so, to provide details of the mechanism.

(d) Declaration to the Organization for the Prohibition of Chemical Weapons (OPCW) on riot control agents

According to the comparison table provided by the Administration (LC Paper No. CB(1)98/02-03(02)), the Bill "does not have any provision pertaining to riot control agent. This is because Article III of the Convention only requires a State Party to make declaration in respect of riot control agents that it holds for riot control purposes. The Government will collect such information through administrative means and make declaration to the OPCW accordingly". In this connection, the Administration was requested to advise on the types and quantities of riot control agents possessed by law enforcement authorities in Hong Kong for riot control purposes, and the law enforcement authorities involved.

(e) Possession and use of controlled chemicals for law enforcement including riot control purposes

As "Purposes not prohibited under this Convention" meant, among other things, law enforcement including domestic riot control purposes, it seemed that law enforcement authorities might possess and use

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controlled chemicals for such purposes. In this connection, the Administration was requested to follow up on the following:

- (i) To keep the Legislative Council (LegCo) informed of the situation, the Administration was requested to consider providing annual reports to the relevant LegCo Panel on the information about the types and quantities of the controlled chemicals imported and possessed by law enforcement authorities in Hong Kong for law enforcement including riot control purposes; and
- (ii) Article 14 of the Basic Law provided that the Government of the Hong Kong Special Administrative Region (HKSAR) might, when necessary, ask the Central People's Government for assistance from the garrison in the maintenance of public order and in disaster relief. It seemed that the garrison might possess and use controlled chemicals for law enforcement including riot control purposes. As Article 14 also provided that "in addition to abiding by national laws, members of the garrison shall abide by the laws of the HKSAR", the Administration was requested to clarify whether the Bill had binding effect on the garrison.

Date of next meeting

3. The Chairman reminded members that the next meeting would be held on Thursday, 31 October 2002 at 8:30 am.

(Post-meeting note: With the concurrence of the Chairman and members of the Bills Committee, the meeting originally scheduled for Thursday, 31 October 2002 at 8:30 am was cancelled to allow more time for the Administration to prepare its responses to the issues raised by members at previous meetings. The next meeting would be held on Tuesday, 19 November 2002 at 8:30 am. The relevant circular was issued to members vide LC Paper No. CB(1)169/02-03 on 30 October 2002.)

II. Any other business

4. There being no other business, the meeting ended at 12:45 pm.

Legislative Council Secretariat

8 November 2002

Appendix

**Proceedings of the fourth meeting of the
Bills Committee on Chemical Weapons (Convention) Bill
on Thursday, 24 October 2002 at 10:45 am
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
0000-0333	Chairman	Opening remarks	
0334-1749	Administration	Comparison of the key requirements of the Convention and the corresponding provisions in the Bill (LC Paper No. CB(1)98/02-03(02))	
1750-1959	Mr James TO Chairman Administration	Difference between "engage in military preparations" and "in preparations of a military nature" in clause 5(e) (LC Paper No. CB(1)98/02-03(02))	Admin to consider whether it was appropriate to add "preparations of a military nature" in clause 5(e)
2000-2330	Mr James TO Administration	Application of section 5 to acts done in Hong Kong and acts done outside Hong Kong (Clause 6(1)) (LC Paper No. CB(1)98/02-03(02))	
2331-2411	Chairman Administration	Clarification on "Chinese nationals who are Hong Kong permanent residents" (Clause 6(1)) (LC Paper No. CB(1)98/02-03(02))	

Time	Speaker	Subject(s)	Action required
2412-2920	Mr HUI Cheung-ching Administration	(a) Powers of members of the Customs and Excise Service under clause 14 (b) Authorization of power to the inspection team sent by the Secretariat of the Convention under Part 7 of the Bill (LC Paper No. CB(1)98/02-03(02))	
2921-3229	Mr HUI Cheung-ching Chairman Administration	SARG officials to accompany the inspection team to conduct inspections (Part 7 of the Bill) (LC Paper No. CB(1)98/02-03(02))	
3230-3649	Ms Audrey EU Yuet-mee Administration	(a) Clarification on "any activity prohibited under the Convention" in clause 5(f) (b) The need for clause 5(f) (LC Paper No. CB(1)98/02-03(02))	Admin to consider the need to retain clause 5(f)
3650-010200	Ms Audrey EU Yuet-mee Chairman Administration Mr James TO Mr HUI Cheung-ching ALA 2	Clarification on : (a) whether there was any mechanism for a person to give up the status of Chinese national or that of Hong Kong permanent resident; and (b) the extra-territorial application of relevant provisions of the Bill (Clause 6 (1)) (LC Paper No. CB(1)98/02-03(02))	Admin to provide information on item (a)

Time	Speaker	Subject(s)	Action required
010201-011750	Mr James TO Chairman Administration	<p>(a) Requirement for a State Party to make declaration in respect of riot control agents that it holds for riot control purposes</p> <p>(b) Possession of riot control agents by law enforcement authorities in Hong Kong for riot control purposes</p> <p>(c) Controlled chemicals imported and possessed by the law enforcement authorities for law enforcement purposes (i.e. purposes not prohibited under the Convention)</p> <p>(Paragraph 1 of Article III of the Convention)</p> <p>(LC Paper No. CB(1)98/02-03(02))</p>	<p>Admin to provide information on item (b) and to consider providing annual reports to the relevant Panel of the Legislative Council on item (c)</p>
011751-012400	Mr James TO Chairman Administration	<p>Binding effect of the Bill on the garrison</p> <p>(Article 14 of the Basic Law)</p>	<p>Admin to clarify whether the Bill has binding effect on the garrison</p>
012401-012625	Mr James TO Chairman Administration	<p>"Abandoned chemical weapons" and "old chemical weapons"</p> <p>(Clauses 2(4) and 7)</p> <p>(LC Paper No. CB(1)98/02-03(02))</p>	
012626-012719	Chairman Administration	<p>An order to be made under the International Organizations (Privileges and Immunities) Ordinance to confer certain privileges and immunities on members of the inspection team</p> <p>(LC Paper No. CB(1)98/02-03(02))</p>	

Time	Speaker	Subject(s)	Action required
012720-012953	ALA 2 Administration	The need for clause 5(f)	
012954-013753	Chairman ALA 2 Administration	The user-friendliness of incorporation of the full text of the Convention into the Bill	
013754-014645	Administration	Comparison of the Bill to relevant legislation in Australia and United Kingdom (LC Paper No. CB(1) 2206/01-02(01))	
014646-014657	Chairman Administration	(a) Forfeiture of chemical weapons (b) Authorization for conducting inspection (Items 8 and 9 of Annex to LC Paper No. CB(1) 2206/01-02 (01))	
014658-015240	Chairman	Concluding remarks	

Note: The audio records of the above proceedings are kept at the Legislative Council Library

Legislative Council Secretariat
8 November 2002