

**Chemical Weapons (Convention) Bill -
The Administration's response to comments / questions
raised at the eighth meeting of the Bills Committee
held on 21 January 2003**

Members have asked the Administration to clarify whether the implementation of the Chemical Weapons Convention falls under the ambit of "foreign affairs" or "defence" referred to in Articles 13 and 14 of the Basic Law. To answer this question, it is necessary to have regard to the nature of the Convention, and the treaty obligations that it imposes on the State Parties.

2. The Convention concerns arms control, and ratification of an arms control international treaty is a foreign policy matter. It is also relevant that only sovereign states can be signatories to the Convention.

3. Article VII(1) of the Convention requires each State Party to the Convention to "*adopt the necessary measures to implement its obligations under this Convention...[, particularly to] (a) [p]rohibit natural and legal persons anywhere on its territory or in any other place under its jurisdiction as recognized by international law from undertaking any activity prohibited to a State Party under this Convention, including enacting penal legislation with respect to such activity; (b) [n]ot permit in any place under its control any activity prohibited to a State Party under this Convention; ...*". The People's Republic of China (PRC), as a State Party, thus is obliged to implement its obligations under the Convention in the HKSAR. In this light, while the Convention applies to the HKSAR pursuant to Article 153 of the Basic Law (i.e. as decided by the Central People's Government (CPG), in accordance with the circumstances and needs of the HKSAR, and after seeking the views of the HKSAR Government), it is very much incidental to the exercise of China's sovereignty in a foreign policy matter, i.e. ratification of an arms-control international treaty. The implementation of the Convention in the HKSAR (at the level or in the sense of international treaty obligation) therefore, in our view, falls within the ambit of "foreign affairs" under Article 13 of the Basic Law.

4. The notion of "defence" under the Basic Law appears to refer to external security affairs (such as protection of the HKSAR from foreign aggression) as opposed to internal security affairs (such as control of civilian disturbances).¹ Our lawyer advises that matters of arms control (which limits

¹ See Mushkat, "Foreign, External, and Defence Affairs" in Wesley-Smith & Chen, *The Basic Law and Hong Kong's Future* (1988), pp 255-6, and Wang Shuwen, *Introduction to the Basic Law of the HKSAR* (English edition, 2000), p 197.

what may be lawfully used in warfare) fall within the ambit of external security affairs. We are therefore of the view that the implementation of the Convention in the HKSAR (at the level or in the sense of international treaty obligation) also relates to “defence” for the purposes of Article 14 of the Basic Law.

Commerce, Industry and Technology Bureau
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