

立法會
Legislative Council

LC Paper No. CB(2)2629/01-02
(These minutes have been
seen by the Administration)

Ref : CB2/BC/9/01

Bills Committee on United Nations (Anti-Terrorism Measures) Bill

Minutes of the 3rd meeting
held on Thursday, 6 June 2002 at 8:30 am
in the Chamber of the Legislative Council Building

Members Present : Hon LAU Kong-wah (Chairman)
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon James TO Kun-sun
Hon CHAN Kam-lam
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP

Members Absent : Hon LEE Cheuk-yan
Hon Eric LI Ka-cheung, JP
Hon Andrew WONG Wang-fat, JP
Dr Hon YEUNG Sum
Hon Ambrose LAU Hon-chuen, GBS, JP

Public Officers Attending : Mr Timothy TONG
Deputy Secretary for Security

Ms Mimi LEE
Principal Assistant Secretary for Security (Narcotics)

Mr Johann WONG
Principal Assistant Secretary for Security

Ms Judy Maguire
Consultant (Narcotics)

Mrs Wendy CHOI
Assistant Secretary for Security

Mr Geoffrey Fox
Senior Assistant Law Draftsman

Mr John Hunter
Deputy Principal Government Counsel
Treaties and Law Unit
International Law Division

Mr Lawrence PENG
Senior Government Counsel
Law Drafting Division

Clerk in Attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

Staff in Attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Miss Mary SO
Senior Assistant Secretary (2) 8

Ms Janet SHUM
Senior Assistant Secretary (2) 9

I. Meeting with the Administration

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

2. The Administration was requested to provide a written response to LC Paper No. CB(2) LS98/01-02 entitled "A comparison of overseas anti-terrorism legislation on listing process" prepared by the Legal Service Division of the Legislative Council, accounting for the difference between the Bill and overseas legislation and the justifications therefor.

3. The Administration undertook to respond to the following issues raised by members at the meeting -

- (a) An analysis of how the proposals in the Bill implemented United Nations Security Council Resolution (UNSCR) 1373 and the Special Recommendations of the Financial Action Task Force Money Laundering, and the relevant existing laws;
- (b) What measure(s) had been taken to implement UNSCR 1373 by those Member States of the United Nations not having existing legislation to combat terrorism;
- (c) What were the criteria for granting compensation for being wrongly specified by the Chief Executive (CE) in the Gazette as terrorists, terrorist associates or owning terrorist property under clause 4 or for funds wrongly frozen by the Secretary for Security (S for S) under clause 5, and what would the compensation be;
- (d) Which provisions of the Bill did not implement the mandatory elements of UNSCR 1373, and what were the reasons for including those provisions;
- (e) What was the existing law that prohibited false threats similar to clause 10;
- (f) Who and what would be the ranking of the authorised officer to whom functions of CE and S for S were to be delegated under clause 15;
- (g) What were the differences between the terms "funds" mentioned in clause 2 and Schedule 1 and "property (other than funds)" mentioned in clause 19 and the different freezing mechanisms referred to in the Bill, as well as to supply draft Regulations to be made under clause 19, if any; and
- (h) Whether clause 13 (in particular, the standard of proof under clause 13(4)), Schedules 2 and 3 were consistent with the minimalist approach and justifications for such powers, what needed to be proved on an application under clause 13 and what would happen if the respondent was outside Hong Kong.

II. Date of next meeting

4. Members noted that the next meeting was scheduled for Monday, 10 June 2002 at 2:30 pm.

5. There being no other business, the meeting ended at 10:25 am.

19 July 2002

**Bills Committee on United Nations (Anti-Terrorism Measures) Bill
Meeting on Thursday, 6 June 2002 at 8:30 am
in the Chamber of the Legislative Council Building**

Time	Speaker	Subject(s)	Action Required
000000 - 000200	Chairman	Drew members attention to the items for discussion	
000200 - 001423	ALA	Referred members to a comparison of overseas anti-terrorism legislation on listing process prepared by the Legal Services Division	
001423 - 001517	Ms Emily LAU	How far the clauses of the Bill were identical to or different from anti-terrorism legislation of other countries such as the United Kingdom (UK)	
001517 - 001712	ALA	Ditto	
001712 - 001922	Ms Emily LAU	Ditto	
001922 - 002151	Ms Cyd HO	Reasons for choosing the proposed listing process instead of other listing process specified in overseas anti-terrorism legislation	
002151 - 002252	Chairman	Ditto	
002252 - 002323	Ms Cyd HO	Ditto	
002323 - 002336	Chairman	Ditto	
002336 - 002729	Administration	Interpretations of terrorist, or terrorist act under clause 2 were based on the specifications in the UK anti-terrorism legislation which was also the source of reference of clause 4. The Administration would provide a written reply in response to the paper on a comparison of overseas anti-terrorism legislation prepared by the Legal Services Division.	(Adm to provide written response)
002729 - 002736	Chairman	Ditto	
002736 - 002834	Ms Emily LAU	How far the interpretation of terrorist act of the anti-terrorism	

		legislation in UK which the Bill based upon was in accordance with UNSCR 1373	
002834 - 002919	ALA	Ditto	
002919 - 003049	Administration	Ditto	
003049 - 003056	Chairman	Ditto	
003056 - 003152	Ms Emily LAU	Ditto	
003152 - 003351	Administration	<p>Reiterated that the Bill mainly focused on measures against terrorist financing.</p> <p>The Administration would consider making provisions for compensation for those being wrongly specified by the Chief Executive in the Gazette as terrorists, terrorist associates or owning terrorist property under clause 4 of the Bill.</p>	
003351 - 003432	Ms Emily LAU	The Administration should consider an alternative mechanism for listing	
003432 - 003508	Chairman	Ditto	
003508 - 003820	Administration	The Administration would provide information on measure(s) taken by Member States of the United Nations, which did not have any existing legislation to combat terrorism, including financing of terrorism, to implement United Nations Security Council Resolution (UNSCR) 1373	(Adm to provide written response)
003820 - 004058	Ms Audrey EU	The need to compare the standard used in overseas anti-terrorism legislation in specifying a person or property was a terrorist, terrorist associate or terrorist property	

004058 - 004520	Miss Margaret NG	<p>Notwithstanding that Financial Action Task Force (FATF) members were expected to implement the Special Recommendations by mid-2002, there was a need to study the Bill in detail as the Administration apparently had not adopted a minimalist approach in implementing UNSCR 1373 and the recommendations of the FATF on money laundering.</p> <p>What were the criteria for seeking compensation from the Government for those being wrongly specified by the Chief Executive (CE) in the Gazette as terrorists, terrorist associates or owning terrorist property.</p>	
004520 - 004724	Administration	The Administration would provide more detailed information regarding the provision of compensation	(Admin to provide written response)
004724 - 004937	Miss Margaret NG	Whether there was a need to implement UNSCR 1373 through legislation if that was not the instruction of the Central People's Government (CPG) but only the Administration's decision	
004937 - 005343	Administration	Ditto	
005343 - 005403	Chairman	Ditto	
005403 - 005430	Miss Margaret NG	Ditto	
005430 - 005923	Mr Albert HO	As the proposed Bill had empowered CE to specify terrorists, terrorist associates or terrorist property if he believed there were reasonable grounds, it would be very difficult for a person to claim damages from the Government even though his application to apply to court to revoke the notice by CE under clause 4 had been successful. The Administration should specify that a person should have immediate	

		<p>right to seek compensation from the Government if the notice had been successfully revoked.</p> <p>Whether clause 9 and clause 10 of the Bill were to implement the mandatory or non-mandatory elements of UNSCR 1373.</p>	
005923 - 010144	Administration	Ditto	
010144 - 010157	Chairman	Ditto	
010157 - 010256	Mr Albert HO, Administration	Ditto	
010256 - 010320	Mr Albert HO	Why was clause 10 necessary if provisions in Hong Kong's existing legislation could also serve the purpose of clause 10	
010320 - 011020	Mr James TO	<p>Which provisions of the Bill were to implement the mandatory and non-mandatory elements of UNSCR 1373, and what were the reasons for including the non-mandatory elements.</p> <p>Reasons for not adopting alternative listing process such as that under the UK Terrorism ACT 2000 which specified that the Order made without an approved draft shall cease to have effect at the end of the period of 40 days beginning with the day on which the Secretary made the Order.</p> <p>Specification of terrorist action under Clause 2 (1) (a)i (A) to(E) should be further defined such as paragraph (a)(I)(F).</p> <p>Amendment of Schedule 1, 2,3 of the Bill should not be made through subsidiary legislation as proposed in clause 18 of the Bill.</p>	
011020 - 011053	Administration	Ditto	
011053 - 011113	Chairman	Ditto	
011113 - 011325	Administration	Ditto	

011325 - 011505	Mr James TO	Ditto	
011505 - 011612	ALA	Drew members' attention that Schedule 2 of the Bill was based on provision of the UN Sanctions (Arms Embargoes) Regulation (Cap 537) which was not a subsidiary legislation and Schedule 3 was based on Cap 134 and Cap 405 which were also not subsidiary legislation	
011612 - 011844	Ms Emily LAU	Ditto	
011844 - 011921	Administration	Ditto	
011921 - 012216	Miss Margaret NG	Whether the Administration had adopted a minimalist approach in drafting the provision of clause 9 (1) which was based on 2 (a) under Chapter VII of the Charter of the United Nations	
012216 - 012500	Ms Cyd HO	Whether overseas anti-terrorism legislation had provided specifications such as that of clause 16(3) and clause 17(1)(b) of the Bill	
012500 - 012539	Mr James TO	Examples of terrorist act specified under (A) and (B) of clause 2(a)ii should be provided	
012539 - 012554	Chairman	Ditto	
012554 - 012629	Mr James TO	Ditto	
012629 - 012727	Chairman	Ditto	
012727 - 012939	Miss Margaret NG	Whether the provisions of clause 13, and schedule 2 and 3 were to implement mandatory elements of UNSCR 1373 and in accordance with the minimalist approach adopted by the Administration	
012939 - 013122	Ms Cyd HO	Would the provision of Schedule 2 restrict the Administration in enforcing mandatory elements of UNSCR 1373	
013122 - 013144	Administration	Ditto	
013144 - 013202	Ms Cyd HO	Ditto	
013202 -	Miss Margaret NG	Ditto	

013224			
013224 - 013249	Administration	Ditto	
013249 - 013348	Ms Emily LAU	The Administration should provide a written reply in response to the concerns and views expressed by the deputations in order to facilitate further discussions	(Adm to provide written response)
013348 - 013355	Chairman	Ditto	
013355 - 013437	Administration	Ditto	
013437 - 013450	Chairman	Ditto	
013450 - 013535	Ms Emily LAU	Ditto	
013535 - 013558	Chairman	Ditto	
013558 - 013716	Mr Albert HO	Who and what was the ranking of the authorised officer referred to in clause 15 of the Bill	
013716 - 013811	Administration	Clause 15 was copied from existing regulations based on the United Nation Sanction Ordinance	
013811 - 013903	Mr Albert HO	Ditto	
013903 - 013907	Chairman	Ditto	
013907 - 014010	Administration, Mr Albert HO	The Administration would respond to Mr HO's questions after consulting the relevant department	(Adm to provide written response)
014010 - 014210	Miss Margaret NG	Ditto	
014210 - 014234	Administration	Ditto	
014234 - 014317	Miss Margaret NG	Ditto	
014317 - 014403	Administration	Ditto	
014403 - 014609	Mr James TO	What were the differences between the terms "funds" and "property (other than funds)" referred to in the Bill. The Administration should provide members with the draft regulation under clause 19 if available and clarify in writing whether the authorized officer would be	

		appointed within the SAR Government.	
014609 - 014730	Chairman	The Administration's response to the views of the Law Society regarding definition of terrorist act and compensation would be discussed in the next meeting	

Council Business Division 2
Legislative Council Secretariat
19 July 2002