

立法會
Legislative Council

Ref : CB2/BC/5/02

LC Paper No. CB(2)2179/02-03
(These minutes have been seen by
the Administration)

**Bills Committee on
National Security (Legislative Provisions) Bill**

**Minutes of meeting
held on Saturday, 10 May 2003 at 9:00 am
in the Chamber of the Legislative Council Building**

Members present :

Hon IP Kwok-him, JP (Chairman)
Hon Ambrose LAU Hon-chuen, GBS, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Dr Hon David CHU Yu-lin, JP
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Eric LI Ka-cheung, JP
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon CHAN Kwok-keung
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong
Hon WONG Yung-kan
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, JP
Hon YEUNG Yiu-chung, BBS
Hon LAU Kong-wah
Hon Miriam LAU Kin-yee, JP

Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Hon Timothy FOK Tsun-ting, SBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Henry WU King-cheong, BBS, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Dr Hon LO Wing-lok
Hon LAU Ping-cheung
Hon Audrey EU Yuet-mee, SC, JP
Hon MA Fung-kwok, JP

**Members
absent** : Hon Cyd HO Sau-lan
Hon Fred LI Wah-ming, JP
Hon LEUNG Yiu-chung
Hon Andrew WONG Wang-fat, JP
Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBS, JP
Dr Hon LAW Chi-kwong, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, JP
Hon WONG Sing-chi

**Public Officers
attending** : Mrs Regina IP, GBS, JP
Secretary for Security

Mr Timothy TONG, JP
Permanent Secretary for Security (Acting)

Mr Bob ALLCOCK, BBS, JP
Solicitor General

Mr Gilbert MO
Deputy Law Draftsman

Mr James O'NEIL
Deputy Solicitor General

Mr Victor LO
Assistant Commissioner of Police

Ms Winnie NG
Administrative Assistant to Secretary for Security

Mr Johann WONG
Principal Assistant Secretary for Security

Miss Adeline WAN
Senior Government Counsel

Ms Francoise LAM
Senior Government Counsel

Mr Hubert LAW
Assistant Secretary for Security

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Jimmy MA, JP
Legal Adviser

Ms Bernice WONG
Assistant Legal Adviser 1

Mr Raymond LAM
Senior Assistant Secretary (2)5

I. Meeting with the Administration

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

2. The Bills Committee requested the Administration to provide a written response to the following issues raised and information sought by members -

Sedition

- (a) to consider adding the word "knowingly", "intentionally" or "wilfully" after the word "he" in the proposed section 9A(1) of the Crimes Ordinance (CO);

- (b) to consider deleting the proposed section 9C of CO;
- (c) to consider extending the protection in the search and seizure of journalistic materials in the proposed section 18B(5) of CO to academics, librarians, non-government organizations and financial analysts;
- (d) to consider defining the term "publishes" in the proposed section 9C(2)(a) of CO having regard to the explanation of "author", "editor" and "publisher" in section 3(3) of the United Kingdom (UK) Defamation Act 1996;
- (e) to consider deleting the term "likely" in the proposed section 9C(1) of CO and substituting "most likely";
- (f) to provide information on the relevant legislation in UK or constitutional instrument which, before Reunification, empowered the Legislative Council to enact legislation with extra-territorial effect;
- (g) to explain the application of the proposed section 9A(1)(b) of CO outside Hong Kong and the authority for the proposed section to apply to a Hong Kong permanent resident who was a foreign national, and to clarify the limits of the "nexus principle";

Investigation power

- (h) to consider the suggestion of the Hong Kong Bar Association that the direction by a Police officer of or above the rank of chief superintendent of police under the proposed section 18B(1) of CO should be given in writing and a copy of the written direction should be shown to or left with the person affected;
- (i) to consider amending the proposed section 18B(4) of CO along the line of section 52(1)(f) of the Dangerous Drugs Ordinance (Cap. 134) that a person might be searched only if there was reason to suspect that the person was involved in an offence under the proposed section; and
- (j) to consider introducing a time limit on the detention of conveyance under the proposed section 18B(2)(e) of CO, having regard to the latest proposed Committee Stage amendments to clauses 15 and 16 of the Chemical Weapons (Convention) Bill.

3. The Bills Committee requested the Legal Adviser -
 - (a) to provide information on the investigation and search powers in CO as amended by the Bill, with particular reference to the Crimes (Amendment) (No. 2) Ordinance 1997; and
 - (b) to write to the Administration setting out the Legal Service Division's views on the Administration's paper on the interpretation, application and enforcement of the Bill (Paper No. 16).
4. The Bills Committee requested the Clerk -
 - (a) to provide the Administration with information on the deliberations of the Bills Committee on Chemical Weapons (Convention) Bill relating to the time limit for detention of conveyance; and
 - (b) to seek the views of the Judiciary on the time needed for obtaining a search warrant from a magistrate outside office hours, which, according to the Administration, would in general be over three hours, and whether there were any means to further shorten the time required for the issue of a search warrant, and whether there would be magistrates dealing with applications for search warrant at all hours.
5. The meeting ended at 12:35 pm.

Council Business Division 2
Legislative Council Secretariat
26 May 2003

**Proceedings of the meeting of the Bills Committee on
National Security (Legislative Provisions) Bill
on Saturday, 10 May 2003 at 9:00 am
in Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000 - 000317	Chairman	Opening remarks and relevant papers	
000318 - 001119	Hon Audrey EU Admin	Drafting of the proposed section 9D of the Crimes Ordinance (CO); whether there was a need for the proposed section 9C of CO	
001120 - 001713	Hon LAU Kong-wah Admin	Suggestion of the Hong Kong Bar Association that the direction by a Police officer of or above the rank of chief superintendent of police under the proposed section 18B(1) of CO should be given in writing and a copy of the written direction should be shown to or left with the person affected	Admin to consider the suggestion
001714 - 002219	Hon Albert HO Admin	Constitutional basis for the enactment of legislation with extra-territorial effect	
002220 - 004210	Hon Martin LEE Admin LA	Whether there was a mental element in the offence provisions in the proposed section 9A of CO; whether the term "only" in the proposed section 9D(1) and (2) should be deleted; adding the word "knowingly", "intentionally" or "wilfully" after the word "he" in the proposed section 9A(1) of CO	Admin to consider adding the word "knowingly", "intentionally or "wilfully" after the word "he" in the proposed section 9A(1)
004211 - 004638	Hon Howard YOUNG Admin	Why the investigation power in the proposed section 18B of CO was to be exercised by a police officer at the rank of chief superintendent of police or above	

Time marker	Speaker	Subject(s)	Action Required
004639 - 005642	Hon CHEUNG Man-kwong Admin Chairman	Whether there was a need for the proposed section 9A(1)(b) of CO and whether there was a need for the proposed section to cover violent disorder in places outside the People's Republic of China	
005643 - 010753	Hon Emily LAU Admin	Whether the proposed section 9C of CO should be deleted; how the Police would determine whether there was a seditious intent	Admin to consider deleting the proposed section 9C of CO
010754 - 011625	Hon NG Leung-sing Admin	Interpretation of the terms "likely" and "substantial value" in the proposed section 18B of CO	
011626 - 012354	Hon SIN Chung-kai Admin	Defining the term "publishes" in the proposed section 9C(2)(a) having regard to the explanation of "author", "editor" and "publisher" in section 3(3) of the United Kingdom (UK) Defamation Act 1996	Admin to consider the suggestion
012355 - 014118	Hon LEE Cheuk-yan Admin LA Chairman	Whether the meaning of "seditious publication" was unclear; whether the proposed section 9C of CO should be deleted; effect of the proposed section 9A(1)(b) of CO if an agreement on mutual legal assistance with the Mainland was established; information on the investigation and search powers in CO as amended by the Bill and the Crimes (Amendment) (No. 2) Ordinance 1997	LA to provide information on the investigation and search powers in CO as amended by the Bill, with particular reference to the Crimes (Amendment) (No. 2) Ordinance 1997
014119 - 014719	Hon Miriam LAU Admin Chairman	Whether there was a need for the proposed section 9C of CO; deleting the term "likely" in the proposed section 9C(1) of CO and substituting "most likely"	Admin to consider deleting the term "likely" in the proposed section 9C(1) of CO and substituting "most likely"

Time marker	Speaker	Subject(s)	Action Required
[Break]			
020221 - 020407	Hon HUI Cheung-ching Admin	Whether the expression "Article 39 of the Basic Law" in the proposed section 18A of CO should be amended to "Chapter 3 of the Basic Law"	
020408 - 021028	Hon CHEUNG Man-kwong Admin Chairman	Whether there was a need for the proposed section 9C of CO, difference between the proposed sections 9A and 9C of CO	
021029 - 022904	Hon Albert HO Admin LA	Basis on which Hong Kong could enact legislation with extra-territorial effect; whether the Hong Kong Special Administrative Region (HKSAR) could and had a need to enact legislation which applied to HKSAR permanent residents in the Mainland; information on the relevant legislation in UK or constitutional instrument which, before Reunification, empowered the Legislative Council to enact legislation with extra-territorial effect	Admin to provide information on the relevant legislation in UK or constitutional instrument which, before Reunification, empowered the Legislative Council to enact legislation with extra-territorial effect
022905 - 024823	Hon James TO Admin Chairman	Whether the HKSAR had a need to enact legislation which applied to HKSAR permanent residents in the Mainland; examples of a seditious publication as defined under the proposed section 9C of CO; whether the time when an article was written was one of the considerations in the determination of whether the article was seditious	
024824 - 025041	Hon David CHU Chairman Admin	Whether the existing time limit for prosecution against sedition was appropriate	
025042 - 030731	Hon Margaret NG Admin	Application of the proposed section 9A(1)(b) of CO outside Hong Kong and the authority for the proposed section to apply to a Hong Kong permanent resident who was a	Admin to explain the application of the proposed section 9A(1)(b) of CO outside Hong Kong and the authority for the

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		foreign national; limits of the "nexus principle"	proposed section to apply to a Hong Kong permanent resident who was a foreign national, and to clarify the limits of the "nexus principle"
030732 - 031409	Hon LAU Kong-wah Admin	Amending the proposed section 18B(4) of CO along the lines of section 52(1)(f) of the Dangerous Drugs Ordinance (Cap. 134) that a person might be searched only if there was reason to suspect that the person was involved in an offence under the proposed section; introducing a time limit on the detention of conveyance under the proposed section 18B(2)(e) of CO, having regard to the latest proposed Committee Stage amendments to clauses 15 and 16 of the Chemical Weapons (Convention) Bill	Admin to consider the suggestions
031410 - 031439	Hon James TO Chairman	Providing the Administration with information on the deliberations of the Bills Committee on Chemical Weapons (Convention) Bill relating to the time limit for detention of conveyance	Clerk to follow up
031440 - 033026	Hon Emily LAU LA Admin Hon Margaret NG Hon Martin LEE Chairman Hon James TO	Threshold of the proposed section 9C(1) of CO; whether there was a need for the proposed section 18B of CO; Legal Service Division's views on the Administration's paper on the interpretation, application and enforcement of the Bill (Paper No. 16); views of the Judiciary on the time needed for obtaining a search warrant from a magistrate outside office hours, which, according to the Administration, would in general be over three hours, and whether there were any means to further shorten the time required for the issue of a	Admin to consider extending the protection in the search and seizure of journalistic materials in the proposed section 18B(5) of CO to academics, librarians, non-government organizations and financial analysts; LA to write to the Administration setting out the Legal Service Division's views on the Administration's paper on the interpretation, application and

Time marker	Speaker	Subject(s)	Action Required
		search warrant, and whether there would be magistrates dealing with applications for search warrant at all hours; extending the protection in the search and seizure of journalistic materials in the proposed section 18B(5) of CO to academics, librarians, non-government organizations and financial analysts	enforcement of the Bill (Paper No. 16); Clerk to seek the views of the Judiciary
033027 - 033134	Chairman	Study areas for the next meeting	

Council Business Division 2
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26 May 2003