

立法會
Legislative Council

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(These minutes have been seen by
the Administration)

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

**Minutes of meeting
held on Thursday, 27 March 2003 at 8:30 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
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, JP
Hon LEE Cheuk-yan
Hon Fred LI Wah-ming, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon HUI Cheung-ching, JP
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon LEUNG Yiu-chung
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
Dr Hon LAW Chi-kwong, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon TANG Siu-tong, JP
Hon Abraham SHEK Lai-him, 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 WONG Sing-chi

Hon LAU Ping-cheung

Hon Audrey EU Yuet-mee, SC, JP

Hon MA Fung-kwok, JP

**Members
absent** : Dr Hon David CHU Yu-lin, JP
Hon Martin LEE Chu-ming, SC, JP
Hon Eric LI Ka-cheung, JP
Dr Hon LUI Ming-wah, JP
Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP
Hon James TO Kun-sun
Hon CHAN Kwok-keung
Hon SIN Chung-kai
Hon Andrew WONG Wang-fat, JP
Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBS, JP
Hon Timothy FOK Tsun-ting, SBS, JP

**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

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 endorsed the proposed order and areas for study of the Bill as set out in Paper No. 5.
3. The Bills Committee agreed that -
 - (a) the Administration should provide papers five working days before the relevant meeting for items with at least three weeks' notice; and
 - (b) the Administration's written response to issues raised at meetings of the Bills Committee should be provided three working days before the meeting at which the issue was to be further discussed.
4. The Bills Committee requested the Administration to provide a written response on the following -

Enforcement to be consistent with the Basic Law

- (a) in relation to the provisions on enforcement to be consistent with the Basic Law (proposed section 18A of the Crimes Ordinance, proposed section 12A of the Official Secrets Ordinance and proposed section 2A of the Societies Ordinance) to explain :
 - (i) the legal effect of the provision;
 - (ii) whether the incorporation of such a provision implied that the Administration would not seek the interpretation of the Standing Committee of the National People's Congress on the relationship between Article 23 of the Basic Law (BL23) and BL39;
 - (iii) why only BL39 but not other Articles of BL was referred to in the provision;
- (b) to explain whether requirements in the international covenants and conventions referred to in BL39 which had not been provided in local legislation were not applicable to Hong Kong;
- (c) to explain whether the Bill was consistent with the respective articles in the international covenants and conventions referred to in BL39.
- (d) to provide information about the court's views regarding the interpretation of the international covenants referred to in BL39 in the case of SIN Yau-ming and the case of CHONG Fung-yuen;
- (e) to explain, in relation to BL84, whether precedents before Reunification were binding on local courts whereas precedents after Reunification were not binding on local courts;
- (f) to explain whether section 3(2) of the Official Secrets Ordinance was subject to BL39 and whether the section was in contravention of human rights and the common law principle of presumption of innocence; and

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- (g) to explain the difference between the offence of treason in the proposed section 2(1)(b) and the sedition offence in the proposed section 9A(1)(a) of the Crimes Ordinance.

5. LA suggested the Administration should also -

- (a) provide judicial authorities on the principle for interpreting legislation enacted for implementing international covenants; and

(b) explain the scope of application of BL84.

6. Miss Margaret NG requested the Legal Adviser to provide his views on the Administration's response after the latter was received.

7. The Administration undertook to provide members with information on the case of *Joyce v DPP* referred to in "The Administration's response to the issues raised and information sought at the joint meeting of the Panel on Security and Panel on Administration of Justice and Legal Services on 17 January 2003" (Paper No.1).

II. Date of next meeting

8. The Chairman reminded members that the next meeting would be held on Tuesday, 1 April 2003 from 2:30 pm to 6:30 pm to continue discussion with the Administration.

9. The meeting ended at 10:40 am.

Council Business Division 2
Legislative Council Secretariat
15 April 2003

**Proceedings of the meeting of the Bills Committee on
National Security (Legislative Provisions) Bill
on Thursday, 27 March 2003 at 8:30 am
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000542	Chairman	Relevant papers; renumbering of papers; circular on schedule of future meetings agreed at the last meeting	
000543-001548	Chairman Hon Margaret NG Hon CHEUNG Man-kwong Hon Emily LAU Hon Howard YOUNG	Proposed order and areas for study of the Bill	
001549-001725	Hon Margaret NG	View of the Hong Kong Bar Association on adaptation of terms	
001726-002216	Chairman Hon Margaret NG Hon Audrey EU Hon CHEUNG Man-kwong Hon Miriam LAU Hon Cyd HO Admin	Proposed order and areas of study of the Bill	
002217-004556	Hon Margaret NG Chairman Admin Clerk Hon CHEUNG Man-kwong Hon LEUNG Fu-wah Hon Henry WU Hon Howard YOUNG Hon LEE Cheuk-yan Hon NG Leung-sing Hon Emily LAU Hon TAM Yiu-chung Hon Albert HO Hon Cyd HO LA	Deadline for provision of the Administration's papers	

Time marker	Speaker	Subject(s)	Action Required
004557-005232	Chairman Hon Margaret NG Admin	Legal effect of a provision requiring enforcement to be consistent with the Basic Law; whether the incorporation of such a provision implied that the Administration would not seek the interpretation of the Standing Committee of the National People's Congress on the relationship between Article 23 of the Basic Law (BL23) and BL39	Admin to provide a response
005232-005537	Hon Audrey EU Hon Margaret NG Chairman Admin	Why BL39 but not other Articles of BL was referred to in provisions requiring enforcement to be consistent with BL; whether requirements in the international covenants and conventions referred to in BL39 which had not been provided in local legislation were not applicable to Hong Kong	Admin to provide a response
005538-005755	LA Chairman	Provisions requiring enforcement to be consistent in the Crimes Ordinance, Official Secrets Ordinance and the Societies Ordinance	
005756-010114	Hon LEE Cheuk-yan Admin	Whether views of experts in international covenants or conventions would be binding on the court	
010115-010249	LA Admin	Judicial authorities on the principle for interpreting legislation enacted for implementing international covenants; scope of application of BL84	Admin to provide the relevant judicial authorities and explain the scope of application of BL84
010250-010641	Hon Cyd HO Chairman Hon Albert HO Admin	Whether the Bill was consistent with the respective articles in the international covenants and conventions referred to in BL39	Admin to provide a response
010642-011009	Hon Margaret NG Chairman Admin	Provision of the Legal Adviser's views on the Administration's response after the latter was received; information about the court's views regarding the interpretation of the international covenants referred to in BL39 in the case of SIN Yau-ming and the case of CHONG Fung-yuen; whether precedents before Reunification were binding on local courts whereas precedents after Reunification were not binding on local courts	Admin to provide a response
011010-011132	Hon Margaret NG Chairman	Whether section 3(2) of the Official Secrets Ordinance was subject to BL39 and whether the section was in contravention of human	Admin to provide a response

Time marker	Speaker	Subject(s)	Action Required
		rights and the common law principle of presumption of innocence	
011133-011210	Chairman	Commencement of the studying the provisions on treason	
011211-011643	Admin Chairman	Briefing on the proposals in the Bill relating to treason	
011644-012301	Hon CHEUNG Man-kwong Chairman Admin	Whether the term “instigation” in the proposed section 2(1)(a) of the Crimes Ordinance covered verbal instigation	
012302-014256	Hon LEE Cheuk-yan Admin Chairman Hon Margaret NG	Whether anti-war demonstrations would amount to assisting public enemy at war or treason	Admin to provide information on the case of <i>Joyce v DPP</i>
014257-015102	Hon Albert HO Chairman Admin	Whether the offence provisions on treason were directed at acts or expression of opinion	
015103-015816	Hon Andrew CHENG Admin Chairman	Whether participation in a human shield at a time of war would amount to treason	
015817-020653	Hon Audrey EU Admin Hon Margaret NG Hon CHEUNG Man-kwong Chairman	Difference between the offence of treason in the proposed section 2(1)(b) and the sedition offence in the proposed section 9A(1)(a) of the Crimes Ordinance	Admin to provide a response
020654-020739	Hon LEE Cheuk-yan Chairman	Whether meetings scheduled to be held in July 2003 should be rescheduled to October 2003	