

立法會
Legislative Council

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LC Paper No. CB(2)1815/02-03

(These minutes have been seen by
the Administration)

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

**Minutes of meeting
held on Tuesday, 1 April 2003 at 2:30 pm
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 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 LEUNG Yiu-chung
Hon Andrew WONG Wang-fat, JP
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
Dr Hon LAW Chi-kwong, 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
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 Cyd HO Sau-lan
Hon Fred LI Wah-ming, JP
Hon SIN Chung-kai
Hon LAU Chin-shek, JP
Hon LAU Wong-fat, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Dr Hon LO Wing-lok
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

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 -

Proposed section 2(1)(b) of the Crimes Ordinance

- (a) deleting the term "instigate" and substituting "incite";
- (b) deleting the expression "the People's Republic of China" and substituting "the territory of the People's Republic of China";
- (c) whether the proposed section, when read with the proposed definition of "foreign armed forces", would exclude instigation of armed forces of Taiwan to invade the Mainland;
- (d) whether requesting the territory of Taiwan to be protected under the missile defence system of the United States or inviting foreign armed forces to enter and protect Taiwan would amount to an offence under the proposed section;

Proposed section 2(1)(c) of the Crimes Ordinance

- (e) providing explicitly in the proposed section that expressing anti-war views and providing humanitarian aid would not amount to treason;

- (f) explaining with examples the active and passive assistance to a public enemy at war, the types of assistance that would amount to an offence under the proposed section 2(1)(c) and explaining whether being a human shield at the time of war would amount to such an offence;
- (g) improving the drafting of the proposed section, having regard to the following suggestions of members :
 - (i) for the purpose of achieving consistency between the Chinese and English texts;
 - (ii) amending the expression "形勢";

Others

- (h) explaining the meaning of the term "intent" in the proposed section 2(1)(a) and 2(1)(c) of the Crimes Ordinance and whether:
 - (i) it referred to subjective intent;
 - (ii) it covered both predominant intent and secondary intent;
 - (iii) recklessness would be regarded as an intent;

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)

- (i) providing information on whether the offence of assisting a public enemy at war was found in the relevant legislation of Singapore;
- (j) explaining and providing case law on "joins the enemies in acts of hostility against the country" referred to in page 4 of the paper;
- (k) providing information on the case of *Re Schaefer* referred to in footnote 8 of the paper; and
- (l) explaining whether assisting nationals of an enemy country to leave one's country would amount to "assisting public enemy" under the proposed section 2(1)(c).

3. The Administration undertook to provide a paper explaining the meaning of the expression "the People's Republic of China" in the Bill.

4. The Bills Committee agreed that a verbatim record should be prepared on the discussion relating to whether the expression "the People's Republic of China" included Taiwan and the Administration's clarification relating to the People's Liberation Army.

5. Mr Martin LEE requested to put on record his view that with a large membership size, the Bills Committee would face the problem of lack of a quorum, if a meeting was too long.

II. Rescheduling of meeting on 6 May 2003 to 10 May 2003

6. The Chairman informed members that as a meeting of the Panel on Security and a joint meeting of the Panel on Manpower and Panel on Administration of Justice and Legal Services would be held in the afternoon of 6 May 2003, he suggested that the meeting originally scheduled for 6 May 2003 be rescheduled to 10 May 2003 from 9:00 am to 12:30 pm.

7. Mr Martin LEE disagreed. He said that if the Bills Committee had decided to hold meetings to discuss the Bill with the Administration on Tuesdays, it should stick to such a decision. He considered that the Bills Committee should not hold any meeting in that week to discuss the Bill with the Administration, if such a meeting could not be held in the afternoon of that Tuesday. He added that Saturdays were reserved for meetings to receive the views of the public on the Bill.

8. Mr CHAN Kam-lam expressed support for the Chairman's suggestion. Mr Howard YOUNG said that a meeting could be scheduled on 10 May 2003 to discuss the Bill with the Administration, if no member of the public was scheduled for presentation of views to the Bills Committee. Mr Martin LEE said that if the meeting was already scheduled for discussion of the Bill with the Administration, no member of the public would be able to attend the meeting to present views on the Bill.

9. The Chairman concluded that the meeting on 6 May 2003 would be rescheduled to 10 May 2003 from 9:00 am to 12:30 pm. He added that consideration could be given to receiving the views of the public on the Bill at the meeting, if such a need arose in the future.

III. Date of next meeting

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

11. The meeting ended at 6:35 pm.

**Proceedings of the meeting of the Bills Committee on
National Security (Legislative Provisions) Bill
on Tuesday, 1 April 2003 at 2:30 pm
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000449	Chairman Admin	Opening remarks and papers issued	
000450-001334	Hon CHEUNG Man-kwong Chairman Admin	Whether expressing anti-war views would be caught by the proposed section 2(1)(c) of the Crimes Ordinance (CO); comparison of the maximum penalties for treason in Hong Kong and the Mainland	
001335-002400	Hon LEE Cheuk-yan Chairman Admin	Comparison of the proposed provisions on treason with those in the legislation of other jurisdictions	
002401-003237	Hon Albert HO Admin Chairman	Meaning of the term "intent" in the proposed section 2(1)(a) and (c) of CO	
003238-003855	Hon LAU Kong-wah Admin	Meaning of the term "position" in the proposed section 2(1)(c) of CO	
003856-004318	Hon Martin LEE Chairman Admin	Whether expressing anti-war views would be caught by the proposed section 2(1)(c) of CO	
004319-004940	Hon Audrey EU Chairman Admin	Whether there was a need to spell out explicitly that expressing anti-war views and providing humanitarian aid would not amount to treason; whether the term "instigate" in the proposed section 2(1)(b) should be amended to "incite"	Admin to consider deleting the term "instigate" and substituting "incite"; to consider providing explicitly that expressing anti-war views and providing humanitarian aid would not amount to treason
004941-005913	Hon Andrew CHENG Chairman Admin	Whether being a human shield at the time of war would amount to assisting a public enemy at war	Admin to explain with examples the active and passive assistance to a public enemy at war, the types of assistance that would amount to an offence under the proposed section

Time marker	Speaker	Subject(s)	Action Required
			2(1)(c) and to explain whether being a human shield at the time of war would amount to such an offence
005914-010342	Hon SZETO Wah Admin	Meaning of the term "position" in the proposed section 2(1)(c) of CO	
010343-011312	Hon CHEUNG Man-kwong Chairman Admin	Whether the proposed section 2(1)(a)(ii) and (iii) of CO was too broad	
011313-012325	Hon James TO Chairman Admin	Whether assisting nationals of an enemy country to leave one's country would amount to "assisting public enemy"	
012326-013209	Hon Jasper TSANG Chairman Hon James TO Admin	Drafting of the Chinese version of the proposed section 2(1)(c) of CO	Admin to consider improving the drafting of the proposed section
013210-013619	Hon LEE Cheuk-yan Admin	Whether "adherent to" amounted to assistance; whether the offence of assisting a public enemy at war was found in the relevant legislation of Singapore	Admin to provide information on whether the offence of assisting a public enemy at war was found in the relevant legislation of Singapore
013620-014127	Hon LAU Kong-wah Admin	Meaning of the proposed section 2(4)(a) and (b) of CO	
014128-015215	Hon Martin LEE Chairman Admin	Whether the expression "藉着" in the proposed section 2(1)(c) of CO should be deleted; whether being a human shield at the time of war would amount to treason	Admin to consider improving the drafting of the proposed section
015216-015617	Hon Emily LAU Admin Chairman	Meaning of "joins the enemies in acts of hostility against the country" referred to in page 4 of Paper No. 1	Admin to explain and provide case law on "joins the enemies in acts of hostility against the country" referred to in page 4 of the paper
[Break]			

Time marker	Speaker	Subject(s)	Action Required
021004-021953	Chairman Hon Audrey EU Admin	Whether the expression "形勢" in the proposed section 2(1)(c) should be amended; meaning of the term "intent" in the proposed section 2(1)(a) and (c)	Admin to explain the meaning of the term "intent"
021954-022737	Hon James TO Admin Hon HUI Cheung-ching Chairman	Whether assisting nationals of an enemy country to leave one's country would amount to "assisting public enemy"	
022738-023215	Hon Albert HO Chairman Admin	Whether the expression "foreign armed forces" in the proposed section 2(1)(a) included Taiwan forces	
023216-023344	Hon Miriam LAU Chairman Admin	Whether an offence under the proposed section 2(1)(c) of CO must contain the element of intent	
023345-024036	Hon Jasper TSANG Chairman Admin	Why the proposed section 2(3) of CO was confined to Chinese nationals who were Hong Kong permanent residents	
024037-024136	Hon Miriam LAU Admin	Information on the case of <i>Re Schaefer</i> referred to in footnote 8 of Paper No. 1	Admin to provide information on the case of <i>Re Schaefer</i>
024137-024824	Hon Martin LEE Admin Chairman	Whether recklessness would be regarded as an intent; expression of the view that with a large membership size, the Bills Committee would face the problem of lack of a quorum, if a meeting was too long	Admin to explain whether recklessness would be regarded as an intent
024825-025502	Hon James TO Admin Chairman	Whether assisting nationals of an enemy country to leave one's country would amount to "assisting public enemy"	Admin to explain whether assisting nationals of an enemy country to leave one's country would amount to "assisting public enemy" under the proposed section 2(1)(c)
025503-030426	Hon Margaret NG Chairman Admin	Whether being a human shield at the time of war would be caught by the offence provision in the proposed section 2(1)(c) of CO; whether the time limit for instituting prosecution should be abolished	

Time marker	Speaker	Subject(s)	Action Required
030427-030950	Hon Albert HO Admin	Interpretation of the expression "the People's Republic of China" and whether it included Taiwan	Admin to consider deleting the expression "the People's Republic of China" and substituting "the territory of the People's Republic of China" in the proposed section 2(1)(b) of CO
030951-031450	Hon Margaret NG Admin Chairman	Interpretation of the term "armed forces of the People's Republic of China"	
031451-031607	Hon LAU Kong-wah Admin Chairman	Amendment of the expression "形勢" in the proposed section 2(1)(c)	Admin to consider amending the expression "形勢"
031608-033117	Hon Martin LEE Admin Chairman Hon LAU Kong-wah Hon Andrew WONG LA	Interpretation of the expression "the People's Republic of China" and whether it included Taiwan	
033118-033725	Hon James TO Admin	Whether the proposed section 2(1)(b), when read with the proposed definition of "foreign armed forces", would exclude instigation of armed forces of Taiwan to invade the Mainland; whether requesting the territory of Taiwan to be protected under the missile defence system of the United States or inviting foreign armed forces to enter and protect Taiwan would amount to an offence under the proposed section	Admin to provide a response
033726-034009	Hon Miriam LAU LA	Whether any "contrary intention" referred to in section 2(1) of the Interpretation and General Clauses Ordinance (Cap. 1) appeared in the Bill	
034010-034458	Hon Margaret NG Chairman Admin	Meaning of the expression "the People's Republic of China" in different parts of the Bill	Admin to provide a paper explaining the meaning of the expression "the People's Republic of China" in the Bill

Time marker	Speaker	Subject(s)	Action Required
034459-035616	Hon Andrew WONG Chairman Admin Hon Martin LEE Hon James TO	Interpretation of the expression "the People's Republic of China" and whether it included Taiwan; interpretation of the expression "public enemy at war with the People's Republic of China"	
035617-040030	Hon Martin LEE Chairman Hon Jasper TSANG Clerk Hon James TO	Preparation of verbatim record of the relevant discussions	
040031-040507	Chairman Hon Martin LEE Hon CHAN Kam-lam Hon Howard YOUNG	Rescheduling of meeting on 6 May 2003 to 10 May 2003	

Council Business Division 2
Legislative Council Secretariat
22 April 2003