

立法會
Legislative Council

LC Paper No. CB(2)285/17-18
(These minutes have been seen
by the Administration)

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**Bills Committee on United Nations (Anti-Terrorism Measures)
(Amendment) Bill 2017**

**Minutes of meeting
held on Tuesday, 10 October 2017, at 9:00 am
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon CHAN Hak-kan, BBS, JP (Chairman)
Hon James TO Kun-sun
Hon Paul TSE Wai-chun, JP
Hon WU Chi-wai, MH
Hon YIU Si-wing, BBS
Hon MA Fung-kwok, SBS, JP
Hon CHAN Chi-chuen
Dr Hon Elizabeth QUAT, BBS, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Holden CHOW Ho-ding
Hon CHAN Chun-ying

Members absent : Hon Kenneth LEUNG
Hon Alvin YEUNG
Hon Jimmy NG Wing-ka, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon SHIU Ka-fai
Hon YUNG Hoi-yan

Public Officers attending : Item I
Ms Mimi LEE Mei-mei, JP
Deputy Secretary for Security 1

Ms Iris LEE Ho-ki
Principal Assistant Secretary for Security A

Mr Percy LEUNG Siu-to
Assistant Secretary for Security A2

Ms Anthea LI Suk-kwan
Deputy Principal Government Counsel
(Mutual Legal Assistance) 1
Department of Justice

Ms Carmen CHAN Ka-man
Acting Senior Government Counsel
Department of Justice

Miss Osa CHAN Wing-yan
Government Counsel
Department of Justice

Mr Gary LI Ming-fung
Government Counsel
Department of Justice

Attendance : Item I
by invitation

Individual

Dr CHEN Chapman

Lab in Hong Kong

Mr Tommy CHEUNG Sau-yin
Convener

香港中國旅遊協會

Mr Perry YIU Pak-leung

The Hong Kong Chinese Importers' & Exporters'
Association

Mr CHONG Shing-hum

Individual

Mr LI Chi-keung

Individual

Mr CHOON Yew-knee

Individual

Mr Tony PANG Chor-fu

Individual

Ms Sally YEUNG Ching

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Mr Raymond LAM
Senior Council Secretary (2) 7

Ms Kiwi NG
Legislative Assistant (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

I. Meeting with deputations and the Administration

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

2. The Bills Committee received oral representations from eight deputations/individuals attending the meeting. The major views and concerns expressed by the deputations/individuals are summarized as follows:

- (a) some deputation/individuals expressed support for the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2017 ("the Bill") and called for its early enactment, while some other deputation/individual expressed opposition/reservation about the Bill;
- (b) the proposals in the Bill to prohibit Hong Kong permanent residents ("HKPRs") from leaving Hong Kong for a foreign state for specified purpose and to prohibit a person from dealing with terrorist property might be open to abuse;
- (c) the proposals in the Bill might be in contravention of Articles 31 and 105 of the Basic Law as well as Articles 13 and 17 of the Universal Declaration of Human Rights;
- (d) the proposal in the Bill to prohibit HKPRs from leaving Hong Kong for a foreign state for specified purpose might be unfair in that it would apply only to HKPRs;
- (e) the definition of "terrorist" under the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("UNATMO") should be narrowed down to those specified in accordance with the designations made by the United Nations committee on the relevant United Nations Security Council Resolution ("UNSCR") only;
- (f) the Administration should explain the meaning of "property" under the Bill;
- (g) the Administration should explain the disclosure requirements under the Bill and issue guidelines to relevant industries;
- (h) the Administration should explain the meaning of "dealing with" specified terrorist property;
- (i) publicity targetting the travel industry should be launched on the requirements under the Bill after its passage;
- (j) the Administration should explain whether the Bill had struck a balance between freedom of travel and anti-terrorism; and

- (k) the Administration should provide information on the enactment of legislation to implement UNSCR 2178 in the Mainland and Macao Special Administrative Region ("SAR") as well as other jurisdictions.

3. In response to the views and concerns of the deputations/individuals attending the meeting, the Administration made the following points:

- (a) the term "terrorist act" was clearly defined in section 2(1) of UNATMO, and terrorists would only be specified in accordance with the designations made by the United Nations committee on the relevant UNSCR, or by the court on application by the Administration. An act would amount to a terrorist act only if the conditions in paragraph (a) of the definition of "terrorist act" in section 2(1) of UNATMO were met, subject to the exemptions provided in the relevant paragraph (b) under the definition;
- (b) since the commencement of UNATMO, the Administration had not made any application to court under section 5 for designating any person as terrorist;
- (c) the Bill had struck a proper balance between freedom of travel and anti-terrorism work. A HKPR would be prohibited from leaving Hong Kong to a foreign state only if there was evidence that he or she intentionally travelled for specified purpose. This prohibition was important and necessary to protect public safety in the fight against terrorism;
- (d) provisions on freezing of assets were set out in section 6 of UNATMO;
- (e) the Bill did not involve any amendment to the existing definition of "terrorist act" set out in section 2 of UNATMO;
- (f) the extra-territorial application of the Bill, if passed, could be enforced through international cooperation as provided for under the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) and the Fugitive Offenders Ordinance (Cap. 503);

- (g) after passage of the Bill, the Administration would step up communication with the travel industry and provide the industry with information in relation to the new prohibitions;
- (h) a high threshold of *mens rea* was required for an offence under the Bill. The prosecution must base on the facts of the case, and the burden of proof would fall on the prosecution, who had to prove beyond reasonable doubt. Similarly, the court would only convict a person for the offence where it could be proven beyond reasonable doubt that the person had committed the offence. A company or travel agency would only commit the new offence under the proposed new section 11M(1) of UNATMO if it had the intention and knowledge that the travel would be for a specified purpose and it still organized and facilitated it;
- (i) having regard to the objective of UNSCR 2178 that each Member state should prevent its nationals from travelling for specified purpose, it was proposed in the Bill to prohibit HKPRs from leaving Hong Kong for a foreign state for specified purpose;
- (j) although "property" was not defined in UNATMO, reference could be made to its definition in the Interpretation and General Clauses Ordinance (Cap. 1);
- (k) "deal with" in relation to property was defined in section 6(12) of UNATMO and the definition would also apply to the new section 8A;
- (l) provisions on disclosure of knowledge or suspicion that property was terrorist property were set out in section 12 of UNATMO; and
- (m) Australia, Canada, the Mainland, Macao SAR and the United Kingdom had implemented the requirements in UNSCR 2178 through legislation.

4. The Administration was requested to:

- (a) provide a consolidated response to the issues raised by attending deputations/individuals as well as those raised in the written submissions to the Bills Committee;

- (b) provide information on whether and how UNSCR 2178 was implemented by other jurisdictions;
- (c) explain whether the attending of a religious lecture or retreat would constitute the attending of a terrorist training;
- (d) provide a response on whether Administration would, in relation to persons designated as terrorist by the Central People's Government, make an application to court under section 5 of UNATMO for designating such persons as terrorist; and
- (e) provide information on the court procedures for considering such an application by the Administration, including whether relevant parties would be allowed to join in the proceedings.

II. Any other business

5. Members noted that the next meeting had been scheduled for 6 November 2017 at 2:30 pm to continue discussion with the Administration.

6. There being no other business, the meeting ended at 11:01 am.

Council Business Division 2
Legislative Council Secretariat
9 November 2017

**Proceedings of meeting of the Bills Committee on
United Nations (Anti-Terrorism Measures) (Amendment) Bill 2017
held on Tuesday, 10 October 2017, at 9:00 am
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s) / Discussion	Action Required
000000 - 000933	Chairman	Opening remarks	
000934 - 001249	Chairman Dr CHEN Chapman	Presentation of views [LC Paper Nos. CB(2)2165/16-17(01) and CB(2)108/17-18(01)]	
001250 - 001558	Chairman Mr Perry YIU, 香港中國 旅遊協會	Presentation of views	
001559 - 001907	Chairman Mr CHEUNG Sau-yin, Lab in Hong Kong	Presentation of views [LC Paper No. CB(2)2165/16-17(02)]	
001908 - 002201	Chairman Ms Sally YEUNG	Presentation of views [LC Paper No. CB(2)108/17-18(03)]	
002202 - 002406	Chairman Mr Tony PANG	Presentation of views	
002407 - 002536	Chairman Mr CHOON Yew-knee	Presentation of views	
002537 - 002804	Chairman Mr LI Chi-keung	Presentation of views [LC Paper No. CB(2)108/17-18(02)]	
002805 - 003138	Chairman Mr CHONG Shing-hum, The Hong Kong Chinese Importers' & Exporters' Association	Presentation of views	
003139 - 010341	Chairman Admin	Administration's response to issues raised by deputations and individuals attending the meeting. The Administration was requested to provide a consolidated written response to the issues raised by attending deputations/individuals as well as those raised in the written submissions to the Bills Committee.	Admin

Time marker	Speaker	Subject(s) / Discussion	Action Required
010342 - 012526	Chairman Mr James TO Mr CHAN Chi-chuen Mr WU Chi-wai Admin	<p>Mr James TO's questions regarding:</p> <ul style="list-style-type: none"> (a) whether the Administration would take into consideration the lists of terrorists adopted by other jurisdictions when determining whether an overseas training was a terrorist training; and (b) whether the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2017 ("the Bill") should be directed at training for terrorist act, instead of being directed at terrorist training. <p>Mr CHAN Chi-chuen's questions regarding:</p> <ul style="list-style-type: none"> (a) whether the attending of a religious lecture or retreat would constitute the attending of a terrorist training; and (b) whether and how the United Nations Security Council Resolution ("UNSCR") 2178 was implemented by other jurisdictions. <p>Mr WU Chi-wai's questions regarding whether the "lone wolf" attacks recently found in many other countries constituted terrorist act and how such attacks were dealt with under the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("UNATMO").</p> <p>Administration's response that:</p> <ul style="list-style-type: none"> (a) whether an act would amount to a terrorist act, or whether a training would amount to a training for terrorist act, would be determined having regard to facts of the case and whether the conditions in paragraph (a) of the definition of "terrorist act" in section 2(1) of UNATMO were met, subject to the exemptions provided in the relevant paragraph (b) under the definition; (b) a high threshold of <i>mens rea</i> was required for an offence under the Bill; and (c) under UNATMO, terrorists would only be specified in accordance with the designations made by the United Nations committee on the relevant UNSCR, or by the court on application by the Administration. In Hong Kong, terrorists had so far only been specified in accordance with the designations made by the 	

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		<p>United Nations committee on the relevant UNSCR.</p> <p>The Administration was requested to:</p> <p>(a) provide information on whether and how UNSCR 2178 was implemented by other jurisdictions; and</p> <p>(b) explain in writing whether the attending of a religious lecture or retreat would constitute the attending of a terrorist training.</p>	<p>Admin</p>
<p>012527 - 014001</p>	<p>Chairman Mr YIU Si-wing Mr Paul TSE Admin</p>	<p>Mr YIU Si-wing's expression of support for the Bill and questions regarding:</p> <p>(a) whether the Administration would explain to the travel industry how they should comply with the Bill;</p> <p>(b) whether an employer would be held liable for an offence under the Bill committed by his employee; and</p> <p>(c) whether failure to report offences under the Bill would amount to an offence.</p> <p>Mr Paul TSE's questions regarding:</p> <p>(a) whether the scope of terrorist under UNATMO could be confined to only those specified in accordance with the designations made by the United Nations committee on the relevant UNSCR;</p> <p>(b) whether the Administration would take into consideration the lists of terrorists adopted by other jurisdictions in the implementation of the Bill, if passed; and</p> <p>(c) whether a travel agency would be held liable under the Bill in case where the agency had organized, or made arrangements to facilitate, a customer's travel during the agency's ordinary course of business (such as by selling air-tickets to its customer) and only discovered that the customer was leaving Hong Kong for a specified purpose (as provided in the new section 11M(1)) after the air-ticket was sold to or arrangements were made for the customer.</p>	

Time marker	Speaker	Subject(s) / Discussion	Action Required
		<p>Administration's response that:</p> <ul style="list-style-type: none"> (a) after passage of the Bill, the Administration would step up communication with the travel industry in relation to the new prohibitions; (b) the proposals in the Bill were targeted at the real criminals but not companies or agencies that conducted normal business and did not harbour any criminal intent; (c) the Administration planned to provide a hotline to facilitate the reporting of breaches of the requirements in the Bill; (d) under UNATMO, terrorists would be specified in accordance with the designations made by the United Nations committee on the relevant UNSCR, or by the court on application by the Administration. Confining the specifying of terrorists to the former procedures might create loopholes in legislation directed at terrorists; (e) an act would amount to a terrorist act only if the conditions in paragraph (a) of the definition of "terrorist act" in section 2(1) of UNATMO were met, subject to the exemptions provided in the relevant paragraph (b) under the definition; and (f) a travel agency would commit the new offence under the Bill if it had the intention or knowledge that the travel would be for a specified purpose and it still organized or facilitated it. 	
014002 - 014706	<p>Chairman Mr Holden CHOW Mr CHAN Chun-ying Admin</p>	<p>Mr Holden CHOW's question regarding how the extra-territorial application of the Bill would be enforced.</p> <p>Mr CHAN Chun-ying's question regarding whether Hong Kong permanent residents ("HKPRs") with foreign nationality were subject to the Bill.</p> <p>Administration's response that:</p> <ul style="list-style-type: none"> (a) the extra-territorial application of the Bill, if passed, could be enforced through international cooperation as provided for under the Mutual Legal Assistance in Criminal Matters Ordinance 	

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		<p>(Cap. 525) and the Fugitive Offenders Ordinance (Cap. 503); and</p> <p>(b) the definition of HKPRs was set out clearly in Article 24 of the Basic Law.</p>	
014707 - 015809	<p>Chairman Mr James TO Mr CHEUNG Sau-yin, Lab in Hong Kong Mr Tony PANG Admin</p>	<p>Mr James TO considered that instead of being directed at terrorist training, the Bill should be directed at training for such act.</p> <p>Mr CHEUNG Sau-yin considered that as different countries might have different lists of terrorists, terrorists should be confined under the Bill to those specified in accordance with the designations made by the United Nations committee on the relevant UNSCR only.</p> <p>Mr Tony PANG considered that the requirements under UNSCR 2178 should be implemented in Hong Kong, especially given that they had already been implemented by many other jurisdictions.</p> <p>Administration's response that:</p> <p>(a) UNSCR 2178 was directed at individuals who travelled for the purpose of "the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training";</p> <p>(b) in the course of drafting of the Bill, reference had been made to relevant legislation in other jurisdictions;</p> <p>(c) as for "terrorist training", it was stated in the Bill that it referred to "training that is in connection with the perpetration, planning or preparation of, or participation in, one or more terrorist acts"; and</p> <p>(d) under sections 4 and 5 of UNATMO, terrorists would be specified in accordance with the designations made by the United Nations committee on the relevant UNSCR, or by the court on application by the Chief Executive.</p>	

Time marker	Speaker	Subject(s) / Discussion	Action Required
015810 - 020535	Chairman Mr CHAN Chi-chuen Admin Mr James TO	<p>Mr CHAN Chi-chuen's concerns and the Administration's response regarding whether Administration would, in relation to persons designated as terrorists by the Central People's Government ("CPG"), make an application to court under section 5 of UNATMO for designating such persons as terrorist.</p> <p>Mr James TO's concerns regarding the court procedures for considering such an application by the Administration, including whether relevant parties would be allowed to join in the relevant proceedings.</p> <p>The Administration was requested to:</p> <p>(a) provide a response on whether Administration would, in relation to persons designated as terrorist by CPG, make an application to court under section 5 of UNATMO for designating such persons as terrorist; and</p> <p>(b) provide information on the court procedures for considering such an application by the Administration, including whether relevant parties would be allowed to join in the proceedings.</p> <p>Date of next meeting.</p>	Admin