

立法會
Legislative Council

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(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 Friday, 17 November 2017, at 8:30 am
in Conference Room 2 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
Hon Alvin YEUNG
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon YUNG Hoi-yan
Hon CHAN Chun-ying

Members absent : Hon Kenneth LEUNG
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon CHUNG Kwok-pan
Dr Hon Junius HO Kwan-yiu, JP

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
Senior Government Counsel
Department of Justice

Mr Gary LI Ming-fung
Government Counsel
Department of Justice

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

Miss Lulu YEUNG
Clerical Assistant (2) 1

I. Meeting with the Administration

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

2. The Administration was requested to:

- (a) consider the need for amending the term "terrorist training" in the long title of the United Nations (Anti-Terrorism

Measures) (Amendment) Bill 2017 ("the Bill") as "training for terrorist act";

- (b) explain the operation of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) and Fugitive Offenders Ordinance (Cap. 503) in relation to achieving the extra-territorial application of the Bill;
- (c) explain, in relation to paragraph 5 of the Legislative Council ("LegCo") Brief, why the proposals in sub-paragraph (a) would apply to "Hong Kong permanent resident" only whereas the proposals in sub-paragraphs (b), (c) and (d) would apply to "any person";
- (d) provide information on whether the relevant laws of other jurisdictions to implement the United Nations Security Council Resolution 2178 ("UNSCR 2178"), including Australia, Canada and the United Kingdom, were applicable to all persons or their nationals and certain categories of persons (such as residents/new immigrants) only;
- (e) provide a full set of UNSCR 2178;
- (f) explain the need for the expression "in connection with" in the proposed section 11J(b) of the United Nations (Anti-Terrorism Measures) Ordinance ("UNATMO") (Cap. 575);
- (g) explain the factors considered by the Administration in arriving at the proposal in the Bill to restrict the application of the proposed section 11K of UNATMO to Hong Kong permanent residents only;
- (h) explain, from a legal point of view, whether the application of the proposed section 11K of UNATMO to Hong Kong permanent residents only was consistent with Articles 24 and 25 of the Basic Law; and
- (i) explain whether the proposed section 11K of UNATMO would apply to a Hong Kong permanent resident leaving Hong Kong for Taiwan for a purpose listed in paragraph 5 of the LegCo Brief.

II. Any other business

3. Members noted that the next meeting had been scheduled for 28 November 2017 at 4:30 pm to continue discussion with the Administration. The Chairman said that the Bills Committee might, after discussion of the Administration's response to issues raised by members, commence on the clause-by-clause examination of the Bill at the next meeting.

4. There being no other business, the meeting ended at 10:33 am.

Council Business Division 2
Legislative Council Secretariat
20 December 2017

**Proceedings of meeting of the Bills Committee on
United Nations (Anti-Terrorism Measures) (Amendment) Bill 2017
held on Friday, 17 November 2017, at 8:30 am
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker	Subject(s) / Discussion	Action Required
000000 - 001113	Chairman	Opening remarks and relevant papers	
001114 - 001940	Chairman Mr James TO Admin	Mr James TO's question on why the United Nations (Anti-Terrorism Measures) (Amendment) Bill 2017 ("the Bill") was directed at terrorist training, as referred to in paragraph 5 of the Legislative Council ("LegCo") Brief, instead of training for terrorist act. The Administration's response that under the proposed section 11J of the United Nations (Anti-Terrorism Measures) Ordinance ("UNATMO") (Cap. 575), the training had to be connected with the perpetration, planning or preparation of, or participation in, one or more terrorist acts.	
001941 - 002640	Chairman Mr CHAN Chi-chuen Admin	Mr CHAN Chi-chuen's question and the Administration's response regarding whether the term "terrorist training" in the long title of the Bill should be amended as "training for terrorist act". The Administration was requested to consider the need for amending the term "terrorist training" in the long title of the Bill as "training for terrorist act".	Admin
002641 - 003316	Chairman Mr WU Chi-wai Admin Mr James TO	Mr WU Chi-wai's question regarding whether an act would amount to a terrorist act, if the conditions in paragraph (a) (ii) of the definition of "terrorist act" in section 2 of UNATMO were met. The Administration's response that: (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) (i) and (ii) of the definition of "terrorist act" in section 2(1) of UNATMO were met,	

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		<p>subject to the exemptions provided in the relevant paragraph (b) under the definition; and</p> <p>(b) a high threshold of <i>mens rea</i> was required for an offence under the Bill.</p>	
003317 - 010225	<p>Chairman Mr MA Fung-kwok Mr James TO Mr CHAN Chi-chuen Mr WU Chi-wai Admin</p>	<p>Mr MA Fung-kwok's questions regarding:</p> <p>(a) how the proposal in the Bill to prohibit any Hong Kong permanent resident ("HKPR") from leaving a place outside the Hong Kong Special Administrative Region ("HKSAR") for a purpose listed in paragraph 5 of the LegCo Brief would be enforced; and</p> <p>(b) the interpretation of paragraph (a)(ii) of the definition of "terrorist act".</p> <p>Mr James TO's questions regarding:</p> <p>(a) whether an act would amount to a terrorist act, if the conditions in paragraph (a)(i) but not paragraph (a)(ii) of the definition of "terrorist act" were met; and</p> <p>(b) 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.</p> <p>Mr WU Chi-wai's question regarding whether the Administration would take into consideration the lists of terrorists adopted by the Mainland when determining whether an overseas training was a terrorist training.</p> <p>The Administration's response that:</p> <p>(a) it would be an offence under the proposed section 11K(2) of UNATMO for a HKPR to leave a place outside HKSAR for a foreign state for a specified purpose defined in the proposed new section 11J. If there was intelligence indicating such an act by a non-HKPR, the Police would notify the jurisdiction concerned through the existing international cooperation mechanism;</p>	

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		<p>(b) 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) (i) and (ii) 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;</p> <p>(c) a high threshold of <i>mens rea</i> was required for an offence under the Bill. Whether an act would amount to a terrorist act would depend on evidence;</p> <p>(d) the Bill did not involve any amendment to the definition of "terrorist act" in UNATMO; and</p> <p>(e) under UNATMO, terrorists would only be specified in accordance with the designations made by the United Nations committee on the relevant United Nations Security Council Resolution ("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 United Nations committee on the relevant UNSCR.</p> <p>Mr CHAN Chi-chuen's question and the Administration's response regarding how the extra-territorial application of the Bill would be enforced.</p> <p>The Administration was requested to explain the operation of the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) and Fugitive Offenders Ordinance (Cap. 503) in relation to achieving the extra-territorial application of the Bill.</p>	<p>Admin</p>
010226 - 010940	Chairman Mr James TO Admin	<p>Mr James TO's question and the Administration's response regarding whether there was a need for the expression "in connection with" in the proposed section 11J(b) of UNATMO.</p> <p>The Administration was requested to:</p>	<p>Admin</p>

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		<p>(a) explain the need for the expression "in connection with" in the proposed section 11J(b) of UNATMO; and</p> <p>(b) provide information on whether the relevant laws of Australia to implement UNSCR 2178 (2014) were applicable to all persons or their nationals and certain categories of persons (such as residents/new immigrants) only.</p>	
010941 - 011605	Chairman Mr CHAN Chi-chuen Admin	<p>Mr CHAN Chi-chuen's question regarding how the court's decision in relation to an application under section 5 of UNATMO for designating persons as terrorist was to be dealt with, if the court's decision was inconsistent with national security.</p> <p>The Administration's response that:</p> <p>(a) according to section 5 of UNATMO, the Chief Executive might make an application to the court for an order to specify a person as a terrorist or terrorist associate, or a property as terrorist property. The court should only make the order if it was satisfied, on the balance of probabilities, that the person was a terrorist or terrorist associate or the property is terrorist property; and</p> <p>(b) the current relevant provisions of UNATMO had already ensured adequate protection for the persons affected by the specifications by the court. For instance, the court might order that any person who might be affected by an application under section 5 of UNATMO (in the case of an application under section 5(1) made <i>inter partes</i>) be joined as a party to the proceedings. As regards terrorists or terrorist associates who were specified in <i>ex parte</i> court proceedings, or persons who held or were affected by terrorist property so specified, etc., they could at any time make an application to the court for revoking the specification order in accordance with section 17(1). In addition, subject to section 18, the person could apply to the court for compensation.</p>	

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011606 - 013032	Chairman Mr James TO Mr CHAN Chi-chuen ALA10 Admin	<p>Mr James TO's question on whether "terrorist training" included training on driving skills in injuring a large number of pedestrians deliberately.</p> <p>Mr CHAN Chi-chuen's question regarding whether a journalist who left Hong Kong to undergo overseas terrorist training for the purpose of gathering journalistic material on terrorist training would be caught by the Bill, if enacted.</p> <p>The Administration's response that a high threshold of <i>mens rea</i> was required for an offence under the Bill. Only persons who had the intention or knowledge that the travel was organized or facilitated for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts, or the provision or receiving of terrorist training would be convicted of the new offence.</p> <p>Issues raised by Mr James TO in relation to the letter dated 3 November 2017 from ALA10 to the Administration (LC Paper No. CB(2)268/17-18(01)) and the Administration's response dated 15 November 2017 (LC Paper No. CB(2)333/17-18(01)). ALA10 elaborated on the basis of the enquiry made in respect of the unequal treatment between HKPRs and non-HKPRs under the proposed section 11K by referring to Articles 24 and 25 of the Basic Law, and requested the Administration to provide the legal justifications on such treatment in the light of the Articles. The Administration was also invited to provide the full text of UNSCR 2178(2014) to illustrate to members how the Bill sought to implement UNSCR 2178 (2014).</p>	
013033 - 014558	Chairman Mr James TO ALA10 Admin	<p>Mr James TO's questions and the Administration's response regarding:</p> <p>(a) why the proposals in paragraph 5(a) of the LegCo Brief would apply to "Hong Kong permanent resident" only whereas the proposals in paragraphs 5(b), (c) and (d) of the LegCo Brief would apply to "any person"; and</p>	

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		<p>(b) the factors considered by the Administration in arriving at the proposal in the Bill to restrict the application of the proposed section 11K of UNATMO to HKPRs only.</p> <p>ALA10's suggestion that the Administration be requested to explain, from a legal perspective, how the application of the proposed section 11K of UNATMO to HKPRs only but not to non-HKPRs was consistent with Articles 24 and 25 of the Basic Law and to provide the Bills Committee with the full text of UNSCR 2178 (2014).</p> <p>The Administration was requested to:</p> <p>(a) explain, in relation to paragraph 5 of the LegCo Brief, why the proposals in sub-paragraph (a) would apply to "Hong Kong permanent resident" only whereas the proposals in sub-paragraphs (b), (c) and (d) would apply to "any person";</p> <p>(b) provide the full text of UNSCR 2178 (2014);</p> <p>(c) explain, from a legal perspective, how the application of the proposed section 11K of UNATMO to HKPRs only but not to non-HKPRs was consistent with Articles 24 and 25 of the Basic Law; and</p> <p>(d) provide the factors considered by the Administration in arriving at the proposal in the Bill to restrict the application of the proposed section 11K of UNATMO to HKPRs only.</p>	<p>Admin</p>
Break			
015034 - 020237	Chairman Mr James TO ALA10 Admin	<p>Mr James TO's questions and the Administration's response regarding:</p> <p>(a) whether the relevant laws of other jurisdictions to implement UNSCR 2178 (2014), including Canada and the United Kingdom, were applicable to all persons or their nationals and certain categories of persons (such as residents/new immigrants) only; and</p>	

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		<p>(b) whether the proposed section 11K of UNATMO would apply to a HKPR leaving Hong Kong for Taiwan for a purpose listed in paragraph 5 of the LegCo Brief.</p> <p>The Administration was requested to:</p> <p>(a) provide information on whether the relevant laws of other jurisdictions to implement UNSCR 2178 (2014), including Canada and the United Kingdom, were applicable to all persons or their nationals and certain categories of persons (such as residents/new immigrants) only; and</p> <p>(b) clarify whether the proposed section 11K of UNATMO would apply to a HKPR leaving Hong Kong for Taiwan for a purpose listed in paragraph 5 of the LegCo Brief.</p>	<p>Admin</p>
020238 - 020759	Chairman Mr James TO Mr SHIU Ka-fai	Chairman's remark as well as the respective views of Mr James TO and Mr SHIU Ka-fai regarding whether the Bills Committee should commence on the clause-by-clause examination of the Bill at the next meeting.	