

立法會
Legislative Council

Ref : CB2/BC/9/01

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

Background paper prepared by the Legislative Council Secretariat

United Nations (Anti-Terrorism Measures) Bill

Purpose

This paper provides a summary of issues and concerns raised by Members on the Administration's proposals in the United Nations (Anti-Terrorism Measures) Bill.

The Administration's proposals

2. At the joint meeting of the Panels on Security and Administration of Justice and Legal Services on 30 November 2001, the Administration informed Members of the need to introduce legislative measures to implement the mandatory elements of the United Nations Security Council Resolution (UNSCR) 1373.

3. At its special meeting held on 5 February 2002, the Panel on Security was consulted on the Administration's legislative proposals to implement the mandatory elements of UNSCR 1373 and certain recommendations of the Financial Action Task Force on Money Laundering. The Administration informed the Panel that it had decided to adopt a minimalist approach to implement UNSCR 1373, which mainly focused on measures against terrorist financing. The Administration briefed Members on the proposed legislative measures as follows -

- (a) Providing a modern definition of "terrorist act", based mainly on the definition of terrorism under the UK Terrorism (United Nations Measures) Order 2001;

- (b) Empowering the Chief Executive to specify by notice in the Gazette terrorists, terrorist associates or terrorist property;
- (c) Empowering the Administration to direct that holders of terrorist funds not to make those funds available to any person and proposing that any persons thus affected should be duly notified and be entitled to apply to the Court to challenge the direction to freeze his funds or assets;
- (d) Prohibiting the provision or making available of funds, financial assets or economic resources for the benefit of persons or entities who commit, participate in or facilitate terrorist acts;
- (e) Creating offences for any person to collect funds for the use of terrorists or terrorist organisations and for any person to disseminate hoaxes of terrorist acts; and
- (f) Requiring financial institutions and other entities subject to anti-money laundering obligations to make reports when they suspect or have reasonable grounds to suspect that funds are linked to or used for terrorist acts.

Issues and concerns raised by Members

4. Members in general supported the adoption of a minimalist approach proposed by the Administration. At the same time, they also raised a number of issues and concerns at the two meetings as summarised in the following paragraphs.

Proposed definition of "terrorist act"

5. As the proposed definition of "terrorist act" was based on the definition of the relevant legislation in the United Kingdom (UK), a Member pointed out that the situation in the UK differed from that in Hong Kong in that there had been much terrorist activities in the UK in the past. The Member also pointed out the anti-terrorist measures adopted in the UK and the US had aroused much concern within their own countries and it might not always be appropriate to follow overseas practices.

6. As regards the scope of the definition, the Member expressed concern that it was so wide that innocent persons, non-terrorist associations and terrorist acts outside Hong Kong might fall within the definition.

List of terrorists

7. Some Members expressed opposition to the Administration's proposal to empower the Chief Executive to list individuals or organisations through an administrative process. A Member considered that amendment of the list of terrorists should be made through a legislative process while another Member considered it more appropriate for the mechanism for amendment of the list to be made by the judiciary than the legislature. A Member suggested that consideration might be given to establishing the initial list by a legislative process, while subsequent additions could be made through a different process. Another Member pointed out the listing process should be a workable one that would enable expeditious additions to the list while providing the necessary check and balance.

8. A Member was concerned whether once an organisation was classified as a terrorist group, all its members would be criminalised for being a member of the organisation. Another Member was of the view that organisation should not be classified as a terrorist organisation merely because of the acts of some extremist members.

9. While noting that the listing process was subject to appeal, some Members expressed concern whether the appellants would be required to prove their innocence in the appeal process.

10. A Member expressed concern that the proposed definition of "terrorist act" and the proposal of empowering the Chief Executive to add individuals or organisations to the list would have the effect of substantially increasing the powers of the Administration. The Member was also concerned that the Central People's Government might influence the decision of the HKSAR Government to list individual and organisations. The Member expressed reservation about the direct incorporation of individuals and organisations designated by UNSCRs into the proposed list of terrorist in Hong Kong. The Member was also concerned that the list would be very long if individuals and organisations listed by other countries were also added to the list.

Freezing of terrorist assets

11. A Member suggested that the Administration should be empowered to issue a temporary freezing order valid for a short period of time to meet the need of freezing funds expeditiously. The Administration should subsequently submit evidence to the court to apply for a freezing order before the expiry of the temporary freezing order.

Human rights considerations

12. Some Members were concerned whether the legislative proposals to be introduced would be consistent with the requirements under the Hong Kong Bill of Rights Ordinance and various international covenants on human rights. They shared the view that a balance should be struck between combating terrorism and protecting human rights.

Minutes of the relevant meetings

13. Members may wish to refer to the minutes of the joint meeting of the Panels on Security and Administration of Justice and Legal Services on 30 November 2001 and the special meeting of the Panel on Security on 5 February 2002 in **Appendices I and II** for details of the discussions.

Council Business Division 2
Legislative Council Secretariat
15 May 2002

立法會
Legislative Council

LC Paper No. CB(2) 916/01-02
(These minutes have been seen
by the Administration)

Ref : CB2/PL/AJLS+SE

**LegCo Panels on Security and
Administration of Justice and Legal Services**

**Minutes of joint meeting held on Friday, 30 November 2001
at 10:45 am in the Chamber of the Legislative Council Building**

Members present : Members of Panel on Security

- * Hon James TO Kun-sun (Chairman)
- Hon LAU Kong-wah (Deputy Chairman)
- Hon Mrs Selina CHOW LIANG Shuk-ye, JP
- Hon CHEUNG Man-kwong
- Hon WONG Yung-kan

Members of the Panel on Administration of Justice and Legal
Services

- ◆ Hon Margaret NG (Chairman)
- Hon Jasper TSANG Yok-sing, JP (Deputy Chairman)
- ◆ Hon Albert HO Chun-yan
- ◆ Hon Ambrose LAU Hon-chuen, GBS, JP
- Hon Emily LAU Wai-hing, JP
- ◆ Hon Audrey EU Yuet-mee, SC, JP

Members attending : Hon Henry WU King-cheong, BBS
Hon James TIEN Pei-chun, GBS, JP
Hon Eric LI Ka-cheung, JP
Hon Bernard CHAN
Dr Hon Philip WONG Yu-hong

Members absent : Members of Panel of Security

Dr Hon LUI Ming-wah, JP
Hon Andrew WONG Wang-fat, JP
Hon Howard YOUNG, JP
Hon IP Kwok-him, JP

Members of the Panel on Administration of Justice and Legal Services

Hon Martin LEE Chu-ming, SC, JP
Hon Miriam LAU Kin-ye, JP

- * Also a member of Panel on Administration of Justice and Legal Services
- ◆ Also a member of Panel on Security

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

Mr Timothy TONG, JP
Deputy Secretary for Security

Mrs Clarie LO, JP
Commissioner for Narcotics

Ms Mimi LEE
Principal Assistant Secretary for Security (Narcotics)

Mrs Margaret CHAN
Principal Assistant Secretary for Security

Mrs Wendy CHOI
Assistant Secretary for Security

Mr Stanley WONG
Deputy Secretary for Financial Services

Mr Bob ALLCOCK, BBS
Solicitor General
Legal Policy Division

Mr John HUNTER
Deputy Principal Government Counsel
Treaties and Law Unit
International Law Division

Mr Danny S Y LEUNG
Division Head
Banking Development Department
Hong Kong Monetary Authority

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

Staff in attendance : Mr Jimmy MA
Legal Adviser, JP

Mr Raymond LAM
Senior Assistant Secretary (2)5

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Members agreed that the meeting would be held as a joint meeting of the Panel on Security and the Panel on Administration of Justice and Legal Services, and members of the Panel on Financial Affairs were invited to attend.

I. Election of Chairman

2. Mr James TO was elected Chairman of the joint meeting.

II. Anti-terrorism legislation and related issues

(LC Paper Nos. CB(2) 490/01-02 and CB(2) 553/01-02(01))

3. At the invitation of the Chairman, Secretary for Security (S for S) briefed Members on the measures to combat terrorism and terrorist financing. She informed Members that the introduction of legislative measures against terrorism would be divided into two stages. The first stage would involve the introduction of legislative proposals to implement the essential elements of United Nations Security Council Resolution (UNSCR) 1373, while the second stage would involve the implementation of the special recommendations of the Financial Action Task Force (FATF) and the UN Conventions relevant to terrorism but not yet applied to Hong Kong.

4. Mr James TIEN expressed support for the introduction of measures against

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terrorism. He asked whether investigations relating to the assets held by a person in Hong Kong would be carried out independently by the law enforcement agencies of Hong Kong. He also asked whether a country could use the name of investigation against terrorism to request Hong Kong to carry out investigations into the asset or business held by a person and share the information obtained from such investigations. He enquired whether such investigations were consistent with the requirements under local legislation related to privacy and taxation.

5. S for S responded that the exchange of information and intelligence with other countries was necessary for combating terrorism. However, all investigations were conducted with the resources of Hong Kong and in accordance with the laws of Hong Kong. As regards the issue of privacy protection, there were exemption provisions in the Personal Data (Privacy) Ordinance that permitted the provision of personal data to relevant government departments for the investigation and prevention of crime. As regards the issue of taxation, she undertook to provide a written reply.

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6. Ms Emily LAU said that she had, together with representatives of non-government organisations (NGOs), held a meeting with S for S and expressed the view that in drawing up legislation on terrorism, a balance should be maintained between combating terrorism and protecting human rights. The NGOs had also expressed the view that the proposed legislation should not be enacted in haste with the compression of necessary procedures. She asked -

- (a) about the timetable for the introduction of legislative amendments to implement UNSCR 1373;
- (b) whether the definition of the term "terrorism" would be substantially widened to the extent that associations such as the Falun Gong would be regarded as a terrorist group;
- (c) whether the proposed legislative amendments would substantially increase the power of law enforcement agencies and reduce the freedom of the public;
- (d) whether the proposed legislative amendments would be consistent with the requirements under the Hong Kong Bill of Rights Ordinance and international covenants on human rights; and
- (e) how public consultation would be conducted on the Administration's proposals.

7. S for S responded that the Administration had always been restrained in increasing the power of law enforcement agencies. The enactment of legislative proposals that increased the power of law enforcement agencies had always been made under the principle of striking a balance between the protection of personal freedom as well as human rights and the safety of the public. They were consistent with the

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common law principle that any increase in power should be proportionate to the needs. The Administration would not seek more power than was necessary. She pointed out that the powers of law enforcement agencies in Hong Kong were much smaller than those of their overseas counterparts.

8. S for S added that in her recent meeting with Ms Emily LAU and NGOs, some representatives of NGOs had expressed concern that some overseas countries such as the Canada, the United Kingdom (UK) and United States (US) had substantially increased the power of law enforcement agencies. She assured Members that local legislative amendments would be drawn up having regard to the risk of terrorist attacks and the needs of law enforcement agencies in Hong Kong. She stressed that the Administration had not sought to introduce the legislative amendments in haste. Many common law jurisdictions, including Canada, Singapore, UK and US had already enacted legislation to give effect to UNSCR 1373. Hong Kong was lagging behind these places.

9. S for S informed Members that the introduction of measures to combat terrorism would comprise two stages. In respect of the first stage, the Administration was considering the options of -

- (a) making a regulation in accordance with section 3 of the United Nations Sanctions Ordinance (Cap. 537) (UNSO); or
- (b) introducing a new bill in late February 2002.

She added that new powers similar to those under the Organized and Serious Crimes Ordinance would be sought for the Police for the investigation of terrorist-related offences under the new bill.

10. As regards the definition of terrorism, S for S said that many specialists in the area and the Department of State of US had, after the terrorist attacks on 11 September 2001, pointed out that there was a need for a new definition of terrorism that reflected modern requirements and developments. She referred to the definition of terrorism in UK on page 6 of the Annex to the Administration's paper entitled "Measures to combat terrorism" and said that some countries had chosen to define terrorism in a more direct way. She said that there was a need to criminalise biochemical attacks, anthrax attacks, hoax reports and actions creating a serious risk to the health or safety of the public.

11. In response to Ms Emily LAU's question about the regulation under the option referred to in paragraph 9(a) above, S for S said that the regulation would be made under section 3 of UNSO by the Chief Executive. No public consultation would be conducted, as was the practice with similar regulations made under UNSO in the past. As a UNSCR was binding on Member States, it was binding on the People's Republic of China (PRC) and thus the Hong Kong Special Administrative Region (HKSAR).

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12. The Chairman said that although HKSAR had an obligation to implement a UNSCR, there was still room for the discussion of the wording to be used in the regulation and how offences should be defined. He hoped that LegCo would be consulted on the legislative proposals.

13. S for S responded that the Administration was aware of the concerns of some Members and had thus proposed two options for the implementation of the first stage. If Members had reservations about the making of a regulation under UNSO, the Administration was willing to introduce a new bill for scrutiny by LegCo.

14. Ms Emily LAU said that public consultation should be conducted on the proposed legislative measures and the Administration should proceed with the option of introducing a new bill for scrutiny by LegCo.

15. Mr Albert HO said that in defining terrorism, the focus should be on the nature of the acts and the extent of harm to the public rather than the purpose of the acts. Referring to the definition adopted by UK, he said that apart from the reference to purpose, the definition seemed not much different from that of other crime. He expressed concern that the new definition for terrorism might be too wide that innocent persons and non-terrorist associations might fall within the new definition.

16. S for S responded that many countries had incorporated in the definition of terrorism a requirement that the crime was for the purpose of advancing a political, religious or ideological cause. However, some specialists had pointed out that many terrorist activities were also connected with organised and serious crime. For example, the funds of some terrorist groups were derived from drug-trafficking and some terrorists might be involved in the use of counterfeit travel documents. Thus, the reference to purpose might not be necessary in the future. As regards the issue of associations falling within the definition, most countries had drawn up a list under the relevant legislation. Solicitor General (SG) added that setting out the names of terrorist groups in a list would help innocent persons to avoid committing offences in respect of them.

17. As regards the definition of terrorism in UK, SG said that motive alone would not constitute a terrorist act. In UK, a terrorist act comprised the following elements -

- (a) threatened actions falling within a list of acts;
- (b) the use or threat was designed to influence the government or intimidate the public; and
- (c) the act was made for the purpose of advancing a political, religious or ideological cause.

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18. Mr Albert HO expressed concern that the new definition of terrorism might be too wide. He said that he was opposed to having a list of persons and entities classified as terrorists. He considered that legislation should be directed towards the act of a person rather than the association to which the person belonged.

19. S for S responded that an entity had to fall within the definition of terrorist group before it could be included in the list. She said that having a list of terrorists would facilitate the freezing of funds used for financing terrorist activities. SG added that the list in Canada was a part of the relevant regulation. In Australia, the Minister was empowered to make additions to its list. In UK, the Treasury was empowered to prohibit the provision of funds to fund holders if there were reasonable grounds to believe that the funds belonged to terrorists.

20. Mr Albert HO expressed concern about the mechanism for additions to the list of terrorists. S for S responded that in the drafting of the legislative proposal, the Administration would examine the possibility of providing channels for seeking redress and the mechanism for amendment of the list.

21. Ms Audrey EU said that the scope of paragraph 8(c) of UNSCR 1333 was very wide and that the funds or financial assets of innocent persons might be frozen. She asked about the redress available to innocent persons.

22. SG said that the United Nations Sanctions (Afghanistan) (Arms Embargoes) Regulation (the Regulation), which gave effect to UNSCR 1333, referred to persons connected with Usama bin Laden and restricted the supply of goods and services to these persons and the territory held by Taliban. An exception to the restrictions could be granted under the authority of a licence under the Regulation. Commissioner for Narcotics (C for N) added that, after the Regulation came into operation, the names of relevant individuals and entities designated by UNSCR had been gazetted and circulated to banks and financial institutions. To date, no such accounts suspected of or known to be connected with the designated names had been identified.

23. In respect of an innocent person charged with the provision of goods to an entity without knowledge that the entity was associated with Usama bin Laden, Ms Audrey EU asked whether such innocent persons should seek redress with a local court or a court in the Mainland. SG responded that it would be necessary for the prosecution to prove that there was a mens rea element in the provision of goods to the Taliban-controlled areas. If a person was in breach of local legislation, he would be prosecuted in the courts of Hong Kong. Ms EU requested the Administration to provide a written response on the redress available. Mr Albert HO added that the Administration should also provide information on whether innocent persons could recover their frozen funds.

24. Miss Margaret NG said that the provisions in UNSCR 1373, especially those in paragraph 1(d), were very wide and that once a regulation was made by CE, there would be little room for CE to exercise any discretion. She asked about the protection

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available, if a regulation was made to implement UNSCR 1373. She added that if the provisions in the regulation were directly adapted from those in UNSCR 1373, they might be in conflict with existing provisions in UNSO.

25. S for S responded that the HKSAR, as part of PRC which was a Member State of UN, had an obligation to implement UNSCR 1373. She pointed out that many countries had already implemented the requirements in UNSCR 1373 through the making of regulations without undermining human rights. Nevertheless, the Administration was willing to introduce a new bill for implementing UNSCR 1373. She took note of Miss Margaret NG's concerns about paragraph 1(d) of UNSCR 1373 and said that the Administration would draw up legislative proposals prudently.

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26. Miss Margaret NG asked whether the Ministry of Foreign Affairs of the People's Republic of China (the Foreign Ministry) had given instructions regarding how the UNSCRs should be implemented in Hong Kong. She requested the Administration to provide copies of the Foreign Ministry's instructions to HKSAR regarding the implementation of UNSCR 1333 and 1373. S for S undertook to consider the request. She said that consent from the Foreign Ministry would be required for the provision of the requested instructions. According to her memory, the instructions from the Foreign Ministry only set out the resolutions of UNSC. The instructions did not refer to implementation details.

27. Miss Margaret NG said that under section 3 of UNSO, CE had to make regulations to give effect to instructions of the Foreign Ministry. She asked whether it was mandatory for Hong Kong to make a regulation for the implementation of UNSCR 1373.

28. SG responded that UNSO applied to places outside PRC, while UNSCR 1373 was not directed at a place. If UNSCR 1373 was to be implemented through the making of a regulation under UNSO, an amendment to UNSO would be necessary before the regulation could be made.

29. The Chairman said that the Legal Adviser (LA) had advised that the scope of UNSCR 1373 might be wider than that of UNSO. It might not be appropriate to make a regulation under UNSO for the purpose of implementing UNSCR 1373.

30. Mr CHEUNG Man-kwong said that the risk of a terrorist attack in Hong Kong was low. Nevertheless, Hong Kong had to fulfil its international obligations. He considered that the mechanism and criteria for additions to the list of terrorist groups should be carefully studied. Issues such as whether the list should be based on the lists supplied by UN, whether Hong Kong should be allowed to make additions to the list, and whether additions would be made upon request from other countries should be carefully studied.

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31. S for S agreed to consider the views of Mr CHEUNG Man-kwong. She said that the US had about 50 000 citizens and important investments in Hong Kong. In

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1998, two US consulates in Africa were the targets of terrorist attacks. Thus, the possibility of a terrorist attack in Hong Kong should not be completely ruled out.

32. Referring to paragraph 16 of the Administration's paper entitled "Measures to combat terrorism", Mr Eric LI asked whether existing legislation in Hong Kong was already adequate, even without the passage of the Drug Trafficking and Organized Crimes (Amendment) Bill 2000 currently under scrutiny by the Legislative Council (LegCo), for compliance with the requirements in UNSCR 1373 regarding the reporting of suspected crime.

33. C for N responded that in respect of the requirements in UNSCR 1373 on the reporting of suspicious transactions, no amendment to existing legislation was necessary. However, legislative amendments would be needed for the requirements on the reporting of crime under the eight Special Recommendations of FATF.

34. Mr Eric LI asked how the general public would be made aware of the list of entities regarded as involved in terrorist activities. He said that merely publishing the list in the Gazette might not be sufficient, as a majority of the public might not read the Gazette. S for S responded that the implementation details could be examined when the relevant legislative proposals were introduced.

35. Referring to paragraph 8 of the Administration's paper entitled "Measures to combat terrorism", Mr LAU Kong-wah asked why six conventions relevant to terrorism, especially the Shanghai Convention on Anti-terrorism, Separatism and Extremism (2001) (the Shanghai Convention), were not applied to Hong Kong. Referring to paragraph 20 of the same paper, he asked about the Administration's initial proposal on the new definition of terrorism and the legislative timetable.

36. S for S responded that some conventions were not applied to Hong Kong mainly because PRC was not a state party to the conventions or the conventions were not yet applied to Hong Kong. The Shanghai Convention was a multilateral convention signed by PRC and five other countries in June 2001. Ratification of the Shanghai Convention was endorsed by the Standing Committee of the National People's Congress in October 2001. The Foreign Ministry was currently seeking the view of HKSAR on the applicability of the Convention to Hong Kong. Mr LAU Kong-wah requested the Administration to inform members of the outcome of the matter.

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37. The Chairman requested the Administration to provide members with the conventions referred to by Mr LAU Kong-wah. He informed Members that LA had advised him that the Foreign Ministry's seeking of HKSAR's views was made under Article 153 of the Basic Law. He said that if Members had any views on the Shanghai Convention, they should provide them to the Administration before the Government responded to the Foreign Ministry.

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38. As regards the definition of terrorism, S for S said that an Australian specialist

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had pointed out that terrorist activity was characterised by the massive harm and destruction created by the activity. Thus, the penalty for terrorist activity should be substantially heavier than that for other crime.

39. S for S reiterated that the introduction of legislative measures would be divided into two stages. The first stage would involve implementation of the essential parts of UNSCR 1373. If a bill was to be introduced, that would be done by end of February 2002. The second stage would involve the implementation of the requirements under new conventions and the recommendations of FATF. The Administration hoped that legislative amendments introduced under the first stage would be passed in June 2002.

40. Mr LAU Kong-wah said that the definition mentioned by S for S was similar to that adopted by Canada, which might be too wide in respect of the reference to political, religious or ideological purpose. He asked about the degree of harm and destruction that would be regarded as massive.

41. S for S responded that different countries had adopted similar definitions for terrorism. The main consideration being given by the Administration to the new definition was whether it should include reference to the purpose of advancing a political, religious or ideological cause as well as biochemical and cyber attacks. She added that the term "massive" could not be quantified. Whether a harm or destruction was massive would be determined by the court.

42. The Chairman considered that the Administration should also examine conventions relating to biochemical weapons. S for S responded that the Administration had examined such conventions and noted that most of them were related to import and export control.

43. The Chairman said that the US had issued many Executive Orders in the past. He expressed concern that a bank to which one of the Executive Orders had referred was still in operation in Hong Kong. He asked about the criteria adopted by the Administration in dealing with the Executive Orders issued by US. He also asked whether the public had been made aware of the reference made in the Executive Order to a bank in Hong Kong.

44. S for S responded that the Executive Orders issued by US had been publicised in the homepage of the US Government. The Hong Kong Monetary Authority had also brought the recent Executive Order on the freezing of terrorist assets to the attention of banks. She stressed that the Administration had to act in accordance with the laws of Hong Kong. Nevertheless, the Administration would provide assistance to other countries in the investigation of terrorist activities.

45. Division Head, Banking Development Department of Hong Kong Monetary Authority added that whether a bank was allowed to operate in Hong Kong was determined by local legislation and that he understood that the Executive Order on the freezing of terrorist assets had no legal effect in Hong Kong. However, the Hong

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Kong Monetary Authority had issued letters to banks bringing their attention to the Executive Order. C for N added that in addition to banks, letters had been issued to all other regulated financial institutions drawing their attention to the Executive Order.

46. The Chairman stressed that if an overseas country enforced a measure relating to a bank or financial institution permitted to operate in Hong Kong, the Administration had a responsibility to bring the matter to the attention of the public.

47. Referring to SG's view that UNSO applied to a place outside PRC, Ms Audrey EU asked why the requirements under UNSCR 1333 could be implemented through the making of a regulation under UNSO.

48. SG responded that the sanctions under UNSCR 1333 were directed at activities in Afghanistan and the Taliban-controlled areas. The regulation involved the taking of actions in Hong Kong to enforce sanctions against these places. On the other hand, the sanctions under UNSCR 1373 were targetted at terrorists in any part of the world.

49. Referring to the United Nations Sanctions (Afghanistan) Regulation, Mr Albert HO asked how the circumstances under which the provision "Except with the permission of the Chief Executive" in section 3 would operate. S for S responded that there were exemption clauses in regulations implementing sanctions of UN for the provision of assistance on humanitarian grounds.

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50. The Chairman requested the Administration to provide Members with the following -

- (a) the full text of overseas legislation enacted for the implementation of UNSCR 1373, especially legislation which provided for a list of entities and persons classified as terrorists, the mechanism for the amendment of the list and the redress available;
- (b) the instructions issued by the Foreign Ministry in respect of UNSCR 1333 and 1373;
- (c) the timetable for public consultation and introduction of legislative proposals; and
- (d) the conventions referred to in paragraph 8 of the Administration's paper entitled "Measures to combat terrorism".

51. S for S said that the Administration would not conduct public consultation on the legislative proposals, as was the case with other countries. She stressed that HKSAR had an obligation to implement resolutions of UNSC. She said that LegCo could conduct its own public consultation in the course of examination of the relevant bill.

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52. In reply to Ms Emily LAU, the Chairman said that he had requested LA to carry out an analysis on relevant overseas legislation after the requested information from the Administration was received and to provide a report on the previous two regulations made by CE to implement UNSCR 1267 and 1333.

53. Regarding public consultation, the Chairman said that he would liaise with the Chairmen of other relevant Panels on the way forward when the requested information was received from the Administration.

54. The meeting ended at 12:55 pm.

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Legislative Council Secretariat
8 January 2002

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

Ref : CB2/PL/SE/1

LegCo Panel on Security

**Minutes of special meeting
held on Tuesday, 5 February 2002
at 8:30 am in the Chamber of the Legislative Council Building**

Members present : Hon James TO Kun-sun (Chairman)
Hon LAU Kong-wah (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Margaret NG
Hon CHEUNG Man-kwong
Hon Howard YOUNG, JP
Hon IP Kwok-him, JP
Hon Audrey EU Yuet-mee, SC, JP

Member attending : Hon Emily LAU Wai-hing, JP

Members absent : Dr Hon LUI Ming-wah, JP
Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon Andrew WONG Wang-fat, JP
Hon WONG Yung-kan
Hon Ambrose LAU Hon-chuen, GBS, JP

Public Officers attending : Item I
Mrs Regina IP, JP
Secretary for Security

Mr Timothy TONG, JP
Deputy Secretary for Security

Mrs Clarie LO, JP
Commissioner for Narcotics

Mr John HUNTER
Deputy Principal Government Counsel

Mr Johann WONG
Principal Assistant Secretary for Security

Mrs Wendy CHOI
Assistant Secretary for Security

Ms Judy MAGUIRE
Legal Consultant (Narcotics)

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

Staff in attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Mr Raymond LAM
Senior Assistant Secretary (2)5

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I. Legislative proposals to implement United Nations Security Council Resolution 1373

(LC Paper Nos. CB(2) 782/01-02(01) to (05), CB(2) 1021/01-02(01), CB(2) 1057/01-02, LS 46/01-02 and LS 53/01-02)

At the invitation of the Chairman, Secretary for Security (S for S) presented the Administration's paper for the meeting and informed Members that -

- (a) the United Nations Security Council Resolution (UNSCR) 1373 mainly required member states to combat terrorists financing. The Administration would not, as in countries like the United Kingdom (UK) and the United States (US), sought to introduce legislative amendments that would substantially increase the power of law enforcement agencies, such as that in detention and interception of communications;
- (b) the enactment of legislative proposals that increased the power of law enforcement agencies had always been made under the principle of striking a balance between the protection of personal freedom as well as human rights and the safety of the public. The Administration would

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not seek more power than was necessary;

- (c) under the legislative proposals, powers similar to those under the Organized and Serious Crimes Ordinance (Cap. 455) (OSCO) would be sought for the Police for the investigation of terrorist-related offences;
- (d) the definition to be proposed for terrorist act would be similar to those adopted by other common law jurisdictions; and
- (e) while Hong Kong had legislation against money laundering, there was currently no local legislation that criminalised terrorist financing, providing or collecting funds to be used for terrorist acts. Legislative measures were necessary to address this deficiency.

2. Referring to paragraph 13 of the Administration's paper for the meeting, Mr CHEUNG Man-kwong asked whether the reporting of news subsequently proved to be false would amount to the offence of disseminating hoaxes of terrorist acts. He said that it was very difficult for a journalist to verify that news were totally true before reporting. He asked how the Administration would differentiate between a news report and a hoax report.

3. Deputy Principal Government Counsel (DPGC) responded that consideration was being given to adopting a provision similar to that in the relevant legislation of Singapore. It would be an offence only if the news were reported with the knowledge that it was false.

4. Mr CHEUNG Man-kwong said that the provision in the relevant legislation of Singapore was "communicating information that he knows or believes to be false", which was different from the provision proposed in the Administration's paper.

5. S for S undertook to consider the views of Mr CHEUNG. She said that the Administration's paper did not set out the wordings to be adopted in the bill to be introduced. It only set out the Administration's proposal to include such a provision in the bill. A direct comparison of the contents in the Administration's paper with provisions in overseas legislation was therefore inappropriate. The proposed legislation only sought to criminalise any person who knowingly or deliberately disseminate hoaxes of terrorist acts, which was different from the reporting of news by journalists. As such a provision had been successfully implemented in many other common law jurisdictions, there should not be a problem in its implementation in Hong Kong.

6. Mr Howard YOUNG asked why the Administration would use a definition of terrorist act based mainly on that in the relevant legislation of UK, although it had said that it would not, as in many other countries including UK, seek to introduce legislative amendments that would substantially increase the power of law enforcement agencies.

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7. S for S responded that the scope of the Administration's legislative proposal would be much narrower than those in other countries. Countries such as Germany, UK and US had enacted anti-terrorism legislation in view of previous terrorist activities in their countries. The US government had, after the terrorist attacks on 11 September 2001, enacted the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act which, among others, facilitated the sharing of information between intelligence agencies and law enforcement agencies and extended existing powers in relation to surveillance of communications. In comparison, the powers of law enforcement agencies in Hong Kong were very limited especially in the interception of communications.

8. Referring to paragraph 6 (v) of the Administration's paper, Mr Howard YOUNG asked why reference was only made to the interference or disruption of an electronic system, but not to the interference or disruption of electric power supply or bringing traffic to a halt.

9. S for S responded that the interference or disruption of an electric power supply system would amount to serious damage to properties and was thus already dealt with in existing legislation. She said that there was a need for a definition of terrorism that reflected modern requirements and developments.

10. In response to Mr Howard YOUNG's question about legislation against hacking, S for S said that the issue was being addressed by the Interdepartmental Working Group on Computer Related Crime.

11. Mr LAU Kong-wah said that according to the Annex to the paper entitled "An analysis of overseas legislation enacted to implement UNSCR 1373" prepared by the Legal Service Division, UK did not have a list of terrorists. He asked why a list of terrorists was proposed for Hong Kong although it was not found in the relevant legislation in UK.

12. S for S responded that a list of terrorists was provided for in the relevant legislation of UK. Before the enactment of legislation to implement UNSCR 1373, the Terrorism Act 2000 had already been enacted in UK to combat terrorist activities.

13. In response to Mr LAU Kong-wah's question about the process for the listing of terrorists or terrorist organisations, S for S said that the list would initially include persons and organisations listed in UNSCRs. The Chief Executive (CE) of the Hong Kong Special Administrative Region (HKSAR) would be empowered to list individuals or organisations through an administrative process. This was to ensure that the process was conducted expeditiously. Empowering CE to make additions to the list was necessary because there might be a change in the lists under UNSCRs in the future or intelligence indicating activities of new terrorists in Hong Kong. She stressed that CE's power to add individuals or organisations to the list was subject to the requirement of reasonable grounds to believe that they were connected with any

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terrorist act as defined in the bill. The listing process was also subject to appeal.

14. Assistant Legal Adviser 1 said that the paper prepared by the Legal Service Division focussed on overseas legislation enacted specifically to implement UNSCR 1373 rather than overseas anti-terrorism legislation in general. The scope of the paper was decided at the joint Panel meeting on 30 November 2001. Members requested the Administration to provide the full text of these legislation, and the Legal Service Division to prepare an analysis. Where there was information relevant to these legislation but not supplied by the Administration, the information was obtained through the Internet and presented in italics to indicate that such information had not been verified.

15. Referring to paragraph 9 of the Administration's paper, Mr LAU Kong-wah asked why the freezing and forfeiture of terrorist assets would apply to individuals or organisations irrespective of whether they had been listed.

16. S for S said that the freezing and forfeiture of assets of terrorists not listed were mainly based on intelligence. They would allow law enforcement agencies to act expeditiously to freeze assets at the start of an investigation to prevent the assets from being moved. As a safeguard, a channel for appeal would be provided under the proposed legislation. Commissioner for Narcotics (C for N) added that the names of relevant individuals and organisations designated by UNSCRs had been circulated to banks and financial institutions. To date, no accounts suspected of or known to be connected with the designated names had been identified. However, freezing of assets had been made in the past under the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) and OSCO.

17. DPGC said that the proposed legislation would deal with the freezing of terrorist assets and making funds available to terrorists. The initial list would comprise terrorists designated in UNSCRs. UNSCRs had mainly dealt with Taliban, Usama bin Laden and the Al Qaida organisation and it was not clear whether UNSC would expand the list to cover the general resolutions in UNSCR 1373. The Administration needed the flexibility to adequately freeze terrorist property and not to be bound by a limited list. He stressed that the Administration would have to investigate and verify that the property belonged to a terrorist under the definition in the legislation. The listing process was subject to appeal.

18. Mr LAU Kong-wah asked about the application of the Shanghai Convention on Anti-terrorism, Separatism and Extremism (2001) (the Shanghai Convention) to HKSAR. S for S responded that the Shanghai Convention was a multilateral anti-terrorism convention signed by the People's Republic of China (PRC) and five other countries. Under Article 153 of the Basic Law (BL 153), the application to the HKSAR of international agreements to which PRC was or became a party should be decided by the Central People's Government (CPG) in accordance with the circumstances and needs of the HKSAR, and after seeking the views of the HKSAR Government. The application of the Shanghai Convention to the HKSAR would be

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dealt with in accordance with BL 153.

19. Miss Margaret NG expressed support for the adoption of a minimalist approach in the implementation of UNSCR 1373. However, she considered the approach adopted by the Administration not a minimalist one. She said that while the proposed definition of terrorist act was based on the definition of the relevant legislation in UK, the situation in UK differed from that in Hong Kong in that there had been much terrorist activities in UK in the past. She asked whether the Association of Falun Dafa would fall within the definition of a terrorist organisation if its members set fire on themselves or "sit in meditation" while refraining from seeking medical treatment.

20. S for S responded that as the situation in Hong Kong differed from that in UK, the Administration had been restrained in increasing the power of law enforcement agencies. It had not sought to introduce legislative proposals that substantially increased the power of law enforcement agencies, such as that in detention and interception of communications. She said that the definition of terrorist act in UK was in line with the international practice of incorporating the elements that the use or threat of action was to influence a government or intimidate the public, and that the use or threat was made for the purpose of advancing a political, religious or ideological cause. In addition to these criteria, it was also necessary to satisfy one of the conditions set out in paragraph 6(i) to (v) of the Administration's paper. S for S added that one of the qualitative characteristics of terrorist activity was the serious harm and damage to property caused by the activity.

21. Miss Margaret NG commented that the scope of the list of terrorists was too wide in that persons or organisations related to terrorist groups were also covered. She said that she was opposed to the amendment of the list of terrorists through administrative procedures. She further said that the listing process was unfair in that even if the aggrieved person lodged an appeal, it would be necessary for the person to prove his innocence. She added that although UK had a list of terrorists, the listing process was a legislative one. She expressed reservations about the direct incorporation of the individuals and organisations listed in UNSCRs into the proposed list of terrorists in Hong Kong. She added that the list would be very long if the individuals and organisations listed by other countries were also added to the list.

22. S for S said that there were many countries where the amendment of lists of terrorists was made through administrative procedures. Matters of national security and public safety had always been a major responsibility of the executive authorities. Actions taken in connection with the list were based on intelligence and required prompt action of law enforcement agencies.

23. S for S stressed that although amendments to the list of terrorists were to be made through an administrative process, it should be noted that the proposed legislation was directed against financing terrorist activities. Even if individuals or organisations were listed, they would still have the freedom of association, holding public meetings and issuing declarations after the proposed legislation was enacted.

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24. S for S said that the Administration would constantly examine whether deletions or additions to the list of terrorists were necessary. She added that previous UNSCRs had been implemented in Hong Kong through regulations made under section 3 of the United Nations Sanctions Ordinance. However, the regulations were mainly related to trade sanctions. As it was found that terrorist activities needed financing, it was necessary to adopt measures against terrorist financing and include terrorists referred to in previous UNSCRs in the list of terrorists. She added that UNSCR 1373 set out the decision that all countries should prevent and suppress the financing of terrorist acts. These would be very difficult to implement if there was not a list of terrorists.

25. Referring to paragraph 12 of the Administration's paper, Miss Margaret NG said that the proposed reporting provision differed from the provisions in existing legislation against money laundering in that the former was directed at financial institutions and businesses while the latter was directed at individuals.

26. C for N responded that as the proposed legislation was directed against terrorist financing, it was important for financial institutions, other business or entities subject to anti-money laundering obligations to report suspicious transactions. The importance of such entities "knowing their customer" was stressed. Recommendation 4 of the Financial Action Task Force Special Recommendations on Terrorist Financing required financial institutions, and other businesses or entities subject to anti-money laundering obligations to report their suspicions that funds might be linked to terrorism. In Hong Kong, the existing anti-money laundering reporting regime was not restricted to financial institutions but extended to any individual.

27. Miss Margaret NG said that the proposed definition of terrorist act and the proposal of empowering CE to add individuals or organisations to the list would have the effect of substantially increasing the power of the Administration. She expressed concern that CPG might influence the decision of the HKSAR Government to list individuals or organisations.

28. S for S responded that CPG had passed criminal laws against terrorism in late 2001. The definition of terrorist act adopted by the Mainland was similar to that proposed by the Administration. As the definition proposed by the Administration was based on that in other common law jurisdictions, it was more specific in comparison with that adopted in Mainland laws.

29. Miss Margaret NG asked whether the term "health" in paragraph 6(iv) of the Administration's paper included mental health. S for S responded that from a layman's point of view, the term "health" included both physical and mental health. However, it should be noted that the proposed definition contained the element of "serious" risk to health. She did not see how "sit in meditation" would create a serious risk to the health or safety of the public.

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30. Miss Margaret NG asked about the Administration's timetable for the introduction of legislative proposals to implement UNSCR 1373. S for S responded that the Administration originally intended to introduce a bill into the Legislative Council (LegCo) in February 2002. As law drafting work had taken more time than expected, the bill would be introduced into LegCo at its meeting on 17 April 2002.

31. Ms Emily LAU considered that the amendment of the list of terrorists should be made through a legislative process. She hoped that the proposed process would be acceptable to various parties, including the legal profession and human rights concern groups. She said that as CPG might request HKSAR to incorporate the list of terrorists in the Mainland to the list of HKSAR, the mechanism for amendment of the list in Hong Kong should be drawn up prudently.

32. S for S agreed to consider the views of Ms Emily LAU. She stressed that any mechanism to be established should be reasonable, feasible and expeditious. The Chairman said that the Administration might share its past experience in handling requests of other countries to freeze assets held by persons or organisations in Hong Kong, and the criteria adopted in the consideration of such requests.

33. In response to the Chairman's question about whether the Mainland had a list of terrorists, S for S suggested that Members might refer to the legislation enacted by the Standing Committee of the National People's Congress in late 2001. She informed Members that CPG had not requested HKSAR to incorporate any terrorist listed by the Mainland in Hong Kong's list for the purpose of implementing UNSCR 1373.

34. In response to Ms Emily LAU's question about whether any country had requested Hong Kong to incorporate their list of terrorists, S for S said that although no country had done so, the possibility of such a request in the future could not be ruled out. Although the proposed legislation would empower CE to amend the list, CE had to act in accordance with the law and additions could be made only when the individual or organisation concerned fell within the definition of a terrorist.

35. Mr Albert HO considered it more appropriate for the mechanism for amendment of the list to be made by the judiciary than the legislature. In his view, the role of the legislature should be that of examining matters of policy and principle. Confusion might arise if the list was to be established by a legislative process and aggrieved persons were to seek redress with the legislature. It was more appropriate for judicial procedures to be established for the protection of affected persons.

36. Mr Albert HO said that although the listing process would be subject to appeal, the appellant would have to prove his innocence. He considered that the burden of proving that a person or organisation should be listed should be on the Administration. To meet the need of freezing funds expeditiously, the Administration could be empowered to issue a temporary freezing order valid for a short period of time. It should subsequently submit evidence to the court and apply for a freezing order before the expiry of the temporary freezing order.

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37. S for S responded that the Administration had examined the idea of issuing a temporary freezing order. It noted that such an arrangement would make it necessary to gather evidence in respect of individuals and organisations already listed in UNSCRs, such as the Al Qaida organisation which was a well-known terrorist group. The Administration therefore considered the existing list under previous UNSCRs a good starting point. Having an administrative listing process would enable additions to be made expeditiously to meet operational needs. She reiterated that the listing process would be subject to appeal. The Chairman said that consideration might be given to establishing the initial list by a legislative process, while subsequent additions could be made through a different process. Mr Albert HO said that UNSCRs might also be presented as evidence before the court.

38. Mr Albert HO asked whether it would be an offence to be a member of a listed organisation. He also asked whether all members of a listed organisation would be held responsible for acts of the listed organisation.

39. DPGC said that the appeal mechanism would require CE to justify the decision to list a person or an organisation. The Administration would be required to prove that there were reasonable grounds to believe that the person was connected with terrorist acts. Regarding recruitment of persons to terrorist groups, the Administration was considering to make it an offence for a person to be a member of a terrorist organisation or to recruit members for a terrorist organisation.

40. Mr CHEUNG Man-kwong said that an organisation should not be classified as a terrorist organisation under the proposed legislation merely because of the acts of some extremist members. Provisions in this respect should be drawn up prudently. Regarding the listing of terrorists or terrorist organisations, he said that while there were different views about whether the listing process should be an administrative, legislative or judicial one, the listing process should be an implementable one that provided for expeditious additions to the list while providing the necessary check and balance.

41. S for S responded that the legislative proposals to be introduced in the first stage would be focussed on measures against terrorist financing and recruitment of members to terrorist organisations. The introduction of legislative measures to implement other conventions would be considered at a later stage. She stressed that whether an organisation should be classified as a terrorist organisation would depend on whether the conditions in the definition were satisfied. There was no question of classifying an organisation as a terrorist organisation merely on the basis of the acts of some extremist members. A more specific definition would provide more safeguard against the criminalisation of innocent persons. DPGC added that the proposed legislation was principally directed against financing of terrorists. If some extremist members of an organisation committed terrorist acts, the property of the organisation and that of the extremist members were liable to confiscation. However, the property of members who had not committed any terrorist act would not be liable to

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confiscation.

42. Mr LAU Kong-wah said that besides the listing process, there were usually requests from other countries for Hong Kong to freeze the assets of certain persons and organisations. He asked how the Administration would ensure that such requests were handled in the interests of the public.

43. S for S responded that although requests for freezing of assets were received from other countries, the Administration had always acted in accordance with the law. She stressed that any freezing of assets would involve judicial procedures where the affected person was given the opportunity to appeal. It was also the Administration's practice to seek legal advice before deciding the way forward in handling a request from a country.

44. C for N said that at present requests to freeze from overseas countries were dealt with under the mutual legal assistance regime. Hong Kong had entered into mutual legal assistance agreements with more than 12 countries. Under the existing regime, requests for freezing of assets from these countries were handled in accordance with the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) and dealt with by application to the Court. Requests for freezing assets to satisfy confiscation orders was only the first step in the legal framework. Requests for confiscation of assets were handled by the Courts in compliance with the legislation in Hong Kong. She informed Members that Hong Kong had handled many such requests relating to drug trafficking. S for S stressed that requests from other countries of freezing of assets would be handled in accordance with legislation in Hong Kong. The Administration would examine whether the terrorists referred to by the requesting country fell within the definition of a terrorist under the legislation in Hong Kong.

Admin

45. The Chairman requested the Administration to provide information on its past experience in the freezing of assets under existing legislation, including the requests received and the information sought from other countries. He asked the Clerk to assist in retrieving any relevant examples provided by the Administration to the then Bills Committee on Mutual Legal Assistance in Criminal Matters Bill.

(Post-meeting note : After searching into the documents provided to the then Bills Committee on Mutual Legal Assistance in Criminal Matters Bill, no relevant examples referred to in paragraph 45 could be found.)

46. Miss Margaret NG said that the measures adopted in UK and US had aroused much concern within their own countries. It might not be always appropriate to follow overseas practices. She expressed concern that once an organisation was classified as a terrorist group, all its members would be criminalised for being a member of the organisation.

47. Miss Margaret NG asked whether terrorist acts outside Hong Kong would fall

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within the definition of terrorist act in Hong Kong and if so, how such acts were to be verified. She said that the act of Falun Gong members who set fire on themselves in the Mainland might fall within the definition of terrorist act, thus resulting in the association being classified as a terrorist organisation.

48. S for S expressed regret that some Members had suspected that the Administration intended to target Falun Gong members with the proposed legislation. She stressed that the objective of the proposed legislation was to implement the essential elements of UNSCR 1373. Regarding the question of whether the definition of terrorist act covered acts outside Hong Kong, she said that the legislation against terrorism in most countries had extra-territorial effect.

49. DPGC added that although it was unlikely that terrorist acts would be committed in Hong Kong, funds related to terrorists might be found in Hong Kong. It was important to include acts outside Hong Kong in the definition of terrorist act.

50. Miss Margaret NG said that the acts of Falun Gong members were only quoted as examples. Her major concern was that the proposed legislation should be drawn up prudently to avoid unintended effects.

Admin

51. The Chairman requested the Administration to provide information on legislation and administrative measures introduced in the Mainland to implement UNSCR 1373, and whether there was a list of terrorists in the Mainland.

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52. Members requested the Legal Service Division and the Research and Library Services Division to jointly provide details about the listing process in overseas countries and the relevant provisions in the legislation of these countries.

53. The meeting ended at 10:30 am.

Council Business Division 2
Legislative Council Secretariat
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