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**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 : Members of Panel of Security

absent

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-yea, JP

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

Public Officers : Mrs Regina IP, JP
attending 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.

18. Mr Albert HO expressed concern that the new definition of terrorism might be

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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.

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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 available, if a regulation was made to implement UNSCR 1373. She added that if the

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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 1998, two US consulates in Africa were the targets of terrorist attacks. Thus, the

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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 had pointed out that terrorist activity was characterised by the massive harm and

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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 Kong Monetary Authority had issued letters to banks bringing their attention to the

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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 targeted 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.

Council Business Division 2
Legislative Council Secretariat
8 January 2002