

**立法會**  
**Legislative Council**

LC Paper No. CB(2) 1478/01-02

(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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Secretariat

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  
25 March 2002