

**For discussion on
5 February 2002**

Legislative Council Panel on Security

Legislative Proposals to Implement Anti-terrorism Measures under United Nations Security Council Resolution (UNSCR) 1373

Purpose

This note briefs members on the main legislative proposals to implement UNSCR 1373 and other related anti-terrorism measures.

Background

2. On 28 September 2001, the United Nations Security Council passed Resolution 1373 (copy of UNSCR 1373 is at **Annex A**). The Resolution calls upon all States to take a number of measures aimed at preventing and suppressing the financing of terrorism. The Central People's Government has given instructions to the HKSAR to implement the Resolution. The UN Security Council has also established a Counter-Terrorism Committee to monitor the implementation of the resolution.

3. The existing legal framework in Hong Kong is already in compliance with many of the requirements of UNSCR 1373. However, a number of areas in the Resolution cannot be fully implemented without enacting new legislation.

4. Hong Kong is currently the President of the Financial Action Task Force on Money Laundering (FATF). The FATF has expanded its

mission beyond money laundering to cover also terrorist financing, and made eight wide-ranging Special Recommendations to tackle the issue (please refer to **Annex B**). Members of the FATF are expected to implement the Special Recommendations by mid-2002. The FATF recommendations overlap to a certain extent with the decisions in UNSCR 1373.

5. The Administration has decided to adopt a minimalist approach to implement UNSCR 1373, which mainly focuses on measures against terrorist financing. We will introduce a Bill on terrorism giving effect to the mandatory elements of the resolution, i.e. paragraphs 1(a), (b), (c), (d) and 2(a), and having regard to recommendations of the FATF. We shall at a later stage decide when and how the other elements of UNSCR 1373, other FATF Special Recommendations and applicable multilateral Conventions ought to be implemented.

Proposed Legislative Measures to Implement UNSCR 1373 etc.

Definition of “terrorist act”

6. A definition of “terrorist act” which reflects modern day requirements will be introduced. We **propose** that the definition should be based mainly on the definition of terrorism under the UK Terrorism (United Nations Measures) Order 2001. The UK definition follows the international trend of requiring that there be the use or threat of action to influence a government or intimidate the public, *and* that the use or threat is made for the purpose of advancing a political, religious or ideological cause. In addition to these two criteria, the action must also -

- (i) involve serious violence against a person;
- (ii) involve serious damage to property;
- (iii) endanger a person’s life, other than that of the person committing the action;

- (iv) create a serious risk to the health or safety of the public or a section of the public; or
- (v) be designed seriously to interfere with or seriously to disrupt an electronic system.

Listing Terrorists and Terrorist Organisations

7. The definition of a “terrorist act” in the Bill will provide the statutory basis for the ‘listing’ of terrorists or terrorist organisations. We **propose** that the Chief Executive should be empowered to list individuals or organisations if there are reasonable grounds to believe that they are connected with any terrorist act as defined in the Bill.

8. As a safeguard, the listing process will be subject to appeal; any listed persons or entities will be able to apply to the Court to challenge the “listing”. We **propose** that it shall be an offence to recruit members for or serve with any listed individuals or organisations. This is in compliance with Paragraph 2(a) of UNSCR 1373, which requires members to “refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists.”

Measures Against Terrorist Financing under UNSCR 1373

9. Paragraphs 1(a), (b), (c) and (d) of UNSCR 1373 require Members to implement measures to prevent and suppress the financing of terrorists, freeze terrorist funds and assets, and criminalise the willful provision or collection of funds for terrorists. The following paragraphs set out in general terms the new enforcement powers and offences proposed to implement these measures. It should be noted that the enforcement powers (such as freezing and forfeiture of terrorist assets) and offences (such as collecting or providing funds or weapons to terrorists) in the Bill will apply to any individual or organisation with a connection or suspected connection to terrorism as per the definition of “terrorist act”, irrespective of whether the individual or organisation has been listed.

10. Paragraph 1(c) of UNSCR 1373 specifically requires jurisdictions to “freeze without delay” terrorist funds and assets. We **propose** that the Administration should be empowered to direct that holders of terrorist funds not make those funds available to any person. Such powers will enable the enforcement authority to act expeditiously to freeze assets at the start of an investigation to reduce the risk that the assets will be used or moved. We also **propose**, as a safeguard, 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. The UK Terrorism (United Nations Measures) Order 2001 (the UK Order) provides a similar mechanism to freeze terrorist funds or assets.

11. We note that there is an overlap between paragraphs 1(b) and 1(d) of UNSCR 1373 in that both deals with providing funds to terrorists. Paragraph 1 (b) in addition deals with collecting funds. We therefore **propose** to create an offence for any person to collect funds for the use of terrorists or terrorist organisations. To comply with the requirements under paragraphs 1(d) we **propose** to create an offence prohibiting the provision or making available of funds, financial assets or economic resources for the benefit of persons or entities who commit, participate or facilitate terrorist acts.

12. FATF’s Special Recommendation IV requires financial institutions, other business or entities subject to anti-money laundering obligations to report suspicious transactions, when they suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations. We **propose** to create a similar “reporting” provision which will result in information being made available to facilitate the investigation into, and enforcement against, terrorist financing. As a member of the FATF, Hong Kong is duty bound to follow the recommendations laid down by the FATF, which are regarded as the best international standards targetting money laundering and terrorist financing activities.

Other Related Measures

13. Given the likely adverse consequences of causing panic and confusion amongst the public in a densely populated place like Hong Kong, we **propose** to include in the Bill an offence for any person to disseminate hoaxes of terrorist acts.

Legislative Timeframe

14. We are aiming to introduce the Bill into the Legislative Council in the near future.

Advice Sought

15. Members are invited to comment on above proposals.

Security Bureau
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United Nations

S/RES/1373 (2001)

Security Council

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28 September 2001

Resolution 1373 (2001)

Adopted by the Security Council at its 4385th meeting, on 28 September 2001

The Security Council,

Reaffirming its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001) of 12 September 2001,

Reaffirming also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

Reaffirming further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

Reaffirming the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

Calling on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

Reaffirming the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that all States shall:

(a) Prevent and suppress the financing of terrorist acts;

(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

(c) Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

(d) Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. Decides also that all States shall:

(a) Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;

(b) Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;

(c) Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;

(d) Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

(e) Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

(f) Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

(g) Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. Calls upon all States to:

(a) Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

(b) Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

(c) Cooperate, particularly through bilateral and multilateral arrangements and agreements, to

prevent and suppress terrorist attacks and take action against perpetrators of such acts;

(d) Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

(e) Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

(f) Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;

(g) Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. Notes with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

5. Declares that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

6. Decides to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and calls upon all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

7. Directs the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;

8. Expresses its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;

9. Decides to remain seized of this matter.

FATF Special Recommendations on Terrorist Financing

Recognising the vital importance of taking action to combat the financing of terrorism, the FATF has agreed these Recommendations, which, when combined with the FATF Forty Recommendations on money laundering, set out the basic framework to detect, prevent and suppress the financing of terrorism and terrorist acts.

I. Ratification and implementation of UN instruments

Each country should take immediate steps to ratify and to implement fully the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism.

Countries should also immediately implement the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts, particularly United Nations Security Council Resolution 1373.

II. Criminalising the financing of terrorism and associated money laundering

Each country should criminalise the financing of terrorism, terrorist acts and terrorist organisations. Countries should ensure that such offences are designated as money laundering predicate offences.

III. Freezing and confiscating terrorist assets

Each country should implement measures to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts.

Each country should also adopt and implement measures, including legislative ones, which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations.

IV. Reporting suspicious transactions related to terrorism

If financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.

V. International co-operation

Each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organisations.

Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations, and should have procedures in place to extradite, where possible, such individuals.

VI. Alternative remittance

Each country should take measures to ensure that persons or legal entities, including agents, that provide a service for the transmission of money or value, including transmission through an informal money or value transfer system or network, should be licensed or registered and subject to all the FATF Recommendations that apply to banks and non-bank financial institutions. Each country should ensure that persons or legal entities that carry out this service illegally are subject to administrative, civil or criminal sanctions.

VII. Wire transfers

Countries should take measures to require financial institutions, including money remitters, to include accurate and meaningful originator information (name, address and account number) on funds

transfers and related messages that are sent, and the information should remain with the transfer or related message through the payment chain.

Countries should take measures to ensure that financial institutions, including money remitters, conduct enhanced scrutiny of and monitor for suspicious activity funds transfers which do not contain complete originator information (name, address and account number).

VIII. Non-profit organisations

Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

- (i) by terrorist organisations posing as legitimate entities;
- (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and
- (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.