

EXTRACT

立法會

Legislative Council

LC Paper No. CB(2)2064/02-03

Ref : CB2/PL/AJLS

Panel on Administration of Justice and Legal Services

**Minutes of meeting
held on Monday, 31 March 2003 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Margaret NG (Chairman)
Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon James TO Kun-sun
Hon Miriam LAU Kin-yee, JP
Hon Mr Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon CHAN Kam-lam, JP
Hon TAM Yiu-chung, GBS, JP

Public officers attending : Item III
Miss Eliza LEE
Deputy Director of Administration

Mrs Fanny YU
Deputy Director of Legal Aid

Mr CHAN Yum-min, James
Assistant Director of Administration

Item IV

Mr Wilfred TSUI
Judiciary Administrator

Miss Emma LAU
Deputy Judiciary Administrator
(Development)

Miss Vega WONG
Assistant Judiciary Administrator
(Development) (Designate)

Mr CHAN Yum-min, James
Assistant Director of Administration

Item V

Mr Ian WINGFIELD, GBS, JP
Law Officer (International Law)

Mr John HUNTER
Deputy Principal Government Counsel
(Treaties and Law)

Attendance by invitation : Item III

Legal Aid Services Council

Mr J P LEE, JP, OBE
Chairman

Mr Billy MA

Mr John MULLICK

Mr NG Shui-lai, JP

Mr Stephen YAU, MH, JP

Mr LI Tin-yiu
Secretary

The Hong Kong Bar Association

Mr Edward CHAN, SC

Mr Andrew LI

Item IV

The Hong Kong Bar Association

Mr Edward CHAN, SC
Mr Anselmo REYES, SC

Clerk in attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mr Paul WOO
Senior Assistant Secretary (2)3

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V. Government's policy on implementation of resolutions and conventions made by the United Nations

(LC Paper No. CB(2)734/02-03(01))

45. The Chairman informed members that the item was referred by the Subcommittee on United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 and United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002 (the Subcommittee) in November 2002 to the Panel for follow-up action. The Subcommittee requested the Panel to clarify with the Administration the Government's policy regarding the variety of measures which were taken to give effect to United Nations (UN) conventions which applied to the Hong Kong Special Administrative Region and UN Security Council resolutions. The Administration had provided a preliminary response in December 2002 (LC Paper No. CB(2)734/02-03(01)).

46. The Chairman enquired about the principles and criteria used to decide whether a new UN resolution should be implemented by way of the UN Sanctions Ordinance (Cap. 537), or by other means. Under the Ordinance, the Chief Executive (CE) could make regulations to give effect to instructions from the People's Republic of China (PRC) to implement sanctions imposed by the UN Security Council against places outside PRC.

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47. Law Officer (International Law) (LO(IL)) replied that some obligations created under UN conventions and UN Security Council resolutions, which applied to Hong Kong, could be implemented administratively, some could be implemented under existing law, and some required enactment of legislation. The mode of implementation depended on the nature of the obligation and the terms set out in the relevant convention or resolution, as well as the extent to which existing legislation in Hong Kong could give effect to such obligation. He further advised that sanctions created by the UN Security Council tended to be specific in nature. New legislation in Hong Kong was usually required to implement UN Security Council resolutions imposing sanctions.

48. Mr Martin LEE asked whether LegCo could have a role to play in monitoring the measures taken by the Hong Kong Special Administrative Region Government (SARG) to implement obligations created by UN resolutions which were binding on Hong Kong, or whether the monitoring rested solely with the PRC.

49. Deputy Principal Government Counsel (Treaties and Law) said that where there were instructions from the PRC to SARG to implement particular resolutions made by the UN Security Council, CE was obliged to give effect to the instruction. While the regulations made by CE under the UN Sanctions Ordinance to implement the particular resolutions were not subject to amendment by LegCo, the views of LegCo Members on the regulations were, of course, relevant. LO(IL) supplemented that if there was feedback that Hong Kong had failed to implement a resolution in a satisfactory manner, the matter would most likely become the subject of comments by the UN Security Council. He further pointed out that jurisdictions to which UN conventions and resolutions applied were in many cases required to submit reports on how they had implemented, or proposed to implement, particular UN conventions and resolutions.

50. The Chairman said that a major concern raised in the deliberations of the Subcommittee was that the regulations made by CE under the UN Sanctions Ordinance were not only confined to trade sanctions, but also covered sensitive political matters such as terrorism and sanctions on places and individuals involved in terrorist related activities. She opined that the Administration should review -

- (a) the parameters for CE to make regulations under the UN Sanctions Ordinance; and
- (b) whether the regulations made by CE should be subject to scrutiny by LegCo.

51. The Chairman informed members that the Subcommittee was in the course of finalising its discussions and a report of the Subcommittee would

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soon be prepared for the House Committee. She said that the Panel would follow up the relevant issues with the Administration in the light of the Subcommittee's report.

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Council Business Division 2
Legislative Council Secretariat
13 May 2003