

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

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**Subcommittee to Examine
the Implementation in Hong Kong of Resolutions of
the United Nations Security Council in relation to Sanctions**

**Minutes of third meeting
held on Thursday, 12 May 2005, at 9:00 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon LAU Kong-wah, JP
- Member absent** : Dr Hon LUI Ming-wah, JP
- Public officers attending** : Mrs Philomena LEUNG
Principal Assistant Secretary for Commerce, Industry
and Technology (Commerce and Industry)
- Mr John HUNTER
Deputy Principal Government Counsel
(Treaties and Law)
Department of Justice
- Miss Kyle HUNG
Assistant Secretary for Commerce, Industry and
Technology (Commerce and Industry)
- Clerk in attendance** : Miss Polly YEUNG
Chief Council Secretary (1)3

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Rosalind MA
Senior Council Secretary (1)8

The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Action

I. Confirmation of minutes and matters arising

(LC Paper No. CB(1)1404/04-05 -- Minutes of meeting held on 15 April 2005)

2. The minutes of the meeting held on 15 April 2005 were confirmed.

II. Meeting with the Administration

Papers provided by the Administration on four Regulations gazetted since July 2004

(LC Paper No. CB(1)1464/04-05(01) -- Information paper on United Nations Sanctions (Iraq) (Amendment) Regulation 2004

LC Paper No. CB(1)1464/04-05(02) -- Information paper on United Nations Sanctions (Liberia) Regulation 2004

LC Paper No. CB(1)1464/04-05(03) -- Information paper on United Nations Sanctions (Democratic Republic of the Congo) Regulation

LC Paper No. CB(1)1464/04-05(04) -- Information paper on United Nations Sanctions (Sudan) Regulation)

Background information

(LC Paper No. CB(1)1195/04-05 -- Discussion paper prepared by the Secretariat

LC Paper No. CB(1)120/04-05(01) -- United Nations Sanctions Ordinance (Cap. 537)

LC Paper No. CB(1)101/04-05 -- Background brief prepared by the Secretariat)

Paper and reports prepared by the Legal Service Division

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| (LC Paper No. LS45/04-05 | -- Report on United Nations Sanctions (Sudan) Regulation (Paper for the House Committee meeting on 8 April 2005) |
| LC Paper No. LS40/04-05 | -- Report on United Nations Sanctions (Democratic Republic of the Congo) Regulation (Paper for the House Committee meeting on 11 March 2005) |
| LC Paper No. LS20/04-05 | -- Report on United Nations Sanctions (Liberia) Regulation 2004 (Paper for the House Committee meeting on 10 December 2004) |
| LC Paper No. LS16/04-05 | -- Report on United Nations Sanctions (Iraq) (Amendment) Regulation 2004 (Paper for the Subcommittee) |
| LC Paper No. LS1/04-05 | -- Report on United Nations Sanctions (Iraq) (Amendment) Regulation 2004 (Paper for the House Committee meeting on 8 October 2004) |
| LC Paper No. LS103/03-04 | -- Further report on United Nations Sanctions (Iraq) (Amendment) Regulation 2004 |
| LC Paper No. LS93/03-04 | -- Report on United Nations Sanctions (Iraq) (Amendment) Regulation 2004 |
| LC Paper No. LS36/03-04 | -- Paper for the Subcommittee on United Nations Sanctions (Liberia) Regulation 2003) |

Other relevant papers

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| (LC Paper No. CB(2)2507/03-04 | -- Interim report of the Subcommittee on United Nations Sanctions (Liberia) Regulation 2003 to the House Committee meeting on 28 May 2004 |
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- LC Paper No. CB(2)2892/03-04 -- Further report of the Subcommittee on United Nations Sanctions (Liberia) Regulation 2003 to the House Committee meeting on 25 June 2004
- LC Paper No. CB(2)2879/03-04(01) -- Submission dated 18 June 2004 from Prof. Yash GHAI of the Department of Law of the University of Hong Kong to the Subcommittee on United Nations Sanctions (Liberia) Regulation 2003)

Legislative Council (LegCo) Briefs on Regulations made under section 3 of the United Nations Sanction Ordinance (UNSO) (Cap. 537)

Admin 3. The Chairman thanked the Administration for providing a paper on each of the four Regulations made under section 3 of UNSO since July 2004. On the format of the paper, the Chairman pointed out that information on key issues such as implications of the proposal (including Basic Law, financial and staffing implications), public consultation and publicity etc. was provided in the LegCo Briefs for other items of subsidiary legislation. After discussion, members requested the Administration to make reference to the standard or usual format of LegCo Briefs on subsidiary legislation and include, where practicable, the aforesaid information in the briefs for future Regulations made under section 3 of UNSO. The Administration undertook to take members' views into account.

Admin 4. To facilitate members' consideration of whether the Administration had taken timely action to implement the resolutions of the United Nations Security Council (UNSC) in relation to sanctions, the Subcommittee agreed the Administration should, on its own accord, provide explanation in the brief where it considered necessary to justify a long time gap between the gazettal of a Regulation and the adoption of the UNSC resolution concerned. The Administration agreed to the Subcommittee's request.

Measures to facilitate the expeditious implementation in Hong Kong of resolutions of UNSC in relation to sanctions

5. Members reiterated their grave concern about the long time gap before a Regulation could be made and gazetted to implement the relevant resolution adopted by UNSC. Given that implementation of the UNSC resolutions on sanctions was one of Hong Kong's international obligations, members considered that the current arrangements should be improved to facilitate the fulfilment of this obligation in a timely manner. Members were particularly concerned about the problems in the implementation of some resolutions

which were time-limited. In order that the relevant Regulation should not continue to be in force after the expiry of the UNSC resolution concerned, members considered that one possible approach was to specify the effective period of the sanctions in the Regulations.

(Post-meeting note: The Administration subsequently advised that for measures in UNSC resolutions with specific expiry dates, such were already specified in the relevant Regulations. The Administration agreed to bear in mind members' concern in preparing future Regulations.)

6. On the pre-handover arrangements for implementing UNSC resolutions in relation to sanctions, the Assistant Legal Adviser 2 briefly explained that before 1 July 1997, UNSC resolutions were implemented in Hong Kong through publishing in the Gazette Orders made by Her Majesty in Council of the United Kingdom, which gave effect to the decisions of UNSC in relation to sanctions. Prior to 1 July 1997, Orders in Council giving effect to UNSC resolutions were made quite promptly and were immediately applicable to Hong Kong after being published in the Gazette. The United Nations Act 1946 of the United Kingdom also provided that the Orders in Council made to give effect to UNSC resolutions would lapse if the relevant resolutions ceased to have effect.

7. Noting that the making of a Regulation as required under section 3 of UNSO would inevitably take time, members urged the Administration to devise a better mechanism for Hong Kong Special Administration Region to implement UNSC resolutions in a more expeditious manner. Members also raised for the Administration's consideration some alternative approaches to deal with the matter, such as:

- (i) to incorporate into the primary legislation (i.e. UNSO) all the provisions on enforcement powers and other key provisions which generally applied to all UN sanctions; and to set out in a Schedule to UNSO the targets and subjects of sanctions which might differ on each occasion;
- (ii) to make reference to the arrangements for Hong Kong to enter into bilateral agreement with other countries as currently provided in the Mutual Legal Assistance on Criminal Matters Ordinance (Cap. 525) and the Fugitive Offenders Ordinance (Cap. 503), in which LegCo had a role in scrutinizing the Orders made under the Ordinances.

8. The Chairman requested the Administration to examine the feasibility of the aforesaid and other possible mechanisms which could achieve the objective of timely implementation of UNSC resolutions on sanctions. The Subcommittee was nevertheless aware that under UNSO, the making of Regulations to give effect to UNSC resolutions in relation to sanctions was predicated on the instructions from the Ministry of Foreign Affairs (MFA). The Administration

agreed to study the matter.

Role of LegCo in approving Regulations made under UNSO

9. Members were concerned that under section 3 of UNSO, power was conferred upon the Chief Executive to make Regulations and such Regulations would not be subject to amendment or approval by LegCo. Members were keenly aware that in accordance with the relevant provision of the Basic Law, the legislature should exercise the power and function to enact, amend and repeal laws. Hence, members reiterated their concern about any constitutional problem which might arise from placing the legislative power in the hands of the executive as currently provided in UNSO. They considered that the arrangements should be suitably modified so that LegCo could have a role in the process of vetting subsidiary legislation.

Further views from Professor Yash GHAI

10. Members noted that Professor Yash GHAI of the University of Hong Kong had undertaken to provide shortly his finalized views and analysis on the legal and constitutional aspects of the issues arising from the implementation of UN sanctions in Hong Kong. The Secretariat would follow up with Professor GHAI and arrange circulation of his submission to members and the Administration as soon as such was available.

III. Any other business

Date of next meeting

11. Members agreed that the date of the next meeting would be decided in due course when the submission from Professor GHAI was available.

12. There being no other business, the meeting ended at 10:10 am.

**Proceedings of the third meeting of the
Subcommittee to Examine the Implementation in Hong Kong
of Resolutions of the United Nations Security Council in relation to Sanctions
on Thursday, 12 May 2005 at 9:00 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action required
000000 – 000303	Chairman	(a) Confirmation of minutes of meeting on 15 April 2005 (b) Introductory and welcoming remarks	
000304 – 000627	The Administration	Briefing by the Administration	
000628 – 000901	Chairman The Administration	Information to be provided in LegCo briefs on Regulations made under section 3 of UNSO	The Administration to take follow-up action as required in paragraph 3 of the minutes
000902 – 001535	Mr LAU Kong-wah The Administration Chairman	(a) Reasons for the long time gap between the gazettal of the United Nations Sanctions (Iraq) (Amendment) Regulation 2004 (the Amendment Regulation) and the adoption of UNSC Resolution 1483 (b) The Administration's explanation that the normal time required for drafting a Regulation under section 3 of UNSO was about four months upon receipt of MFA's instruction. For the drafting of the Amendment Regulation, more time had been required as the Administration also took the opportunity to review existing provisions of the Regulation having regard to other Regulations made under UNSO since 1997	The Administration to take follow-up action as required in paragraph 4 of the minutes
001536 – 001954	Mr Martin LEE The Administration	(a) Arrangements for implementing UNSC resolution 1483 during the time gap between receipt of MFA's instruction and the	

Time Marker	Speaker	Subject(s)	Action required
		<p>making of the Amendment Regulation and whether any party had suffered loss as a result of the time gap</p> <p>(b) Whether the process of drafting the Regulations made under section 3 of UNSO could be expedited</p>	
001955 – 005630	<p>Chairman The Administration Mr Martin LEE Mr LAU Kong-wah ALA2</p>	<p>(a) Problems arising from the time gap between the adoption of the resolutions by UNSC and the gazettal of the relevant Regulations, in particular when the resolutions concerned expired or were subsequently renewed</p> <p>(b) Discussion on some possible approaches to facilitate the expeditious implementation of UNSC resolutions, such as:</p> <p>(i) to incorporate into the primary legislation (i.e. UNSO) all the provisions on enforcement powers and other key provisions which generally applied to all UN sanctions; and to set out in a Schedule to UNSO the targets and subjects of sanctions which might differ on each occasion;</p> <p>(ii) to make reference to arrangements for Hong Kong to enter into bilateral agreement with other countries as currently provided in the Mutual Legal Assistance on Criminal Matters Ordinance (Cap. 525) and the Fugitive Offenders Ordinance (Cap. 503), in which LegCo had a role in scrutinizing the Orders made under the Ordinances.</p>	<p>The Administration to take follow-up action as required in paragraph 8 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action required
005631 – 010618	Chairman The Administration Mr LAU Kong-wah Mr Martin LEE	(a) The Administration should make reference to the standard or usual format of LegCo Briefs of subsidiary legislation in preparing briefs for future Regulations made under UNSO (b) Members' view that LegCo should be involved in the process of vetting subsidiary legislation	The Administration to take follow-up action as required in paragraph 3 of the minutes
010619 – 010843	Chairman	Date of next meeting to be decided upon receipt of the submission from Professor Yash GHAI	