

立法會
Legislative Council

LC Paper No. CB(1)2085/07-08
(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 twelfth meeting
held on Monday, 2 June 2008, at 1:00 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon Margaret NG (Chairman)
Hon Martin LEE Chu-ming, SC, JP
Dr Hon LUI Ming-wah, SBS, JP
Hon LAU Kong-wah, JP
- Public officers attending** : Mr Jonathan MCKINLEY
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)
- Miss Anna CHOR
Assistant Secretary for Commerce and Economic
Development (Commerce and Industry)
- Ms Amelia LUK
Law Officer (International Law)
- Mr Peter WONG
Deputy Principal Government Counsel
(Treaties and Law)
- Clerk in attendance** : Miss Polly YEUNG
Chief Council Secretary (1)5
- Staff in attendance** : Mr Kelvin LEE
Assistant Legal Adviser 1

Ms Guy YIP
Senior Council Secretary (1)5

Action

I Papers issued since last meeting

- (LC Paper No. LS89/07-08 -- Paper on implementation of resolutions of the United Nations Security Council in Hong Kong before 1 July 1997 prepared by the Legal Service Division
- LC Paper No. CB(1)1667/07-08(02) -- List of Regulations made under section 3 of the United Nations Sanctions Ordinance (Cap. 537) (since July 2004 and up to 27 May 2008))

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

2. The Chairman informed members that an informal meeting was held on 23 May 2008 to go through the 26 Regulations gazetted since July 2004. The key observations arising from the study of the 26 Regulations were set out in LC Paper No. CB(1)1714/07-08.

II Meeting with the Administration

- (LC Paper No. CB(1)1720/07-08(01) -- Issues and questions raised by members at the closed meeting held on 3 April 2008 prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1667/07-08(01) -- Administration's response to issues and questions raised by members at the closed meeting held on 3 April 2008
- LC Paper No. LS90/07-08
(*tabled at the meeting and subsequently issued on 6 June 2008*) -- Paper on comments on the implementation of the decisions of the Security Council of the United Nations by the United Nations Sanctions Ordinance (Cap. 537) and the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) prepared by the Legal Service Division

- LC Paper No. CB(1)1074/07-08 -- Paper on the Subcommittee's further views on the proposed way forward prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)532/07-08 -- Paper on the Subcommittee's proposed way forward prepared by the Legislative Council Secretariat)

Background leading to the enactment of the United Nations Sanctions Ordinance (Cap. 537) (UNSO)

3. At the invitation of the Chairman, the Law Officer (International Law) briefed members on the Administration's response to issues and questions raised by members at the closed meeting held on 3 April 2008 (LC Paper No. CB(1)1667/07-08(01)). The Chairman drew members' attention to paragraph 8 of the paper stating that the relevant directive by the Central People's Government (CPG) to the Chief Executive required that legislative measures be taken in the Hong Kong Special Administrative Region (HKSAR) to implement UN sanctions and that CPG be consulted on the draft legislation before it was made by the HKSAR. While other members had not raised any query, the Chairman expressed her reservation on the current arrangement for implementing UN sanctions. However, the Subcommittee noted that as confirmed by the Administration, this set-up was in accordance with directives from the CPG and that the subject matter fell within the realm of foreign affairs and defence..

Recommendations to improve the current mechanism for implementing UN sanctions

Use of a model law approach

4. At the invitation of the Chairman, the legal adviser to the Subcommittee took members through the key observations arising from the study of the 26 Regulations at an informal meeting held on 23 May 2008, details of which were set out in paragraphs 2 to 8 of LC Paper No. CB(1)1714/07-08. On the Subcommittee's recommendation to adopt a model law approach, the Principal Assistant Secretary for Commerce and Economic Development (Commerce and Industry) (PASCED(CI)) pointed out that despite the similarities of the provisions in the gazetted Regulations, there were differences in each and every resolution passed by the UN Security Council (UNSC) in relation to sanctions. He doubted whether a model law approach could facilitate quick drafting and scrutiny of the Regulations.

5. Mr Martin LEE asked whether the Administration would raise the matter with UNSC, through CPG, to adopt a model law approach at the UNSC level in respect of the sanctions resolved. PASCED(CI)'s view was that given the different terms of sanctions imposed in respect of different entities, it would appear to be more practicable for UNSC to prepare each resolution on sanctions on its own. In this connection, the Chairman opined that the Administration should at least consider adopting a model law approach in Hong Kong for making Regulations to implement

the UN sanctions.

Involving the Legislative Council (LegCo) during the regulation-making process

6. It was the Subcommittee's common view that it was necessary to improve the existing regulation-making process to achieve greater transparency and accountability, even on the assumption that the arrangement under the UNSO was legal and constitutional. To this end, the Subcommittee had put forward specific suggestions on how the LegCo could be engaged during the Regulation-making process, as set out in paragraph 7 of and Appendix to LC Paper No. CB(1)1074/07-08. In response to the Chairman, PASCED(CI) pointed out that due to the tight schedule for co-ordinating the work of relevant bureaux and departments in the preparation of the draft Regulations as well as seeking CPG's endorsement and the Chief Executive-in-Council's approval of the draft Regulations, it might not be feasible to engage the LegCo as suggested by the Subcommittee. Nevertheless, the Administration would consider other possible ways to keep the LegCo more abreast of the subject matter.

Proposal to facilitate LegCo's scrutiny role

7. In the absence of any firm undertaking by the Administration to take on board the Subcommittee's suggestions raised at the meeting, the Chairman considered it necessary to put in place a standing arrangement to deal with Regulations made under the UNSO by recommending the setting up of a dedicated subcommittee under the House Committee. In future, gazetted Regulations would be considered by Members at meetings of the House Committee and reference would be made to the legal adviser's report. Where necessary, the Regulation(s) would be referred to the dedicated subcommittee for further scrutiny. Meanwhile, in the LegCo Brief to be issued in respect of each gazetted Regulation, the Administration should include the following information in addition to what had been currently included:

- (a) the reasons for the Administration's decision to implement the UN sanctions in question by way of Regulations made under the UNSO, instead of by way of amending existing legislation (such as the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)) or by the enactment of a new piece of legislation;
- (b) the date when the Administration finalized and forwarded the draft Regulation to CPG for endorsement;
- (c) the date when the draft Regulation was endorsed by CPG;
- (d) whether there was any matter which was different from the provisions on enforcement powers and other key provisions which generally applied to all UN sanctions; and
- (e) any other information relevant to the gazetted Regulation.

8. The Administration was asked to consider and respond to the Subcommittee's request.

III The way forward

(LC Paper No. CB(1)1714/07-08 -- Paper on follow-up to certain issues raised at previous meetings prepared by the Legislative Council Secretariat)

Clerk 9. Members agreed that the Subcommittee would prepare a report for submission to the House Committee which would be supplemental to the last report submitted on 18 May 2007. The draft report would be circulated to members for comments, if any, and endorsement when ready.

(Post-meeting note: The Subcommittee's report has been circulated to members vide LC Paper No. CB(1)1905/07-08(01) on 17 June 2008.)

Clerk 10. On options for Members to speak at a Council meeting on the subject (paragraphs 9 to 11 of LC Paper No. CB(1)1714/07-08), members agreed that it would suffice for the Chairman to address the Council (i.e. Option I in Appendix I to LC Paper No. CB(1)1714/07-08), instead of initiating an adjournment debate. The draft speech would be circulated to members for comments, if any, for the Chairman's consideration. Members also agreed that the Subcommittee would submit a report to the House Committee on 20 June 2008 and the Chairman would address the Council on the report at the Council meeting on 2 July 2008.

(Post-meeting note: The draft speech has been circulated to members vide LC Paper No. CB(1)2034/07-08(01) on 24 June 2008.)

Admin 11. To facilitate the preparation of the Subcommittee report, the Administration was requested to provide further response to the issues of concern raised at the meeting and any other relevant information to the Subcommittee shortly.

(Post-meeting note: The Administration's response has been circulated to members vide LC Paper No. CB(1)1855/07-08(01) on 11 June 2008.)

IV Any other business

12. There being no other business, the meeting ended at 1:55 pm.

**Proceedings of the twelfth meeting of the
Subcommittee to Examine the Implementation in Hong Kong
of Resolutions of the United Nations Security Council in relation to Sanctions
on Monday, 2 June 2008 at 1:00 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action required
000848 – 001408	Chairman Mr Martin LEE Dr LUI Ming-wah Administration	(a) The Chairman's report on the study of the 26 Regulations at the informal meeting held on 23 May 2008. (b) Discussion on the options available for providing a forum for Members to give views on the current arrangement of implementing UN sanctions in Hong Kong. Mr Martin LEE and Dr LUI Ming-wah considered it more appropriate for the Chairman to address the Council.	The Clerk to follow up as stated in paragraph 10 of the minutes
001409 – 002237	Chairman Administration	(a) The Administration's response to issues and questions raised by members at the closed meeting held on 3 April 2008 (LC Paper No. CB(1)1667/07-08(01)). (b) The Chairman's reservation on the current mechanism for implementing UN sanctions.	
002238 – 003738	Chairman ALA Administration Mr Martin LEE	(a) ALA's briefing on the key observations arising from the study of the 26 Regulations gazetted since July 2004 (paragraphs 2 to 8 of LC Paper No. CB(1)1714/07-08). (b) Discussion on the feasibility of adopting a model law approach for implementing UN sanctions in future. (c) The Administration's advice that a model law approach was not feasible given the differences in the sanctions to be imposed under different resolutions passed by the UNSC.	
003739 – 004401	Chairman Administration Mr Martin LEE	(a) Discussion on the specific suggestions made by the Subcommittee about engaging the LegCo during the regulation-making process (paragraph 7 of and Appendix to LC Paper No. CB(1)1074/07-08). (b) The Administration's advice that it would be very difficult for the Administration to take forward the Subcommittee's suggestions in view of the extremely tight schedule for preparing the draft Regulations.	

Time Marker	Speaker	Subject(s)	Action required
004402 – 005124	Chairman Administration Mr LAU Kong-wah Mr Martin LEE	The Chairman's suggestion that a dedicated subcommittee should be set up under the House Committee on a continuous basis to keep in view the gazetted Regulations made under the UNSO. To facilitate Members' scrutiny, additional information should be included in the LegCo Brief to be issued in respect of each gazetted Regulation.	
005125 – 005500	Chairman Administration Mr LAU Kong-wah	The way forward (paragraph 11 of LC Paper No. CB(1)1714/07-08) Mr LAU Kong-wah's view that it would suffice for the Chairman to address the Council.	The Clerk and the Administration to follow up as stated in paragraphs 9 and 11 of the minutes respectively

Council Business Division 1
Legislative Council Secretariat
30 June 2008