

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2135/04-05  
(These minutes have been seen  
by the Administration)

Ref: CB1/HS/1/04/1

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

**Minutes of Fourth meeting  
held on Tuesday, 12 July 2005, at 3:00 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** : 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
- Mr Peter WONG Hing-hong  
Senior Assistant Solicitor General  
Basic Law Unit  
Legal Policy (Constitutional) Section  
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

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

Action

**I. Meeting with the Administration**

Submission and the Administration's response

- (LC Paper No. CB(1)1665/04-05(01) -- Submission dated 12 May 2005 from Professor Yash GHAI of the University of Hong Kong
- LC Paper No. CB(1)1934/04-05(01) -- The Administration's response to Professor Yash GAHI's submission

Papers provided by the Administration on 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
- LC Paper No. CB(1)1806/04-05(01) -- Information paper on United Nations Sanctions (Liberia) Regulation 2005

- LC Paper No. CB(1)2029/04-05(01) -- Information paper on United Nations Sanctions (Côte d'Ivoire) Regulation
- LC Paper No. CB(1)2029/04-05(02) -- Information paper on United Nations Sanctions (Democratic Republic of the Congo) (Amendment) Regulation 2005
- LC Paper No. CB(1)2029/04-05(03) -- Information paper on United Nations Sanctions (Sudan) (Amendment) Regulation 2005

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

- LC Paper No. LS89/04-05 -- LegCo's power over subsidiary legislation made under Ordinances that implement international obligations
- 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)

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| 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  |
| 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) |

The Administration's response to Professor Yash GHAI's submission and issues raised at the previous meeting

2. Members noted that in its response to Professor Yash GHAI's submission, the Administration concluded (paragraphs 23 and 24 of LC Paper No. CB(1)1934/04-05(01)) that the current arrangement under UNSO was consistent with the Basic Law and should be maintained. The Administration's view was that from the legal point of view, UNSO was consistent with the Basic Law. It had therefore taken a policy decision that the current arrangement under UNSO

should be maintained. The Chairman was concerned whether the exclusion of the Legislative Council (LegCo) from the vetting of the subsidiary legislation made under section 3 of UNSO was consistent with the principle of separation of powers enshrined in the Basic Law. The Administration considered that the Basic Law did not institute a rigid separation of powers and therefore did not prohibit the delegation of law-making power/function to other bodies or persons to make subsidiary legislation. Members also noted the Administration's view that the constitutional limit imposed by the doctrine of effacement was likely to be applicable to LegCo on its delegation of law-making power.

3. Given that the current arrangement for implementing resolutions adopted by the United Nations Security Council (UNSC) in relation to sanctions was far from satisfactory, members reiterated their concern about the need to improve the existing system by exploring alternative approaches to implement UNSC sanctions in a more expeditious manner and with the involvement of LegCo in the legislative process. Members recalled that at the last meeting held on 12 May 2005, the Administration had been urged to consider their preliminary suggestions, as follows:

- (i) to consider incorporating into the primary legislation (i.e. United Nations Sanctions Ordinance (Cap. 537) (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; and
- (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) (MLACMO) and the Fugitive Offenders Ordinance (Cap. 503) (FOO), in which LegCo had a role in scrutinizing the Orders made under the Ordinances.

4. Members noted the Administration's preliminary view that the aforesaid alternatives might not be the most effective means to achieve the objective of timely implementation of UNSC resolutions on sanctions. The Administration advised that after reviewing its internal procedures and workflow, improvement measures would be put in place to speed up the process of the making of Regulations under section 3 of UNSO. The Chairman pointed out that in addition to concerns about the need to expedite the process of making the Regulations, members were concerned about the current arrangement which had excluded LegCo from vetting and amending the subsidiary legislation made under UNSO. In this connection, the Administration was requested to confirm in writing whether it would pursue the aforesaid suggestions or other alternative approaches to improve the current arrangement. If not, the Administration should provide a detailed explanation/analysis on why the alternative approaches were considered not

Admin viable or effective and why maintaining the current arrangement was considered the most appropriate option.

Paper prepared by the Legal Service Division on “LegCo’s power over subsidiary legislation made under Ordinances that implement international obligations”

5. Some members expressed grave concern about the current arrangement in which sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap.1) (IGCO) did not apply to Regulations made under section 3 of UNSO, in particular the constitutional problem which might arise from placing the legislative power in the hands of the executive under such an arrangement. They noted from the paper prepared by the legal adviser (Annex II to LC Paper No. LS89/04-05) that of the four sampled Ordinances implementing international obligations i.e. UNSO, FOO, MLACMO and the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (UN(ATM)O), UNSO was the only Ordinance that excluded LegCo altogether from vetting and amending the subsidiary legislation made under the principal ordinance. They were also aware that Committee Stage Amendments had been introduced to the other three bills to provide/strengthen LegCo’s role in scrutinizing the subsidiary legislation made under the principal ordinance. In this connection, the Administration was requested to provide an explanation on why the UNSO had deviated from the usual practice adopted in ordinances which implemented international obligations.

Admin

The way forward

6. The Chairman expressed grave concern about the Administration’s conclusion (paragraphs 23 and 24 of LC Paper No. CB(1)1934/04-05(01)) that the current arrangement under UNSO was consistent with the Basic Law and should be maintained. She remarked that if the Administration was firmly against taking any action to improve the current arrangement but insisted on its continuation on the grounds that the arrangement was constitutional, then, she would invite members of the Subcommittee to consider the option of challenging the Government on the point of constitutionality by taking the issue to court. The Administration was requested to give further consideration to the need to improve the current arrangement having regard to members’ concerns about LegCo being deprived of its role in vetting or amending the Regulations made under section 3 of UNSO.

Admin

7. Pending the Administration’s further response, the Chairman asked the Legal Service Division of the LegCo Secretariat to explore the relevant legal procedures as well as possible impediments if the issue was to be resolved by the judicial channel.

ALA2

## **II Any other business**

### Arrangements for the next meeting

- Clerk
8. The Clerk to the Subcommittee would liaise with the Administration in early September 2005 on the availability of its written response on paragraphs 4 to 6 above; and consult the Chairman and members on the arrangements for the next meeting.
  9. There being no other business, the meeting ended at 4:25 pm.

Council Business Division 1  
Legislative Council Secretariat  
22 July 2005

**Proceedings of the fourth meeting of the  
Subcommittee to Examine the Implementation in Hong Kong  
of Resolutions of the United Nations Security Council in relation to Sanctions  
on Tuesday, 12 July 2005 at 3:00 pm  
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action required
000000 – 002659	Chairman Mr Martin LEE Mr LAU Kong-wah ALA2	<p>Discussion on how the Subcommittee should take forward the legal and constitutional issues arising from the current arrangement for implementing UNSC resolutions under UNSO:</p> <ul style="list-style-type: none"> <li>● The Chairman's grave concern about the Administration's conclusion (paragraphs 23 and 24 of LC Paper No. CB(1)1934/04-05(01)) that the current arrangement under UNSO was consistent with the Basic Law and should be maintained. The Chairman remarked that she would invite members to consider the option of challenging the Government on the point of constitutionality by taking the issue to court if the Administration insisted on its conclusion as stated in the paper</li> <li>● ALA2 briefed members on the paper on "LegCo's power over subsidiary legislation made under Ordinances that implement international obligations" (LC Paper No. LS89/04-05)</li> <li>● Members noted from the paper prepared by ALA2 (Annex II to LC Paper No. LS89/04-05) that of the four Ordinances implementing international obligations i.e. UNSO, FOO, MLACMO and UN(ATM)O, UNSO was unique in excluding LegCo altogether from vetting and amending the subsidiary</li> </ul>	

Time Marker	Speaker	Subject(s)	Action required
		<p>legislation made under the principal ordinance</p> <ul style="list-style-type: none"> <li>● Members examined the Administration's response to Professor Yash GHAI's submission on whether the current arrangement under UNSO was consistent with the Basic Law in terms of the separation of powers between the executive authority and the legislature</li> </ul>	
002700 – 003830	Chairman Administration Mr Martin LEE	<p>(a) The Administration's preliminary response to the alternatives suggested by members at the meeting on 12 May 2005 as re-stated in paragraph 3 of the minutes</p> <p>(b) Some members' grave concern about the current arrangement which had excluded LegCo from vetting and amending the subsidiary legislation made under UNSO. The Administration was requested to confirm in writing its views on members' concerns and suggestions raised at the last meeting on 12 May 2005</p>	The Administration to take follow-up action as required in paragraph 4 of the minutes
003831 – 012125	Administration Chairman Mr LAU Kong-wah ALA2 Mr Martin LEE	<p>(a) Briefing by the Administration on its response to Professor Yash GHAI's submission (LC Paper No. CB(1)1934/04-05(01))</p> <p>(b) Concerns about the constitutional limits in the delegation of law-making power by LegCo and the application of the doctrine of effacement in such delegation</p> <p>(c) Query as to why UNSO had deviated from the usual practice adopted in ordinances which</p>	The Administration to take follow-up

Time Marker	Speaker	Subject(s)	Action required
		<p>implemented international obligations (i.e. four sampled ordinances including UNSO, FOO, MLACMO and UN(ATM)O)</p> <p>(d) The Chairman's remark that she would invite members to consider the option of challenging the Government on the point of constitutionality by taking the issue to court if the Administration decided against improving the current arrangement and insisted on its continuation on the grounds of its being consistent with the Basic Law</p> <p>(e) Pending the Administration's further response, the Chairman asked the Legal Service Division of the LegCo Secretariat to explore the relevant legal procedures as well as possible impediments if the issue was to be resolved by the judicial channel</p>	<p>action as required in paragraph 5 of the minutes</p> <p>The Administration to take follow-up action as required in paragraph 6 of the minutes</p> <p>ALA2 to take follow-up action as required in paragraph 7 of the minutes</p>
012126 – 012309	Chairman Mr Martin LEE Mr LAU Kong-wah	Arrangements for the next meeting	The Clerk to take follow-up action as required in paragraph 8 of the minutes