

立法會
Legislative Council

LC Paper No. CB(1)1714/07-08

Ref : CB1/HS/1/04

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

Meeting on 2 June 2008

Follow-up to certain issues raised at previous meetings

Purpose

The purpose of this paper is to-

- (a) recapitulate the key observations arising from a study of the 26 Regulations made under the United Nations Sanctions Ordinance (Cap. 537) ("UNSO") gazetted since July 2004; and
- (b) seek members' agreement for the Subcommittee to move a motion for adjournment at a Council meeting.

Study of the 26 gazetted Regulations

2. From time to time, the House Committee has referred to this Subcommittee the Regulations made by the Chief Executive under section 3(1) of the UNSO and published in the Gazette. At the closed meeting of the Subcommittee held on 3 April 2008, members agreed that an informal meeting be held to consider such Regulations. To facilitate a systematic study, the Secretariat has prepared a table on a country-based format summarizing the salient provisions of each Regulation. The paper was issued to members vide LC Paper CB(1)1561/07-08(01) and considered at the informal meeting held on 23 May 2008. The key observations are recapitulated in the ensuing paragraphs.

Types of prohibition measures

3. It is found that the following areas are the more common subjects of prohibition as stipulated in the 26 gazetted Regulations :

- (a) the sale and supply of arms and related materials;
- (b) importation of certain goods (i.e. timber, rough diamonds);
- (c) provision of advice, assistance or training related to military activities;
- (d) making available funds or assets or resources to certain persons or entities; and
- (e) the entry into or transit through Hong Kong of certain persons.

4. Some Amendment Regulations¹ contain provisions for the granting of licences for the supply of certain prohibited goods and the provision of certain assistance or training. It has been noted that most of the Regulations in relation to the Democratic Republic of the Congo, Cote d'Ivoire, Liberia, Sudan, Iraq and Lebanon have been drafted in similar terms.

5. In the case of the Regulations in relation to Iran and the Democratic People's Republic of Korea, one of the prohibition measures which is not found in the other Regulations is the prohibition on the provision of technologies or the transfer of nuclear-related material.

6. It has been observed that many of the prohibition measures may also be implemented under the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("UN(ATM)O"). In this connection, the legal adviser has been invited to provide a paper setting out his views on whether or how the UNSO or the UN(ATM)O should be invoked when applying the relevant sanctions as resolved by the United Nations Security Council in Hong Kong.

Use of a model law

7. In the course of examination, it has been noted that the drafting approach adopted for most of the Regulations are quite similar, with the exception of the Regulations in relation to Iran and the Democratic People's Republic of Korea, where prohibitions relating to technologies and the transfer of nuclear-related material are involved. This finding reinforces the Subcommittee's earlier suggestion to adopt a model law approach by incorporating into the primary legislation (i.e. UNSO) all the provisions on enforcement powers and other key provisions which generally apply to all UN sanctions; and to set out in a Schedule to UNSO the targets and subjects of sanctions which may differ on each occasion.

¹ For example, see the United Nations Sanctions (Democratic Republic of the Congo) (Amendment) Regulation 2005 (L.N.123 of 2005), the United Nations Sanctions (Liberia) Regulation 2005 (Amendment) (No.2) Regulation 2006 (L.N.188 of 2006), and the United Nations Sanctions (Sudan) (Amendment) Regulation 2005 (L.N.124 of 2005).

Timeliness of the Regulations

8. The long time taken by the Administration to make and gazette the Regulations to implement UN sanctions remains a concern for the Subcommittee. While the Administration has earlier on informed the Subcommittee that it has made endeavours to expedite the process, such as more streamlined arrangements and dedicated officers in the Department of Justice to deal with the subject, the use of a model law approach will further facilitate the preparation of the Regulations, as well as facilitate scrutiny of the gazetted Regulations by Members.

Proposal on moving a motion for adjournment

9. Given that regulations made under section 3(1) of the UNSO are not subject to sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1) ("IGCO"), the procedures of positive vetting or negative vetting applicable to subsidiary legislation do not apply to such regulations. Nevertheless, given the important legal and constitutional implications arising from the current arrangement of implementing UN sanctions in Hong Kong as provided under the UNSO, the Subcommittee Chairman has considered it necessary to provide a forum for Members to give views on the subject and to elicit the Administration's response. For this purpose, the Clerk has set out the options for Members to speak on the subject as per **Appendix I**.

10. In presenting the Subcommittee's report at a Council meeting, the Chairman may address the Council as per **Option I : Addressing the Council**. Regarding the arrangement for Members to speak on the subsidiary legislation made under UNSO, initially, the Chairman is of the view that **Option III : Adjournment debate initiated by the Subcommittee** may be a more appropriate option, having regard to a past adjournment debate involving the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Replacement of Schedule 1) Notice 2005, which was also subsidiary legislation not subject to positive or negative vetting by the Legislative Council and was not tabled before the Council. The proposed wording of the motion for adjournment is at **Appendix II**.

Proposed timetable

11. Assuming that the Subcommittee concludes its deliberation at the meeting held on 2 June 2008, it will prepare a report for submission to the House Committee. Subject to members' agreement to the proposal to move a motion for adjournment under Rule 16(4) of the Rules of Procedure (RoP), the support of the House Committee will be sought to include one more debate at the Council meeting in question. In this connection, members may wish to consider the following proposed timetable :

Date of reporting to the House Committee	Deadline for giving notice of motion on adjournment debate under RoP 16(5)	Date of Council meeting for the adjournment debate
20 June 2008	21 June 2008	2 July 2008

Advice sought

12. Members are invited to –
- (a) note the observations arising from the study of the 26 gazetted Regulations (paragraphs 2 to 8);
 - (b) consider the suggestion for the Subcommittee to initiate an adjournment debate (paragraph 10); and
 - (c) indicate whether they would agree to the proposed timetable for subsequent actions (paragraph 11).

Council Business Division 1
Legislative Council Secretariat
 30 May 2008

Options available for Members to speak at a Council meeting on the subsidiary legislation made by the Chief Executive under section 3(1) of the United Nations Sanctions Ordinance (Cap. 537)

Option I : Addressing the Council

Under Rule 21(3) of the Rules of Procedure (RoP), the Member presenting a paper which is laid on the Table of the Council may, with the permission of the President, address the Council thereon.

2. After the Subcommittee has issued its report, the Subcommittee Chairman may address the Council. However, under Rule 21(6) of RoP, no debate may arise on such an address. Under House Rule (HR) 2, an advance copy of the intended address should be provided to the President to enable her to decide whether the address may provoke a debate.

Option II : Motion debate initiated by the Subcommittee

3. The Subcommittee may seek the agreement of the House Committee to allocate a debate slot under HR 14A(h) to the Chairman to move a motion on the Report of the Subcommittee for debate at a Council meeting. If the House Committee accedes to the Subcommittee's request, the debate slot would not be counted as the Chairman's own slot. In line with the usual practice, the Subcommittee may also suggest that there should only be one other motion debate without legislative effect at that Council meeting.

4. Recent examples of debates allocated under HR 14A(h) included the motion debate on "Elderly in poverty" and the motion debate on "Review of the Comprehensive Social Security Assistance Scheme" which took place on 27 June 2007 and 20 February 2008 respectively. The wording of one of the motions is attached at **Annex A**.

5. The normal speaking time limits for a motion debate are set out in HR 17(b).

Option III : Adjournment debate initiated by the Subcommittee

6. Under Rule 16(4) of RoP, at the conclusion of all the business on the Agenda of the Council, a Member may move that this Council do now adjourn for the purpose of raising any issue concerning public interest, with a view to eliciting a reply from a designated public officer.

7. An example was an adjournment debate at the Council meeting on 19 October 2005, which was moved by Hon LAU Kong-wah for the purpose of enabling Members to debate on the toll adjustment issues of Tate Cairn Tunnel and Route 3 (Country Park Section). In this connection, the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Replacement of Schedule 1) Notice 2005 was not subject to negative or positive vetting by LegCo and was not tabled before LegCo. The wording of the motion is attached at **Annex B**.

8. Another example was the adjournment debate moved by Hon Miriam LAU, Chairman of the Subcommittee on Closed Area (Hong Kong Ministerial Conference of World Trade Organization) Order at the Council meeting on 23 November 2005 to enable Members to debate on the security and public order issues. The Order in question was subsidiary legislation subject to negative vetting by LegCo but no amendment had been proposed thereto.

9. If the proposed resolution to amend Rule 16 of the Rules of Procedure is passed by the Council at its meeting to be held on 4 June 2008, the duration of adjournment debates held pursuant to RoP 16(4) will be extended from one hour to one and a half hours. According to the revised HR 18, which has already been endorsed by the House Committee at its meeting on 16 May 2008, each Member, including the proposer, may speak for up to five minutes in the debate.

Option IV : Motion or adjournment debate initiated by individual Members

10. Any Member of the Council may propose a debate by either bidding for the allocation of a slot for a motion debate or an adjournment debate in accordance with the relevant requirements under HR 14.

(Translation)

**Motion on "Report of the Subcommittee on Review
of the Comprehensive Social Security Assistance Scheme"
moved by Dr Hon Fernando CHEUNG Chiu-hung
at the Council meeting
of Wednesday, 20 February 2008**

Wording of the Motion

"That this Council notes the Report of the Subcommittee on Review of the Comprehensive Social Security Assistance Scheme."

(Translation)

**Motion for Adjournment
moved by Hon LAU Kong-wah
at the Legislative Council meeting
of Wednesday, 19 October 2005**

Wording of the Motion

"That this Council do now adjourn for the purpose of debating the following issue: Toll adjustment issues of Tate's Cairn Tunnel and Route 3 (Country Park Section)."

2008年7月2日(星期三)
立法會會議席上
吳靄儀議員提出的休會待續議案

"本會現即休會待續，以就下述事項進行辯論：在香港實施聯合國安全理事會會議決的制裁事宜的現行安排。"

**Motion for Adjournment
to be moved by Hon Margaret NG
at the Legislative Council meeting
of Wednesday, 2 July 2008**

"That this Council do now adjourn for the purpose of debating the following issue : The current arrangement of implementing in Hong Kong sanctions resolved by the Security Council of the United Nations."