

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

UNITED NATIONS SANCTIONS
(DEMOCRATIC REPUBLIC OF THE CONGO)
REGULATION 2005

INTRODUCTION

At the meeting of the Executive Council on 25 October 2005, the Council advised and the Acting Chief Executive ordered that the United Nations Sanctions (Democratic Republic of the Congo) Regulation 2005 (“the 2005 Regulation”) (at Annex A) should be made under section 3 of the United Nations Sanctions Ordinance (Cap. 537) (“the Ordinance”). The 2005 Regulation was gazetted on 28 October 2005 and came into effect on the same day.

A

BACKGROUND

Obligation and Authority

2. Under section 3(1) of the Ordinance, the Chief Executive (“CE”) is required to make regulations to give effect to an instruction of the Ministry of Foreign Affairs (“MFA”) of the People’s Republic of China to implement sanctions decided by the Security Council of the United Nations (“UNSC”). In September 2005, the CE received specific instruction from MFA which requested the Government of the Hong Kong Special Administrative Region (“HKSAR”) to implement United Nations Security Council Resolution (“UNSCR”) 1616. The 2005 Regulation was made in pursuance of that instruction. A copy of the document issued by the Chief Secretary for Administration confirming MFA’s instruction is at Annex B.

B

UNSCR 1616

C

3. UNSCR 1616 (at Annex C) was adopted on 29 July 2005 by the UNSC which decided, inter alia, to renew until 31 July 2006 the provisions of paragraphs 20 to 22 of UNSCR 1493, as amended and expanded by paragraph 1 of UNSCR 1596, and reaffirmed paragraphs 2, 6, 10 and 13 to 16 of UNSCR 1596 (paragraph 2 of UNSCR 1616). Copies of UNSCR 1493 and 1596 are at Annex D and Annex E respectively.

D & E

4. Paragraph 1 of UNSCR 1596 extends the sanctions imposed under paragraph 20 of UNSCR 1493 (that is, sanctions against direct or indirect supply, sale or transfer of arms and any related material and the provision of any assistance, advice or training related to military activities) to all persons in the territory of the Democratic Republic of the Congo. Paragraph 2 of UNSCR 1596 provides for exceptions to such measures. Paragraphs 6 and 10 of UNSCR 1596 are not applicable to the HKSAR. Paragraphs 13 and 14 of UNSCR 1596 provide for sanctions against entry into or transit through territories of States of certain designated persons and for the relevant exceptions. Paragraphs 15 and 16 of UNSCR 1596 provide for financial sanctions against certain designated persons or entities, and for related exceptions.

5. UNSCR 1596 was implemented vide the United Nations Sanctions (Democratic Republic of the Congo) (Amendment) Regulation 2005 (L.N. 123 of 2005) which amended the United Nations Sanctions (Democratic Republic of the Congo) Regulation (Cap. 537V). In line with UNSCR 1596, the Amendment Regulation expired at midnight on 31 July 2005.

THE 2005 REGULATION

6. The 2005 Regulation, at Annex A, seeks to implement sanctions imposed in UNSCR 1493 as modified by UNSCR 1596 and renewed by UNSCR 1616, and sanctions imposed in UNSCR 1596 as reaffirmed by UNSCR 1616. The main provisions are –

- (a) section 1 which provides for the expiry of the 2005

Regulation;

- (b) sections 3 to 6 which provide for prohibition against supply, delivery and carriage of arms and related material to persons in the territory of the Democratic Republic of the Congo;
- (c) section 7 which provides for prohibition against provision to such persons of advice, assistance or training related to military activities;
- (d) section 8 which provides for prohibition against making available funds or other financial assets or economic resources to or for the benefit of a relevant person specified by the CE in accordance with section 36 (“relevant person”) or a relevant entity specified by the CE in accordance with section 36 (“relevant entity”);
- (e) sections 9 and 10 which provide for prohibition against entry into or transit through the HKSAR by persons designated by the Committee of the UNSC established pursuant to paragraph 8 of Resolution 1533 (“the Committee”);
- (f) sections 11 to 13 which provide for the granting of a licence for the supply, delivery or carriage of arms and related material, the provision of assistance or training related to military activities, or making available funds, etc. to a relevant person or a relevant entity, where the exceptions provided for in UNSCR 1596 (as reaffirmed by UNSCR 1616) are satisfied;
- (g) sections 16 to 27 which provide for the enforcement powers; and
- (h) section 36 which provides that the CE may, by notice published in the Gazette, specify a person or an entity designated by the Committee with respect to the measures set out in paragraph 15 of UNSCR 1596 as a relevant person or a relevant entity.

IMPLICATIONS OF THE 2005 REGULATION

7. The 2005 Regulation is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the binding effect of the Ordinance. It has no financial, civil service, economic, productivity, environmental or sustainability implications.

PUBLICITY

8. A press release was issued on 28 October 2005 when the 2005 Regulation was published in the Gazette.

RELATED MATTER

9. Between receipt of MFA's instruction and gazettal of the 2005 Regulation, the sanctions in respect of arms and related material could be implemented through Regulation 2 of the Import and Export (Strategic Commodities) Regulations (Cap. 60G) which provides that no one shall import or export an article specified in Schedule 1 to the Regulations except under and in accordance with an import or export licence issued by the Director-General of Trade and Industry. The Trade and Industry Department maintains import and export control on strategic commodities, including munitions items, chemical and biological weapons and their precursors, nuclear materials and equipment, and dual-use goods that are capable to be developed into weapons of mass destruction.

10. In respect of paragraphs 13 to 16 of UNSCR 1596, we are not aware of the Committee having yet designated any individuals or entities who would be subject to the said measures.

ADVICE SOUGHT

11. Members are invited to note the implementation of UNSCR 1616 by the 2005 Regulation.

Commerce, Industry and Technology Bureau
October 2005

L.N. 192 of 2005

Annex A

**UNITED NATIONS SANCTIONS (DEMOCRATIC REPUBLIC
OF THE CONGO) REGULATION 2005**

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UNITED NATIONS SANCTIONS (DEMOCRATIC REPUBLIC OF THE CONGO) REGULATION 2005

(Made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance (Cap. 537) on the instruction of the Ministry of Foreign Affairs of the People's Republic of China and after consultation with the Executive Council)

1. Duration

This Regulation expires at midnight on 31 July 2006.

PART 1

PRELIMINARY

2. Interpretation

In this Regulation, unless the context otherwise requires—
“assistance” (協助), in relation to military activities, includes financing and financial assistance;

“authorized officer” (獲授權人員) means—

- (a) a police officer;
- (b) a member of the Customs and Excise Service holding an office specified in Schedule 1 to the Customs and Excise Service Ordinance (Cap. 342); or
- (c) a public officer employed in the Customs and Excise Department in the Trade Controls Officer Grade;

“commander” (機長), in relation to an aircraft, means the member of the flight crew designated as the commander of the aircraft by the operator of the aircraft, or, failing such a person, the person who is for the time being the pilot in command of the aircraft;

“Commissioner” (關長) means the Commissioner of Customs and Excise, the Deputy Commissioner of Customs and Excise or any Assistant Commissioner of Customs and Excise;

“Committee” (委員會) means the Committee of the Security Council established pursuant to paragraph 8 of Resolution 1533;

“funds” (資金) includes—

- (a) gold coin, gold bullion, cash, cheques, claims on money, drafts, money orders and other payment instruments;
- (b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;

- (c) securities and debt instruments (including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures, debenture stock and derivatives contracts);
- (d) interest, dividends or other income on or value accruing from or generated by property;
- (e) credit, rights of set-off, guarantees, performance bonds or other financial commitments;
- (f) letters of credit, bills of lading and bills of sale; and
- (g) documents evidencing an interest in funds or financial resources, and any other instrument of export financing;

“licence” (特許) means a licence granted under section 11(1)(a), 11(1)(b), 12(1) or 13(1);

“master” (船長), in relation to a ship, includes any person (other than a pilot) for the time being in charge of the ship;

“operator” (營運人), in relation to an aircraft or a vehicle, means the person for the time being having the management of the aircraft or the vehicle;

“owner” (擁有人), in relation to a ship, where the owner of the ship is not the operator, means the operator and any person to whom it is chartered;

“prohibited goods” (禁制物品) means any arms or related material;

“relevant entity” (有關實體) means an entity specified by the Chief Executive as a relevant entity in accordance with section 36;

“relevant person” (有關人士) means a person specified by the Chief Executive as a relevant person in accordance with section 36;

“Resolution 1533” (《第 1533 號決議》) means Resolution 1533 (2004) adopted by the Security Council on 12 March 2004;

“Resolution 1596” (《第 1596 號決議》) means Resolution 1596 (2005) adopted by the Security Council on 18 April 2005;

“Resolution 1616” (《第 1616 號決議》) means Resolution 1616 (2005) adopted by the Security Council on 29 July 2005;

“Security Council” (安全理事會) means the Security Council of the United Nations;

“ship” (船舶) includes every description of vessel used in navigation not propelled by oars.

PART 2

PROHIBITIONS

Supply and delivery of goods**3. Prohibition against supply and delivery of certain goods to persons in Congo**

(1) Except under the authority of a licence granted under section 11(1)(a), a person shall not supply or deliver, agree to supply or deliver, or do any act likely to promote the supply or delivery of, any prohibited goods—

- (a) to, or to the order of, a person in the territory of the Democratic Republic of the Congo; or
- (b) to a destination for the purpose of delivery, directly or indirectly, to, or to the order of, a person in the territory of the Democratic Republic of the Congo.

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on conviction on indictment to a fine and to imprisonment for 7 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(3) In any proceedings for an offence under subsection (2), it is a defence for a person charged to prove that he did not know and had no reason to believe—

- (a) that the goods concerned were prohibited goods; or
- (b) that the goods concerned were to be supplied or delivered—
 - (i) to, or to the order of, a person in the territory of the Democratic Republic of the Congo; or
 - (ii) to a destination for the purpose of delivery, directly or indirectly, to, or to the order of, a person in the territory of the Democratic Republic of the Congo.

(4) This section applies to—

- (a) a person within the HKSAR; and
- (b) a person acting elsewhere who is—
 - (i) both a Hong Kong permanent resident and a Chinese national; or
 - (ii) a body incorporated or constituted under the law of the HKSAR.

Carriage of goods

4. Application of sections 5 and 6

Sections 5 and 6 apply to—

- (a) a ship that is registered in the HKSAR;
- (b) an aircraft that is registered in the HKSAR;
- (c) any other ship or aircraft that is for the time being chartered to a person who is—
 - (i) within the HKSAR;
 - (ii) both a Hong Kong permanent resident and a Chinese national; or
 - (iii) a body incorporated or constituted under the law of the HKSAR; and
- (d) a vehicle within the HKSAR.

5. Prohibition against carriage of certain goods to persons in Congo

(1) Except under the authority of a licence granted under section 11(1)(b), and without prejudice to the generality of section 3, a ship, aircraft or vehicle to which this section and section 6 apply shall not be used for the carriage of any prohibited goods if the carriage is, or forms part of, carriage—

- (a) to, or to the order of, a person in the territory of the Democratic Republic of the Congo; or
 - (b) to a destination for the purpose of delivery, directly or indirectly, to, or to the order of, a person in the territory of the Democratic Republic of the Congo.
- (2) Subsection (1) does not apply if—
- (a) the carriage of the prohibited goods is performed in the course of the supply or delivery of the prohibited goods; and
 - (b) the supply or delivery was authorized by a licence granted under section 11(1)(a).

(3) This section does not operate so as to prejudice any other law prohibiting or restricting the use of ships, aircraft or vehicles.

6. Offences in respect of carriage of certain goods to persons in Congo

(1) For the purposes of subsection (2), “specified person” (指明人士) means—

- (a) in relation to a ship registered in the HKSAR, the owner or master of the ship;

- (b) in relation to any other ship—
 - (i) the person to whom the ship is for the time being chartered;
or
 - (ii) the master of the ship, if the master is within the HKSAR or is both a Hong Kong permanent resident and a Chinese national;
 - (c) in relation to an aircraft registered in the HKSAR, the operator or commander of the aircraft;
 - (d) in relation to any other aircraft—
 - (i) the person to whom the aircraft is for the time being chartered;
 - (ii) the operator of the aircraft, if the operator is within the HKSAR, is both a Hong Kong permanent resident and a Chinese national, or is a body incorporated or constituted under the law of the HKSAR; or
 - (iii) the commander of the aircraft, if the commander is within the HKSAR or is both a Hong Kong permanent resident and a Chinese national; or
 - (e) in relation to a vehicle, the operator or driver of the vehicle.
- (2) If a ship, aircraft or vehicle is used in contravention of section 5(1), each specified person commits an offence and is liable—
- (a) on conviction on indictment to a fine and to imprisonment for 7 years; or
 - (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.
- (3) In any proceedings for an offence under subsection (2), it is a defence for a person charged to prove that he did not know and had no reason to believe—
- (a) that the goods concerned were prohibited goods; or
 - (b) that the carriage of the goods concerned was, or formed part of, carriage—
 - (i) to, or to the order of, a person in the territory of the Democratic Republic of the Congo; or
 - (ii) to a destination for the purpose of delivery, directly or indirectly, to, or to the order of, a person in the territory of the Democratic Republic of the Congo.

Provision of advice, assistance or training

7. Prohibition against provision of certain advice, assistance or training to persons in Congo

(1) A person shall not provide to a person in the territory of the Democratic Republic of the Congo any advice related to military activities.

(2) Except under the authority of a licence granted under section 12(1), a person shall not provide to a person in the territory of the Democratic Republic of the Congo any assistance or training related to military activities.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable—

(a) on conviction on indictment to a fine and to imprisonment for 7 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(4) In any proceedings for an offence under subsection (3), it is a defence for a person charged to prove that he did not know and had no reason to believe—

(a) that the advice, assistance or training concerned was to be provided to a person in the territory of the Democratic Republic of the Congo; or

(b) that the advice, assistance or training concerned related to military activities.

(5) This section applies to—

(a) a person within the HKSAR; and

(b) a person acting elsewhere who is—

(i) both a Hong Kong permanent resident and a Chinese national; or

(ii) a body incorporated or constituted under the law of the HKSAR.

Making available funds, etc. to certain persons or entities

8. Prohibition against making available funds, etc. to certain persons or entities

(1) Except under the authority of a licence granted under section 13(1), a person shall not make available any funds or other financial assets or economic resources to or for the benefit of a relevant person or a relevant entity.

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on conviction on indictment to a fine and to imprisonment for 7 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(3) In any proceedings for an offence under subsection (2), it is a defence for a person charged to prove that he did not know and had no reason to believe that the funds or other financial assets or economic resources concerned were to be made available to or for the benefit of a relevant person or a relevant entity.

(4) This section applies to—

- (a) a person within the HKSAR; and
- (b) a person acting elsewhere who is—
 - (i) both a Hong Kong permanent resident and a Chinese national; or
 - (ii) a body incorporated or constituted under the law of the HKSAR.

Entry into or transit through HKSAR

9. Prohibition against entry or transit by certain persons

(1) Subject to the exception in section 10, a specified person shall not enter or transit through the HKSAR.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 2 years.

(3) This section shall not prohibit a person having the right of abode or the right to land in the HKSAR from entry into the HKSAR.

(4) In this section—

“paragraph 13 of Resolution 1596” (《第 1596 號決議》第 13 段) means paragraph 13 of Resolution 1596 as reaffirmed by the Security Council in paragraph 2 of Resolution 1616;

“specified person” (指明人士) means a person designated by the Committee with respect to the measures set out in paragraph 13 of Resolution 1596.

10. Exception to prohibition against entry or transit by certain persons

Section 9 shall not apply if—

- (a) the Committee determines in advance and on a case-by-case basis that the relevant entry into or transit through the HKSAR is justified on the ground of humanitarian need, including religious obligation; or

- (b) the Committee concludes that the relevant entry into or transit through the HKSAR would further the objectives of the resolutions of the Security Council, that is peace and national reconciliation in the Democratic Republic of the Congo and stability in the region.

PART 3

LICENCE

11. Licence for supply, delivery or carriage of certain goods

(1) If it is proved to the satisfaction of the Chief Executive that any one of the requirements in subsection (2) is met, the Chief Executive shall, on application, grant, as appropriate—

- (a) a licence for the supply or delivery of prohibited goods, or the doing of an act likely to promote the supply or delivery of prohibited goods—
- (i) to, or to the order of, a person in the territory of the Democratic Republic of the Congo; or
 - (ii) to a destination for the purpose of delivery, directly or indirectly, to, or to the order of, a person in the territory of the Democratic Republic of the Congo; or
- (b) a licence for the carriage of prohibited goods which is, or forms part of, carriage—
- (i) to, or to the order of, a person in the territory of the Democratic Republic of the Congo; or
 - (ii) to a destination for the purpose of delivery, directly or indirectly, to, or to the order of, a person in the territory of the Democratic Republic of the Congo.
- (2) The requirements referred to in subsection (1) are as follows—
- (a) the prohibited goods are intended solely for support of or use by such units of the army and police of the Democratic Republic of the Congo that—
- (i) have completed the process of their integration;
 - (ii) operate under the command, respectively, of the état-major intégré of the Armed Forces or of the National Police of the Democratic Republic of the Congo; or
 - (iii) are in the process of their integration in the territory of the Democratic Republic of the Congo outside the provinces of North and South Kivu and the Ituri district;

- (b) the prohibited goods are intended solely for support of or use by the United Nations Organization Mission in the Democratic Republic of the Congo;
- (c) the prohibited goods are non-lethal military equipment intended solely for humanitarian or protective use, as notified in advance to the Committee in accordance with paragraph 8(e) of Resolution 1533.

12. Licence for provision of certain assistance or training

(1) If it is proved to the satisfaction of the Chief Executive that any one of the requirements in subsection (2) is met, the Chief Executive shall, on application, grant a licence for the provision to a person in the territory of the Democratic Republic of the Congo of assistance or training related to military activities.

(2) The requirements referred to in subsection (1) are as follows—

- (a) the assistance or training is technical assistance or training intended solely for support of or use by such units of the army and police of the Democratic Republic of the Congo that—
 - (i) have completed the process of their integration;
 - (ii) operate under the command, respectively, of the état-major intégré of the Armed Forces or of the National Police of the Democratic Republic of the Congo; or
 - (iii) are in the process of their integration in the territory of the Democratic Republic of the Congo outside the provinces of North and South Kivu and the Ituri district;
- (b) the assistance or training is technical assistance or training intended solely for support of or use by the United Nations Organization Mission in the Democratic Republic of the Congo;
- (c) the assistance or training is technical assistance or training related to the supply of non-lethal military equipment intended solely for humanitarian or protective use, as notified in advance to the Committee in accordance with paragraph 8(e) of Resolution 1533.

13. Licence for making available funds, etc. to certain persons or entities

(1) If it is proved to the satisfaction of the Chief Executive that any one of the requirements in subsection (2) is met, the Chief Executive shall, on application, grant a licence for making available funds or other financial assets or economic resources to or for the benefit of a relevant person or a relevant entity.

- (2) The requirements referred to in subsection (1) are as follows—
- (a) the funds or other financial assets or economic resources have been determined by the Chief Executive to be—
 - (i) necessary for basic expenses, including payment for foodstuffs, rents, mortgages, medicines and medical treatments, taxes, insurance premiums, and public utility charges; or
 - (ii) for payment of reasonable professional fees or reimbursement of incurred expenses associated with the provision of legal services,and the Committee has been notified by the Chief Executive of the intention to authorize, where appropriate, access to such funds or other financial assets or economic resources, and the Committee has not made a negative decision within 4 working days of such notification;
 - (b) the funds or other financial assets or economic resources have been determined by the Chief Executive to be necessary for extraordinary expenses, and the Committee has been notified by the Chief Executive of the determination, and the Committee has approved the determination;
 - (c) the funds or other financial assets or economic resources have been determined by the Chief Executive to be the subject of a judicial, administrative or arbitration lien or judgment, and the lien or judgment—
 - (i) was entered prior to 18 April 2005;
 - (ii) is not for the benefit of a relevant person or a relevant entity; and
 - (iii) has been notified by the Chief Executive to the Committee.
- (3) A licence granted by the Chief Executive under subsection (1), on his being satisfied that the requirements in subsection (2)(c) are met, shall only authorize that the funds or other financial assets or economic resources be used to satisfy the relevant lien or judgment.

14. Provision of false information or documents for purpose of obtaining licences

(1) If, for the purpose of obtaining a licence, a person makes any statement or provides or produces any information or document that he knows to be false in a material particular, that person commits an offence and is liable—

- (a) on conviction on indictment to a fine and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(2) If, for the purpose of obtaining a licence, a person recklessly makes any statement or provides or produces any information or document that is false in a material particular, that person commits an offence and is liable—

(a) on conviction on indictment to a fine and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

PART 4

THINGS DONE OUTSIDE HKSAR

15. Licence or permission granted by authorities of places outside HKSAR

(1) If the circumstances described in subsection (2) apply, a provision of this Regulation which prohibits the doing of a thing except under the authority of a licence shall not have effect in relation to any such thing done in a place outside the HKSAR by—

(a) a person who is ordinarily resident in that place; or

(b) a body corporate incorporated or constituted under the law of that place.

(2) For the purposes of subsection (1), the circumstances are that the thing is done under the authority of a licence or with permission granted, in accordance with any law in force in that place outside the HKSAR (being a law substantially corresponding to the relevant provision of this Regulation), by the authority competent in that behalf under that law.

PART 5

ENFORCEMENT OF REGULATION

Investigation, etc. of suspected ships

16. Investigation of suspected ships

(1) If an authorized officer has reason to suspect that a ship to which sections 5 and 6 apply has been, is being or is about to be used in contravention of section 5(1), he may—

- (a) either alone or accompanied and assisted by any person acting under his authority, board the ship and search it and, for that purpose, use or authorize the use of reasonable force; and
- (b) request the master or charterer of the ship to provide such information relating to the ship and its cargo, and produce for his inspection such documents so relating and such cargo carried on it, as he may specify.

(2) If an authorized officer has reason to suspect that a ship is being or is about to be used in contravention of section 5(1), he may (either there and then or on consideration of any information provided or document or cargo produced in response to a request made under subsection (1)(b)), with a view to preventing the commission, or the continued commission, of such a contravention or in order that enquiries may be pursued, do one or more of the following—

- (a) direct the master or charterer of the ship to refrain, except with the consent of an authorized officer, from landing at any port specified by the authorized officer any part of the ship's cargo that is so specified;
- (b) request the master or charterer of the ship to take one or more of the following steps—
 - (i) to cause the ship, including any of its cargo, not to proceed with the voyage on which the ship is then engaged or about to be engaged until the master or charterer is notified by an authorized officer that the ship and its cargo may so proceed;
 - (ii) (if the ship is in the HKSAR) to cause the ship and any of its cargo to remain in the HKSAR until the master or charterer is notified by an authorized officer that the ship and its cargo may depart;
 - (iii) (if the ship is in any other place) to take the ship and any of its cargo to such port as is specified by an authorized officer, and to cause the ship and its cargo to remain in that place until the master or charterer is notified by an authorized officer that the ship and its cargo may depart;
 - (iv) to take the ship and any of its cargo to such other destination as may be specified by an authorized officer in agreement with the master or charterer.

(3) A power conferred by this section to request the provision of any information or the production of any document or cargo for inspection includes a power to—

- (a) specify whether the information should be provided orally or in writing and in what form; and

- (b) specify the time by which and the place in which the information should be provided or the document or cargo should be produced for inspection.

17. Offences by master or charterer of ship

(1) If a master or charterer of a ship disobeys any direction given under section 16(2)(a), or, without reasonable excuse, refuses or fails to comply with a request made under section 16(1)(b) or (2)(b) within the time specified by an authorized officer or, if no time is specified, within a reasonable time, the master or charterer commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

(2) If a master or charterer of a ship, in response to a request made under section 16(1)(b) or (2)(b), provides or produces to an authorized officer any information, explanation or document that he knows to be false in a material particular, or recklessly provides or produces to an authorized officer any information, explanation or document that is false in a material particular, the master or charterer commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

18. Power of authorized officers to enter and detain ships

(1) Without prejudice to section 17, if an authorized officer has reason to suspect that a request that has been made under section 16(2)(b) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose—

- (a) enter, or authorize the entry on, any land and the ship concerned;
- (b) detain, or authorize the detention of, that ship and any of its cargo; and
- (c) use, or authorize the use of, reasonable force.

(2) Subject to subsection (3), subsection (1) does not authorize the detention of any ship for more than 12 hours.

(3) The Chief Secretary for Administration may, by order in writing under his hand, authorize the detention of a ship referred to in subsection (1) for further periods of not more than 12 hours each, and any such order shall state the times from which and for which the order shall be effective.

19. Sections 16, 17 and 18 not to prejudice other laws

Sections 16, 17 and 18 do not operate so as to prejudice any other law conferring powers or imposing restrictions or enabling restrictions to be imposed in respect of a ship.

Investigation, etc. of suspected aircraft

20. Investigation of suspected aircraft

(1) If an authorized officer has reason to suspect that an aircraft to which sections 5 and 6 apply has been, is being or is about to be used in contravention of section 5(1), he may—

- (a) either alone or accompanied and assisted by any person acting under his authority, board the aircraft and search it and, for that purpose, use or authorize the use of reasonable force; and
- (b) request the charterer, operator or commander of the aircraft, or all of them, to provide such information relating to the aircraft and its cargo, and produce for his inspection such documents so relating and such cargo carried on it, as he may specify.

(2) If the aircraft referred to in subsection (1) is in the HKSAR, an authorized officer may (either there and then or on consideration of any information provided or document or cargo produced in response to a request made under subsection (1)(b)) further request the charterer, operator or commander, or all of them, to cause the aircraft and any of its cargo to remain in the HKSAR until the charterer, operator or commander is, or (if the further request is made to all of them) all of them are, notified by an authorized officer that the aircraft and its cargo may depart.

(3) A power conferred by this section to request the provision of any information or the production of any document or cargo for inspection includes a power to—

- (a) specify whether the information should be provided orally or in writing and in what form; and
- (b) specify the time by which and the place in which the information should be provided or the document or cargo should be produced for inspection.

21. Offences by charterer, operator or commander of aircraft

(1) If a charterer, operator or commander of an aircraft, without reasonable excuse, refuses or fails to comply with a request made under section 20(1)(b) or (2) within the time specified by an authorized officer or, if no time is specified, within a reasonable time, the charterer, operator or commander commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

(2) If a charterer, operator or commander of an aircraft, in response to a request made under section 20(1)(b) or (2), provides or produces to an authorized officer any information, explanation or document that he knows to

be false in a material particular, or recklessly provides or produces to an authorized officer any information, explanation or document that is false in a material particular, the charterer, operator or commander commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

22. Power of authorized officers to enter and detain aircraft

(1) Without prejudice to section 21, if an authorized officer has reason to suspect that a request that has been made under section 20(2) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose—

- (a) enter, or authorize the entry on, any land and the aircraft concerned;
- (b) detain, or authorize the detention of, that aircraft and any of its cargo; and
- (c) use, or authorize the use of, reasonable force.

(2) Subject to subsection (3), subsection (1) does not authorize the detention of any aircraft for more than 6 hours.

(3) The Chief Secretary for Administration may, by order in writing under his hand, authorize the detention of an aircraft referred to in subsection (1) for further periods of not more than 6 hours each, and any such order shall state the times from which and for which the order shall be effective.

23. Sections 20, 21 and 22 not to prejudice other laws

Sections 20, 21 and 22 do not operate so as to prejudice any other law conferring powers or imposing restrictions or enabling restrictions to be imposed in respect of an aircraft.

Investigation, etc. of suspected vehicles

24. Investigation of suspected vehicles

(1) If an authorized officer has reason to suspect that a vehicle within the HKSAR has been, is being or is about to be used in contravention of section 5(1), he may—

- (a) either alone or accompanied and assisted by any person acting under his authority, board the vehicle and search it and, for that purpose, use or authorize the use of reasonable force;

- (b) request the operator or driver of the vehicle to provide such information relating to the vehicle and any article carried on it, and produce for his inspection such documents so relating and such articles carried on it, as he may specify; and
- (c) (either there and then or on consideration of any information provided or document or article produced in response to a request made under paragraph (b)) further request the operator or driver to take the vehicle and any article carried on it to such place as is specified by an authorized officer, and to cause the vehicle and the article to remain in that place until the operator or driver is notified by an authorized officer that the vehicle and the article may depart.

(2) A power conferred by this section to request the provision of any information or the production of any document or article for inspection includes a power to—

- (a) specify whether the information should be provided orally or in writing and in what form; and
- (b) specify the time by which and the place in which the information should be provided or the document or article should be produced for inspection.

25. Offences by operator or driver of vehicle

(1) If an operator or driver of a vehicle, without reasonable excuse, refuses or fails to comply with a request made under section 24(1)(b) or (c) within the time specified by an authorized officer or, if no time is specified, within a reasonable time, the operator or driver commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

(2) If an operator or driver of a vehicle, in response to a request made under section 24(1)(b) or (c), provides or produces to an authorized officer any information, explanation or document that he knows to be false in a material particular, or recklessly provides or produces to an authorized officer any information, explanation or document that is false in a material particular, the operator or driver commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

26. Power of authorized officers to enter and detain vehicles

(1) Without prejudice to section 25, if an authorized officer has reason to suspect that a request that has been made under section 24(1)(c) may not be complied with, he may take such steps as appear to him to be necessary to secure compliance with that request and, without prejudice to the generality of the foregoing, may for that purpose—

- (a) enter, or authorize the entry on, any land and enter, or authorize the entry into, the vehicle concerned;
- (b) detain, or authorize the detention of, that vehicle and any article carried on it; and
- (c) use, or authorize the use of, reasonable force.

(2) Subject to subsection (3), subsection (1) does not authorize the detention of any vehicle for more than 12 hours.

(3) The Commissioner may, by order in writing under his hand, authorize the detention of a vehicle referred to in subsection (1) for further periods of not more than 12 hours each, and any such order shall state the times from which and for which the order shall be effective.

27. Sections 24, 25 and 26 not to prejudice other laws

Sections 24, 25 and 26 do not operate so as to prejudice any other law conferring powers or imposing restrictions or enabling restrictions to be imposed in respect of a vehicle.

Proof of identity

28. Production of proof of identity

Before or on exercising a power conferred by section 16, 18, 20, 22, 24 or 26, an authorized officer shall, if requested so to do, produce evidence of his identity.

PART 6

EVIDENCE

29. Power of magistrate or judge to grant warrant

(1) A magistrate or judge may grant a warrant if he is satisfied by information on oath given by an authorized officer that there are reasonable grounds for suspecting that—

- (a) an offence under this Regulation has been committed or is being committed; and
- (b) there is on any premises specified in the information, or on any ship, aircraft or vehicle so specified, evidence in relation to the commission of the offence.

(2) A warrant granted under subsection (1) may authorize any authorized officer, together with any other person named in the warrant, to enter the premises specified in the information or any premises on which the ship, aircraft or vehicle so specified may be, at any time within one month from the date of the warrant, and to search the premises, ship, aircraft or vehicle.

(3) A person authorized by a warrant to search any premises, ship, aircraft or vehicle may exercise any or all of the following powers—

- (a) to search any person who is found on, or whom he has reasonable grounds to believe to have recently left or to be about to enter, the premises, ship, aircraft or vehicle;
- (b) to seize and detain any document or article found on the premises, ship, aircraft or vehicle or on such person that he has reasonable grounds to believe to be evidence in relation to the commission of an offence under this Regulation;
- (c) to take in relation to any such document or article any other steps that may appear necessary for preserving the document or article seized and preventing interference with it.

(4) A person may only be searched under this section by a person who is of the same sex.

(5) If a person is empowered under this section to enter any premises, ship, aircraft or vehicle, he may use such force as is reasonably necessary for that purpose.

30. Detention of documents or articles seized

(1) Subject to subsection (2), any document or article seized under section 29(3) may not be detained for a period of more than 3 months.

(2) If the document or article is relevant to an offence under this Regulation, and proceedings for the offence have begun, the document or article may be detained until the completion of those proceedings.

PART 7

DISCLOSURE OF INFORMATION OR DOCUMENTS

31. Disclosure of information or documents

(1) Any information or document provided, produced or seized in pursuance of this Regulation may be disclosed only if—

- (a) the person who provided or produced the information or document or the person from whom the document was seized has given consent to the disclosure;

- (b) the information or document is disclosed to a person who would have been empowered under this Regulation to request that it be provided or produced;
 - (c) the information or document is disclosed on the authority of the Chief Executive, subject to the information or document being transmitted through and with the approval of the instructing authority, to any organ of the United Nations or to any person in the service of the United Nations or to the Government of any place outside the People's Republic of China for the purpose of assisting the United Nations or that Government in securing compliance with or detecting evasion of measures in relation to the Democratic Republic of the Congo decided on by the Security Council; or
 - (d) the information or document is disclosed with a view to the institution of, or otherwise for the purposes of, any proceedings for an offence under this Regulation.
- (2) For the purposes of subsection (1)(a)—
- (a) a person may not give consent to the disclosure if he has obtained the information or possessed the document only in his capacity as servant or agent of another person; and
 - (b) a person may give consent to the disclosure if he is entitled to the information or to the possession of the document in his own right.

PART 8

OTHER OFFENCES AND MISCELLANEOUS MATTERS

32. Liability of person other than principal offender

(1) Where the person convicted of an offence under this Regulation is a body corporate and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, the director, manager, secretary or other similar officer shall be guilty of the like offence.

(2) Where the person convicted of an offence under this Regulation is a firm and it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of, any partner in the firm or any person concerned in the management of the firm, the partner or the person concerned in the management of the firm shall be guilty of the like offence.

33. Offences in relation to obstruction of authorized persons, etc.

A person who obstructs another person (including a person acting under the authority of an authorized officer) in the exercise of his powers under this Regulation commits an offence and is liable on conviction to a fine at level 6 and to imprisonment for 6 months.

34. Offences in relation to evasion of this Regulation

A person who destroys, mutilates, defaces, secretes or removes any document or article with intent to evade any of the provisions of this Regulation commits an offence and is liable—

- (a) on conviction on indictment to a fine and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

35. Proceedings to be instituted

(1) Proceedings for an offence under this Regulation may only be instituted by or with the consent of the Secretary for Justice.

(2) Summary proceedings for an offence under this Regulation, being an offence alleged to have been committed outside the HKSAR, may be commenced at any time not later than 12 months from the date on which the person charged first enters the HKSAR after committing the offence.

36. Specification of relevant person or relevant entity by Chief Executive

(1) The Chief Executive may by notice published in the Gazette specify a person or an entity designated by the Committee with respect to the measures set out in paragraph 15 of Resolution 1596 as a relevant person or a relevant entity.

(2) In this section, “paragraph 15 of Resolution 1596” (《第 1596 號決議》第 15 段) means paragraph 15 of Resolution 1596 as reaffirmed by the Security Council in paragraph 2 of Resolution 1616.

37. Exercise of powers of Chief Executive

The Chief Executive may, to such extent and subject to such restrictions and conditions as he may think proper, delegate or authorize the delegation of any of his powers or functions under this Regulation to any person, or class or description of persons, approved by him, and references in this Regulation to the Chief Executive shall be construed accordingly.

Rafael S. Y. HUI
Acting Chief Executive

25 October 2005

Explanatory Note

The purpose of this Regulation is to give effect to a decision of the Security Council of the United Nations (“the Security Council”) in Resolution 1616 (2005) as adopted by the Security Council on 29 July 2005.

2. The Regulation provides for the further implementation of the following sanctions imposed by the Security Council in Resolution 1493 (2003), as modified by the Security Council in Resolution 1596 (2005), and renewed by the Security Council in Resolution 1616 (2005)—

- (a) prohibition against the direct or indirect supply, sale or transfer of arms and related materials to persons in the territory of the Democratic Republic of the Congo; and
- (b) prohibition against the provision to such persons of assistance, advice or training related to military activities.

3. The Regulation also provides for the further implementation of the following sanctions imposed by the Security Council in Resolution 1596 (2005) and reaffirmed by the Security Council in Resolution 1616 (2005)—

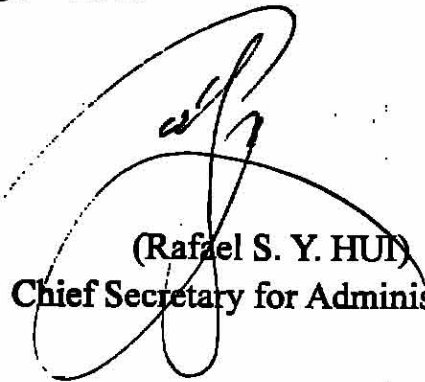
- (a) prohibition against making available to or for the benefit of certain persons or entities any funds or other financial assets or economic resources; and
- (b) prohibition against entry into or transit through the HKSAR of certain persons.

United Nations Sanctions Ordinance (Cap. 537)

**United Nations Sanctions (Democratic Republic of the Congo)
Regulation 2005**

This is to confirm that the Chief Executive received specific instruction from the Ministry of Foreign Affairs of the People's Republic of China in September 2005 which requested the Government of the Hong Kong Special Administrative Region to fully implement Resolution No. 1616 of the Security Council of the United Nations, and that the United Nations Sanctions (Democratic Republic of the Congo) Regulation 2005 was made in pursuance of that instruction.

Dated this *31st* day of *October* 2005


(Rafael S. Y. HUI)
Chief Secretary for Administration

**Security Council**Distr.: General
29 July 2005

Resolution 1616 (2005)**Adopted by the Security Council at its 5243rd meeting, on
29 July 2005***The Security Council,*

Recalling its previous resolutions and the statements by its President concerning the Democratic Republic of the Congo, in particular resolutions 1493 of 28 July 2003, 1533 of 12 March 2004, 1552 of 27 July 2004, 1565 of 1 October 2004, 1592 of 30 March 2005 and 1596 of 18 April 2005,

Reiterating its serious concern regarding the presence of armed groups and militias in the Eastern part of the Democratic Republic of the Congo, particularly in the provinces of North Kivu and South Kivu and in the Ituri district, which perpetuate a climate of insecurity in the whole region,

Condemning the continuing illicit flow of weapons within and into the Democratic Republic of the Congo, and declaring its determination to closely monitor compliance with the arms embargo imposed by resolution 1493 and expanded by resolution 1596, and to enforce the measures provided for in paragraphs 13 and 15 of resolution 1596 against persons and entities acting in violation of this embargo,

Recognizing the linkage between the illegal exploitation of natural resources, illicit trade in such resources and the proliferation and trafficking of arms as one of the factors fuelling and exacerbating conflicts in the Great Lakes region of Africa,

Taking note of the report of the Group of Experts referred to in paragraph 10 of resolution 1533 and paragraph 21 of resolution 1596 (hereafter the Group of Experts), dated 5 July 2005 (S/2005/436), transmitted by the Committee established in accordance with paragraph 8 of resolution 1533 (hereafter the Committee),

Noting that the situation in the Democratic Republic of the Congo continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Reaffirms* the demands of paragraphs 15, 18 and 19 of resolution 1493 and of paragraphs 5 and 19 of resolution 1596;

2. *Decides*, in light of the failure by the parties to comply with the demands of the Council, to renew until 31 July 2006 the provisions of paragraphs 20 to 22 of

resolution 1493, as amended and expanded by paragraph 1 of resolution 1596, and reaffirms paragraphs 2, 6, 10 and 13 to 16 of resolution 1596;

3. *Expresses* its intention to modify or to remove those provisions if it determines that the demands noted above have been satisfied;

4. *Requests* the Secretary-General, in consultation with the Committee, to re-establish the Group of Experts within thirty days from the date of adoption of this resolution and for a period expiring on 31 January 2006, drawing, as appropriate, on the expertise of the members of the group of experts established pursuant to resolution 1596;

5. *Requests* the Group of Experts to continue fulfilling its mandate as defined in resolutions 1533 and 1596, to update the Committee on its work by 10 November 2005, and to report to the Council in writing, through the Committee, before 10 January 2006, including on the implementation of the measures imposed by paragraph 20 of resolution 1493 and expanded by resolution 1596, with recommendations in this regard, in particular regarding the lists provided for by paragraph 10 (g) of resolution 1533, and including information on the sources of financing, such as from natural resources, which are funding the illicit trade in arms;

6. *Decides* to remain actively seized of the matter.

**Security Council**Distr.: General
28 July 2003

Resolution 1493 (2003)**Adopted by the Security Council at its 4797th meeting,
on 28 July 2003***The Security Council,**Recalling* its previous resolutions and the statements by its President concerning the Democratic Republic of the Congo,*Reaffirming* its commitment to respect for the sovereignty, territorial integrity and political independence of the Democratic Republic of the Congo and all the States of the region,*Reaffirming also* the obligations of all States to refrain from the use of force against the territorial integrity and political independence of any State or in any other manner incompatible with the purposes and principles of the United Nations,*Concerned* by the continued illegal exploitation of the natural resources of the Democratic Republic of the Congo, and *reaffirming* in this regard its commitment to respect for the sovereignty of the Democratic Republic of the Congo over its natural resources,*Welcoming* the conclusion of the Global and All Inclusive Agreement on the Transition in the Democratic Republic of the Congo (signed in Pretoria on 17 December 2002), and the subsequent establishment of the Government of National unity and Transition,*Deeply concerned* by the continuation of hostilities in the eastern part of the Democratic Republic of the Congo, particularly in North and South Kivu and in Ituri, and by the grave violations of human rights and of international humanitarian law that accompany them,*Recalling* that it is incumbent on all the parties to cooperate in the overall deployment of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC),*Renewing* its support to the Interim Emergency Multinational Force deployed in Bunia and *stressing* the need to ensure effective and timely replacement of the Force, as requested in resolution 1484 (2003), to contribute in the best way to the stabilization of Ituri,

Taking note of the second special report of the Secretary-General on MONUC, of 27 May 2003 (S/2003/566), and of its recommendations,

Taking note also of the report of the Security Council Mission to Central Africa, of 18 June 2003 (S/2003/653),

Noting that the situation in the Democratic Republic of the Congo continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Expresses satisfaction* at the promulgation, on 4 April 2003, of the Transitional Constitution in the Democratic Republic of the Congo and at the formation, announced on 30 June 2003, of the Government of National unity and Transition, *encourages* the Congolese parties to take the necessary decisions in order to allow the transitional institutions to begin functioning effectively, and *encourages* them also in this regard to include representatives of the interim institutions that emerged from the *Ituri Pacification Commission* in the transitional institutions;

2. *Decides* to extend the mandate of MONUC until 30 July 2004;

3. *Notes with appreciation* the recommendations in the second special report of the Secretary-General and *authorizes* increasing the military strength of MONUC to 10,800 personnel;

4. *Requests* the Secretary-General to ensure, through his Special Representative for the Democratic Republic of the Congo, who convenes the International Committee in support of the Transition, the coordination of all the activities of the United Nations system in the Democratic Republic of the Congo, and to facilitate coordination with other national and international actors of activities in support of the transition;

5. *Encourages* MONUC, in coordination with other United Nations agencies, donors and non-governmental organizations, to provide assistance, during the transition period, for the reform of the security forces, the re-establishment of a State based on the rule of law and the preparation and holding of elections, throughout the territory of the Democratic Republic of the Congo, and *welcomes*, in this regard, the efforts of the Member States to support the transition and national reconciliation;

6. *Approves* the temporary deployment of MONUC personnel intended, during the first months of the establishment of the transitional institutions, to participate in a multi-layer security system in Kinshasa in accordance with paragraphs 35 to 38 of the second special report of the Secretary-General, *approves also* the reconfiguration of the MONUC civilian police component as outlined in paragraph 42 of that report, and *encourages* MONUC to continue to support police development in areas of urgent need;

7. *Encourages* donors to support the establishment of an integrated Congolese police unit and *approves* the provision by MONUC of the additional assistance that might be needed for its training;

8. *Strongly condemns* the acts of violence systematically perpetrated against civilians, including the massacres, as well as other atrocities and violations of international humanitarian law and human rights, in particular, sexual violence against women and girls, *stresses* the need to bring to justice those responsible, including those at the command level, and *urges* all parties, including the

Government of the Democratic Republic of the Congo, to take all necessary steps to prevent further violations of human rights and international humanitarian law, in particular those committed against civilians;

9. *Reaffirms* the importance of a gender perspective in peacekeeping operations in accordance with resolution 1325 (2000), *recalls* the need to address violence against women and girls as a tool of warfare, and in this respect *encourages* MONUC to continue to actively address this issue; and *calls* on MONUC to increase the deployment of women as military observers as well as in other capacities;

10. *Reaffirms* that all Congolese parties have an obligation to respect human rights, international humanitarian law and the security and well-being of the civilian population;

11. *Urges* the Government of National unity and Transition to ensure that the protection of human rights and the establishment of a State based on the rule of law and of an independent judiciary are among its highest priorities, including the establishment of the necessary institutions as reflected in the Global and All-inclusive agreement, *encourages* the Secretary-General, through his Special Representative, and the United Nations High Commissioner for Human Rights to coordinate their efforts in particular to assist the transitional authorities of the Democratic Republic of the Congo in order to put an end to impunity, and *encourages also* the African Union to play a role in this regard;

12. *States that it is profoundly preoccupied* by the humanitarian situation throughout the country and, in particular, in the eastern regions, and *demands* that all the parties guarantee the security of the civilian population thereby enabling MONUC and humanitarian organizations to have total, unrestricted and immediate access to the population groups in need;

13. *Strongly condemns* the continued recruitment and use of children in the hostilities in the Democratic Republic of the Congo, especially in North and South Kivu and in Ituri, and *reiterates* the request addressed to all the parties, in Security Council resolution 1460 (2003) to provide the Special Representative of the Secretary-General with information on the measures that they have taken to put an end to the recruitment and use of children in their armed components, as well as the requests concerning the protection of children set forth in resolution 1261 (1999) and subsequent resolutions;

14. *Strongly condemns* the continuing armed conflict in the eastern part of the Democratic Republic of the Congo especially the serious ceasefire violations that occurred recently in North and South Kivu, including in particular the offensives by the Congolese Rally for Democracy (RCD-Goma), *demands* that all the parties, in compliance with the Bujumbura “Acte d’Engagement” of 19 June 2003, establish without delay or precondition the full cessation of hostilities and withdraw to the positions agreed to in the Kampala/Harare disengagement plans, and that they refrain from any provocative action;

15. *Demands* that all the parties desist from any interference with freedom of movement of United Nations personnel, *recalls* that all the parties have the obligation to provide full and unhindered access to MONUC to allow it to carry out its mandate, and *asks* the Special Representative of the Secretary-General to report any failure to comply with this obligation;

16. *Expresses concern* at the fact that the continuing hostilities in the eastern part of the Democratic Republic of the Congo are seriously compromising MONUC action in the process of the disarmament, demobilization, repatriation, reintegration or resettlement (DDRRR) of the foreign armed groups referred to in chapter 9.1 of the Lusaka Ceasefire Agreement (S/1999/815), *urges* all the parties concerned to cooperate with MONUC and *underscores* the importance of making rapid and appreciable progress in that process;

17. *Authorizes* MONUC to assist the Government of National Unity and Transition in disarming and demobilizing those Congolese combatants who may voluntarily decide to enter the disarmament, demobilization and reintegration (DDR) process within the framework of the Multi-Country Demobilization and Reintegration Programme, pending the establishment of a national DDR programme in coordination with the United Nations Development Programme and other agencies concerned;

18. *Demands* that all States and in particular those in the region, including the Democratic Republic of the Congo, ensure that no direct or indirect assistance, especially military or financial assistance, is given to the movements and armed groups present in the Democratic Republic of the Congo;

19. *Demands* that all parties provide full access to MONUC military observers, including in ports, airports, airfields, military bases and border crossings, and *requests* the Secretary-General to deploy MONUC military observers in North and South Kivu and in Ituri and to report to the Security Council regularly on the position of the movements and armed groups and on information concerning arms supply and the presence of foreign military, especially by monitoring the use of landing strips in that region;

20. *Decides* that all States, including the Democratic Republic of the Congo, shall, for an initial period of 12 months from the adoption of this resolution, take the necessary measures to prevent the direct or indirect supply, sale or transfer, from their territories or by their nationals, or using their flag vessels or aircraft, of arms and any related materiel, and the provision of any assistance, advice or training related to military activities, to all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not party to the Global and All-inclusive agreement, in the Democratic Republic of the Congo;

21. *Decides* that the measures imposed by paragraph 20 above shall not apply to:

- supplies to MONUC, the Interim Emergency Multinational Force deployed in Bunia and the integrated Congolese national army and police forces;
- supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training as notified in advance to the Secretary-General through its Special Representative;

22. *Decides* that, at the end of the initial 12 months, the Security Council will review the situation in the Democratic Republic of the Congo and in particular in the eastern part of the country, with a view to renewing the measures stipulated in paragraph 20 above if no significant progress has been made in the peace process, in particular an end to support for armed groups, an effective ceasefire and progress in the DDRRR by foreign and Congolese armed groups;

23. *Expresses its determination* closely to monitor compliance with the measures laid down in paragraph 20 and to consider necessary steps to ensure the effective monitoring and implementation of these measures, including the possible establishment of a monitoring mechanism;

24. *Urges* the States neighbouring the Democratic Republic of the Congo, particularly Rwanda and Uganda, which have an influence over movements and armed groups operating in the territory of the Democratic Republic of the Congo, to exercise a positive influence on them to settle their disputes by peaceful means and join in the process of national reconciliation;

25. *Authorizes* MONUC to take the necessary measures in the areas of deployment of its armed units, and as it deems it within its capabilities:

- to protect United Nations personnel, facilities, installations and equipment;
- to ensure the security and freedom of movement of its personnel, including in particular those engaged in missions of observation, verification or DDRRR;
- to protect civilians and humanitarian workers under imminent threat of physical violence;
- and to contribute to the improvement of the security conditions in which humanitarian assistance is provided;

26. *Authorizes* MONUC to use all necessary means to fulfil its mandate in the Ituri district and, as it deems it within its capabilities, in North and South Kivu;

27. *Requests* the Secretary-General to deploy in the Ituri district, as soon as possible, the tactical brigade-size force whose concept of operation is set out in paragraphs 48 to 54 of his second special report, including the reinforced MONUC presence in Bunia by mid-August 2003 as requested in resolution 1484 (2003), particularly with a view to helping to stabilize the security conditions and improving the humanitarian situation, ensuring the protection of airfields and displaced persons living in camps and, if the circumstances warrant it, helping to ensure the security of the civilian population and the personnel of the United Nations and the humanitarian organizations in Bunia and its environs and eventually, as the situation permits, in other parts of Ituri;

28. *Condemns* categorically the illegal exploitation of the natural resources and other sources of wealth of the Democratic Republic of the Congo and *expresses its intention* to consider means that could be used to end it, *awaits with interest* the report to be submitted shortly by the group of experts on such illegal exploitation and on the link that exists between it and the continuation of hostilities, and *demands* that all parties and interested States offer full cooperation to the group of experts;

29. *Encourages* the Governments of the Democratic Republic of the Congo, Rwanda, Uganda and Burundi to take steps to normalize their relations and cooperate in assuring mutual security along their common borders, and *invites* these Governments to conclude good-neighbourly agreements among themselves;

30. *Reaffirms* that an international conference on peace, security, democracy and development in the Great Lakes region of Africa, with participation by all the Governments of the region and all the other parties concerned, should be organized at the appropriate time under the aegis of the United Nations and the African Union

with a view to strengthening stability in the region and working out conditions that will enable everyone to enjoy the right to live peacefully within national borders;

31. *Reiterates its support* unreservedly for the Special Representative of the Secretary-General and for all MONUC personnel, and for the efforts they continue to make to assist the parties in the Democratic Republic of the Congo and in the region to advance the peace process;

32. *Decides* to remain actively seized of the matter.

**Security Council**Distr.: General
3 May 2005

Resolution 1596 (2005)**Adopted by the Security Council at its 5163rd meeting,
on 18 April 2005**

The Security Council,

Recalling its resolutions concerning the Democratic Republic of the Congo, in particular resolutions 1493 of 28 July 2003, 1533 of 12 March 2004, 1552 of 27 July 2004, 1565 of 1 October 2004 and 1592 of 30 March 2005, and *recalling* also the statements by its President concerning the Democratic Republic of the Congo, in particular on 7 December 2004,

Reiterating its serious concern regarding the presence of armed groups and militias in the Eastern part of the Democratic Republic of the Congo, particularly in the provinces of North and South Kivu and in the Ituri district, which perpetuate a climate of insecurity in the whole region,

Welcoming the fact that some of these groups and militias have started to submit an inventory of arms and related materiel in their possession, as well as their location, with a view to their participation in the programmes of disarmament, and *encouraging* those who have not yet done so rapidly to do so,

Expressing its readiness to review the provisions of its resolutions 918 of 17 May 1994, 997 of 9 June 1995 and 1011 of 16 August 1995 in a broader perspective, taking into account the implications of continued instability in the Eastern part of the Democratic Republic of the Congo for peace and security in the Great Lakes Region of Africa,

Condemning the continuing illicit flow of weapons within and into the Democratic Republic of the Congo, and *declaring* its determination to continue closely monitoring implementation of the arms embargo imposed by resolution 1493 of 28 July 2003,

Recalling the importance for the Government of National Unity and Transition to implement without delay the integration for which it bears responsibility of the armed forces of the Democratic Republic of the Congo, by continuing to work within the framework of the Joint Commission on Security Sector Reform, and *encouraging* the donor community to provide coordinated financial and technical assistance for this task,

* Reissued for technical reasons.

Commending the efforts made by the Secretary-General, the African Union and other actors concerned to restore peace and security in the Democratic Republic of the Congo and *welcoming in this regard* the Declaration adopted in Dar es Salaam on 20 November 2004 at the conclusion of the first summit of the International Conference on Peace, Security, Democracy and Development in the Great Lakes Region of Africa,

Taking note of the reports of the Group of Experts established by paragraph 10 of resolution 1533, dated 15 July 2004 (S/2004/551) and 25 January 2005 (S/2005/30), transmitted by the Committee established in accordance with paragraph 8 of that resolution (hereafter the Committee), and of their recommendations,

Noting that the situation in the Democratic Republic of the Congo continues to constitute a threat to international peace and security in the region,

Acting under Chapter VII of the Charter of the United Nations,

1. *Reaffirms* the measures established by paragraph 20 of resolution 1493, dated 28 July 2003, and extended until 31 July 2005 by resolution 1552, dated 27 July 2004, *decides* that these measures shall from now on apply to any recipient in the territory of the Democratic Republic of the Congo, and *reiterates* that assistance includes financing and financial assistance related to military activities;

2. *Decides* that the measures above shall not apply to:

(a) Supplies of arms and related materiel or technical training and assistance intended solely for support of or use by units of the army and police of the Democratic Republic of the Congo, provided that the said units:

- have completed the process of their integration, or
- operate under the command, respectively, of the *état-major intégré* of the Armed Forces or of the National Police of the Democratic Republic of the Congo, or
- are in the process of their integration, in the territory of the Democratic Republic of the Congo outside the provinces of North and South Kivu and the Ituri district,

(b) Supplies of arms and related materiel as well as technical training and assistance intended solely for support of or use by the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC),

(c) Supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance and training, as notified in advance to the Committee in accordance with paragraph 8 (e) of resolution 1533;

3. *Requests* MONUC, within its existing capabilities and without prejudice to the performance of its current mandate, and the Group of Experts referred to in paragraph 21 below to continue to focus their monitoring activities in North and South Kivu and in Ituri;

4. *Decides* that all future authorized shipments of arms and related materiel consistent with such exemptions noted in paragraph 2 (a) above shall only be made to receiving sites as designated by the Government of National Unity and

Transition, in coordination with MONUC, and notified in advance to the Committee;

5. *Demands* that all parties other than those referred to in paragraph 2 (a) above with military capabilities in Ituri, in North Kivu or in South Kivu, help the Government of National Unity and Transition implement its commitments regarding disarmament, demobilization and reintegration of foreign and Congolese combatants, and regarding security sector reform;

6. *Decides* that, during the period of enforcement of the measures referred to in paragraph 1 above, all governments in the region, and in particular those of the Democratic Republic of the Congo and of States bordering Ituri and the Kivus, shall take the necessary measures:

- To ensure that aircraft operate in the region in accordance with the Convention on International Civil Aviation, signed in Chicago on 7 December 1944, in particular by verifying the validity of documents carried in aircraft and the licences of pilots,
- To prohibit immediately in their respective territories operation of any aircraft inconsistent with the conditions in that Convention or the standards established by the International Civil Aviation Organization, in particular with respect to the use of falsified or out-of-date documents, and to notify the Committee, and to maintain such prohibition until the Committee is informed by States or by the Group of Experts that these aircraft meet the said conditions and standards set forth in Chapter V of the Chicago Convention and determines that they will not be used for a purpose inconsistent with the resolutions of the Security Council,
- To ensure that all civilian and military airports or airfields on their respective territories will not be used for a purpose inconsistent with the measures imposed by paragraph 1 above;

7. *Further decides* that each government in the region, in particular those of States bordering Ituri and the Kivus, as well as that of the Democratic Republic of the Congo, shall maintain a registry for review by the Committee and the Group of Experts of all information concerning flights originating in their respective territories en route to destinations in the Democratic Republic of the Congo, as well as flights originating in the Democratic Republic of the Congo en route to destinations in their respective territories;

8. *Calls upon* the Government of National Unity and Transition to strengthen the monitoring of the activity of all airports and airfields, in particular those located in Ituri and in the Kivus, to ensure in particular that only customs airports are used for international air service, and *requests* MONUC, in airports and airfields where it has a permanent presence, to cooperate within its existing capability with the competent Congolese authorities, with a view to enhancing the capability of those authorities to monitor and control the use of airports;

9. *Recommends* in this context to States in the region, and in particular to those parties to the Declaration adopted in Dar es Salaam on 20 November 2004, to promote regional cooperation in the field of air traffic control;

10. *Decides* that, during the period of enforcement of the measures referred to in paragraph 1 above, the Government of the Democratic Republic of the Congo

on the one hand, and those of States bordering Ituri and the Kivus on the other hand, shall take the necessary measures:

- To strengthen, as far as each of them is concerned, customs controls on the borders between Ituri or the Kivus and the neighbouring States,
- To ensure that all means of transport on their respective territories will not be used in violation of the measures taken by Member States in accordance with paragraph 1 above, and notify MONUC of such actions,

and *requests* MONUC and the United Nations Operation in Burundi (ONUB), in accordance with their respective mandates, to provide assistance to this end, where they have a permanent presence, to the competent customs authorities of the Democratic Republic of the Congo and of Burundi;

11. *Reiterates its call* upon the international community, in particular the specialized international organizations concerned, notably the International Civil Aviation Organization and the World Customs Organization, to provide financial and technical assistance to the Government of National Unity and Transition with a view to helping it exercise effective control over its borders and its airspace, and *invites in this regard* the International Monetary Fund and the World Bank to provide assistance with a view to evaluating and improving the performance and enhancing the capacity of the Customs of the Democratic Republic of the Congo;

12. *Urges* all States to conduct inquiries into the activities of their nationals who operate or are associated with the operation of aircraft or other means of transport such as those referred to in paragraphs 6 and 10 above used for the transfer of arms or related materiel in violation of the measures imposed by paragraph 1 above, and if necessary to institute the appropriate legal proceedings against them;

13. *Decides* that, during the period of enforcement of the measures referred to in paragraph 1 above, all States shall take the necessary measures to prevent the entry into or transit through their territories of all persons designated by the Committee as acting in violation of the measures taken by Member States in accordance with paragraph 1 above, provided that nothing in this paragraph shall oblige a State to refuse entry into its territory to its own nationals;

14. *Decides* that the measures imposed by the previous paragraph shall not apply where the Committee determines in advance and on a case-by-case basis that such travel is justified on the grounds of humanitarian need, including religious obligation, or where the Committee concludes that an exemption would further the objectives of the Council's resolutions, that is peace and national reconciliation in the Democratic Republic of the Congo and stability in the region;

15. *Decides* that all States shall, during the period of enforcement of the measures referred to in paragraph 1 above, immediately freeze the funds, other financial assets and economic resources which are on their territories from the date of adoption of this resolution, which are owned or controlled, directly or indirectly, by persons designated by the Committee pursuant to paragraph 13 above, or that are held by entities owned or controlled, directly or indirectly, by any persons acting on their behalf or at their direction, as designated by the Committee, and *decides further* that all States shall ensure that no funds, financial assets or economic resources are made available by their nationals or by any persons within their territories, to or for the benefit of such persons or entities;

16. *Decides* that the provisions of the previous paragraph do not apply to funds, other financial assets and economic resources that:

(a) have been determined by relevant States to be necessary for basic expenses, including payment for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges, or for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or service charges, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources, after notification by the relevant States to the Committee of the intention to authorize, where appropriate, access to such funds, other financial assets and economic resources and in the absence of a negative decision by the Committee within four working days of such notification,

(b) have been determined by relevant States to be necessary for extraordinary expenses, provided that such determination has been notified by the relevant States to the Committee and has been approved by the Committee, or

(c) have been determined by relevant States to be the subject of a judicial, administrative or arbitration lien or judgement, in which case the funds, other financial assets and economic resources may be used to satisfy that lien or judgement provided that the lien or judgement was entered prior to the date of the present resolution, is not for the benefit of a person or entity designated by the Committee pursuant to paragraph 15 above, and has been notified by the relevant States to the Committee;

17. *Decides* that, no later than 31 July 2005, it shall review the measures set forth in paragraphs 1, 6, 10, 13 and 15 above, in the light of progress accomplished in the peace and transition process in the Democratic Republic of the Congo, in particular with regard to the integration of the Armed Forces and of the National Police;

18. *Decides* that the Committee shall undertake, in addition to the tasks listed in paragraph 8 of resolution 1533, those hereafter:

(a) to designate persons and entities with respect to the measures set forth in paragraphs 6, 10, 13 and 15 above, including aircraft and airlines, and regularly to update its list,

(b) to seek from all States concerned, and particularly those in the region, information regarding the actions taken by them to enforce the measures imposed by paragraphs 1, 6, 10, 13 and 15 above, and any further information it may consider useful, including by providing all States with an opportunity to send representatives to meet the Committee to discuss in more detail any relevant issues,

(c) to call upon all States concerned, and particularly those in the region, to provide the Committee with information regarding the actions taken by them to investigate and prosecute as appropriate individuals designated by the Committee pursuant to subparagraph (a) above,

(d) to consider and decide on requests for the exemptions set out in paragraphs 14 and 16 above,

(e) to promulgate guidelines as may be necessary to facilitate the implementation of paragraphs 6, 10, 13 and 15 above;

19. *Demands* that all parties and all States cooperate fully with the work of the Group of Experts referred to in paragraph 21 below and of MONUC, and that they ensure:

- the safety of their members,
- unhindered and immediate access for the members of the Group of Experts, in particular by supplying them with any information on possible violations of the measures taken by Member States in accordance with paragraphs 1, 6, 10, 13 and 15 above, and by facilitating access of the Group of Experts to persons, documents and sites it deems relevant to the execution of its mandate;

20. *Requests* all States concerned, in particular those in the region, to report to the Committee, within forty-five days from the date of adoption of this resolution, on the actions they have taken to implement the measures imposed by paragraphs 6, 10, 13 and 15 above, and *authorizes* the Committee thereafter to request from all Member States any information it may consider necessary to fulfil its mandate;

21. *Requests* the Secretary-General, in consultation with the Committee, to re-establish, within thirty days from the date of adoption of this resolution, and for a period expiring on 31 July 2005, the Group of Experts referred to in paragraph 10 of resolution 1533 with the addition of a fifth expert for financial issues, and requests further that the Secretary-General provide the Group of Experts with the necessary resources to fulfil its mandate;

22. *Requests* the Group of Experts above to report to the Council in writing before 1 July 2005, through the Committee, including on the implementation of the measures set forth in paragraphs 1, 6, 10, 13 and 15 above;

23. *Decides* to remain seized of the matter.
