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Legislative Council

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From : Clerk to Panel
To : Hon Margaret NG (Chairman)
Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon James TO Kun-sun
Hon CHAN Kam-lam, JP
Hon Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP

Panel on Administration of Justice and Legal Services

**Government's policy on implementation of resolutions
and conventions made by the United Nations**

The Subcommittee on United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 and United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002 has expressed concern about the lack of a consistent approach adopted by the Administration in implementing UN resolutions and conventions in Hong Kong. It is noted that different approaches have been adopted in respect of the following -

- (a) Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction

The Administration sought to implement the above Convention by way of the Chemical Weapons (Convention) Bill. The legislative provisions were largely modelled on that of the Convention.

(b) The United Nations Security Council Resolution (UNSCR) 1412

The implementation of the above Resolution, which suspended sections 4D and 4E of the United Nations Sanctions (Angola) Regulation ("the measures") for a period of 90 days from 17 May 2002 to 14 August 2002, was made through administrative means. The Administration considered it impracticable to introduce a regulation to give effect to UNSCR 1412 for consideration by the Executive Council (ExCo) before ExCo's summer recess.

(c) The United Nations Security Council Resolution (UNSCR) 1432

The United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002 was made by the Chief Executive under section 3 of the United Nations Sanctions Ordinance to implement UNSCR 1432, which aimed at suspending "the measures" for an additional period of 90 days from 15 August 2002 to 13 November 2002.

2. The Subcommittee has noted that all regulations made under section 3 of the United Nations Sanctions Ordinance are not required to be laid before the Legislative Council (LegCo), and are not subject to amendment by LegCo. According to the Administration, UN sanctions are external affairs for which the Hong Kong Special Administrative Region (HKSAR) has no autonomy, and which may only be conducted by HKSAR with the authorisation of the Central People's Government (CPG), pursuant to Article 13 of the Basic Law. This arrangement will ensure that the decision on whether to implement the UN sanctions, and if so, the nature and scope of the sanctions, remains with CPG.

3. The Subcommittee has agreed to request the Panel on Administration of Justice and Legal Services to clarify with the Administration on the Government's policy regarding measures (legislative or otherwise) to give effect to UN resolutions and conventions, including what factors would be taken into consideration by the Administration in deciding the appropriate measures to be adopted for implementation.

4. With the agreement of the Panel Chairman, the matter was referred to the Administration for a response.

5. I attach for members' reference a reply dated 16 December 2002 from the Law Officer (International Law) on behalf of the Secretary for Justice (LC Paper No. CB(2)734/02-03(01)).

6. Members are invited to consider whether the matter should be followed up by the Panel. Please bring along this paper to the next meeting on 27 January 2003.

(Mrs Percy MA)
Clerk to Panel

Encl.

c.c. Members of the Subcommittee on United Nations Sanctions (Afghanistan) (Amendment) Regulation 2002 and United Nations Sanctions (Angola) (Suspension of Operation) Regulation 2002

Hon Cyd HO Sau-lan)
Hon Fred LI Wah-ming, JP)
Hon NG Leung-sing, JP)
Hon LEUNG Yiu-chung) (Non-Panel Members)
Hon LAU Chin-shek, JP)
Hon Andrew CHENG Kar-foo)
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16 December, 2002

Mrs Percy Ma,
Clerk to Panel on Administration of
Justice and Legal Services
Legislative Council

Dear Mrs Ma,

**Panel on Administration of Justice and Legal Services
Government's policy on implementation of resolutions
and conventions made by the United Nations**

I am replying on behalf of the Secretary for Justice to your letter of 22 November 2002 which seeks clarification from the Administration in relation to the variety of measures which are taken to give effect to Conventions which apply to the HKSAR and United Nations Security Council Resolutions.

United Nations Conventions which apply to the HKSAR

UN Conventions provide for obligations which are binding on the Parties to the particular Convention. These obligations must be implemented by the Parties. Some obligations can be implemented administratively, some can be implemented under existing law and some require the enactment of new legislation. The mode of implementation depends upon the nature of the obligation. Hong Kong cannot become a Party to a UN Convention but when such a Convention applies to it, it must implement the obligations in the Convention in the same way as a Party does.

Three Articles in the International Convention against the Taking of Hostages can be referred to to demonstrate the three ways in which UN Convention obligations are implemented -

(a) **administrative implementation** - Article 7 provides

The State Party where the alleged offender is prosecuted shall, in accordance with its laws communicate the final outcome of the proceedings to the Secretary General of the United Nations who shall transmit the information to the other States concerned and the international intergovernmental organisations concerned.

In the event that this obligation to communicate the results of criminal proceedings had to be discharged it would be done administratively by the HKSAR Government, probably via the OCMFA.

(b) **implementation under existing law** - Article 8.2 provides

Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in Article 1 shall be guaranteed fair treatment at all stages of the proceedings including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which he is present.

This obligation to provide "fair treatment" is discharged pursuant to the laws of Hong Kong governing criminal proceedings and the Bill of Rights Ordinance.

(c) **implementation requiring new legislation** - Article 2 provides

Each State Party shall make the offences set forth in Article 1 punishable by appropriate penalties which take into account the grave nature of those offences.

Article 1 creates offences in relation to the taking of hostages and Article 5 requires that extensive extra-territorial jurisdiction be taken in respect of those offences.

Section 4 of the Internationally Protected Persons and Taking of Hostages Ordinance [CAP 468] was enacted to give effect to Articles 2 and 5 of the Convention.

United Nations Security Council Resolutions

Article 25 of the United Nations Charter reads as follows -

*The Members of the United Nations agree to accept and carry out the **decisions** of the Security Council in accordance with the present Charter.*

Article 41 of the United Nations Charter reads as follows -

*The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its **decisions** and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication and the severance of diplomatic relations.*

Obligations created by decisions of the UN Security Council are binding on Hong Kong (via the PRC as a Member of the UN) in the same way as obligations in UN Conventions. And they can be implemented, depending on the nature of the obligation, in the three ways previously described.

In 1997 the United Nations Sanctions Ordinance [CAP 537] was passed to enable the Chief Executive to make Regulations to give effect to instructions from the PRC to implement sanctions imposed by the Security Council against places outside the PRC. This Regulation making power has been used on a number of occasions to implement decisions of the United Nations Security Council imposing sanctions.

But it cannot be used to implement all decisions of the United Nations Security Council and there will be occasion when implementation has to be by way of primary legislation (assuming existing legislation or administrative means are not appropriate to implement the particular decision). Such a situation arose in the case of UNSCR 1373 which was directed towards terrorism generally and could not be categorized as a Resolution imposing sanctions against a place. Accordingly the United Nations (Anti-Terrorism Measures) Ordinance was enacted to, inter alia, implement UNSCR 1373.

Reference is made in your letter to the implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on their Destruction, as well as the UNSCR 1412 and 1432. I shall not go into the specifics of these as they are under the scrutiny of the respective Bills Committee and Sub-Committee of the Legislative Council. I trust that the explanation given above has addressed Members' request for clarifications on the measures taken to give effect to Conventions which apply to the HKSAR and United Nations Security Council Resolutions.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Ian Wingfield', written in a cursive style.

(Ian Wingfield)
Law Officer (International Law)