

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

INTRODUCTION

A At the meeting of the Executive Council on 22 February 2005, the Council advised and the Chief Executive ordered that the United Nations Sanctions (Democratic Republic of the Congo) Regulation (“the Regulation”) (at Annex A) should be made under section 3 of the United Nations Sanctions Ordinance (“the Ordinance”) (Cap. 537). The Regulation was gazetted on 4 March 2005 and came into effect on the same day.

BACKGROUND

Obligation and Authority

B 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 August 2004, the CE received specific instruction from MFA which requested the Government of the Hong Kong Special Administrative Region to implement United Nations Security Council Resolutions (“UNSCRs”) 1493 and 1552. The 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.

UNSCR 1493

3. In view of the acts of violence and the continued armed conflict in the eastern part of the Democratic Republic of the Congo, the

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UNSC adopted Resolution 1493 (at Annex C) on 28 July 2003 in which it decided, inter alia, that:

- (a) all Member States shall, for an initial period of 12 months from the adoption of UNSCR 1493, take the necessary measures to prevent the direct or indirect supply, sale or transfer of arms and any related material from their territories or by their nationals, or using their flag vessels or aircraft, 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 on the Transition in the Democratic Republic of the Congo (“the Agreement”), in the Democratic Republic of the Congo (paragraph 20 of UNSCR 1493);
- (b) all Member States shall, for an initial period of 12 months from the adoption of UNSCR 1493, take the necessary measures to prevent 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 Agreement, in the Democratic Republic of the Congo (paragraph 20 of UNSCR 1493);
- (c) the measures imposed by paragraph 20 of UNSCR 1493 shall not apply to certain circumstances (paragraph 21 of UNSCR 1493); and
- (d) the UNSC will review the position and decide whether to continue the sanctions at the end of the initial 12 months (paragraph 22 of UNSCR 1493).

4. The sanctions imposed under UNSCR 1493 expired on 27 July 2004.

UNSCR 1552

5. On 27 July 2004, Resolution 1552 was adopted by the UNSC which decided, inter alia, to renew the provisions of paragraphs 20 to 22 of UNSCR 1493 until 31 July 2005. A copy of UNSCR 1552 is at Annex D. In August 2004, we received instruction from the MFA to implement UNSCRs 1493 and 1552 in the Hong Kong Special Administrative Region.

D

THE REGULATION

6. The Regulation implements sanctions decided under UNSCR 1493 as renewed by UNSCR 1552. The main provisions are –

- (a) sections 3 to 6 which provide for prohibition against supply, delivery and carriage of arms and related material to persons connected with Congo;
- (b) section 7 which provides for prohibition against provision to persons connected with Congo of advice, assistance or training related to military activities;
- (c) sections 8 and 9 which provide for the granting of a licence for the supply, delivery or carriage of arms and related material, or provision of advice, assistance or training related to military activities, where the exceptions provided for in paragraph 21 of UNSCR 1493 are satisfied; and
- (d) sections 12 to 23 which provide for the enforcement powers.

7. In line with UNSCR 1552, the Regulation will expire on 31 July 2005.

RELATED MATTER

8. Between receipt of MFA's instruction and the making of the Regulation, some of the sanctions imposed under UNSCR 1493 as renewed by UNSCR 1552 were implemented through existing law.

For example, in respect of prohibition against supply, sale or transfer of arms and related material (paragraph 3(a) above), Regulation 2 of the Import and Export (Strategic Commodities) Regulations (Cap. 60G) provides that no one should 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.

ADVICE SOUGHT

9. Members are invited to note the implementation of UNSCRs 1493 and 1552 by the Regulation.

Commerce, Industry and Technology Bureau
May 2005

L.N. 27 of 2005

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

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UNITED NATIONS SANCTIONS (DEMOCRATIC REPUBLIC OF THE CONGO) REGULATION

(Made 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 2005.

PART 1

PRELIMINARY

2. Interpretation

In this Regulation, unless the context otherwise requires—

“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;

“Global and All Inclusive Agreement” (《包容各方的全面協定》) means the Global and All Inclusive Agreement on the Transition in the Democratic Republic of the Congo signed in Pretoria on 17 December 2002;

“licence” (特許) means a licence granted under section 8(1)(a), 8(1)(b), 9(1) or 9(2);

“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;
- “person connected with Congo” (有關連人士) means—
- (a) any foreign or Congolese armed group or militia operating in the territory of North Kivu, South Kivu or Ituri in the Democratic Republic of the Congo; or
 - (b) any group in the Democratic Republic of the Congo, not being a party to the Global and All Inclusive Agreement;
- “prohibited goods” (禁制物品) means any arms or related material;
- “Secretary-General” (秘書長) means the Secretary-General of the United Nations;
- “ship” (船舶) includes every description of vessel used in navigation not propelled by oars;
- “Special Representative” (特別代表) means the Special Representative of the Secretary-General for the Democratic Republic of the Congo.

PART 2

PROHIBITIONS

Supply and delivery of goods

3. Prohibition against supply and delivery of certain goods to persons connected with Congo

- (1) Except under the authority of a licence granted under section 8(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 connected with Congo; or
 - (b) to a destination for the purpose of delivery, directly or indirectly, to, or to the order of, a person connected with 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 in relation to a contravention of subsection (1), 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 connected with Congo; or
 - (ii) to a destination for the purpose of delivery, directly or indirectly, to, or to the order of, a person connected with 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 connected with Congo

(1) Except under the authority of a licence granted under section 8(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 connected with Congo; or
 - (b) to a destination for the purpose of delivery, directly or indirectly, to, or to the order of, a person connected with 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 8(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 connected with 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 in relation to a contravention of section 5(1), 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 connected with Congo; or
- (ii) to a destination for the purpose of delivery, directly or indirectly, to, or to the order of, a person connected with Congo.

Provision of advice, assistance or training

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

(1) Except under the authority of a licence granted under section 9(1) or (2), a person shall not provide to a person connected with Congo any advice, assistance or training related to military activities.

(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 in relation to a contravention of subsection (1), 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 being provided to a person connected with Congo; or
- (b) that the advice, assistance or training concerned related to military activities.

(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.

PART 3

LICENCE

8. 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 connected with Congo; or

(ii) to a destination for the purpose of delivery, directly or indirectly, to, or to the order of, a person connected with 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 connected with Congo; or

(ii) to a destination for the purpose of delivery, directly or indirectly, to, or to the order of, a person connected with Congo.

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

(a) the prohibited goods are to be supplied to the United Nations Organization Mission in the Democratic Republic of the Congo, the Interim Emergency Multinational Force deployed in Bunia in the Democratic Republic of the Congo or the integrated Congolese national army or police force;

(b) the prohibited goods are non-lethal military equipment intended solely for humanitarian or protective use, and the Secretary-General has been notified in advance, through the Special Representative, of the supply of the goods.

9. Licence for provision of certain advice, assistance or training

(1) If it is proved to the satisfaction of the Chief Executive that the requirement in subsection (3)(a) is met, the Chief Executive shall, on application, grant a licence for the provision to a person connected with Congo of advice, assistance or training related to military activities.

(2) If it is proved to the satisfaction of the Chief Executive that the requirement in subsection (3)(b) is met, the Chief Executive shall, on application, grant a licence for the provision to a person connected with Congo of assistance or training related to military activities.

(3) The requirements referred to in subsections (1) and (2) are as follows—

- (a) the advice, assistance or training is to be provided to the United Nations Organization Mission in the Democratic Republic of the Congo, the Interim Emergency Multinational Force deployed in Bunia in the Democratic Republic of the Congo or the integrated Congolese national army or police force;
- (b) 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, and the Secretary-General has been notified in advance, through the Special Representative, of the provision of the assistance or training.

10. 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****11. 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****12. 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.

13. Offences by master or charterer of ship

(1) If a master or charterer of a ship disobeys any direction given under section 12(2)(a), or, without reasonable excuse, refuses or fails to comply with a request made under section 12(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 12(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.

14. Power of authorized officers to enter and detain ships

(1) Without prejudice to section 13, if an authorized officer has reason to suspect that a request that has been made under section 12(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.

15. Sections 12, 13 and 14 not to prejudice other laws

Sections 12, 13 and 14 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

16. 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.

17. 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 16(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 16(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.

18. Power of authorized officers to enter and detain aircraft

(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) 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.

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 an aircraft.

Investigation, etc. of suspected vehicles

20. 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.

21. 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 20(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 20(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.

22. Power of authorized officers to enter and detain vehicles

(1) Without prejudice to section 21, if an authorized officer has reason to suspect that a request that has been made under section 20(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.

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 a vehicle.

General

24. 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.

25. Production of proof of identity

Before or on exercising a power conferred by section 12, 14, 16, 18, 20 or 22, an authorized officer shall, if requested so to do, produce evidence of his identity.

PART 6**EVIDENCE****26. Power of magistrate or judge to grant warrant**

(1) A magistrate or judge may grant a warrant under this section 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.

27. Detention of documents or articles seized

(1) Subject to subsection (2), any document or article seized under section 26(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****28. 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 of the United Nations; 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****29. Liability of person other than principal offender**

(1) Where the person convicted of an offence against 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 against 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.

30. 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.

31. 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.

32. 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.

TUNG Chee-hwa
Chief Executive

24 February 2005

Explanatory Note

This Regulation gives effect to a decision of the Security Council of the United Nations (“the Security Council”) in Resolution 1552 of 27 July 2004 and provides for the implementation of the following sanctions imposed by the Security Council in Resolution 1493 (2003)—

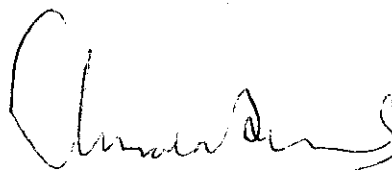
- (a) prohibitions against direct and indirect sale, supply and transfer of arms and related materials to foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not being party to the Global and All Inclusive Agreement on the Transition in the Democratic Republic of the Congo signed in Pretoria on 17 December 2002;
- (b) prohibitions against provision to such groups and militias of advice, assistance or training related to military activities.

United Nations Sanctions Ordinance (Cap. 537)

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

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 August 2004 which requested the Government of the Hong Kong Special Administrative Region to fully implement Resolutions No. 1493 and 1552 of the Security Council of the United Nations, and that the United Nations Sanctions (Democratic Republic of the Congo) Regulation was made in pursuance of that instruction.

Dated this 8th day of March 2005



(Donald Tsang)
Chief Secretary for Administration

United Nations

S/RES/1493 (2003)



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 DDRR 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 DDRR;
- 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 *demand*s 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.

United Nations

S/RES/1552 (2004)



Security Council

Distr.: General
27 July 2004

Resolution 1552 (2004)

**Adopted by the Security Council at its 5011th meeting, on
27 July 2004**

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 and 1533 of 12 March 2004,

Reiterating its 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,

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 its resolution 1493 of 28 July 2003,

Taking note of the report and of the recommendations of the Group of experts referred to in paragraph 10 of resolution 1533, dated 15 July 2004 (S/2004/551), transmitted by the Committee established in accordance with paragraph 8 of the same resolution (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;
2. *Decides*, in light of the failure by the parties to comply with these demands, to renew, until 31 July 2005, the provisions of paragraphs 20 to 22 of resolution 1493 and all the provisions of resolution 1533;
3. *Expresses its intention* to modify or to remove those provisions if it determines that the demands noted above have been satisfied;
4. *Decides* further that it will review those measures by 1 October 2004, and periodically thereafter;

5. *Requests* to this end 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 January 2005, the Group of experts referred to in paragraph 10 of resolution 1533;

6. *Requests* the Group of experts above to report to the Council in writing before 15 December 2004, through the Committee, on the implementation of the measures imposed by paragraph 20 of resolution 1493, with recommendations in this regard, in particular regarding the lists provided for by paragraph 10-g of resolution 1533;

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