

**Summary of the Subcommittee's key observations/recommendations and the Administration's comments thereon**

(Mainly based on the Subcommittee's report and executive summary at LC Paper Nos. CB(1)1586/06-07 and CB(1)1587/06-07) and the Administration's written comments at LC Paper No. CB(1)2323/06-07(01))

<b>The Subcommittee's views</b>	<b>The Administration's comments</b>
<b><u>Scope of UNSO</u></b>	
<p>1. Section (2)1 of UNSO stipulates that sanctions are mandatory measures to be implemented against a "place" outside the People's Republic of China, it has been noted that at least seven of the Regulations gazetted since July 2004 were targeted at a "relevant entity" or a "relevant person" and not a "place" as specified in UNSO.</p>	<p>1. At the meeting held on 7 February 2006, the Administration explained that it would be inappropriate to view "place" in isolation from the people who operated in that place or who had a connection with that place. Sanctions against a "place" comprehend the activities or conduct of individuals or entities in the place.</p>
<b><u>Disclosure of MFA's instructions</u></b>	
<p>2. The Subcommittee has urged the Administration to re-consider disclosing MFA's instructions.</p>	<p>2. The Administration remains of the view that such instructions are internal documents and should not be disclosed.</p>
<b><u>Giving effect to MFA's instructions in relation to UN sanctions</u></b>	
<p>3. While CPG has the responsibility to implement international obligations, the actual method of implementation is a decision for the HKSAR Government. A comparative study of four Ordinances reveals a variety of modalities being adopted. UNSO is unique in that its subsidiary legislation is entirely excluded from LegCo's scrutiny.</p>	<p>3. Ensuring the implementation of UN sanctions by CPG in HKSAR is a matter of discharging the PRC's international obligation to UN, which is, and has always been, considered to be a matter of foreign affairs over which CPG has the sole responsibility. Such matters were not the subject of LegCo's vetting before the Reunification as a matter of foreign affairs for which the UK Government was responsible.</p>

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	<p>There is no distinction between the so-called basic terms of a UN sanction and its implementation details. The entire set of draft regulation (including implementation details) has to be submitted to the CPG for approval before the legislative process under section 3(1) of UNSO commences. <i>[Note – The aforesaid information is new. It has not been mentioned by the Administration in its previous written information, nor during past meetings of this Subcommittee.]</i></p> <p>Given that the entire set of relevant regulation is part and parcel of the instruction given by CPG, there is no room for amendment by LegCo, even if negative vetting was allowed.</p>
<b><u>Removal of vetting by LegCo of subsidiary legislation</u></b>	
<p>4(a). Members consider that section 3(5) of UNSO may have deprived LegCo of its constitutional role in scrutinizing and, where necessary, amending subsidiary legislation, thereby placing legislative power in the hands of the executive government, which is not in line with the principle of separation of powers under the Basic Law.</p> <p>4(b). The Subcommittee is gravely concerned whether it is proper for LegCo to delegate the legislative (regulation-making) power to the executive government and to exclude itself from the vetting of subsidiary legislation made under UNSO. The regulations made</p>	<p>4(a).The Basic Law does not institute a rigid separation of powers. This is consistent with the theme of continuity as before the reunification, neither the British nor the Hong Kong systems were based on a rigid separation of powers.</p> <p>4(b).The Basic Law does not prohibit the delegation of law-making power/function to other bodies or persons to make subsidiary legislation. The disapplication of section 34 and 35 of the Interpretation and General Clauses Ordinance (Cap.1) in the scrutiny of subsidiary legislation predated 1 July 1997. The Administration</p>

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<p>under UNSO may be challenged as being legally ineffective if the statutory basis on which they have been made is unconstitutional.</p>	<p>has further referred to the Hong Kong Institute of Education Ordinance (Cap. 444) and the Vocation Training Council Ordinance (Cap. 1130).  <i>[ALAI's comment - subject matters provided in the subsidiary legislation made under these 2 ordinances are in relation to internal regulation and management of the respective organizations only.]</i></p> <p>The Administration maintains the view that as a matter of law, the disapplication provision under UNSO is constitutional.</p>
<p><b><u>Timeliness of implementing UN sanctions</u></b></p>	
<p>5. There are long time gaps between the passing of the relevant resolutions by UN and the gazettal of some Regulations.</p>	<p>5. Efforts have been made and some recently gazetted Regulations of average complexity have a shorter time gap of one to two months between the receipt of MFA instructions and the gazettal of the Regulations. There are more streamlined arrangements and dedicated officers in the Department of Justice to deal with the subject.</p>
<p><b><u>Suggested alternative approaches</u></b></p>	
<p>6. The Subcommittee has suggested that consideration be given to :</p> <p>(a) incorporate into the primary legislation (i.e. UNSO) all the provisions on enforcement powers and other key provisions which generally apply to all UN sanctions; and</p>	<p>6. The Administration considers it not possible to devise standard clauses for incorporation into UNSO. There can be no question of repealing the regulations made by CE under section 3(1) of UNSO as they are to implement the directives issued by CPG in respect of foreign affairs (i.e. UN sanctions), unlike the arrangements</p>

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(b) make reference to the arrangements for Hong Kong to enter into bilateral agreements with other countries as currently provided in Fugitive Offenders Ordinance (Cap. 503) and Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525).	for Orders made under Cap. 503 and Cap. 525.

Abbreviations

- CPG - Central People's Government
- HKSAR - Hong Kong Special Administrative Region
- MFA - Ministry of Foreign Affairs
- PRC - People's Republic of China
- UK - United Kingdom
- UNSO - United Nations Sanctions Ordinance