

立法會
Legislative Council

LC Paper No. CB(2)2117/07-08
(These minutes have been seen by the
Administration)

Ref : CB2/SS/4/07

**Subcommittee on
Subsidiary Legislation to Implement the Obligations under
the United Nations Convention Against Transnational Organized Crime**

**Minutes of meeting
held on Tuesday, 13 May 2008, at 2:30 pm
in Conference Room B of the Legislative Council Building**

- Members present** : Hon James TO Kun-sun (Chairman)
Hon Margaret NG
Hon Howard YOUNG, SBS, JP
Hon LEUNG Kwok-hung
- Member absent** : Hon LAU Kong-wah, JP
- Public Officers attending** : Mrs Apollonia LIU
Principal Assistant Secretary for Security

Miss S K LEE
Deputy Law Officer (Mutual Legal Assistance) (Acting)

Ms Mabel CHEUNG
Senior Government Counsel
- Clerk in attendance** : Mrs Sharon TONG
Chief Council Secretary (2)1
- Staff in attendance** : Mr Kelvin LEE
Assistant Legal Adviser 1

Miss Josephine SO
Council Secretary (2)1

Ms Camy YOONG
Clerical Assistant (2)1

I. Election of Chairman

Hon James TO was elected Chairman of the Subcommittee.

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

II. Meeting with the Administration

3. The Subcommittee requested the Administration -

- (a) to provide information on the scope of offences covered by Articles 16(1) and 16(2) and their correlation with Article 3 of the United Nations Convention Against Transnational Organized Crime (UNTOC);
- (b) to advise whether Article 16(2) was subject to the requirements in Article 16(1);
- (c) to explain how the requirements of Articles 5, 6, 8 and 23 of UNTOC were implemented in Hong Kong; and
- (d) to confirm whether the protection of individuals' fundamental rights provided under the Fugitive Offenders Ordinance would be affected following the implementation of UNTOC in Hong Kong.

4. Assistant Legal Adviser 1 was requested to advise on his view, if any, in respect of the information referred to in paragraph 3(a) and (b) to be provided by the Administration.

III. Date of next meeting

5. The Subcommittee agreed that the next meeting might be scheduled, pending the availability of the aforesaid information to be provided by the Administration.

6. The Subcommittee agreed that the Chairman should move a motion at the Council meeting on 21 May 2008 to extend the scrutiny period of the Fugitive Offenders (Transnational Organized Crime) Order to the Council

Action

meeting on 11 June 2008.

7. The meeting ended at 3:56 pm.

Council Business Division 2
Legislative Council Secretariat
29 May 2008

**Proceedings of the first meeting of the
Subcommittee on Subsidiary Legislation to Implement the Obligations under
the United Nations Convention Against Transnational Organized Crime
on Tuesday, 13 May 2008, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker(s)	Subject(s)	Action Required
000451 - 000733	Hon Margaret NG Hon James TO Hon LEUNG Kwok-hung	Election of Chairman	
000734 - 000856	Chairman	Opening remarks	
000857 - 001424	Admin Chairman	Briefing by the Administration on the two Orders	
001425 - 001535	Hon Margaret NG Admin	Article 14 of the United Nations Convention Against Transnational Organized Crime (UNTOC) in respect of disposal of confiscated proceeds of crime or property	
001536 - 002006	Hon Margaret NG Admin Chairman	Modifications to section 17(3)(b) of the Mutual Legal Assistance in Criminal Matters Ordinance, as specified in Schedule 2 to the Mutual Legal Assistance in Criminal Matters (Transnational Organized Crime) Order (the MLA Order), to implement Article 18(27) of UNTOC in respect of safe conduct period How the safe conduct period provided for in Article 18(27) should be applied to requests made pursuant to this Article if the States Parties in question were bound by a treaty of mutual legal assistance, or vice versa	
002007 - 003500	Chairman Admin	Concern as to whether the application of UNTOC to Hong Kong would create new offences and affect the domestic law of Hong Kong	

Time Marker	Speaker(s)	Subject(s)	Action Required
		<p>Difference in definition between the offences established in accordance with Articles 5, 6, 8 and 23 of UNTOC and such offences in the domestic law of Hong Kong</p> <p>Circumstances in which States Parties to UNTOC might decline to render mutual legal assistance, e.g. by reason of absence of dual criminality</p>	
003501 - 004901	Chairman Hon Margaret NG ALA1 Admin	<p>Requirement that each State Party should adopt the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under UNTOC</p> <p>Possibility of adopting more strict or severe measures than those provided for by UNTOC</p> <p>Obligations of States Parties in the case of offences hinging on "knowledge" versus offences hinging on "suspicion"</p> <p>Whether the principle of non-extradition for political offences provided under the Fugitive Offenders Ordinance (FOO) would be affected following the implementation of UNTOC in Hong Kong</p>	
004902 - 010359	Chairman Admin ALA1	<p>Scope of offences covered by Articles 16(1) and 16(2) and their correlation with Article 3</p> <p>Whether Article 16(2) was subject to the requirements in Article 16(1)</p>	<p>Admin to provide information on the scope of offences covered by Articles 16(1) and 16(2) and their correlation with Article 3</p> <p>Admin to advise whether Article 16(2)</p>

Time Marker	Speaker(s)	Subject(s)	Action Required
		How the requirements of Articles 5, 6, 8 and 23 of UNTOC were implemented in Hong Kong	<p>was subject to the requirements in Article 16(1)</p> <p>Admin to explain how the requirements of Articles 5, 6, 8 and 23 of UNTOC were implemented in Hong Kong</p>
010400 - 010809	Chairman Admin	Articles 15, 20, 22 and 24 of UNTOC	
010810 - 011614	Chairman Admin Hon Howard YOUNG	<p>Articles 14, 16(1) and 18 of UNTOC</p> <p>Number of States Parties which had entered into UNTOC; number of jurisdictions with which Hong Kong had signed bilateral surrender of fugitive offenders agreements</p>	
011615 - 011710	Chairman Clerk	Legislative timetable for the Fugitive Offenders (Transnational Organized Crime) Order; deadline for giving notice of motion to extend the scrutiny period of the Order; date of next meeting	
011711 - 012334	Chairman Admin	<p>The correlation between Articles 3 and 16(1); how Article 16(1) was to be interpreted with reference to Articles 3(1)(a) and 3(1)(b)</p> <p>Whether Article 16 of UNTOC would require a State Party to make mandatory extradition arrangements for a person who was the subject of a request for extradition and was located in the territory of the requested State Party</p> <p>Whether the protection of</p>	<p>Admin to provide information on the correlation of Article 3 with Articles 16(1) and 16(2)</p> <p>Admin to confirm</p>

Time Marker	Speaker(s)	Subject(s)	Action Required
		individuals' fundamental rights provided under FOO would be affected following the implementation of UNTOC in Hong Kong	whether the protection of individuals' fundamental rights provided under FOO would be affected following the implementation of UNTOC in Hong Kong
012335 - 012615	Chairman Admin	Proposed implementation of the MLA Order to give effect to Articles 14 and 18 of UNTOC	
012616 - 012651	Chairman	Closing remarks	

Council Business Division 2
Legislative Council Secretariat
29 May 2008