

立法會
Legislative Council

LC Paper No. CB(1)445/08-09
(These minutes have been cleared
by the Chairman)

Ref : CB1/HS/2/08

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

**Minutes of first meeting on
Monday, 1 December 2008 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Dr Hon Margaret NG (Chairman)
Hon LAU Kong-wah, JP
Hon Cyd HO Sau-lan
Hon Tanya CHAN

Clerk in attendance : Ms YUE Tin-po
Chief Council Secretary (1)3

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Ms Annette LAM
Senior Council Secretary (1)3

Action

I. Election of Chairman

Dr Margaret NG was elected Chairman of the Subcommittee.

II. Any other business

2. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Scope of work

3. Members agreed that the Subcommittee would focus its work on the following areas:

- (a) to examine the implementation in Hong Kong resolutions of the United Nations Security Council in relation to sanctions by Regulations made under section 3 of the United Nations Sanctions Ordinance (Cap. 537) (UNSO); and
- (b) to follow up the recommendations made by the previous Subcommittee.

Clerk 4. The Chairman requested the Clerk to draft the proposed terms of reference (TOR) and circulate to members for consideration.

(Post-meeting note: With the concurrence of the Chairman, the proposed TOR was circulated to members vide LC Paper No. CB(1)404/08-09 on 15 December 2008. All members endorsed the proposed TOR as set out in LC Paper No. CB(1)404/08-09(01)).

The way forward

5. Members agreed that the Administration should be requested to -

- (a) reconsider adopting the model law approach when preparing the regulations; and
- (b) state whether there was any matter which was different from the provisions on enforcement powers and other key provisions which generally applied to all United Nations sanctions, in addition to the information currently provided in the LegCo brief.

ALA 6. The Assistant Legal Adviser was asked to draft the model law to facilitate members' scrutiny of the Regulations gazetted under UNSO if the Administration refused to do so.

Date of next meeting

7. Members agreed to schedule a meeting to examine the United Nations Sanctions (Arms Embargoes) (Amendment) Regulation 2008 and the United Nations Sanctions (Federal Republic of Yugoslavia) (Prohibition on terrorist Activity) Regulation (Repeal) Regulation made under section 3 of the UNSO which were gazetted on 31 October 2008 and came into effect on the same day. The Administration would be invited to attend the next meeting. The Secretariat would consult members on the meeting date and notify members of the meeting arrangements in due course.

Clerk

(Post-meeting note: With the concurrence of the Chairman, the next meeting was scheduled for Friday, 16 January 2009 at 4:30 pm in Conference Room B of the Legislative Council Building. Notice of the meeting was issued to members vide LC Paper No. CB(1)415/08-09 on 16 December 2008).

8. There being no other business, the meeting ended at 2:45 pm.

Council Business Division 1
Legislative Council Secretariat
18 December 2008

**Proceedings of the first meeting of
the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of
the United Nations Security Council in relation to Sanctions
on Monday, 1 December 2008 at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000018	Dr Margaret NG Ms Cyd HO Miss Tanya CHAN Mr LAU Kong-wah	Election of Chairman	
000019 – 000256	Chairman	<p>The Chairman briefed members on:</p> <p>(a) the background to the enactment of the United Nations Sanctions Ordinance (Cap. 537) (UNSO);</p> <p>(b) the current arrangement in implementing resolutions of the United Nations Security Council (UNSC) in relation to sanctions made under section 3 of the UNSO in Hong Kong;</p> <p>(c) the deliberations of a subcommittee set up in the Third Legislative Council (LegCo) to examine the legal and constitutional issues arising from the current arrangements for implementing in Hong Kong resolutions of the UNSC in relation to sanctions as provided under the UNSO with reference to Regulations made under section 3 of the UNSO;</p> <p>(d) the previous subcommittee's concern whether the exclusion of LegCo from vetting and amending the subsidiary legislation made under the UNSO was consistent with the principle of separation of powers enshrined in the Basic Law, having regard that the regulations purported to have serious penal effect and conferred vast investigation and enforcement powers;</p> <p>(e) the alternative approaches to implement a UNSC sanction by –</p> <p>(i) making a regulation under UNSO,</p> <p>(ii) applying or amending existing legislation with reference to the United Nations (Anti-Terrorism Measures) Ordinance</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(Cap. 575), or</p> <p>(iii) enacting a new piece of legislation.</p> <p>(f) the House Committee's decision that a dedicated subcommittee be set up to deal with regulations made under UNSO and the matter be further considered by the House Committee in the Fourth LegCo.</p>	
000257 – 001749	<p>Chairman Ms Cyd HO Mr LAU Kong-wah Assistant Legal Adviser (ALA) Clerk</p>	<p>Discussion on future scope of work</p> <p>Discussion on the feasibility of adopting a model law approach for implementing UN sanctions in future</p> <p>Ms Cyd HO's suggestion for the Subcommittee to work on a model law approach in the absence of any firm undertaking from the Administration to take on board the Subcommittee's recommendation</p> <p>Mr LAU Kong-wah's concern about time and resource constraints</p> <p>The Chairman's view that:</p> <p>(a) the drafting approach adopted by most of the 26 regulations made under UNSO since July 2004 and up to 13 May 2008 was broadly similar, with targets and subjects of sanction and enforcement provisions which might differ on each occasion; and</p> <p>(b) the use of a model law was conducive to improving efficiency in the Administration's preparation of regulations and the Subcommittee's scrutiny.</p> <p>The Chairman's suggestion to:</p> <p>(a) adopt the model law approach in scrutinizing the gazetted regulations made under UNSO; and</p> <p>(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), which provided LegCo</p>	<p>The Clerk to follow up as stated in paragraph 5 of the minutes</p> <p>ALA to follow up as stated in paragraph 6 of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		a role in scrutinizing the Orders made under the Ordinances. Deliberations on the way forward	
001750 – 001800	Chairman	Meeting arrangements	The Clerk to follow up as stated in paragraph 7 of the minutes

Council Business Division 1
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