

SBCR 1/2716/89

BY FAX

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22 October 2001

Mr KAU Kin-wah
Legal Service Division
Legislative Council Secretariat
LegCo Building
8 Jackson Road, Central
Hong Kong

Dear Mr Kau,

**Fugitive Offenders (Sri Lanka) Order
& Fugitive Offenders (Portugal) Order**

I refer to your letter of 13 October 2001.

Before dealing with the specific points you have raised it may be helpful to briefly describe how Hong Kong's Agreements operate to determine whether a particular offence is one for which surrender may be granted. The conduct underlying the offence rather than the specific description of the offence is critical. And provided the conduct would have constituted a criminal offence in the requested jurisdiction (and carry more than 12 months imprisonment) surrender will be available irrespective of how the offence is actually described in the requesting Party. All that is required is that the offence is comprehended by one of the descriptions of offences in the Agreement; and these descriptions are couched in broad generic terms to take account of the fact that different jurisdictions will describe offences in different ways. The particular provisions of the Sri Lankan Agreement which are relevant to the above are the preambular part of Article 2(1) (... insofar as it is according to the laws of both Parties ...) and Article 2(3).

We have the following comments on the points you have

raised in your letter:

Fugitive Offenders (Sri Lanka) Order

Article 2

Item 3 : "maliciously wounding" is omitted at Sri Lankan request because there is no offence so described under Sri Lankan law. If Hong Kong were to request surrender for this offence (see sections 17 & 19 of the Offences Against the Person Ordinance [CAP 212]) it would clearly fall within the description in item 3 of "offences relating to unlawful wounding or injury".

Item 10 : The wording of this Item follows the wording in the Model Agreement. Article 2 is only concerned with offences and since offences can only be created by law it is not considered that any amendment is required.

Item 18 : Part VII of the Crimes Ordinance deals with offences related to "Explosive Substances". If Sri Lanka were to request surrender for an offence involving an incendiary weapon the underlying conduct would almost certainly be comprehended by Part VII or one of the offences in the Offences Against the Persons Ordinance [CAP 212].

Item 33 : Hong Kong does not have any specific Child Pornography legislation although preparation of a Bill dealing with the Prevention of Child Pornography is under consideration. If Sri Lanka were to request surrender under Item 18 Hong Kong might not, before enactment of the Child Pornography legislation referred to, be able to accede (although of course it is possible that the underlying conduct might amount to an offence comprehended by Part XII of the Crimes Ordinance [CAP 200]).

Item 34 : Sections 129 and 131 of the Crimes Ordinance (Cap.200) are relevant.

Fugitive Offenders (Portugal) Order

Article 2

Item 10 : Please see our explanation in relation to Item 10 of Article 2 of the Fugitive Offenders (Sri Lanka) Order.

Yours sincerely,

(Ms Angelina Kwan)
for Secretary for Security

c.c. Department of Justice (Attn: Mr John Hunter)