

**Joint meeting of the Panels on
Administration of Justice and Legal Services,
Financial Affairs and Security**

Measures to combat terrorism

Purpose

This paper provides information on measures to combat terrorism, including existing Hong Kong laws dealing with anti-terrorism, recommendations in United Nations Security Council Resolutions (UNSCR) 1333 and 1373, the implementation of UNSCR 1373 in Hong Kong and anti-terrorism measures adopted by overseas jurisdictions.

Existing Hong Kong Laws dealing with anti-terrorism

2. Hong Kong does not have an anti-terrorist law of general application. Offences which are typically committed by terrorists or associated with terrorism are however offences against Hong Kong law. These offences are offences for which extradition and mutual legal assistance can be granted. The relevant Hong Kong laws are set out under the following headings:

- Laws which give effect to Multilateral Conventions, Bilateral Agreements and United Nations Security Council Resolutions
- The ordinary criminal law of Hong Kong

(A) Laws which give effect to Multilateral Conventions, Bilateral Agreements and United Nations Security Council Resolutions

(i) *Multilateral Conventions*

3. The following seven Multilateral Conventions which apply to Hong Kong deal with offences which are typically committed by terrorists -

- (a) Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (1973)

- (b) International Convention Against the Taking of Hostages (1979)
- (c) Convention on Offences and Certain Other Acts Committed on Board Aircraft (1963)
- (d) Convention for the Suppression of Unlawful Seizure of Aircraft (1970)
- (e) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971)
- (f) Protocol for the Suppression of Unlawful Acts of Violence at airports serving International Civil Aviation (1988)
- (g) Convention on the Marking of Plastic Explosives for the Purpose of Detection 1991

4. The two Conventions at paras. 3(a) and 3(b) above are implemented by the Internationally Protected Persons and Taking of Hostages Ordinance (Cap. 468) which provides:

- for extra-territorial jurisdiction to deal with offences of attacking or threatening “protected persons” (protected persons include Heads of State, Governmental heads and official representatives of States) when these persons are outside their home jurisdiction.
- that it is an offence under Hong Kong law to detain hostages (whether in Hong Kong or elsewhere) and threaten to kill or injure them or continue their detention in order to compel a State, international governmental organization or person to do or abstain from doing any act.

In addition, the Fugitive Offenders (Internationally Protected Persons and Hostages) Order [made pursuant to the Fugitive Offenders Ordinance (Cap. 503)] permits extradition to all the Parties to the two Conventions for the offences dealt with in the Conventions.

5. The four Conventions mentioned at paras. 3(c) to 3(f) are implemented by the Aviation Security Ordinance (Cap. 494), which gives powers to the commander of an aircraft in flight to protect the safety of the aircraft, and creates offences of:

- hijacking

- performing various acts which are likely to endanger the safety of aircraft in flight (e.g. performing acts of violence on an aircraft, destroying air navigation facilities)
- performing acts of violence at airports and destroying or damaging the facilities of an airport

Jurisdiction is given to Hong Kong courts to deal with these offences irrespective of whether the criminal conduct occurred in Hong Kong or outside Hong Kong.

6. In addition, the Fugitive Offenders (Safety of Civil Aviation) Order [made pursuant to the Fugitive Offenders Ordinance (Cap. 503)] permits extradition to all the Parties to these four Conventions for the offences dealt with in the Conventions.

7. As regards the Convention on the Marking of Plastic Explosives for the Purpose of Detection 1991, Part VIIA of the Crimes Ordinance (Cap. 200) imposes controls (by the creation of offences) in relation to the manufacture, possession, transfer and import and export of plastic explosives. The controls are facilitated by requirements for plastic explosives to be marked with a detection agent.

8. There are however six other Conventions which are relevant to terrorism but do not at present apply to the HKSAR:

- Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (1988)
- Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms located on the Continental Shelf (1988)
- Convention on the Physical Protection of Nuclear Material (1980)
- Convention for the Suppression of Terrorist Bombings (1997)
- Convention for the Suppression of the Financing of Terrorism (1999)
- Shanghai Convention on Anti-terrorism, Separatism and Extremism (2001)

(ii) *Bilateral Agreements*

9. Hong Kong's bilateral extradition Agreements for the Surrender of Fugitive Offenders permit extradition to Hong Kong for offences described in para. 12 below and extradition from Hong Kong for equivalent offences in the other jurisdiction. These Agreements are implemented in Hong Kong under the Fugitive Offenders Ordinance (Cap. 503).

10. Hong Kong's bilateral Mutual Legal Assistance Agreements permit international assistance to be rendered and obtained for the above-mentioned offences. Assistance may also be rendered on the basis of reciprocity even if there is no Agreement. The Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) is the relevant domestic law which provides for the provision of mutual legal assistance.

(iii) *United Nations Security Council Resolutions (UNSCR)*

11. The following UNSCRs related to terrorism have been implemented in Hong Kong:

(a) UNSCR 1267

This resolution of October 1999 is principally directed towards preventing funds being made available to the Taliban or any Taliban-related undertaking. It is implemented in Hong Kong by the United Nations Sanctions (Afghanistan) Regulation, made under the United Nations Sanctions Ordinance (Cap. 537). It is an offence to take any action that is likely to make funds available in breach of the Regulation.

(b) UNSCR 1333

This resolution of December 2000 is directed towards preventing goods (arms etc) and funds being made available to Usama bin Laden and persons and organizations connected with him. It is implemented in Hong Kong by the United Nations Sanctions (Afghanistan) (Arms Embargoes) Regulation made under the United Nations Sanctions Ordinance (Cap. 537). Again, offences are created of taking action that is likely to make goods or arms available in breach of the Regulation.

(B) The ordinary criminal law of Hong Kong

12. The ordinary criminal law of Hong Kong associated with terrorist type offences are listed below:

Common Law Offences

- Murder
- Kidnapping
- False Imprisonment

Crimes Ordinance (Cap. 200)

- Causing explosion likely to endanger life or property (s. 53).
- Attempt to cause explosion, or making or keeping explosive with intent to endanger life or property (s. 54).
- Making or possession of explosive (s. 55)
- Destroying or damaging property (s. 60)
- Threats to destroy or damage property (s. 61)
- Possessing anything with intent to destroy or damage property (s. 62)

Offences Against the Person Ordinance (Cap. 212)

- Administering poison or wounding with intent to murder (s. 10)
- Destroying or damaging building with intent to murder (s. 11)
- Setting fire to or casting away ship with intent to murder (s. 12)
- Attempting to administer poison, or shooting, or attempting to shoot or attempting to shoot or drown, etc, with intent to murder (s. 13)
- Shooting or attempting to shoot, or wounding or stocking with intent to do grievous bodily harm (s. 17)
- Wounding or inflicting grievous bodily harm (s. 19)
- Attempting to choke, etc, in order to commit indictable offence (s. 20)
- Using chloroform, etc, in order to commit indictable offence (s. 21)

- Administering poison, etc, so as to endanger life or inflict grievous bodily harm (s. 22)
- Administering poison, etc, with intent to injure etc (s. 23)
- Causing bodily injury by gunpowder etc. (s. 28)
- Causing gunpowder to explode, etc, or throwing corrosive fluid, with intent to do grievous bodily harm (s. 29)
- Possession of corrosive substance (s. 29A)
- Placing gunpowder near building, etc, with intent to do bodily injury (s. 30)
- Setting spring gun, etc, with intent to inflict grievous bodily harm (s. 31)
- Placing wood, etc, on a railway with intent to endanger passengers etc (s. 32)
- Assault occasioning actual bodily harm (s. 39)
- Common assault (s. 40)
- Making or having gunpowder with intent to commit offence (s. 54)

Firearms and Ammunition Ordinance (Cap. 238)

- Possession of arms or ammunition without licence (s. 13)
- Dealing in arms or ammunition without a licence (s. 14)

Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap. 526)

- Prohibition on providing services in relation to weapons of mass destruction (s. 4)

Import and Export Ordinance (Cap. 60)

- Restriction on import and export of strategic commodities (s. 6A)

Organized and Serious Crimes Ordinance (Cap. 455)

- Dealing with property known or believed to represent proceeds of indictable offence (s. 25)
- Disclosure of knowledge or suspicion that property represents proceeds etc. of indictable offences (s. 25A)

Dangerous Goods Ordinance (Cap. 295)

- Licence required for manufacture, etc, of dangerous goods (s. 6)

Pharmacy & Poisons Ordinance (Cap. 138)

- Possession of Part 1 poisons prohibited (s. 23)

Details of UNSCR 1333 and 1373

13. Copies of UNSCRs 1333 and 1373 are at **Annex A**.

Implementation of UNSCR 1373 in Hong Kong

14. UNSCR 1373 requires member states to combat terrorism on various fronts. It includes the prevention and suppression of terrorist financing, criminalising direct, indirect and willful provision or collection of funds, establishing terrorist acts as serious criminal offences in domestic laws with appropriate penalties and enhanced exchange of information and intelligence to fight terrorism.

15. As set out paragraph 12 above, there are provisions in our existing laws to deal with terrorist type offences. The Police have the power to arrest terrorists if they are suspected to be involved in crimes. Our immigration authorities operate a sophisticated computerized system in support of immigration clearance services at all control points. This system is a very effective tool to prevent the movement of terrorists. The Director of Immigration has the power to bar them from entry.

16. We have existing legislative provisions to freeze assets of terrorists in Hong Kong. As mentioned in para. 11 above, we have implemented UNSCRs 1267 and 1333. Under the Organized and Serious Crimes Ordinance (OSCO) (Cap. 455), terrorist type crimes, such as murder, kidnapping, etc., are specified offences. The powers of tracing, restraint and confiscation of assets available under OSCO are therefore applicable to those crimes. Chapter 455 and the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) also stipulate that money laundering is a serious crime. We are working towards strengthening the provisions on money laundering, reporting suspicious money laundering activities, freezing and confiscation of assets, etc. as stipulated in Chapters 455 and 405, thereby enhancing their effectiveness. The relevant recommendations have been incorporated into the Drug Trafficking and Organized Crimes Bill which is currently under the scrutiny of the Legislative Council.

17. The existing Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) provides for the enforcement of restraint orders and confiscation orders for assets made in foreign courts in respect of serious external offences i.e. offences entailing imprisonment of two years or more on conviction.

18. The HKSARG maintains close contacts with consulates to exchange information on terrorism. The law enforcement agencies also have long-standing intelligence exchange arrangements with their overseas counterparts. We will continue to strengthen our intelligence network.

20. While we are able to meet many of the requirements of the Resolution, there are areas of the Resolution which we cannot cover without new legislative measures. We would have to examine the need for a definition of terrorism which would reflect modern day requirements and developments, including the threat to use force or violence and action designed to interfere with or disrupt an electronic system. There are other terrorist-related offences which are not provided for by our existing laws, for example, perpetrating a hoax of a terrorist act and action to create a serious risk to the health or the safety of the public, etc. The Resolution requires member states to criminalise, amongst others, the provision of funds by their nationals or in their territories with intent to use the funds to carry out terrorist acts. There is at present no specific offence in Hong Kong of providing funds to be used to carry out terrorist acts. The situation with regard to measures to combat terrorist financing is covered in a separate paper. Further, we have yet to implement the Convention for the Suppression of Terrorist Bombings and the Convention for the Suppression of the Financing of Terrorism. We are looking into various issues and expect to come up with legislative proposals soon. The Security Council has established a Committee to monitor implementation of the Resolution. Member states are required to submit their first report to the Committee on or before 27 December to demonstrate the legislative and administrative measures in place or contemplated to give effect to the Resolution. The Committee has offered to provide Member states with additional guidance and technical assistance in the process of implementation.

Anti-terrorism measures adopted by overseas jurisdictions

21. The legislation of and/or measures adopted by other jurisdictions to combat terrorism are at **Annex B**.

LEGISLATION/MEASURES BY OTHER JURISDICTIONS TO COMBAT TERRORISM

This paper provides examples of the measures, particularly legislative measures, taken by other jurisdictions to

A : implement United Nations Security Council Resolution 1373 (UNSCR 1373)

B : deal with terrorism generally.

PART A : IMPLEMENTATION OF UNSCR 1373

Australia

Introduced on 8 October 2001 the following subsidiary legislation :

Charter of the United Nations (Anti-Terrorism Measures) Regulations 2001 (made pursuant to the Charter of the United Nations Act 1945)

These Regulations

- enable the Minister to list "proscribed" persons or entities referred to in paragraph 1(c) of UNSCR 1373 i.e. persons who commit etc "terrorist acts" and entities controlled by such persons; and to list "freezable" assets, i.e. principally assets owned or controlled by proscribed persons or entities, or by others who commit terrorist acts.
- create an offence for the holder of a freezable asset to use or deal with that asset (thus effectively freezing it)
- create an offence of making any assets available to listed persons or entities.
- enable the Minister to lift in particular cases the effect of the published lists
- provide for indemnity and compensation of persons acting in good faith to comply with the Regulations.

Canada

(a) Introduced on 2 October 2001 the United Nations Suppression of Terrorism Regulations 2001 (made pursuant to the United Nations Act) to implement UNSCR 1373.

(b) Also introduced on 15 October 2001 an Anti-Terrorism Bill (see Part B, post)

The Regulations

- provide for the listing of persons (or organisations) who have committed "terrorist acts"
- create offences of
 - dealing with assets owned or controlled by listed persons
 - raising funds to be used by listed persons
 - failing to report dealings in property owned or controlled by listed persons.
- requires financial institutions to determine whether they have assets belonging to listed persons and to provide regular compliance reports.

Denmark

Provisions to implement UNSCR 1373 will be introduced at the end of November 2001 as part of a legislative package to enable ratification of the International convention for the suppression of the Financing of Terrorism and to deal with terrorism generally. [see under Part B, post].

New Zealand

Before the adoption of UNSCR 1373, New Zealand had in May 2001 introduced a Terrorism (Bombings and Financing) Bill to implement the Conventions on the Suppression of Terrorist Bombings and of the Financing of Terrorism. The Bill has been amended so that it will also implement the financing provisions of UNSCR 1373. The proposed amendments will include a prohibition on providing funds and financial resources to terrorists and an ability to freeze such funds.

A further Bill is expected to be introduced in 2002 to implement less urgent parts of the UNSCR, following an assessment of New Zealand's

existing laws.

Norway

Introduced by Royal Decree a Provisional Ordinance on 5 October 2001, which -

- makes it an offence to
 - make available, collect or obtain funds that will be used to carry out a terrorist act
 - make funds available to persons who may, with just cause, be suspected of preparing for or perpetrating terrorist acts
- provides for the freezing of property belonging to or controlled by a person who is suspected, with just cause, of preparing for or perpetrating terrorist acts or funding them
- obligates financial institutions to report transactions that it suspects are connected with a terrorist act

- defines terrorist act to mean
 - (a) the unlawful use, or threat of the unlawful use, of force or violence against persons or property
 - (b) in an attempt to exert pressure on or coerce the authorities or people of the country or society in general in order to achieve political, religious or ideological aims and any acts such as those mentioned in the International Convention for the Suppression of the Financing of Terrorism.

Singapore

Introduced on 10 November 2001 the United Nations (Anti-Terrorism Measures) Regulations 2001 (under the United Nations Act 2001)

These Regulations

- list terrorists and terrorist organisations who have been identified by the UN Committee established pursuant to UNSCR 1267
- defines "terrorist act" - it includes the use or threat of action that
 - (a) involves serious violence against a person or property; or creates a serious risk to the health or the safety of the public; or involves the use of firearms or explosives, or the release of harmful substances, toxic chemicals or toxins; or is designed to disrupt public computer systems, communications infrastructures, banking and financial services, public utilities, public transportation or public key infrastructure or emergency services; and

(b) is intended to influence a government or intimidate the public.

- creates offences of
 - providing or collecting funds that will be used to commit or facilitate the commission of terrorist acts;
 - dealing in property which is owned or controlled by terrorists or their associates, or providing financial services in relation to their property;
 - making funds available to terrorists or their associates
 - making false threats of terrorist acts;
- imposes a duty on persons to inform the Commissioner of Police if they have in their possession property belonging to a terrorist or if they have any information about any transaction in respect of such property.

United Kingdom

(a) The Terrorism (United Nations Measures) Order 2001 (made under the United Nations Act 1946 to implement UNSCR 1373) came into force on 10 October 2001.

(b) The Anti-Terrorism, Crime and Security Bill was introduced on 13 November 2001 (See Part B, post)

The Order

- Defines "terrorism" to mean the use or threat of action where

(a) the use or threat is designed to influence the government or to intimidate the public and is made for the purpose of advancing a political, religious or ideological cause;

(b) the action involves serious violence against a person, serious damage to property, endangers life, creates a serious risk to the health or safety of the public or is designed seriously to disrupt an electronic system;

- creates offences
 - of making funds available to persons who commit, attempt to commit, facilitate or participate in the commission of acts of terrorism.
 - (which can only be committed by banks and building societies) of not disclosing to the Treasury knowledge or suspicion that one of its customers is a person who commits etc acts of terrorism.
- provides for freezing by the Treasury of funds where the Treasury has reasonable grounds for suspecting a person on behalf of whom funds are held is or may be or person who commits etc acts of terrorism. The holder of the funds is served with a notice by the Treasury directing that the funds are not to be made available to any persons. Failure to comply with such a direction is an offence.
- The Treasury is given power to compel the production of information and documents required for the purpose of securing compliance with or detecting evasion of the Order.

PART B : GENERAL TERRORISM LEGISLATION

Canada

Introduced the Anti-Terrorism Bill on 15 October 2001. It establishes new criminal offences related to the financing of terrorism, building on the Regulations made to implement UNSCR 1373 [see under Part A of this paper]. The following offences are created by the Bill -

- providing or collecting property for the purpose of carrying out terrorist activity or to benefit any person who is facilitating it or carrying it out;
- using or possessing property for facilitating terrorist activity;
- dealing in or facilitating a transaction in property of a terrorist group or providing any financial or related services for a terrorist group;

The Bill provides for a definition of "terrorist activity" which includes criminal conduct -

- (a) that is committed for a political, religious or ideological purpose and with the intention of intimidating the public, or compelling a person, a government or organization to do or to refrain from doing any act, whether at home or abroad; and
- (b) that is intended
 - (i) to cause death or serious bodily harm to a person by the use of violence or to endanger a person's life.
 - (ii) to cause a serious risk to the health or safety of the public; or to cause substantial property damage; or
 - (iii) to cause serious disruption of an essential service, facility or system,

Criminal conduct which amounts to an offence against any of ten listed multilateral Conventions which deal with offences that are typically committed by terrorists (e.g. the Convention for the Suppression of the Unlawful Seizure of Aircraft) is also "terrorist activity".

Denmark

A legislative package will be introduced at the end of November 2001 which will include the following -

- amendments to the Criminal Code to enable ratification of the International Convention for the Suppression of the Financing of Terrorism, to punish those who contribute to the financing of terrorism to exclude such offences from the prohibition against extradition for political offences; and to add a definition of terrorism;
- provisions to implement UNSCR 1373, by freezing finances of terrorists;
- power to intercept and observe serious violation of weapons legislation, and to install a computer program in the computer equipment of a suspect for the purpose of "intercepting" what is written on the machine;
- power to order a third party to surrender documents, etc., without prior court warrant if the purpose would otherwise be frustrated;
- power to perform secret searches in cases of aggravated arson, explosion of bombs, hijacking, addition of toxic substances to the water supply or foodstuffs, etc.

- extension of the scope of the money-laundering laws to impose a reporting duty on financial institutions for any transaction associated with the financing of terrorism.

Japan

Introduced on 29 October 2001 an Anti-terrorism Special Measures Law to enable Japan to contribute to the efforts of the international community for the prevention and eradication of international terrorism, through such activities as

- cooperation and support activities for the armed forces of the USA and other countries which aim to eradicate the threat of terrorist attacks
- search and rescue activities for such foreign forces
- humanitarian aid

Also the Government of Japan has frozen assets, and restricted money flows, to groups and individuals identified by the UN.

United Kingdom

Introduced the Anti-Terrorism, Crime and Security Bill on 13 November 2001 to amend the Terrorism Act 2000 and make further provision about terrorism and security. Note also the Order to implement UNSCR 1373 (see Part A, ante).

The Bill will

- enable magistrates to forfeit "terrorist cash"; and the Treasury to make a "freezing order" prohibiting persons from making funds available to persons named or described in the order.
- confer greater powers of immigration control over suspected international terrorists.
- create offences relating to the transfer, use and security of biological, nuclear and other dangerous material and weapons and facilitate the prosecution of such offences.
- increase police powers of search, finger printing and

investigation.

- provide for communication service providers to retain data for reasons of national security or where it may be vital for criminal investigation.
- extend existing offences of racial hatred to cover offences motivated by religious hatred.
- extend the law which covers bomb hoaxes to include other types of hoaxes [such as anthrax hoaxes]
- improve aviation security by providing for powers to remove and arrest people in restricted areas and detain aircraft for security reasons.

[Note : this Bill comprises 113 pages]

USA

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism USA PATRIOT Act was signed into law on October 26 2001.

In general terms this Act

- facilitates the sharing of information between agencies responsible for intelligence and agencies responsible for law enforcement;

- extends existing powers in relation to the surveillance of communications (including e-mails, the internet and cell phones);
- gives law enforcement official enhanced powers against money laundering;
- extends the reach of federal search warrants;
- imposes harsher penalties for offences associated with terrorism;
- makes it easier to seize the assets of terrorists; and
- gives wide powers to deport terrorists and their supporters.

[Note the USA Patriot Act comprises 130 pages]