

《聯合國人員和有關人員安全條例草案》委員會

目的

本文件載述當局對條例草案委員會在二零零六年六月一日會議上提出事項的回應。

“指明人士”的涵蓋範圍

2. 委員要求當局解釋《條例草案》採用“指明人士”一詞，而非《聯合國人員和有關人員安全公約》（《公約》）第 10(1)(b)條所用的“本國國民”的原因，以及考慮把有關“香港永久性居民”的提述從“指明人士”的定義中刪除。

3. 正如當局在二零零六年六月一日的會議上解釋，公約第 10(1)(b)條規定，各締約國應採取措施，在嫌疑犯是該國國民的情況下，確定其對公約所禁止的罪行的管轄權。這些罪行如在香港發生，不論犯罪者屬何國籍，《刑事罪行條例》（第 200 章）、《侵害人身罪條例》（第 212 章）及《刑事訴訟程序條例》（第 221 章）現時訂明的一般刑事罪行，以及普通法，已可處理。新立法措施只為履行《公約》有關確立對國民的域外管轄權的規定而制定。

4. 香港沒有本身的“國民”。根據香港的法律制度，“永久性居民”的身分最接近“國籍”的概念。按此，香港可以對中國籍及其他國籍的香港永久性居民確立管轄權。不過，對於通常在香港居住但沒有香港永久性居民身分、或在香港沒有居留權的中國及其他國籍人士，根據公約第 10(1)(b)條的用意，應由該等人士本身所屬的國家確立所需的域外管轄權。

5. 有鑑於此，在《條例草案》中，“指明人士”指兼具中國公民及香港永久性居民兩項身分的人。就“指明人士”所干犯的被禁止罪行確立域外管轄權，符合香港須根據《公約》第 10(1)(b)條確立“國民”管轄權的責任。

6. 如在“指明人士”的定義中刪除“香港永久性居民”這一提述，則“指明人士”僅指“中國公民”。正如上文解釋，把域外管轄權擴闊至包括非香港永久性居民的中國公民，與香港在《公約》第 10(1)(b)條下的責任並不一致。

擴闊域外管轄權以涵蓋屬香港永久性居民的無國籍人士

7. 委員亦要求當局考慮是否需要擴闊《條例草案》的覆蓋範圍，以涵蓋屬香港永久性居民的無國籍人士。事實上，《公約》第 10(2)(a)條訂明，締約國可以確定其對任何公約所禁止罪行的管轄權，如果犯罪行為是慣常居住該國境內的無國籍人所為。此為非強制性的規定。

8. 考慮到委員的意見，我們同意把域外管轄權擴闊至涵蓋具香港永久性居民身分的無國籍人士，有助更有效達致公約保護聯合國人員和有關人員的目標。因此，我們建議《條例草案》中的“指明人士”可涵蓋屬香港永久性居民的無國籍人士，並會提出相應的委員會審議階段修正案。

有域外管轄權的現行刑事罪行

9. 委員要求當局，就香港具有域外管轄權的罪行，說明域外管轄權適用於哪類人士。我們於附件 A 載列了有域外管轄權的現行刑事罪行的例子。從附件 A 可見，有關做法各異。我們認為域外管轄權的範圍應按個別情況的需要而考慮。《條例草案》建議的域外管轄權，適當地履行了《公約》第 10(1)(b)條對“國民”確立管轄權的要求。

對具備香港永久性居民身分的中國公民同時有域外管轄權

10. 委員要求當局說明，在《條例草案》實施後，如果內地和香港同時對觸犯《公約》禁止的罪行而具備香港永久性居民身分的中國公民有域外管轄權，將如何處理該等犯罪者。

11. 在同時具有域外管轄權的情況下，一般做法是由案發的司法管轄區起訴犯罪者。具備香港永久性居民身分的中國公民如在內地和香港以外地方觸犯《公約》禁止的罪行，而內地和香港同時具有域外管轄權，可按以下方法處理：

- (a) 案發的司法管轄區可起訴犯罪者；
- (b) 犯罪者如在香港，香港可對其行使管轄權；以及
- (c) 視乎所得證據，香港和內地均可要求案發的司法管轄區移交該犯罪者，但移交與否和移交予何地，則由該司法管轄區決定。

威脅罪的刑罰

12. 委員要求當局就澳洲、加拿大和英國的威脅聯合國人員和有關人員罪行的罰則，和其他威脅罪的罰則作一比較。

13. 有關比較表列於**附件 B**。從該表可見，威脅聯合國人員和有關人員的罰則，普遍較其他威脅罪為高。

保安局

二零零六年七月

有域外管轄權的刑事罪行例子

《刑事罪行條例》(第 200 章)第 23B(1)條訂明：

“任何人的任何作為如—

- (a) 在處於公海的香港船舶上作出；及
- (b) 無本條則不屬一項罪行；及
- (c) 在香港作出的情況下，根據香港法律會構成一項罪行，

則……無論該人具有何種公民身分或屬何種國籍，該作為均構成該項罪行。”

若罪行在香港船舶上發生，則不論犯罪者的公民身分或國籍，該條對犯罪者有域外管轄權。

2. 第 200 章第 23B(3)條訂明：

“凡—

- (a) 任何香港特別行政區居民的作為—
 - (i) 在處於香港以外的任何港口或海港的香港船舶上作出；
或
 - (ii) 在既非香港船舶亦非該人所隸屬的船舶上作出；
- (b) 該作為如無本款則不屬一項罪行；及
- (c) 在該作為如在香港作出的情況下，根據香港法律會構成一項罪行，

則……該作為即構成該項罪行。”

若罪行在船舶上發生，該條對任何香港居民有域外管轄權。

3. 《侵害人身罪條例》(第 212 章)第 8B(1)條規定—

“凡有以下情況—

- (a) 一項作為在公海或香港以外任何其他地方發生；
- (b) 該項作出或發生的作為所針對或關乎的人因該作為而在香港死去；及
- (c) 該作為如在香港發生，會構成謀殺罪、誤殺罪或協從謀殺或誤殺的罪行，

則不論作出該作為或須對該作為負責的人具有何種公民身分或屬何種國籍，該作為均視乎適用情況而構成謀殺罪、誤殺罪或協從謀殺或誤殺的罪行。”

若受害人在香港死去，則不論犯罪者的公民身分或國籍，該條對犯罪者有域外管轄權。

4. 《刑事訴訟程序條例》(第 221 章)第 19 條規定—

“在任何關於在公海或香港以外任何地方所犯罪行的公訴書內，指稱受損害的人在所控告的罪行發生時是在香港法院的司法管轄權範圍內的，即為法院具有司法管轄權聆訊和裁定該案件的足夠指稱。”

若受損害的人在所控告的罪行發生時是在香港的司法管轄權範圍內，則不論犯罪者的公民身分或國籍，該條對犯罪者有域外管轄權。

5. 《航空保安條例》(第 494 章)第 3(1)條訂明：

“在正在航行但並非在香港境內或上空航行的香港控制的飛機上發生的任何作為或不作為，假如在香港境內發生便會構成香港法律下的某罪行的，即構成該罪行。”

若罪行於正在航行的香港控制的飛機上發生，則不論犯罪者的公民身分或國籍，該條對犯罪者具有域外管轄權。

6. 《聯合國(反恐怖主義措施)條例》(第 575 章)實施聯合國安全理事會第 1373 號決議的強制執行部分。其中一項是要求締約國對資助、支持或

犯下恐怖主義行為的人拒絕給予安全庇護。為執行這項要求，第 575 章對決議禁止的罪行，就香港永久性居民及根據香港法律成立為法團或組成的團體確立域外管轄權。

**Comparison of the level of penalties imposed by Australia, Canada and the United Kingdom
when the offence of threat is committed against United Nations and associated personnel
as opposed to other threat offences**

澳洲、加拿大和英國的威脅聯合國人員和有關人員罪行和其他威脅罪的罰則比較

	Australia 澳洲	Canada 加拿大	United Kingdom 英國
Provisions on the threat offence committed against United Nations and associated personnel 有關威脅聯合國人員和有關人員罪行的條文	<p><u>Criminal Code Act 1995</u></p> <p>71.12 Threatening to commit other offences</p> <p>A person is guilty of an offence if the person:</p> <p>(a) threatens to commit an offence (the <i>threatened offence</i>) under any of sections 71.2 to 71.11; and</p> <p>(b) intends to compel any other person to do or omit to do an act by making the threat.</p> <p>Maximum penalty:</p> <p>(a) if the threatened offence is the offence under section 71.2 (murder of a UN or associated person)—imprisonment for</p>	<p><u>Criminal Code</u></p> <p>424.1 Threat against United Nations or associated personnel</p> <p>Every one who, with intent to compel any person, group of persons, state or any international or intergovernmental organization to do or refrain from doing any act, threatens to commit an offence under section 235, 236, 266, 267, 268, 269, 269.1, 271, 272, 273, 279 or 279.1 against a member of United Nations personnel or associated personnel or threatens to commit an offence under section 431.1 is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.</p>	<p><u>United Nations Personnel Act 1997</u></p> <p>3. Threats of attacks on UN workers –</p> <p>(1) If a person in the United Kingdom or elsewhere contravenes subsection (2) he shall be guilty of an offence.</p> <p>(2) A person contravenes this subsection if, in order to compel a person to do or abstain from doing any act, he-</p> <p>(a) makes to a person a threat that any person will do an act which is-</p> <p>(i) an offence mentioned in section 1(2) against a UN worker, or</p> <p>(ii) an offence mentioned in subsection (2) of section 2 in</p>

	<p>10 years; or</p> <p>(b) if the threatened offence is the offence under section 71.3, 71.4, 71.5, 71.8 or 71.9 (manslaughter of, causing serious harm to, kidnapping, or sexually penetrating, a UN or associated person)—imprisonment for 7 years; or</p> <p>(c) if the threatened offence is the offence under section 71.6 or 71.11 (causing harm to, or damaging the property etc. of, a UN or associated person)—imprisonment for 5 years; or</p> <p>(d) if the threatened offence is the offence under section 71.7 or 71.10 (recklessly causing harm to, or unlawful detention of, a UN or associated</p>		<p>connection with such an attack as is mentioned in subsection (1) of that section, and</p> <p>(b) intends that the person to whom he makes the threat shall fear that it will be carried out.</p> <p>(3) A person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term-</p> <p>(a) not exceeding ten years, and</p> <p>(b) not exceeding the term of imprisonment to which a person would be liable for the offence constituted by doing the act threatened at the place where the conviction occurs and at the time of the offence to which the conviction relates.</p>
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	person)—imprisonment for 3 years.		
Provisions on the other threat offences 有關其他威脅罪的條文	<p><u>Criminal Code Act 1995</u></p> <p>147.2 Threatening to cause harm to a Commonwealth public official etc.</p> <p><i>Threatening to cause serious harm</i></p> <p>(1) A person (the first person) is guilty of an offence if:</p> <p>(a) the first person makes to another person (the second person) a threat to cause serious harm to the second person or to a third person; and</p> <p>(b) the second person or the third person is a public official; and</p> <p>(c) the first person:</p> <p>(i) intends the second person to fear that the threat will be carried out; or</p> <p>(ii) is reckless as to causing the second person to fear that the threat will be carried</p>	<p><u>Criminal Code</u></p> <p>264.1 (1) Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat</p> <p>(a) to cause death or bodily harm to any person;</p> <p>(b) to burn, destroy or damage real or personal property; or</p> <p>(c) to kill, poison or injure an animal or bird that is the property of any person.</p> <p>(2) Every one who commits an offence under paragraph (1)(a) is guilty of</p> <p>(a) an indictable offence and liable to imprisonment for a term not exceeding five years; or</p> <p>(b) an offence punishable on summary conviction and liable to imprisonment for a term not</p>	<p><u>Criminal Justice and Public Order Act 1994</u></p> <p>Intimidation, etc., of witnesses, jurors and others</p> <p>51.—(1) A person who does to another person—</p> <p>(a) an act which intimidates, and is intended to intimidate, that other person;</p> <p>(b) knowing or believing that the other person is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence; and</p> <p>(c) intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with,</p> <p>commits an offence.</p>

	<p>out; and</p> <p>(d) the first person makes the threat because of:</p> <p>(i) the official's status as a public official; or</p> <p>(ii) any conduct engaged in by the official in the official's capacity as a public official; and</p> <p>(da) the official is a Commonwealth public official; and</p> <p>(db) if subparagraph (d)(i) applies—the status mentioned in that subparagraph was status as a Commonwealth public official; and</p> <p>(dc) if subparagraph (d)(ii) applies—the conduct mentioned in that subparagraph was engaged in by the official in the official's capacity as a Commonwealth public official.</p> <p>Penalty:</p> <p>(e) if the official is a</p>	<p>exceeding eighteen months.</p> <p>3) Every one who commits an offence under paragraph (1)(b) or (c)</p> <p>(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or</p> <p>(b) is guilty of an offence punishable on summary conviction.</p> <p>423. (1) Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,</p> <p>(a) uses violence or threats of violence to that person or his or her spouse or common-law partner or children, or injures his or her</p>	<p>(2) A person who does or threatens to do to another person—</p> <p>(a) an act which harms or would harm, and is intended to harm, that other person;</p> <p>(b) knowing or believing that the other person, or some other person, has assisted in an investigation into an offence or has given evidence or particular evidence in proceedings for an offence, or has acted as a juror or concurred in a particular verdict in proceedings for an offence; and</p> <p>(c) does or threatens to do the act because of what (within paragraph (b)) he knows or believes,</p> <p>commits an offence.</p> <p>(3) A person does an act "to" another person with the intention of intimidating, or (as the case may be) harming, that other person not only</p>
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	<p>Commonwealth judicial officer or a Commonwealth law enforcement officer—imprisonment for 9 years; or</p> <p>(f) in any other case—imprisonment for 7 years.</p> <p>(1A) Absolute liability applies to the paragraphs (1)(da), (db) and (dc) elements of the offence.</p> <p><i>Threatening to cause harm</i></p> <p>(2) A person (the first person) is guilty of an offence if:</p> <p>(a) the first person makes to another person (the second person) a threat to cause harm to the second person or to a third person; and</p> <p>(b) the second person or the third person is a public official; and</p> <p>(c) the first person:</p> <p>(i) intends the second person to fear that the threat will</p>	<p>property;</p> <p>(b) intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted on him or her or a relative of his or hers, or that the property of any of them will be damaged;</p> <p>(c) persistently follows that person;</p> <p>(d) hides any tools, clothes or other property owned or used by that person, or deprives him or her of them or hinders him or her in the use of them;</p> <p>(e) with one or more other persons, follows that person, in a disorderly manner, on a highway;</p> <p>(f) besets or watches the place where that person resides, works, carries on business or happens to be; or</p> <p>(g) blocks or obstructs a highway.</p>	<p>where the act is done in the presence of that other and directed at him directly but also where the act is done to a third person and is intended, in the circumstances, to intimidate or (as the case may be) harm the person at whom the act is directed.</p> <p>(4) The harm that may be done or threatened may be financial as well as physical (whether to the person or a person's property) and similarly as respects an intimidatory act which consists of threats.</p> <p>(5) The intention required by subsection (1)(c) and the motive required by subsection (2)(c) above need not be the only or the predominant intention or motive with which the act is done or, in the case of subsection (2), threatened.</p> <p>(6) A person guilty of an offence under this section shall be liable—</p>
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	<p>be carried out; or</p> <p>(ii) is reckless as to causing the second person to fear that the threat will be carried out; and</p> <p>(d) the first person makes the threat because of:</p> <p>(i) the official's status as a public official; or</p> <p>(ii) any conduct engaged in by the official in the official's capacity as a public official; and</p> <p>(e) the official is a Commonwealth public official; and</p> <p>(f) if subparagraph (d)(i) applies—the status mentioned in that subparagraph was status as a Commonwealth public official; and</p> <p>(g) if subparagraph (d)(ii) applies—the conduct mentioned in that subparagraph was engaged in by the official in the official's</p>		<p>(a) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both;</p> <p>(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.</p>
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	<p>capacity as a Commonwealth public official.</p> <p>Penalty: Imprisonment for 2 years</p> <p>(2A) Absolute liability applies to the paragraphs (2)(e), (f) and (g) elements of the offence.</p> <p><i>Threatening to cause serious harm to a former Governor-General, former Minister or former Parliamentary Secretary</i></p> <p>(3) A person (the first person) is guilty of an offence if:</p> <p>(a) the first person makes to another person (the second person) a threat to cause serious harm to the second person or to a third person; and</p> <p>(b) the second person or the third person is a former Governor-General, a former Minister or a former Parliamentary Secretary; and</p> <p>(c) the first person:</p>		
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	<ul style="list-style-type: none"> (i) intends the second person to fear that the threat will be carried out; or (ii) is reckless as to causing the second person to fear that the threat will be carried out; and <p>(d) the first person makes the threat because of:</p> <ul style="list-style-type: none"> (i) the second or third person's status as a former Governor-General, a former Minister or a former Parliamentary Secretary; or (ii) any conduct engaged in by the second or third person in the second or third person's former capacity as a Governor-General, a Minister or a Parliamentary Secretary. <p>Penalty: Imprisonment for 7 years.</p> <p><i>Threats</i></p> <p>(4) For the purposes of this section,</p>		
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	<p>a <i>threat</i> may be:</p> <ul style="list-style-type: none"> (a) express or implied; or (b) conditional or unconditional. <p><i>Unnecessary to prove that a threatened person actually feared harm</i></p> <p>(5) In a prosecution for an offence against this section, it is not necessary to prove that the person threatened actually feared that the threat would be carried out.</p> <p><i>149.1 Obstruction of Commonwealth public officials</i></p> <p>(1) A person is guilty of an offence if:</p> <ul style="list-style-type: none"> (a) the person knows that another person is a public official; and (b) the first-mentioned person obstructs, hinders, intimidates or resists the official in the performance of the official's functions; and (c) the official is a Commonwealth 		
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	<p>public official; and</p> <p>(d) the functions are functions as a Commonwealth public official. Penalty: Imprisonment for 2 years.</p> <p>(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew:</p> <p>(a) that the official was a Commonwealth public official; or</p> <p>(b) that the functions were functions as a Commonwealth public official.</p> <p>(3) For the purposes of this section, it is immaterial whether the defendant was aware that the public official was performing the official's functions.</p> <p>(4) Section 15.3 (extended geographical jurisdiction—category C) applies to an offence against subsection (1).</p>		
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	<p>(5) The definition of <i>duty</i> in section 130.1 does not apply to this section.</p> <p>(6) In this section:</p> <p><i>function:</i></p> <p>(a) in relation to a person who is a public official—means any authority, duty, function or power that is conferred on the person as a public official; or</p> <p>(b) in relation to a person who is a Commonwealth public official—means any authority, duty, function or power that is conferred on the person as a Commonwealth public official.</p> <p><i>268.107 Threatening witnesses or interpreters</i></p> <p>(1) A person commits an offence if the person causes or threatens to cause any detriment to another person with the intention that the other person or a third person will:</p>		
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	<p>(a) not attend as a witness at a proceeding before the International Criminal Court; or</p> <p>(b) give false evidence at such a proceeding; or</p> <p>(c) withhold true evidence at such a proceeding.</p> <p>Penalty: Imprisonment for 7 years.</p> <p>(2) A person commits an offence if the person causes or threatens to cause any detriment to another person with the intention that the other person or a third person will:</p> <p>(a) not attend as an interpreter at a proceeding before the International Criminal Court; or</p> <p>(b) give a false or misleading interpretation as an interpreter in such a proceeding.</p> <p>Penalty: Imprisonment for 7 years.</p>		
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	<p>Dictionary</p> <p><i>detriment</i> includes any disadvantage and is not limited to personal injury or to loss of or damage to property.</p>		
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