

LS/B/12/05-06

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Miss Jane Lee
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CGO

By Fax (2524 3762) and By Post

23 May 2006

Dear Miss Lee,

Safety of United Nations and Associated Personnel Bill

I am looking at the drafting and legal aspects of the Safety of United Nations and Associated Personnel Bill and wonder if you could provide following information:-

(a) Clause 4(1)

2. Clause 4(1) provides that “[a] specified person shall not, outside Hong Kong, do any act - ...”.
3. Please clarify whether the phrase “outside Hong Kong” refers to the physical presence of the specified person as referred to at the beginning of the clause or the phrase “do any act”.
4. In the former case, i.e. the specified person is physically outside Hong Kong, how does the law of conspiracy apply, if at all, to the provision of the Bill? Please kindly explain and illustrate with examples, if possible.
5. Please also clarify the similar dangling modifier in clause 5(2) (“[a] specified person shall not, *outside Hong Kong*, in order to compel another person to do or refrain from doing any act, make to the other person a threat that an act will be done which, would constitute a relevant offence, ...”).

(b) Clause 5

6. Section 24 of the Crimes Ordinance (Cap. 200) prohibits the act of intimidation, for which a maximum penalty for a conviction upon indictment is

imprisonment for 5 years. Clause 5 of the Bill creates the offence of threat for which a maximum penalty of 10 years' imprisonment is sought to be imposed. Please explain the difference, in terms of elements of offences, between the offence of intimidation under the Crimes Ordinance and clause 5 of the Bill.

7. It is mentioned in the LegCo Brief that the Administration considers necessary to prescribe a higher maximum penalty for the offence of threatening to commit an attack on United Nations and associated personnel to reflect the international recognized need for special deterrence (para. 6) and the Administration has taken into account of the penalty level in Australia, Canada and the UK. Please clarify whether or not the offence of intimidation as provided in section 24 of the Crimes Ordinance, except the level of penalty prescribed in section 27, is sufficient to satisfy the requirement of Article 9(1)(c) of the Convention on the Safety of United Nations and Associated Personnel ('the Convention').

8. Clause 5(1) and clause 5(2) read as follows:-

“5 (1) A person shall not, in order to compel *another person* to do or refrain from doing any act, make to *the other person* a threat that an act will be done which, if done, would constitute a relevant offence, with the intention that the other person shall fear that the threat will be carried out.

(2) A specified person shall not, outside Hong Kong, in order to compel *another person* to do or refrain from doing any act, make to *the other person* a threat that an act will be done which, if done, would constitute a relevant offence, with the intention that the other person shall fear that the threat will be carried out.”

9. Who are “another person” and “the other person” in the above provisions. Do they mean United Nations personnel or United Nations associated personnel but not any other persons?

(c) The Bill

10. I wonder if it would be possible for you to provide more information about the implementation of Articles 9 and 10(1) of the Convention in other common law countries, such as Australia, Canada and the UK, and identify the particular provisions of the laws of these countries (preferably in a table form) which implement the requirements of Articles 9 and 10(1). If possible, please let the Bills Committee have copies of the relevant laws.

11. I would be grateful for your reply in bilingual form on or before 29 May 2006.

Yours sincerely,

Kitty Cheng
Assistant Legal Adviser

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