

立法會
Legislative Council

LC Paper No. LS61/05-06

**Paper for the House Committee Meeting
on 19 May 2006**

**Legal Service Division Report on
Safety of United Nations and Associated Personnel Bill**

I. SUMMARY

1. **Object of the Bill** To implement Article 9 and Article 10(1) of the Convention on the Safety of United Nations and Associated Personnel.

2. **Comments**
 - (a) The Bill establishes jurisdiction over Chinese nationals who are Hong Kong residents for common law offences of murder, manslaughter, kidnapping, false imprisonment, assault occasioning actual bodily harm and common assault and certain offences under the Crimes Ordinance (Cap. 200) and the Offences against the Persons Ordinance (Cap. 212) that are committed outside Hong Kong against United Nations personnel or associated personnel.
 - (b) Section 24 of the Crimes Ordinance prohibits the act of intimidation, for which the 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.

3. **Public Consultation** No public consultation has been conducted.

4. **Consultation with LegCo Panel** When the Panel on Security was consulted on the legislative proposals at its meeting on 6 December 2005, members raised questions on the application of the Bill to persons of dual nationality and stateless persons who had acquired right of abode in Hong Kong and the desirability of extradition of the relevant offenders to the jurisdiction where the crime was committed for trial. The Administration has subsequently provided a paper to explain the applicability of the legislative proposals to Hong Kong residents residing in Taiwan and persons of dual nationality under the Nationality Law.

5. **Conclusion** In view of the questions raised at the Panel meeting on 6 December 2005, members may wish to consider whether to set up a Bills Committee to examine the Bill in detail.

II. REPORT

Object of the Bill

To implement Article 9 and Article 10(1) of the Convention on the Safety of United Nations and Associated Personnel (“the Convention”).

LegCo Brief Reference

2. SBCR 25/15/5691/74 issued by the Security Bureau on 3 May 2006.

Date of First Reading

3. 17 May 2006.

Comments

4. The Convention was adopted by the United Nations General Assembly on 9 December 1994 at its 49th session. The People’s Republic of China acceded to the Convention on 22 September 2004 and it entered into force for PRC including Hong Kong on 22 October 2004. As at February 2006, there were 79 Parties to the Convention.

5. The provisions of the Convention were made to ensure the safety and security of United Nations and associated personnel by requiring State Parties to take all necessary measures to protect them by establishing criminal offences punishable by appropriate penalties, and by cooperating in the prevention of such crimes and in providing assistance to one another in connection with criminal proceedings.

6. According to the understanding of the Administration, Hong Kong’s existing administrative measures and legislation already comply with most of the requirements, except a few provisions, of the Convention (para. 3 of LegCo Brief).

7. By this Bill, the Administration seeks to make local enactments to implement Article 9 and Article 10(1) of the Convention.

8. Article 9 of the Convention provides as follows:-

“1. The intentional commission of:

(a) A murder, kidnapping or other attack upon the person or liberty of any United Nations or associated

personnel;

(b) A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations or associated personnel likely to endanger his or her person or liberty;

(c) A threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act;

(d) An attempt to commit any such attack; and

(e) An act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack,

shall be made by each State Party a crime under its national law.

2. Each State Party shall make the crimes set out in paragraph 1 punishable by appropriate penalties which shall take into account their grave nature.”

9. In Hong Kong, the criminal offences created under the Crimes Ordinance (Cap. 200), the Offences against the Persons Ordinance (Cap. 212), the Criminal Procedure Ordinance (Cap. 221) and the common law already deal with the crimes under Article 9(1)(a), (b), (d) and (e) of the Convention.

10. Section 24 of the Crimes Ordinance prohibits the act of intimidation in that it shall be an offence for a person to threaten any other person with any illegal act with intent to cause the person so threatened to do any act which he is not legally bound to do or to omit to do any act which he is legally entitled to do. The maximum penalty for a conviction upon indictment of the offence is imprisonment for 5 years (section 27). Clause 5 of the Bill creates the offence of threat. The Administration has taken into account the penalty level for the relevant offence in Australia, Canada and the United Kingdom and seeks to impose a maximum term of imprisonment of 10 years for this offence.

11. Article 10(1) of the Convention provides that each State Party shall take measures as may be necessary to establish its jurisdiction over the crimes under Article 9 in the following cases:-

“(a) when the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) when the alleged offender is a national of that State.”

12. By virtue of section 23B of the Crimes Ordinance and section 3 of the Aviation Security Ordinance (Cap. 494), Hong Kong has jurisdiction over any offence committed on board a Hong Kong registered ship and a Hong Kong registered aircraft.

13. The Bill also seeks to establish extra-territorial jurisdiction over Chinese nationals who are Hong Kong residents for offences committed outside Hong Kong. Clause 4 of the Bill establishes the jurisdiction of Hong Kong over common law offences of murder, manslaughter, kidnapping, false imprisonment, assault occasioning actual bodily harm and common assault and certain offences under the Crimes Ordinance and the Offences against the Persons Ordinance that are committed outside Hong Kong by a Chinese national and Hong Kong resident against United Nations personnel or associated personnel or against premises or means of transportation ordinarily used by United Nations personnel or associated personnel.

Public Consultation

14. No public consultation has been conducted.

Consultation with LegCo Panel

15. The Panel on Security was consulted on the legislative proposals to implement Article 9 and Article 10(1) of the Convention on 6 December 2005. At the meeting, members raised the following questions:-

- (a) Whether the extra-territorial jurisdiction of Hong Kong would apply to Hong Kong residents residing in Taiwan and whether a Hong Kong permanent resident who was of dual nationality (Chinese nationality and another nationality) who had committed offence in another jurisdiction would be covered by the legislative proposals;
- (b) Whether the extra-territorial jurisdiction would apply to stateless persons who had acquired right of abode in Hong Kong under Article 24(2)(6) of the Basic Law; and
- (c) Whether it would be more desirable from a policy point of view to extradite the offender to the jurisdiction where the crime was committed for trial.

16. Subsequent to the discussions at the meeting, the Administration has provided a paper (LC paper no. CB(2)1228/05-06(01)) to respond to members' question (a) above. The Administration is of the view that the Nationality Law of the People's Republic of China ("the Nationality Law") does not recognize dual

nationality for any Chinese national, hence a Hong Kong permanent resident of Chinese nationality who has subsequently acquired another nationality is still considered a Chinese national unless he has lost his Chinese nationality under the Nationality Law.

Conclusion

17. The Legal Service Division is looking at the legal and technical aspects of the Bill.

18. In view of the questions raised at the Panel meeting on 6 December 2005, members may wish to consider whether to set up a Bills Committee to examine the Bill in detail.

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