

**National Security (Legislative Provisions) Bill :  
Instigate foreign armed forces to invade with force**

This paper sets out the Administration's response to two questions relating to the proposed section 2(1)(b) of the Crimes Ordinance, following paragraphs 2(c) and 2(d) of the minutes of the meeting of the Bills committee held on 1 April 2003.

**The questions**

2. The two questions are as follows.
  - (a) *“Whether the proposed section, when read with the proposed definition of ‘foreign armed forces’, would exclude instigation of armed forces of Taiwan to invade the Mainland.”*
  - (b) *“Whether requesting the territory of Taiwan to be protected under the missile defence system of the United States or inviting foreign armed forces to enter and protect Taiwan would amount to an offence under the proposed section.”*

**Response of the Administration**

3. The proposed section 2(1)(b) of the Crimes Ordinance stipulates that instigation of foreign armed forces to invade the People's Republic of China (PRC) with force would constitute an offence of treason. “Foreign armed force” is defined in the proposed section 2(4)(a)(i) to (iii). The proposed provisions are narrowed down from the existing provisions of the treason offence.

4. Taiwan is a part of the PRC. Armed forces based in Taiwan are therefore armed forces based in the PRC. Under the proposed section 2(4)(a) of the Crimes Ordinance, “armed forces of Taiwan” are not “foreign armed forces.” The proposed offence under section 2(1)(b) is not applicable to the situation described in paragraph 2(a) above.

5. In relation to the situation described under paragraph 2(b) above, the Administration has explained in an earlier paper responding to the questions raised at the joint panel meeting of 17 January 2003 that “invade” has an ordinary dictionary meaning of “making *hostile* inroad into (country etc).” The act of invasion is further qualified by “with force”, and the target of instigation and the subject of invasion is limited to “foreign armed forces.” Whether an act amounts to invasion would ultimately be decided by the court taking into account all the circumstances and facts.

6. It should be noted that a general expression of opinion would be very different from the act of “instigating foreign armed forces,” which in practice would be directed at those in control of the foreign armed forces, i.e. those who give the orders. Moreover, the acts in paragraph 2(b) could in practice only be done by those who had the authority to make the request or invitation referred to. The freedom of expression is fully protected under the Basic Law. The proposed section 18A of Crimes Ordinance explicitly specifies that the provisions in this Part must be interpreted, applied and enforced in accordance with the Article 39 of the Basic Law.

Security Bureau  
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