

**Bills Committee on
United Nations (Anti-Terrorism Measures) (Amendment) Bill 2003**

Purpose

This paper addresses the suggestion raised by the Bills Committee in respect of sections 8, 9 and 10 of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) at the meeting on 15 April 2004, and the issues raised at the meeting on 4 May 2004.

Sections 8, 9 and new section 10 – prohibition on making funds, etc. available to terrorists and terrorist associates; prohibition on supply of weapons to terrorists and terrorist associates; prohibition on recruitment, etc. to terrorist groups

2. A Member has suggested replacing the mental element of “having reasonable grounds to believe” with “recklessness” in sections 8, 9 and the new section 10. We have examined the implications of the proposal and consider it agreeable as far as sections 8, 9 and 10(1) are concerned. We will prepare the necessary draft Committee Stage Amendments (CSAs) accordingly.

3. According to R v Caldwell [1982] AC 341 and R v Lawrence [1982] AC 510, “recklessness” requires the prosecution to prove that the offender does an act which creates an obvious risk, and when he does the act, he either –

- (a) has not given any thought to the possibility of there being any such risk; or
- (b) has recognized that there is such a risk, he has nonetheless gone on to do it.

It is an objective test, with the proof being whether the risk would have been obvious to an ordinary prudent man.

4. Applying “recklessness” to sections 8, 9 and the new section 10(1), the prosecution would have to prove that the offender either -

- (a) had not given thought to whether the person concerned was a “terrorist” or “terrorist associate” in circumstances where there was an obvious risk that this was the case; or

(b) having recognized that there was a risk that the person concerned was a “terrorist” or “terrorist associate”, proceeded anyway.

5. We will further examine the appropriateness of applying “recklessness” to the offence under the new section 10(2) and will provide a response to the Bills Committee.

Section 3 – application of certain provisions outside HKSAR

6. A Member has suggested adding a provision under section 3 to put it beyond doubt that the operation of that section does not affect the existing provisions on extra-territorial jurisdiction under other ordinances or common law. Our view is that section 3 as presently provided for would not affect any other existing provisions on extra-territorial jurisdiction. We therefore consider the suggested additional provision unnecessary.

New section 11B – prohibitions against bombing of prescribed objects

7. The Bills Committee has requested a comparison be made to illustrate the differences between the bombing offences under the new section 11B and similar existing criminal offences in terms of the scope, extra-territorial jurisdiction and penalty. We are collating the required information for submission to the Bills Committee.

New section 11E – prohibition relating to ships

8. The Bills Committee has requested us to explain the coverage of “any other form of intimidation” in the new section 11E(1)(a). These words are taken from Article 3(1) of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (the Convention). Since the new section 11E creates offences to implement Article 3(1) the words must bear the same meaning as they have in the Convention. Treaties are to be interpreted in the light of their object and purpose. The principal object and purpose of the Convention is the prevention of unlawful acts against the safety of maritime navigation. Accordingly any form of intimidation which results in the seizing or exercising control over a ship will be caught. The Crimes (Ships and Fixed Platforms) Act 1992 of Australia, the Criminal Code of Canada, the

Maritime Crimes Act 1999 of New Zealand and Title 18 of the United States Code, which give effect to the Convention, have also put in “any other form/kind of intimidation” in their relevant provisions.

New Parts 4A and 4B – law enforcement powers

9. A Member has suggested adding a provision to put it beyond doubt that nothing in the new Parts 4A and 4B affects the protection of the privilege against self-incrimination under section 2(5)(c). We agree to this suggestion and will prepare the necessary CSA accordingly.

10. A Member has suggested the model of the exercise of law enforcement powers and the definition of “authorized officer” in the Organized and Serious Crimes Ordinance (Cap. 455) be adopted for the new Part 4A. We agree to this suggestion and will prepare the necessary CSAs accordingly.

New section 12G – issue of search warrants

11. A Member has suggested improving the drafting of the new section 12G(1) to the effect that the Court may issue a warrant to authorize the law enforcement agencies to enter premises and to search for, seize, remove and detain any terrorist property therein, and that the law enforcement agencies may use any assistance and force as is necessary and reasonable for the purpose of giving effect to the warrant. We agree to this suggestion and have prepared the necessary CSA accordingly.

Security Bureau
May 2004

Draft

UNITED NATIONS (ANTI-TERRORISM MEASURES)(AMENDMENT) BILL 2003

COMMITTEE STAGEAmendments to be moved by the Secretary for Security

<u>Clause</u>	<u>Amendment Proposed</u>
2(a)	<p>(a) By adding –</p> <p>“(ia) in the definition of “terrorist act” in paragraph (a)(i) –</p> <p>(A) by repealing “(including, in the case of a threat, the action if carried out)” and substituting “is carried out with the intention of, or the threat is made with the intention of using action that would have the effect of”;</p> <p>(B) in sub-subparagraphs (A) and (B), by repealing “causes” and substituting “causing”;</p> <p>(C) in sub-subparagraph (C), by repealing “endangers” and substituting “endangering”;</p> <p>(D) in sub-subparagraph (D), by repealing “creates” and substituting “creating”;</p> <p>(E) in sub-subparagraphs (E) and (F), by repealing “is intended seriously to interfere with or seriously to disrupt” and</p>

substituting “seriously interfering with or seriously disrupting”;

- (b) In subparagraph (iii) –
 - (i) in the proposed definition of “premises” in paragraph (b) by deleting “removable” and substituting “movable”;
 - (ii) by deleting the proposed definition of “public body”.

2 By deleting paragraph (b).

5 In paragraph (g) by adding –

“(11) The Secretary may exercise the powers under subsection (10) only if he has reasonable cause to suspect that the relevant property will be removed from the HKSAR.”.

New By adding –

“5A. Prohibition on provision or collection of funds to commit terrorist acts

Section 7 is amended –

- (a) in paragraph (a), by repealing “directly or indirectly supplied to or otherwise used by” and substituting “used”;
- (b) in paragraph (b) –
 - (i) by repealing “or having reasonable grounds to believe”;
 - (ii) by repealing “directly or indirectly supplied to or otherwise used by” and substituting “used”;

- (c) by repealing “a person who the first-mentioned person knows or has reasonable grounds to believe is a terrorist or terrorist associate” and substituting “to commit a terrorist act (whether or not the funds are actually so used)”.

6 By deleting the proposed section 10 and substituting –

“10. Prohibition on recruitment, etc. to a body specified in a section 4(1) notice or a section 5(2) order

- (1) A person shall not –
 - (a) recruit another person to become a member; or
 - (b) become a member,

of a body specified in a notice published in the Gazette under section 4(1) or (2) or an order published in the Gazette under section 5(3), knowing or having reasonable grounds to believe that it is a body specified in such a notice or order (as the case may be).

(2) Where a person is a member of a body specified in a notice published in the Gazette under section 4(1) or (2) or an order published in the Gazette under section 5(3), the person shall, as soon as practicable after it comes to his knowledge or he has reasonable grounds to believe that the body is specified in such a notice or order (as the case may be), take all practicable steps to cease to be such a member.

(3) In this section, “body” () means a body of persons, whether corporate or unincorporate.”.

- 7 (a) In the proposed section 11B –
 - (i) in subsection (1) by adding “unlawfully and intentionally” after “not”;
 - (ii) in subsection (2) by adding “unlawfully and intentionally” after “not”;
 - (iii) in subsection (2)(a) by deleting “the destruction of all or part” and substituting “extensive destruction”;
 - (iv) by deleting subsection (2)(b) and substituting –
 - “(b) where such destruction results in or is likely to result in major economic loss.”.
- (b) In the proposed section 11E(1) by deleting “without lawful excuse,” and substituting “unlawfully and”.
- (c) In the proposed section 11F(1) by deleting “without lawful excuse,” and substituting “unlawfully and”.

- 8 In the proposed section 12(6) –
 - (a) in paragraph (a) by adding “, for the purpose of preventing and suppressing the financing of terrorist acts” after “Corruption”;
 - (b) by deleting paragraph (b) and substituting –
 - “(b) by any authorized officer to the authorities or persons responsible for investigating or preventing terrorist acts, or handling the disclosure of knowledge or suspicion that any property is terrorist property, of any place outside the HKSAR which the

authorized officer thinks fit, for the purpose of preventing and suppressing the financing of terrorist acts.”.

- 9 (a) In the proposed section 12A –
 - (i) by deleting subsection (3)(c)(ii) and substituting –
 - “(ii) to produce any material, or any material of a class, that reasonably appears to the authorized officer to be relevant to the investigation.”;
 - (ii) in subsection (6) –
 - (A) by deleting “to relate to any matter relevant to an investigation, or any material of a class that reasonably appears to him so to relate” and substituting “to be relevant to the investigation or be of a class that is so relevant”;
 - (B) by deleting “so to relate or any material of a specified class that reasonably appears to him so to relate” and substituting “to be so relevant or any material of a specified class that reasonably appears to him to be so relevant”;
 - (iii) in subsection (7)(c) by deleting “subsections (8), (9) and (10)” and substituting “subsection (8)”;
 - (iv) by deleting subsections (9) and (10);
 - (v) in subsection (11) by deleting “A person” and substituting “Subject to section 2(5)(a) and (b), a person”;

- (vi) in subsection (12) by deleting everything after “except” and substituting “in evidence in proceedings under section 14(7F) or under section 36 of the Crimes Ordinance (Cap. 200).”.
- (b) In the proposed section 12B –
 - (i) in subsection (2) by deleting “subsections (6) and (7)” and substituting “subsection (6)”;
 - (ii) by deleting subsections (7) and (12);
 - (iii) in subsection (13) by deleting “A person” and substituting “Subject to section 2(5)(a) and (b), a person”.
- (c) In the proposed section 12D(2) –
 - (i) in paragraph (a) by adding “, for the purpose of preventing and suppressing a relevant offence” after “Corruption”;
 - (ii) by deleting paragraph (b) and substituting –
 - “(b) to any corresponding person or body, where the information appears to the Secretary for Justice to be likely to assist that person or body to discharge its functions relating to preventing and suppressing offences of a similar nature to relevant offences; and”.
- (d) In the proposed section 12G –
 - (i) by deleting subsection (1) and substituting –
 - “(1) Where it appears to the Court upon the oath of any person that there is reasonable cause to suspect that –

- (a) in any premises there is terrorist property; or
- (b) there is in any premises any thing that is, or contains, evidence of a relevant offence,

the Court may issue a warrant authorizing an authorized officer to enter the premises named in the warrant and there to search for and seize, remove and detain any terrorist property.

(1A) An authorized officer executing a warrant issued under subsection (1) may use such assistance and force as is reasonable and necessary for the purposes for which the warrant is issued.”;

- (ii) in subsection (2) by deleting “Any authorized officer” and substituting “An authorized officer who has entered any premises by virtue of a warrant issued under subsection (1)”.

- 14 (a) By renumbering the clause as clause 14(2).
- (b) By adding –
 - “(1) Section 18(2)(c) is amended by repealing “serious”.”.
- (c) In subclause (2) in the proposed section 18(2B)(a) by deleting “serious”.

New By adding –
“14A. Section added
 The following is added –

“18A. Saving of common law remedies

(1) Subject to subsection (2), nothing in section 18 affects any remedy available to a person at common law.

(2) Where a court orders any compensation under section 18 or damages at common law in respect of any such default, the court shall take into account, in reduction of the amount of compensation or damages, any amount awarded as damages or ordered as compensation (as the case may be) in respect of that default.”.”.

Schedule,
section 1

In the proposed section 25A(9) –

(a) in paragraph (a) by adding “, for the purpose of combating drug trafficking” after “Corruption”;

(b) by deleting paragraph (b) and substituting –

“(b) by any authorized officer to the authorities or persons responsible for investigating or preventing drug trafficking, or handling the disclosure of knowledge or suspicion on property relating to drug trafficking, of any place outside Hong Kong which the authorized officer thinks fit, for the purpose of combating drug trafficking.”.

Schedule,
section 2

In the proposed section 25A(9) –

- (a) in paragraph (a) by adding “, for the purpose of combating crime” after “Corruption”;
- (b) by deleting paragraph (b) and substituting –
 - “(b) by any authorized officer to the authorities or persons responsible for investigating or preventing crime, or handling the disclosure of knowledge or suspicion on property relating to crime, of any place outside Hong Kong which the authorized officer thinks fit, for the purpose of combating crime.”.