

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

Purpose

This paper addresses the issues raised in the submission of 20 May 2004 (CB(2)2473/03-04(01)) from JUSTICE, the Hong Kong Section of the International Commission of Jurists.

Section 10 – prohibition on recruitment, etc. to a gazetted terrorist body

2. We have earlier accepted the suggestion of the Bills Committee that the mental element of “having reasonable grounds to believe” should be replaced by “recklessness” in section 10(1). We agree with the Bills Committee that recruiters who have not given thought to whether the organizations concerned are gazetted terrorist organizations despite the obvious risk involved, or who having recognized that there is a risk that the organizations are gazetted terrorist organizations proceed with the recruitment, should be caught.

3. At its meeting on 17 May 2004, the Bills Committee suggested further consideration be given to applying “recklessness” to the offence under section 10(2). The purpose is to catch those persons who, despite the risk involved, “turn a blind eye” to whether the organizations of which they are members are gazetted terrorist organizations. We consider the suggestion reasonable. We have therefore prepared a draft Committee Stage Amendment (CSA) to provide for a revised section 10(2) to the effect that where a person is a member of a gazetted terrorist organization, the person commits an offence if he does not take practicable steps to cease to be such a member and is reckless as to whether the organization has been gazetted, for the Bills Committee’s consideration.

4. The penalty for contravention of section 10 is 7 years’ imprisonment upon indictment. We note that under the Security Legislation Amendment (Terrorism) Act 2002 of Australia, the penalty for similar offences is 15 to 25 years’ imprisonment, the Terrorism Suppression Act 2002 of New Zealand, 14 years’ imprisonment, and the Terrorism Act 2000 of the United Kingdom, 10 years’ imprisonment.

Section 11 - Prohibition against false threats of terrorist acts

5. As we have explained in a previous paper (CB(2)294/03-04(01)) submitted to the Bills Committee, while noting that United Nations Security Council Resolution 1373 and the Special Recommendations of the Financial Action Task Force on Money Laundering (FATF) do not require prohibition of the acts covered by section 11, we consider enactment of the section necessary to criminalize wilful dissemination of false threats of terrorist attacks or placing/despaching dubious articles/substances with the intention of causing alarm to the public.

Section 12 – disclosure of knowledge or suspicion that property is terrorist property

6. The reporting requirement under section 12 is consistent with that under section 25A of the Drug Trafficking (Recovery or Proceeds) Ordinance (Cap. 405) and the Organized and Serious Crimes Ordinance (Cap. 455). Under Special Recommendation IV of FATF, the mental threshold for making disclosure is “suspect” or “having reasonable grounds to suspect”. Deleting the mental element of “suspect” from section 12 would render Hong Kong being non-compliant with the Recommendation.

7. The information obtained under section 12 is different in nature from that obtained under the new sections 12A, 12B and 12C. The new sections 12A, 12B and 12C deal with court orders in relation to the investigation of offences under the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575). The stringent requirements for obtaining court orders can obviously have no application to section 12 (and section 25A of Cap. 405 and Cap. 455) as these provisions deal with persons disclosing information at their own initiative. To clearly reflect our intention that the transmission of the information concerned to overseas authorities is for the respective purposes of the three Ordinances, we have accepted the Bills Committee’s suggestion of prescribing the specific purposes of disclosure under the new section 12(6) of Cap. 575 and the new section 25A(9) of Cap. 405 and Cap. 455.