

Submission by JUSTICE, the Hong Kong Section of the
International Commission of Jurists
on
The United Nations (Anti-Terrorism Measures)
(Amendment) Bill 2003

1. JUSTICE is of the view that the Ordinance as it stands goes beyond the requirements of UN Security Council Resolution 1373 and the Financial Asset Task Force Special Recommendations. The minimalist approach should be adopted and the Ordinance should now be amended to do no more than is required by the Resolution. FATF Recommendation III expressly refers to the implementation of measures to freeze funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations resolutions relating to the prevention and suppression of the financing of terrorist acts. It is therefore clear that nothing in FATF requires any country or territory to go beyond what is required by the Resolution.

Where criminalisation is concerned, the UN Special Resolution only requires States to criminalise "*the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts.*" (emphasis added).

These important qualifications have been completely ignored in the implementation of the Resolution in the existing Ordinance (see

existing sections 7 and 8) and a much broader formulation has been adopted which does not require knowledge or intent to fund terrorist activity before a person can be found guilty of committing an offence. The opportunity presented by this Amendment Bill should now be used to introduce these qualifications into the Ordinance. In our submissions on the original Bill, JUSTICE had suggested various draft provisions. We would invite members of the Committee to revisit those suggestions.

2. Secondly, the Ordinance remains objectionable insofar as innocent and ignorant conduct may be criminalised. This is wrong in principle. Nor will it be effective in controlling terrorism. Instead, it will antagonise those who would otherwise support the battle against terrorism just as the US Government with its heavy-handed measures against terrorism breaching human rights serves only to increase antagonism to the USA. Hong Kong should not go down that route.
3. Thirdly, as obvious to all, terrorists and terrorist organisations do not carry a label proclaiming themselves to be terrorists. If it were that easy to recognise a terrorist or terrorist organisation, then we would not be suffering the scourge of terrorism today. The law enforcement authorities should not expect a higher standard of awareness, powers of observation and recognition from ordinary citizens than they themselves are capable of. They have powers conferred on them that ordinary citizens do not have, they have access to information from surveillance methods which ordinary citizens do not have. Therefore, it is wrong in principle to criminalise an ordinary citizen unless he or she knows that he or she is assisting a terrorist activity. If the case

cannot be proved on that basis, the ordinary citizen is not to be held guilty of any offence. The Gazettal of an organisation as a terrorist organisation is an insufficient and unsafe basis upon which to criminalise persons as having reasonable grounds to believe that the person or organisation with which he or she is dealing is the organisation specified in the Gazette. We repeat our original submission that since it can be assumed that terrorist organisations will be operating under the appearance of a legitimate organisation, knowledge that the organisation or person with whom one is dealing is in fact the specified organisation or person must be a necessary ingredient of the offences.

4. Members of the Legislative Council cannot be unaware of the sorry circumstances in which this Ordinance was passed with minimal public consultation on the pretext that Hong Kong had an international obligation to fulfil despite the acknowledgment that there was no terrorist threat nor emergency requiring such haste. A defective Ordinance was passed as a result. The opportunity should now be taken to rectify the mistakes of the past. A thorough review of the Ordinance should be conducted to bring it into line with minimum human rights standards and to ensure that it does no more than the Special Resolution requires.
5. We repeat our original submission that the Court should not be involved in specification for constitutional reasons. This principle was finally accepted in the context of proscription under the now withdrawn National Security (Legislative Provisions) Bill. Principle and logic now demands that an amendment be made to the Ordinance

to restore the Court to its normal role of being a check against abuse by the Executive. The same applies to forfeiture of property under section 13.

6. Proof of serious default by some person concerned in obtaining the relevant specification should not be a prerequisite for the obtaining of compensation where an application is made under section 18. All civil remedies should be preserved.
7. The definitions of "terrorist", "terrorist act" and "terrorist property" all require amendment as do many of the existing provisions of the Ordinance. JUSTICE is willing to make a more detailed submission on the original Ordinance should the Council decide that a review of the Ordinance is required.
8. On the detail of the bill, we have the following comments:
s.6 repealing existing section 10 to the Ordinance and replacing it _
see above for reasons; "reasonable grounds for belief" is objectionable
as a basis for conviction

s.7 introducing new sections 3A and 3B _ it is not clear why these new offences are necessary since all of these acts would be crimes under the existing law; the seriousness of the consequences would no doubt be reflected in the sentence if the person is convicted.

New section 12D of the Ordinance is objectionable; the same restrictions on the passing on of information obtained under the disclosure order as applies in the case of section 12(6) as proposed to

be amended should apply; there cannot be unrestricted general disclosure of such information.

s.14 amending section 18 of the Ordinance _ compensation should be payable without the necessity of proving serious default on the part of the person concerned with the seizure or detention of the property concerned.

s. 20 introducing consequential amendments _ these are not truly consequential amendments; they enable information disclosed under the guise of one Ordinance to be freely available for use under another Ordinance. This is conducive to abuse of power and should not be permitted.

Chairman, JUSTICE

29 October 2003

(ICJ, The Hong Kong Section)