

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

Purpose

This paper addresses the issues raised in the submission of 31 October 2003 (CB(2)220/03-04(01)) from the Hong Kong Christian Institute (香港基督徒學會).

Public consultation

2. We always attach great importance to comments from the public on any legislative proposals. In this regard, we are grateful that the then Bills Committee had conducted a total of 15 meetings in scrutinizing the United Nations (Anti-Terrorism Measures) Ordinance (the Ordinance) (Cap. 575) before its passage, during which we had received numerous suggestions from Members, professional organizations as well as interested individuals. Many of these suggestions have in fact been incorporated into the Ordinance. We therefore believe that the purpose of public consultation had been achieved during the legislative process involved.

3. We similarly welcome comments and suggestions from the public on the United Nations (Anti-Terrorism Measures)(Amendment) Bill 2003 (the Bill) during scrutiny of the Bill in accordance with established legislative process.

Compliance with United Nations and human rights requirements

4. The Bill seeks to –

- (a) implement the requirements under United Nations Security Council Resolution 1373 and the Special Recommendations of the Financial Action Task Force on Money Laundering (FATF) to freeze the non-fund property of terrorists and terrorist organizations;
- (b) implement the International Convention for the Suppression of Terrorist Bombings, which requires State Parties to criminalize terrorist type attacks by means of explosives or other lethal

devices;

- (c) implement the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation and its Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, which require State Parties to criminalize unlawful acts against the safety of maritime navigation and of fixed platforms for exploiting offshore resources; and
- (d) provide for the necessary law enforcement powers.

5. We are satisfied that the measures set out in the Bill are necessary for implementing the above international obligations, and are consistent with the requirements of the International Covenant on Civil and Political Rights.

Definition of “terrorist act”

6. The definition of “terrorist act” in the Ordinance is based on the definition of “terrorism” in the United Kingdom Terrorism (United Nations Measures) Order 2001 and the definition of “terrorist activity” in the Canadian Anti-Terrorism Act. It is consistent with the international trend.

7. The Ordinance unambiguously stipulates that a “terrorist act” must fulfill all the following three criteria -

- (a) there must be the use or threat of action intended to compel the Government or to intimidate the public;
- (b) the use or threat of action is made for the purposes of advancing a political, religious or ideological cause; and
- (c) the action causes serious violence against a person; serious damage to property; or creates a serious risk to the health or safety of the public etc.

8. The Ordinance also clearly excludes “the use or threat of action in the course of any advocacy, protest, dissent or industrial action” from the definition of “terrorist act”. Legal civil activities such as peaceful demonstrations or protests do not constitute terrorist acts.

Law enforcement powers

9. The new Parts 4A and 4B in the Bill propose to empower the law enforcement agencies to require relevant persons to furnish information or produce materials, to search premises for relevant materials, and to seize and detain such materials. These powers are necessary for effective investigation into offences under the Ordinance, and are modelled on similar powers under the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405), the Organized and Serious Crimes Ordinance (Cap. 455) and the Dangerous Drugs Ordinance (Cap 134), the exercise of which is subject to prior court authorization. The provisions do not allow interception of any form of communication, or expand the powers of arrest and detention of the law enforcement agencies.

Disclosure of knowledge or suspicion that property is terrorist property and freezing of terrorist funds

10. Section 12 of the Ordinance implements FATF Special Recommendation IV which requires that “if financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organizations, they should be required to report promptly their suspicions to the competent authorities”. The purpose is to facilitate investigation into suspicious transactions in relation to terrorist financing offences. The concerns that the provision will cause leakage of information on all bank transactions and target non-government organizations as terrorist financing offenders are unfounded.

11. Section 6(1) of the Ordinance requires the Secretary for Security (S for S) to have “reasonable grounds to suspect” that any funds are terrorist property before freezing the funds. Section 6(5) provides that S for S shall not re-freeze the same funds unless there has been a material change in the grounds. Section 17 further provides for an appeal mechanism for the affected persons to apply to the Court of First Instance to have a freezing notice issued under section 6 revoked. On appeal the

Administration will bear the burden of satisfying the Court that there are reasonable grounds to suspect that the frozen funds etc. are terrorist property. This ensures effective safeguards against abuse and wrongful exercise of the freezing power. It is therefore incorrect to say that the Government can freeze the property of any organization in the absence of relevant evidence.

Security Bureau
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