

**立法會**  
***Legislative Council***

LC Paper No. CB(2)2186/05-06(02)

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**Bills Committee on Safety of United Nations and Associated Personnel Bill**

**Background brief prepared by the Legislative Council Secretariat**

**Purpose**

This paper summarises the discussion held by Members on the legislative proposals to implement the Convention on the Safety of United Nations and Associated Personnel (the Convention).

**Background**

2. The objective of the Convention is to ensure safety and security of United Nations and associated personnel by requiring State Parties to take all necessary measures to protect United Nations and associated personnel by establishing criminal offences punishable by appropriate penalties, and by cooperating in the prevention of such crimes and in providing assistance to one another in connection with criminal proceedings. The Convention entered into force for China, including Hong Kong, on 22 October 2004.

3. Hong Kong's existing administrative measures and legislation can comply with the majority of the requirements of the Convention. However, the following Articles of the Convention need to be implemented by new legislative measures –

- (a) Article 8 of the Convention specifically provides that if United Nations and associated personnel are captured or detained in the course of the performance of their duties, they shall not be subjected to interrogation and they shall be promptly released and returned to the United Nations or other appropriate authorities;
- (b) Article 10(1)(b) of the Convention requires each State Party to take such measures as may be necessary to establish its jurisdiction over the crimes specified in Article 9(1) when the alleged offender is a national of that State; and

- (c) Articles 13(1) and 15 of the Convention require each state party to take measures to extradite to another State Party offenders who have committed the crimes set out in the Convention.

4. At its meeting on 6 December 2005, the Administration briefed the Panel on Security on the legislative proposals which sought to give effect to the requirements under the aforementioned Articles. The Administration informed the Panel that it would introduce the legislative proposals in the form of a bill (the Safety of United Nations and Associated Personnel Bill) and two orders (i.e. the International Organization (Privileges and Immunities) (United Nations and Associated Personnel) Order and the Fugitive Offenders (Safety of United Nations and Associated Personnel) Order).

## **Issues raised**

### Rendition requirements

5. Members enquired whether the legislative proposals would be applicable to the rendition of Hong Kong residents who committed the relevant crime in the Mainland and Mainlanders who committed such crime in Hong Kong.

6. The Administration explained that the rendition requirements under the Convention would be implemented by an order to be made in accordance with the Fugitive Offenders Ordinance (Cap. 503). Section 2 of the Ordinance stipulated that the arrangements under the Ordinance were not applicable to the Mainland. Therefore, the extradition requirements to be made under the order would not cover the rendition of Hong Kong residents who committed crime in the Mainland and Mainlanders who committed crime in Hong Kong. Such offences would have to be dealt with in accordance with the laws of the jurisdiction in which the crime was committed.

### Stateless persons

7. Members expressed concern that the legislative proposals might not be applicable to stateless persons who had acquired the right of abode in Hong Kong under BL 24(2)(6).

8. The Administration explained that as Hong Kong did not have “nationals”, jurisdiction would be established in respect of permanent residents who were also Chinese nationals. The requirement in Article 10(2)(a) of the Convention, which provided that a State Party might establish its jurisdiction over such crime when it was committed by a stateless person whose habitual residence was in that State, was not a mandatory one and had not been adopted by the Administration.

9. A member suggested that the Administration should consider establishing extra-territorial jurisdiction over stateless persons who had acquired right of abode in Hong Kong, or by making the legislative proposals applicable to all Hong Kong permanent residents, regardless of whether they were Chinese nationals.

Other issues

10. Members requested the Administration to provide a written response to the following issues raised –

- (a) whether the legislative proposals would be applicable to Hong Kong permanent residents residing in Taiwan; and
- (b) how a Hong Kong permanent resident who possessed dual nationality, namely Chinese nationality and another nationality, and had committed crime in another jurisdiction would be dealt with under the legislative proposals.

The Administration's written response which was subsequently issued to the Panel vide LC Paper No. CB(2)1228/05-06 is in the **Appendix**.

**Relevant papers**

11. Relevant papers considered by the Panel are available on the LegCo website at <http://www.legco.gov.hk/general/english/panels/yr04-08/se.htm>.

Council Business Division 2  
Legislative Council Secretariat  
30 May 2006

## For information

### Legislative Council Panel on Security

#### Legislative Proposals to Implement the Convention on the Safety of United Nations and Associated Personnel

### Purpose

At the Security Panel meeting on 6 December 2005, the Administration presented its legislative proposals to implement the Convention on the Safety of United Nations and Associated Personnel (the Convention). Members raised the following two questions –

- (a) whether the legislative proposals would be applicable to Hong Kong permanent residents residing in Taiwan; and
  - (b) how a Hong Kong permanent resident who possessed dual nationality, namely Chinese nationality and another nationality, and had committed crime in another jurisdiction would be dealt with under the legislative proposals.
2. This note provides the Administration's response to the above questions.

### Details

#### *Hong Kong permanent residents of Chinese nationality*

3. Article 10(1)(b) of the Convention requires each State Party to take such measures as may be necessary to establish its jurisdiction over the crimes specified in Article 9(1)<sup>Note</sup> when the alleged offender is a national of that State.

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<sup>Note</sup> The crimes specified in Article 9(1) are the intentional commission of:

- (a) A murder, kidnapping or other attack upon the person or liberty of any United Nations or associated personnel;
- (b) A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations or associated personnel likely to endanger his or her person or liberty;
- (c) A threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act;
- (d) An attempt to commit any such attack; and

To give effect to such extra-territoriality over nationals under Article 10(1)(b) of the Convention, the Administration proposes drawing up a new piece of legislation to establish extra-territorial jurisdiction over Chinese nationals who are Hong Kong permanent residents. Specifically, the new Bill will provide that any person who is a Hong Kong permanent resident of Chinese nationality, when outside Hong Kong, intentionally commits an act to any United Nations or associated personnel as proscribed by Article 9(1) and hence (such an act if committed in Hong Kong) would be in contravention of the relevant criminal offences under the Crimes Ordinance (Cap. 200) or the Offences Against the Person Ordinance (Cap. 212), commits an offence.

4. Persons of Chinese nationality may acquire Hong Kong permanent resident status pursuant to paragraphs 2(a), 2(b), 2(c) and 6(2) of Schedule 1 to the Immigration Ordinance (Cap. 115). Extracts of these provisions are attached at **Annex**. The above extra-territorial jurisdiction will cover Hong Kong permanent residents of Chinese nationality who have acquired Hong Kong permanent resident status by the aforesaid provisions including those residing in Taiwan.

### *Dual nationality*

5. The Nationality Law of the People's Republic of China (the Nationality Law), which is applicable to Hong Kong by virtue of Article 18 and Annex III of the Basic Law, stipulates the acquisition, loss and restoration of Chinese nationality. The Nationality Law does not recognize dual nationality for any Chinese national.

6. The implementation of the Nationality Law in Hong Kong is further stipulated in the Explanations of Some Questions by the Standing Committee of the National People's Congress concerning the Implementation of the Nationality Law of the PRC in the HKSAR (the Explanations). Paragraph 1 of the Explanations provides that where a Hong Kong resident is of Chinese descent and was born in Chinese territories (including Hong Kong), or where a person satisfies the criteria laid down in the Nationality Law for having Chinese nationality, he is a Chinese national. Consequently, the Chinese nationality of such a Hong Kong resident would be lost only if his declaration of change of nationality made in accordance with Paragraph 5 of the Explanations has been approved by the Director of Immigration, or his application for renunciation of Chinese nationality made in accordance with Article 11 of the Nationality Law has been approved by the Director of Immigration. A Hong Kong permanent

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(e) An act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack.

resident of Chinese nationality who has subsequently acquired another nationality will be considered as a Chinese national unless he has lost his Chinese nationality in accordance with the foregoing, and will be covered by the extra-territorial jurisdiction stated above.

Security Bureau  
February 2006

**Provisions of the Immigration Ordinance (Cap. 115) pursuant to which  
Persons of Chinese Nationality may Acquire  
Hong Kong Permanent Resident Status**

**Schedule 1 - PERMANENT RESIDENTS OF THE HONG KONG SPECIAL  
ADMINISTRATIVE REGION**

**2. Permanent resident of the Hong Kong Special Administrative Region**

A person who is within one of the following categories is a permanent resident of the Hong Kong Special Administrative Region-

- (a) A Chinese citizen born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region.
- (b) A Chinese citizen who has ordinarily resided in Hong Kong for a continuous period of not less than 7 years before or after the establishment of the Hong Kong Special Administrative Region.
- (c) A person of Chinese nationality born outside Hong Kong before or after the establishment of the Hong Kong Special Administrative Region to a parent who, at the time of birth of that person, was a Chinese citizen falling within category (a) or (b).

**6. Transitional**

- (2) A person who is a Chinese citizen and was a Hong Kong permanent resident immediately before 1 July 1997 under this Ordinance as then in force shall, as from 1 July 1997, be a permanent resident of the Hong Kong Special Administrative Region as long as he remains a Chinese citizen.