

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

Purpose

This note sets out the Administration's response to the issues raised at the Bills Committee meeting on 1 June 2006.

Coverage of "specified person"

2. Members have requested the Administration to explain the reasons for adopting the term "specified person" in the Bill, instead of a "national of that State" as stipulated in Article 10(1)(b) of the Convention on the Safety of United Nations and Associated Personnel (the Convention), and to consider whether the reference to "a Hong Kong permanent resident" could be deleted from the definition of "specified person".

3. As the Administration explained at the meeting on 1 June 2006, Article 10(1)(b) of the Convention requires each State Party to take measures to establish its jurisdiction over the crimes proscribed by the Convention when the alleged offender is a national of that State. The existing general criminal offences under the Crimes Ordinance (Cap. 200), the Offences Against the Person Ordinance (Cap. 212) and the Criminal Procedure Ordinance (Cap. 221) as well as common law can already deal with such crimes when committed in Hong Kong, irrespective of the offenders' nationality. New legislative measures are only needed to give effect to the Convention requirement to establish extra-territorial jurisdiction over nationals.

4. Hong Kong does not have its own "nationals". The status of "permanent residency" is the most akin to the concept of "nationality" under Hong Kong's legal system. On this basis, Hong Kong may establish jurisdiction over persons of Chinese and other nationalities who are permanent residents of Hong Kong. Regarding Chinese nationals and other nationals who merely ordinarily reside in Hong Kong but are not Hong Kong permanent residents, or who have no residency in Hong Kong, however, Article 10(1)(b) of the Convention contemplates that only the States of which they are nationals will establish the required extra-territorial jurisdiction.

5. Having regard to the above, “specified person” is defined in the Bill as a person who is a Chinese national and a Hong Kong permanent resident. Establishing extra-territorial jurisdiction over the proscribed crimes committed by a “specified person” is consistent with Hong Kong’s obligation under Article 10(1)(b) of the Convention to establish jurisdiction over “nationals”.

6. If the reference to “a Hong Kong permanent resident” were deleted from the definition of “specified person”, a “specified person” would simply mean “a Chinese national”. As explained above, this extension of extra-territorial jurisdiction to Chinese nationals who are not Hong Kong permanent residents would be inconsistent with Hong Kong’s obligation under Article 10(1)(b) of the Convention.

Extension of extra-territoriality to cover stateless persons who are Hong Kong permanent residents

7. Members have also requested the Administration to consider the need to extend the Bill’s coverage to stateless persons who are Hong Kong permanent residents. Indeed, Article 10(2)(a) of the Convention provides, as a non-mandatory requirement, that a State Party may establish its jurisdiction over any crime proscribed by the Convention when it is committed by a stateless person whose habitual residence is in that State.

8. Taking into account Members’ views, we agree that extending our jurisdiction to a stateless person who is a Hong Kong permanent resident would facilitate a better attainment of the objective of the Convention in protecting United Nations and associated personnel. We therefore propose that a “specified person” under the Bill could also cover a stateless person who is a Hong Kong permanent resident, and will make a corresponding Committee Stage Amendment.

Existing criminal offences with extra-territorial effect

9. Members have requested the Administration to clarify, in relation to crimes over which Hong Kong has extra-territorial jurisdiction, the categories of persons to whom the extra-territoriality would apply. We have set out at

Annex A some examples of existing criminal offences with extra-territorial jurisdiction. It can be seen that the practice varies. We consider that the scope of extra-territorial jurisdiction should be considered in the context of the requirements of individual circumstances. The extra-territoriality proposed under the Bill aims to fulfil the requirement of establishing jurisdiction over “nationals” under Article 10(1)(b) of the Convention, and is appropriate for the purpose.

Concurrent extra-territorial jurisdiction over Chinese nationals who are Hong Kong permanent residents

10. Members have requested the Administration to clarify if the Mainland and Hong Kong have concurrent extra-territorial jurisdiction over Chinese nationals who are Hong Kong permanent residents having committed the crimes proscribed by the Convention after the enactment of the Bill, how such offenders would be dealt with.

11. In the event of concurrent jurisdiction, the usual practice is for the jurisdiction where the offence was committed to institute proceedings against the offender. If the Mainland and Hong Kong have concurrent extra-territorial jurisdiction over a Chinese national who is a Hong Kong permanent resident having committed an offence proscribed by the Convention outside the Mainland and Hong Kong, the offender may be dealt with as follows -

- (a) the jurisdiction where the offence was committed may institute proceedings against the offender;
- (b) if the offender is located in Hong Kong, Hong Kong may exercise jurisdiction over him/her; and
- (c) depending on the availability of evidence, both Hong Kong and the Mainland may request the jurisdiction where the offence was committed to surrender the offender, and it would be up to that jurisdiction to decide whether and to whom the offender should be surrendered.

Penalty for the offence of threat

12. Members have requested the Administration to provide a comparison of the level of penalties imposed by Australia, Canada and the United Kingdom when the offence of threat is committed against United Nations and associated personnel as opposed to other threat offences.

13. The comparison is tabulated at **Annex B**. It can be observed that the penalties for the offence of threat against United Nations and associated personnel are generally higher than those for other threat offences.

Security Bureau
July 2006

Examples of criminal offences with extra-territorial jurisdiction

Section 23B(1) of the Crimes Ordinance (Cap. 200) provides that -

“Any act of any person which –

- (a) takes place on board a Hong Kong ship on the high seas; and
- (b) apart from this section is not an offence; and
- (c) would, were it to take place in Hong Kong, constitute an offence under the law of Hong Kong

shall whatever the citizenship or nationality of the person, constitute that offence.”

It establishes extra-territorial jurisdiction over any offenders irrespective of their citizenship or nationality, if the offences are committed on board Hong Kong ships.

2. Section 23B(3) of Cap. 200 provides that -

“Where –

- (a) an act of any resident of the Hong Kong Special Administrative Region takes place –
 - (i) on board a Hong Kong ship in any port or harbour outside Hong Kong; or
 - (ii) on board a ship which is neither a Hong Kong ship nor a ship to which the person belongs;
- (b) apart from this subsection the act does not constitute an offence; and
- (c) the act would, if it took place in Hong Kong, constitute an offence under the law of Hong Kong,

then the act shall constitute that offence.”

It establishes extra-territorial jurisdiction over any Hong Kong residents, if the offences are committed on board a ship.

3. Section 8B(1) of the Offences against the Person Ordinance (Cap. 212) provides that -

“Where –

- (a) an act takes place on the high seas or in any other place outside Hong Kong;
- (b) the person against or in relation to whom the act is committed or took place dies in Hong Kong as a result of the act; and
- (c) the act would, if taking place in Hong Kong, constitute murder or manslaughter or being accessory to murder or manslaughter,

whatever the citizenship or nationality of the person committing it or responsible for it, the act shall constitute the crime of, as may be appropriate, murder or manslaughter or so being accessory.”

It establishes extra-territorial jurisdiction over any offenders irrespective of their citizenship or nationality, if the victims die in Hong Kong.

4. Section 19 of the Criminal Procedure Ordinance (Cap. 221) provides that -

“In any indictment for an offence committed on the high seas or in any place outside Hong Kong, an allegation that the person injured was, at the time of the offence charged, within the jurisdiction of the Hong Kong courts shall be a sufficient allegation of the jurisdiction of the court to hear and determine the case.”

It establishes extra-territorial jurisdiction over offenders irrespective of their citizenship or nationality, if the person injured was at the time of the offence charged, within Hong Kong’s jurisdiction.

5. Section 3(1) of the Aviation Security Ordinance (Cap. 494) provides that -

“Any act or commission taking place on board a Hong Kong-controlled aircraft while in flight elsewhere than in or over Hong Kong which, if

taking place in Hong Kong, would constitute an offence under the law of Hong Kong shall constitute that offence.”

It establishes extra-territorial jurisdiction over offenders irrespective of their citizenship or nationality, if the offences are committed on a Hong Kong-controlled aircraft while in flight.

6. The United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) implements the mandatory elements of United Nations Security Council Resolution 1373, one of which requires States to deny safe haven to those who finance, support, or commit terrorist acts. To give effect to this requirement, extra-territorial jurisdiction is established over Hong Kong permanent residents and bodies incorporated or constituted under the law of Hong Kong in respect of the offences proscribed by the Resolution.

**Comparison of the level of penalties imposed by Australia, Canada and the United Kingdom
when the offence of threat is committed against United Nations and associated personnel
as opposed to other threat offences**

澳洲、加拿大和英國的威脅聯合國人員和有關人員罪行和其他威脅罪的罰則比較

	Australia 澳洲	Canada 加拿大	United Kingdom 英國
Provisions on the threat offence committed against United Nations and associated personnel 有關威脅聯合國人員和有關人員罪行的條文	<p><u>Criminal Code Act 1995</u></p> <p>71.12 Threatening to commit other offences</p> <p>A person is guilty of an offence if the person:</p> <p>(a) threatens to commit an offence (the <i>threatened offence</i>) under any of sections 71.2 to 71.11; and</p> <p>(b) intends to compel any other person to do or omit to do an act by making the threat.</p> <p>Maximum penalty:</p> <p>(a) if the threatened offence is the offence under section 71.2 (murder of a UN or associated person)—imprisonment for</p>	<p><u>Criminal Code</u></p> <p>424.1 Threat against United Nations or associated personnel</p> <p>Every one who, with intent to compel any person, group of persons, state or any international or intergovernmental organization to do or refrain from doing any act, threatens to commit an offence under section 235, 236, 266, 267, 268, 269, 269.1, 271, 272, 273, 279 or 279.1 against a member of United Nations personnel or associated personnel or threatens to commit an offence under section 431.1 is guilty of an indictable offence and liable to imprisonment for a term of not more than ten years.</p>	<p><u>United Nations Personnel Act 1997</u></p> <p>3. Threats of attacks on UN workers –</p> <p>(1) If a person in the United Kingdom or elsewhere contravenes subsection (2) he shall be guilty of an offence.</p> <p>(2) A person contravenes this subsection if, in order to compel a person to do or abstain from doing any act, he-</p> <p>(a) makes to a person a threat that any person will do an act which is-</p> <p>(i) an offence mentioned in section 1(2) against a UN worker, or</p> <p>(ii) an offence mentioned in subsection (2) of section 2 in</p>

	<p>10 years; or</p> <p>(b) if the threatened offence is the offence under section 71.3, 71.4, 71.5, 71.8 or 71.9 (manslaughter of, causing serious harm to, kidnapping, or sexually penetrating, a UN or associated person)—imprisonment for 7 years; or</p> <p>(c) if the threatened offence is the offence under section 71.6 or 71.11 (causing harm to, or damaging the property etc. of, a UN or associated person)—imprisonment for 5 years; or</p> <p>(d) if the threatened offence is the offence under section 71.7 or 71.10 (recklessly causing harm to, or unlawful detention of, a UN or associated</p>		<p>connection with such an attack as is mentioned in subsection (1) of that section, and</p> <p>(b) intends that the person to whom he makes the threat shall fear that it will be carried out.</p> <p>(3) A person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term-</p> <p>(a) not exceeding ten years, and</p> <p>(b) not exceeding the term of imprisonment to which a person would be liable for the offence constituted by doing the act threatened at the place where the conviction occurs and at the time of the offence to which the conviction relates.</p>
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	person)—imprisonment for 3 years.		
Provisions on the other threat offences 有關其他威脅罪的條文	<p><u>Criminal Code Act 1995</u></p> <p>147.2 Threatening to cause harm to a Commonwealth public official etc.</p> <p><i>Threatening to cause serious harm</i></p> <p>(1) A person (the first person) is guilty of an offence if:</p> <p>(a) the first person makes to another person (the second person) a threat to cause serious harm to the second person or to a third person; and</p> <p>(b) the second person or the third person is a public official; and</p> <p>(c) the first person:</p> <p>(i) intends the second person to fear that the threat will be carried out; or</p> <p>(ii) is reckless as to causing the second person to fear that the threat will be carried</p>	<p><u>Criminal Code</u></p> <p>264.1 (1) Every one commits an offence who, in any manner, knowingly utters, conveys or causes any person to receive a threat</p> <p>(a) to cause death or bodily harm to any person;</p> <p>(b) to burn, destroy or damage real or personal property; or</p> <p>(c) to kill, poison or injure an animal or bird that is the property of any person.</p> <p>(2) Every one who commits an offence under paragraph (1)(a) is guilty of</p> <p>(a) an indictable offence and liable to imprisonment for a term not exceeding five years; or</p> <p>(b) an offence punishable on summary conviction and liable to imprisonment for a term not</p>	<p><u>Criminal Justice and Public Order Act 1994</u></p> <p>Intimidation, etc., of witnesses, jurors and others</p> <p>51.—(1) A person who does to another person—</p> <p>(a) an act which intimidates, and is intended to intimidate, that other person;</p> <p>(b) knowing or believing that the other person is assisting in the investigation of an offence or is a witness or potential witness or a juror or potential juror in proceedings for an offence; and</p> <p>(c) intending thereby to cause the investigation or the course of justice to be obstructed, perverted or interfered with,</p> <p>commits an offence.</p>

	<p>out; and</p> <p>(d) the first person makes the threat because of:</p> <p>(i) the official's status as a public official; or</p> <p>(ii) any conduct engaged in by the official in the official's capacity as a public official; and</p> <p>(da) the official is a Commonwealth public official; and</p> <p>(db) if subparagraph (d)(i) applies—the status mentioned in that subparagraph was status as a Commonwealth public official; and</p> <p>(dc) if subparagraph (d)(ii) applies—the conduct mentioned in that subparagraph was engaged in by the official in the official's capacity as a Commonwealth public official.</p> <p>Penalty:</p> <p>(e) if the official is a</p>	<p>exceeding eighteen months.</p> <p>3) Every one who commits an offence under paragraph (1)(b) or (c)</p> <p>(a) is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years; or</p> <p>(b) is guilty of an offence punishable on summary conviction.</p> <p>423. (1) Every one is guilty of an indictable offence and liable to imprisonment for a term of not more than five years or is guilty of an offence punishable on summary conviction who, wrongfully and without lawful authority, for the purpose of compelling another person to abstain from doing anything that he or she has a lawful right to do, or to do anything that he or she has a lawful right to abstain from doing,</p> <p>(a) uses violence or threats of violence to that person or his or her spouse or common-law partner or children, or injures his or her</p>	<p>(2) A person who does or threatens to do to another person—</p> <p>(a) an act which harms or would harm, and is intended to harm, that other person;</p> <p>(b) knowing or believing that the other person, or some other person, has assisted in an investigation into an offence or has given evidence or particular evidence in proceedings for an offence, or has acted as a juror or concurred in a particular verdict in proceedings for an offence; and</p> <p>(c) does or threatens to do the act because of what (within paragraph (b)) he knows or believes,</p> <p>commits an offence.</p> <p>(3) A person does an act "to" another person with the intention of intimidating, or (as the case may be) harming, that other person not only</p>
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	<p>Commonwealth judicial officer or a Commonwealth law enforcement officer—imprisonment for 9 years; or</p> <p>(f) in any other case—imprisonment for 7 years.</p> <p>(1A) Absolute liability applies to the paragraphs (1)(da), (db) and (dc) elements of the offence.</p> <p><i>Threatening to cause harm</i></p> <p>(2) A person (the first person) is guilty of an offence if:</p> <p>(a) the first person makes to another person (the second person) a threat to cause harm to the second person or to a third person; and</p> <p>(b) the second person or the third person is a public official; and</p> <p>(c) the first person:</p> <p>(i) intends the second person to fear that the threat will</p>	<p>property;</p> <p>(b) intimidates or attempts to intimidate that person or a relative of that person by threats that, in Canada or elsewhere, violence or other injury will be done to or punishment inflicted on him or her or a relative of his or hers, or that the property of any of them will be damaged;</p> <p>(c) persistently follows that person;</p> <p>(d) hides any tools, clothes or other property owned or used by that person, or deprives him or her of them or hinders him or her in the use of them;</p> <p>(e) with one or more other persons, follows that person, in a disorderly manner, on a highway;</p> <p>(f) besets or watches the place where that person resides, works, carries on business or happens to be; or</p> <p>(g) blocks or obstructs a highway.</p>	<p>where the act is done in the presence of that other and directed at him directly but also where the act is done to a third person and is intended, in the circumstances, to intimidate or (as the case may be) harm the person at whom the act is directed.</p> <p>(4) The harm that may be done or threatened may be financial as well as physical (whether to the person or a person's property) and similarly as respects an intimidatory act which consists of threats.</p> <p>(5) The intention required by subsection (1)(c) and the motive required by subsection (2)(c) above need not be the only or the predominant intention or motive with which the act is done or, in the case of subsection (2), threatened.</p> <p>(6) A person guilty of an offence under this section shall be liable—</p>
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	<p>be carried out; or</p> <p>(ii) is reckless as to causing the second person to fear that the threat will be carried out; and</p> <p>(d) the first person makes the threat because of:</p> <p>(i) the official's status as a public official; or</p> <p>(ii) any conduct engaged in by the official in the official's capacity as a public official; and</p> <p>(e) the official is a Commonwealth public official; and</p> <p>(f) if subparagraph (d)(i) applies—the status mentioned in that subparagraph was status as a Commonwealth public official; and</p> <p>(g) if subparagraph (d)(ii) applies—the conduct mentioned in that subparagraph was engaged in by the official in the official's</p>		<p>(a) on conviction on indictment, to imprisonment for a term not exceeding five years or a fine or both;</p> <p>(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.</p>
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	<p>capacity as a Commonwealth public official.</p> <p>Penalty: Imprisonment for 2 years</p> <p>(2A) Absolute liability applies to the paragraphs (2)(e), (f) and (g) elements of the offence.</p> <p><i>Threatening to cause serious harm to a former Governor-General, former Minister or former Parliamentary Secretary</i></p> <p>(3) A person (the first person) is guilty of an offence if:</p> <p>(a) the first person makes to another person (the second person) a threat to cause serious harm to the second person or to a third person; and</p> <p>(b) the second person or the third person is a former Governor-General, a former Minister or a former Parliamentary Secretary; and</p> <p>(c) the first person:</p>		
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	<ul style="list-style-type: none"> (i) intends the second person to fear that the threat will be carried out; or (ii) is reckless as to causing the second person to fear that the threat will be carried out; and <p>(d) the first person makes the threat because of:</p> <ul style="list-style-type: none"> (i) the second or third person's status as a former Governor-General, a former Minister or a former Parliamentary Secretary; or (ii) any conduct engaged in by the second or third person in the second or third person's former capacity as a Governor-General, a Minister or a Parliamentary Secretary. <p>Penalty: Imprisonment for 7 years.</p> <p><i>Threats</i></p> <p>(4) For the purposes of this section,</p>		
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	<p>a <i>threat</i> may be:</p> <ul style="list-style-type: none"> (a) express or implied; or (b) conditional or unconditional. <p><i>Unnecessary to prove that a threatened person actually feared harm</i></p> <p>(5) In a prosecution for an offence against this section, it is not necessary to prove that the person threatened actually feared that the threat would be carried out.</p> <p><i>149.1 Obstruction of Commonwealth public officials</i></p> <p>(1) A person is guilty of an offence if:</p> <ul style="list-style-type: none"> (a) the person knows that another person is a public official; and (b) the first-mentioned person obstructs, hinders, intimidates or resists the official in the performance of the official's functions; and (c) the official is a Commonwealth 		
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	<p>public official; and</p> <p>(d) the functions are functions as a Commonwealth public official. Penalty: Imprisonment for 2 years.</p> <p>(2) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew:</p> <p>(a) that the official was a Commonwealth public official; or</p> <p>(b) that the functions were functions as a Commonwealth public official.</p> <p>(3) For the purposes of this section, it is immaterial whether the defendant was aware that the public official was performing the official's functions.</p> <p>(4) Section 15.3 (extended geographical jurisdiction—category C) applies to an offence against subsection (1).</p>		
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	<p>(5) The definition of <i>duty</i> in section 130.1 does not apply to this section.</p> <p>(6) In this section:</p> <p><i>function:</i></p> <p>(a) in relation to a person who is a public official—means any authority, duty, function or power that is conferred on the person as a public official; or</p> <p>(b) in relation to a person who is a Commonwealth public official—means any authority, duty, function or power that is conferred on the person as a Commonwealth public official.</p> <p><i>268.107 Threatening witnesses or interpreters</i></p> <p>(1) A person commits an offence if the person causes or threatens to cause any detriment to another person with the intention that the other person or a third person will:</p>		
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	<p>(a) not attend as a witness at a proceeding before the International Criminal Court; or</p> <p>(b) give false evidence at such a proceeding; or</p> <p>(c) withhold true evidence at such a proceeding.</p> <p>Penalty: Imprisonment for 7 years.</p> <p>(2) A person commits an offence if the person causes or threatens to cause any detriment to another person with the intention that the other person or a third person will:</p> <p>(a) not attend as an interpreter at a proceeding before the International Criminal Court; or</p> <p>(b) give a false or misleading interpretation as an interpreter in such a proceeding.</p> <p>Penalty: Imprisonment for 7 years.</p>		
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	<p>Dictionary</p> <p><i>detriment</i> includes any disadvantage and is not limited to personal injury or to loss of or damage to property.</p>		
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