

# A BILL

## To

Implement Article 9 and paragraph 1 of Article 10 of the Convention on the Safety of United Nations and Associated Personnel; and to provide for incidental or related matters.

Enacted by the Legislative Council.

### PART 1

#### PRELIMINARY

#### 1. Short title and commencement

(1) This Ordinance may be cited as the Safety of United Nations and Associated Personnel Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice published in the Gazette.

#### 2. Interpretation

In this Ordinance—

“associated personnel” (有關人員) means—

- (a) persons assigned by a government or an intergovernmental organization with the agreement of a competent organ of the United Nations;
- (b) persons engaged by the Secretary-General of the United Nations or by a specialized agency or by the International Atomic Energy Agency; and
- (c) persons deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency or with the International Atomic Energy Agency,

to carry out activities in support of the fulfilment of the mandate of a United Nations operation;

“Convention” (《公約》) means the Convention on the Safety of United Nations and Associated Personnel done at New York on 9 December 1994;

“relevant offence” (有關罪行) means—

- (a) an offence mentioned in section 4(1)(a) or (b), against a member of the United Nations personnel or a member of the associated personnel; or
- (b) an offence mentioned in section 4(1)(c), against any premises or means of transportation ordinarily used by a member of the United Nations personnel or a member of the associated personnel,

whether it is an offence by virtue of section 4(2) or not;

“specified person” (指明人士) means a person who is—

- (a) a Chinese national; and
- (b) a Hong Kong permanent resident;

“United Nations operation” (聯合國行動) means an operation established by a competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under the authority and control of the United Nations—

- (a) where the operation is for the purpose of maintaining or restoring international peace and security; or
- (b) where the Security Council of the United Nations or the General Assembly of the United Nations has declared, for the purposes of the Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation,

but does not include any operation which is authorized by the Security Council of the United Nations as an enforcement action under Chapter VII of the Charter of the United Nations, in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies;

“United Nations personnel” (聯合國人員) means—

- (a) persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation; and
- (b) other officials and experts on mission of the United Nations or its specialized agencies or the International Atomic Energy Agency who are present in an official capacity in the area where a United Nations operation is being conducted.

## PART 2

### OFFENCES

#### **3. Institution of proceedings**

Proceedings for an offence which apart from this Part would not be an offence in Hong Kong shall only be instituted by, or with the consent of, the Secretary for Justice.

#### **4. Offences against United Nations personnel and associated personnel**

- (1) A specified person shall not, outside Hong Kong, do any act—
  - (a) to or in relation to a member of the United Nations personnel or a member of the associated personnel which, if done in Hong Kong, would constitute the offence of murder, manslaughter, kidnapping, false imprisonment, assault occasioning actual bodily harm or common assault;
  - (b) to or in relation to a member of the United Nations personnel or a member of the associated personnel which, if done in Hong Kong, would constitute an offence under—
    - (i) section 53, 60 or 118 of the Crimes Ordinance (Cap. 200); or
    - (ii) section 17, 19, 20, 21, 22, 23, 28, 29, 30 or 42 of the Offences against the Person Ordinance (Cap. 212); or
  - (c) to or in relation to any premises or means of transportation ordinarily used by a member of the United Nations personnel or a member of the associated personnel which, if done in Hong Kong, would constitute an offence under section 53 or 60 of the Crimes Ordinance (Cap. 200).
- (2) A specified person who contravenes subsection (1) commits the offence that he would have committed had the act been done in Hong Kong.

#### **5. Threats**

(1) A person shall not, in order to compel another person to do or refrain from doing any act, make to the other person a threat that an act will be done which, if done, would constitute a relevant offence, with the intention that the other person shall fear that the threat will be carried out.

(2) A specified person shall not, outside Hong Kong, in order to compel another person to do or refrain from doing any act, make to the other person a threat that an act will be done which, if done, would constitute a relevant offence, with the intention that the other person shall fear that the threat will be carried out.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction on indictment to imprisonment for 10 years, but the term of imprisonment shall not exceed the maximum which may be imposed for the relevant offence constituted by doing the act threatened to be done.

(4) A specified person who contravenes subsection (2) commits an offence and is liable on conviction on indictment to imprisonment for 10 years, but the term of imprisonment shall not exceed the maximum which may be imposed for the relevant offence constituted by doing the act threatened to be done.

## **6. Attempts, aiding, abetting, etc.**

(1) If a specified person does any act, outside Hong Kong, which, if done in Hong Kong, would constitute an attempt to commit a relevant offence under section 159G of the Crimes Ordinance (Cap. 200), the act shall be deemed to have been done in Hong Kong.

(2) A specified person who aids, abets, counsels or procures, outside Hong Kong—

(a) the commission by another person of a relevant offence; or

(b) an attempt by another person to commit a relevant offence, shall be guilty of the like offence.

## **7. Knowledge of other persons being members of United Nations personnel or members of associated personnel**

For the purposes of sections 4(1), 5(1) and (2) and 6(1) and (2), it is immaterial whether a person knows that another person is a member of the United Nations personnel or a member of the associated personnel.

### **Explanatory Memorandum**

The Government of the People's Republic of China acceded to the Convention on the Safety of United Nations and Associated Personnel ("the Convention") on 22 September 2004 and the Convention entered into force for the People's Republic of China, including Hong Kong, on 22 October 2004.

2. Paragraph 1 of Article 10 of the Convention requires every State Party to the Convention to take such measures as may be necessary to establish its jurisdiction over the offences set out in Article 9 of the Convention in the following cases—

- (a) where the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;
- (b) where the alleged offender concerned is a national of that State.

3. The objective of this Bill is to implement Article 9 and paragraph 1 of Article 10 of the Convention by—

- (a) establishing the jurisdiction of the Hong Kong courts in respect of the offences set out in Article 9 of the Convention that are committed outside Hong Kong by any Chinese national who is a Hong Kong permanent resident; and
- (b) creating a new offence of a threat to commit the attack described in Article 9 of the Convention.

4. Clause 4 establishes the jurisdiction of Hong Kong in respect of the following offences that are committed outside Hong Kong against United Nations personnel or associated personnel or against premises or means of transportation ordinarily used by United Nations personnel or associated personnel, as the case may be—

- (a) the following common law offences—
  - (i) murder;
  - (ii) manslaughter;
  - (iii) kidnapping;
  - (iv) false imprisonment;
  - (v) assault occasioning actual bodily harm;
  - (vi) common assault;
- (b) offences under the following provisions—
  - (i) the following provisions of the Crimes Ordinance (Cap. 200)—
    - (A) section 53 (causing explosion likely to endanger life or property);
    - (B) section 60 (destroying or damaging property);
    - (C) section 118 (rape);

- (ii) the following provisions of the Offences against the Person Ordinance (Cap. 212)—
- (A) section 17 (shooting or attempting to shoot, or wounding or striking with intent to do grievous bodily harm);
  - (B) section 19 (wounding or inflicting grievous bodily harm);
  - (C) section 20 (attempting to choke, etc., in order to commit indictable offence);
  - (D) section 21 (using chloroform, etc., in order to commit indictable offence);
  - (E) section 22 (administering poison, etc., so as to endanger life or inflict grievous bodily harm);
  - (F) section 23 (administering poison, etc., with intent to injure, etc.);
  - (G) section 28 (causing bodily injury by gunpowder, etc.);
  - (H) section 29 (causing gunpowder to explode, etc., or throwing corrosive fluid, with intent to do grievous bodily harm);
  - (I) section 30 (placing gunpowder near building, etc., with intent to do bodily injury);
  - (J) section 42 (forcible taking or detention of person, with intent to sell him).

5. Clause 5 provides for an offence of making a threat that an act will be done which, if done, would constitute an offence mentioned in clause 4(1).

6. Clause 6 provides for attempting outside Hong Kong to commit any of the offences mentioned in clause 4(1) and aiding, abetting, counselling or procuring outside Hong Kong the commission of, or an attempt to commit, any of those offences.