

立法會

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Bills Committee on United Nations (Anti-Terrorism Measures) (Amendment) Bill 2017

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper sets out background information and summarizes the past discussions of the Panel on Security ("the Panel") on the Administration's proposal to amend the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("UNATMO") to implement certain requirements of the United Nations Security Council Resolution ("UNSCR") 2178 and the Financial Action Task Force ("FATF")¹'s recommendations.

Background

2. According to the Administration, Hong Kong has a number of legislation in place to deal with terrorism-related offences. Among them, UNATMO was enacted to implement the UNSCR 1373² passed after the September 11 terrorist attacks in the United States in 2001, and certain recommendations of FATF on counter-financing of terrorism ("CFT"). First enacted in 2002, UNATMO was amended in 2004 and 2012 to further implement UNSCR 1373 and some terrorism-related multilateral conventions, and to meet FATF's evolving CFT standards.

¹ FAFT is an inter-governmental organization specializing in recommending standards and best practices in countering money laundering and terrorist financing. Hong Kong has been an FAFT member since 1991.

² UNSCR 1373 was endorsed on 28 September 2001. It requires, among other things, the prevention and suppression of terrorist financing, criminalization of the wilful provision or collection of funds for terrorist acts, freezing of terrorist assets, and prohibition from making funds, etc. available for the benefit of terrorist or terrorist associate.

3. On 24 September 2014, the United Nations Security Council passed UNSCR 2178 which is binding on all Member States. The resolution expressed grave concern about the acute and growing threat posed by foreign terrorist fighters, i.e. individuals who travel for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or providing or receiving of terrorist training, and urged Member States to implement legal sanctions against such travels and related matters. Operative paragraph 6 of UNSCR 2178 reads as follows:

"Recalls its decision, in resolution 1373 (2001), that all Member States shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice, and decides that all States shall ensure that their domestic laws and regulations establish serious criminal offenses sufficient to provide the ability to prosecute and to penalize in a manner duly reflecting the seriousness of the offense-

- (a) their nationals who travel or attempt to travel to a State other than their States of residence or nationality, and other individuals who travel or attempt to travel from their territories to a State other than their States of residence or nationality, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;*
- (b) 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 finance the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training; and*
- (c) the wilful organization, or other facilitation, including acts of recruitment, by their nationals or in their territories, of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training."*

In October 2014, the Central People's Government gave instructions to Hong Kong to implement the resolution.

The United Nations (Anti-Terrorism Measures) (Amendment) Bill 2017

4. The Bill seeks to amend UNATMO to further implement a decision of UNSCR 2178 of 24 September 2014 by prohibiting travelling, providing or collecting property to finance travel, and organizing or facilitating travel, for the purpose of terrorist acts or terrorist training, and to further implement the recommendations of FATF by prohibiting dealing with property relating to terrorists or terrorist associates.

Deliberations of the Panel

5. At its meeting on 3 January 2017, the Panel was briefed on the Administration's proposal to amend UNATMO, having regard to the mandatory requirements in UNSCR 2178 and views expressed by FATF. The major views and concerns of members are summarized in the ensuing paragraphs.

Impacts of the legislative proposal

6. Some members expressed concern about whether the legislative proposal would be abused for prohibiting certain persons from leaving Hong Kong by specifying them as terrorists, and thus infringing individuals' freedom of travel.

7. According to the Administration, the legislative proposal only sought to prohibit persons from leaving Hong Kong for the purpose of perpetration, planning, or preparation of, or participation in, terrorist acts or providing or receiving of terrorist training. Members were advised that under UNATMO, terrorists would only be specified in accordance with the designations by the United Nations ("UN") committee on the relevant UNSCR or by the court on application by the Administration. Members were further advised that human rights in Hong Kong were safeguarded by the court and there were various administrative channels for seeking redress. Besides the requirements under UN, the Administration had examined and confirmed that the legislative proposal was in conformity with the Basic Law and the Hong Kong Bill of Rights Ordinance (Cap. 383).

8. Some members expressed concern about whether an *inter partes* hearing would be held by the court on an application by the Administration for specifying a person as terrorist. The Administration explained that although it could apply to the court for specifying a person as terrorist, whether the person should be specified as terrorist would have to be determined by the court. Under the existing legislation, the prohibition on becoming a member of a

terrorist associate would only take effect after the terrorist associate was specified in the Gazette.

Definition of "terrorist act" and "terrorist training"

9. Members were advised that an act would amount to a terrorist act only if the conditions in sub-paragraph (a) of the definition of "terrorist act" in section 2 of UNATMO were met, subject to an exemption provided in sub-paragraph (b) for the use or threat of action in the course of any advocacy, protest, dissent or industrial action. The Administration added that it had made reference to the relevant laws of many jurisdictions, including the United Kingdom ("UK"), before drawing up the definition of "terrorist act" in UNATMO. The Administration stressed that the legislative proposal did not involve any amendment to the existing definition of "terrorist" or "terrorist act" under UNATMO.

10. Some members enquired whether "terrorist training" and "terrorist purpose" would be defined in the legislative amendments to be introduced. Some members considered that "terrorist training" would better be well defined in the legislative amendments to be introduced. According to the Administration, terrorist training was defined in the relevant laws of Australia, Ireland and UK. It would have regard to such overseas definition in the drafting of the legislative amendments. The Administration added that there was a need for examining whether there was *mens rea* in determining whether an act amount to an offence under UNATMO. For presentation purpose, the term "terrorism purpose" was used in the Administration's paper for abbreviating the bundle of acts specified in UNSCR 2178. In the legislative amendments to be introduced, the term "terrorism purpose" would not be used and the acts specified in UNSCR 2178 would be set out in full.

Freezing of terrorist property

11. Members noted that FATF's Recommendation 5 required Member States to criminalize terrorist financing. Recommendation 6 required Member States to freeze without delay the funds or other assets of a person or entity designated as a terrorist or terrorist associate. Members were advised that Hong Kong relied on section 6 of UNATMO in respect of the freezing of terrorist property, but so far no terrorist property had been frozen under section 6 of UNATMO.

Relevant papers

12. A list of relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
20 July 2017

**Relevant papers on the proposal to amend the United Nations
(Anti-Terrorism Measures) Ordinance (Cap. 575)**

| Committee | Date of meeting | Paper |
|-------------------|------------------------|---|
| Panel on Security | 3.1.2017 (Item III) | Agenda Minutes |

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