

HONG KONG

香 港

ORDINANCE NO. 20 OF 1995

1995年第20號條例



I assent.



本人批准。

Christopher PATTEN,
Governor.
30 March 1995

彭定康，
總督
1995年3月30日

An Ordinance to provide for the implementation of both the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents and the International Convention against the Taking of Hostages; and for related matters.

本條例旨在就《關於防止和懲處侵害應受國際保護人員包括外交代表的罪行的公約》和《反對劫持人質國際公約》的實施，以及就有關事宜，訂定條文。

[31 March 1995]

[1995年3月31日]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

由香港總督參照立法局意見並得該局同意而制定。

1. Short title

This Ordinance may be cited as the Internationally Protected Persons and Taking of Hostages Ordinance.

1. 簡稱

本條例可引稱為《應受國際保護人員及劫持人質條例》。

2. Interpretation

In this Ordinance—

“act” (作為) includes an omission;

“nationality” (國籍) includes citizenship;

“protected person” (應受保護人員) means, in relation to an alleged offence under section 3 or 5, any of the following—

(a) a person who at the time of such alleged offence is a Head of State, a member of a body which performs the functions of Head of State under the constitution of the State, a Head of Government or a Minister for Foreign Affairs and who is at such time outside the territory of the state in which he holds office;

(b) a person, other than a person described in paragraph (a), who, because of his being at such time a representative or an official of a state or territory or an official or agent of an international organization of an inter-governmental character, is entitled under international law to special protection from attack on his person, freedom or dignity;

2. 釋義

在本條例中——

“有關處所” (a relevant premises) 指應受保護人員居住或正在逗留的處所，或被應受保護人員用作執行其官方職能的處所；

“作為” (act) 包括不作為；

“車輛” (vehicle) 指任何經構造或改裝為於道路上使用的車輛，不論是否由機械推動的，並且包括飛機、氣墊船、船舶或船隻及任何其他交通工具；

“國籍” (nationality) 包括公民地位；

“應受保護人員” (protected person)，就第3或5條所訂的指稱罪行而言，指任何下列人士——

(a) 在上述指稱罪行發生時是國家元首、根據有關的國家憲法執行國家元首職能的一個團體的成員、政府首長或外交部長的人，而當其時他正身處其擔任職位的國家領土以外的地方；

(b) 任何並非(a)段所描述的人，而由於他當其時是國家或地區的任何代表或官員或屬政府間性質的國際組織的任何官員或代理人，他有權根據國際法律受到特別保護，以免其人身、自由或尊嚴受到攻擊；

- (c) a person who at such time is a member of the same family as a person mentioned in paragraph (a) or (b) (“the other person”) and—
- (i) if the other person is a person described in paragraph (a), is at such time accompanying that person; or
 - (ii) if the other person is a person described in paragraph (b), is a member of that person’s household;

“a relevant premises” (有關處所) means any premises at which a protected person resides or is staying or which are used by a protected person for the purpose of carrying out his official functions as such a person;

“vehicle” (車輛) means any vehicle whether mechanically propelled or not which is constructed or adapted for use on a road and, in addition, includes an aircraft, hovercraft, ship or vessel and any other means of transport.

3. Attacks and threats of attack on protected persons

- (1) Any person, whatever his nationality, who outside Hong Kong—
- (a) does any act to or in relation to a protected person which, if done in Hong Kong, would constitute the offence of murder, manslaughter, rape, assault occasioning actual bodily harm, kidnapping, false imprisonment or an offence under section 17, 19, 20, 21, 22, 23, 28, 29, 30 or 43 of the Offences against the Person Ordinance (Cap. 212) or section 53 of the Crimes Ordinance (Cap. 200); or
 - (b) in connection with an attack either on a relevant premises or on a vehicle ordinarily used by a protected person which is made when a protected person is in or on the premises or vehicle, does any act which, if done in Hong Kong, would constitute an offence under section 53 or 60 of the Crimes Ordinance (Cap. 200),

is guilty of such of those offences of which he would have been guilty had the act occurred in Hong Kong and shall be punishable accordingly.

(2) Subject to subsection (3), any person, whatever his nationality, who in Hong Kong or elsewhere—

- (a) makes to another person a threat that he or any other person will do an act which if done would constitute an offence mentioned in subsection (1)(a); or
- (b) attempts to make or aids, abets, counsels or procures the making of such a threat to another person,

with the intention that the other person shall fear that the threat will be carried out, commits an offence and is liable on conviction on indictment to imprisonment for 10 years.

- (c) 當其時與(a)或(b)段所述的人(“該另一人”)屬同一家庭的成員，並且——
- (i) (如該另一人是(a)段所描述的人)在當其時陪伴該另一人同行；或
 - (ii) (如該另一人是(b)段所描述的人)是該另一人的住戶成員。

3. 對應受保護人員的攻擊或攻擊威脅

- (1) 任何人(不論屬何國籍)在香港以外地方——
- (a) 向應受保護人員或就應受保護人員作出任何作為，而該作為如在香港作出，便會構成謀殺、誤殺、強姦、襲擊致造成身體傷害、綁架或非法禁錮的罪行，或《侵害人身罪條例》(第212章)第17、19、20、21、22、23、28、29、30或43條或《刑事罪行條例》(第200章)第53條所訂的罪行的；或
 - (b) 在與對有關處所或對通常由應受保護人員使用的車輛的攻擊(而作出該攻擊時有應受保護人員在該處所或車輛之內或之上)有關連的情況下作出任何作為，而該作為如在香港作出，便會構成《刑事罪行條例》(第200章)第53或60條所訂的罪行的，

即屬犯了假使該作為是在香港發生他便會犯的的罪行，並可據此予以懲罰。

(2) 在符合第(3)款的規定下，任何人(不論屬何國籍)在香港或其他地方——

- (a) 向另一人作出威脅，表示他或任何其他他人將會作出某作為，而該作為若作出，即會構成第(1)(a)款所述的罪行；或
- (b) 企圖向另一人作出上述威脅，或協助、教唆、慫使或促使向另一人作出上述威脅，

而其用意在使該另一人害怕該威脅會付諸實行的，即屬犯罪，循公訴程序定罪後，可處監禁10年。

(3) A term of imprisonment imposed under subsection (2) shall not exceed the maximum which may be imposed as regards any offence which would have been constituted had the threat been carried out.

(4) For the purposes of subsections (1) and (2) and section 5 it is immaterial whether a person knows that another person is a protected person.

(5) Proceedings for an offence which apart from this section or section 5 would not be an offence in Hong Kong shall only be instituted by, or with the consent of, the Attorney General.

4. Hostage taking

(1) Any person, whatever his nationality, who in Hong Kong or elsewhere—

- (a) detains any other person (“the hostage”); and
- (b) in order to compel a state, an international governmental organization or any person to do or to abstain from doing any act, threatens to kill, injure or continue to detain the hostage,

commits an offence.

(2) A person guilty of an offence under subsection (1) is liable, on conviction on indictment, to imprisonment for life.

(3) Proceedings for an offence under this section shall only be instituted by, or with the consent of, the Attorney General.

5. Attempts etc.

Any person, whatever his nationality, who, whether in Hong Kong or elsewhere—

- (a) attempts—
 - (i) to commit against a protected person, an offence which is an offence mentioned in section 3(1)(a), whether it is an offence by virtue of section 3(1) or not; or
 - (ii) to commit an offence in connection with an attack mentioned in section 3(1)(b), whether it is an offence by virtue of section 3(1) or not; or
 - (iii) to commit an offence under section 4; or
- (b) aids, abets, counsels or procures—
 - (i) the commission by another person of an offence described or mentioned in paragraph (a)(i), (ii) or (iii); or
 - (ii) an attempt by another person to commit an offence so described or mentioned,

commits an offence and may be dealt with and punished in the same manner as if the offence in question had been committed by him.

(3) 根據第(2)款判處的監禁期，不得超逾可就假使有關的威脅付諸實行便會構成的任何罪行所判處的最高監禁期。

(4) 為施行第(1)及(2)款及第5條，任何人是否知道另一人是應受保護人員，並無關鍵性。

(5) 就任何罪行(而該罪行如無本條或第5條的規定在香港便不會是罪行的)提起的法律程序，只可由律政司提起或在律政司同意下提起。

4. 劫持人質

(1) 任何人(不論屬何國籍)在香港或其他地方——

- (a) 扣押任何其他人(“人質”);及
- (b) 為強迫某個國家、國際政府間組織或任何人作出或不作出任何作為而威脅要殺死、傷害或繼續扣押人質，

即屬犯罪。

(2) 任何人犯第(1)款所訂的罪行，循公訴程序定罪後，可處終身監禁。

(3) 就本條所訂的罪行提起的法律程序，只可由律政司提起或在律政司同意下提起。

5. 企圖等

任何人(不論屬何國籍)在香港或其他地方——

- (a) 企圖——
 - (i) 對應受保護人員犯第3(1)(a)條所述的任何罪行(不論該罪行是否憑藉第3(1)條的規定屬罪行的);或
 - (ii) 在與第3(1)(b)條所述的攻擊有關連的情況下犯任何罪行(不論該罪行是否憑藉第3(1)條的規定屬罪行的);或
 - (iii) 犯第4條所訂的罪行;或
- (b) 協助、教唆、慫使或促使——
 - (i) 另一人犯(a)(i)、(ii)或(iii)段所描述或所述的任何罪行;或
 - (ii) 另一人企圖犯任何如此描述或所述的罪行，

即屬犯罪，可按猶如他犯了所涉的罪行一樣的方式對他作出處置及予以懲罰。

6. Evidential value of certain certificates

(1) If in any proceedings for an offence under or by virtue of this Ordinance a question arises as to whether a person is or was a protected person, a document purporting to be a certificate issued by the Governor and to certify any fact relating to the question shall be conclusive evidence of that fact.

(2) In any proceedings for an offence under or by virtue of this Ordinance, a document purporting to be a certificate issued by the Governor and to certify that, at a time or during a period specified in the document—

(a) a state so specified was a country or state which was then a party to the 1973 Convention; or

(b) a state so specified was a country or state which was then a party to the 1979 Convention,

shall be conclusive evidence of that fact.

(3) In this section—

“the 1973 Convention” (《1973年公約》) means the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents opened for signature at New York on 14 December 1973;

“the 1979 Convention” (《1979年公約》) means the International Convention against the Taking of Hostages opened for signature at New York on 18 December 1979.

7. Construction of Fugitive Offenders Order

The Fugitive Offenders (Hong Kong) Order 1967 (App. III, p. CK1), as amended, shall be construed and have effect as if offences under or by virtue of this Ordinance were included among the descriptions of offences set out in Schedule 1 to the Schedule to that Order.

8. Consequential amendments

(1) In so far as they apply to Hong Kong, the enactments specified in the second column of the Schedule are amended in the manner specified in the third column of the Schedule opposite their mention in the said second column.

(2) Sections 23 to 25 of the Interpretation and General Clauses Ordinance (Cap. 1) apply in relation to the enactments specified in the Schedule as they apply in relation to an Ordinance.

6. 某些證明書的證據價值

(1) 在就本條例所訂的或憑藉本條例屬罪行的任何罪行而進行的任何法律程序中，如對某人是否或曾否是應受保護人員一事產生問題，則一份看來是由總督發出的證明書而其意是核證與該問題有關的任何事實的文件，即為該事實的確證。

(2) 在就本條例所訂的或憑藉本條例屬罪行的任何罪行而進行的任何法律程序中，一份看來是由總督發出的證明書而其意是核證以下事實的文件，即為該事實的確證——

(a) 在該文件指明的時間或期間內，該文件所指明的國家屬《1973年公約》的締約成員；或

(b) 在該文件指明的時間或期間內，該文件所指明的國家屬《1979年公約》的締約成員。

(3) 在本條中——

“《1973年公約》”(the 1973 Convention)指於1973年12月14日在紐約聽由簽署的《關於防止和懲處侵害應受國際保護人員包括外交代表的罪行的公約》；

“《1979年公約》”(the 1979 Convention)指於1979年12月18日在紐約開放簽字的《反對劫持人質國際公約》。

7. 《Fugitive Offenders Order》的解釋

經修訂的《Fugitive Offenders (Hong Kong) Order 1967》(附錄III CK1頁)須予以解釋及具有效力，猶如本條例所訂的或憑藉本條例屬罪行的罪行，是包括在該命令的附表中的附表1所列的罪行類別之內一樣。

8. 相應修訂

(1) 附表第2欄指明的成文法則，在其適用於香港的範圍內，按附表第3欄中相對於該第2欄所述之處所指明的方式修訂。

(2) 《釋義及通則條例》(第1章)第23至25條就附表指明的成文法則而適用，如同其就任何條例而適用一般。

SCHEDULE [s. 8]

附表 (第8條)

Item	Enactment	Amendment	項	成文法則	修訂
1.	The Internationally Protected Persons Act 1978 (Overseas Territories) Order 1979 (App. III, p. BG1)	In Schedule 2 by repealing "Hong Kong".	1.	《Internationally Protected Persons Act 1978 (Overseas Territories) Order 1979》(附錄 III BG1 頁)	在附表 2 中，廢除 "Hong Kong"。
2.	The Taking of Hostages Act 1982 (Overseas Territories) Order 1982 (S.I. 1982 No. 1540)	In Schedule 2 by repealing "Hong Kong".	2.	《Taking of Hostages Act 1982 (Overseas Territories) Order 1982》(S.I. 1982 No. 1540)	在附表 2 中，廢除 "Hong Kong"。
3.	The Visiting Forces Act (Application to Colonies) Orders 1954 to 1967 (App. III, p. AZ1)	In the Second Schedule to the Orders by adding— "15. In paragraph 1 of the Schedule there shall be inserted— "(d) an offence of making such a threat as is mentioned in section 3(2) of the Internationally Protected Persons and Taking of Hostages Ordinance (20 of 1995) and any of the following offences against a protected person within the meaning of that Ordinance, namely, an offence of kidnapping, an offence of false imprisonment and an offence under section 53 of the Crimes Ordinance (Cap. 200) of causing an explosion likely to endanger life; (e) an offence under section 53 of the Crimes Ordinance (Cap. 200) of causing an explosion likely to cause serious injury to property in connection with such an attack as is mentioned in section 3(1)(b) of the Internationally Protected Persons and Taking of Hostages Ordinance (20 of 1995)." "	3.	《Visiting Forces Act (Application to Colonies) Orders 1954 to 1967》(附錄 III AZ1 頁)	在該命令的附表 2 中，加入—— "15. In paragraph 1 of the Schedule there shall be inserted— "(d) an offence of making such a threat as is mentioned in section 3(2) of the Internationally Protected Persons and Taking of Hostages Ordinance (20 of 1995) and any of the following offences against a protected person within the meaning of that Ordinance, namely, an offence of kidnapping, an offence of false imprisonment and an offence under section 53 of the Crimes Ordinance (Cap. 200) of causing an explosion likely to endanger life; (e) an offence under section 53 of the Crimes Ordinance (Cap. 200) of causing an explosion likely to cause serious injury to property in connection with such an attack as is mentioned in section 3(1)(b) of the Internationally Protected Persons and Taking of Hostages Ordinance (20 of 1995)." "