

The jurisdiction of Hong Kong National Security Law accords with international norms and double-standard criticisms are for an ulterior motive

In respect of the action taken by the National Security Department of the Hong Kong Police Force on July 3 to list the eight persons who have absconded overseas and allegedly committed offences under the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (Hong Kong National Security Law) as wanted persons, the Department of Justice today (July 6) said that in terms of the scope of application, the Hong Kong National Security Law fully aligns with the principles of international law, international practice and common practice adopted in various countries and regions. Such practice is both necessary and legitimate, and is also in line with those of other countries and regions around the world. The criticisms by some countries and organisations on this issue are made in complete disregard of basic jurisprudence and facts, so that it is necessary to make the following statement to explain relevant legal principles in order to set record straight.

The Hong Kong National Security Law serves the purposes of safeguarding national security as well as preventing, suppressing and imposing punishment for acts and activities endangering national security. A lack of extraterritorial effect in the relevant law is tantamount to condoning activities such as secession and subversion carried out by ill-intentioned people overseas. Therefore, extraterritorial effect is an essential component of the Hong Kong National Security Law.

In general, the criminal law of the Hong Kong Special Administrative Region (HKSAR) only regulates acts that take place in the HKSAR, and this is known as the "territorial principle" in the international law and international practice. At the same time, international law and relevant practice have also established exceptions to the "territorial principle", including the "personality principle" and the "principle of protective jurisdiction". Any State has the right to formulate laws based on these principles to exercise jurisdiction over criminal acts committed outside its territory. The Hong Kong National Security Law formulated by the Central Authorities defines the scope of application of the Law precisely in accordance with these principles of international law, international practice and common practice in various countries and regions.

The "territorial principle"

Article 36(1) of the Hong Kong National Security Law stipulates that "this Law shall apply to offences under this Law which are committed in the Hong Kong Special Administrative Region by any person. An offence shall be deemed to have been committed in the Region if an act constituting the offence or the consequence of the offence occurs in the Region." This provision is directed at criminal acts that are wholly or partly committed in the HKSAR, and reflects the "territorial principle".

Article 36(2) of the Hong Kong National Security Law is directed at "offences under this Law committed on board a vessel or aircraft registered in the Region", which also complies with the provisions of the relevant international treaties.

Under certain situations in line with international law and practice, the criminal law may regulate acts that take place outside the HKSAR. The Hong Kong National Security Law provides for two types of situations as follows.

The "personality principle"

The first type of situation concerns an offender whose identity has close connection with the HKSAR, rather than a foreigner who has absolutely no ties with the HKSAR, and this is known as the "personality principle". Under this principle, a State may exercise jurisdiction over criminal acts committed by its citizens outside its territory. As a matter of fact, as a citizen or permanent resident of a country or region, it is incumbent on him or her to abide by the laws of respective country or region, regardless of where he or she is.

To this end, Article 37 of the Hong Kong National Security Law stipulates that "this Law shall apply to a person who is a permanent resident of the Hong Kong Special Administrative Region or an incorporated or unincorporated body such as a company or an organisation which is set up in the Region if the person or the body commits an offence under this Law outside the Region."

There are also numerous overseas examples of national security laws that tackle criminal acts committed outside the sovereign territory in accordance with the "personality principle", such as the offences of treason, unlawful disclosure of classified information and the Logan Act which targets activities of collusion with a foreign country or with external elements in the US; the offence of treason and the Terrorism Act 2000 in the UK; the foreign interference offence in Australia; the offence of treason in Canada and the offence of dissemination of propaganda material of unconstitutional and terrorist organisations in Germany, etc.

The principle of "protective jurisdiction"

The second type of situation arises when the criminal acts go against and undermine the security or the vital interests of Hong Kong, and this is the principle of "protective jurisdiction". Under the principle of

"protective jurisdiction", if foreigners commit criminal acts abroad against a sovereign State that endanger its security or its vital interests (such as government systems or functions), the sovereign State can adopt laws with extraterritorial effect to exercise prescriptive criminal jurisdiction.

To this end, Article 38 of the Hong Kong National Security Law stipulates that "this Law shall apply to offences under this Law committed against the Hong Kong Special Administrative Region from outside of the Region by a person who is not a permanent resident of the Region."

The national security laws of other countries in which the protective principle is applied include the terrorism offences in the US, the National Security Bill currently at the final legislative stage in the UK, the espionage offence in Australia, the espionage offence in Canada and the offence of theft of state secrets in Germany.

It can be seen that the national security laws of various countries, including the US, the UK, Australia, Canada and the Member States of the European Union, also have extraterritorial effect under the principles of "personality" and "protective jurisdiction", which amply exposes the criticisms by the relevant countries against the law enforcement authorities in Hong Kong as nothing but double standards and sophistry.

It is the inherent right and obligation of our Country as a sovereign State to enact the Hong Kong National Security Law as well as to exercise prescriptive extraterritorial jurisdiction over the relevant offences endangering national security, in which other countries should not meddle. It is the constitutional duty of the HKSAR to safeguard national security and the HKSAR Government would definitely spare no effort to take all necessary measures in accordance with the law and to pursue the liability of those who have allegedly committed offences under the Hong Kong National Security Law outside Hong Kong.