Proposals to implement Article 23 of the Basic Law

Consultation Document

Security Bureau

September 2002

We welcome your views

The Government has always attached great importance to comments from the public. We have now formulated the proposals to implement Article 23 of the Basic Law, as detailed in this document, for public consultation.

We sincerely invite your views on the proposals. Comments on the proposals are welcomed, by 24 December 2002, as follows —

- by post : Security Bureau
  (Attn: AS(F)2, F Division)
  6th Floor, East Wing
  Central Government Offices
  Lower Albert Road
  Central
  Hong Kong

- by fax : 2521 2848

- by e-mail : bl23@sb.gov.hk

Any person submitting views and comments should be aware that the Government may publish all or part of the views and comments received and disclose the identity of the source in such manner as the Government considers appropriate, unless he/she requests any part of the views and comments and/or his/her identity be treated in confidence.

Copies of the consultation document are available at all District Offices, and can be accessed at the Security Bureau website at http://www.info.gov.hk/sb or the Government Information Centre website at http://www.info.gov.hk/eindex.htm. In an effort to reduce paper consumption, we encourage you to access the consultation document through these websites as far as possible.

For enquiries, please contact the Security Bureau at 2810 2593.

Contents

Summary

Background

Article 23 of the Basic Law stipulates that the Hong Kong Special Administrative Region (HKSAR) "shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government (CPG), or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies."

2. In line with the high degree of autonomy for the HKSAR as provided under Article 2 of the Basic Law, and the guarantee that the socialist system and policies shall not be practised in the HKSAR as set out in Article 5, national laws for the protection of essential interests of the state and national security have not been promulgated in Hong Kong. The HKSAR has both practical and legal obligations to implement Article 23.

3. Every nation has laws to protect its sovereignty, territorial integrity, unity and national security. It is universally accepted that a national owes allegiance to his state, in return for the protection afforded by the state against foreign aggression, and for the provision of a stable, peaceful and orderly society within which to carry out his pursuits. The intent of Article 23 is to prohibit by law acts that would undermine the sovereignty, territorial integrity, unity and national security of our country.

4. Some of the Article 23 offences are already dealt with under existing legislation. Parts I and II of the Crimes Ordinance (Cap. 200) deal with treason and sedition respectively. Where the protection of official information is concerned, the Official Secrets Ordinance (Cap. 521) deals with spying and unlawful disclosure of official information. The Societies Ordinance (Cap. 151) regulates, *inter alia*, the activities of and ties with foreign political organizations.

Guiding Principles

5. The Basic Law provides for the continuity of the common law system of the HKSAR, and it follows that the implementation of Article 23 should be effected through making use of existing legislation as far as possible. We have also taken into account the following guiding principles —

(a) the need to meet fully the requirements of the Basic Law, including Article 23 which stipulates the acts to be prohibited; and other relevant provisions in Chapter III, in particular Article 27 which guarantees certain fundamental rights and freedoms of Hong Kong residents, and Article 39 which stipulates, *inter alia*, that the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as applied to Hong Kong shall remain in force, and shall be implemented through the laws of the HKSAR;

(b) the need to protect adequately the State's essential interests, namely sovereignty, territorial integrity, unity and national security; and

(c) the need to ensure that all offences encompassed by local legislation to implement Article 23 are as clearly and tightly defined as appropriate, so as to avoid uncertainty and the infringement of fundamental rights and freedoms guaranteed by the Basic Law.

The Proposals

Treason

6. Treason means the betrayal of one's country. The interests to be protected against treason are the sovereignty, territorial integrity and security of the People's Republic of China (PRC) as a whole, and the PRC Government (PRCG). Treason offences under the Criminal Law of the PRC refer to those acts endangering the sovereignty, territorial integrity and security of the PRC committed by a PRC citizen in collusion with a foreign state, or with an organization or individual outside the territory of the PRC. Treason offences are essentially crimes of endangering state

security from without and the legal interest to be protected is the external status of the country.

7. Having studied the existing offence of treason, the Criminal Law of the PRC and the relevant provisions in other jurisdictions, we propose to update and improve the treason provisions in Part I of the Crimes Ordinance by restricting the substantive offences to —

(a) levying war by joining forces with a foreigner to —

(i) overturn the PRCG; or

(ii) compel the PRCG to change its policy or measures by force or constraint; or

(iii) put any force or constraint upon the PRCG; or

(iv) intimidate or overawe the PRCG; or

(b) instigating a foreigner to invade the PRC; or

(c) assisting by any means a public enemy at war with the PRC.

We also propose to codify the common law inchoate and accomplice offences of attempting, aiding and abetting, counselling and procuring the commission of substantive offences, and conspiring to commit the substantive offences; and also the offence of misprision of treason (i.e. failure to report a known offence of treason).

8. The current treasonable offences and offence of assaults on the sovereign are proposed to be repealed.

Secession

9. Preserving the territorial integrity and unity of a nation lies at the heart of the welfare of a nation. A breach of that integrity by force or other serious unlawful means will almost invariably lead to war. There is at present no offence termed "secession" in the HKSAR. To ensure the protection of territorial integrity and unity of our country, we propose to create a specific offence of secession, making it an offence to —

(a) withdraw a part of the PRC from its sovereignty; or

(b) resist the CPG in its exercise of sovereignty over a part of the PRC

by levying war, or by force, threat of force, or other serious unlawful means. The specific inchoate and accomplice offences of attempting, aiding and abetting,

counselling and procuring the commission of the substantive secession offence, and conspiring to commit the substantive offence, are also proposed.

Sedition

10. While it is universally accepted that the freedom of expression, in particular the right to voice dissenting opinions, is a fundamental right in modern democratic societies, the ICCPR specifically provides that the freedom of expression is not absolute and carries special duties and responsibilities. It is also widely recognized that the fundamental national security interests and stability of the state may sometimes be seriously endangered by verbal or written communications, including those conveyed electronically. Examples would include a speech inciting others to commit an offence endangering national security. For this reason, the freedom of expression may under the ICCPR be restricted on certain specified grounds, such as national security. Many jurisdictions, including the most liberal and democratic societies, retain sedition as a serious criminal offence. There is therefore a continued need for sedition offences to protect the state and key institutions from stability-threatening communications.

11. We propose to narrow the existing offence of sedition so that it is an offence —

(a) to incite others to commit the substantive offences of treason, secession or subversion; or

(b) to incite others to violence or public disorder that seriously endangers the stability of the state or the HKSAR.

12. While the sedition offence should cover one aspect of communications threatening the security and stability of the state, there is also a need to deal with seditious publications. However, offences targetting publications are a direct restriction on the freedom of expression, and should therefore be narrowly defined in order to comply with the necessity and proportionality criteria as required under the ICCPR. If the act of dealing with seditious publications is part of an act of incitement, it may be covered by the offence proposed in paragraph 11 above. However, if someone deals with seditious publications for some other reasons such as profit, while at the same time being fully aware that the publications would incite offences that endanger national security, such dealings should also be suitably regarded as criminal acts.

13. We propose to narrow the existing definition of "seditious publication". A publication should be regarded as seditious only if it would incite persons to commit the substantive treason, secession and subversion offences, and that it would be an offence, with knowledge or reasonable suspicion that a publication is seditious,

(a) to deal with that publication without reasonable excuse; or

(b) to possess that publication without reasonable excuse.

14. The mere expression of views, or mere reports or commentaries on views or acts, will not be criminalized, unless such expressions, reports or commentaries incite others to achieve a specified purpose through levying war, force, threat of force, or serious unlawful means. This is in compliance with Article 39 of the Basic Law, which enshrines protection of the freedom of expression.

Subversion

15. In the context of the protection of state institutions, subversion is commonly understood to involve overthrowing or undermining the constitution, the constitutionally established government, or system of government by internal or domestic elements. There is no specific offence of "subversion" in the laws of the HKSAR, although the violent overthrow of the government is covered by the existing treason offence of "levying war to depose the sovereign".

16. The targets of protection against subversion should be the basic system of the state and the PRCG. We propose to define the offence of subversion as —

(a) to intimidate the PRCG; or

(b) to overthrow the PRCG, or to disestablish the basic system of the state as established by the PRC constitution,

by levying war, or by force, threat of force, or by other serious unlawful means. The related inchoate and accomplice offences of attempting, aiding and abetting, counselling and procuring the commission of substantive offences, and conspiring to commit the substantive offences, are also proposed to be codified.

Theft of State Secrets

17. While open government and a high degree of transparency of government actions encourages participation in public affairs and enhances accountability, some information has of necessity to be kept confidential to protect the security of the country and the people, and to ensure the smooth running of government. There should therefore be legal sanctions against unauthorized access or disclosure of such information. At the same time, in order to safeguard freedom of expression and information, protection should only be afforded to truly deserving categories of information, and the means of protection should be clearly defined. We propose to retain the stipulations of the existing Official Secrets Ordinance, specifying that the targets of protection against the theft of state secrets should be —

(a) where spying is concerned, information which is likely to be useful to an enemy, and whose obtaining or disclosure is for a purpose prejudicial to the safety or interests of the PRC or the HKSAR;

(b) where unlawful disclosure is involved, information belonging to the following categories —

(i) security and intelligence information;

(ii) defence information;

(iii) information relating to international relations;

(iv) information relating to relations between the Central Authorities of the PRC and the HKSAR; and

(v) information relating to commission of offences and criminal investigations.

18. "Spying", which generally refers to the procurement of information useful to a foreign power and prejudicial to state security, is regarded worldwide as a serious national security offence meriting heavy punishment. In contrast, in order to preserve the balance between protecting state security and promoting open government, it is considered that unauthorized disclosure of official information should only be criminalised where the information is of a sensitive nature.

19. The Official Secrets Ordinance already provides a good foundation for protecting state secrets. Nonetheless, we propose to introduce a new offence of unauthorized and damaging disclosure of protected information obtained by unauthorized access.

Foreign Political Organizations

20. The existing provisions in the Societies Ordinance are sufficient to prohibit foreign political organizations from unduly influencing the local political process, and should be retained. On the other hand, political activities that pose genuine threats to national security are likely to be organized. Prohibition of such threatening political activities can be achieved to a large extent under the existing Societies Ordinance, which enables the Secretary for Security to declare an organization within the HKSAR unlawful where this is necessary on national security grounds.

21. To thwart organization of such activities that would genuinely endanger the state, it is proposed that an organization that endangers state security could be proscribed, but only where necessary under the standards of the ICCPR to protect national security, public safety and public order, and where one of the following circumstances exists —

(a) the objective, or one of the objectives, of the organization is to engage in any act of treason, secession, sedition, subversion, or spying; or

(b) the organization has committed or attempts to commit any act of treason, secession, sedition, subversion, or spying; or

(c) the organization is affiliated with a Mainland organization which has been proscribed in the Mainland by the Central Authorities in accordance with national law on the ground that it endangers national security.

22. We propose to make it an offence to organise or support the activities of proscribed organizations, or to manage or to act as an office-bearer for these organizations. An organization which has a connection with a proscribed organization might also be declared as unlawful where necessary under the standards of the ICCPR.

23. The decision to proscribe and to declare an organization unlawful would be subject to an appeal procedure. To ensure fairness, this procedure should involve two levels. First, points of fact may be appealed to an independent tribunal. Secondly, points of law may be appealed to the court.

Others

24. It is necessary to ensure that sufficient account is taken of the possible implications of technological developments and the vastly increased ease of communications on extra-territorial acts. Very broadly, we propose to claim jurisdiction over an offence only where a sufficient nexus with the HKSAR is present, i.e. either the act is committed by a HKSAR permanent resident overseas, or the act has a specified "link" with the HKSAR. At present, under the Criminal Jurisdiction Ordinance (Cap. 461), HKSAR courts already have jurisdiction over various offences of fraud and dishonesty even if they do not take place in Hong Kong, provided there is a specified link with the HKSAR. Also, at common law, an attempt, conspiracy or incitement to commit an offence in Hong Kong is an offence here. We propose to adopt these common law and statutory principles in defining what constitutes a "link".

25. Effective investigation powers are required to deal with threats to the security or interests of the State or the HKSAR. We propose to provide enhanced powers for dealing with the more serious of the Article 23 offences.

Chapter 1
Introduction

This paper sets out the Administration's proposals as to how Article 23 of the Basic Law[1] should be implemented.

I. Background

(a) Basic Law

1.2 The Basic Law is enacted in accordance with the Constitution of the People's Republic of China (PRC) to prescribe the systems to be practised in the Hong Kong Special Administrative Region (HKSAR), in order to ensure the implementation of the basic policies of the PRC regarding Hong Kong. It is premised on the "one country, two systems" principle, and provides for a high degree of autonomy for the HKSAR. There is provision for the HKSAR to have its own executive authorities and legislature (Article 3 of the Basic Law). Article 8 of the Basic Law provides for the preservation of the laws previously in force before the Re-unification. Chapter III of the Basic Law guarantees the fundamental rights and duties of HKSAR residents. These rights include, for example, equality before the law, freedom of the person, freedom and privacy of communication, freedom of movement and freedom of religious belief. The two Basic Law articles of more immediate relevance for our current purpose are Article 27 and Article 39. Article 27 provides that —

> "Hong Kong residents shall have freedom of speech, of the press and of publication; freedom of association, of assembly, of procession and of demonstration; and the right and freedom to form and join trade unions, and to strike."

[1] The full name of the Basic Law is "The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China". It was promulgated by decree of the President of the People's Republic of China on 4 April 1990.

Article 39 stipulates that —

> "The provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region.
>
> The rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article."

1.3 Article 19[2] of the International Covenant on Civil and Political Rights (ICCPR) guarantees both the right to hold opinions without interference and the right to freedom of expression. The right to hold opinions is an absolute one for which the ICCPR permits no exception or restriction. The right to freedom of expression is, however, subject to some permissible limitations, including those necessary for the protection of national security or of public order (*ordre public*). Moreover, such restrictions should be provided by law. Similar restrictions are also permissible under the Covenant in its protection of the freedoms of peaceful assembly and association.

(b) The concept of protection of the state

1.4 The protection of the state, the prevention of crimes posing serious threats to sovereignty and national security, is a concept of high importance both past

[2]The article reads —

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the right provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   (a) for respect of the rights or reputations of others;
   (b) for the protection of national security or of public order (ordre public), or of public health or morals.

and present. The constitutionally established government has the responsibility to exercise its powers in accordance with the law to protect its nationals from violent attack or coercion, whether by foreign invaders or domestic insurgents, to provide welfare for its nationals, and the peace and stability within which to pursue their individual pursuits. To achieve such aims, it is an essential and foremost task of every nation to afford their states special protection against crimes which threaten their well-being and hence indirectly the well-being of individuals who make up the states, ensuring the sovereignty, territorial integrity and safety of the nation. All countries around the world, including both common law and civil law jurisdictions, have express provisions on their statute books to prevent and punish crimes which endanger the sovereignty, territorial integrity and security of the state. Therefore, while nationals of a state enjoy the privilege of protection provided by it on the one hand, the individual citizens have a reciprocal obligation to protect the state by not committing criminal acts which threaten the existence of the state, and to support legislation which prohibits such acts on the other hand[3].

1.5 In the HKSAR, the Central Authorities provide us with effective protection against possible foreign aggression, and a stable framework within which the fundamental rights and freedoms of HKSAR residents can be realized. The HKSAR therefore has a duty to ensure that the sovereignty and security of the state is protected. Article 18 of the Basic Law provides that the national laws of the PRC (with limited exceptions) do not apply in the HKSAR. As a result, the relevant national laws to protect national security have not been applied to the HKSAR. In this context, Article 23 of the Basic Law provides that:

> "The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies."

[3] *The Canadian Law Reform Commission Working Paper 49* provides a good summary of this concept of a "reciprocal relationship" between the state and the individual, pointing out that "the reciprocal relationship between the individual and the State involves, on the part of the State, protection of the individual from violent invasion and oppression, and, on the part of the individual, a concomitant obligation to uphold the State and not betray it. Thus if the State affords such protection to the individual, betrayal of the State by the individual would be wrongful and deserving of criminal sanction." (*Canadian Law Reform Commission (LRC) Working Paper 49* (1986) pp.43–44.)

1.6 The above provisions illustrate that the manner in which the state's sovereignty and security are protected in the Mainland and in the HKSAR may legitimately differ. Indeed, this has to be the case given the different situations, including the respective legal framework, of the Mainland and the HKSAR. Therefore, the HKSAR has a duty to enact laws to protect national security in accordance with the common law principles as have been practised in Hong Kong, and such laws must comply with the Basic Law provisions protecting fundamental rights and freedoms.

II. Proposals to Implement Article 23 of the Basic Law

(a) Guiding principles

1.7 The HKSAR has to discharge its responsibility to protect the state by implementing Article 23 of the Basic Law, to ensure that national security is not threatened by serious criminal offences. In considering how best to implement Article 23, we have taken into consideration the following guiding principles —

(a) the need to fully implement the provisions of the Basic Law, including Article 23 which stipulates the acts to be prohibited; and other relevant provisions in Chapter III, particularly Article 27 and Article 39;

(b) the need to protect adequately the state's essential interests, namely, sovereignty, territorial integrity, unity, and national security; and

(c) the need to ensure that all offences encompassed by local legislation to implement Article 23 are as clearly and tightly defined as appropriate, so as to avoid uncertainty and the infringement of fundamental rights and freedoms guaranteed by the Basic Law.

(b) Existing legislation

1.8 Some of the offences referred to in Article 23 are already dealt with under existing legislation. Parts I and II of the existing Crimes Ordinance (Cap. 200) deal with treason and sedition.

1.9 Where the protection of official information is concerned, the Official Secrets Ordinance (Cap. 521) deals with espionage and the unlawful disclosure of official

information. The Societies Ordinance (Cap. 151) regulates, *inter alia*, the activities of and ties with foreign political organizations.

(c) Objectives of local legislation to implement Article 23

1.10 In recognition of the explicit stipulation in the Basic Law that the HKSAR should enact laws on its own to fulfill its obligation to protect the state from serious criminal offences, we consider that legislation implementing Article 23 should be focused on the objectives of protecting the sovereignty, territorial integrity, unity and security of our country[4]. Since the offences of "treason", "sedition", "spying" and "unlawful disclosure" of official information are already provided for in existing legislation, we intend to achieve the above objectives by making use of existing legislation where appropriate. Certain existing legislative provisions will need to be modernized. Regarding acts of secession and subversion, new offences of "secession" and "subversion" will need to be created. Express legislative provisions will also need to be introduced to prohibit the organization of activities endangering national security, the conduct of political activities by foreign political organizations or bodies in the HKSAR; and the establishment of ties between political organizations or bodies of the HKSAR and foreign political organizations or bodies.

(d) Compliance with international human rights covenants

1.11 On the other hand, the fundamental freedoms of expression, assembly and association, particularly the right to raise dissenting views regarding the governance of the state, are the cornerstones of a democratic society. In the course of drawing up the legislative proposals, we have paid careful attention to the provisions governing the protection of fundamental rights and freedoms in the international human rights covenants, namely, the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which are entrenched in the HKSAR by virtue of

[4] See Articles 51 to 55, Chapter 2 of the *Constitution of the People's Republic of China*, which broadly set out the obligations of citizens of the state in relation to protection of the state. It specifies that Chinese citizens should uphold the security and interests of the country. They have a duty to defend the Motherland and resist aggression. They should not infringe the interests of the state or rights and freedoms of others. They should safeguard the unification of the country and unity of different ethnic groups of the country. They should safeguard state secrets.

Article 39 of the Basic Law[5]. We have also studied thoroughly other human rights conventions and declarations and related literature, although they are not legally binding on the HKSAR. These include the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, and the Johannesburg Principles on National Security, Freedom of Expression and Access to Information[6], as well as the relevant jurisprudence. We are satisfied that the legislative proposals put forward are consistent with the principles governing limitation and derogation from the basic rights enshrined in the ICCPR, in that the measures proposed which would impose restrictions on such rights and freedoms are both necessary and proportionate[7] to the legitimate aims of protecting the sovereignty, territorial integrity, unity and security of our country.

(e) Other considerations

1.12 In the course of drawing up its legislative proposals, the Hong Kong Special Administrative Region Government (HKSARG) have studied extensively national security legislation in other jurisdictions, law reform proposals put forward in various countries and common law principles. The HKSARG have also examined carefully the views put forward on this subject, both before and after the Re-unification, including those submitted by the Hong Kong Bar Association, the Law Society of Hong Kong, Justice (Hong Kong Section of the International Commission of Jurists), the Hong Kong Human Rights Monitor, the Hong Kong Journalists Association, and various political parties and legislators.

[5]See, for example, Article 19 of the ICCPR which guarantees the right to freedom of speech, and Article 22 which guarantees the freedom of association.

[6]We note that the Siracusa Principles and the Johannesburg Principles are not yet widely accepted international norms. See, for example, *Human Rights Quarterly* 20.1 (1998) at 15.

[7]See, for example, *Handyside v United Kingdom* (1976) 1 EHRR 737 on the principles established by European jurisprudence.

Chapter 2

Treason

I. Current Laws : Summary

At present, Part I of the Crimes Ordinance deals with treason[8]. Under section 2, there are a number of acts of treason, each punishable with imprisonment for life. Taking into account the Interpretation and General Clauses Ordinance (Cap. 1) as amended by the Hong Kong Reunification Ordinance, the main heads of treason under this section are —

(a) killing, wounding or causing bodily harm to the sovereign[9] or imprisoning or restraining him/her;

(b) forming an intention to do any act in (a) above and manifesting such intention by an overt act;

(c) with various intents such as to compel the Central People's Government (CPG) or other competent authorities of the PRC[10] to change its measures, levying war against the PRC[11];

(d) instigating any foreigner to invade with force the PRC[12] or any of its territory; and

---

[8]The Chinese term for treason is "叛國" in Article 23, and "叛逆" in the existing Crimes Ordinance.

[9]The original term was "Her Majesty" as a person, to which there is no direct equivalent in post-Reunification Hong Kong.

[10]The original term was "Her Majesty", to which there is no direct equivalent in post-Reunification Hong Kong. According to the Interpretation and General Clauses Ordinance as amended by the Hong Kong Reunification Ordinance, the term "the Central People's Government or other competent authorities of the People's Republic of China" should be used instead.

[11]The original term was "Her Majesty". The term chosen here, i.e., "the People's Republic of China", is an alternative to "the Central People's Government or other competent authorities of the People's Republic of China", which is the strictly correct term. See note 10.

[12]The original term was "United Kingdom". The term "People's Republic of China" is used instead.

(e) assisting any public enemy at war with the PRC[13].

2.2 The Crimes Ordinance also provides, under section 3, for certain "treasonable offences", punishable by imprisonment for life. These offences involve forming an intention to —

(a) depose the sovereign;

(b) levy war against the PRC[14]; or

(c) instigate any foreigner with force to invade the PRC[15] or its territory,

and manifesting that intention by an "overt act" or by publishing any printing or writing.

2.3 Sections 3 and 4 impose various restrictions on (with certain exceptions) prosecution. Section 3(2) provides that no person convicted or acquitted of a treasonable offence should subsequently be prosecuted for treason under section 2 for the same acts. Section 4 provides that prosecutions must be commenced within three years after the offence is committed.

II. Considerations and Proposals

2.4 The existing practice, as set out in the relevant provisions of the Crimes Ordinance, of equating assaults on the sovereign as acts of treason has its origins in the days of monarchical rule and is no longer appropriate to the HKSAR. It is necessary to modernise the concept of "treason" and to bring it in line with the HKSAR's constitutional position as set out in the Basic Law.

2.5 A survey of the offence of treason in Mainland laws as well as overseas jurisdictions shows a common feature, namely the concept that treason involves the betrayal of one's country in collaboration with an external enemy. Such offences against the state are to be distinguished from other violent or unlawful acts instigated by internal insurgents, which we propose to deal with under the offence of "subversion". In the light of this guiding principle, we propose to amend the existing offence of treason in the following way —

[13] See note 11

[14] Ditto

[15] Ditto

(a) Offences against the person of the sovereign or head of state

2.6 For the HKSAR, the head of state is the President. However, equating attacks on the head of state as treason of the highest order is no longer appropriate under our country's present-day constitutional order. Thus we propose that paragraphs (a) and (b) of section 2(1) and the whole of section 5 (which stipulates the offence of assaults on the sovereign) of the Crimes Ordinance should be deleted.

(b) Levying war

2.7 Under section 2(1)(c) of the Crimes Ordinance, a person commits treason if he "levies war" against the state —

(a) with the intent to depose the sovereign; or

(b) in order by force or constraint to compel the CPG or other competent authorities of the PRC[16] to change its measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe the legislature.

No definition is given of "levying war". However, at common law, "levying war" has been held to include a riot or insurrection involving a considerable number of people for some general public purpose, but does not include a rising for a limited, local or private purpose[17].

2.8 The concept of protecting the sovereign as an individual is no longer appropriate under the constitutional situation of Hong Kong after Re-unification, and should therefore be removed. The use of force to overthrow, intimidate or overpower

[16] See note 10.

[17] A fuller exposition of the concept of levying war has been provided as follows —

> " 'War', here, is not limited to the true 'war' of international law, but will include any foreseeable disturbance that is produced by a considerable number of persons, and is directed at some purpose which is not of a private but of a 'general' character, e.g., to release the prisoners in all the gaols. It is not essential that the offenders should be in military array or be armed with military weapons. It is quite sufficient if there be assembled a large body of men who intend to debar the government from the free exercise of its lawful powers and are ready to resist with violence any opposition." *Kenny's Outlines of Criminal Law* (19th ed., 1966) p.398.

the PRC Government (PRCG)[18], on the other hand, should continue to be punishable as such acts clearly threaten the fundamental security of our country. Given the overriding principle discussed in paragraph 2.5 above, *the scope of provisions in paragraph (c) of section 2(1) of the Crimes Ordinance should be more tightly defined to refer only to levying war by joining forces with a foreigner with the intent to —*

(a) *overthrow the PRCG*; or

(b) *compel the PRCG by force or constraint to change its polices or measures*; or

(c) *put any force or constraint upon the PRCG*; or

(d) *intimidate or overawe the PRCG.*

(c) Instigation of foreigner to invade the country

2.9 An armed invasion is clearly a serious breach of the sovereignty, territorial integrity and security of the country. The offence of instigation of foreigners to invade the country should therefore be retained as a treason offence. We note, however, that at present the term "foreigner" is not defined in the Crimes Ordinance, and believe that it should be. In most cases, a foreign invader is the armed forces of a foreign country. There might however be cases where the invader is not under the direction of a foreign country or government, but consists of, for example, militias or mercenaries engaged by a hostile foreign entity. We propose that the term "foreigner" should be defined along the following lines — "armed forces which are under the direction and control of a foreign government or which are not based in the PRC". Thus *there should continue to be a treason offence along the lines of paragraph (d) of section 2(1) of the Crimes Ordinance, with the meaning of "foreigner" defined. The territory to be protected should be the entire territory of the state.*

(d) Assisting public enemy at war

2.10 According to case law, a public enemy is someone whose country is in a state of war with one's country. The state of war may be formally declared or may consist of

[18] In the context of this paper, the term "PRC Government" represents collectively the Central People's Government, and other state organs established under the Constitution.

armed conflicts to which sufficient publicity has been given, i.e. open hostilities. Any act done to strengthen the enemy or weaken one's country to resist the enemy counts as assistance.

2.11 A country will only go to war or engage in other forms of armed hostilities with another country when its essential interests are at stake. It would therefore be highly reprehensible for a person to assist a public enemy at war with his country, and the act is generally recognized as a form of treason in almost all jurisdictions. We propose *to retain this offence*. We propose also *to codify the case law position as summarized above*.

(e) Non-violent threats

2.12 In so far as a non-violent attack (e.g. electronic sabotage) is part of a larger planned operation by which foreign forces levy war or invade the territory of the state, it would be caught by the offences proposed in paragraphs 2.8 and 2.9.

(f) Inchoate or accomplice acts

2.13 We have considered carefully whether it is necessary to retain the special category of "treasonable offences" (see paragraph 2.2 above) to catch inchoate or preparatory acts. Treasonable offences were developed at a time before the law of attempt became generally applicable. They do not merely reflect the general inchoate offences, but are based on "forming an intention" and "manifesting that intention by an overt act", and could therefore be rather wide. In view of the seriousness of the offences in question, we propose *to provide expressly for statutory offences for inchoate and accomplice acts, i.e. attempting, conspiring, aiding and abetting, counselling and procuring the commission of the substantive treason offences*[19] (incitement to treason, one of the inchoate offences, will be dealt with in Chapter 4). Subject to this, *treasonable offences, i.e. section 3 of the Crimes Ordinance, should no longer be retained*.

[19] Under our present law, attempting or conspiring with others to commit a substantive offence (except conspiracy to defraud) is a crime under sections 159A and 159G of the Crimes Ordinance. Under section 89 of Criminal Procedure Ordinance (Cap. 221), any person who aids, abets, counsels or procures the commission by another person of any offence shall be guilty of the like offence. Nevertheless, that provision is procedural in nature. Strictly speaking, other inchoate or accomplice acts are common law crimes.

(g) Misprision of treason

2.14 At present, misprision of treason is a common law offence. It is committed when a person knows that another person has committed treason but omits to disclose this to the proper authority within a reasonable time. In view of the possible severe consequences of such suppression of information to national security and to provide for more certainty as regards what constitutes the "proper authority", we propose *to make misprision of treason a statutory offence*. This should cover failure to take reasonable steps within a reasonable time to inform the Police of the fact that another person has committed treason.

(h) Compounding treason

2.15 Compounding treason is another common law offence. It is committed by anyone who agrees for value to abstain from prosecuting a person who has committed treason. Where the act involves misprision as well, it will be caught by the proposed statutory offence for misprision already. Where it involves the mere omission of prosecution for value, we would suggest that it be dealt with under anti-corruption laws and that *no specific offence need to be created for the purpose.*

(i) Application within the HKSAR

2.16 In many jurisdictions, it is considered that only someone who owes allegiance to the state or enjoys its protection may commit treason against it[20]. It would be inappropriate to charge a member of an invading foreign army with treason, for example. On the other hand, case law indicates that allegiance does not necessarily have to be based on nationality[21]. Indeed, some law reform proposals favour applying

[20] See UK House of Lords decision in *Joyce v DPP* [1946] 1 All ER 186. Lord Jowitt, L.C., said at 189–190, *inter alia*,"The question whether a man can be guilty of treason to the King has been treated as identical with the question whether he owes allegiance to the King ... It must be asked, whether there was not such protection still afforded by the sovereign as to require of him the continuance of his allegiance."

[21] Lord Jowitt, L.C., also said, at 189 of the decision of the case of note 20 above, that "Allegiance is owed to their Sovereign Lord the King by his natural-born subjects; so it is by those who, being aliens, become his subjects by denisation or naturalization...; so it is by those who, being aliens, reside within the King's realm..."

the offence of treason to all those who enjoy protection by the state[22]. We agree with the latter approach, as it is only reasonable that protection enjoyed by any person by being present in a state, regardless of his nationality, should be reciprocated at least by abstention from actions endangering the vital interests of the state. Therefore, *the treason offences should apply to all persons who are voluntarily in the HKSAR.*

(j) Extra-territorial application

2.17 Many jurisdictions provide that treason offences have extra-territorial application only to those who owe allegiance to the country. As noted above, modern legal thinking favours basing allegiance on the concept of protection. On that basis, if a country's national or someone under the continuing protection of the country commits an act of treason in a place outside his country, he would still be triable by his country. The rationale of such an approach is that it would be anomalous if the offender should be left scot-free on his return to the country even if he is known to have committed an act of treason overseas (e.g. assisting an enemy at war with the country), the most serious of all offences.

2.18 The question lies in defining who enjoys the protection of the HKSAR and hence by extension that of the state for the purpose of extra-territorial application. One possibility is to confine such application to those who are entitled to consular protection and assistance of the representative offices of the PRC whilst overseas. The idea is that for those who are not so entitled, the reciprocity argument no longer applies. However, this arrangement might give rise to anomalies. For example, a non-Chinese national who is permanently resident in and hence under the protection of the HKSAR (and hence the state), but is not entitled to Chinese consular protection or assistance overseas because of his foreign nationality, could repeatedly go overseas to conspire with a foreign government to launch an invasion of the Mainland from the HKSAR, and would not be caught by the offence of treason on return to the HKSAR.

---

[22] See, for example, Canadian Law Reform Commission, *Working Paper 49: Crimes Against the State* (1986) at 56-57 : "Anyone voluntarily present in Canada and benefiting from Canada's protection (whether he is a Canadian citizen, landed immigrant, visitor, and so forth) would be liable for crimes against the state committed in Canada." English Law Commission, *The Law Commission Working Paper No. 72* (1977) at paragraph 54 : "any person, including an enemy alien, who is voluntarily in the UK ... in respect of any act of treason in the UK ... but excluding any foreign diplomatic representative or a member of an invading or occupying force." Australian Committee on Review of Commonwealth Criminal Law, *Fifth Interim Report* (1991) at paragraph 31.34 : "any person (including an enemy alien) voluntarily in Australia."

The technical and temporary "absence" of a permanent resident from Hong Kong should not outweigh the fact that the person's family and properties in the HKSAR continue to enjoy protection by the HKSAR. In addition, many of his statutory rights, for example, his right of abode, continue to be protected even when he is temporarily outside the HKSAR. On balance, therefore, it would seem more logical *to subject all HKSAR permanent residents to the extra-territorial application of treason offences in respect of their actions outside the HKSAR.*

Chapter 3

Secession

I. Current Laws

There is no specific offence termed "secession" under existing laws in the HKSAR[23].

II. Considerations and Proposals

(a) General

3.2 Secession is defined by political scientists as "the formal withdrawal from an established, internationally recognized state by a constituent unit to create a new sovereign state"[24]. Generally speaking, secession involves the refusal on the part of a distinct, constituent community to recognize the sovereignty of the existing political authority, and to create a new independent state with its own geographical territory, thereby necessitating a change in internationally recognized boundaries. The law on acts of secession in individual jurisdictions is determined by the constitutional situation of individual states. Unitary states do not provide for the possibility of secession in their constitutions. For example, Article 52 of the Constitution of our country specifically provides that all citizens of the PRC have the responsibility of safeguarding national unity. Federal states, on the other hand, may have a constitutional mechanism for a constituent part of the federal union to secede

[23] It may be argued that secession is covered by the existing section 2(1)(c)(i) of the Crimes Ordinance (Cap. 200), but since the term "Her Majesty's other dominions" is peculiar to the United Kingdom and has not been dealt with in section 6 of the Hong Kong Reunification Ordinance, there is no certainty that the term automatically becomes "any part of Chinese territory" after the Re-unification.

[24] See Viva Ona Bartkus, *The Dynamic of Secession* (Cambridge: Cambridge University Press, 1999).

from the union. However, to our knowledge, no federal states allow the **unilateral** secession of their constituent parts. For example, the Supreme Court of Canada has declared that neither the provincial government of Quebec nor the Quebec legislature has a legal right under Canadian constitutional law or under international law to unilaterally secede Quebec from Canada[25].

3.3 Some jurisdictions have expressly outlawed secession. For example, in France, the country's territorial integrity is part of the fundamental interests of the nation protected by the law on treason[26]. In Germany, the offence of high treason includes attempts to detach a part from the territory of the Federal Republic[27]. Pakistan also has specific offences against depriving the country of its sovereignty over any part of its territory[28].

3.4 The actual development of the law on secession of individual countries is determined to a large extent by the history and special circumstances of the country in question. Where there are, within a particular country, distinct, discontented communities associated with a geographical territory in respect of which they intend to establish new independent states, the country in question has a pressing need to formulate clear policies and laws on secessionist attempts. The need for specific legislation to proscribe secessionist attempts or acts is particularly acute where such actions have become violent or could result in the fragmentation of a country, or threaten its unity or peace.

(b) The importance of countering secessionist activities

3.5 Nations provide their nationals, and others who lawfully reside in the nations, protection from foreign attacks or coercion, stability, peace and security, apart from other benefits. Preserving the territorial integrity of the nation lies at the heart of the

[25] In its 1998 ruling, the Supreme Court of Canada also confirmed that the secession of any Canadian province would only be lawful with an amendment to the constitution of Canada. Such an amendment would in turn require negotiations in relation to secession involving at least all the provincial governments and the federal government.

[26] See Title I, Book IV of the *French Penal Code* regarding the threats against the fundamental interests of the nation.

[27] See sections 81 and 92 of the *German Penal Code of 1871*. Separation of constituent territories from Germany is regarded as high treason which undermines the continued existence of the state.

[28] See section 121A, Chapter VI of the *Pakistan Penal Code*.

welfare of a nation, and is a top priority of most countries. Breach of that integrity by force, threat of force or other serious unlawful means almost invariably leads to war, and any efforts to tamper with territorial integrity should be discouraged. For our country, we strongly agree that upholding sovereignty, territorial integrity and unity, and the "One-China" Principle[29] is crucial to the well-being of our country as a whole. We should as a matter of principle staunchly resist moves to break up the nation.

(c) Secessionist activities using violent or other unlawful means

3.6 Acts undermining the territorial integrity of a nation by levying war, use of force, threat of force or other serious unlawful means threaten the unity and underlying security of a country, and are prohibited in one way or another in all jurisdictions. In view of the reprehensible nature of such acts threatening the fundamental well-being of a country, they need to be severely dealt with. For this reason, in line with the practice of many countries, we propose to create specific offences relating to secession attempts where they are undertaken by levying war, force, threat of force or other serious unlawful means. In sum —

(a) *withdrawing a part of the PRC from its sovereignty*; or

(b) *resisting the CPG in its exercise of sovereignty over a part of China,*

by levying war, use of force, threat of force or by other serious unlawful means should be outlawed by the offence of secession.

3.7 To avoid casting the net too wide and including relatively minor offences as secession, the term "serious unlawful means" should only refer to offences of a grave nature. We propose to further elaborate the term to mean any of the following criminal actions taken for the purpose of secession —

(a) serious violence against a person;

(b) serious damage to property;

(c) endangering of a person's life, other than that of the person committing the action;

[29] See Taiwan Affairs Office & Information Office, State Council, *The One-China Principle and the Taiwan Issue* (February 2000).

(d) creation of a serious risk to the health or safety of the public or a section of the public;

(e) serious interference or serious disruption of an electronic system; or

(f) serious interference or serious disruption of an essential service, facility or system, whether public or private.

Adequate and effective safeguards should also be in place to protect the freedoms of demonstration and assembly, etc. as guaranteed by the Basic Law, including peaceful assembly or advocacy.

(d) Organization or support of secessionist activities

3.8 In the HKSAR, because of our proximity to the Mainland, individuals or groups of individuals could become involved in organizing and supporting secessionist activities on the Mainland. Such activities, which involve making use of Hong Kong's free and open environment as a base against national security and territorial integrity, should be prohibited. Any secessionist activities against our country would likely involve some form of organization. To deal with such activities, we will discuss the proscription of organized secessionist activities in Chapter 7.

(e) Inchoate or accomplice acts

3.9 In addition to actual acts of secession, the related inchoate and accomplice acts should be dealt with. Given the very serious threat of secession to the country, we propose *to provide for statutory offences in respect of attempting and conspiring to commit the substantive secession offences.* Similarly, *the general law regarding aiding and abetting, and counselling and procuring the commission of offences should also be codified as statutory offences where secession is concerned.* As with the approach in dealing with the treason offences, incitement to secession will be dealt with in Chapter 4.

(f) Extra-territorial application

3.10 Regarding the territorial application of the secession offences, it is considered that, as for treason offences, those who enjoy the protection of the HKSAR and

hence the state should have a reciprocal duty to safeguard the national security and territorial integrity of the state. In other words, *secession offences should apply to all persons who are voluntarily in the HKSAR, and have an extra-territorial effect on HKSAR permanent residents in respect of their actions outside the HKSAR.*

3.11 Furthermore, commission of secession, a major crime against the state, is not limited to those owing "allegiance" to it. We need to avoid the anomalous situation that a foreigner who is known to have plotted a major crime against the state whilst outside the HKSAR being left untouched when he transits through or visits the HKSAR. In international law, well-established principles which are applicable to such situations include —

(a) the principle of objective territoriality, which allows a place to assume jurisdiction where the result or effects of the crime are sustained in that place[30]; and

(b) the protective principle, which applies if the conduct abroad threatens the security, integrity or the proper functioning of the government of the place initiating the prosecution[31].

3.12 Presently, at common law, an attempt, conspiracy or incitement to commit an offence in Hong Kong is an offence here even though it took place elsewhere. Furthermore, under the Criminal Jurisdiction Ordinance (Cap. 461), HKSAR courts have jurisdiction over various offences of fraud and dishonesty even if they do not take place in the HKSAR, as long as a specified "link"[32] with the HKSAR is

---

[30] See Geoff Gilbert, *Aspects of Extradition Law* (Kluwer Academic Publishers, 1991) p.41.

[31] See Karl M. Meessen (ed.), *Extraterritorial Jurisdiction in Theory and Practice* (Kluwer Law International Ltd., 1996) at 109.

[32] The Criminal Jurisdiction Ordinance provides that the HKSAR courts have jurisdiction over offences included in the Ordinance in the following cases —

(a) if any of the conduct (including an omission) or part of the results that are required to be proved for conviction of the offence takes place in the HKSAR; or

(b) if there has been an attempt to commit the offence in the HKSAR, whether or not the attempt was made in the HKSAR or elsewhere and irrespective of whether it had an effect in the HKSAR; or

(c) if there has been an attempt or incitement in the HKSAR to commit the offence elsewhere; or

(d) if there has been a conspiracy to commit in the HKSAR the offence wherever the conspiracy is formed and whether or not anything is done in the HKSAR to further or advance the conspiracy; or

established. In view of the considerations and the international law principles on extra-territoriality above, we consider that these common law and statutory approaches should be adopted to apply to all persons who are not HKSAR permanent residents for their actions outside the HKSAR in respect of the secession offences. Thus, in addition to the application in paragraph 3.10 above, *secession offences should have an extra-territorial effect on all persons in respect of their actions outside the HKSAR, if such actions have a "link" with the HKSAR, either under the above common law principle or as set out in the Criminal Jurisdiction Ordinance.*

(e) if there has been a conspiracy in the HKSAR to do elsewhere that which if done in the HKSAR would constitute the offence, provided that the intended conduct was an offence in the jurisdiction where the object was intended to be carried out.

Chapter 4

Sedition

I. Current Laws : Summary

Sections 9 to 14 of Part II of the Crimes Ordinance deals with what may broadly be categorized as seditious acts. The following summary of these sections has taken into account the provisions of the Interpretation and General Clauses Ordinance as amended by the Hong Kong Reunification Ordinance.

4.2 Sections 9 and 10 of the Ordinance deal with acts done with a "seditious intention". The latter term is defined in section 9(1) of the Ordinance as an intention to —

(a) bring into hatred or contempt or to excite disaffection against the CPG or other competent authorities of the PRC[33] or the HKSARG or the government of any part of the sovereign's dominions; or

(b) excite Chinese nationals or HKSAR inhabitants[34] to attempt to change, otherwise than by lawful means, any other legally established matter in the HKSAR; or

(c) bring into hatred or contempt or excite disaffection against the administration of justice in the HKSAR; or

(d) raise discontent or disaffection among Chinese nationals or HKSAR inhabitants[35]; or

(e) promote feelings of ill-will and enmity between different classes of population of the HKSAR; or

[33] The original term was "the person of Her Majesty". See note 10.

[34] The original term was "Her Majesty's subjects or inhabitants of Hong Kong".

[35] Ditto

(f) incite persons to violence; or

(g) counsel disobedience to law or to any lawful order.

4.3 Under section 10 of the Ordinance, it is an offence to —

(a) do or attempt to do, or make any preparation to do, or conspire with any person to do any act with a seditious intention;

(b) utter any seditious words;

(c) print, publish, sell, offer for sale, distribute, display or reproduce any seditious publication (i.e., a publication with seditious intention); or

(d) import any seditious publication.

This offence is punishable on first conviction by a fine of $5,000 and imprisonment for two years.

4.4 It is also an offence, punishable on first conviction by a fine of $2,000 and imprisonment for one year, for a person to have any seditious publication in his possession without lawful excuse. Section 14 further provides for the removal of seditious publications. In addition, section 32(1)(h) of the Post Office Ordinance (Cap. 98) provides that no person shall post any seditious publication. The offence is punishable by a fine of $20,000 and imprisonment for six months.

4.5 The Crimes Ordinance expressly provides that an act, speech or publication is not seditious by reason only that it intends to —

(a) show that the CPG or other competent authorities of the PRC[36] has been misled or mistaken in any of its measures; or

(b) point out errors or defects in the government or constitution of the HKSAR or in its legislation or in the administration of justice with a view to remedying such errors or defects; or

(c) persuade Chinese nationals or HKSAR inhabitants[37] to attempt to procure by lawful means the alteration of any legally established matter; or

[36] The original term was "Her Majesty". Please see note 10.

[37] Please see note 34.

(d) point out, with a view to their removal, any matters that are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of the HKSAR.

4.6 In terms of procedural safeguards, section 11 provides that prosecution for the offence of sedition must be brought within six months of the commission of the offence, and be with the written consent of the Secretary for Justice. Section 12 further provides that no person shall be convicted of an offence of sedition on the uncorroborated testimony of one witness.

4.7 Sections 8 and 13 of the Crimes Ordinance deal with applications for search warrants in respect of premises for evidence of incitement to disaffection and sedition offences. The application has to be made to a judge or magistrate.

4.8 The offences in the Crimes Ordinance relating to seditious activities are based on a common law offence. It has been clearly established that the common law offence is committed only if the person with the seditious objective intends to achieve that objective by causing violence or creating public disorder or public disturbance. However, that element of the common law offence is not set out in the Crimes Ordinance and, according to a Hong Kong case decided in 1952, such legislation is not to be construed according to the common law but on its own terms[38]. But this judicial decision must now be viewed in the light of the constitutional guarantee of freedom of speech in Article 27 of the Basic Law, and Article 19 of the ICCPR as applied to the HKSAR by Article 39 of the Basic Law. It is therefore highly likely that the court will read into the legislation the common law element.

II. Considerations and Proposals

(a) Need for crimes of sedition

4.9 We are aware of doubts as to the place that crimes of sedition should occupy in a modern criminal code. It has been argued, for example, that sedition offences could be abused to curb freedom of expression or persecute political dissenters, especially if the offences are cast widely. Some have also argued that, if it is required

[38] *Fei Yi-ming v R* (1952) 36 HKLR 133.

that the intention to incite violence or public disorder or disturbance be present (paragraph 4.8 above), the defendant would likely have committed incitement to commit other offences, e.g. those against the person or property, or those against unlawful assembly. It should therefore be sufficient for his misconduct to be dealt with by these latter offences, and no specific offence of sedition should be necessary.

4.10 While it is universally accepted that the freedom of expression, in particular the right to voice dissenting opinions, is a fundamental right in modern democratic societies, it is also widely recognized that the fundamental national security interests of the state and the stability of the state may sometimes be seriously endangered by verbal or written communications, including those conveyed electronically. Examples would include a speech inciting others to commit an offence endangering the national security interests of the state, or a publication calling on the people to attack the forces of law and order. The possible serious consequences of seditious acts to the security and stability of lawfully established government and hence to society in general have been recognized for centuries and cannot be under-estimated. Experience round the world, and the retention of sedition as a serious criminal offence in many jurisdictions, argue strongly in favour of retaining sedition as a specific offence against the state, in order to protect the security and stability of the state and the HKSAR, and hence society at large. This would be in keeping with the practice adopted by the most liberal and democratic jurisdictions. The crux lies in striking a balance between proscribing such highly damaging communications and protecting the freedom of expression.

(b) The offence of sedition

4.11 It would be useful to note that the term "sedition" is rendered as "煽動叛亂" in the Chinese version of Article 23 of the Basic Law. "煽動" is normally understood as "incite", "fan" or "instigate", while "叛亂" as "rebellion" or "armed rebellion". "煽動叛亂" may therefore be translated as "incitement to [armed] rebellion". "Sedition", in common law jurisdictions, is commonly understood to involve incitement of resistance to lawful authority[39]. Thus, the two terms carry essentially similar meanings. Under both Mainland laws and Hong Kong's legal

[39]At common law, "disturbing constituted authority" is a necessary element for the offence. "Constituted authority" refers to "some person or body holding public office or discharging some public function of the state". See *R v Chief Metropolitan Stipendiary Magistrate, ex p. Choudhury* [1991] 1 Q.B. 429.

system, the offence of "sedition" involves incitement to actions, armed or otherwise, against lawful authority.

4.12 The sedition offence under Article 23 of the Basic Law should focus on serious cases which endanger the security or stability of the state, instead of isolated incidents of limited violence or disturbance of public order. The existing provisions under the laws of Hong Kong are sufficient to deal with ordinary cases of violence or disturbance of public order.

4.13 The commission of treason, secession and subversion offences are obviously the most serious type of attacks on lawful authority and fundamental national security interests. As discussed earlier, the act of inciting others to commit these substantive offences is itself already an offence under common law. Nevertheless, we consider it necessary to underscore the seriousness of such acts by codifying these incitement offences in the context of sedition. Similarly, the overall stability of the state and that of the HKSAR are vital to the security of the state and the implementation of the "one country, two systems" principle, and merit protection by specific provisions. Thus, we propose *to provide that inciting others —*

(a) *to commit the substantive offence of treason, secession or subversion*; or

(b) *to cause violence or public disorder which seriously endangers the stability of the state or the HKSAR*

amounts to sedition.

4.14 Therefore, the mere expression of views, or mere reports or commentaries on views or acts of others, will not be criminalized, unless such expression, report or commentary incites others to achieve a purpose of endangering the state through levying war, force, threat of force or serious unlawful means, or incites violence or public disorder which seriously endangers the stability of the state or the HKSAR. We are satisfied that our proposals are in keeping with Article 19 of the ICCPR, which guarantees the right to freedom of expression, subject to necessary restrictions for the purpose of, inter alia, the protection of public order and national security.

(c) Seditious publications

4.15 The acts of dealing with a seditious publication, covered by section 10 of the Crimes Ordinance, are conceptually different in nature from the crime of incitement.

There is a case for dealing with them separately. Offences targeting publications, when the persons involved may not have the intention to incite offences against the state, are a direct restriction of freedom of expression, and should therefore be narrowly defined in order to comply with the necessity and proportionality criteria as required under the ICCPR.

4.16 We therefore propose to restrict the scope of the offence to publications that would incite the crime of treason, secession or subversion only. If the act of dealing with seditious publications is part of an act of incitement, it may be covered by the offence proposed in paragraph 4.13 above. In addition, if, for example, someone prints a publication for some other reasons such as profit, while being fully aware that the publication would incite offences that endanger national security, we believe that such dealings should also be suitably regarded as criminal acts.

4.17 We propose therefore to create a separate offence of dealing with seditious publications. To protect the unwitting agent, we propose that the offence should include an element of knowledge or reasonable suspicion. Thus *it should be an offence if a person —*

(a) *prints, publishes, sells, offers for sale, distributes, displays or reproduces any publication*; or

(b) *imports or exports any publication,*

knowing or having reasonable grounds to suspect that the publication, if published, would be likely to incite others to commit the offence of treason, secession or subversion. To cater for cases where such publications are dealt with under legitimate circumstances, such as academic research or news reporting, *a defense of "reasonable excuse" should be provided.*

4.18 *There should continue to be a separate offence of possession of seditious publications with the mental element and defence that are proposed in paragraph 4.17 above.* With this offence and that in paragraph 4.17 in place, *there should be no need to retain section 32(1)(h) of the Post Office Ordinance regarding the posting of seditious publications.*

(d) Safeguards

4.19 Strictly speaking, with the incorporation of the intention to cause violence or create public disorder as described above in the definition of the sedition offence, *the*

current defences in section 9 of the Crimes Ordinance (please see paragraph 4.5) are not absolutely necessary. However, for the purpose of reassurance, we propose that *they should be retained.*

4.20 Currently, *section 12 of the Crimes Ordinance* provides that no person shall be convicted of sedition offences on the uncorroborated testimony of one witness. This requirement for corroboration goes against the general principle that it is the quality and not the quantity of evidence that should count in a criminal trial. The approach in most common law jurisdictions has been to move away from this requirement. At the same time, we recognize that a similar requirement still exists in the sedition laws of many common law jurisdictions such as Canada, Australia and New Zealand. The paucity of sedition cases brought to the court in recent years also means that there is not much empirical experience to support either its removal or its retention. For the sake of reassurance, therefore, we propose that *the existing requirement should be retained.*

(e) Extra-territorial application

4.21 Sedition involves the act of inciting others to commit crimes against the state and the HKSAR. *Prima facie*, the objective territoriality and protective principles as discussed in Chapter 3 should similarly apply. In addition, at common law English courts have jurisdiction over an incitement offence committed abroad provided that it was intended to result in the commission of an offence in England[40]. This being so we suggest that *the HKSAR should have jurisdiction over offences of sedition committed by an HKSAR permanent resident anywhere. In the case of other persons the HKSAR should have jurisdiction over extra-territorial conduct only if it is intended or likely to incite the offence of treason, secession or subversion, or incite violence or public disorder as described in paragraph 4.13, in the HKSAR, or has a "link" with the HKSAR of the kind set out in the Criminal Jurisdiction Ordinance*[41]. In other cases, it should not be subject to criminal sanctions under Hong Kong laws.

[40] See *DPP v Stonehouse* [1978] AC 55, [1977] 2 All ER 909, HL; *Somchai Liangsiriprasert v Government of the USA* [1991] 1 AC 225, [1990] 2 All ER 866, and *Archbold — Criminal Pleading, Evidence and Practice* (London: Sweet & Maxwell Limited, 2002) section 33-74.

[41] See paragraph 3.12 of Chapter 3.

Chapter 5
Subversion

I. Current Laws

In the context of the protection of state institutions, subversion is commonly understood to involve overthrowing or undermining, either overtly or covertly, the constitution, the constitutionally established government, or system of government by internal or domestic elements. There is no specific offence termed "subversion" under existing laws of the HKSAR. However, acts aimed at overthrowing the government are covered by existing provisions on treason, for example, that on levying war to "depose the sovereign".

II. Considerations and Proposals

(a) General

5.2 Many jurisdictions have law against acts of overthrowing or undermining the constitutionally established government, the constitution and/or the system of government. The details vary. For instance, in Canada, it is treason to use force or violence for the purpose of overthrowing the government[42]. In Australia, it is treachery to overthrow the constitution of Australia by revolution or sabotage; or to overthrow by force or violence the established government[43]. Similarly, in Germany, a person commits an offence of high treason against the federal government if, by violence or the threat of violence, he undermines the stability of Germany or changes the system of government established by the constitution[44].

[42] See section 46(2)(a) of the *Canadian Criminal Code*.

[43] See section 24AA at Part 2 of the *Australian Crimes Act 1914*.

[44] See section 81 of the *German Penal Code of 1871*.

5.3 Although there are not many examples of offences termed "subversion" in common law jurisdictions, the concept is by no means alien. For example, the UK government has adopted the following definition of the term "subversion" —

> "actions which are intended to overthrow or undermine Parliamentary democracy by political, industrial or violent means"[45].

In Canada, the term "subversive or hostile activities" is defined as, inter alia, "activities directed toward accomplishing government change within Canada or foreign states by the use of or the encouragement of the use of force, violence or any criminal means"[46].

(b) The offence of "subversion"

5.4 The essence of any subversion offence should therefore be the protection of the basic system of government and the constitutionally or legally established government.

5.5 The basic system of the state, as well as the PRCG, which includes the National People's Congress, the Central People's Government and other state organs, are the key institutions of the state. Overthrowing or undermining them by illegal means should be viewed most seriously. Conceptually such acts are akin to treason, except that these acts may or may not be perpetrated in collusion with foreign

[45] Protection of national security against threats from such activities is one of the functions spelled out for the UK Security Service (MI5) in the UK Security Service Act. According to the official website of the MI5, "The Security Service Act does not use the term 'subversion', but provides a definition of it by reference to *actions which are intended to overthrow or undermine parliamentary democracy by political, industrial or violent means*."

[46] Other meanings of the term "subversive or hostile activities" under the Canadian Access to Information Act are as follows —

(a) espionage against Canada or any state allied or associated with Canada;

(b) sabotage;

(c) activities directed toward the commission of terrorist acts, including hijacking, in or against Canada or foreign states;

(d) activities directed toward gathering information used for intelligence purposes that relates to Canada or any state allied or associated with Canada; or

(e) activities directed toward threatening the safety of Canadians, employees of the government of Canada or property of the government of Canada outside Canada.

elements. Moreover, we are keenly aware that acts of subversion are not confined to acts involving the use of force. Indeed, with the rapid development of technology, a serious threat to the country's security and stability might come from illegal acts employing non-violent means, such as electronic sabotage. We therefore propose *to make it an offence of subversion —*

(a) *to intimidate the PRCG; or*

(b) *to overthrow the PRCG or disestablish the basic system of the state as established by the Constitution,*

by levying war, use of force, threat of force, or other serious unlawful means[47].

5.6 As with secession (see Chapter 3), it is imperative to ensure that the HKSAR will not be used as a base for supporting subversive activities in or against the Mainland. The means to proscribe organized activities aimed at endangering national security will be discussed in Chapter 7.

(c) Inchoate or accomplice acts

5.7 In addition to the substantive subversion offence, inchoate offences such as attempts to commit subversion, and accomplice offences such as aiding and abetting in relation to the substantive offence should be dealt with. In view of the serious consequences of such offences, we propose *to create statutory offences of attempting, conspiring, aiding and abetting, and counselling and procuring the commission of the subversion offence.*

(d) Extra-territorial application

5.8 We consider that the principles relating to extra-territorial conduct proposed for the secession offences (Chapter 3) should also apply to subversion offences. Thus subversion offences should *apply to all persons who are voluntarily in the HKSAR, and have an extra-territorial effect on —*

[47] The term "serious unlawful means" should have a similar meaning as that proposed in respect of secession, including the adequate and effective safeguards of guaranteed rights, described in paragraph 3.7.

(a) *HKSAR permanent residents in respect of their actions outside the HKSAR; and*

(b) *all other persons in respect of their actions outside the HKSAR, if such actions have a "link" with the HKSAR either under the common law principle or as set out in the Criminal Jurisdiction Ordinance.*

Chapter 6

Theft of State Secrets

I. Current Laws : Summary

At present, state or government secrets are protected by the Official Secrets Ordinance (Cap. 521). There are two main categories of offences under the Ordinance — espionage and unlawful disclosure of protected information.

(a) Espionage

6.2 Under section 3 (on spying), a person commits an offence if he, *for a purpose prejudicial to the safety or interests of the PRC or the HKSAR*[48] —

(a) approaches, inspects, passes over or is in the neighbourhood of, or enters, a "prohibited place"[49];

(b) makes a sketch, plan, model or note that is calculated to be or might be or is intended to be directly or indirectly useful to an enemy; or

(c) obtains, collects, records or publishes, or communicates to any other person, any secret official code word or password, or any sketch, plan, model or note, or other document or information, that is likely to be or might be or is intended to be directly or indirectly useful to an enemy.

[48] The original term was "the United Kingdom or Hong Kong".

[49] Section 2(1) of the Official Secrets Ordinance provides a long definition of the term "prohibited place". It includes, for example, any work of defence, arsenal, naval or air force establishment of the government; any place for building or storing munitions for the government; any place declared to be a prohibited place by the Chief Executive; and any railway, road, gas, water or electricity works declared to be a prohibited place.

6.3 Under section 4, it is an offence to harbour a person who has committed or is about to commit a section 3 offence (paragraph 6.2 above).

6.4 Under section 5, it is an offence for a person to be involved in any falsification of statements, forgery or unauthorized use of uniforms etc. for the purpose of gaining admission to a prohibited place, or for any other purpose prejudicial to the safety or interests of the state or the HKSAR.

6.5 Section 6 prohibits the unauthorized use of official documents for any purpose prejudicial to the safety or interests of the state or the HKSAR.

6.6 A person convicted under section 3 is punishable by imprisonment for 14 years. For other offences, the penalty is imprisonment for 2 years on conviction on indictment or a fine at level 4 and imprisonment for 3 months on summary conviction.

(b) Unlawful disclosure

6.7 Section 13 deals with breaches by *members of the security and intelligence services*. It is an offence for any such member to disclose, without lawful authority, any information, document etc. relating to security or intelligence that is or has been in his possession by virtue of his position or in the course of his work.

6.8 *A public servant or a government contractor* commits an offence if he, without lawful authority, makes a *damaging disclosure* of any information in his possession by virtue of his position, that relates to security or intelligence (section 14), defence (section 15) or international relations (section 16). The circumstances constituting a damaging disclosure vary depending on the nature of the information in question. For security and intelligence information, a disclosure is damaging if it causes damage to the work of the security or intelligence service. For defence information, a disclosure is damaging if it damages the capability of the armed forces to carry out their tasks; or leads to loss of life or injury to members of the armed forces or serious damage to the equipment or installations of those forces. For both defence and international relations information, a disclosure is damaging if it endangers the interests of either the state or the HKSAR which are located elsewhere, seriously obstructs the promotion or protection of those interests or endangers the safety of Chinese nationals[50] or HKSAR permanent residents elsewhere. It is also a damaging disclosure if the

[50] The original term was "British nationals".

information disclosed is of such a nature that its unauthorized disclosure would likely have any of the effects described above.

6.9 Under section 17, it is an offence for a public servant or a government contractor to disclose, without lawful authority, any information in his possession by virtue of his position if the disclosure would actually or would be likely to —

(a) result in the commission of an offence;

(b) facilitate an escape from legal custody; or

(c) impede the prevention or detection of offences or the apprehension or prosecution of suspected offenders.

6.10 Under section 18, it is an offence for a person who comes into possession of information protected under sections 13 to 17 as a result of unlawful disclosure or on terms of trust to disclose it without lawful authority, if he knows or has reasonable cause to believe that the information disclosed is protected information and that the disclosure would be damaging.

6.11 Under sections 19 and 20, it is an offence for a person to disclose, without lawful authority, information resulting from spying or communicated in confidence by the CPG or the HKSARG[51] to a territory, state or international organization.

6.12 A person convicted of an offence for unlawful disclosure is liable to imprisonment (from 3 months to 2 years), and a fine (from level 4 to $500,000), depending on the type and seriousness of the offence.

II. Considerations and Proposals

(a) General

6.13 It is accepted that open government and a high degree of transparency of government actions encourages participation in public affairs and enhances accountability. However, some information has of necessity to be kept confidential to protect the security of the country and the people, and to ensure the smooth running

[51] The original term was “the Government of the United Kingdom or Hong Kong”.

of government. Given the importance of such information to the country's security, there should be suitable legal sanctions against its unauthorized access or disclosure. At the same time, in order to safeguard freedom of expression and information, it is important to afford protection only to truly deserving categories of information, and to clearly define the means of protection.

6.14 In keeping with the Article 23 requirement, we propose to focus on the protection of state secrets, i.e. information the unauthorized disclosure of which will be damaging to the state, rather than the protection of all Government information as such. We consider that the existing provisions of the Official Secrets Ordinance already strike an appropriate and delicate balance between the need for open government and for protection of state secrets. However, Article 23 should not be interpreted as implying that information other than state secrets needs no protection. We therefore propose that, subject to the refinements below, the Ordinance should be retained in its present form.

(b) Categories of information that require protection

6.15 The Official Secrets Ordinance does not use the term "state secret". Where espionage is concerned, the protected information as such is not defined, but the *purpose* of obtaining the information and related acts has to be one *prejudicial to the safety or interests of the state or the HKSAR*. Where unlawful disclosure is concerned, the following types of information are protected —

(a) *security* and *intelligence* information;

(b) *defence* information;

(c) information related to *international relations*; and

(d) information related to the *commission of offences* and *criminal investigations*.

6.16 The apparently asymmetrical treatment of "spying" and "unlawful disclosure" under existing legislation is not hard to understand given the different nature of the offences involved. "Spying", which generally refers to the procurement of information useful to a foreign power and prejudicial to state security, is regarded worldwide as a serious national security offence meriting heavy punishment. In contrast, in order to preserve the balance between protecting state security and promoting open government, it is considered that unauthorized disclosure of official

information should only be criminalized where the information is of a sensitive nature and the unauthorized disclosure is damaging.

6.17 Another point of detail concerns information protected from unlawful disclosure. The Official Secrets Ordinance already sets out some specific targets of protection (paragraph 6.15). With one exception, we believe that they all fit the description of state secrets. The exception concerns information related to the commission of offences and investigations. As presently cast, this may relate to all offences and investigations; thus information not necessarily related to secrets of the state may also be covered. Although not directly related to the objects of the present exercise which are to protect sovereignty, territorial integrity, unity and security, the present provisions of the Official Secrets Ordinance protecting information relating to all offences and investigations have proved a useful deterrent and should be retained.

6.18 Section 16 of the Official Secrets Ordinance relates to the disclosure of any information etc. relating to "international relations". In accordance with this provision, prior to the Re-unification, information relating to the relationship between Hong Kong and the Mainland was protected. Following the Re-unification it would not be appropriate to protect such information under the rubric of "international relations". To ensure that information relating to the relationship between the Central Authorities of the state and the HKSAR continues to be protected, we propose *to create a new class of protected information — "relations between the Central Authorities of the People's Republic of China and the HKSAR", to protect such information from unauthorized disclosure.*

6.19 To summarize, therefore, we propose that —

(a) *where spying is concerned, the information to be protected should include that which is likely to be useful to an enemy, and is obtained or disclosed for a purpose prejudicial to the safety or interests of the state or the HKSAR*; and that

(b) *where unlawful disclosure is involved, the following categories of information should be protected —*

(i) *security and intelligence information*;

(ii) *defence information*;

(iii) *information relating to international relations*;

(iv) *information relating to relations between the Central Authorities of the PRC and the HKSAR*; and

(v) *information relating to commission of offences and criminal investigations.*

(c) Means of protection

6.20 Article 23 refers to the "theft" of state secrets. In relation to information, however, the concept of theft cannot be applied in the same way as to the theft of other properties. Generally speaking, the legal concept of theft involves the permanent deprivation of property belonging to someone. With information, the question of ownership and permanent deprivation normally does not arise. It is possible to "steal" information without stealing the medium through which the information is stored or kept. In addition, memory or knowledge cannot easily be purged.

6.21 Given the considerations above, we believe that state secrets should be protected by preventing —

(a) unauthorized access to, transmission of or dealing with protected information; and

(b) unauthorized disclosure of protected information.

To a large extent, the present approach of the Official Secrets Ordinance already tallies with this thinking. Part II of the Ordinance seeks to prevent unauthorized access to protected information through spying. Section 2 specifically provides that obtaining or retaining any document, note etc. includes copying or causing to be copied such document, note etc. In addition, communication of such a document includes the transfer or transmission of the document. Part III seeks to prevent unauthorized disclosure of both information obtained from spying, as well as other information specified in Part III. We believe that *as far as spying is concerned, the present protection under the Ordinance is adequate as it covers access to, transmission of, dealing with and disclosure of information resulting from spying.*

6.22 As regards information that is protected from unlawful disclosure, however, the Official Secrets Ordinance only prohibits disclosure of such information either by people who have come to possess such information in the course of performing their duties or by those who have obtained the information from such people. It does not provide sanctions against the unauthorized access to, transmission of and dealing with such information. We consider that the present loophole of a damaging disclosure being made by a person who obtains protected information

through unauthorized access, whether by himself or through another person, ought to be plugged. We should avoid situations where, for example, a hacker may openly sell stolen protected information to a publisher who may then openly publish the information for profit, without being caught by Part III of the Official Secrets Ordinance, even though the disclosure is highly damaging. Thus we propose *there should be a new offence of making an unauthorized and damaging disclosure of information protected under Part III of the Ordinance that was obtained (directly or indirectly) by unauthorized access to it*. The existing damaging disclosure test as well as the defences in section 18 should, with necessary modification, apply to the new offence.

(d) Application

6.23 As regards the *persons* to whom the different provisions of the Ordinance apply, we believe that the current arrangement is by and large along the right lines. We note, for example, that under section 12, the definition of the term "public servant" includes any person employed in the civil service. We consider that this is appropriate. Part III of the Official Secrets Ordinance lays down clear guidelines as to when unauthorized disclosure is an offence. Except with members of the security and intelligence services who disclose security or intelligence information they possess by virtue of their position or in the course of their work, *a damaging disclosure test has to be satisfied*. The more onerous requirement imposed on members of the security and intelligence services is well justified, given the sensitivity of their work. We consider that *the present arrangement should continue.*

6.24 We propose to introduce two technical amendments as regards the application of the Official Secrets Ordinance. We have identified a potential loophole in section 18(2) of the Ordinance. Currently it refers to "a public servant or government contractor" only, and not to a former public servant or government contractor. This is to be contrasted with sections 14 to 17 of the Ordinance, all of which refer to "a person who is or *has been* a public servant or government contractor" (emphasis added). The ambiguity was highlighted in a UK case in 1989[52]. We propose *to amend section 18(2)*

[52] Section 18(2) of the Official Secrets Ordinance is modelled on section 5(1) of the UK Official Secrets Act 1989. In *Lord Advocate v The Scotsman Publications Ltd.* [1989] 3 WLR 358, Lord Jauncey of Tullichettle said, "Section 5(1) does not refer to past Crown servants, as does section 1(1) and (3) ... Upon the assumption that section 5 was intended to apply to confidential information deriving from

to put it beyond doubt that the provision applies to information deriving from both present and past public servants and government contractors.

6.25 The other proposed amendment relates to government contractors. It is arguable whether the present definition[53] covers *agents and informants* engaged by the Police to assist in their security and intelligence work. Some of these agents and informants work for a reward, and others provide their service solely as a civic duty. While paid agents could presumably count as government contractors, the case regarding informants is more doubtful. Given that these agents and informants may come across protected information in the course of performing their service, we believe that they *should also be expressly covered by the definition of "government contractors" under the Ordinance.*

(e) Extra-territorial application

6.26 *Extra-territoriality already applies to most offences related to unauthorized disclosure by virtue of section 23 of the Official Secrets Ordinance.* It is an offence for any Chinese national, HKSAR permanent resident or a public servant to do any act outside the HKSAR should that be an offence under Part III of the Ordinance (except for a few provisions) if it were done in the HKSAR. *There is a continued need for such a provision* in order to cover situations where, for example, a public servant of the HKSARG discloses protected information whilst overseas. As pointed out in paragraph 6.24, public servants should include ex-public servants.

6.27 At present, there is no express statutory provision to apply spying offences (Part II of the Official Secrets Ordinance) extra-territorially. We have considered if this should be changed. In theory, consideration may be given to making express provision for such offences to have extra-territorial application where the information involved in the act of spying concerns the safety or interests of the state, including that of the HKSAR. In practice, however, the need for such extra-territoriality effect is likely to be small. Where the spying act involves communication or unlawful disclosure (Part III of the Ordinance), extra-territorial application already applies

---

past as well as present members of the security services, an assumption which may well be unjustified having regard to the obscurity of the language . . . "

[53] Section 12(2) of the Official Secrets Ordinance defines "government contractor" as "any person who is not a public servant but who provides, or is employed in the provision of, goods or services [sic] for the purposes of the Crown in right of the Government of Hong Kong [sic]"

in most cases. Where only foreign agents are involved, it is questionable what real effect extra-territorial application would have. It is implausible for a foreign government to surrender its secret agents to another government for trial on spying charges. In addition, given the highly clandestine nature of spying, and the intricate international relations involved, it is highly unlikely that the HKSAR on its own will have sufficient information to investigate and hence bring charges against spying activities conducted entirely outside of the HKSAR. We *do not* therefore propose *to apply extra-territoriality to spying offences*. Correspondingly, the definition of "prohibited place" for the espionage offence should be confined to those under the territorial jurisdiction of the HKSAR.

Chapter 7

Foreign Political Organizations

I. Current Laws : Summary

At present, the main legislation dealing with foreign political organizations (FPOs) is the Societies Ordinance (Cap. 151).

7.2 Under section 5 of the Societies Ordinance, a local society, or a branch thereof[54], has to apply to the Societies Officer for registration or exemption from registration within one month of its establishment. The term "local society" is defined comprehensively to mean any society organized and established in the HKSAR or having its headquarters or chief place of business in the HKSAR. In addition, a society is deemed to be established in the HKSAR if any of its office-bearers or members resides or is present in the HKSAR, or if any person in the HKSAR manages or assists in the management of the society or solicits or collects money or subscription on its behalf. However, the registration (or exemption from registration) requirement does not apply to certain entities set out in the Schedule to the Ordinance. These entities include, for example, companies registered under the Companies Ordinance (Cap. 32), co-operative societies registered under the Co-operative Societies Ordinance (Cap. 33) and trade unions registered under the Trade Unions Ordinance (Cap. 332)[55].

7.3 If a society is a political body[56] that has a connection[57] with an FPO[58] or a

[54] Henceforth the reference to "society" should be taken to mean a society and/or its branch(es).

[55] Others include pupils' associations, companies or associations constituted pursuant to or under any Ordinance or other legislation, Chinese temples, credit unions, building management corporations, recreation groups and unincorporated trusts.

[56] Please see paragraph 7.4 below.

[57] Please see paragraph 7.7 below.

[58] Please see paragraph 7.5 below.

political organization of Taiwan (TPO)[59], the Societies Officer may —

(a) refuse to register or to exempt from registration the society after consultation with the Secretary for Security (S for S);

(b) cancel the registration or exemption from registration of the society after consultation with S for S; or

(c) recommend to S for S the making of an order prohibiting the operation or continued operation of a society.

These same powers also apply if the Societies Officer reasonably believes that they are necessary in the interests of national security or public safety, public order (*ordre public*) or the protection of the rights and freedoms of others.

7.4 The Societies Ordinance defines "political body" as follows —

(a) a political party or an organization that purports to be a political party; or

(b) an organization whose principal function or main object is to promote or prepare a candidate for an election[60].

7.5 The Societies Ordinance defines an FPO as follows -

(a) a government of a foreign country or a political subdivision of a government of a foreign country;

(b) an agent of a government of a foreign country or an agent of a political subdivision of the government of a foreign country; or

(c) a political party in a foreign country or its agent.

Points (a) and (b) above include the government of a foreign country at the sub-national or local level and its agents.

7.6 A TPO is defined as —

(a) the administration of Taiwan or a political subdivision of the administration;

---

[59] Please see paragraph 7.6 below.

[60] An election will include an ordinary election or a by-election of persons to act as members of the Legislative Council or a District Council.

(b) an agent of the administration of Taiwan or an agent of a political subdivision of the administration; or

(c) a political party in Taiwan or its agent.

7.7 In relation to a local society that is a political body, "connection" is defined to include —

(a) solicitation or acceptance by the society of financial contributions, financial sponsorships or financial support of any kind or loans from an FPO or TPO;

(b) affiliation with an FPO or TPO;

(c) determination of the society's policies by an FPO or TPO; or

(d) direction, dictation, control or participation in the society's decision making process by an FPO or TPO.

7.8 A society that is refused registration or exemption or has had its registration or exemption cancelled is obliged to cease its operation under section 5F(1) of the Societies Ordinance. Failure to comply with this requirement makes every office-bearer liable to a fine at level 3 for a first conviction, and to a fine at level 4 and imprisonment for three months for a second or subsequent conviction. A default fine of $300 is imposed on a daily basis while the offence continues.

7.9 Where the Secretary for Security makes a prohibition order pursuant to a recommendation made by the Societies Officer (paragraph 7.3(c) above), a society will be deemed an "unlawful society" if it continues operation. Its office-bearers will be liable to a fine of $100,000 and imprisonment for three years. Its members, sponsors etc. are punishable by a fine of $20,000 and imprisonment for one year on a first conviction, and a fine of $50,000 and imprisonment for two years on a second or subsequent conviction. There are other related offences of aiding, inciting and procuring the affairs of an unlawful society.

7.10 Under section 15 of the Societies Ordinance, the Societies Officer may require any society to furnish him with such information as he may reasonably require for the performance of his functions under the Ordinance. The information required may include the income, the source of the income and the expenditure of the society. Failure to comply is punishable by a fine of $20,000.

II. Considerations and Proposals

7.11 We believe that the existing provisions of the Societies Ordinance, in particular those governing the definition of "foreign political organizations" and "connections", are sufficient for the purpose of prohibiting foreign political organizations from taking part in the political process of the HKSAR. Many jurisdictions have similar provisions preventing undue influence or interference by foreign political organizations in domestic politics. These provisions should be retained.

7.12 For the purpose of protecting national security, separate provisions are needed to prevent foreign political organizations from conducting political activities in the HKSAR, or establishing ties with local political organizations, that are harmful to national security or unity.

7.13 In fact, organized political activities endangering the security of the state must be proscribed by effective measures, regardless of whether such threats originate from foreign or domestic elements. The existing power under the Societies Ordinance to prohibit the operation of a society on national security grounds already provides effective sanctions against such activities. However, in view of the highly serious and reprehensible nature of activities damaging national security, together with the possibility that such activities would extend beyond the HKSAR and have national-wide effects, more specific measures are needed to address national security concerns.

7.14 We therefore propose *to make it an offence to organize or support activities of a proscribed organization*. The element of knowledge or reasonable suspicion should be included in the offence. The concept of "support" includes, for example, being a member of; providing financial assistance, other property or facilitation to; and carrying out the policies and directives of the proscribed organization.

(a) Proscription mechanism

7.15 Taking into account the above considerations, we propose that the Secretary for Security should be given the power to proscribe an organization, if he or she reasonable believes that this is necessary in the interests of national security or public safety or public order. As with the interpretation of these terms in the Societies

Ordinance, the expressions "public safety" and "public order" are interpreted in the same way as under the ICCPR as applied to Hong Kong, and "national security" means the safeguarding of the territorial integrity and the independence of the state. For our purpose, an organization should be defined as an organized effort by two or more people to achieving a common objective, irrespective of whether there is a formal organizational structure. The power to proscribe an organization may only be exercised if —

(a) the objective, or one of the objectives, of the organization is to engage in any act of treason, secession, sedition, subversion or theft of state secrets (espionage); or

(b) the organization has committed or is attempting to commit any act of treason, secession, sedition, subversion or theft of state secrets (espionage); or

(c) the organization is affiliated with a Mainland organization which has been proscribed in the Mainland by the Central Authorities, in accordance with national law on the ground that it endangers national security.

7.16 Regarding (c) above, the HKSAR may not be in a position to determine whether an organization poses a threat to national security, especially for those entities based in Mainland with cells in the HKSAR affiliated with them. Therefore, to a large extent, on the question of whether such a Mainland organization endangers national security, we should defer to the decision of the Central Authorities based on the comprehensive information that it possesses. Formal notification by the CPG that a Mainland organization has been proscribed on national security grounds should be conclusive of the fact that the organization has been so proscribed. Nevertheless, the Secretary for Security must then be satisfied by evidence of the said affiliation, and must reasonably believe that it is necessary in the interests of national security or public safety or public order to ban the affiliated organization, before the power of proscription can be exercised.

7.17 In addition, it should be possible to prohibit the operation of an organization that has a connection with a proscribed organization. The Secretary for Security should be empowered to declare such an organization unlawful, if he or she reasonably believes that this is necessary in the interests of national security, public safety or public order, according to the interpretation of ICCPR, etc. as mentioned in paragraph 7.15 above. It would then be *an offence for anyone to manage or be*

an office-bearer of the unlawful organization. Thus an organization that endangers national security, whether on the Mainland or in the HKSAR, may be proscribed, and a grouping in the HKSAR affiliated with it may become unlawful. In order to avoid casting the net too wide, the concept of "connection" above should be clearly defined to include —

(a) solicitation or acceptance by the association of financial contributions, financial sponsorships or financial support of any kind or loans from a proscribed organization, or *vice versa*;

(b) affiliation with a proscribed organization, or *vice versa*;

(c) determination of the association's policies by a proscribed organization, or *vice versa*; or

(d) direction, dictation, control or participation in the association's decision making process by a proscribed organization, or *vice versa*.

A similar concept is already comprehensively covered under the Societies Ordinance[61].

(b) Appeal mechanism

7.18 The decision to proscribe and to declare an organization unlawful should be subject to an appeal procedure. To ensure fairness, this procedure should involve two levels. First, points of fact may be appealed to an independent tribunal. Second, points of law may be appealed to the court. Given that sensitive information

[61] In the context of a local society that is a political body, the Societies Ordinance (Cap. 151) now defines "connection" as —

(a) if the society or the branch solicits or accepts financial contributions, financial sponsorships or financial support of any kind or loans, directly or indirectly, from a foreign political organization or a political organization of Taiwan;

(b) if the society or the branch is affiliated directly or indirectly with a foreign political organization or a political organization of Taiwan;

(c) if the society's or the branch's policies or any of them are determined directly or indirectly by a foreign political organization or a political organization of Taiwan; or

(d) if a foreign political organization or a political organization of Taiwan directs, dictates, controls or participates, directly or indirectly, in the decision making process of the society or the branch.

or intelligence may be involved, the rules of procedures of appeal should protect confidential material and sources from disclosure while ensuring procedural fairness.

Chapter 8

Investigation Powers

I. Introduction

The very essence of Article 23 is to protect the sovereignty, territorial integrity, unity and security of the state, and hence the fundamental interests of our country. It is therefore important that sufficient powers be provided for investigation into the offences proposed. This need is well recognized in many other jurisdictions, where the security and intelligence services are almost invariably given enhanced powers for investigating activities that may harm the nation's fundamental interests. At the same time, we are mindful of the need to ensure that the investigation powers are proportionate to and necessary for the offences in question, and are compatible with the requirements of the ICCPR. Sufficient safeguards and oversight procedures should be built into the regulatory mechanism.

II. Existing Powers

8.2 Some basic investigation powers are already provided in the Police Force Ordinance (Cap. 232). They are applicable to all offences, unless otherwise provided for under specific pieces of legislation. They cover such issues as search and seizure of suspected property, etc. In addition, there are special provisions in some ordinances setting out the circumstances in which certain investigation powers under those ordinances may be exercised. For example, sections 8 and 14 of the Crimes Ordinance (Cap. 200) and section 11 of the Official Secrets Ordinance (Cap. 521) provide for the circumstances under which search warrants should be used.

8.3 We have reviewed *existing provisions governing investigation into treason, sedition and official secrets* in the Crimes Ordinance and Official Secrets Ordinance. We consider that, by and large, they continue to be appropriate and *should be retained,*

subject to certain adaptations. For example, the criteria for the exercise of the power to remove seditious publications without a court warrant, as at *section 14 of the Crimes Ordinance*, should not be conditioned solely upon whether such publications are visible from a public place. Instead, *such powers should only be exercised in case of great emergency* irrespective of whether the publications are visible to the public, and would be adapted in accordance with the approach in paragraph 8.4 below.

III. Additional Powers

(a) Emergency entry, search and seizure powers

8.4 The existing investigation powers may not always be adequate to cater for the special nature of some Article 23 offences. For example, at common law, a police officer can, *inter alia*, enter private premises without a warrant in emergencies in order to stop a crime. However, there are no emergency entry and search powers for the purpose of an investigation. This may well be a major weakness with regard to the investigation of some of the more serious Article 23 offences. Critical evidence for suspected offences could have been destroyed if a search warrant could not be obtained in time.

8.5 We therefore propose that *an emergency entry, search and seizure power should be provided to the police for investigating some Article 23 offences*. The power should only be exercised by a sufficiently senior police officer (e.g., a superintendent) when he reasonably believes that —

(a) a relevant offence has been committed or is being committed;

(b) unless immediate action is taken evidence of substantial value to the investigation of the offence would be lost; and

(c) the investigation of the relevant offence would be seriously prejudiced as a result.

(b) Financial investigation power

8.6 Critical evidence for an investigation could be destroyed if relevant financial information could not be obtained in time. Therefore, *for selected Article 23 offences*

where illicit financial backing may particularly be relevant, we propose that emergency financial investigation powers should be provided. The power should enable the Commissioner of Police, in cases of exceptional emergency and in the interests of national security (the safeguarding of the territorial integrity and the independence of the state) or public safety, to require a bank or a deposit-taking company to disclose to him information relevant to the investigation where there is reasonable suspicion that the relevant offence has been committed or is being committed.

(c) Organized and Serious Crimes Ordinance powers

8.7 Some of the more serious Article 23 offences are likely to involve an organized element. For example, it is improbable that an individual could pull off a successful act of subversion or secession single-handedly. The enhanced powers of the Organized and Serious Crimes Ordinance (OSCO) (Cap. 455) should therefore be made available for dealing with these offences. We propose *to include selected Article 23 offences under Schedule 1 to the Ordinance.* Such inclusion would afford the following additional legal powers for dealing with the offences in question.

(a) Witness order

Under section 3 of the OSCO, the Secretary for Justice may make an ex parte application to the Court of First Instance for an order to require a person to answer questions or furnish material that reasonably appears to be relevant to an investigation.

(b) Production order

Under section 4 of the OSCO, the Secretary for Justice or an authorized officer may make an ex parte application to the Court of First Instance for an order to require a person to produce or to grant access to material specified which is likely to be relevant to an investigation.

(c) Search warrant

Under section 5 of the OSCO, an authorized officer may make an application to the Court of First Instance or the District Court for a warrant to search specified premises for the purpose of an investigation where the witness order or production order is not complied with.

There are also other powers such as restraint orders and charging orders on crime proceeds, as well as enhanced sentencing.

IV. Offences Requiring Enhanced Investigation Powers

8.8 Annex 1 sets out the selected Article 23 offences for which enhanced investigation powers (as set out in paragraphs 8.4 to 8.7 above) are proposed and the specific power(s) proposed for each of the offences in question.

Chapter 9

Procedural and Miscellaneous Matters

I. Introduction

This chapter examines the procedures and other miscellaneous matters for dealing with the offences proposed in Chapters 2 to 7.

II. Unlawful Oaths and Unlawful Drilling

9.2 *Sections 15 to 17 of the Crimes Ordinance* deal with the administration or taking of unlawful oaths for undertaking various offences such as treason and sedition. There is no record of an offence having been charged under them, and their continued usefulness is doubtful. When a person who takes an oath has the required mental element to be guilty of conspiracy or incitement to commit Article 23 offences, he could be prosecuted for those offences. Where there is no such mental element, the person should not be regarded as having committed an offence. We therefore consider that these sections are not necessary in respect of treason and sedition or, for that matter, other offences, and suggest that they *should be repealed*.

9.3 Another relevant legislative provision is *section 18 of the Crimes Ordinance*. Under this section, it is an offence to train, or be trained, in the use of arms or the practice of military exercises, without the permission of the Chief Executive or the Commissioner of Police. The purpose of such training is not specified in section 18, but the context in which the section is placed makes it clear that it is intended to catch military training for offences against the state. This section should have continued usefulness, and accordingly we propose that *it should be retained*.

III. Procedures

9.4 The Criminal Procedure Ordinance (Cap. 221) sets out the procedures generally applicable to all cases, unless otherwise specified in specific legislation. With regard to the latter, we have reviewed existing provisions governing procedures for dealing with treason, sedition and official secrets to see whether they require improvement.

(a) Time limits for bringing prosecutions

9.5 Sections 4(1) and 11(1) of the Crimes Ordinance provide, respectively, that prosecution for treason must be brought within three years, and for sedition within six months, after the offence is committed. However, at common law there are no time limits imposed on the institution of prosecutions for indictable offences. Statutory time limits for indictable offences are also very rare. As a matter of principle, we question whether it is right to "write off" a serious criminal offence because of the expiry of a time limit for prosecution. The reprehensible nature of treason and sedition should not diminish with time. In addition, the proposed treason and sedition offences are now much more tightly drawn than the current provisions. There should therefore be enough safeguards against possible abuse. As such we propose *to remove the current time limits for bringing prosecutions against treason or sedition.*

(b) Consent of Secretary for Justice

9.6 At present, the consent of the Secretary for Justice has to be obtained before prosecutions for such offences as sedition and unlawful disclosure of protected information may be brought. This is a safeguard to protect the accused from, for example, inappropriate prosecutions such as vexatious private prosecutions or prosecutions in trivial cases. It also affords some central oversight over the use of the criminal law in sensitive and potentially controversial areas, and ensures that prosecution decisions on these take sufficient and consistent account of important public policy considerations.

9.7 At present, the Secretary for Justice may at any stage take over the conduct of proceedings instituted by private prosecution and, if appropriate, discontinue the

proceedings. Given this power, it may be argued that it is not necessary to specify that the consent of the Secretary for Justice must be sought before prosecutions are brought for sedition or other Article 23 offences. Nonetheless, given the sensitive nature of the offences and hence the possible significant public interests involved, we propose to stipulate that *the requirement for consent of the Secretary for Justice for bringing prosecutions should apply to all offences against the state in the Crimes Ordinance and the Official Secrets Ordinance, and to other proposed Article 23 offences.*

IV. Penalties

9.8 Given their potentially very serious impact on the stability and survival of the state, crimes against the state usually attract very severe penalties in other jurisdictions. The same considerations should apply in our case. Penalties that suitably reflect the seriousness and repugnance with which society views the offences are required. Otherwise the deterrent effect could be lost. The statutory penalty levels are of course only the maximal that may be meted out. It is entirely within the power of the court to determine, within the limits set by law, the appropriate level of penalty in each particular case having regard to its circumstances.

9.9 Taking into account the seriousness of the offences, existing penalties where applicable, and penalties for comparable offences where appropriate, we propose *the penalties for the various Article 23 offences set out at Annex 2.*

Annex 1

Proposed Enhanced Investigation Powers

Selected Article 23 Offences[62]

Offence	Emergency entry, search and seizure powers	Emergency financial investigation powers	Inclusion under Schedule 1 to Organized and Serious Crimes Ordinance	Justifications and Remarks
Treason	yes	yes	yes	Most serious of all offences. Evidence could well be lost without emergency powers. Organization and covert financial dealings likely.
Secession	yes	yes	yes	Threat to territorial integrity and hence survival of country. Evidence could well be lost without emergency powers. Organization and covert financial dealings likely.
Sedition: incitement to commit treason, secession and subversion	yes	yes	yes	Same consideration as for substantive offences.

[62] Only those offences for which enhanced investigation powers are proposed are set out in this annex. For a tabular summary of all the Article 23 offences, please see Annex 2.

Offence	Emergency entry, search and seizure powers	Emergency financial investigation powers	Inclusion under Schedule 1 to Organized and Serious Crimes Ordinance	Justifications and Remarks
Sedition: incitement to violence or public disorder that seriously endangers the stability of the state or HKSAR	yes	yes	yes	Consequence — very serious threat to stability of society. Evidence could well be lost without emergency powers. Organization and covert financial dealings likely.
Dealing with seditious publications	yes (by amendment of existing powers)	yes	yes	Consequence — substantive offences of treason, secession and subversion. Very serious threat to national security. Organization and covert financial dealings likely.
Subversion	yes	yes	yes	Serious threat to national security and stability. Evidence could well be lost without emergency powers. Organization and covert financial dealings likely.
Organizing or supporting proscribed organization	yes	yes	yes	Threat to national security and territorial integrity and hence survival of country. Evidence could well be lost without emergency powers. Organization and covert financial dealings likely.

Offence	Emergency entry, search and seizure powers	Emergency financial investigation powers	Inclusion under Schedule 1 to Organized and Serious Crimes Ordinance	Justifications and Remarks
Unlawful drilling	no	no	yes	Preparatory to serious offences of treason, secession etc. Organization likely.
Inchoate and accomplice offences of treason, secession and subversion (attempts, conspiracy etc.)	Same powers as for substantive offences.			Same considerations as for substantive offences.

Annex 2

Proposed Penalties for Offences

Offence	Existing penalties (if applicable)	Proposed penalties
Treason		
Treason	Life imprisonment (s. 2(2), Cap. 200)	Retain existing penalty, i.e., life imprisonment.
Treasonable offences	Life imprisonment (s. 3(1), Cap. 200)	N/A — the offences are proposed to be repealed.
Attempt, conspiracy, aiding, abetting, counselling and procuring the commission of treason	Currently not specific statutory offences. But normally attempt, conspiracy etc. to commit an offence are punishable by the same penalties for the substantive offence. (s. 159C, s. 159J, Cap. 200, s. 89, Cap. 221)	In line with the normal practice, the penalty should be set at the same level as that for the substantive offence.
Misprision of treason	Currently a common law offence, with no statutory penalties. Section 101I(1) of the Criminal Procedure Ordinance (Cap. 221) provides that where a person is convicted of an offence which is an indictable offence and for which no penalty is otherwise provided by any Ordinance, he shall be liable to imprisonment for 7 years and a fine.	In line with the spirit of s. 101I(1), Cap. 221, we propose 7 years' imprisonment and an unlimited fine.
Compounding treason	Currently a common law offence, with no statutory penalties — 7 years' imprisonment and a fine (s. 101I(1), Cap. 221)	N/A — the offence is proposed to be repealed.

Offence	Existing penalties (if applicable)	Proposed penalties
Secession		
Secession	No direct equivalent, but may draw reference from levying war under treason — life imprisonment	Given the seriousness of the offence which could directly threaten the territorial integrity of the country, we propose life imprisonment.
Attempt, conspiracy, aiding, abetting, counselling and procuring the commission of secession	N/A	In line with the normal practice, same penalty as the substantive offence.
Sedition		
Incitement to commit treason, secession or subversion	N/A	In line with the normal practice, same penalty as the substantive offence, i.e. life imprisonment.
Incitement to violence or public disorder which seriously endangers the stability of the state or the HKSAR	No direct equivalent, but may draw reference from sedition. First offence — 2 years' imprisonment and $5,000 fine Subsequent offence — 3 years' imprisonment (s. 10(1), Cap. 200)	Given the higher threshold of "seditious intention" (seriously endangers the stability of the state or the HKSAR), more severe penalties are called for. We suggest 7 years' imprisonment and an unlimited fine.
Dealing with seditious publications	Same as sedition, publications to be forfeited (s. 10(1) and (3), Cap. 200)	Given the serious consequences that may be brought about by publications endangering national security, the existing penalties are on the low side. We suggest 7 years' imprisonment and a fine of $500,000 to act as an effective deterrent. The publications should be forfeited.

Offence	Existing penalties (if applicable)	Proposed penalties
Possession of seditious publications	First offence — 1 year's imprisonment and $2,000 fine, publications to be forfeited Subsequent offence — 2 years' imprisonment, publications to be forfeited (s. 10(2) and (3), Cap. 200)	While the existing custodial term is appropriate, the fine should be updated to level 5 (currently $50,000) to act as a more effective deterrent. The publications should be forfeited.
Posting of seditious publications	6 months' imprisonment and $20,000 fine (s. 32(1)(h), Cap. 98)	N/A — the offence is proposed to be repealed.
Subversion		
Subversion	No direct equivalent, but may draw reference from levying war under treason — life imprisonment (s. 2(2), Cap. 200)	To reflect the very serious nature of the offence which could result in the illegal toppling of the basic system of the State or the lawfully established government, we suggest life imprisonment.
Attempt, conspiracy, aiding, abetting, counselling and procuring the commission of subversion	N/A	In line with the normal practice, same penalties as the substantive offence.
Theft of State Secrets		
Spying	14 years' imprisonment (s. 3, 10(1), Cap. 521)	Retain the existing penalty level.

Offence	Existing penalties (if applicable)	Proposed penalties
Harbouring, unauthorized use of uniforms, official documents, obstruction, failure to provide information etc.	2 years' imprisonment on conviction on indictment 3 months' imprisonment and a level 4 fine (currently $25,000) on summary conviction (s. 4–8, 10(2), Cap. 521)	The gravity of the offences could vary considerably, and it is appropriate to retain convictions on indictment and summary convictions. To reflect more accurately the full range of potential seriousness, we propose 5 years' imprisonment on conviction on indictment, and 3 years' imprisonment and a level 6 fine (currently $100,000) on summary conviction.
Unauthorized disclosure of protected information obtained by virtue of official position or unauthorized disclosure, etc.	2 years' imprisonment and $500,000 fine on conviction on indictment 6 months' imprisonment and a level 5 fine (currently $50,000) on summary conviction (s. 13–20, 25(1), Cap. 521)	The existing custodial term appears to be on the low side given the significant damage that unauthorized disclosure may bring about. We suggest increasing it to 5 years' imprisonment for conviction on indictment, and 3 years' imprisonment on summary conviction. The other existing penalties should be retained.
Unauthorized disclosure of protected information obtained by unauthorized access	N/A	Same as the proposed penalties for unauthorized disclosure of protected information obtained by virtue of official position or unauthorized disclosure, etc.
Failure to safeguard protected information or return documents	3 months' imprisonment and a level 4 fine (currently $25,000) (s. 22, 25(2), Cap. 521)	Retain the existing penalties.

Offence	Existing penalties (if applicable)	Proposed penalties
Organized Crime against National Security		
Organizing or supporting proscribed organization, or operating a prohibited association	N/A	7 years' imprisonment and an unlimited fine.
Others		
Unlawful drilling or military training	For the trainer — 7 years' imprisonment (s. 18(1), Cap. 200) For the trainee — 2 years' imprisonment (s. 18(2), Cap. 200)	The existing penalties should be retained.
Unlawful oaths	Imprisonment for life or 7 years (s. 15-16, Cap. 200)	N/A — the offence is proposed to be repealed.