

The Foreign Correspondents' Club, Hong Kong

香港外國記者會 香港中環下亞厘畢道二號北座
2 Lower Albert Road, North Block, Central, Hong Kong
Tel: (852) 2521 1511 Fax: (852) 2868 4092
E-mail: fcc@fcchk.org



November 18, 2002

LC Paper No. CB(2)271/02-03(17)

Mr. Raymond Lam
Senior Assistant Secretary
Security Panel
Legislative Council
2 Jackson Road
Central Hong Kong

Dear Mr. Raymond Lam,

In a region where governments habitually jail journalists and censor the media, Hong Kong has long served as a beacon of free expression and transparent rule of law.

Certainty of these freedoms encouraged many foreign correspondents to use Hong Kong as a base to cover Asia and prompted some of the world's largest media organizations to locate their regional headquarters here. This large presence of international media provides hundreds of jobs and opportunities for Hong Kong residents while lending prestige to the territory. In addition to making Hong Kong the largest regional concentration of foreign media in Asia, the territory's reputation for free flowing information has also encouraged investor confidence in the economy and been a major draw for multi-nationals from many other industries.

Founded more than half a century ago to liaise between foreign correspondents and the government of China, the Foreign Correspondents' Club has long represented the interests of foreign media. Our membership includes most of Hong Kong's foreign correspondents, many local journalists as well as a high proportion of the Asia's most senior publishing executives. Our clubhouse has long served as a neutral venue to help foster balanced debate and rational discussion on all topics. In recent weeks our club has hosted numerous events at which participants spoke both for and against the government's Article 23 Consultation Document.

While our club rarely seeks involvement in any public policy debate, the issue of Article 23 raises questions vital to foreign and local journalists as well as the future of free expression in Hong Kong.

The Foreign Correspondents' Club, Hong Kong

香港外國記者會 香港中環下亞厘畢道二號北座
2 Lower Albert Road, North Block, Central, Hong Kong
Tel: (852) 2521 1511 Fax: (852) 2868 4092
E-mail: fcc@fcchk.org



Our response to your request for comments and views: The Foreign Correspondents' Club strongly opposes the government's proposal for Article 23.

We fear the proposal, as described in the Consultation Document, endangers journalists by opening them up to prosecution for merely undertaking normal journalistic activities.

More specifically, we strongly object to:

- The introduction of the mainland's broad notions of "national security" and "state secrets" into Hong Kong.
- Increases in the government's power to restrict the flow of information without a corresponding statutory right to access information.
- Placing the onus on reporters to determine whether information they obtain has been legally disseminated or not.
- Possible prosecution of journalists under the newly created offense "unauthorized disclosure" if materials are published without prior government permission.
- The prohibition on publication of "information relating to the commission of offences and criminal investigations."
- The proposed granting of expanded police rights of search and seizure.
- The offense of "dealing with a seditious publications" and the offense of "unauthorized possession of a seditious publication".
- The global reach of the proposed law which hold Hong Kong permanent residents at risk of prosecution for activities worldwide.
- The many broad and vague concepts put forward in the Consultation Document, such as "national security", "incitement" as well as the declaration that "to intimidate" the PRC government consists of subversion.

We suggest that rather than introduce the law described in the Consultation Document, the government update and narrow Hong Kong's current and far too broad laws on these matters.

Any changes should just clean up anachronistic language related to Britain's administration of the territory and reduce the scope of the law to conform with the Johannesburg Principles on National Security, Freedom of Expression and Access to Information. Drafted in 1995 by an international group of experts on law and human

The Foreign Correspondents' Club, Hong Kong

香港外國記者會 香港中環下亞厘畢道二號北座
2 Lower Albert Road, North Block, Central, Hong Kong
Tel: (852) 2521 1511 Fax: (852) 2868 4092
E-mail: fcc@fcchk.org



principles seek to create a balance between the citizen's right to information and the state's right and responsibility to protect its integrity and security. (Full text attached.)

For the protection of journalists, we also urge introduction of "prior publication" and "public interest" as a legal defense.

Since the details of wording will be so important, we strongly urge the government to release the full text of the proposed changes and allow a lengthy consultation period during which the public may comment on any proposed law in relation to Article 23.

In addition to these comments on Article 23, please find the attached a set of more detailed questions and comments with regard to the Consultation Document.

As it stands, the government's proposal for Article 23 would damage Hong Kong's reputation for free flowing information and possibly spark an exodus of journalists and news organizations, among other dire effects on the territory.

Thank you for considering our views and please do not hesitate to get in touch should you wish further discussion or input.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas Crampton', written in a cursive style.

Thomas Crampton
President

The Foreign Correspondents' Club, Hong Kong

香港外國記者會 香港中環下亞厘畢道二號北座
2 Lower Albert Road, North Block, Central, Hong Kong
Tel: (852) 2521 1511 Fax: (852) 2868 4092
E-mail: fcc@fcchk.org



Attachment 1:

PRESS FREEDOM COMMITTEE FOREIGN CORRESPONDENTS' CLUB, HONG KONG VIEWS ON ART. 23 CONSULTATION PROPOSALS

Chairman, Vice-chairman, Honorable Members:

Thank you for this opportunity to address the Joint Panel on the Article 23 proposals. The Press Freedom Committee of the FCC is continuing to examine the consultation paper and we are pleased to share with you our thinking to date. We also look forward to an opportunity to give our comments again in future when we are all privileged to see the Government's actual submission.

1) When FCC members travel abroad, or host international visitors, we are always asked if press freedom is threatened in Hong Kong. Given the proposals contained in the consultation paper on Article 23, we can now say "Yes."

The Secretary for Justice, Elsie Leung, made that threat clear when she told the Newspaper Society "the knife has always been hanging over your head."

Referring specifically to the Article 23 proposals she continued: "...you need to know the parameters of the law, how much room you have so that you won't face criminal liabilities."

The Consultation Paper lays out the criminal liabilities but it does not delineate the true "parameters" because it fails to reveal the actual wording of the proposed national security laws.

2) The offenses proposed are political crimes and therefore highly sensitive. The FCC therefore joins with other organizations in calling for the full text of the Government's submission to the legislature to be made public well in advance of its introduction.

The community needs an adequate opportunity to assess the legislation and develop an informed response. Any failure to make the draft Bill public creates suspicion, here and overseas, that the Government is hiding something, and that it does not trust its citizens to engage in mature and civilized debate. This refusal to be forthcoming has already damaged Hong Kong's image abroad and will do further injury the longer such suspicions persist.

During the consultation period, senior officials have made statements, given interpretations and granted apparent concessions that at times vary from what is in the

The Foreign Correspondents' Club, Hong Kong

香港外國記者會 香港中環下亞厘畢道二號北座
2 Lower Albert Road, North Block, Central, Hong Kong
Tel: (852) 2521 1511 Fax: (852) 2868 4092
E-mail: fcc@fcchk.org



document. But citizens cannot be asked to respond to an ever-shifting target. Law is law, assertions are assertions, and personal opinion is just opinion. It is unclear whether some officials' comments represent their own views or the enunciation of government policy. Unless the actual wording of the legal document is revealed, the public cannot know to what, precisely, it is supposed to be responding. Only with publication of the text, and enough time to digest its meaning and implications, can the public have a fair chance to reply intelligently.

3) Absent the full text, the FCC wishes to make the following points:

-- We believe existing laws, with minor modification, are sufficient to meet many of the requirements of Article 23. We urge that any efforts to legislate on Article 23 should be minimalist in nature.

-- We oppose the creation of seditious offenses. The Crimes Ordinance covers these areas and is itself in need of review and narrowing.

Any legislation should be limited, for example, to amendments that narrow the scope of existing laws, remove anachronistic wording and, where necessary, bring the laws into line with the Bill of Rights Ordinance and the relevant international covenants. Possession of seditious material is particularly repugnant and would be extremely difficult to enforce. This offense would be particularly difficult to reconcile with press freedom as it has been understood in Hong Kong and we urge that this proposal be dropped.

-- We oppose the creation of a new law against secession. Existing law can deal with this, and the proposed law would threaten free expression and the free reporting of opinion.

People must be free to express their views and journalists should be free to report it. Also, pollsters must be free to gauge opinions on sometimes-sensitive matters and to release their findings and interpretations, just as historians must not be constrained either in revealing the truth regarding past events, or in suggesting eventual outcomes. One real example of a potential difficulty: In some collections of Mao Zedong's writings published prior to c.1949, reference can be found to his support for the independence of Taiwan. If this law were enacted, would anyone holding an early copy of Mao's writing, or quoting from it on this point, be liable to prosecution under these proposals? Or would they have to restrict themselves to referring only to sanitized versions printed subsequently?

-- We urge that all national security-related laws be drafted to meet the requirements of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, and that "national security" be narrowly defined.

Balancing national security against personal liberty is the essence of the debate over

The Foreign Correspondents' Club, Hong Kong

香港外國記者會 香港中環下亞厘畢道二號北座
2 Lower Albert Road, North Block, Central, Hong Kong
Tel: (852) 2521 1511 Fax: (852) 2868 4092
E-mail: fcc@fcchk.org



Article 23. As expressed in the preamble to the Johannesburg Principles: “...some of the most serious violations of human rights are justified by governments as necessary to protect national security.”

-- We urge that any legislation specifically include guarantees of a statutory right to access government-held information and specific protections of press freedom, e.g., a public interest defense.

We find the proposals seriously imbalanced, strengthening the government's control over information in a number of ways while failing to provide any corresponding measures to strengthen press freedom. Whenever national security is invoked an excuse for censorship or punishment, acting in the public interest should be an allowable defense and this must be specifically included in the law.

-- The Official Secrets Ordinance should be carefully reviewed in order to cover the theft of state secrets.

The FCC is deeply concerned that the mainland's vague and mutable notions of state secrets could be imported into Hong Kong, and that the Central People's Government could make representations on such matters that the SAR Government would have difficulty resisting.

SAR Government officials argue that the Art. 23 legislation, if enacted, would be Hong Kong laws interpreted by Hong Kong courts, but despite such assertions, experience to date suggests the Central People's Government would almost certainly become involved in the determination of what matters touch or do not touch upon national security.

If the press is to carry out its role of monitoring the performance of government, it must be made clear in the law that impropriety, abuse of office, malfeasance or other acts of illegality by officials are specifically exempted from “state secrets” protection.

We are deeply concerned about the proposed punishments for so-called unauthorized disclosure. This directly affects a free press and it should not be included in any legislation. Information already in the public domain must be allowed to be reported; failure to allow this would risk putting librarians, researchers, students, booksellers, financial analysts and anyone using the Internet at risk of prosecution.

If the Government wishes to protect material on the basis that its release would damage national security, it should be required to demonstrate that security interest and to produce evidence of the real or potential damage. It is wrong for the Government to seek to ban the release of information based on the means by which it was obtained. In our view, expanding this to include sources in the Central People's Government will doubtless result in restriction of the press.

The Foreign Correspondents' Club, Hong Kong

香港外國記者會 香港中環下亞厘畢道二號北座
2 Lower Albert Road, North Block, Central, Hong Kong
Tel: (852) 2521 1511 Fax: (852) 2868 4092
E-mail: fcc@fcchk.org



-- Any reference to "incitement" must be tightly drawn.

This is one of the most important points regarding press freedom that arises among these proposals, for incitement in its most simple sense could mean simply to "utter." Free expression must be protected. Where any threat to national security is alleged, it must be demonstrated that there exists a "clear and imminent danger" of violence, a demonstrable intention to incite such violence, and a direct connection between the words expressed and the occurrence of such violence.

-- We believe the banning of organizations proscribed on the mainland is a dangerous proposal that risks creating pressures on Hong Kong's autonomy, appears to open Hong Kong law to Mainland influence and could threaten the free exercise of religion. The Societies Ordinance contains sufficient powers for the control of organizations and we see no need for new legislation, especially as it appears to go beyond the requirements of Article 23. We believe that courts are well qualified on their own to settle any issue of fact and law in national security cases.

It appears that Mainland law, not Hong Kong law, is the starting point for this proposed offense because a group must first be banned on the Mainland before consideration by the Secretary for Security would be triggered. In that event, the consultation paper says the Government would have no choice but to accept -- as fact -- a certification that a certain group had been banned by the Mainland on national security grounds. The Catholic Church has already raised its concern on this point, as have other groups.

This proposal has potential implications for the press. If, for example, a news organization were shut down on these grounds by Mainland authorities, would its Hong Kong bureau risk closure as well? If a similar certification from central authorities were given relating to a point of information or a document, claiming it to be a "state secret" or pertaining to an "act of state," on what basis would the SAR Government or a Court refuse to accept that assertion? Would the courts have a full ambit to decide the issues? These are not explained in the consultation paper.

The Government also proposes to create a special body empowered to ascertain "fact" in these cases. We would like to know the composition of this body, its terms of reference, length of appointment, who would appoint it, and whether its deliberations would be open and accountable. This goes to the heart of the role of courts and to whatever degree of protection they or cannot be expected to provide.

The proposal also appears to pose a threat to religious freedom, a point Bishop Joseph Zen made forcefully during an appearance at the FCC. As this could have a deterrent effect on people's behavior, and that may well be the intention of the provision, it would necessarily affect free expression and free press.

The Foreign Correspondents' Club, Hong Kong

香港外國記者會 香港中環下亞厘畢道二號北座
2 Lower Albert Road, North Block, Central, Hong Kong
Tel: (852) 2521 1511 Fax: (852) 2868 4092
E-mail: fcc@fcchk.org



-- The FCC sees no need or justification for introducing new offenses regarding the protection of materials pertaining to Hong Kong-Mainland relations and extra-territoriality.

It is unclear what would be restricted regarding Mainland-Hong Kong relations, which are the ties between a central government and a subordinate territory. We oppose creating this new category of offense, which has implications for the press, but if the Government insists on legislating we would insist that any proscribed areas, e.g., exchange of information pertaining to criminal investigations, should be specifically identified and carefully spelled. It is also unclear how Article 29 might interact with Article 23 legislation, for example, whether the certification process suggested for groups banned on the mainland, or a similar process, might be used to certify that certain information pertains to national security or acts of state and thus put that information not only outside the bounds of reporting, but perhaps beyond the reach of the courts as well. We can think of numerous examples of reportage done today that might fall afoul under Hong Kong-Mainland relations or Article 19.

-- The FCC strongly opposes any granting of expanded search-and-seizure powers to the police.

We urge that it be stated explicitly in any treason legislation that: no prosecution can be brought absent a formal declaration of a state of war; any act prosecuted must have a demonstrable link to imminent violence against the state; and the defendant must be shown to have intended such violence. The legislation should also clearly distinguish between "state" and "government."

Section 2.2 (C) makes it clear this applies to the press, as it refers to manifesting intention "by an overt act" or by publishing any printing or writing." It also refers to efforts aimed by force or constraint to compel the Central People's Government (CPG) "to change its measures or counsels" or to "intimidate or overawe" the CPG. We urge that these terms be clearly defined and narrowly constructed following the principles of plain language. The proposals also say "inchoate offences" - like aiding, abetting and counseling-- will be the subject of additional legislation but no description is provided.

-- "Misprision of treason" is not a statutory offense and should not be made one. It invites the making of scurrilous and damaging accusations, and risks wasting the resources of security agencies. Because it will put a chill on free expression, it will also affect a free press.

Misprision of Treason is a common law offense of ancient vintage and in earliest usage applied not to ordinary citizens but to misdemeanors or failures of duty on the part of public officials. We have difficulty understanding why the Government would seek to add an unnecessary law that would apply to everyone else while at the same time proposing to

The Foreign Correspondents' Club, Hong Kong

香港外國記者會 香港中環下亞厘畢道二號北座
2 Lower Albert Road, North Block, Central, Hong Kong
Tel: (852) 2521 1511 Fax: (852) 2868 4092
E-mail: fcc@fcchk.org



scrap Compounding Treason (see below), which is the only treason-related offense now specifically applicable to Department of Justice officials.

-- Compounding of Treason should be kept as an offense as it can be committed only by Department of Justice officials who fail to prosecute in exchange for some advantage.

This is example of devils in details and why we need the actual draft Bill. The consultation paper is misleading on the Compounding Treason proposal. It says in the body of the text that no new offense will be created, but in a footnote (Annex 2) it says that in fact the existing offense of Compounding Treason is "proposed be repealed." We urge the Government to provide an adequate explanation as to why it proposes that ordinary citizens should be subjected to a new law (Misprision of Treason) while the Department of Justice would be exempted from an existing law (Compounding Treason) aimed at punishing officers who interfere with prosecution. It should also explain why it failed to make this clear in the consultation paper.

-- No national security legislation should be introduced before (a) the Law Reform Commission has released its recommendations on the results of the consultation exercise regarding the Press Council, and (b) the administration has published its response.

End of submission

The Foreign Correspondents' Club, Hong Kong

香港外國記者會 香港中環下亞厘畢道二號北座
North Block, 2 Lower Albert Road, Central, Hong Kong
Tel: (852) 2521 1511 Fax: (852) 2868 4092
E-mail: fcc@fchkc.org



Attachment 2:

THE JOHANNESBURG PRINCIPLES ON NATIONAL SECURITY, FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION

INTRODUCTION

These Principles were adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, in Johannesburg.

The Principles are based on international and regional law and standards relating to the protection of human rights, evolving state practice (as reflected, *inter alia*, in judgments of national courts), and the general principles of law recognized by the community of nations.

These Principles acknowledge the enduring applicability of the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights and the Paris Minimum Standards of Human Rights Norms In a State of Emergency.

PREAMBLE

The participants involved in drafting the present Principles:

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;

Convinced that it is essential, if people are not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law;

Reaffirming their belief that freedom of expression and freedom of information are

The Foreign Correspondents' Club, Hong Kong

香港外國記者會 香港中環下亞厘畢道二號北座
North Block, 2 Lower Albert Road, Central, Hong Kong
Tel: (852) 2521 1511 Fax: (852) 2868 4092
E-mail: fcc@fcchk.org



vital to a democratic society and are essential for its progress and welfare and for the enjoyment of other human rights and fundamental freedoms;

Taking into account relevant provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the UN Convention on the Rights of the Child, the UN Basic Principles on the Independence of the Judiciary, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights and the European Convention on Human Rights;

Keenly aware that some of the most serious violations of human rights and fundamental freedoms are justified by governments as necessary to protect national security;

Bearing in mind that it is imperative, if people are to be able to monitor the conduct of their government and to participate fully in a democratic society; that they have access to government-held information;

Desiring to promote a clear recognition of the limited scope of restrictions on freedom of expression and freedom of information that may be imposed in the interest of national security, so as to discourage governments from using the pretext of national security to place unjustified restrictions on the exercise of these freedoms;

Recognizing the necessity for legal protection of these freedoms by the enactment of laws drawn narrowly and with precision, and which ensure the essential requirements of the rule of law; and

Reiterating the need for judicial protection of these freedoms by independent courts;

Agree upon the following Principles, and recommend that appropriate bodies at the national, regional and international levels undertake steps to promote their widespread dissemination, acceptance and implementation:

I. GENERAL PRINCIPLES

Principle 1: Freedom of Opinion, Expression and Information

The Foreign Correspondents' Club, Hong Kong

香港外國記者會 香港中環下亞厘畢道二號北座
North Block, 2 Lower Albert Road, Central, Hong Kong
Tel: (852) 2521 1511 Fax: (852) 2868 4092
E-mail: fcc@fchk.org



- (a) Everyone has the right to hold opinions without interference.
- (b) Everyone has the right to freedom of expression, which includes the 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 or her choice.
- (c) The exercise of the rights provided for in paragraph (b) may be subject to restrictions on specific grounds, as established in international law, including for the protection of national security.
- (d) No restriction on freedom of expression or information on the ground of national security may be imposed unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest.² The burden of demonstrating the validity of the restriction rests with the government.

Principle 1.1: Prescribed by Law

- (a) Any restriction on expression or information must be prescribed by law. The law must be accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful.
- (b) The law should provide for adequate safeguards against abuse, including prompt, full and effective judicial scrutiny of the validity of the restriction by an independent court or tribunal.

Principle 1.2: Protection of a Legitimate National Security Interest

Any restriction on expression or information that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest.

Principle 1.3: Necessary in a Democratic Society

To establish that a restriction on freedom of expression or information is necessary to

The Foreign Correspondents' Club, Hong Kong

香港外國記者會 香港中環下亞厘畢道二號北座
North Block, 2 Lower Albert Road, Central, Hong Kong
Tel: (852) 2521 1511 Fax: (852) 2868 4092
E-mail: fcc@fchkhk.org



protect a legitimate national security interest, a government must demonstrate that:

- (a) the expression or information at issue poses a serious threat to a legitimate national security interest;
- (b) the restriction imposed is the least restrictive means possible for protecting that interest; and
- (c) the restriction is compatible with democratic principles.

Principle 2: Legitimate National Security Interest

- (a) A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.
- (b) In particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.

Principle 3: States of Emergency

In time of public emergency which threatens the life of the country and the existence of which is officially and lawfully proclaimed in accordance with both national and international law, a state may impose restrictions on freedom of expression and information but only to the extent strictly required by the exigencies of the situation and only when and for so long as they are not inconsistent with the government's other obligations under international law.

The Foreign Correspondents' Club, Hong Kong

香港外國記者會 香港中環下亞厘畢道二號北座
North Block, 2 Lower Albert Road, Central, Hong Kong
Tel: (852) 2521 1511 Fax: (852) 2868 4092
E-mail: fcc@fcchk.org



Principle 4: Prohibition of Discrimination

In no case may a restriction on freedom of expression or information, including on the ground of national security, involve discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, nationality, property, birth or other status.

II. RESTRICTIONS ON FREEDOM OF EXPRESSION

Principle 5: Protection of Opinion

No one may be subjected to any sort of restraint, disadvantage or sanction because of his or her opinions or beliefs.

Principle 6: Expression That May Threaten National Security

Subject to Principles 15 and 16, expression may be punished as a threat to national security only if a government can demonstrate that:

- (a) the expression is intended to incite imminent violence;
- (b) it is likely to incite such violence; and
- (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

Principle 7: Protected Expression

(a) Subject to Principles 15 and 16, the peaceful exercise of the right to freedom of expression shall not be considered a threat to national security or subjected to any restrictions or penalties. Expression which shall not constitute a threat to national security includes, but is not limited to, expression that:

- (i) advocates non-violent change of government policy or the government itself;
- (ii) constitutes criticism of, or insult to, the nation, the state or its symbols, the

The Foreign Correspondents' Club, Hong Kong

香港外國記者會 香港中環下亞厘畢道二號北座
North Block, 2 Lower Albert Road, Central, Hong Kong
Tel: (852) 2521 1511 Fax: (852) 2868 4092
E-mail: fcc@fchkhk.org



III. RESTRICTIONS ON FREEDOM OF INFORMATION

Principle 11: General Rule on Access to Information

Everyone has the right to obtain information from public authorities, including information relating to national security. No restriction on this right may be imposed on the ground of national security unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest.

Principle 12: Narrow Designation of Security Exemption

A state may not categorically deny access to all information related to national security, but must designate in law only those specific and narrow categories of information that it is necessary to withhold in order to protect a legitimate national security interest.

Principle 13: Public Interest in Disclosure

In all laws and decisions concerning the right to obtain information, the public interest in knowing the information shall be a primary consideration.

Principle 14: Right to Independent Review of Denial of Information

The state is obliged to adopt appropriate measures to give effect to the right to obtain information. These measures shall require the authorities, if they deny a request for information, to specify their reasons for doing so in writing and as soon as reasonably possible; and shall provide for a right of review of the merits and the validity of the denial by an independent authority, including some form of judicial review of the legality of the denial. The reviewing authority must have the right to examine the information withheld.⁴

Principle 15: General Rule on Disclosure of Secret Information

No person may be punished on national security grounds for disclosure of information if (1) the disclosure does not actually harm and is not likely to harm a legitimate

The Foreign Correspondents' Club, Hong Kong

香港外國記者會 香港中環下亞厘畢道二號北座
North Block, 2 Lower Albert Road, Central, Hong Kong
Tel: (852) 2521 1511 Fax: (852) 2868 4092
E-mail: fcc@fcchk.org



national security interest, or (2) the public interest in knowing the information outweighs the harm from disclosure.

Principle 16: Information Obtained Through Public Service

No person may be subjected to any detriment on national security grounds for disclosing information that he or she learned by virtue of government service if the public interest in knowing the information outweighs the harm from disclosure.

Principle 17: Information in the Public Domain

Once information has been made generally available, by whatever means, whether or not lawful, any justification for trying to stop further publication will be overridden by the public's right to know.

Principle 18: Protection of Journalists' Sources

Protection of national security may not be used as a reason to compel a journalist to reveal a confidential source.

Principle 19: Access to Restricted Areas

Any restriction on the free flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law. In particular, governments may not prevent journalists or representatives of intergovernmental or non-governmental organizations with a mandate to monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed. Governments may not exclude journalists or representatives of such organizations from areas that are experiencing violence or armed conflict except where their presence pose a clear risk to the safety of others.

IV. RULE OF LAW AND OTHER MATTERS

Principle 20: General Rule of Law Protections

The Foreign Correspondents' Club, Hong Kong

香港外國記者會 香港中環下亞厘畢道二號北座
North Block, 2 Lower Albert Road, Central, Hong Kong
Tel: (852) 2521 1511 Fax: (852) 2868 4092
E-mail: fcc@fcchk.org



should be tried by a jury where that institution exists or else by judges who are genuinely independent. The trial of persons accused of security-related crimes by judges without security of tenure constitutes a prima facie violation of the right to be tried by an independent tribunal.

(b) In no case may a civilian be tried for a security-related crime by a military court or tribunal.

(c) In no case may a civilian or member of the military be tried by an *ad hoc* or specially constituted national court or tribunal.

Principle 23: Prior Censorship

Expression shall not be subject to prior censorship in the interest of protecting national security, except in time of public emergency which threatens the life of the country under the conditions stated in Principle 3.

Principle 24: Disproportionate Punishments

A person, media outlet, political or other organization may not be subject to such sanctions, restraints or penalties for a security-related crime involving freedom of expression or information that are disproportionate to the seriousness of the actual crime.

Principle 25: Relation of These Principles to Other Standards

Nothing in these Principles may be interpreted as restricting or limiting any human rights or freedoms recognized in international, regional or national law or standards.