Proposals to implement Article 23 of the Basic Law - Comparison of Offences and Penalties

T : 4: 000	Proposed Offences (Note 1)	Comparable / Similar Offences in Other Jurisdictions			
Existing Offences		UK	USA	Singapore	Canada
Treason					
Kill, wound or cause bodily harm to the head of state	To repeal – no longer applicable under the constitutional situation of the HKSAR.	Compass or imagine the death of the King	Kill or attempt to kill or assault the President	Imagine or intend the death of or hurt to the President	Kill or do bodily harm to Her Majesty
(Cap 200 s 2 – life imprisonment)		(Treason Act 1351 – life imprisonment)	(18 USCS §1751-death penalty or life	(s 121A of the Penal	(s 46 of the Criminal Code – <i>life</i>
Levy war to depose or compel the sovereign or intimidate the legislature	Levy war by joining force with a foreigner to overthrow or compel or intimidate the PRC Government	Levy war against the King	imprisonment) Whoever, owing	Code – death penalty and fine)	imprisonment) Levy war against
(Cap 200 s 2 - life imprisonment)	(Life imprisonment)	(Treason Act 1351 – life imprisonment)	allegiance to US, levies war against them.	Wage war against the Government	Canada (s 46 of the Criminal
Instigate a foreigner to invade the PRC (Cap 200 s 2 - <i>life imprisonment</i>)	Instigate a foreign armed force to invade the PRC	Stir any foreigner or stranger with force to	`	(s 121 of the Penal Code – death penalty or life imprisonment	Code - life imprisonment)
(Cup 200 5 2 tyc imprisonment)	(Life imprisonment)	invade the UK or other dominions	and/or fine)	and fine)	Assist an enemy at war or armed forces in
Assist public enemy at war	Assist public enemy at war	(s 3 of the Treason	Adhere to the enemies giving them aid and	Abet the waging of war against the	
(Cap 200 s 2 - life imprisonment)	(Life imprisonment)	Felony Act 1848 - life imprisonment)	comfort, giving false report to promote	Government	(s 46 of the Criminal Code – <i>life</i>
Treasonable Offence	To repeal – existing offence is not clearly defined.	Adherent to the King's enemies, giving to	success of enemy (18 USCS §2381 /	(s 121 of the Penal Code – death penalty or life imprisonment	imprisonment) Form an intention to do
- Manifest the intention to levy war or instigate invasion by overt acts.		them aid and comfort	2388 – death penalty/up to 20 years and/or	and fine)	treasonable acts and manifest that intention
(Cap 200 s 3 - life imprisonment)		(Treason Act 1351 – life imprisonment)	fine)		by overt act
Inchoate and accomplice offences	To codify the inchoate and accomplice offences of treason.				(s 46 of the Criminal Code – <i>life imprisonment</i>)
(Common Law / ss 159A and 159G of Cap 200 - <i>life imprisonment</i>)	(Life imprisonment)		(cont'd)		priserune.ii)
		(cont'd)		(cont'd)	(cont'd)
		- 1 - Express, utter or declare intention to	Whoever owing allegiance to US and having knowledge of	Attempt to wage war against the	Do any preparatory act or conspire to levy war
		levy war or stir invasion by any overt	commission of treason, does not disclose to	Government	(s 46 of the Criminal

E 'A' - Off			Comparable / Similar Offences in Other Jurisdictions			
Existing Offences		UK	USA	Singapore	Canada	
Misprision of treason						
(Knowing that treason is being planned or committed but did not disclose this to a proper authority within a reasonable time) (Common law offence - 7 years and a	_					
fine)						

Secession					
Broadly covered by Treason - (Cap 200 s 2 - life imprisonment)	Secession - withdraw a part of the PRC from its sovereignty or resist the CPG in exercising its sovereignty over a part of China by levying war, force, threat of force or other serious unlawful means. (Life imprisonment)	Broadly covered by levying war under treason (Treason Act 1351 - life imprisonment) See also "Treasonable	advocating the overthrow of the government of any US state or territory by force or violence (18 USCS §2385 - 20	levying war against the Government (s 121 of the Penal Code – death penalty	Broadly covered by levying war against Canada (s 46 of the Criminal Code – life imprisonment)
Broadly covered by inchoate and accomplice offences of treason (Common Law / ss 159A and 159G of Cap 200 - life imprisonment)	To codify the inchoate and accomplice offences of secession (Life imprisonment)	Offence" above		against the Government	Do any preparatory act or conspire to levy war (s 46 of the Criminal Code - <i>life imprisonment</i>)

Existing Offences	Proposed Offences (Note 1)	Comparable / Similar Offences in Other Jurisdictions				
		UK	USA	Singapore	Canada	
Sedition						
Incite others to commit treason (Common Law – same as substantive	Incite others to commit treason, secession or subversion	See "Treasonable Offence" above	Print, publish, edit, etc any written or printed matter advocating or	Do or attempt / prepare / conspire with others to do any act which has	publish seditious libel	
offence: life imprisonment)	(life imprisonment)	Publish seditious words or libel with a			ndency, or seditious conspiracy.	
Do or attempt / prepare / conspire with others to do acts with a seditious intention, or utter seditious words.	Incite others to violence or public disorder that seriously endangers the stability of the state or the HKSAR.	seditious intention. Incitement to disorder or violence necessary. (Common Law Offence - fine or imprisonment at court's discretion)	US government by force or violence (18 USCS §2385 - 20	or deal with seditious publications. (s 3-4 of Sedition Act - 3 years for first offence, 5 years for subsequent ones and / or fine)	(s 61 of the Criminal Code - 14 years)	
(Cap 200 s 10 – 2 years and \$5,000 for first offence and 3 years for subsequent offences)	(7 years and unlimited fine)		years and / or fine)			
Deal with seditious publication— (i.e. publication having a seditious intention.) (Cap 200 s 10(1) - 2 years and \$5,000 for first offence and 3 years for subsequent ones. Publications to be forfeited)	Knowingly or having reasonable ground to suspect, and without reasonable excuse, deal with seditious publication (i.e. publication that would be likely to incite treason, secession or subversion.) (7 years and \$500,000. Publications to be forfeited)					
Possess seditious publications (Cap 200 s 10(2) - 1 year and \$2,000 for first offence and 2 years for subsequent ones. Publications to be forfeited)	Knowingly or having reasonable ground to suspect, and without reasonable excuse, possess seditious publication (1 year and \$50,000 for first offence and 2 years for subsequent ones. Publications to be forfeited)					
Posting of seditious publications (Cap 98, s 32 - 6 months and \$20,000)	To repeal – offence covered by seditious publications.					

Existing Offences Proposed Offences (Note 1)	D 1000 (21.4)	Comparable / Similar Offences in Other Jurisdictions			
	UK	USA	Singapore	Canada	
Subversion					
Treason – levy war to compel the sovereign to change measures or intimidate the legislature. (Cap 200 s 2 – <i>life imprisonment</i>)	To intimidate the PRC Government by levying war, force, threat of force or other serious unlawful means. (life imprisonment)	change Her measures, or to intimidate Parliament by overt act	Engage in any rebellion or insurrection against the authority of the US (18 USCS §2383 –10 years and / or fine)	with the intention to compel him to exercise or refrain from exercise of his lawful	or legislature of a province by violence (s 51 of the Criminal Code – 14 years)
Treason - levy war to depose the sovereign. (Cap 200 s 2 – <i>life imprisonment</i>)	To overthrow the PRC Government or disestablish the basic system of the state by levying war, force, threat of force or other serious unlawful means.	Felony Act 1848 – life imprisonment)	conspire to overthrow by force the US	(s 124 of the Penal Code – 7 years and fine)	Treason - use force or violence for the purpose of overthrowing the Government of Canada or a province
Broadly covered by inchoate and accomplice offences of treason	(life imprisonment) To codify the inchoate and accomplice offences of subversion	the crown of the UK by any overt art or deed (s 3 of the Treason Felony Act 1848 - <i>life</i>		Deprive or depose the President from the sovereignty of Singapore	(s 46 of the Criminal Code – <i>life</i> <i>imprisonment</i>)
(Common Law / ss 159A and 159G of Cap 200 - life imprisonment)	(Life imprisonment)	imprisonment) see also "Treasonable offence" above	see also "Seditious conspiracy" above	(s 121B of the Penal Code - life imprisonment and fine) Attempt to wage war against the Government (s 121 of the Penal Code – death penalty or life imprisonment and fine)	Do any preparatory act or conspire to levy war (s 46 of the Criminal Code — life imprisonment)

T 11 000	D 1000 (1) (1)	Comparable / Similar Offences in Other Jurisdictions			
Existing Offences	Proposed Offences (Note 1)	UK	USA	Singapore	Canada
Theft of State Secrets					
Spying	Spying	Spying	Spying	Spying	Spying
(Cap 521 ss 3 and 10 - 14 years)	(retain existing penalty - 14 years)	(s 1 of the 1911 Official Secrets Act and s 2 of 1920 Act - liable to penal	(18 USCS §793 and 794 - death penalty / life imprisonment / 10 years and / or fine)	(ss 3 and 7 of the Official Secrets Act - 14 years and \$20,000)	(ss 6 and 19 of the Security of Information Act, s 46 of the Criminal Code – life
Harbouring spies and other espionage related offences	Harbouring spies and other espionage related offences	servitude between 3-14 years)		Harbouring spies (s 11 of the Official	imprisonment / 10 years)
(Cap 521 ss 4-8 and 10 - 2 years on indictment, 3 months and \$25,000 on summary conviction)	(5 years on indictment, 3 years and \$100,000 on summary conviction)	Habouring spies (s 7 of the 1911 Official Secrets Act - 2	(18 USCS §792 - 10 years and / or fine) Unlawful disclosure of	Secrets Act - 2 years and \$2,000)	Habouring spies (s 21 of the Security of Information Act – 10
Unlawful disclosure of information obtained by virtue of official position or unauthorized disclosure.	Unlawful disclosure of information obtained by virtue of official position or unauthorized disclosure or unauthorized access.		classified information (50 USCS §783 and 18	(s 5 of the Official	years) Unlawful disclosure
(Cap 521 ss 13-20 and 25 - 2 years and \$500,000 on indictment, 6 months and \$50,000 on summary conviction)	(5 years and \$500,000 on indictment, 3 years and \$50,000 on summary conviction)	Unlawful disclosure (ss 1-6 of the Official	and / or fine)	Failure to safeguard information or return documents	(ss 4, 13, 14, 16-18 of the Security of Information Act – <i>life</i> <i>imprisonment</i> / <i>up to</i>
Failure to safeguard protected information or return documents.	Failure to safeguard protected information or return documents.	Secrets Act 1989 - 2 years and / or fine on indictment, 6 months		(s 5 of the Official Secrets Act – 2 years	14 years) Failure to safeguard
(Cap 521 ss 22 and 25 - 3 months and \$25,000)	(Retain existing offences - 3 months and \$25,000)	and fine on summary conviction)		and fine)	information or return documents
		Failure to safeguard information or return documents			(s 4 of the Security of Information Act – up to 14 years on indictment, 12 months
		(s 8 of the Official Secrets Act 1989 - 3 months and/ or fine)			and / or \$2,000 on summary conviction)

Existing Offences	Proposed Offences (Note 1)	Comparable / Similar Offences in Other Jurisdictions
Organized Crime against National Secu	rity	
empowers the Secretary for Security to	member of or providing financial aids to) a proscribed organization (7 years and unlimited fine)	Organize any society which advocates the overthrow or destruction of any government in the US by force or violence; become members of such society knowing its purposes. (18 USCS §2385 - 20 years and / or fine) Singapore Managing or being a member of an unlawful society (i.e. an unregistered society. A society shall be refused registration if its registration would be contrary to the national interest) (s 14 of the Societies Act – 5 years or 3 years and / or \$3,000)

Note 1: The proposals are based on amendments to existing ordinances, such as the Crimes Ordinance, the Societies Ordinance and the Official Secrets Ordinance. It is not our intention to introduce a new ordinance on national security.

Security Bureau September 2002