

國家安全(立法條文)條例草案－  
“聯同敵方進行對國家有敵意的行為”

法案委員會就 1 號文件第 4 頁第(i)項所提到的“聯同敵方進行對國家有敵意的行為”所涵蓋的行為，要求當局列舉一些例子。

2. 正如 1 號文件註腳 6 所述，有關的提述引自一本英國刑事法的權威文獻 *Archbold 2002*，該書根據一些英國的權威典籍，列出一些會構成“向女皇的敵人提供協助和安慰”的行為(見附件 I 中 *Archbold 2002* 第 25-28 段)。

3. *Archbold* 和 *Fost. 216* (*Archbold* 所提述的參考文獻)都沒有提到任何會構成“聯同敵方進行對國家有敵意的行為”的例子。不過，敵意的行為會包括戰爭行為，例如某個國家向邊境的另一方開火。如有兩個國家的武裝部隊發生武裝衝突，當中一個國家的國民聯同其國家的敵人攻擊自己國家的邊境，該人士會被視為向敵人提供協助和安慰。

4. 條例草案沒有使用“提供協助和安慰”的用語，但卻訂明若任何人懷有損害中華人民共和國在戰爭中的形勢的意圖，協助在該場戰爭中與中華人民共和國交戰的公敵，即屬犯罪。我們認為，任何以上文第 3 段所述的方式行事的人，若在作出有關作為的時候，是懷有損害中華人民共和國在戰爭中的形勢的意圖的，他便會觸犯該項罪行。

律政司  
二零零三年四月

附件

## § 25-25 OFFENCES AGAINST THE CROWN AND GOVERNMENT [CHAP. 25]

## Evidence

25-25 The count is proved by proving one or more of the overt acts laid. The fact of the persons adhered to being enemies may be proved by the production of the Gazette containing the proclamation, if war were formally proclaimed, or public notoriety is sufficient evidence of it: Y.B. 19 Edw. IV, f. 5; Fost. 219; 1 Hale 164. And whether they are enemies or not is a matter of fact to be determined by the jury: *ibid.*

An actual adherence must be proved. A mere conspiracy or intention to adhere is not treason within this branch of the statute, although probably such a conspiracy might be laid as an overt act of compassing the Sovereign's death. But, if the prosecution can prove such a conspiracy, and connect the defendant with it by evidence, and can prove an act done by any one of the conspirators in furtherance of the common design, it may be given in evidence against the defendant, if it tends to prove any of the overt acts laid in the indictment; for the act of one, in such a case, is the act of all: *R. v. Stone* (1796) 25 St.Tr. 1155 (see *ante*, § 25-16).

## (i) "Giving aid and comfort, etc."

25-26 The words in the *Treason Act* 1351 (*ante*, § 25-1), are "or be adherent to the King's enemies in his realm, giving to them aid and comfort in the realm or elsewhere". As to the words in the Parliament Roll and Statute Roll, see *R. v. Casement* [1917] 1 K.B. 98 at 134. The offence defined by these words is "adhering to the [Queen's] enemies within the land or without, and declaring the same by some overt act": 3 Co.Inst. 10, 11, 63; Co.Litt. 261 b; the offence being complete though both the adherence and the enemies adhered to are without the realm. As to the common law before the statute and as to the statute, see 1 Hale 91, 159, 165, 166, 169; 1 Hawk. c. 17, s.28; 1 East P.C. 60, 78; *R. v. Maclane* (1797) 26 St.Tr. 722 at 725; *Mulcahy v. R.* (1868) L. R. 3 H.L. 306 at 317; *R. v. Lynch* [1903] 1 K.B. 444. The words "giving aid and comfort to the [Queen's] enemies" are words in apposition; they are words to explain what is meant by being adherent to, so that a man may be adherent to the Queen's enemies in her realm by giving to them aid and comfort in her realm or he may be adherent to the Queen's enemies elsewhere by giving them aid and comfort elsewhere. In either case he is equally adherent to the Queen's enemies, and so commits this treason: *R. v. Casement*, *ante*, at p. 136.

25-27 Records are preserved in the Public Record Office of the following cases, all of which contain indictments for adhering to, aiding, and assisting the Queen's enemies abroad, *viz.*: *R. v. Lord Wentworth* (1559) Queen's Bench Indictments (Baga de Secretis) K.B. 8/38; *R. v. Grymston*; *R. v. Chamberlayn* (1559): for the surrender of Calais, *ibid.* K.B. 8/38, 39; but as to this case, see *R. v. Casement*, *ante*, at p. 128; *R. v. Lord Middleton and John Stafford* (1713) K.B. Crown Rolls 28: for assisting the King of France in fighting against the British in France; *R. v. Duke of Wharton* (1729): for assisting the King of Spain in the siege of Gibraltar, Queen's Bench Indictments (Baga de Secretis), Trin. 2 Geo. 2, K.B. 8/67; *R. v. Cundell* (1812): for assisting "the French Government and the men of France under the said Government" in fighting against the British in the Isle of France, *ibid.* K.B. 8/89; followed in *R. v. Casement*, *ante*.

## (ii) Overt acts

25-28 Every assistance given by the Queen's subjects to her enemies, unless given from a well-grounded apprehension of immediate death in case of a refusal, is high treason within this branch of the statute: 1 Hale 159. Any act done by a British subject which strengthens or tends to strengthen the enemies of the Queen in the conduct of a war against the Queen, or which weakens or tends to weaken the power of the Queen and of the country to resist or attack the enemies of the Queen and country, constitutes giving aid and comfort to her enemies within the meaning of this part of the Act of Edward III: *R. v. Casement* [1917] 1

## SECT. I]

## HIGH TREASON

## § 25-31

K.B. 98. Therefore, if a British subject joins the Queen's enemies in acts of hostility against this country: Fost. 216; 1 Hawk. c. 17, s.28; or even against the Queen's allies: Fost. 220; *R. v. Vaughan* (1696) 13 St.Tr. 485; or raises troops for the enemy: *R. v. Harding* (1690) 2 Vent. 315 (where, after a special verdict, it was held that the indictment did not sufficiently charge an adherence to the King's enemies, as it did not state who those enemies were; but the defendant was convicted of compassing the King's death); or, whilst a state of war exists, endeavours in an enemy country to persuade British prisoners of war in that enemy country to join the armed forces of the enemy: *R. v. Casement, ante*; or takes part in an attempt to land arms and ammunition in any part of the United Kingdom for the use of the enemy: *ibid.*; or delivers up the Queen's castle, forts, or ships of war to the Queen's enemies through treachery or in combination with them: Fost. 219; 3 Co.Inst. 10; 1 Hale 168; or even detains the Queen's castles, etc., from her, if it is done in confederacy with the enemy: Fost. 219; 1 Hale 326; or sends money, arms, intelligence or the like to the Queen's enemies: Fost. 217; although such money, intelligence, etc., be intercepted and never reach them: *R. v. Gregg* (1708) 14 St.Tr. 1371 at 1376n.; Fost. 217, 218; *R. v. Hensey* (1758) 19 St.Tr.1341; *R. v. De La Motte* (1781) 21 St.Tr. 687; *R. v. Lord Preston* (1691) 12 St.Tr. 645; *R. v. Tyrie* (1782) 21 St.Tr. 815; he is guilty of treason.