

**National Security (Legislative Provisions) Bill –  
“joining the enemies in acts of hostility against the country”**

The Bills Committee asked for examples of acts that are covered by “joining the enemies in acts of hostility against the country” referred to in item (i) on page 4 of Paper No. 1.

2. As stated at footnote 6 of Paper No. 1, the subject reference was cited from a leading text on English criminal law *Archbold 2002*, which refers to a number of acts that would constitute “giving aid and comfort to the Queen’s enemies” in the light of English authorities (see para. 25-28 of *Archbold 2002* at Annex).

3. Neither *Archbold* nor *Fost. 216* (the reference in *Archbold*) gives any example of what amounts to “joining the enemies in acts of hostility against the country”. However, acts of hostility would include acts of warfare, such as firing across a country’s border. If armed conflicts were occurring between the armed forces of two countries, a national of one country who joined that country’s enemy in attacking the country’s border would therefore be regarded as giving aid and comfort to that enemy.

4. The Bill does not use the expression ‘giving aid and comfort’ but makes it an offence to assist any public enemy at war with the PRC with intent to prejudice the position of the PRC in the war. It is considered that the offence would be committed by someone who acted in the manner described in paragraph 3 above, provided the person did the act with intent to prejudice the position of the PRC in the war.

Department of Justice  
April 2003

## § 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. Maclean* (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 Col.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.