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Further to my previous submission (Submission No.91) to the Government of the Hong Kong Special Administrative Region (HKSAR), I thought it necessary to make an additional submission in light of Amnesty International's recent additional submission. I agree entirely with Amnesty International's most recent submission (Submission No.96).

It is regrettable that I omitted to make some comments in my previous submission, which is why I make this additional submission.

I note with great alarm that there are no provisions relating to evidence of treason, either in the National Security (Legislative Provisions) Bill or in s.2 of the Crimes Ordinance. It cannot be assumed, it appears to me, that the criminal procedure in murder trials will be automatically applied to treason trials since this is expressly omitted in section 2 of the Crimes Ordinance. May I suggest that the HKSAR takes immediate steps to insert a clause along the following lines:

*"75. Evidence of treason---(1) No one shall be convicted of treason on the evidence of one witness only, unless the evidence of that witness is corroborated in some material particular by evidence implicating the accused."*  
[New Zealand Crimes Act 1961, s.75(1)]

Please allow me now to write on how I interpret the definition of treason proposed by the National Security (Legislative Provisions) Bill, now before the Legco.

Clause 2(1)(a)

*"A Chinese national commits treason if he—*

*(a) with intent to—*

- i. overthrow the Central People's Government;*
- ii. intimidate the Central People's Government;*

*iii. compel the Central People's Government to change its policies or measures, joins or is a part of foreign armed forces at war with the People's Republic of China;"*

It would be treason for a Chinese citizen in Hong Kong (although the necessity for the commission of treason *within Hong Kong* is implied, not expressed - this should be expressed) to join enemy forces with the intention of overthrowing the Chinese Government, or of "intimidating" the Chinese Government (the word "intimidates" is not clear and needs defining), or of compelling the Chinese Government to change any of its ministers or national laws (again, the word "compelling" is not clear and needs defining). However, this heading does not account for rebellion by citizens outside a time of war; if citizens were to take up arms in time of peace with the same intentions as listed in the Bill, this would not be treason when it should be.

Clause 2(1)(b)

*"A Chinese national commits treason if he...(b) instigates foreign armed forces to invade the People's Republic of China with force;"*

This is treason in many countries, including New Zealand, Australia and the United Kingdom. However, the particular phraseology needs defining; for instance, what constitutes "instigating" an invasion? In New Zealand, it is treason for someone "owing allegiance" to the Queen of New Zealand to "incite or assist any person with force to invade New Zealand" [New Zealand Crimes Act 1961, s.73(d)]. Inciting an invasion clearly means to encourage or lure an invading force to actually invade. There is also no intent mentioned in this treason: it seems to me that there should at least be an intention to cause an armed invasion. Perhaps this would be better:

*"A Chinese national commits treason if he...(b) with intent to cause an armed invasion of the People's Republic of China, incites foreign armed forces to invade the People's Republic of China with force".*

It seems that to omit any intent in this treason would hold any person liable of committing treason merely for innocent acts that may not have the intention of causing an armed invasion.

Clause 2(1)(c)

*"A Chinese national commits treason if he...(c) assists any public enemy at war with the People's Republic of China by doing any act with intent to prejudice the position of the People's Republic of China in the war"*

This is an excellent provision. It does not criminalize acts of humanitarian assistance to enemy individuals as treason: although it would otherwise be treason to assist such individuals, the lack of intent to prejudice China's position in the war nullifies any treasonable act here. However, some have expressed concern that humanitarian assistance is not immediately obvious and should be clarified in clear and certain terms. In Australia, the rendering of humanitarian assistance to the enemy is not treason, although it remains treason in the United Kingdom, the United States (arguably), Canada, Ireland and so forth.

Also covered under this treason is the passing of State secrets to the enemy in time of war. It is widely accepted that a citizen who passes State secrets to the enemy in time of war does so to assist the enemy with intent to prejudice his country's position in the war and as such is a traitor, and ought to be prosecuted for treason rather than under Official Secrets legislation. This treason clearly makes allowance for this act to be a treasonable act.

Further to be noted is the concern raised by some that public demonstrations against a war in which China is involved might be construed under this treason as assisting the enemy with intent to betray. It seems to me that this is not the case. In demonstrating against a war, citizens do not assist the enemy with intent to prejudice their country's position in that war - they merely exercise their non-treasonable freedom with intent to tell the Government: "Listen to us! You are not representing us!" I believe that such demonstrations cannot be treason by the definition proposed.

### Conclusion

The fact that the proposed definition does not contain any treasons against the head of state is very commendable.

I would, however, recommend the following amendments to the current Bill:

- the terms "intimidate" and "compel" in clause 2(1)(a) to be clearly defined:

- the term "instigate" in clause 2(1)(b) to be clearly defined:
- a clause inserted in clause 2(1)(c) to express in clear and certain terms that acts of humanitarian assistance are not treason since there is no intent to betray:
- a clause inserted in clause 2 to provide for evidence in cases of treason to prevent abuse by State authorities.

I very strongly urge the HKSAR to act on the recommendations of Amnesty International with respect to this Bill, especially with respect to the treason offence. Hong Kong must ensure that its citizens' rights are protected, and that its citizens' human rights above all are protected, and following Amnesty International's advice will ensure that these are guaranteed and protected. Hong Kong has the chance to set a perfect example to the rest of the world: let that example be an inspiration to the rest of the world.

Yours sincerely  
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