



UNION INTERNATIONALE DES EDITEURS
INTERNATIONALE VERLEGER - UNION

INTERNATIONAL PUBLISHERS ASSOCIATION
UNION INTERNACIONAL DE EDITORES



Hon IP Kwok-him
Chairman Bills Committee
Legislative Council Building
8, Jackson Road
Hong Kong

12 June 2003

Re: Amendments to the provisions pertaining to "seditious publications" in the National Security Bill

Dear Mr. IP Kwok-him,

Please allow me to thank you, on behalf of the International Publishers' Association (IPA), for seeking our organisation's views on the 3 June 2003 Committee Stage amendments to the National Security Bill amending the Crimes Ordinance, the Official Secrets Ordinance and the Societies Ordinance pursuant to the obligation imposed by Article 23 of the Basic Law the Hong Kong SAR of the People's Republic of China and to provide for related, incidental and consequential amendments.

The amendments to the National Security Bill proposed by the Administration on 3 June 2003 contain a number of issues of concern to our constituency. In particular, we are still very much concerned about a number of provisions pertaining to sedition.

As in our 14 March 2003 letter to Mrs. Fan Hsu Lai-tai, please allow us to focus on Articles 9 C and 9 D of the proposed Bill. The proposed amendments do affect Article 9C. However, they leave Article 9D unchanged.

Article 9C must be read with Article 9D of the Bill. Article 9D, which remains unchanged by 3 June amendments, preserves limited opportunity to comment on political and public life in Hong Kong and China.

According to the proposed amendment to Article 9C, a seditious publication is now "a publication that is likely to induce a person to commit an offence under section 2 (treason), 2 A (subversion) or 2B (secession)". The rest of Article 9C remains unchanged, except for an additional section 3: "No prosecution for an offence under section 9C.2 shall be commenced after 3 years from the date of commission of the offence".

Previously, the definition of a seditious publication (9C.1) was as follows: “A seditious publication is a publication that is likely to cause the commission of an offence under section 2 (treason), 2 A (subversion) or 2B (secession)”.

In terms of Article 9C, it would be an offence to:

- “publish, sell, offer for sale, distribute or display any seditious publication” (9C. 2.a)
- “print or reproduce any seditious publication” (9C.2.b)
- “imports or exports any seditious publication” (9C.2.c)

“with intent to incite others, by means of the publication, to commit an offence under section 2 (treason), 2A (subversion) or 2B (secession)”. A violation of Article 9C would constitute “an offence” and would be “liable on conviction on indictment to a fine of \$ 500,000 and to imprisonment to 7 years”.

The IPA is still deeply concerned about the new definition of a “seditious publication”. Although it is less vague than in the initial draft, through the use of the notion of “inducement”, it is not narrow enough and could still lead to some unexpected interpretations. Actually, the very concept of “seditious publication” is a clear threat to the fundamental freedoms to publish and to read.

Article 9C, as currently drafted, would affect the entire book trade. If Article 9C came into force as such, authors, publishers, booksellers and librarians would face permanent uncertainty as to which publication would or not qualify as a seditious publication “likely to inducing a person to commit an offence section 2 (treason), 2 A (subversion) or 2B (secession)”. As for the new section 3 of Article 9C, the introduction of a limitation period is a step in the right direction. However, we believe a three-year period is still too long.

The provision targeting the imports and exports of any seditious publication has not been amended by the Administration, although it is against the spirit of the 1950 Florence Agreement of which Hong Kong, China, is a party.

Furthermore, should the term “publication” include electronic communication and publications, the Bill would threaten not only print publications in Hong Kong, but potentially also any electronic publication and web site accessible from Hong Kong, thus raising serious concerns about the extra-territorial impact of the Bill. .

Considering that Hong Kong current legislative arsenal is already able to assure an effective protection of national security, the IPA believes that implementation of Article 23 is actually unnecessary. In particular, and despite 3 June amendments, the IPA still feels compelled to call upon the Hong Kong authorities not to enact the concept of “seditious publication” in order to maintain the principle.

In conclusion, the IPA respectfully calls upon the Hong Kong SAR Government to ensure that authors and publishers can continue to create and distribute the works of the mind in complete freedom. The 3 June 2003 amendments to the National Security Bill proposed by the Administration do not go far enough in that direction. Upholding the principles enshrined in Article 19 of the United Nations' Universal Declaration of Human Rights is a universal duty.

Yours sincerely,

Lars Grahn

Chairman of IPA's Freedom to Publish Committee



cc: Mr. Tung Chee Hwa, Chief Executive, Hong Kong SAR, People's Republic of China
Hon Mrs. Fan Hsu Lai-tai, President, Hong Kong Legislative Council
H.E. Mr. Sha Zukand, Ambassador & Permanent Representative, Permanent Mission of the People's Republic of China to the UN Office at Geneva and other International organisations in Switzerland
H.E. Mr. Wu Chuanfu, Chinese Ambassador to Switzerland
Mr. Christopher Patten, Commissioner, European Commission External Relations DG
Mr. Colin L. Powell, US Secretary of State
Mr. Gil-Robles, Council of Europe's Commissioner for Human Rights
Sergio Vieira de Mello, High Commissioner for Human Rights, United Nations
Mrs Milagros del Corral, Deputy Assistant Director General, Culture Sector, UNESCO
Mr. Ross Shimmon, Secretary General, International Federation of Library Associations and Institutions (IFLA)
Mr. Alex Byrne, Chair, IFLA Freedom of Access to Information and Freedom of Expression Committee
Mrs. Sara Whyatt, Programme Director, Writers in Prison Committee, PEN International
Mr. Kjell Olaf Jensen, Chairman, Norwegian PEN Centre
Mr. Yu Youxian, Chairman, Publishers Association of China
Mrs Mechthild von Alemann, Director, Federation of European Publishers
Mrs Patricia Schroeder, President and CEO, Association of American Publishers
Mrs Nan Graham, Chair, International Freedom to Publish Committee, Association of American Publishers
Mr. Charles Clark, Secretary, Freedom to Publish Committee, UK Publishers Association