

Sir David Akers-Jones

April 17, 2003

Secretary General of the Legislative Council
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Sir,

I am writing to express my support for the enactment by the HKSAR of National Security Legislation whose enactment is required by Article 23 of the Basic Law.

I note in particular that Article 23 in itself does not stand alone in the Basic Law and that any action to enforce 23 must itself comply specifically with Article 39 of the Basic Law and the Provisions of the International Covenant of Civil and Political Rights. I am reassured by the advice, which, I am informed, has been received from international lawyers of repute that the proposals to implement Article 23 comply with the provisions of the International Covenant. There is therefore a double protection of the rights and freedoms which we cherish, such that not only does the draft legislation comply but moreover any enforcement of the law can be tested against and must not infringe Article 39. An additional safeguard in Article 35 describes the rights of Hong Kong residents to institute legal proceeding in the courts against the acts of the Executive Authorities.

There have been many months of vigorous public debate about the enactment of this legislation and its wording. Arising from this debate the Administration has made strenuous efforts to meet objections to the legislation and has clarified and modified the legislation in an endeavour to meet these objections and suggestions.

In particular:-

- i. The Government has confirmed the right to trial by jury of the serious

crimes addressed under Article 23.

- ii. Levying war has been replaced by engaging in war.
- iii. The existing common law of misprision of treason will be abolished.
- iv. Secession has been more clearly defined.
- v. Existing laws on sedition are to be repealed and replaced to require the proof of criminal intent to incite acts involving war etc. and similarly such proof of criminal intent for publication of material of seditious import.
- vi. With regard to official secrets the scope of protected information has been more narrowly defined.
- vii. The freedom of association and the possible proscription of organisations have given rise to much concern. The meaning of "subordination" of a local organization to an organization proscribed by the CPG has therefore been defined in the legislation and an appeal to the Courts against proscription provided for.

The draft National Security Legislation tidies up existing legislation and expressly provided that its provisions are to be interpreted, applied and enforced in a manner that is consistent with Article 39 of the Basic Law which relates to civil and political rights.

I have not been able to write today in detail of each proposed Article in the Draft Law however I am content that the Administration has taken care to address and respond to the real concerns that have been expressed and to build into the Law the safeguards which protect the rights and freedoms of the citizens of the Special Administrative Region.

Yours faithfully,



David Akers-Jones