

1. **Need for Change.** I doubt that it would be in the Government or the public interest to launch any Article 23 legislation in the current political climate. Much of the problems advocates seek to address are consequent on government policies meeting public resistance. Any initiative to launch Article 23 would surely be seen as further government overreach and merely inflame the situation further. Rather the current focus should be on fully complying with the democratic commitments in the Basic Law. Once those are fully realized then it would be appropriate to launch the process to enact various legislative reforms related to Article 23. The approach the Government has long taken to date appears aimed at silencing opposition and not at carrying out its mandate under the Basic Law. For this reason it is doubtful that sufficient trust can be established until political reform is carried out. Until then, in its opaque relationship with the Central Government, there will be widespread suspicion that Chinese officials are calling the shots, as was perceived to be the case in the 2003 exercise. The Basic Law, of course, calls for Hong Kong to enact such legislation on its own.
2. **Deliberative Process.** When the time is right to launch Article 23 legislation than that should surely be done through the Law Reform Commission, with a sub-committee panel of analyst that are beyond reproach. The LRC could conduct a single study of all Article 23 related legislation or take up different areas independently as is judged most appropriate. Such review should involve a neutral report that addresses the best practices in the relevant areas and any concerns and compromises discussed in the prior exercise. Only after a public consultation on such neutral report should the LRC then issue its final report on the consultation and make appropriate recommendations for further public consultation incidental to any drafting process. The Government then in power would be responsible for drafting the legislation and defending its proposals but this should be done with the sound advice of this neutral framework. At the draft stage a White Paper should follow. See Petersen Article pp. 21-23. These steps not only get the relevant legislation right but also enable the public to understand it. If public trust is to be maintained the process for enacting such laws is as important and the content. Any process that disregards these prudent steps, as was the case in 2003, would surely be viewed with suspicion and would consequently raise serious questions about Hong Kong's autonomy and rule of law.
3. **Order of Proceeding and Substance.** After any LRC report it should not be necessary to enact all Article 23 legislation at one time. It would surely be more understandable to the public if different or related areas were addressed separately in distinct components in a reform spirit to achieve best practices and protect rights guaranteed in the Hong Kong Basic Law. With legislative reform in the late 1990s some of the relevant legislation has already been substantially reformed and would only require changes

to reflect the change of sovereign. For example, such reform spirit when it comes to official secrets, might preserve much of the existing legislation, which was agreed with China in 1997, but such legislation might be supplemented with an access to information bill; the Societies Ordinance might be revised to strike excessive provisions added to earlier reforms by the Provisional Legislature and to provide a proper process of review of any denial of registration; *See* Proposal of the Article 23 Concern Group, "The Proper Way Forward," August 2003. With relation to current debates, for sedition, provisions requiring both incitement and imminent likelihood of unlawful action should be adopted. In the unusual situation of Hong Kong, such legislation should surely be narrow in scope and the highest international standards should be met. *See eg* the Johannesburg Principles.

4. **Current Posture.** Much has been historically made of Beijing's concerns with security in Hong Kong being born of the massive protest over Article 23 in 2003. There is a need to appreciate that these protests were preceded by a heavy-handed approach in putting forth the consultation report over Article 23 legislation in the first place. The government proceeded by first consulting Beijing and then putting forth a largely one-sided argument for its favored legislation in the consultation. Criticisms of the Government's proposals were dismissed as "spurious. This was followed by efforts to manipulate the consultation favorably to the Government. By so starkly elevating Beijing concerns over those of Hong Kong, the Government put in place a pattern of failing to defend Hong Kong and respect Hong Kong concerns that persist until the present and was again very much evident in recent debates over democratic reform. This failure has been at the heart of the emergence of more radical politics in Hong Kong, the very thing now targeted as a security threat. A proper process of first implementing democratic reform under the Basic Law and then enacting Article 23 legislation with full regard to Basic Law requirements would go a long way toward alleviating such concerns and building the requisite trust.