Article 29 of National Security Law

It has come to my attention that, on the occasion of a recent online webinar on the National Security Law, a statement of one of the speakers was to the effect that it would be an offence of "collusion" under the National Security Law for persons in Hong Kong to "contact overseas" and "urging action in Hong Kong." If this statement were in fact made, it is my duty to put the correct position before the public – nothing is further from the truth. In any event, I would like to take this opportunity to set out some basic points about the National Security Law.

The purpose of the National Security Law is to safeguard national security, thereby maintaining prosperity and stability in the Hong Kong Special Administrative Region (HKSAR). National security is a matter of top priority for any State, the protection of which is a basic prerequisite and foundation of the State's sovereign integrity, survival and development. As in any State, safeguarding national security is a matter entirely within the purview of the central authorities.

To address the delusion that might have been proffered, it is incumbent upon me to bring to your attention that the National Security Law sets out four types of offences which can be generally described as secession, subversion, terrorist activities and collusion with a foreign country or with external elements to endanger national security. The relevant provisions on "collusion" are set out in Articles 29 and 30 in Part 4 of Chapter III.

The term "collusion" does not appear in the substantive part of Articles 29 and 30 and is only present in the title to the fourth type of offences under the National Security Law. One must not therefore ascribe a definition of "collusion" in the abstract or even simply by reference to any dictionary meaning. The proper approach would be to look at the relevant provision itself.

Under Article 29, it is an offence if a person steals, spies, obtains with payment, or unlawfully provides State secrets or intelligence concerning national security for a foreign country or an external element (an institution, organisation or individual outside the mainland, Hong Kong and Macau).

It is also an offence if a person engages in activities such as requesting, conspiring with, receiving instructions etc., from a foreign country or external element to commit specific types of acts which are explicitly set out in Article 29. These include, (1) waging a war against China, using or threatening the use of force to seriously undermine the sovereignty, unification and territorial integrity of China; (2) seriously disrupting the formulation and implementation of laws and policies by the HKSAR government which is likely to cause serious consequences; (3) rigging or undermining an election in HKSAR which is likely to cause serious consequences; (4) imposing sanctions or blockade or engaging in other hostile activities against HKSAR or China; or (5) provoking by unlawful means hatred among Hong Kong residents towards the Central People's Government or the HKSAR government which is likely to cause serious consequences.

It is clear therefore to any well-informed person when reading Article 29 of the National Security Law that it does <u>not</u> preclude any interaction or communication between a Hong Kong resident with others overseas. The prohibition relates only to acts that would endanger national security which are clearly set out. Persons locally and abroad are free to conduct any act they so desire during their normal course of business or daily lives. It would be most unfortunate if there were indeed, as I was informed, such a blatant misreading and misconstruction of the provision of the National Security Law disseminated to the international community during the webinar.

Indeed, protecting against foreign interference in the course of safeguarding national security is nothing unusual. For example, to name but a few, the United States' Logan

Act[1] makes it an offence for any citizen of the United States to commence or carry on any correspondence or intercourse with any foreign government to influence the measures or conduct of any foreign government "in relation to any disputes or controversies with the United States, or to defeat the measures of the United States", while Australia's Criminal Code as contained in the Schedule of the Criminal Code Act 1995 (Cth) contains, for example, the offences concerning foreign interference[2], funding or being funded by a foreign intelligence agency[3], and sabotage involving national security involving a foreign principal[4].

The National Security Law seeks to prevent, suppress and punish any collusion with a foreign country and external elements to carry out activities that endanger national security. This is for the purposes of securing national security, and is not designed to suppress any acts which might arise in individuals going about their day-to-day business in society. There is nothing in the National Security Law that inhibits or affects the normal operation of commercial activities and businesses, and in fact, the law expressly stipulates that legitimate rights of residents in the HKSAR are protected. The National Security Law is targeted at activities that endanger national security and it is far-fetched and fanciful to suggest that commercial activities or the daily lives of residents in the HKSAR would be adversely affected. On the contrary, the law brings about stability and predictability, an environment conducive to economic and human development much desired by all.

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[1] Title 18 US Code Chapter 45 – Foreign Relations §953: Private correspondence with foreign governments.
[2] Section 91.2 of the Criminal Code as contained in the Schedule of the Criminal Code Act 1995 (Cth)(Australia).
[3] Sections 92.9 and 92.10 of the Criminal Code as contained in the Schedule of the Criminal Code Act 1995 (Cth)(Australia).
[4] Sections 82.3 and 82.4 of the Criminal Code as contained in the Schedule of the Criminal Code Act 1995 (Cth)(Australia).