

立法會
Legislative Council

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LC Paper No. CB(2) 701/02-03
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by the Administration)

**Panel on Security
and
Panel on Administration of Justice and Legal Services**

**Minutes of joint meeting held on Thursday, 7 November 2002
at 4:30 pm in the Chamber of the Legislative Council Building**

**Members
present** : Panel on Security

- Hon LAU Kong-wah (Chairman)
- * Hon James TO Kun-sun (Deputy Chairman)
- * Hon Albert HO Chun-yan
- Dr Hon LUI Ming-wah, JP
- Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
- Hon CHEUNG Man-kwong
- Hon WONG Yung-kan
- Hon Howard YOUNG, JP
- * Hon Ambrose LAU Hon-chuen, GBS, JP
- Hon Michael MAK Kwok-fung
- Hon IP Kwok-him, JP
- * Hon Audrey EU Yuet-mee, SC, JP

Panel on Administration of Justice and Legal Services

- ◆ Hon Margaret NG (Chairman)
- Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)
- Hon Martin LEE Chu-ming, SC, JP
- Hon CHAN Kam-lam, JP
- Hon Miriam LAU Kin-ye, JP
- Hon Emily LAU Wai-hing, JP
- Hon TAM Yiu-chung, GBS, JP

Members attending : Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Hon SIN Chung-kai
Hon YEUNG Yiu-chung, BBS
Hon CHOY So-yuk
Hon LEUNG Fu-wah, MH, JP

Member absent : Panel on Security
Hon Andrew WONG Wang-fat, JP

* Also a member of Panel on Administration of Justice and Legal Services

◆ Also a member of Panel on Security

Public Officers attending : Mrs Regina IP, GBS, JP
Secretary for Security

Mr Timothy TONG, JP
Permanent Secretary for Security (Acting)

Mr Bob ALLCOCK, BBS
Solicitor General

Mr James O'NEIL
Deputy Solicitor General

Miss Adeline WAN
Senior Government Counsel

Mr Hubert LAW
Assistant Secretary (Security)

Attendance by Invitation : Hong Kong Bar Association
Mr Alan LEONG, SC
Chairman

Mr P Y LO

Kowloon Women's Organisations Federation

Ms KO Po-ling

Kowloon City District Resident Association

Mr LO Man-sing

Kowloon Federation of Associations

Mr LAI Wing-ho, Joe

Mr CHIU Kwok-wai

Federation of Hong Kong Guangdong Community Organisations Ltd

Mr YIP Chun-nam
Deputy Secretary General

The Hong Kong Wan Chai District Association Ltd

Mr YIP Chun-to

Hong Kong Swatow Merchants Association Limited

Mr TONG Wang-chow
Chairman

Hong Kong Association of International Investment

Mr PUN Tak-hung
General Secretary

Clerk in attendance : Mrs Sharon TONG
Chief Assistant Secretary (2)1

Staff in attendance : Mr Jimmy MA
Legal Adviser, JP

Ms Bernice WONG
Assistant Legal Adviser 1

Mr Raymond LAM
Senior Assistant Secretary (2)5

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I. Election of Chairman

Miss Margaret NG was elected Chairman of the joint meeting.

II. To receive public views on the Consultation Document on Proposals to implement Article 23 of the Basic Law

Meeting with representatives of the Hong Kong Bar Association
(LC Paper No. CB(2) 2640/01-02(01))

2. Mr Alan LEONG presented the views of the Hong Kong Bar Association (the Bar Association) as follows -

General principles on the enactment of legislation to implement Article 23 of the Basic Law

- (a) The enactment of legislation to implement Article 23 of the Basic Law (BL23) should be made under the following principles :
 - (i) Enactment of legislation should be kept to a minimum and made only where strictly necessary (the minimalist principle);
 - (ii) Some existing but outdated legislation relating to the areas under BL23 should be refined;
 - (iii) Any law drafting under BL23 should be unambiguous, drawn narrowly and with precision (the precision principle);

Treason

- (b) Some of the proposed treasonable offences, such as "intimate or overawe the Government of the People's Republic of China (PRCG)" and "constraint upon the PRCG", were outdated and inconsistent with the minimalist and precision principles;

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Secession and subversion

- (c) The Bar Association had reservations about the need to enact legislation against secession and subversion. The scopes of the proposed secession and subversion offences were much wider than that of treasonable offences. They were not consistent with the minimalist and precision principles;
- (d) The proposed offence of secession in paragraph 3.6(b) of the Consultation Document was unnecessary. The meaning of "threat of force" in the paragraph should be clarified;
- (e) Although it was stated in paragraph 3.7 of the Consultation Document that adequate and effective safeguards should be in place to protect the freedoms of demonstration and assembly, etc. as guaranteed by the Basic Law, no information was provided as to whether the safeguards would be set out in legislation;
- (f) BL23 required the enactment of legislation to prohibit subversion against the Central People's Government (CPG), which was the State Council according to Article 85 of the PRC Constitution. It was not the enactment of legislation to prohibit subversion against the PRCG as proposed in the Consultation Document;

Sedition

- (g) There was inherent conflict between freedom of expression and protection against sedition. Caution should be exercised to ensure that the provisions to be proposed on sedition would not restrict the freedom of expression. The Bar Association considered that provisions on sedition should be consistent with the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (the Johannesburg Principles). An intention to incite violence or public disorder for the purpose of disturbing "constituted authority" and an actual likelihood of such response to the incitement should be present for an act to constitute sedition;

Offences endangering stability of the Hong Kong Special Administrative Region

- (h) The offence of seriously endangering the stability of the Hong Kong Special Administrative Region (HKSAR) should not be dealt with under legislation to implement BL23, which dealt with acts endangering national security. Existing local legislation was already adequate for safeguarding the stability of the HKSAR;

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Theft of state secrets

- (i) Regarding the proposed offence of making an unauthorised and damaging disclosure of information protected under Part III of the Official Secrets Ordinance (Cap. 521) that was obtained by unauthorised access to it, the Bar Association was concerned that the offence was based on how information was obtained rather than the nature of information itself;
- (j) The meaning of "information relating to relations between the Central Authorities of the PRC and the HKSAR" was unclear and inconsistent with the minimalist principle;

Proscription of an organisation

- (k) The proposal in paragraph 7.15(c) of the Consultation Document was unnecessary, as the Societies Ordinance (Cap. 151) (SO) had already empowered the Secretary for Security (S for S) to prohibit the registration or cancel the registration of an organisation that endangered national security.
- (l) While BL23 was directed at acts that endangered national security, the proposed proscription of an organisation under paragraph 7.15(c) of the Consultation Document was not directed at acts. This was outside the scope of BL23 and inconsistent with the minimalist principle;

Emergency investigation powers

- (m) The proposed emergency investigation powers were excessive and unnecessary, especially given that the signing of a search warrant by a magistrate should not be difficult when there were more than 100 magistrates in Hong Kong;

Procedural and miscellaneous matters

- (n) The proposed penalties for BL23 offences were heavier than those for similar offences under existing legislation and Mainland laws. This was also inconsistent with the minimalist principle;
- (o) The proposal of removing time limits for bringing prosecution against treason or sedition was unacceptable. With the proposal, the expression of an opinion considered to be lawful at a certain time might become unlawful after a political change; and

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Definition of "serious unlawful means"

- (p) The definition of "serious unlawful means", which was proposed to be the same as that under the United Nations (Anti-Terrorism Measures) Ordinance, was unacceptable.

3. Mr Alan LEONG informed Members that the Bar Association would provide Members with a written submission in late November 2002.

Meeting with representative of Kowloon Women's Organisations Federation
(LC Paper No. CB(2) 201/02-03(03))

4. Ms KO Po-ling presented the views as detailed in the submission from Kowloon Women's Organisations Federation. She concluded that the Federation supported the enactment of legislation to implement BL23 and there was no need to introduce a white bill before the introduction of a blue bill.

Meeting with representative of the Kowloon City District Resident Association
(LC Paper No. CB(2) 201/02-03(05))

5. Mr LO Man-sing presented the views as detailed in the submission from the Kowloon City District Resident Association. He concluded that -

- (a) It was the right time to enact legislation to implement BL23; and
- (b) The proposal in respect of the Police's emergency investigation powers should be tightened to prevent abuse.

Meeting with representatives of the Kowloon Federation of Associations
(LC Paper No. CB(2) 201/02-03(06))

6. Mr LAI Wing-ho and Mr CHIU Kwok-wai presented the views as detailed in the submission from Kowloon Federation of Associations. They concluded that -

- (a) It was time to enact legislation to implement BL23; and
- (b) Some revisions and clarifications, as detailed in the submission from Kowloon Federation of Associations, could be made to certain proposals in the Consultation Document.

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Meeting with representative of the Federation of Hong Kong Guangdong Community Organisations Limited
(LC Paper No. CB(2) 201/02-03(07))

7. Mr YIP Chun-nam presented the views as detailed in the submission from the Federation of Hong Kong Guangdong Community Organisations Ltd. He concluded that the Federation supported the enactment of legislation to implement BL23.

Meeting with representative of the Hong Kong Wan Chai District Association Limited
(LC Paper No. CB(2) 74/02-03(01))

8. Mr Yip Chun-to presented the views as detailed in the submission from Hong Kong Wan Chai District Association Limited. He concluded that the Association supported the enactment of legislation to implement BL23.

Meeting with representative of the Hong Kong Swatow Merchants Association Limited
(LC Paper No. CB(2) 201/02-03(08))

9. Mr TONG Wang-chow presented the views as detailed in the submission from Hong Kong Swatow Merchants Association Limited. He concluded that the Association supported the enactment of legislation to implement BL23.

Meeting with representative of the Hong Kong Association of International Investment
(LC Paper No. CB(2) 201/02-03(09))

10. Mr PUN Tak-hung presented the views as detailed in the submission from Hong Kong Association of International Investment. He concluded that the Association supported the enactment of legislation to implement BL23. There was no need to introduce a white bill before the introduction of a blue bill.

Issues raised by Members

11. Ms Emily LAU asked about the Bar Association's position on the introduction of a white bill before a blue bill was introduced.

12. Mr Alan LEONG responded that a white bill differed from a blue bill in that the Administration did not take a stand on a white bill. Any provision in a white bill could be amended after the consultation process. On the other hand, once the legislative process on a blue bill had commenced, any amendment to the provisions in the bill would have to be agreed to by the Administration and would be adopted only if supported by a majority of Legislative Council (LegCo) Members. He said that as the Administration had indicated that July 2003 was not a definite deadline for the passage

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of legislation to implement BL23, he could not see any drawback for the Administration to issue the proposed legislative provisions for a further public consultation period of three months.

13. Mr Alan LEONG said that apart from secession and subversion which were already covered by treason, the Bar Association considered that legislation should be enacted for other areas of BL23. He added that the enactment of legislation to implement BL23 should be made prudently. Although no one could question the need for national security, there were many examples in different parts of the world where protection of national security was used as a ground for restricting human rights and freedom. While the economic and legal systems in the Mainland had undergone substantial development after the Cultural Revolution, there were still substantial differences between the HKSAR and the Mainland in the protection of human rights and individual freedom.

14. Ms Emily LAU asked about the Bar Association's view on the proposed extra-territorial application of BL23 offences. Mr Alan LEONG responded that the Bar Association had reservations about whether LegCo was empowered to enact legislation with extra-territorial effect. Such a power might belong to the National People's Congress. He added that if the proposed extra-territorial effect was only intended for dealing with HKSAR permanent residents whose act outside Hong Kong endangered national security of the PRC, it was unnecessary for the proposal to have such a wide coverage.

15. Mr Alan LEONG said that the Administration's proposals in respect of extra-territorial effect, misprision of treason and removal of time limit for bringing prosecution against treason had caused widespread concern. A HKSAR permanent resident might ask whether he had to report the act of his relatives living overseas that endangered the national security of the PRC. A foreign national living in Hong Kong might ask whether he would be affected by the proposals relating to treason, if his country was at war with the PRC. There might not be such concerns if the provisions to be proposed in legislation were publicised.

16. Referring to an act endangering national security of the PRC by a HKSAR permanent resident who was a foreign national, Mr James TO asked whether such an act should be dealt with under treason or other legislation.

17. Ms KO Po-ling said that any Hong Kong resident should abide by the laws of Hong Kong, even if he was of a foreign nationality. Legislation should deal with situations where the act of a foreign national endangered nationality security.

18. Mr Alan LEONG stated that a foreign national in Hong Kong might encounter the question of whether he should leave Hong Kong or continue working in Hong Kong, if his country was at war with the PRC. There might not be such a concern if the provisions to be proposed in legislation were known.

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19. Mr James TO said that while the Kowloon Federation of Associations proposed narrowing the definition of sedition by applying the Johannesburg Principles, the Bar Association had proposed applying them to all BL23 offences. He asked whether the Kowloon Federation of Associations had examined whether the Johannesburg Principles should also be applied to other BL23 offences. Referring to the statement "以確保國內的準則不會毫無保留地搬用於香港" in page 4 of the submission from the Federation, he asked about the concerns behind such a statement.

20. Mr LAI Wing-ho responded that the definition of sedition was proposed to be narrowed by applying the Johannesburg Principles so that a person would not be criminalised for expression of opinion unless the expression was intended and likely to incite imminent violence.

21. Mr Alan LEONG said that the Bar Association had a similar view to that of the Kowloon Federation of Associations in that the Johannesburg Principles should be applied in the definition of sedition. He further said that the Johannesburg Principles would indirectly apply to other BL23 offences through provisions on sedition, as it was proposed in the Consultation Document that the offence of sedition included inciting others to commit the substantive offence of treason, secession or subversion.

22. Mr IP Kwok-him was of the view that it was difficult to draw up any legislative provisions, if the Administration did not take a position on the policy intent behind the legislative provisions. He said that it was the established practice of a Bills Committee to invite public views on a blue bill and the Bar Association had expressed its views on many blue bills under scrutiny by Bills Committees. It was not unusual that provisions of a blue bill were amended in the legislative process. He added that the time taken for the scrutiny of a bill was to a large extent dependent upon the pace of scrutiny of the Bills Committee concerned. Indeed, the scrutiny of many blue bills had taken one or two years.

23. Mr Alan LEONG pointed out that although the Bar Association had proposed a number of amendments to the United Nations (Anti-Terrorism Measures) Bill, none of them had been taken on board in the legislative process. He stated that a responsible government would hope that the legislature accepted the policy intent behind a blue bill. As the enactment of legislation to implement BL23 was a sensitive and important one attracting much international attention, proposed legislative provisions on which the Administration had not taken a stand should be issued for a three-month public consultation. He said that once a blue bill was introduced, the initiative of introducing amendments would rest upon the Administration and the relevant Bills Committee.

24. Mr IP Kwok-him said that the Administration had always taken the initiative to introduce amendments to a bill, whether a white bill or blue bill. He further said that amendments could be proposed to provisions in a blue bill by Members or the Administration. For example, many amendments had been made to the United Nations (Anti-Terrorism Measures) Bill at Committee Stage in the legislative process.

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25. Mr LAU Kong-wah shared the views of Mr IP. He said that although the amendments proposed by the Bar Association to the United Nations (Anti-Terrorism Measures) Bill had not been adopted in the legislative process, amendments proposed by the Bar Association to many other bills had been taken on board in the legislative process. He further said that all parts of the United Nations (Anti-Terrorism Measures) Bill had actually undergone substantial amendment.

26. Mr Alan LEONG said that as legislative proposals to implement BL23 were more important and sensitive than previous legislative proposals on which white bills were issued, he could not see why a white bill on legislative proposals to implement BL23 could not be introduced.

27. Mr IP Kwok-him and Mr LAU Kong-wah asked whether the Bar Association supported the enactment of legislation to implement BL23. Mr Alan LEONG responded that BL23 imposed a responsibility on the HKSAR Government to enact legislation to implement BL23. However, the Bar Association considered that the enactment of such legislation should be consistent with the principles set out in paragraph 2(a) above. The Bar Association had reservations about the need to enact legislation against secession and subversion. Even if the enactment of legislation against secession and subversion was inevitable, the legislative proposals regarding secession and subversion would be more acceptable if they only contained the element of treason.

28. Mr LAU Kong-wah asked whether the Bar Association would refuse to accept a blue bill on proposals to implement BL23 introduced by the Administration, if a white bill was not introduced. Mr Alan LEONG responded that he had not so far heard of any argument against the suggestion of issuing a white bill for a further three-month public consultation.

29. Mr LAU Kong-wah said that the introduction of a blue bill for scrutiny by LegCo after public consultation on the policy aspects was a usual practice. He expressed support for the Administration's current arrangement of forming its views on proposals to implement BL23 and publicising its proposals for public consultation.

30. Mr Alan LEONG responded that the main difference between his view and that of Mr LAU was in the time when the Administration should take a position. He considered that it would be more prudent and appropriate for the Administration to take a position after public consultation on the legislative provisions to be proposed.

31. The Chairman said that all the Committee Stage amendments she had moved to the United Nations (Anti-Terrorism Measures) Bill had been voted down during the Committee Stage. She pointed out that although amendments could be moved to provisions in a blue bill, there were restrictions on the amendments. She further said that according to experience, amendments to a blue bill were usually undesirable when there was time constraint on the scrutiny of a bill or when the scope of amendments

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was too wide.

32. Mr CHAN Kam-lam said that there were many examples where a Bills Committee had taken on board the Bar Association's suggestions to a blue bill. He said that the Bar Association's view that the Administration should not take a position while issuing proposed legislative provisions for public consultation was self-contradictory. He considered that the public could submit views on the proposals in the Consultation Document during the consultation period. There would also be opportunities for further submission of views after the blue bill was introduced.

33. Mr Alan LEONG responded that the issuing of a white bill would allow the Administration to have regard to views received in the first stage of public consultation on the policy aspects and the second stage of public consultation on the legislative provisions in a white bill before finalising on the provisions to be proposed.

34. Referring to the Bar Association's submission dated 22 July 2002, Mr CHAN Kam-lam asked whether the Bar Association considered that the requirements relating to foreign political organisations in BL23 would be fulfilled by merely setting out in electoral laws provisions prohibiting foreign political organisations from participating in local elections.

35. Mr Alan LEONG responded that the Bar Association considered that the proposal in paragraph 7.15(c) of the Consultation Document was unnecessary, as S for S was already provided sufficient power under SO to deal with organisations that endangered national security. He expressed concern that the proposal might lead to the introduction of the Mainland's criteria of determining whether an organisation endangered national security into the HKSAR.

36. Ms Audrey EU asked about the view of Kowloon City District Resident Association regarding the proposed emergency investigation power of the Police. Mr LO Man-sing responded that the Association considered that the proposed emergency investigation powers should be exercised by a Police officer more senior than a Police superintendent.

Administration's response to issues raised at the meeting

37. S for S said that it was not possible for the Administration to issue proposed legislative provisions without taking a position in respect of the legislative intent. She added that whether public consultation was divided into stages was unimportant as long as the Administration was willing to consider views received. She stated that members of the public could still express views through LegCo after a blue bill was published.

Other submissions received

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38. Members noted that besides the deputations attending the meeting, another 21 organisations and individuals had submitted written submissions but not requested making oral representations to the Panels.

III. Dates of subsequent meetings

39. Members noted that further joint meetings to receive the views of interested parties on the proposals in the Consultation Document had been scheduled for 15, 21, 28 and 29 November 2002. In view that a number of members had indicated that they would not be able to attend the joint meeting on 29 November 2002, members agreed that the joint meeting schedule for 29 November 2002 would be cancelled.

40. Members agreed that the following joint meetings would be scheduled to continue receiving the views of interested parties -

- (a) Thursday, 5 December 2002 from 4:30 pm to 6:30 pm;
- (b) Thursday, 12 December 2002 from 2:30 pm to 5:30 pm; and
- (c) Thursday, 19 December 2002 from 10:45 am to 12:45 pm.

Members also agreed that the meeting on 19 December 2002 would be the last session to receive public views.

41. The meeting ended at 6:45 pm.

Council Business Division 2
Legislative Council Secretariat
17 December 2002