

立法會
Legislative Council

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

**Minutes of joint meeting held on Thursday, 21 November 2002
at 9:00 am 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-yee, GBS, JP
Hon CHEUNG Man-kwong
Hon Andrew WONG Wang-fat, JP
Hon WONG Yung-kan
Hon Howard YOUNG, JP
* Hon Ambrose LAU Hon-chuen, GBS, JP
Hon Michael MAK Kwok-fung

Panel on Administration of Justice and Legal Services

Hon Jasper TSANG Yok-sing, JP (Deputy Chairman)
Hon CHAN Kam-lam, JP
Hon Miriam LAU Kin-yee, JP
Hon Emily LAU Wai-hing, JP
Hon TAM Yiu-chung, GBS, JP

**Members
attending** : Hon Cyd HO Sau-lan
Hon LEUNG Fu-wah, HM, JP

**Members
absent**

: Panel on Security

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 Martin LEE Chu-ming, SC, JP

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

◆ Also a member of Panel on Security

**Public Officers
attending**

Mr Timothy TONG

Permanent Secretary for Security (Acting)

Mr James O'NEIL

Solicitor General (Acting)

Ms Roxanna CHENG

Senior Assistant Solicitor General

Mr Johann WONG

Principal Assistant Secretary (Security)

**Attendance by
invitation**

Professor Albert CHEN

Faculty of Law, University of Hong Kong

Wan Chai Community Activities Centre

Mr LEE Yum-sheng

New Century Society Ltd

Mr Jackson KUNG

Director

The Society for the Coordination & Promotion of Eastern
District

Mr CHENG Chi-sing

Vice-Chairman

Mr LIM York-ming
Vice-Chairman

Joint Committee of Hong Kong Fisherman's Organizations

Mr PANG Wah-kan
Deputy Chairman

Yiu Tung & Hing Tung Residents' Association

Mr HUI Ka-hoo
Chairman

Shaukiwan and Chaiwan Residents Fraternal Association

Ms SIU Lai-na
Chief Executive

Aldrich Bay Residents Association

Mr NGAN Chun-lim
Chairman

New Territories Association of Societies

Mr WAN Yuet-kau
Deputy Chairman

Mr LO Kwong-shing, Andy
Standing Committee Director

The Hong Kong Association of Falun Dafa

Mr KAN Hung-cheung
Chairman

Mr HUI Kwok-hung
Director

The Democratic Party

Ms CHAN Shu-ying

The Association of Hong Kong Health Care Professionals

Mr Peter CHUA
President

Miss CHONG Lu

Hong Kong Alliance Youth Group

Mr CHUI Ka-chun, Dickens
President

Mr CHIU Yan-loy, Lloyd
External Affairs Committee

Central & Western District Liaison Group of the Chinese
General Chamber of Commerce

Mr LAU Mak-leong
Vice-Chairman

Wanchai District Liaison Group of the Chinese General
Chamber of Commerce

Mr CHAN Sun
Vice-Chairman

Hong Kong East District Liaison Group of the Chinese
General Chamber of Commerce

Mr LAU Yuen-biu
Vice-Chairman

Kowloon East District Liaison Group of the Chinese General
Chamber of Commerce

Mr CHOW Hing
Vice-Chairman

Yaumati-Tsimshatsui-Mongkok District Liaison Group of the
Chinese General Chamber of Commerce

Mr CHOW Chi-cheong
Vice-Chairman

Shamshuipo District Liaison Group of the Chinese General
Chamber of Commerce

Mr WONG Kuen-wai
Vice-Chairman

Dr Anthony W FERGUSON
Librarian, University of Hong Kong

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

Staff in attendance : Mr Jimmy MA
Legal Adviser, JP

Mr Stanley MA
Senior Assistant Secretary (2)6

Action

I. Election of Chairman

Mr LAU Kong-wah was elected as Chairman of the joint meeting.

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

2. The Chairman welcomed representatives of the 20 deputations to the meeting.

Meeting with Professor Albert CHEN, Faculty of Law, University of Hong Kong
(LC Paper Nos.CB(2)262/02-03(02) and CB(2)413/02-03(01))

3. Professor Albert CHEN presented his views and proposals as detailed in his submissions. He concluded that although there were technical problems in some of the proposals in the Consultation Document which, if not properly rectified, might cause serious implications on human rights issues, he supported the general orientation of the Consultation Document which was a concrete demonstration of the principle of “one country, two systems” at work.

Meeting with representative of the Wan Chai Community Activities Centre
(LC Paper No.CB(2)262/02-03(04))

4. Mr LEE Yum-sheng presented the views of the Wan Chai Community Activities Centre as detailed in the submission. He concluded that the Centre supported the enactment of legislation to implement Article 23 of the Basic Law (BL23).

Meeting with representative of the New Century Society
(LC Paper No.CB(2)262/02-03(05))

5. Mr Jackson KUNG presented the views of the New Century Society as detailed in the submission. He concluded that the Society supported the enactment of legislation to implement BL23.

Meeting with representatives of The Society for the Coordination and Promotion of Eastern District
(LC Paper No.CB(2)262/02-03(06))

6. Mr CHENG Chi-sing presented the views of The Society for the Coordination and Promotion of Eastern District as detailed in the submission. He concluded that the Society supported the enactment of legislation to implement BL23.

Meeting with representative of the Joint Committee of Hong Kong Fisherman's Organisations
(LC Paper No.CB(2)262/02-03(07))

7. Mr PANG Wah-kan presented the views of the Joint Committee of Hong Kong Fisherman's Organisations as detailed in the submission. He concluded that the Joint Committee supported the enactment of legislation to implement BL23 and the introduction of a blue bill into the Legislative Council (LegCo) after the consultation.

Meeting with representative of the Yiu Tung and Hing Tung Residents' Association
(LC Paper No.CB(2)262/02-03(08))

8. Mr HUI Ka-hoo presented the views of the Yiu Tung and Hing Tung Residents' Association as detailed in the submission. He concluded that the Association supported the enactment of legislation to implement BL23.

Meeting with representative of the Shaukiwan and Chaiwan Residents Fraternal Association
(LC Paper No.CB(2)262/02-03(09))

9. Ms SIU Lai-na presented the views of the Shaukiwan and Chaiwan Residents Fraternal Association as detailed in the submission. She concluded that the Association supported the enactment of legislation to implement BL23.

Meeting with representative of the Aldrich Bay Residents Association
(LC Paper No.CB(2)262/02-03(10))

10. Mr NGAN Chun-lim presented the views of Aldrich Bay Residents Association as detailed in the submission. He concluded that the Association supported the enactment of legislation to implement BL23.

Meeting with representatives of the New Territories Association of Societies
(LC Paper No.CB(2)262/02-03(11))

11. Mr WAN Yuet-kau presented the views of the New Territories Association of Societies as detailed in the submission. He concluded that the Association supported the enactment of legislation to implement BL23.

Meeting with representatives of The Hong Kong Association of Falun Dafa
(LC Paper No.CB(2)262/02-03(12))

12. Mr HUI Kwok-hung presented the views of The Hong Kong Association of Falun Dafa as detailed in the submission. He concluded that the Association objected to the enactment of legislation to implement BL23.

Meeting with representative of The Democratic Party
(LC Paper No.CB(2)262/02-03(13))

13. Mr CHAN Shu-ying presented the views as detailed in the submission of the Democratic Party. She concluded that the Party held the view that the existing legislation was sufficient for the purposes of BL23 and the Administration should publish a white bill for in-depth consultation on the detailed legislative provisions before the enactment of further legislation to implement BL23.

Meeting with representatives of The Association of Hong Kong Health Care Professionals
(LC Paper No.CB(2)262/02-03(14))

14. Mr Peter CHUA presented the views of The Association of the Hong Kong Health Care Professionals as detailed in the submission. He concluded that the Association supported the enactment of legislation to implement BL23.

Meeting with representatives of the Hong Kong Alliance Youth Group
(LC Paper No.CB(2)262/02-03(15))

15. Mr Dickens CHUI and Mr Lloyd CHIU presented the views of the Hong Kong Alliance Youth Group as detailed in the submission. They concluded that the Youth Group strongly opposed to the enactment of legislation to implement BL23 because the proposals in the Consultation Document would jeopardise the rights of students to education, literary and artistic creation, and cultural activities; and restrict the freedom of speech, of expression and of the press in the name of protecting national security.

Meeting with representative of the Central and Western District Liaison Group of the Chinese General Chamber of Commerce
(LC Paper No.CB(2)262/02-03(16))

16. Mr LAU Mak-leong presented the views of the Central and Western District Liaison Group of the Chinese General Chamber of Commerce as detailed in the submission. He concluded that the Liaison Group supported the enactment of legislation to implement BL23.

Meeting with representative of the Wanchai District Liaison Group of the Chinese General Chamber of Commerce
(LC Paper No.CB(2)262/02-03(17))

17. Mr CHAN Sun presented the views of the Wanchai District Liaison Group of the Chinese General Chamber of Commerce as detailed in the submission. He concluded that the Liaison Group supported the enactment of legislation to implement BL23.

Meeting with representative of the Hong Kong East District Liaison Group of the Chinese General Chamber of Commerce
(LC Paper No.CB(2)262/02-03(18))

18. Mr LAU Yuen-biu presented the views of the Hong Kong East District Liaison Group of the Chinese General Chamber of Commerce as detailed in the submission. He concluded that the Liaison Group supported the enactment of legislation to implement BL23.

Meeting with representative of the Kowloon East District Liaison Group of the Chinese General Chamber of Commerce
(LC Paper No.CB(2)262/02-03(19))

19. Mr CHOW Hing presented the views of the Kowloon East District Liaison Group of the Chinese General Chamber of Commerce as detailed in the submission. He concluded that the Liaison Group supported the enactment of legislation to implement BL23.

Meeting with representative of the Yaumati-Tsimshatsui-Mongkok District Liaison Group of the Chinese General Chamber of Commerce
(LC Paper No.CB(2)262/02-03(20))

20. Mr CHOW Chi-cheong presented the views of the Yaumati-Tsimshatsui-Mongkok District Liaison Group of the Chinese General Chamber of Commerce as detailed in the submission. He concluded that the Liaison Group supported the enactment of legislation to implement BL23.

Meeting with representative of the Shamshuipo District Liaison Group of the Chinese General Chamber of Commerce
(LC Paper No.CB(2)262/02-03(21))

21. Mr WONG Kuen-wai presented the views of the Shamshuipo District Liaison Group of the Chinese General Chamber of Commerce as detailed in the submission. He concluded that the Liaison Group supported the enactment of legislation to implement BL23.

Meeting with Dr Anthony W FERGUSON
(LC Paper No.CB(2)262/02-03(22))

22. Dr Anthony FERGUSON presented his views as detailed in his submission. He concluded that all libraries, particularly academic libraries, should be exempted from the proposed offences of dealing with seditious publications and possession of seditious publications.

Issues raised by Members

23. Referring to Professor Albert CHEN's statement in his submission that it was doubtful whether pre-19th English conception of "levying war" in relation to the offence of treason should still be applicable today, Mr James TO requested Professor CHEN to elaborate on the concept of "levying war" against the state and its application in the proposed new offences of secession and subversion.

24. Professor Albert CHEN responded that the concept of treason was defined in the existing Crimes Ordinance and "levying war" against one's own state was the fundamental element of the existing offence of treason. While he did not object to the adoption of the concept for the new offences of secession and subversion, Professor CHEN pointed out that the concept of "levying war" under the common law system did not require very serious and large-scale violence amounting to war. He considered that many pre-19th century interpretations of the concept of levying war were apparently too strict and inappropriate for application in the 21st century. He cited as an example that according to old English law, a considerable number of persons assembled together and created a disturbance directed at the release of the prisoners in all the jails might already constitute an act of "levying war". Professor CHEN therefore suggested that there should be an express provision in the legislation to be enacted that "war" should not include a riot or disturbance of a local nature that did not amount to an armed rebellion for the purpose of the offences of treason, secession and subversion. He considered that such riot or disturbance was already adequately covered by the existing criminal law other than the law of treason.

25. Mr James TO also requested Professor CHEN to elaborate on his suggestion for the establishment of actus reus under the offences of secession and subversion as proposed in the Consultation Document. He further asked whether the suggestion had taken into consideration the Johannesburg Principles on National Security, Freedom of

Expression and Access to Information (Johannesburg Principles).

26. Professor CHEN responded that the direction in defining the offences of secession and subversion were appropriate. However, the language used in the Consultation Document for the proposed offences were not the technical language used in legal drafting and it was not clear as to what actus reus was required for the offences. Professor CHEN considered that there should be a close link between the actual act, e.g. levying war, use of force or other serious unlawful means, and the purposes of "withdraw a part of People's Republic of China (PRC) from its sovereignty", "resist the Central People's Government (CPG) in its exercise of sovereignty over a part of China" and "overthrow CPG" in the offences of secession and subversion. He suggested that the concept of "attempt" should be used in the definitions of the two offences.

27. Referring to his suggested definitions of offences of secession and subversion in the submission, Professor CHEN explained that the incorporation of the word "attempts" in the definitions would bring into play the common law "doctrine of proximity" in the criminal law of attempt. The doctrine of proximity distinguished between an act which remotely led towards the commission of a crime and an act which was more immediately connected with the commission of the crime, even where both acts were committed with an intention to commit the crime ultimately. It would enable the court to determine the actus reus of the offences by considering whether the acts committed by the accused were sufficiently proximate to the realisation of the objective of the definitions such as to withdraw part of the PRC from its sovereignty by levying war, use of force, threat of force or by other serious unlawful means. Professor CHEN added that the doctrine of proximity also incorporated the element of "likelihood" as incorporated under the Johannesburg Principles.

28. Mr James TO asked how the concepts of "withdraw" and "resist" in the proposed offence of secession in the Consultation Document should be interpreted. Professor CHEN responded that he found the two terms acceptable for the offence of secession. He considered that the Administration should explain the concepts and in case of disputes on their meaning, the court would have to make judgment on the interpretation of the two terms.

29. Referring to Professor CHEN's analysis of the definition of the term "affiliation" in the context of the proscription mechanism from both a negative and a positive perspective, Mr Albert HO asked whether "affiliation" should be restricted to local organisations affiliated with a Mainland organisation which had been proscribed in the Mainland by the Central Authorities, but not Mainland organisations which were affiliated with an organisation in the HKSAR. He also asked whether the scope of the term "foreign political organisations or bodies" in BL23 should cover organisations in the Mainland.

30. Professor CHEN responded that the Consultation Document had not specified that the term "affiliation" in the context of the proscription mechanism only referred to local organisations which were affiliated with a Mainland organisation. He

considered that the term “affiliation” must be defined to mean a degree of “connection” which was considerably higher than the meaning of “connection” under the existing Societies Ordinance. He suggested that one of the essential conditions for the establishment of an affiliation between a local and a Mainland organisation should require that many aspects of their operation were under the control and direction of the same person or persons.

31. Regarding the appeals against the decision of the Secretary for Security (S for S) to proscribe and declare an organisation unlawful, Professor CHEN considered that the court might find it difficult or political to make judgment on national security matters which involved national activities and behaviours and politically sensitive information or intelligence. He suggested that apart from points of law, the court should also deal with points of fact which consisted mainly those related to the determination of whether an affiliation had been established between the local organisation and the proscribed Mainland organisation.

32. As regards the scope of foreign political organisations or bodies under BL23, Professor CHEN said that the proscription mechanism was targeted at proscribing local organisations with an objective to engage in, or had committed or was attempting to commit, any act of treason, secession, sedition, subversion or theft of state secrets. He pointed out that under the existing Societies Ordinance, in relation to a local society that was a political body, "connection" was defined to include affiliation with a foreign political organisation or a political organisation of Taiwan. It followed that the establishment of an affiliation between a local organisation and a Mainland organisation was not a new concept.

33. Mr Albert HO remarked that a local organisation which was affiliated with a Mainland organisation was a lawful organisation in the HKSAR and should not be proscribed if they had not committed any act of treason, secession, sedition, subversion or theft of state secrets. He considered that the proscription of a local organisation based on an affiliation with a Mainland organisation was beyond the scope of BL23. He also held the view that the court should deal with appeals against decisions made on the ground of upholding national security in accordance with the existing legislation such as the Public Order Ordinance.

34. Professor Albert CHEN pointed out that the decision to proscribe a local organisation affiliated with a Mainland organisation which had been proscribed in the Mainland by the Central Authorities on national security reasons would only be made when S for S was satisfied by evidence of the affiliation and believed it necessary to do so in the interest of national security or public safety or public order. He reiterated that courts should hear an appeal against a decision of proscription on points of law as well as on points of fact. He considered that affiliation should not be established merely because the name of a local organisation was the same or similar to a proscribed organisation in the Mainland, or simply because either one of them contributed financially to the other, or because a local organisation was affiliated to or had a connection with an overseas organisation which was affiliated to or had a

connection with a proscribed organisation in the Mainland. He added that he shared the view of Mr Albert HO that the term "affiliation" should be defined by adopting a narrow and focused approach.

35. Ms Emily LAU noted that Professor Albert CHEN had proposed that the display or shouting of slogans the content of which involved the threat of force in a peaceful demonstration should not be caught by the offence of secession, subversion or sedition. She asked whether Professor CHEN had further proposals on the provisions of safeguards to protect the freedom of expression, of thought, of demonstration and of assembly, etc., as guaranteed by the Basic Law. She also asked how Professor CHEN would consider the Johannesburg Principles in respect of the enactment of legislation to implement BL23.

36. Professor Albert CHEN responded that the Consultation Document had specified the need to provide safeguards for the proposed offences, but had not provided the detailed provisions. His suggestion for an express provision to the effect that displaying or shouting slogans carrying a threat of force in a peaceful demonstration would not constitute an offence of secession, subversion or sedition was one of the necessary safeguards. He suggested that the views of demonstrators on the provision of such safeguards should be sought.

37. Professor CHEN pointed out that the Consultation Document had specified that mere expression of views, or mere reports or commentaries on views or acts, would not be criminalized, unless such expressions, reports or commentaries incited others to achieve a specified purpose through levying war, force, threat of force, or serious unlawful means. In particular, paragraph 4.15 of the Consultation Document had specified that offences targeting publications, where the persons involved might not have the intention to incite offences against the state, were a direct restriction of freedom of expression, and should therefore be narrowly defined in order to comply with the necessity and proportionality criteria as required under the International Covenant on Civil and Political Rights jurisprudence.

38. Professor CHEN also pointed out that the concept of "incitement" under common law did not incorporate an element of "the likelihood of the acts being incited actually occurring" as provided under the Johannesburg Principles. He considered it appropriate to incorporate the concept in the provisions for the offence of sedition proposed in the Consultation Document. On the other hand, Professor CHEN did not consider it necessary to incorporate the requirement under the Johannesburg Principle that there should be a direct and immediate connection between the expression and the likelihood or occurrence of an imminent violence for an offence of sedition to be justified. In view of the importance of freedom of expression and freedom of thought, particularly in the context of the circulation of publications, Professor CHEN suggested that dealing with seditious publications should only be prohibited where the publications were likely to cause others to commit the relevant crimes.

39. Ms Emily LAU expressed concern about the impacts of implementing BL23 on individual rights and freedom of expression, including the right to voice dissenting opinions, which were fundamental human rights in modern democratic societies. She asked why only libraries, but not all individuals, should be exempted from regulations which required them to exclude from their collections books and other materials with points of views that differed from the government.

40. Dr Anthony FERGUSON responded that he agreed that the rights of people to read, speak and think should be respected, as long as the exercise of such rights would not affect the rights of others. He also agreed that all citizens should not act in ways which would jeopardise the fundamental national security or overthrow the government. He added that he did not consider the element of knowledge or reasonable suspicion sufficient for the purpose of protecting an innocent owner of seditious publications.

41. Ms Cyd HO asked whether the time limits for bringing prosecutions for the offence of dealing with seditious publications and the offence of possession of seditious publications should be the shortest possible so that the effects of a publication on incitement of others to commit the offence of treason, secession or subversion could be reasonably and fairly assessed.

42. Professor Albert CHEN responded that by incorporating the element of "the likelihood of the acts being incited actually occurring" into the concept of "incitement", it was unlikely that there would be many prosecutions for the offence of sedition. In this connection, he suggested that for the offence of dealing with seditious publications, seditious publications should be defined to mean publications which were likely to cause others to commit the offence of treason, secession or subversion or to commit acts of violence or public disorder which seriously endangered the stability of the state or the HKSAR. He also considered that the proposed offence of possession of seditious publications should be withdrawn since the possession and reading of a seditious publication was a private act, and it should not be criminalised. Professor CHEN added that section 11 of the Crimes Ordinance which stipulated that prosecution for the offence of sedition must be brought within six months of the commission of the offence, and be with the written consent of the Secretary for Justice. He considered that the procedural safeguard was appropriate and should be retained.

43. Ms Cyd HO asked about the adverse effects of the offence of dealing with seditious publications and the offence of possession of seditious publications, if implemented, on the quality of the HKSAR population.

44. Dr Anthony FERGUSON responded that as a librarian, he had grave concerns about the effects of the proposed offences on the operation of a library and the rights of students and other users to access information. He cited as an example that the library of the University of Hong Kong had an extensive collection of books about Taiwan which would most likely be classified as seditious publications. He pointed out that forbidding the possession and display of seditious publications in the library would

significantly affect the operation of the library and research work in universities. As a consequence, researchers would be unable to obtain both supporting and opposing views on their research topics from the library.

45. Mrs Miriam LAU asked whether there were similar exemptions from the offence of possessing seditious publications for libraries in overseas jurisdictions, and if not, how overseas libraries would tackle the issue of seditious publications. She also asked whether withdrawing the offence of possession of seditious publications would address the concerns of librarians.

46. Dr Anthony FERGUSON responded that he had been a librarian for some thirty years and most of which were spent in universities in northern America. So far he had not encountered a similar legislative restriction on the possession of seditious publications as an act of treason. He considered that withdrawing the proposal on the offence of possession of seditious publications would address most of his concerns as a librarian.

47. Referring to the submission of the Democratic Party, Dr LUI Ming-wah opined that it appeared not difficult to address the Democratic Party's concerns about the lack of detailed provisions, the operation of the proscription mechanism and the proposed emergency investigation powers for the Police. He suggested that the Democratic Party could submit detailed proposals on the drafting of the legislation to implement BL23 for the Administration to consider.

48. Ms CHAN Shu-ying reiterated that the Democratic Party held the view that the existing legislation was sufficient for the purposes of BL23 and the enactment of further legislation to implement BL23 in the current session was not urgently needed. She considered that the Administration should publish a white bill and conduct an in-depth consultation on the detailed legislative provisions. She said that the Democratic Party was not opposed to enacting legislation to protect national security, but could not express support for the proposals in the Consultation Document in the absence of detailed provisions and extensive consultation.

49. Dr LUI Ming-wah asked about the implications of consolidating the relevant provisions in the existing three ordinances, i.e., the Crimes Ordinance, the Official Secrets Ordinance and the Societies Ordinance, for the purpose of implementing BL23. Ms CHAN Shu-ying responded that the Administration should explain whether it planned to enact a piece of new legislation to replace the relevant provisions in these ordinances.

50. Mr MAK Kwok-fung asked why foreign investors would refrain from investing in the HKSAR if legislation to implement BL23 was not enacted.

51. Mr WONG Kuen-wai said that businessmen would make their investment decisions having regard to the social, economic and political environment of the HKSAR. Enacting legislation to implement BL23 would remove the social and

political uncertainties which might affect investors' confidence on the future developments of the HKSAR. He added that businessmen would welcome clear legislation to implement BL23 in order to reduce investment risks which might arise as a result of the existing legislative gap.

52. Mr Andrew WONG pointed out that withdrawing the offence of possession of seditious publications in the Consultation Document would not clear the concerns of librarians since libraries not only possessed some seditious publications, but also circulated these publications to students or members of the public. He expressed support for exempting libraries from the offence of dealing with seditious publications and possession of seditious publications. If this was not feasible, he suggested that the concept of "one library - two shelves" should be considered for libraries to store seditious publications in a controlled setting and allow access to these publications on a needs basis. He added that both the University of Hong Kong and the Chinese University of Hong Kong had a collection of books on recent history of China which might be classified as seditious publications if the two proposed offences were included in the legislation for implementing BL23.

53. Dr Anthony FERGUSON clarified that he considered that libraries funded by public monies should have the right to hold seditious publications for public access. In fact, one of the missions of university libraries was to make available to users all sources of information and views on all topics. He added that people nowadays could access all sources of information through the Internet.

54. Mr James TO questioned the need to establish a proscription mechanism given that the existing provisions in the Societies Ordinance were sufficient to prohibit foreign political organisations from unduly influencing the local political process. He considered that the phrase "engage in any act of treason, secession, sedition, subversion, or spying" in paragraph 7.15(a) of the Consultation Document would more likely be construed by the court as a broad concept instead of an offence. He also asked whether, in compliance with international human rights standards, the provision of the Mainland legislation under which an organisation was proscribed by the Central Authorities on national security grounds should be specified.

55. Mr Andrew WONG asked whether enactment of the legislation to implement BL23 would take the form of a new piece of legislation or a number of amendments to relevant existing ordinances. He also asked whether a white bill should be published to facilitate in-depth discussion of the legislative provisions and subsequent scrutiny of the blue bill.

56. Professor Albert CHEN responded that the enactment of legislation to implement BL23 by way of a new bill or a number of amendment bills to the relevant ordinances was a technical issue which would not affect the general public. He said that it would be desirable to include a white bill as an appendix to the Consultation Document. In the absence of detailed provisions, it would be difficult to comment on the proposals. Nevertheless, the most important point was whether LegCo would

hold a series of meetings to receive the views of the public on the legislative proposals in the process of scrutiny of the blue bill, so as to achieve effect of a white bill in terms of public consultation. The Chairman remarked that it was a normal procedure for a Bills Committee to receive the views of the public on important legislative proposals.

57. Professor CHEN further said that prohibition of foreign political organisation from unduly influencing the local political process could be achieved to a large extent under the existing Societies Ordinance. The purpose of the proposal to proscribe organised political activities endangering the security of the state in the Consultation Document was to convey the message that the HKSAR Government was determined to implement BL23. On the proposed proscription mechanism, Professor CHEN held the view that the powers to proscribe an organisation under paragraph 7.15(a) should be exercised when the offence of treason, secession, sedition, subversion or theft of state secrets had been committed. He added that an open and transparent procedure should be established for the proclamation of a Mainland organisation which had been proscribed in the Mainland by the Central Authorities.

58. Ms Emily LAU asked whether the Hong Kong Association of Falun Dafa would oppose the enactment of legislation to implement BL23, regardless of whether the detailed provisions were set out in the form of a white bill or blue bill. She also asked whether it would accept some of the proposals in the Consultation Document if appropriate amendments were made to the proposals.

59. Mr HUI Kwok-hung responded that the existing legislation was sufficient for the purpose of implementing BL23. The proposals in the Consultation Document were aimed at suppressing the dissenting views and peaceful demonstration activities which were currently lawful in Hong Kong. He added that the penalties for an "unlawful society" and its office-bearers and members under the Societies Ordinance were less severe when compared to the life imprisonment proposed under the offence of treason.

Administration's response to issues raised at the meeting

60. Permanent Secretary for Security (Acting) (PS for S(Atg)) thanked deputations for their views and suggestions. He said that the Administration intended to introduce an amendment bill into the LegCo to amend the three relevant ordinances, i.e., the Crimes Ordinance, the Societies Ordinance and the Official Secrets Ordinance. The Administration shared the views of some deputations that enacting legislation to implement BL23 was an obligation of the HKSAR under the "one country, two systems" principle and filling the existing legislative gap would enhance political stability, economic development and investors' confidence.

61. PS for S (Atg) further said that the Administration was well aware of the concerns of some deputations that national laws in the Mainland should not be extended to the HKSAR. The Administration would endeavour to ensure that all offences encompassed by local legislation to implement BL23 should be as clearly and

tightly defined as appropriate so as to avoid uncertainty and the infringement of fundamental rights and freedoms guaranteed by the Basic Law. PS for S (Atg) also highlighted the following -

- (a) the concept of "affiliation" in paragraph 7.15 applied only to local organisations affiliated with a Mainland organisation which had been proscribed in the Mainland by the Central Authorities, but not vice versa;
- (b) persons who superficially appeared to incite others to use force but actually had no intention to do so would not commit the offence of sedition;
- (c) the power to proscribe a local organisation would not be exercised merely when either one of the conditions set out in paragraph 7.15(a), (b) or (c) occurred, but would only be exercised when S for S also reasonably believed that such proscription was necessary in the interests of national security, public safety or public order in accordance with the interpretation of the International Covenant on Civil and Political Rights; and
- (d) the proposals in the Consultation Document were to narrow the scope of the offences relating to seditious publications. The proposed offence of dealing with seditious publications and the offence of possession of seditious publications were not targeted at cases where such publications were dealt with under legitimate circumstances including academic research or news reporting, and a defence of "reasonable excuse" would be provided.

III. Any other business

62. The meeting ended at 12:30 pm.

Council Business Division 2
Legislative Council Secretariat
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