To: Chairmen of Panel on Security and Panel on Administration of Justice and Legal Services
From: Dr. David Bodoff, Hong Kong University of Science and Technology
Re: December 14 Joint Meeting

On 14 December, I attended the joint meeting of the Panel on Security and Panel on Administration of Justice and Legal Services. Mr. Robert Allcock, representing the government, misled the panel with a false statement. I want to call this falsehood to your attention.

The issue regards the consultation document's paragraph 7.15, which givers the power to the Secretary for Security to proscribe an organization "if he or she reasonable [sic] believes that this is necessary in the interests of national security or public safety or public order". The question is, should the law say that

- the Secretary may proscribe an organization if it threatens national security (etc.),

or should the law say that

- the Secretary may proscribe an organization if he or she reasonably believes it threatens national security (etc.)

In my comments to the committee, I referred to this question, and mentioned the public statements of Professor Michael Davis that the first formulation is better, while the latter formulation is open to abuse, as it depends on the beliefs of a single (appointed) official.

During his reply, Mr. Allcock referred to this question, and said that it's true the current formulation chooses the latter version, but that this does not really matter because in any case there is the right to appeal in the courts.

This statement – that the above distinction is unimportant or less important because there is a right to appeal – this statement is simply false. In fact, the distinction comes into play *only* during an appeal. If the law is worded in the first way, then I need to convince the court that my organization does not endanger national security (etc.). This is straightforward enough. If the law is worded in the latter way, then I need to convince the court that the Secretary for Security could not possibly believe that my organization might endanger national security. In the former case, the court rules on the facts of what my organization does, i.e. does it endanger national security. In the latter case, the facts of what my organization actually does are only important to the extent they shed light on the reasonableness of the Secretary's beliefs.

In essence, the latter version, which is the government's position, shifts the burden of proof to the organization. Even if a court -- or all the courts -- agrees that my organization poses no threat, if I cannot show that the Secretary is just plain nuts, then the proscription stands.

Respectfully,

David Bodoff