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

Minutes of joint meeting held on Thursday, 26 September 2002 at 2:30 pm in the Chamber of the Legislative Council Building

Members present : Panel on Security

* Hon James TO Kun-sun (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 Ambrose LAU Hon-chuen, GBS, JP
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, JP (Deputy Chairman)
Hon Martin LEE Chu-ming, SC, JP
Hon Miriam LAU Kin-yee, JP

Members attending : Hon Cyd HO Sau-lan
Hon NG Leung-sing, JP
Hon CHAN Yuen-han, JP
Hon CHAN Kam-lam, JP

Members absent	:	Panel on Security Hon LAU Kong-wah (Deputy Chairman) Hon Howard YOUNG, JP Panel on Administration of Justice and Legal Services Hon Emily LAU Wai-hing, 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, 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 Mr Johann WONG Principal Assistant Secretary (Security) Miss Adeline WAN Senior Government Counsel Mr Hubert LAW Assistant Secretary (Security)
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. Consultation document on Proposals to implement Article 23 of the Basic Law

(Consultation Document on Proposals to Implement Article 23 of the Basic Law, LC Paper Nos. CB(2) 2828/01-02(01) and (02), CB(2) 2829/01-02(01) and CB(2) 2640/01-02(01))

2. Members noted the following papers tabled at the meeting -

(a) Relevant overseas legislation referred to in the comparison table entitled "Proposals to implement Article 23 of the Basic Law - Comparison of offences and penalties" provided by the Administration; and

(b) Extracts of relevant provisions in existing local legislation referred to in the Administration's Consultation Document on Proposals to Implement Article 23 of the Basic Law (the Consultation Document).

(*Post-meeting note* : The papers tabled at the meeting were issued to Members vide LC Paper No. CB(2) 2850/01-02 on 30 September 2002.)

3. At the invitation of the Chairman, Secretary for Security (S for S) highlighted the following points about the Administration's proposals to implement Article 23 of the Basic Law (BL23) -

(a) BL23 provided that the Hong Kong Special Administrative Region (HKSAR) "shall enact laws on its own" to prohibit the acts listed in the Article. It indicated that the HKSAR had a responsibility to enact laws to implement BL23. It also indicated that the HKSAR would enact its own laws rather than extending the relevant Mainland laws to the HKSAR. Since the HKSAR would enact laws on its own, the legislation would be enacted by the Legislative Council (LegCo) of the HKSAR;

(b) The seven offences referred to in BL23 were offences against the State, which were internationally regarded as serious offences. Because of their infrequent nature, members of the public were unlikely to be involved in the commission of such offences;

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(c) The HKSAR Government (HKSARG) had, in accordance with the principles laid down in the BL, drawn up proposals to implement BL23. It had consulted the Central People's Government (CPG) on matters of principle and issued a consultation document for a public consultation period of three months; and

(d) In drawing up the proposals, the Administration had adopted the principle that the implementation of BL23 would be effected through existing legislation as far as possible. Legal advice had been sought to ensure that the proposals were consistent with provisions in international human rights covenants, especially the International Covenant on Civil and Political Rights (ICCPR).

4. Referring to the proscription mechanism proposed in paragraphs 7.15 to 7.17 of the Consultation Document, Mr CHEUNG Man-kwong said that the proposed mechanism might result in the introduction of Mainland's rule of man and legal system into Hong Kong. This would undermine the rule of law and the legal system in Hong Kong. Quoting the Association of Falun Dafa (the Association) as an example, he said that the Association had been respectively branded at different times by the Central Authorities as an illegal association, a cult, a reactionary association, a terrorist association and an association which sought secession by means of cult. In view of these, he questioned whether it was appropriate for S for S to proscribe a local organisation on the basis of a proscription by the Central Authorities of a Mainland organisation to which it was affiliated.

5. S for S responded that according to information on hand, the Central Authorities had never branded the Association of Falun Dafa as a reactionary association or a terrorist association. The Central Authorities had prohibited the operation of the Association of Falun Dafa in accordance with the provisions in Article 300 of the Criminal Law of the People's Republic of China (PRC) concerning penalty on forming or using superstitious sects to undermine the implementation of laws and administrative rules of the State.

6. Regarding the proscription mechanism referred to in paragraphs 7.15 to 7.17 of the Consultation Document, Solicitor General (SG) said that the proscription by the Central Authorities on national security ground was one of the pre-conditions which were required to be satisfied before S for S could exercise her independent power to proscribe a local organisation. Under the Societies Ordinance (Cap. 151) (SO), S for S already had the power to proscribe a society on the basis that it was necessary in the interests of national security. As the same test would apply to the new power of proscription, the new power was not wider than the current one. He explained that the new power would be exercised only if one of the three conditions referred to in paragraph 7.15 of the Consultation Document was satisfied. Before proscribing a local organisation under the condition in paragraph 7.15(c) of the Consultation Document, S for S had to be satisfied by evidence that -

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(a) The local organisation was affiliated to the proscribed organisation in the Mainland;

(b) There was such a threat to national security that it was both necessary and proportionate to proscribe the local organisation.

7. SG added that S for S's power of proscription was subject to the safeguards of appeal to an independent tribunal on points of fact and the court on points of law, and the ordinary remedy of judicial review. It could also be noted from recent cases that where human rights were enforceable and judiciable as in Hong Kong, the court would consider whether a response to national security threat was proportionate.

8. Mr CHEUNG Man-kwong said that while the SO sought to prohibit the operation of a society which had connection with a foreign political organisation or a political organisation of Taiwan, the Administration proposed in the Consultation Document to extend the coverage to a society which had a connection or affiliation with a proscribed Mainland organisation. He expressed concern that proscriptions made by the Central Authorities were based on rule of man rather than common law principles.

9. S for S responded that the SO was not only restricted to a society which had connection with a foreign political organisation or a political organisation of Taiwan. The existing provisions in SO already provided for the Societies Officer to recommend to S for S the making of an order prohibiting the operation or continued operation of a society, if he reasonably believed that this was necessary in the interests of national security, public safety or public order (*ordre public*). She added that this was consistent with the provisions in ICCPR.

10. Referring to the proposed appeal mechanism, Mr CHEUNG Man-kwong said that it would be very difficult for an accused to defend himself, if information heard by the independent tribunal was confidential. He added that the proscription of an organisation by the Central Authorities might be an act of State on which the courts of the HKSAR had no jurisdiction under BL19. Thus, it was questionable whether the appeal mechanism was independent and consistent with common law principles.

11. S for S stressed that apart from the proposal regarding proscription mechanism, all proposals in the Consultation Document were based on existing legislation and the principles and practices adopted in other common law jurisdictions. As the continental law system was adopted in the Mainland, a decision of the Central Authorities to proscribe a Mainland organisation in the Mainland was not made in accordance with the common law. She stressed that such a proscription by Central Authorities referred to a lawful decision made by the Central Authorities in accordance with national laws on the ground that the particular Mainland organisation endangered national security. There was no reason why Hong Kong should not at least consider whether such a decision made in accordance with the law by the Central Authorities,

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especially under the "one country" principle, would impact on Hong Kong. She added that the Administration could provide Members with the relevant provisions of Mainland laws on which Mainland organisations could be proscribed, if Members so wished. She stressed that the decision of S for S to proscribe an organisation was to be made in accordance with Hong Kong laws and standards of the ICCPR as applied to Hong Kong, and subject to the conditions and safeguards referred to in paragraph 7 above. Even after S for S had proscribed a local organisation, the proscription would not come into force before the appeal process was concluded. Where a proscription came into force, it only involved prohibiting the operation or continued operation of an organisation. It would not involve the arrest of persons.

12. Mr Albert HO said that the Democratic Party considered that the phrase "enact laws on its own" in BL23 meant that the HKSAR could decide when and how the legislation was to be enacted. In this connection, it was not an appropriate time to enact laws to implement BL23. He said that with the proposed extra-territorial effect of the legislation to be enacted and the proposed proscription mechanism on the basis of a Mainland proscription, many people were concerned whether the legal system in Hong Kong would be affected and whether the rule of law in Hong Kong could be preserved. They were also concerned whether the existing freedom of speech and freedom of expression enjoyed by the people of Hong Kong would be undermined. He asked whether a person who gave speeches or donation to support peaceful civil disobedience in the Mainland which caused serious disruption of an essential service would be in breach of the provisions relating to sedition. He also asked whether the expression of the view that the people of Taiwan had the right to determine their future would constitute an offence of obstructing the CPG in its exercise of sovereignty over a part of China.

13. SG stressed that his response would not be binding on the courts. He said that 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 BL including peaceful assembly or advocacy. Thus, peaceful assembly or peaceful advocacy should not amount to an offence of secession. However, it should be noted that whether a specific act would amount to an offence would depend on the facts of each case. He added that the proposed definition of "serious unlawful means" as referred to in the same paragraph of the Consultation Document was taken from the definition of "terrorist act" in the recently enacted United Nations (Anti-Terrorism Measures) Ordinance.

14. The Chairman asked whether a HKSAR permanent resident who participated in a civil disobedience event in the Mainland would be prosecuted after his or her return to Hong Kong. SG responded that HKSAR permanent residents would be subject to the proposed legislation regardless of where they were. Since the offences of subversion and secession were as serious as treason, it was appropriate for such legislation to have extra-territorial application to permanent residents of the HKSAR.

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15. Mr Albert HO asked who was to judge whether an act of civil disobedience in the Mainland had caused a serious disruption to service. SG responded that if prosecution was made in a court of Hong Kong, it would be necessary to establish evidence admissible to the courts of Hong Kong, i.e. direct evidence subject to cross examination and the usual safeguards.

16. Referring to paragraphs 7.16 and 7.17 of the Consultation Document, Ms Audrey EU asked whether the decision to prohibit a local organisation from operation would be based on whether it was "connected" rather than "affiliated" with a proscribed organisation in the Mainland. Regarding the appeal mechanism in paragraph 7.18 of the Consultation Document, she asked why an independent tribunal was to be established to consider points of fact while the court would only consider points of law. She also asked whether an organisation endangered national security would be determined solely by the Central Authorities. She considered that if this was the case, the definition of national security in SO would become meaningless. In this connection, she asked whether the Administration intended to revise the definition of national security in the legislative proposals to be introduced.

17. S for S responded that under the SO and the provisions in ICCPR, the Societies Officer could refuse to register, refuse to exempt from registration, cancel the registration or prohibit the operation of a society on the grounds of national security, public safety or public order (*ordre public).* She said that under the SO, national security was narrowly defined as the safeguarding of the territorial integrity and the independence of the State. Consideration could be given to revising the definition of national security to cover sovereignty, territorial integrity, unity and security. Such a definition was consistent with the common law. However, the Administration had not formed a view on whether to revise the definition of "national security".

18. S for S said that paragraph 7.15 of the Consultation Document was related to the proscription of a local organisation "affiliated" with a Mainland organisation proscribed by the Central Authorities, while paragraph 7.17 of the Consultation Document was related to the prohibition of operation of a local organisation that had a "connection" with a local organisation proscribed under paragraph 7.15(c) of the Consultation Document. Regarding the appeal mechanism, S for S said that it was the Administration's established practice to establish tribunals to handle appeals on points of facts, while appeals regarding points of law were dealt with by the court. An appellant could save much legal expense with the lodging of an appeal with a tribunal than seeking judicial review with the court. She added that the establishment of an independent tribunal would not prevent a person from seeking judicial review with the court.

19. SG said that as the nature of evidence likely to be considered in an appeal was highly confidential, the establishment of an independent tribunal was appropriate. Special tribunals were also established in many other jurisdictions to deal with similar matters. He stressed that the decision of the tribunal was subject to judicial review by the court. While a decision by the Mainland to proscribe a Mainland organisation

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would be based on the interpretation of national security in the Mainland, S for S would make an independent decision as to whether a local organisation was a threat to national security as defined in the legislation of Hong Kong. This decision was subject to the review of the courts.

20. Regarding the situation where the CPG had certified that a Mainland organisation had been proscribed on the ground of national security, the Chairman asked whether S for S or the court could come to a different decision.

21. SG responded that the proscription of a Mainland organisation by the Central Authorities would be a fact that the court must accept. However, the question to be addressed in Hong Kong was whether the local affiliated organisation was a threat to national security. Sufficient evidence admissible to the court would have to be presented by the prosecution to prove that the local affiliated organisation was a threat to national security.

22. Mr Martin LEE said that it was difficult for one to comment on the proposals in the Consultation Document without studying the provisions to be proposed. He considered that the Administration should, after the three-month consultation period, issue a white bill setting out its legislative proposals to implement BL23 before introducing a blue bill.

23. S for S responded that if a white bill was issued instead of a consultation document, some people might say that the Administration was not carrying out real consultation. She pointed out that it was not the Administration's usual practice to issue a white bill before the introduction of a blue bill. She said that the Administration would consider all the views received and introduce a blue bill in early 2003. She believed that the Bills Committee to be formed to study the bill would study the provisions prudently and hold a series of meetings to receive the views of the public on the legislative proposals. In her view, this would be the most efficient way to deal with the matter.

24. Referring to paragraph 9.5 of the Consultation Document, Mr Martin LEE expressed concern about the proposal to remove the current time limits for bringing prosecutions against treason or sedition. He declared that he was formerly a Vice-Chairman and a Committee Member of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China. He said that many people of different political affiliation and prominent businessmen had expressed support or given donations to support the student movement in Beijing on 4 June 1989. With the Mainland authorities declaring organisations involved in the student movement as organisations that endangered national security and the absence of a time limit for bringing prosecutions, he said that all these persons would be liable to prosecution under the legislation to be enacted.

25. S for S responded that the legislation to be enacted would not have any retrospective effect. The proposed removal of time limit for instituting prosecution

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only referred to the time after an offence was committed.

26. SG added that the existing provisions in the Crimes Ordinance (Cap. 200) provided that prosecution against treason had to be instituted within three years, and that for sedition had to be brought within six months, after the offence was committed. This was very unusual for serious offences. Thus, the Administration proposed that the time limit for prosecution should be removed.

27. Referring to paragraph 7.18 of the Consultation Document, Mr Martin LEE asked whether the "points of fact" as referred to in the paragraph were the "facts concerning acts of State" as referred to in BL19.

28. SG responded that in relation to a Mainland proscription, the Administration was proposing a system of certification which was similar to that referred to in BL19. However, this did not mean that the proposed system would operate under BL19. It only meant that the court must accept the fact that the Mainland organisation had been proscribed, if there was a certificate to such effect.

29. Mr Martin LEE suggested that the Administration should, after the consultation period, issue a white bill in early 2003 setting out the details of legislative proposals to implement BL23 for a consultation period of a few months before issuing a blue bill in mid-2003. The Chairman asked whether legislation would be enacted to implement BL23 irrespective of the views received in the public consultation.

30. S for S said that the introduction of a blue bill after the consultation period would be the most efficient way to deal with the matter. She said that after a blue bill was introduced, both members of the public and LegCo Members could express views on the proposals therein. Mr Martin LEE said that the Administration could, in addition to the Consultation Document, issue a white bill for public consultation.

31. Mr Martin LEE said that if the CPG certified that a Mainland organisation was proscribed on national security ground and that a certain organisation in Hong Kong was affiliated to that proscribed organisation, the certification would be an act of State over which the courts of Hong Kong had no jurisdiction.

32. SG responded that BL19 should not be interpreted to mean that the CPG could certify anything at all and then say it was binding on the courts of Hong Kong. He said that the Administration only proposed that a certification by the Mainland authorities of the proscription of a Mainland organisation would be conclusive evidence that the Mainland organisation had been proscribed in the Mainland on the grounds of national security. It would not be conclusive for any other purpose.

33. Mr James TO said that the Chairman of the Hong Kong Bar Association had recently stated that it was difficult to comment on the Administration's proposals to implement BL23 without looking at the provisions to be proposed in legislation. He said that even for its proposed legislation against organised and serious crimes, the

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Administration had introduced a white bill in 1992. In comparison, legislative proposals to implement BL23 would certainly draw much wider local and international attention and thus a white bill should be issued. He added that from a constitutional point of view, a white bill differed from a blue bill in that the Administration had not taken a position on the provisions to be enacted and the legislative process had not commenced.

34. S for S responded that although a white bill had been issued on the Administration's legislative proposals against organised and serious crimes, no consultation document was issued at that time. According to her memory, there was no precedent where a white bill was issued after the issuing of a consultation document. She stressed that a blue bill and a white bill could equally serve the purpose of providing details about the legislative proposals. Mr James TO said that the arrangement of issuing a white bill after issuing a public consultation document could be found in the enactment of the Securities and Futures Ordinance.

35. Mr James TO considered that the provision "enact laws on its own" in BL23 meant that the HKSAR could decide on its own when and how the enactment of legislation was to be made. He expressed doubt whether it was necessary and appropriate to enact laws to implement BL23 at this time, especially when the proposal in the Consultation Document might extend the legal concept of the Mainland to Hong Kong and in view of the current development of the legal system in the Mainland. S for S stressed that the proposed proscription mechanism was not an extension of the Mainland legal system to Hong Kong.

36. Mr James TO asked whether, in the event that the Mainland decided to reunite with Taiwan with the use of force, a person would be in breach of the legislation on secession if he expressed the opinion that the Mainland should not use force to reunite with Taiwan or that any resistance by Taiwan under such a situation was legitimate.

37. SG responded that holding or expressing an opinion, which was different from incitement, would not amount to an offence of secession.

38. Mr James TO said that the Chief Executive of the HKSAR (CE) had emphasised on 24 September 2002 that the Administration's proposals would not undermine in any way the existing human rights and civil liberties enjoyed by the people of Hong Kong. With the proposals regarding secession and the proposed proscription of organisations affiliated with a proscribed Mainland organisation, he questioned how CE could conclude that the existing human rights enjoyed by the people of Hong Kong would not be undermined.

39. S for S responded that as had been explained by SG, holding or expression of opinions would not constitute an offence under the Administration's proposals. Thus, the rights as guaranteed under the ICCPR would not be undermined. SG added that in respect of the legislation to be proposed on secession, there would not be any extension of the existing criminal law in relation to acts or speech of people. Mr James TO said

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that if that was the case, there would not be a need for the Consultation Document. He suggested that the Administration should explain whether the new offences to be proposed would undermine the human rights enjoyed by the people of Hong Kong. The Chairman said that the matter might be discussed at a later time.

40. Mr James TO said that BL23 provided, among others, that the HKSAR should enact laws to prohibit foreign political organisations or bodies from conducting political activities in the HKSAR. He expressed doubt as to whether the Administration's proposal to proscribe an organisation affiliated to a proscribed Mainland organisation was within the scope of BL23, as it was not a foreign organisation.

41. Ms Cyd HO said that with the issuing of a white bill, the process of scrutiny of the blue bill would take less time. She considered that after a white bill was issued, sufficient time should be allowed for public consultation. She expressed concern that S for S had stated at a radio interview on the previous day that the Administration hoped that legislation to implement BL23 would be passed in July 2003. In her view, there was no need to pass the legislative proposals in a hurry, especially in view of the fact that there had not been any cases of treason or sedition in the past five years after reunification. She said that there were previous examples where the introduction of legislative amendments in haste had resulted in many problems.

42. S for S responded that she saw no point in delaying the enactment of the relevant legislation. With matters of principle having been discussed and the detailed proposals being made available, and that there was sufficient time to examine professional views, there was no reason why the legislation to be proposed could not be enacted in July 2003, especially under the principle that any matter should be dealt with efficiently. She added that it was also undesirable to leave a gap in the legislation of Hong Kong.

43. Referring to paragraph 8.5 of the Consultation Document, Ms Cyd HO said that with the emergency power of entry, search and seizure provided to the Police for investigating some BL23 offences, no one would be willing to provide the media with any information, thus undermining press freedom. She asked whether the proposal was open to discussion.

44. S for S responded that the powers proposed in paragraph 8.5 of the Consultation Document were emergency powers which could only be exercised in relation to the offences set out in Annex 1 of the Consultation Document. Whether such powers would affect press freedom and whether such powers were needed could be further discussed. She said that the Administration would provide information setting out the powers in respect of such offences in other jurisdictions.

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45. SG added that since the proposed emergency powers would not apply to the Official Secrets Ordinance (Cap. 521), offence provisions relating to freedom of expression were only found in legislation on sedition. In this connection, the

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Administration proposed to narrow down the definition of seditious publications to publications that would incite the crime of treason, secession or subversion. In response to the Chairman's question about how and who would decide whether an emergency situation had arisen, SG said that the emergency powers were proposed to be exercised only by a sufficiently senior Police officer, such as a Superintendent, who had reasonable grounds to believe that -

(a) a relevant offence had been committed or was being committed;

(b) unless immediate action was taken, evidence of substantial value to the investigation of the offence would be lost; and

(c) the investigation of the relevant offence would be seriously prejudiced as a result.

SG added that any Police officer who abused his power would be subject to prosecution in the courts for any unlawful acts and subject to complaints lodged with the Complaints Against Police Office.

46. Mr Andrew WONG said that it was more appropriate to issue a white bill after the consultation period, followed by the introduction of a blue bill.

47. Mr Andrew WONG requested the Administration to provide an honest answer regarding whether the drafting of the bill to implement BL23 had been completed. SG responded that there was not yet a draft bill. S for S added that the Administration had always given honest answers. She stressed that there was not yet a draft bill, nor had any drafting instruction been given to the Department of Justice.

48. Mr Andrew WONG said that while he did not support the contents of BL23, he considered that a white bill on legislation to implement BL23 should be introduced as soon as possible before a blue bill was introduced.

49. Mr Andrew WONG said that the Administration should provide a paper comparing the Administration's proposals with relevant legislation in other jurisdictions, and the risk assessment in these jurisdictions. S for S responded that the Administration had already provided Members with information about relevant legislation in other jurisdictions. She pointed out that similar legislation was found in most parts of the world, apart from the Macao Special Administrative Region.

50. Ms Audrey EU requested the Administration to elaborate on the type of information that would fall within the meaning of information relating to relations between the Central Authorities of the PRC and the HKSAR, as referred to in paragraph 6.19(b)(iv) of the Consultation Document.

51. S for S responded that information relating to relations between the Central Authorities of the Peoples' Republic of China and the HKSAR could be defined in a

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manner similar to information related to international relations under section 16(1) of the Official Secrets Ordinance. She said that while the scope of section 16(1) of the Official Secrets Ordinance might appear broad, no person had been prosecuted for such an offence in the past. She stressed that the Administration welcomed views on the issue.

52. Ms Audrey EU requested the Administration to provide examples of contents that would render a document falling into the definition of a seditious publication. S for S responded that during a radio interview on the previous day, it could be easily noted from the contents of a book entitled "如何推翻政府" was obviously not seditious. Thus, distinguishing whether a publication was seditious was not in practice very difficult.

53. Mr Martin LEE asked whether the Administration had discussed and reached an agreement with the Mainland regarding its proposals and legislative timetable to implement BL23.

54. S for S responded that consultation had been made with the CPG on matters of principle and concepts such as national security, territorial integrity and unity. However, technical issues, points of law and enforcement aspects would be dealt with by HKSAR on its own. Regarding the legislative timetable, she said that the common wish was that as the BL had came into operation for five years, and that there had been sufficient time to fully examine relevant legislation in the Mainland and overseas, the proposals to implement BL23 should be enacted as soon as possible.

55. Mr CHEUNG Man-kwong said that CE had stated on 24 September 2002 that the Administration's proposals would not undermine the existing human rights and civil liberties enjoyed by the people of Hong Kong. He asked whether the proposed proscription mechanism would restrict freedom of association. He also asked whether the increase in Police power arising from the proposed emergency powers for investigating some BL23 offences would undermine the human rights of the people of Hong Kong.

56. S for S responded that CE was right in saying that the human rights of the people of Hong Kong would not be undermined. She said that the Administration's proposals would not affect human rights, such as the freedom of speech, freedom of expression, freedom of association and freedom of assembly. Where an act had gone beyond the limits and was in breach of local legislation, it would become an offence and thus it was no longer a matter of freedom. Whether a certain act would constitute an offence would be subject to the legislation to be enacted.

57. Ms Cyd HO asked whether the enacted legislation would override existing provisions in the Hong Kong Bill of Rights Ordinance (Cap. 383) (BORO). S for S responded that the enacted legislation would not override the provisions in BORO. As BL39 provided that the provisions of ICCPR would be implemented through the laws of the HKSAR, the laws enacted by the HKSAR ought to be consistent with the

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provisions in ICCPR.

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58. Mr Martin LEE requested the Administration to provide a paper to explain an act of State and to clarify whether the proscription of a Mainland organisation by the Central Authorities in accordance with national law on national security ground was an act of State referred to in BL19.

Way forward

59. Ms Cyd HO suggested that the discussion of issues relating to the Administration's proposals to implement BL23 should be followed up jointly by the Panel on Administration of Justice and Legal Services, the Panel on Home Affairs and the Panel on Security. She suggested that future discussions should be divided into the seven areas set out in BL23 and any other subjects as proposed by Members. She added that the joint meetings should not be held at intervals of less than two weeks so that it would be easier for the public to digest the discussions.

60. Noting that it would usually be difficult to form a quorum for a joint meeting of three Panels, Members agreed that the matter should be followed up at joint meetings of the Panel on Administration of Justice and Legal Services and Panel on Security, and all other LegCo Members would be invited to attend the meetings. Members agreed that a joint meeting would be held to continue discussion with the Administration, followed by another joint meeting to receive the views of interested parties on the proposals in the Consultation Document. They also agreed that the Clerk would consult the Chairman on the meeting dates. The Chairman requested the Clerk to draw up a list of issues and concerns raised by Members.

(*Post-meeting note* : The joint meeting to continue discussion with the Administration and that to receive the views of interested parties on the proposals in the Consultation Document were subsequently scheduled for 21 October and 7 November 2002 respectively.)

61. Members agreed that a press release would be issued and the following organisations or persons would be invited to give views on the proposals in the Consultation Document -

(a) Hong Kong Bar Association;

(b) The Law Society of Hong Kong;

(c) Hong Kong Human Rights Monitor; and

(d) Academics from local universities, including those from the law faculties of local universities.

62. The Chairman requested Members to inform the Clerk as soon as possible their

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suggestions of interested groups which should be invited to express views on the proposals in the Consultation Document.

63. The meeting ended at 4:45 pm.

Council Business Division 2
Legislative Council Secretariat
25 November 2002