

**National Security (Legislative Provisions) Bill :  
The Offence of Subversion**

At the meetings of the Bills Committee held on 15 and 22 April, Members have asked whether certain situations, including those referred to in paragraph 53 of the submission of the Hong Kong Bar Association, would be prosecuted under the proposed new law of subversion.

**The Scenarios**

2. The various scenarios referred to are as follows.

*“A person calls for the amendment of Article 1 of the PRC Constitution by deleting the reference to the socialist system as the ‘basic system’ in the Constitution and spreads his message by a mass e-mail campaign that disrupts the ordinary working of the HKG Information website.”*

*“A person calls for the overthrow of the CPG by painting slogans with that message on Government property and causes criminal damage to property amounting to HK\$ 1,000,000.”*

*“A person kidnaps an SCNPC delegate and threatens to kill or maim him unless the CPG pays him a ransom of HK\$10,000,000.”*

*“joining movements in the Mainland like the one in Beijing in June 1989”*

*“joining supporters of the Association of Falun Dafa in besieging Zhongnanhai”*

*“taking part in a demonstration in Hong Kong in support of the Mainland movement [like the one in Beijing in June 1989] if the local demonstration brought traffic to a halt”*

*“providing financial support to the Mainland movement [like the one in Beijing in June 1989]”*

**No Offence of Subversion Committed**

3. We do not think that any of the above situations would have amounted to the proposed offence of subversion, for the following reasons.

4. For a person to be guilty of the substantive offence of subversion, it would have to be proved beyond reasonable doubt that the results referred to in

paragraph (a), (b) or (c) of proposed section 2A(1) were achieved by the use of force or serious criminal means that seriously endangers the stability of the PRC or by engaging in war. For a person to be guilty of conspiring or attempting to commit, or inciting, an offence of subversion, it would have to be proved beyond reasonable doubt that he intended to achieve such a result by the use of force or serious criminal means that would seriously endanger the stability of the PRC, or by engaging in war. None of the scenarios involve engagement in war.

5. For any conduct to amount to “serious criminal means,” it would have to be satisfy the one of the criteria under section 2A(4)(b)(i)-(v), and be committed in a way that amounts to an offence under Hong Kong law. Even if these two conditions were satisfied, or if force were used, it is almost inconceivable that any of the situations in paragraph 2 above could seriously endanger the stability of the PRC.

6. Even if it might be possible to prove an intention to use force or serious criminal means, that would not be sufficient to secure a conviction for an inchoate offence relating to subversion. The intentional use of force or serious criminal means that “seriously endangers the stability of the PRC” with the intention to overthrow the CPG etc. would need to be proved. Painting slogans, sending e-mails, stopping traffic in Hong Kong, kidnapping or even a threat to kill or maim a person would not be sufficient to satisfy the high threshold. It is difficult to see how slogans painted in Hong Kong could seriously endanger the stability of the PRC, or how it could be proved that a person intended to overthrow the CPG by stopping traffic in Hong Kong.

7. For a person to be guilty of being an accomplice to an offence of subversion it would have to be proved that –

- (i) an offence of subversion was actually committed; and
- (ii) at the time the person acted (e.g. provided financial support) he was aware of the essential matters that constituted the offence of subversion.

8. It is most unlikely that these conditions could be satisfied in the situations referred to in paragraph 2 above.

Security Bureau  
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