

## ROUNDTABLE DISCUSSION

## ARTICLE 23 LEGISLATION: CONCERNS AND IMPERATIVES 13 YEARS ON

30 August 2016, 1.00-7.00 pm, 11/F, Cheng Yu Tung Tower

## BACKGROUND BRIEF

This brief was prepared with the generous research assistance of Hugo Lai (LLB 2016) and Cedric Yeung (LLB 3). Participants will be provided with hard copies of items marked with \*.

	Information	Pages
* 1	Introduction	3-4
* 2	Participants	4
* 3	Programme and format	5
* 4	Discussion agenda	6-8
* 5	Timeline of post-2003 events	9-27
* 6	Summary of remaining concerns with the National Security (Legislative Provisions) Bill with Committee Stage Amendments that stood as at 10 July 2003	28-35
7	Carole J Petersen, "Hong Kong's Spring of Discontent: The Rise and Fall of the National Security Bill in 2003" in Fu Hualing, Carole J Petersen and Simon NM Young, <i>National Security and Fundamental Freedoms: Hong Kong's Article 23 Under Scrutiny</i> (HKU Press, 2005)	36-88
8	Hualing Fu & Richard Cullen, "National Security" in J Chan & CL Lim (eds), <i>Law of the Hong Kong Constitution</i> (Hong Kong: Sweet & Maxwell, 2 <sup>nd</sup> edn, 2015).	89-101
9	Article 23 Concern Group, "Article 23 Legislation: The Proper Way Forward", August 2003, available at <a href="http://www.article23.org.hk/english/newsupdate/aug03/0813Pamphlet_e.htm">http://www.article23.org.hk/english/newsupdate/aug03/0813Pamphlet_e.htm</a>	102-107
10	Bob Hu, "The Future of Article 23" (2011) 41 HKLJ 431.	108-127
11	Simon Young, "Guide to Basic Law Article 23", HKU Legal Scholarship Blog, available at <a href="http://researchblog.law.hku.hk/2015/03/guide-to-basic-law-article-23-hong.html">http://researchblog.law.hku.hk/2015/03/guide-to-basic-law-article-23-hong.html</a>	128-146

12	Alvin Cheung, “A Spectre Resurfaces: Chinese National Security Legislation and Hong Kong”, Blog of the International Journal Constitutional Law, 11 February 2015, available at <a href="http://www.icconnectblog.com/2015/02/a-spectre-resurfaces-chinese-national-security-legislation-and-hong-kong/">http://www.icconnectblog.com/2015/02/a-spectre-resurfaces-chinese-national-security-legislation-and-hong-kong/</a>	147-148
13	Bing Ling, “The ‘confused topic’ of act of state under the Hong Kong Basic Law” (2013) 1(1) Chinese Journal of Comparative Law pp 84-111.	149-176
14	Research and Library Services Division and Legal Service Division, Legislative Council Secretariat (prepared by Pak-kwan Chau and Stephen Lam), “Research Study on the Agreement between Hong Kong and the Mainland concerning Surrender of Fugitive Offenders” (March 2001), Chs 4 & 5.	177-229
15	Jorge Godinho, “The regulation of article 23 of the Macau Basic Law: A commentary of the draft law on the protection of State security”, 28 November 2008, available at <a href="http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1303245">http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1303245</a>	230-249
16	Hualing Fu, “Responses to terrorism in China”, in Victor V. Ramraj, Michael Hor, Kent Roach and George Williams, <i>Global Anti-Terrorism Law and Policy</i> (USA: Cambridge University Press, 2 <sup>nd</sup> edn, 2012).	250-273
17	Fiona de Londras, <i>Detention in the War on Terror: Can Human Rights Survive?</i> (USA: Cambridge University Press, 1 <sup>st</sup> edn, 2011), Ch 1.	274-287
18	Thomas Poole, “Courts and conditions of uncertainty in ‘times of crises’” (2008) Public Law 234	288-317
* 19	Appendix I: Selected legislative provisions and extracts from National Security (Legislative Provisions) Bill 2003 with Committee Stage Amendments as at 10 July 2003, extracted from Fu Hualing, Carole J Petersen and Simon NM Young, <i>National Security and Fundamental Freedoms: Hong Kong’s Article 23 Under Scrutiny</i> (HKU Press, 2005), pp 427-472.	318-364
* 20	Appendix II: Hong Kong Basic Law	365-395
* 21	Appendix III: Macau National Security Law (English translation available at <a href="https://www.amnesty.org/en/documents/ASA27/003/2009/en/">https://www.amnesty.org/en/documents/ASA27/003/2009/en/</a> )	396-409
* 22	Appendix IV: National Security Law of the People’s Republic of China, adopted by the Standing Committee of the National People’s Congress on 1 July 2015.	410-436

## INTRODUCTION

Article 23 of the Hong Kong Basic Law requires Hong Kong to “enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People’s Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.”

Enacting legislation to implement this provision has been one of the most controversial constitutional law issues in Hong Kong. Part of the controversy fits with the global challenge of balancing security and rights. Yet part of it is unique to Hong Kong: its lack of democratic governance, the weak institutional protection of autonomy and rights in the territory against erosion thereof from China – a one-party dictatorship with a bleak record of using security laws to clamp down on legitimate dissent, the huge power imbalance between China and Hong Kong, and distrust between the general public and the Chinese and Hong Kong governments. No other issue better illustrates the intricate relationship between national security, democracy, human rights protection, separation of powers, civil society and autonomy in Hong Kong than the attempts to enact Article 23 legislation in Hong Kong. How that issue will be resolved will have far-reaching ramifications on the freedoms and principles of legality that constitute the identity of Hong Kong society, as well as its constitutional relationship with China.

The Hong Kong Government’s attempt to introduce such legislation in 2003 led to a demonstration of half a million people, forcing the Government to offer major concessions and ultimately, to shelve the bill. Since then, there has been no further attempt to introduce Article 23 legislation. However, given the obligation in the Basic Law, the issue will no doubt be re-opened in the not too distant future. In the past year, in light of social movements in Hong Kong that China deem secessionist, there have been renewed calls from pro-China figures for the enactment of Article 23 legislation. This roundtable aims to update the discourse on the subject of Article 23 in light of relevant developments in Hong Kong, China and worldwide in the last 13 years that may impact upon the forces for and against introducing security legislation in Hong Kong and the form that such legislation should take. These developments include: the increase of Chinese interference in Hong Kong’s affairs, the lack of significant progress on democratization in Hong Kong, the occurrence of a large-scale civil disobedience movement and other incidents that are seen to threaten public order and the rule of law in Hong Kong, the rise of localist forces and Beijing’s perception of these developments, the increase in media self-censorship in Hong Kong, suspected attempts by the Mainland authorities to enforce Mainland security law in Hong Kong, the passing of Article 23 legislation in Macau, the high-profile suppression of political dissent in the Mainland, the proliferation of international terrorism, the accumulation of experience by Western democracies on the enactment and implementation of post-911 security measures, internal instability in China and developments in China’s national security policy.

The aim of the roundtable discussion is a modest one of identifying what the stakes of enacting *and* not enacting Article 23 legislation are, respectively, in light of developments in the past decade, assuming that legislation along the lines of the Revised Bill with Committee Stage Amendments that stood as at 10 July 2003 is reintroduced. By throwing into relief what exactly falls into the two sides of the balance on the enactment of security legislation in Hong Kong, the discussion will inform law-makers and the public on how that balance should be struck when the issue arises for deliberation again.

The format of the roundtable will entail brief presentations on the issues in national security law in global and Chinese perspectives. The discussion which will follow will comprise two main sessions. The first seeks to identify the new and remaining concerns in relation to Article 23 legislation, given the global, national and local developments in the past decade. The second session focuses on the other side of the balance: the issues triggered by lack of Article 23 legislation and the implications and concerns that arise if its enactment is put on halt indefinitely.

## **ROUNDTABLE PARTICIPANTS**

Ms Amy Barrow, The Chinese University of Hong Kong

Ms Cora Chan, The University of Hong Kong

Professor Albert Chen, The University of Hong Kong

Mr Eric Cheung, The University of Hong Kong

Ms Surabhi Chopra, The Chinese University of Hong Kong

Professor Michael Davis, Centre for Comparative and Public Law, The University of Hong Kong

Professor Fiona de Londras, University of Birmingham

Professor Fu Hualing, The University of Hong Kong

Mr Danny Gittings, HKU School of Professional and Continuing Education

Dr Denis Halis, The University of Macau

Dr Eric Ip, The University of Hong Kong

Dr Huang Mingtao, Wuhan University

Dr Margaret Ng, Sir Oswald Cheung's Chambers, Hong Kong

Mr Malik Imtiaz Sarwar, Malik Imtiaz Sarwar Advocates & Solicitors, Malaysia

Ms Puja Kapai, The University of Hong Kong

Professor Lin Feng, City University of Hong Kong

Dr Lo Pui Yin, Gilt Chambers, Hong Kong

Professor Carole Petersen, University of Hawaii

Mr Benny Tai, The University of Hong Kong

Ms Doreen Weisenhaus, The University of Hong Kong

Professor Simon Young, The University of Hong Kong

## PROGRAMME

1.00-1.15	Opening remarks and introduction
1.15-1.30	Professor Fiona de Londras – Security, Liberty, and the Seductive Power of “Balance”
1.30-1.45	Mr Malik Imtiaz Sarwar – The Role of Courts in Balancing Rights and Security: the Malaysian Experience
1.45-4.00	Discussion Part I
4.00-4.15	Coffee break
4.15-6.30	Discussion Part II
6.30-7.00	Conclusion

## FORMAT

1. Participants are expected to have studied the agenda and brief before the event.
2. To ease participants’ workload in preparing for the roundtable, participants have been assigned to work on particular topics. The allocation is non-definitive and participants are free to suggest alternative allocations.
3. Apart from the opening presentations, there shall be no formal speeches.
4. The discussion will be an open exchange between participants.
5. In the interest of time, we kindly ask participants to be **as succinct as possible** in expressing viewpoints.
6. To facilitate the chairing of and exchange at the event, participants are encouraged to submit brief written responses **by 24 August 2016**, although it would not be obligatory.

## DISCUSSION AGENDA

### Note:

To ease participants' workload in preparing for the roundtable, participants have been assigned to work on certain topics. The allocation is non-definitive and participants are free to suggest alternative allocations.

**“Revised Bill”** denotes the National Security (Legislative Provisions) Bill with Committee Stage Amendments that stood as at 10 July 2003.

### Part I: New and remaining concerns with Article 23 legislation

1. How, in concrete terms, might Hong Kong society be different if legislation along the lines of the Revised Bill is to be enacted? Freedoms to be considered include: freedoms of expression, association, demonstration, religion, information and press, artistic creation, academic freedom, rights to privacy, liberty and fair trial. Other aspects to be considered include autonomy and legitimate and accountable governance. [1 hour 15 min]
  - a. For instance, would the following activities constitute crimes under the Revised Bill? Should they constitute national security crimes? Are they already “ordinary crimes” under current law, and what difference might deeming them as national security crime make? [**Simon, Eric Cheung, PY; comparative perspectives: Fiona, Surabhi, Imtiaz, Denis-has the passing of Article 23 legislation in Macau in 2009 changed things? Any prosecutions?**]
    - i. Occupy Movement; Mongkok incident (freedom to demonstrate, legitimate dissent) (see incident nos. 12 and 24 in the Timeline included in the brief)
    - ii. Setting up of political organizations calling for Hong Kong to become an independent state (freedom of association) (see, e.g. incident nos. 9, 17 in the Timeline)
    - iii. Publishing or reporting of materials that challenge one-party rule or harm the reputation of senior Chinese officials (e.g. by disclosing their personal lives or financial status, reporting the Panama papers) (press and media freedom) (see, e.g. incident no. 13 in the Timeline)
    - iv. University student body publishing materials calling for self-determination (Academic freedom, freedom of expression) (see, e.g. incident no. 26 in the Timeline)
    - v. Producing and broadcasting the film “Ten Years” (freedom of expression, artistic creation) (see incident no. 8 in the Timeline)
    - vi. Falun Gong activities in Hong Kong (freedom of religion)
  - b. In light of trajectories of China's policies towards Hong Kong, the Hong Kong Government's approaches to governance, police powers in Hong Kong, and the rights situation in the territory, what might be the impact on civil society, the enjoyment of rights and liberties and accountable governance if the Revised Bill is to be enacted? Have new concerns emerged – those that did not exist in 2003 – given developments in the past decade? [**Doreen, Amy, Puja, Margaret, Carole; comparative perspectives: Fiona, Imtiaz, Denis**]

2. Can the concerns against Article 23 legislation be mitigated? What is the relationship between rights protection, democracy, separation of powers, and “one country two systems”? [~1 hour]
  - a. Can the concerns against Article 23 legislation be mitigated by the following means? [**Michael, Carole, Margaret, PY, Benny**]
    - i. Drafting techniques; or would there still be formidable concerns even if the “perfect” bill was proposed, such that legislation ought to be opposed in principle?
    - ii. Continued constitutional entrenchment of international human rights, maintenance of a common law legal system and independent judiciary
      1. Under Article 158 of the Basic Law, the power of interpreting local legislation is vested with Hong Kong courts, while the final power of interpreting the Basic Law is vested with Beijing’s National People’s Congress Standing Committee (NPCSC). If Article 23 legislation is introduced, will the Chinese Government’s expansive understandings of security crimes find their way into Hong Kong law and, if so, how?
      2. What are the limits of courts in vetting security claims? [**comparative perspectives: Fiona, Imtiaz**]
    - iii. Universal suffrage of the Chief Executive and Legislature
      1. How are developments in democratic reform (or lackof) in the past 13 years relevant to an assessment of issues regarding Article 23? What if (as seems to be the case) the Chinese Government makes enactment of Article 23 legislation a prerequisite for granting full democracy?
  - b. Are there institutional and social prerequisites to the introduction of Article 23 legislation? [**Michael, Carole, Doreen, Margaret, Benny**]
  - c. How is the uncertainty clouding the post-2047 constitutional arrangements relevant to the consideration of issues regarding Article 23? [**Michael, Carole, Eric Ip, Benny**]

## **Part II: The place of Hong Kong in China’s security order**

1. Apart from the fulfilment of a constitutional obligation, are there other reasons – *normative* ones – for introducing national security legislation in Hong Kong? Are there security threats in Hong Kong? Is Hong Kong prone to international terrorism? What are the Central Government’s concerns in relation to Hong Kong as a source of security threat, and are they founded? Is the introduction of Article 23 legislation necessary or sufficient for addressing prevailing security concerns regarding Hong Kong? [50 min] [**Hualing, Mingtao, Lin Feng, Eric Ip, Surabhi**]
2. The Causeway Bay Books incident and Poon Wai Hei incident (incidents nos. 13 and 33 in the Timeline) apparently show that it is possible for Mainland authorities to enforce Mainland security laws extra-jurisdictionally (in Hong Kong), thereby importing Mainland laws extra-constitutionally. In any case, the Mainland authorities have jurisdiction to enforce Mainland security laws against Hong Kong residents that are physically in the Mainland. If Article 23 legislation is introduced, would the use of Mainland security legislation by Mainland authorities against Hong Kong residents (either in the Mainland or cross-jurisdictionally) be reined in or aggravated? How sound is the argument that introducing Article 23 legislation and placing it in the

hands of the local judiciary and enforcement agents can help recapture the security territory – a territory that is increasingly being lost to the Chinese Government? How are the concerns regarding Article 23 and the extradition arrangements between China and Hong Kong related? [~1 hour] [**Hualing, Mingtao, Albert, Lin Feng, Danny, Carole, Margaret; comparative perspective: Denis**]

3. Are there legal consequences to the HKSAR not fulfilling the requirements of Article 23? Will there be a point at which Article 23 becomes “violated”? Is the Chinese Government constitutionally entitled to take action in response to any such “violation”? In any case, is there constitutional basis for the NPCSC to apply Mainland security law to Hong Kong through Article 18 of the Basic Law? [~25 min] [**Albert, Lin Feng, Danny, Benny**]

### **Conclusion: Wishlist**

Points that participants would like the Mainland and Hong Kong Governments to heed on the issue of Article 23 legislation. Aspects to be considered include: to legislate or not, and procedure, substance, wording, principles, timing of legislation



## TIMELINE OF POST-2003 EVENTS

*Last updated on 3 August 2016.*

The following is a *non-exhaustive* list of incidents that may be relevant to the consideration of the issue of Article 23 legislation in Hong Kong.

Ref	Year/Month	Event	Significance
1.	2016/ August	Anti-segregation video broadcast by the Supreme People's Procuratorate of the People's Republic of China	On 3 August 2016, the Supreme People's Procuratorate of the People's Republic of China shared a video on its official Weibo account. The video listed threats to China's national security, including the rise of localism in Hong Kong. Lau Siu-kai, Vice-president of the Chinese Association of Hong Kong & Macao Studies, commented that the spread of localism in Hong Kong had caught Central Government's concern as a threat to China's stability. <sup>1</sup>
2.	2016/ July	Arrest of James Wang and Guo Zhongxiao	On 26 July 2016, James Wang and Guo Zhongxiao, both Hong Kong permanent residents, were tried and sentenced in the Mainland. They were taken away from their homes in Shenzhen in May 2014 for "unlawful business operations". The prosecution alleged that Wang and Guo delivered "Xin Wei Yue Kan" and "Lian Pu", two political commentaries which were published in Hong Kong and banned in the Mainland, to eight Mainland readers. <sup>2</sup>
3.	2016/ July	Zhang Xiaoming's speech	On 20 July 2016, Zhang Xiaoming, the Director of the Liaison Office of the Central People's Government ("CPG") in Hong Kong, delivered a speech for the National Day Preparatory Committee. He questioned whether allowing those that advocate the independence of Hong Kong to be elected to the Legislative Council ("Legco") is consistent with the policy of "One Country, Two Systems", the Basic Law, and the rule of law. <sup>3</sup>
4.	2016/ July	Confirmation form for Legco election candidates	The upcoming Legco election would take place in September, 2016. The Electoral Affairs Commission announced that all candidates must sign a confirmation form, in addition to the usual nomination form, to acknowledge that they clearly understand a number of Articles of the Basic Law ("BL" – the <i>de facto</i> constitution of Hong Kong), including Article 1 (" <i>The Hong Kong</i>

<sup>1</sup> “中國最高人民檢察院微博轉發 內地反港獨片 配黃之鋒畫面”, *Ming Pao*, 3 August 2016. Available at [http://news.mingpao.com/pns/dailynews/web\\_tc/article/20160803/s00001/1470161778841](http://news.mingpao.com/pns/dailynews/web_tc/article/20160803/s00001/1470161778841).

<sup>2</sup> “香港政論雜誌創辦人王健民周中校在深圳被判刑”, *BBC News*, 27 July 2016. Available at [http://www.bbc.com/zhongwen/trad/china/2016/07/160727\\_hongkong\\_publisher\\_sentenced\\_shenzhen](http://www.bbc.com/zhongwen/trad/china/2016/07/160727_hongkong_publisher_sentenced_shenzhen).

<sup>3</sup> “【中共講法治】張曉明：容港獨份子入立會符法治原則嗎？”, *Apple Daily*, 20 July 2016. Available at <http://hk.apple.nextmedia.com/realtime/news/20160720/55384346>.

		<p><b><i>Special Administrative Region is an inalienable part of the People's Republic of China</i></b>). The nomination form states that anyone making false declarations is liable to criminal sanction.</p> <p><b>Elsie Leung, the former Secretary for Justice, and Maria Tam, a deputy of Hong Kong to the National People's Congress ("NPC"), said the new confirmation form only repeated the requirements of the BL and since all Legco candidates are required to plead allegiance to the BL, it is legitimate to draw candidates' attention to particular Articles of it.<sup>4</sup> Alan Leong, a current pan-democratic Legco member, was of the view that the new form sought to challenge citizens' freedom of speech and thought whereas Sin Chung-kai, also a current pan-democratic Legco member, doubted the legality of the new requirement.<sup>5</sup></b></p> <p><b>As at 3 August 2016, the nomination of 7 candidates has been invalidated by the Returning Officer.</b></p> <p><b>Andy Chan Ho-tin, a candidate representing Hong Kong National Party for the New Territories West constituencies (see [9] below), was the first to have his nomination invalidated. Despite signing the confirmation form, Chan did not reply to the Returning Officer's enquiries on his political stance, and the Returning Officer gathered from the media, including Facebook, that Chan advocated for Hong Kong's independence. <sup>6</sup></b></p> <p><b>Yeung Kai Cheong, a candidate representing Democratic Progressive Party of Hong Kong for the Kowloon West constituencies, was eliminated because he signed neither the declaration form nor the confirmation form.<sup>7</sup></b></p> <p><b>Nakade Hitsujiko, a candidate for the New Territories West constituencies, was removed because he added localist propositions in the confirmation form, the Returning Officer found from Hitsujiko's social media website that his policy included independence movement</b></p>
--	--	--

<sup>4</sup> “梁愛詩:確認書只重覆條文沒違反基本法”, Metroradio, 15 July 2016 .Available at <http://www.metroradio.com.hk/news/live.aspx?NewsId=20160715135841>.

<sup>5</sup> “立會選舉「聲明」禁港獨人士入閘”, *Sing Tao Daily*, 15 July 2016. Available at <http://std.stheadline.com/daily/news-content.php?id=985515&target=2>.

<sup>6</sup> “民族黨陳浩天 被禁參選立會 斥政治審查 擬採暴力行動”, *Apple Daily*, 31 July 2016. Available at <http://hk.apple.nextmedia.com/news/art/20160731/19716926>

<sup>7</sup> “今屆第 2 人 楊繼昌 禁參選 當局：因不擁護《基本法》”, *Apple Daily*, 1 August 2016. Available at <http://hk.apple.nextmedia.com/news/first/20160801/19718106>.

			<p>and in Hitsujiko’s reply to the Returning Officer’s enquiry, Hitsujiko still propounded localism.<sup>8</sup></p> <p>Edward Leung, a candidate representing Hong Kong Indigenous for the New Territories East constituencies, was removed despite signing both the nomination and confirmation forms. The Returning Officer was of the view that Leung had not changed his previous stance in supporting Hong Kong independence, based on Leung’s conduct on the mass media. However, despite the same advocacy for localism, Leung was not precluded from participating in the Legco by-election in February 2016 (see [10] below).<sup>9</sup></p> <p>Other candidates who were eliminated from the election for advocating localism were James Chan Kwok-keung, an independent, Alice Lai, representing the Conservatives. Li Kaixia, the last eliminated candidate, was ruled out because of insufficient nominations.<sup>10</sup></p>
5.	2016/ July	Publication of Hong Kong Journalist Association (“HKJA”) Annual Report 2016	HKJA Annual Report 2016, entitled “One Country Two Nightmares”, was published on 3 July 2016. The themes of the Report include the concern on the deeper incursion of Mainland influence in Hong Kong, the suppression of media freedom by violence and the political fissure within pan-democrats due to the rise of localism. HKJA has made various suggestions to the Government to maximise the protection of fundamental human rights, including taking a stronger stance against Beijing’s manipulation in local affairs. <sup>11</sup>
6.	2016/ May	Visit of Zhang Dejiang to Hong Kong	On 17 May 2016, Zhang Dejiang, Chairman of the National People’s Congress Standing Committee (“NPCSC”), arrived in Hong Kong for a three-day visit. The police adopted an “anti-terrorism” level of security measures, such as deploying more than 5,000 police officers to escort political heavyweights. The police force justified this heavy security measures by referring to, <i>inter alia</i> , the rise of “local terrorism” in Hong Kong, such

<sup>8</sup> “中出羊子遭裁定不擁護基本法 今屆立會選舉第三人提名無效”, *HK01*, 1 August 2016. Available at <http://www.hk01.com/立法會選舉/34794/中出羊子遭裁定不擁護基本法-今屆立會選舉第三人提名無效>.

<sup>9</sup> “梁天琦被拒入閘斥人治決定 選舉主任：不能信納真正改變支持港獨立場”, *Ming Pao*, 3 August 2016. Available at [http://news.mingpao.com/pns/dailynews/web\\_tc/article/20160803/s00001/1470161771805](http://news.mingpao.com/pns/dailynews/web_tc/article/20160803/s00001/1470161771805).

<sup>10</sup> *Ibid.* See also “李慨俠提名人不足失資格”, *Ta Kung Pao*, 3 August 2016. Available at <http://www.takungpao.com.hk/hongkong/text/2016/0803/13641.html>.

<sup>11</sup> “One Country, Two Nightmares”, 3 July 2016, *HKJA* at p. 2 – 4.

			as radical members' attempts to make explosives (see [11] and [22] below). <sup>12</sup>
7.	2016/ May	<b>"Implementation of One Country Two Systems" roundtable conference</b>	<p>The Democratic Alliance for the Betterment of Hong Kong organised a roundtable on 10 May 2016 to discuss the implementation of "One Country Two Systems" in Hong Kong.</p> <p>Maria Tam Wai-chu, a deputy of Hong Kong to the NPC, suggested that Hong Kong should focus on implementing Article 23 two years later, in 2018.<sup>13</sup> In 2015, she advocated that Article 23 should be implemented as soon as possible, and in particular, anti-localist legislation should be included.<sup>14</sup></p>
8.	2016/ April	<b>"Ten Years" awarded the Best Film in the 35<sup>th</sup> Hong Kong Film Awards</b>	<p>"Ten Years" is a film that portrays how Hong Kong's core values (e.g. freedom) are encroached gradually under Beijing's influence in a speculative future. It was chosen as the Best Film in the 35<sup>th</sup> Hong Kong Film Awards.</p> <p>Some critics slammed the film as inciting separationist ideology.<sup>15</sup></p>
9.	2016/ March	<b>Establishment of the Hong Kong National Party</b>	<p>On 28 March 2016, Hong Kong National Party ("HKNP") was established as a localist body which advocates the independence of Hong Kong. Its members would run for the Legco in the upcoming election in September 2016. The Companies Registry refused to register HKNP for "political reasons".</p> <p>The Hong Kong Government issued a statement stating that any suggestion of Hong Kong being independent from China is against BL, and it might take actions against HKNP in accordance with the current legal framework.<sup>16</sup></p> <p>Global Times, a state-owned paper of the Chinese Government slammed HKNP as being at the "forefront of</p>

<sup>4</sup> "警列反恐保安行動 動員 5000 警力", *Ta Kung Pao*, 16 May 2016. Available at <http://news.takungpao.com.hk/paper/q/2016/0516/3318812.html>.

<sup>13</sup> "譚惠珠：兩年後可處理 23 條", *Apple Daily*, 11 May 2016. Available at <http://hk.apple.nextmedia.com/news/art/20160511/19606520>.

<sup>14</sup> "譚惠珠：二十三條立法越早越好 董立坤指刻不容緩 不能任港變動亂基地", *Wen Wei Po*, 13 April 2015. Available at <http://paper.wenweipo.com/2015/04/13/HS1504130022.htm>.

<sup>15</sup> "《十年》獲獎 內地不滿 影業老闆發爛渣 逼金像獎改制", *Apple Daily*, 5 April, 2016. Available at <http://hk.apple.nextmedia.com/news/first/20160406/19559598>.

<sup>16</sup> Available at <http://www.info.gov.hk/gia/general/201603/30/P201603300926.html>.

			<p>extremism” which undermined China’s sovereignty.<sup>17</sup> Alan Hoo, who is a Senior Counsel in Hong Kong and a member of the Chinese People’s Political Consultative Conference National Committee, urged the Hong Kong government to legislate on Article 23 to suppress the formation of these localist organisations. Regina Ip, a current Legco member and former Secretary for Security (in charge of the Article 23 legislation process in 2003) said that the conditions to legislate on Article 23 had not materialised yet.<sup>18</sup></p>
10.	2016/ February	New Territories East Legco By-election	<p>Hong Kong Indigenous (“HKI”) is a localist political group which opposes “mainlandisation” and involvement of the Beijing Government in local affairs. Edward Leung, its member, participated in the New Territories East Legco By-election and obtained 15% of the total votes, ranking third out of 7 candidates. This unexpectedly good result was seen as a sign of the rise of localism.<sup>19</sup></p>
11.	2016/ February	Unit of an environmental group raided for “storing weapons”	<p>On 11 February 2016, the Hong Kong police force raided an industrial building unit in Kwai Chung, which the police deemed a “weapon storage unit”. The police confiscated explosive chemicals, air rifles, knives, wooden sticks etc. The police suspected the “weapons” might be connected to the Mong Kok Incident (see [12] below).<sup>20</sup> Three persons associated with Grebbish, an environmental group, were arrested for “possessing offensive weapons for unlawful purposes with intent to use the same for any unlawful purpose”, contrary to Summary Offences Ordinance (Cap. 228) s. 17.</p> <p>However, Grebbish claimed that all “weapons” found in the premise were recyclables used only for environmental-friendly acts. The group criticised the police for misleading the public at a “sensitive time”.<sup>21</sup></p>

<sup>17</sup> “社评：“港独”宣布建党，猖狂全球无双”，*Huán Qiú Shí Bào*, 30 March, 2016. Available at <http://opinion.huanqiu.com/editorial/2016-03/8791550.html>.

<sup>18</sup> “葉劉：現未有立 23 條條件”，*Ming Pao Daily News*, 14 April, 2016. Available at [http://news.mingpao.com/pns/dailynews/web\\_tc/article/20160414/s00002/1460570592958](http://news.mingpao.com/pns/dailynews/web_tc/article/20160414/s00002/1460570592958).

<sup>19</sup> “【新東補選】馬嶽：本土派有市場料更多名單爭泛民票源”，*Apple Daily*, 29 February, 2016. Available at <http://hk.apple.nextmedia.com/realtime/news/20160229/54810218>.

<sup>20</sup> “警搗或涉暴亂武器庫”，*Ta Kung Pao*, 12 February 2016. Available at <http://news.takungpao.com.hk/paper/q/2016/0212/3278805.html>.

<sup>21</sup> “回收倉被當武器庫 「結束一桶專棄」：環保人士無辜被捕 警方誤導市民”，*Stand News*, 12 February 2016. Available at <https://thestandnews.com/politics/回收倉被當武器庫-結束一桶專棄-環保人士無辜被捕-警方誤導市民/>

12.	2016/February	Mong Kok Incident	<p>On 8 February 2016, HKI instigated an incident in Mong Kok, involving violent acts such as arson and assault on police officers. About 40 participants were prosecuted for rioting, unlawful assembly, incitement of the two offences, assaulting a police office, resisting police and behaving in a disorderly manner in a public place .<sup>22</sup></p> <p>Although the incident’s ostensible aim is to defend hawkers’ right and preserve local street-treat cultures, officials, including Zhang Xiaoming (the Director of the Liaison Office of the Central People’s Government (“CPG”) in Hong Kong), categorised the event as “separationist” in nature.<sup>23</sup></p> <p>Hong Lei, the spokesperson of CPG’s Ministry of Foreign Affairs, also criticised the incident as one orchestrated by a “radical separationist group”.<sup>24</sup> Rao Geping, the Vice-president of Chinese Association of Hong Kong &amp; Macao Studies, said that the incident underlined the urgent need of legislating on Article 23 to protect national security.<sup>25</sup></p>
13.	2016/January – July	Causeway Bay Books incident	<p>Lee Bo, a major shareholder of Causeway Bay Books, which sell, inter alia, reading materials critical of the Chinese Communist Party, as well as four of his associates went missing from late 2015 to early 2016. Subsequently, Lee was found to be detained by Chinese officials in the Mainland. During interviews with the media, Lee claimed that he was not kidnapped by the Chinese authority, and he voluntarily returned to China to assist in a criminal investigation.</p> <p>As regards other associates, Gui Minhai, a Swedish national, was removed from his home in Pattaya, Thailand by a man on 17 October 2015. The Thai authorities have no record of his departure from the country. He re-appeared on a televised interview on 17 January 2016, when he confessed to drink-driving causing death to a student in 2005, and he claimed to return to China voluntarily for his guilt.</p>

<sup>22</sup> “Hong Kong localists face extra charges over Mong Kok riot“, *SCMP*, 28 June 2016. Available at <http://www.scmp.com/news/hong-kong/law-crime/article/1982634/hong-kong-localists-face-extra-charges-over-mong-kok-riot>.

<sup>23</sup> “張曉明談旺角暴亂：譴責激進分離勢力”, *Wén huì bào*, 14 February, 2016. Available at <http://news.wenweipo.com/2016/02/14/IN1602140017.htm>.

<sup>24</sup> “旺角暴亂：本土派被列分離組織等同疆獨分子”, *on.cc*, 12 February, 2016. Available at [http://hk.on.cc/hk/bkn/cnt/news/20160212/bkn-20160212134145830-0212\\_00822\\_001.html](http://hk.on.cc/hk/bkn/cnt/news/20160212/bkn-20160212134145830-0212_00822_001.html).

<sup>25</sup> “饒戈平：有必要速推動 23 條立法”, *Hong Kong Economic Times*, 17 February 2016. Available at <http://paper.hket.com/article/1370080/饒戈平：有必要速推動23條立法>.

		<p><b>Lui Bo and Cheung Jiping were arrested in Shenzhen and Dongguan respectively. Lam Wing Kee was apprehended by Shenzhen police at the Lo Wu Border. They all appeared on a televised interview on 28 February, when they admitted conspiring with Gui in sending banned books to people in China and being guilty of “illegal book trading”.</b></p> <p><b>This incident has sparked an outcry in both Hong Kong and the international community. Claudia Mo, a Legco member from the Civic Party, criticised the Chinese authority as creating a chilling effect on those disseminating politically sensitive information, undermining free speech in society.<sup>26</sup> Philip Hammond, British Foreign Secretary, said any abduction of Hong Kong people to face charges in Mainland China would constitute an “egregious breach” of “One Country, Two Systems”.<sup>27</sup></b></p> <p><b>However, Chan Chek Yan, a political commentator, said that this incident shed light on the current lacunae in enforcing national security law, where both the Mainland and local authorities are institutionally crippled to prosecute seditious or subversive individuals, and urged the Hong Kong Government to put in place Article 23 legislation.<sup>28</sup></b></p> <p><b>On 16 June 2016, Lam Wing Kee, one of the missing associates, conducted a press conference in Hong Kong, claiming he had been abducted and subjected to derogatory treatment by Chinese officials. In particular, the officials forced Lam to provide personal details of Chinese readers who bought censored books from the bookstore. Lam also said that Lee Bo’s interview was contrived. On 1 July 2016, Lam was absent from the 7.1 Demonstration, which he originally planned to lead, because he felt that he was being stalked and supervised, thus subjected to “immense threats to personal safety”.<sup>29</sup></b></p> <p><b>Wang Guangya, the Director of the Hong Kong and Macau Affairs Office of the State Council of PRC,</b></p>
--	--	--

<sup>26</sup> “【賣禁書被失蹤】或涉有組織犯罪 郭榮鏗促黎棟國助追查”, *Apple Daily*, 2 January, 2016. Available at <http://hk.apple.nextmedia.com/realtime/news/20160102/54602771>.

<sup>27</sup> “Abductions in HK would breach promises by Beijing: Britain”, *ejinsight*, 7 January, 2016. Available at <http://www.ejinsight.com/20160107-abductions-hk-would-breach-promises-by-beijing-britain/>.

<sup>28</sup> “李波事件與國安立法真空”, *Hong Kong Economic Journal*, 14 January, 2016. Available at <http://www1.hkej.com/dailynews/commentary/article/1222115/%E6%9D%8E%E6%B3%A2%E4%BA%8B%E4%BB%B6%E8%88%87%E5%9C%8B%E5%AE%89%E7%AB%8B%E6%B3%95%E7%9C%9F%E7%A9%BA>

<sup>29</sup> “民陣：林榮基感嚴重威脅缺席七一遊行”, *Now news*, 1 July 2016. Available at <http://news.now.com/home/local/player?newsId=184457>.

			<p>rejected the allegation that Chinese officials would enforce law in Hong Kong and urged Hong Kong “compatriots” to respect “One Country, Two Systems” and guard against localist ideologies.<sup>30</sup> The Ministry of Foreign Affairs responded to Lam’s allegations that he was a Chinese national who broke Mainland law, so Mainland authorities had the power to arrest him. Lam retorted by saying that the Mainland authorities had no authority to arrest him because whatever act he did was done in Hong Kong.<sup>31</sup></p> <p>On 5 July 2016, Hong Kong officials visited Beijing to discuss the reporting mechanism with Mainland enforcement authorities in relation to arrests of Hong Kong residents in Mainland China. The officials reached an agreement that a report must be made to the Hong Kong government within 14 days for arrests made by every Mainland enforcement authority.<sup>32</sup></p>
14.	2015/ December	Release of a Chinese song by the Islamic State of Iraq and Greater Syria (“ISIS”)	<p>ISIS released a mandarin song on its media centre, alleged to be a means to recruit Chinese members.</p> <p>Hua Chunying, the spokesperson of CPG’s Ministry of Foreign Affairs, responded that China would make every effort to combat terrorism on both local and international levels.<sup>33</sup></p>
15.	2015/ December	Controversy over co-location immigration arrangements for Express Rail Link	<p>The Mainland and Hong Kong governments have been carrying out a railway project – the Guangzhou-Shenzhen-Hong Kong Express Rail Link – to connect the three places. To streamline the immigration process, the Hong Kong government proposed a co-location arrangement under which Mainland immigration officers can enforce their immigration procedures at the Hong Kong station.</p> <p>This arrangement has raised eyebrows in society because BL Article 18(2) provides that national laws, except those listed in BL Annex III, shall not be applied in Hong Kong. The arrangement in substance allows Chinese immigration laws to be enforced in Hong Kong,</p>

<sup>30</sup>“王光亞：市民應慎防「港獨」”，*Wen Wei Po*, 2 July 2016. Available at <http://paper.wenweipo.com/2016/07/02/HK1607020034.htm>.

<sup>31</sup>“【被失蹤真相】林榮基斥港官睇完片無反應 無為香港人做事”，*Apple Daily*, 9 July 2016. Available at <http://hk.apple.nextmedia.com/realtime/news/20160709/55336477>.

<sup>32</sup>“梁振英：通報機制設 14 日時限 黎棟國指內地刑事措施港無法律效力”，*Ming Pao*, 7 July 2016. Available at [http://news.mingpao.com/pns/dailynews/web\\_tc/article/20160707/s00001/1467827469829](http://news.mingpao.com/pns/dailynews/web_tc/article/20160707/s00001/1467827469829)

<sup>33</sup>“ISIS 發中文聖戰歌曲 煽動性強”，*dà gōng bào*, 8 December 2015. Available at <http://news.takungpao.com/hk/world/exclusive/2015-12/3250513.html>.



			<p>inconsistent with BL. To address this concern, the Government proposed to add relevant provisions to BL Annex III to ensure the co- arrangement’s compatibility with the BL.<sup>34</sup></p> <p>The pan-democrats slammed the proposal as eroding the high degree of autonomy conferred to Hong Kong under the “One Country, Two Systems” arrangement.<sup>35</sup></p>
16.	2015/ December	Legco garbage bin set on fire	<p>On 9 December 2015, a garbage bin outside the Legco building was set on fire. The police charged 5 persons for conspiring to commit arson. The police force spokesperson suspected that the arrestees were associated with “localist groups”.<sup>36</sup> Three of the arrestees are acquitted, whereas the others will appear before the District Court in August 2016.<sup>37</sup></p>
17.	2015/ February	Registration of Hong Kong Independence Party (“HKIP”) in the UK	<p>HKIP is a non-profit organization formed in 2014, advocating the independence of Hong Kong by “supporting the people of Hong Kong in their struggle for self-determination” and “helping them in the process of ‘nation-building’”. HKIP was registered formally in the UK.<sup>38</sup></p>
18.	2009 July – 2015 December	Xinjiang Terrorist Attack	<p>A series of terrorist attacks, including suicide bombing and civilian attacks, took place in Xinjiang between 2009 and 2015. The most serious attack took place on 5 July 2009, causing 197 deaths and 1700 injuries.</p> <p>On 2 June 2016, the State Council published a White Paper entitled “Freedom of Religious Belief in Xinjiang”. It reiterates that any attempt in “splitting the country” in the “guise of religion” must be prohibited.<sup>39</sup></p>
19.	2015/July	Manhunt of Chinese human right lawyers in Mainland	<p>On 10 July 2015, Chinese police barged into Beijing Fengrui Law Firm, a firm that handled an array of high-profile human right cases, and arrested many of its associates. This marked the commencement of a nationwide manhunt of human right lawyers. Thus far, about 300 lawyers have been arrested. The arrested were either</p>

<sup>34</sup> “一地兩檢 政府研引入內地法 袁國強：可納基本法附件三 泛民：衝擊兩制”, *Ming Pao*, 10 December 2015. Available at [http://news.mingpao.com/pns/dailynews/web\\_tc/article/20151210/s00001/1449683369598](http://news.mingpao.com/pns/dailynews/web_tc/article/20151210/s00001/1449683369598).

<sup>35</sup> Ibid.

<sup>36</sup> “【立法會垃圾桶爆炸】5男被捕有大專生 警方：係啲本土派組織”, *Apple Daily*, 22 December 2015. Available at <http://hk.apple.nextmedia.com/realtime/breaking/20151221/54560770>.

<sup>37</sup> “立法會垃圾桶縱火案 5被告 3人因證據不足獲撤控”, *Stand News*, 20 July 2016.

Available at <https://thestandnews.com/politics/立法會垃圾桶縱火案5被告-3人因證據不足獲撤控/>

<sup>38</sup> See <http://www.hkip.org.uk/>.

<sup>39</sup> See Part IV of the White Paper at <http://english.cri.cn/12394/2016/06/02/4161s929681.htm>.

			<p>imprisoned, missing or released with supervision and warnings to their safety.</p> <p>John Kirby, the Spokesperson for the United States Department of State, expressed grave concern over the incident and urged China to respect citizens' civil rights. Democratic Progressive Party in Taiwan also urged Beijing to stop suppressing the freedom of Chinese citizens.<sup>40</sup></p> <p>On 2 August 2016, Di Yanmin, one of the arrestees, was the first to be tried and sentenced. He was imprisoned for 3 years for “subversion of state power”. The prosecution alleged, <i>inter alia</i>, that Di “attacked” the government by hyping up incidents such as corruption cases. Di’s wife was confined at home and could not attend the trial.<sup>41</sup></p> <p>On 3 August 2016, Hu Shihen, another arrestee, was tried and sentenced. He was sentenced to imprisonment for 7 years and 6 months for “subversion of state power”. The Prosecution alleged, <i>inter alia</i>, that Hu had joined a “cult” to spread subversive ideas and conspired to subvert the state with other human right lawyers.<sup>42</sup></p>
20.	2015/ July	Adoption of People’s Republic of China National Security Law	<p>On 1 July 2015, the Standing Committee of the National People’s Congress (“NPCSC”) adopted new national security law. Article 15 of the new law prohibits all forms of treason, secession, sedition and against against the CPG.<sup>43</sup></p> <p>Although this piece of national legislation is not part of Hong Kong Law, some local concern groups urged the Government to ratify the law to realise its constitutional duty under Article 23.<sup>44</sup> This view is consistent with that of Jiang Shigong, Law Professor at Peking University, who indicated that it was more feasible and efficient to adopt the National Security law in BL, than to go through</p>

<sup>40</sup> “U.S. Condemns Detention of Human Rights Defenders in China”. Available at <http://www.state.gov/r/pa/prs/ps/2015/07/244820.htm>.

<sup>41</sup> “709 大抓捕首審 翟岩民顛覆罪成 囚 3 年緩刑 4 年 妻被軟禁無法聽審”, *Ming Pao*, 3 August 2016. Available at [http://news.mingpao.com/pns/dailynews/web\\_tc/article/20160803/s00013/1470161820477](http://news.mingpao.com/pns/dailynews/web_tc/article/20160803/s00013/1470161820477).

<sup>42</sup> “維權人士胡石根涉顛覆國家政權 判囚 7 年 6 個月”, *Sing Tao Daily*, 3 August 2016. Available at <http://std.stheadline.com/instant/articles/detail/195060-中國-維權人士胡石根涉顛覆國家政權+判囚 7 年 6 個月/>

<sup>43</sup> See <http://npc.people.com.cn/BIG5/n/2015/0710/c14576-27285049.html>.

<sup>44</sup> “多個團體游行撐 23 條立法”, *Hong Kong Commercial Daily*, 24 August 2015. Available at [http://www.hkcd.com.hk/content/2015-08/24/content\\_3483363.htm](http://www.hkcd.com.hk/content/2015-08/24/content_3483363.htm).

			the resistant legislation process. <sup>45</sup> Rita Fan, Deputy of Hong Kong to the NPC, said that the CPG had no intention to rush for Article 23 legislation, which should be left to the Hong Kong Government to plan. <sup>46</sup>
21.	2015/ June	Veto of Hong Kong electoral reform	<p>On 31 August 2014, the NPCSC handed down a decision on the electoral model that Hong Kong should adopt for the 2017 CE election (the “8.31 decision”). It stated generally that the Chief Executive (“CE”) election in 2017 could be achieved by universal suffrage, on the condition that the candidates were chosen by a nominating committee constituting 1200 people. The committee is to be formed with reference to the existing pro-Beijing election committee. A person could only become a candidate if s/he has obtained the support of at least half of the members of the nominating committee, and the number of candidates returned is capped at three. A reform proposal based on this model was tabled to Legco on 17 June 2015 and was vetoed by 28 Legco members.</p> <p>Benny Tai Yiu-ting, an Associate Law Professor in HKU, commented that Article 23 Legislation would be unlikely without genuine universal suffrage because Hong Kong citizens are unlikely to trust an undemocratically-mandated Government in legislating on such a sensitive topic.<sup>47</sup></p>
22.	2015/ June	Explosives allegedly belonging to “local radical organisation” found	<p>Not long before the voting of the electoral reform proposal, the Hong Kong Police Force found explosives in Sai Kung and arrested 10 persons for possessing explosives. The police stated that some of the suspects belonged to a “local radical organisation”, which the media suspected to be the “National Independent Party”.</p> <p>National Independent Party advocates Hong Kong’s independence from China, and claims to have connections with groups advancing Taiwan’s independence.<sup>48</sup></p>

<sup>45</sup> “強世功:國安法納基本法較 23 條可行”, *HKEJ*, 21 January 2015. Available at <http://www2.hkej.com/instantnews/current/article/975403/%E5%BC%B7%E4%B8%96%E5%8A%9F%3A%E5%9C%8B%E5%AE%89%E6%B3%95%E7%B4%8D%E5%9F%BA%E6%9C%AC%E6%B3%95%E8%BC%8323%E6%A2%9D%E5%8F%AF%E8%A1%8C>

<sup>46</sup> “【國安法】 范太指香港不適用 中央不急立 23 條”, *Ming Pao Daily News*, 5 July 2015. Available at [http://news.mingpao.com/ins/范太指香港不適用-中央不急立 23 條/web\\_tc/article/20150705/s00001/1436062093309](http://news.mingpao.com/ins/范太指香港不適用-中央不急立 23 條/web_tc/article/20150705/s00001/1436062093309)

<sup>47</sup> “二十三條與普選死局”, *Apple Daily*, 31 March, 2016. Available at <http://hk.apple.nextmedia.com/news/art/20150331/19096399>.

<sup>48</sup> “香港「本地激進組織」涉制炸彈 各方反應不一”, *BBC News*, 16 June 2015. Available at [http://www.bbc.com/zhongwen/trad/china/2015/06/150616\\_hk\\_explosives\\_reax](http://www.bbc.com/zhongwen/trad/china/2015/06/150616_hk_explosives_reax).

23.	2015 January	Investigation on the Occupy Central Movement	<p>On 13 January 2015, CY Leung, the Chief Executive of Hong Kong, said that the government was looking into the Occupy Movement. He then suggested that “external/foreign forces” were involved in assisting and inciting the Movement.<sup>49</sup></p> <p>Ng Leung-sing, Vice-president of the Panel on Security of Legco, believed that the Ministry of State Security was involved in gathering evidence to support CY Leung’s allegations on “foreign forces”. He also claimed that Mainland officials could obtain warrants from Hong Kong courts to search residents’ premises, given the overriding interest of national security.<sup>50</sup> Five days later, Stanley Ng Chau-pei, NPC deputy in Hong Kong, proposed to incorporate CPG’s National Security Law into the Annex of BL before Article 23 legislation is put in place, to curb another Occupy Movement.<sup>51</sup></p>
24.	2014 September – 2014 December	Occupy Movement	<p>The Occupy Movement is a civil disobedience campaign for genuine democracy in Hong Kong which began in the territory on September 28, 2014. The idea of the movement was proposed by Benny Tai, Associate Professor of Law at HKU. The Movement lasted for 79 days, with thousands of protestors blocking passageways in Central, Causeway Bay, Mongkok, etc. Some protestors have been charged with offences including taking part in and/or inciting an unlawful assembly and, assaulting police officers.<sup>52</sup></p> <p>Some regarded the Movement as a peaceful campaign for Hong Kong people to exercise their freedom and to fight for genuine democracy. However, Wong Chack Kie, the Consultant of the Hong Kong Central Policy Unit, stated that the Movement was a result of collusion with foreign elements, and this underlines the importance of Article 23 legislation.<sup>53</sup></p>

<sup>49</sup>梁振英：香港「佔中」有三股外國勢力, *BBC News*, 13 January 2015. Available at [http://www.bbc.com/zhongwen/trad/china/2015/01/150113\\_hk\\_occupy\\_foreign\\_forces](http://www.bbc.com/zhongwen/trad/china/2015/01/150113_hk_occupy_foreign_forces).

<sup>50</sup>“「國安搜佔中證據」吳亮星：佢哋可在港執法”, *Apple Daily*, 15 January 2015. Available at <http://hk.apple.nextmedia.com/news/art/20150115/19003323>.

<sup>51</sup>“吳秋北：續爭取提出國安法引入香港意見”, *BBC News*, 3 March 2015. Available at [http://www.bbc.com/zhongwen/trad/china/2015/03/150303\\_hongkong\\_national\\_security](http://www.bbc.com/zhongwen/trad/china/2015/03/150303_hongkong_national_security).

<sup>52</sup>“Case against Occupy protesters including Joshua Wong ‘shouldn’t have taken a year to get to court’”, *SCMP*, 2 September 2015. Available at <http://www.scmp.com/news/hong-kong/law-crime/article/1854655/case-against-occupy-protesters-including-joshua-wong>.

<sup>53</sup>“中策組顧問 趁佔中重提 23 條”, *Apple Daily*, 12 October, 2014. Available at <http://hk.apple.nextmedia.com/news/art/20141012/18897574>.

25.	2015/ October	Seven police officers beating a protestor	<p>On 15 October 2014, in the course of the Occupy Movement (see [24] above), video footages showing seven police officers dragging Ken Tsang Kin-chiu, a participant of the Movement and political activist, to an alley near the government headquarter and beating him were broadcast through mainstream media. The police officers were each charged with “wounding or striking with intent to do grievous bodily harm”.<sup>54</sup> The trial is still ongoing (as at 23 July 2016).</p> <p>Meanwhile, Tsang himself had been convicted of assaulting police officers (for splashing liquid on the police) and resisting arrest during the Movement.<sup>55</sup></p>
26.	2014/ September	“Hong Kong Nationalism” published by Undergrad	<p>Undergrad, a student body under the University of Hong Kong (“HKU”), published a book entitled “Hong Kong Nationalism”, discussing the possibility of Hong Kong being an independent sovereign state. It argues that Hong Kong has the necessary conditions of becoming independent from China.</p> <p>In his 2015 policy address, Leung Chun Ying, the Chief Executive of Hong Kong, criticised the publication as having “misstated some facts” and advocating “fallacies”.<sup>56</sup> Tung Chee-Hwa, the Vice-Chairman of the Chinese People’s Political Consultative Conference National Committee and former Chief Executive, agreed with Leung and said that the publication sought to infringe China’s sovereignty over Hong Kong. Tung said that Article 23 should be put in place to keep this separationist ideology in check.<sup>57</sup></p>
27.	2014/June	Publication of the “White Paper”	<p>On 10 June 2014, the State Council published a White Paper entitled “The Practice of the ‘One Country, Two Systems’ Policy in HKSAR”. The Paper emphasises that China has “comprehensive jurisdiction” over Hong Kong and any extremists who try to collude with foreign elements to alienate Hong Kong from China must be guarded against.<sup>58</sup></p>

<sup>54</sup> “Trial of seven police officers charged with beating activist begin”, *HKFP*, 1 June 2016. Available at <https://www.hongkongfp.com/2016/06/01/trial-of-seven-police-officers-charged-with-beating-activist-begins/>.

<sup>55</sup> “Activist Ken Tsang convicted of assaulting police during Occupy protests”, *SCMP*, 26 May 2016. Available at <http://www.scmp.com/news/hong-kong/law-crime/article/1955109/activist-ken-tsang-convicted-assaulting-police-during>.

<sup>56</sup> Available at <http://www.policyaddress.gov.hk/2015/eng/p8.html>.

<sup>57</sup> “撐梁振英批《學苑》 董建華：有必要咁做“, *Apple Daily*, 20 January, 2015. Available at <http://hk.apple.nextmedia.com/realtime/news/20150120/53353334>.

<sup>58</sup> See Part V Point 1 at <http://www.fmcoprc.gov.hk/eng/xwdt/gsxw/t1164057.htm>.

28.	2015/May	Yiu Man Tin Incident	In May 2015, Yiu Man Tin, a Hong Kong permanent resident and the publisher of Morning Bell Press, was tried and sentenced to 10 years of imprisonment and fined RMB 250,000 in the Mainland for “smuggling common goods”. Morning Bell Press has published books which criticised the ruling of the Communist Party in China and various Chinese leaders. Allegedly, the Mainland authorities entrapped Yiu by telling his friends to invite Yiu to visit Shenzhen, where he was subsequently arrested. <sup>59</sup>
29.	2014/March	Taiwan’s Sunflower Student Movement	Taiwanese students and civic groups started a protest against the passing of the Cross-Strait Service Trade Agreement without clause-by-clause review. The protestors feared the Agreement would make Taiwan susceptible to Beijing’s influence. The protestors occupied the Legislative and Executive bureau for several days. On 10 April 2014, the protestors vacated the bureau after Wang Jin-pyng, the President of the Legislative Yuan, agreed to postpone the review of the Trade Agreement until bills monitoring all cross-strait agreements have been passed.
30.	2014/February	Attack on Kevin Lau	On 26 February 2014, Kevin Lau, the former chief editor of Ming Pao (a prominent newspaper publication in Hong Kong), was slain by aggressors and suffered severe injuries. It was generally believed that the attack was linked to Lau’s investigative journalistic work. The Journalist Association categorised the event as an affront to press and speech freedom. <sup>60</sup>
31.	2013/December	Trespass to Central People’s Liberation Army Forces Hong Kong Building	Several members of a group named “Hongkongers Priority” trespassed the Chinese People’s Liberation Army Forces Hong Kong Building at Tamar, Central, while waving a British colonial flag. The trespassers were charged with “entering closed area without permit”, contrary to Public Order Ordinance (Cap 245) s.38(1).  Wang Zhenmin, Dean and Professor at Tsinghua Law School, said that the trespass was a direct challenge to China’s sovereignty over Hong Kong. He urged Hong Kong Government to legislate on Article 23 to prevent the recurrence of such subversive acts. <sup>61</sup>

<sup>59</sup> “【姚文田被捕】子姚勇戰寫信 抗議中共迫害” *Apple Daily*, 23 January, 2014. Available at <http://hk.apple.nextmedia.com/realtime/china/20140123/52120004>.

<sup>60</sup> See Hong Kong Journal Association Annual Report at p. 5. Available at [https://www.hkja.org.hk/site/Host/hkja/UserFiles/file/Annual%20Report%202014\\_Chinese.pdf](https://www.hkja.org.hk/site/Host/hkja/UserFiles/file/Annual%20Report%202014_Chinese.pdf)

<sup>61</sup> “聲討擅闖軍營 陳佐洱指港人須「補腦」 王振民促盡快 23 條立法”, *Sing Tao Daily*, 22 January, 2014. Available at <http://news.singtao.ca/vancouver/2014-01-22/hongkong1390376968d4886032.html>.

32.	2013/ October	Tiananmen Square Attack	On 28 October 2013, a jeep crashed in Tiananmen Square, Beijing as a terrorist suicide attack. The Turkistan Islamic Party, an Islam extremist group, claimed responsibility and warned of future attacks. <sup>62</sup>
33.	2013/ September	Arrest of Poon Wai Hei	In September, Poon Wai Hei and his wife, both Hong Kong permanent residents, were abducted by unknown persons in Hong Kong and sent to Guangzhou for a criminal investigation. Poon was subsequently sentenced to jail and fined for an economic crime whereas his wife was released to Hong Kong. It was reported by Mainland media that “Guangdong police arrested Poon in Hong Kong”. <sup>63</sup>
34.	2012/ September	Protest against Moral and national education	In June 2012, the Hong Kong Education Bureau published the revised curriculum guide of Moral and National Education. The Bureau planned to implement the course in primary and secondary schools fully in 2012 and 2013 respectively. Groups such as Scholarism worried that the course materials would “brainwash” susceptible students to be biased towards China (e.g. only knowing the positive side of China). Mass protests were therefore rallied. Eventually the Government shelved the plan.
35.	2012/ June	Death of Li Wanyang	<p>Li Wanyang was a Chinese dissident labour rights activist who had been imprisoned for 21 years for his role in the Tiananmen Square protests in 1989. Li was released on 6 June 2012. After giving a television interview where he vindicated the Tiananmen Square protests, Li was found hanged in his hospital ward.</p> <p>This incident sent shockwaves to both the Hong Kong and international community. Lee Cheuk-yan, the convener of the Hong Kong Alliance in Support of Patriotic Democratic Movements in China, claimed that Li was “suicided” by Mainland authorities because Li’s ailing health conditions did not allow him to hang himself.<sup>64</sup> A mass protest with 25,000 participants calling for a thorough autopsy of Li’s death ensued on 10 June in Hong Kong.<sup>65</sup> Amnesty International also issued a statement calling for an investigation of Li’s death in detail.<sup>66</sup></p>

<sup>62</sup> “Islamic group claims responsibility for attack on China’s Tiananmen Square”, *The Guardian*, 25 November 2013. Available at <https://www.theguardian.com/world/2013/nov/25/islamist-china-tiananmen-beijing-attack>.

<sup>63</sup> “港商被擄內地 妻求助中聯辦 網綁全身只留口鼻 港警曾拘 3 港澳”, *Ming Pao*, 10 January 2016. Available at [http://news.mingpao.com/pns/dailynews/web\\_tc/article/20160110/s00001/1452363071356](http://news.mingpao.com/pns/dailynews/web_tc/article/20160110/s00001/1452363071356).

<sup>64</sup> “李卓人：李旺陽明顯非自殺”, *Apple Daily*, 6 June 2012. Available at <http://hk.apple.nextmedia.com/realtime/news/20120606/50090724>.

<sup>65</sup> “Protests erupt over death of Tiananmen dissident”, *WSJm* 12 June 2012. Available at <http://blogs.wsj.com/chinarealtime/2012/06/12/protests-erupt-over-death-of-tiananmen-dissident/>.

<sup>66</sup> See <https://www.amnesty.org/en/latest/news/2012/06/china-must-investigate-veteran-dissidents-death/>.

36.	2011/Sept	<b>Court of Final Appeal Judgment on the Congo case</b>	On June 8, 2011, the Court of Final Appeal (CFA) provisionally held by a 3:2 majority in <i>Democratic Republic of Congo v FG Hemisphere</i> [2011] HKCFA 41 that the issue of what law on state immunity applies in Hong Kong is a foreign affair outwith Hong Kong courts' jurisdiction, and that the Chinese Government's determination that absolute immunity applies to Hong Kong is an unchallengeable act of state. Pursuant to Article 158(3) of the Basic Law, the court sought an interpretation of Basic Law Articles 13 and 19 – the two provisions that carve out foreign affairs and act of state from Hong Kong courts' jurisdiction – from the NPCSC. The latter confirmed the CFA's understanding of the terms “foreign affair” and “act of state”. <sup>67</sup> The CFA confirmed its provisional judgment. <sup>68</sup> This is the first time that the CFA triggers the procedure under Basic Law Article 158(3) for referring an interpretative question to the NPCSC.
37.	2011/ April	<b>Arrest of Ai Weiwei</b>	<p>Ai Weiwei is a Chinese contemporary artist and political dissident. On 3 April 2011, Ai was arrested at Beijing Capital International Airport before taking a flight to Hong Kong. The Chinese Ministry of Foreign Affairs claimed that Ai was detained for economic crimes. On 22 June 2011, Ai was released from jail. Ai's sister gave some particulars of Ai's detention conditions, which were allegedly tantamount to psychological torture. Ai was under surveillance until 2015.<sup>69</sup></p> <p>The international and Hong Kong community protested against Ai's arbitrary detention.<sup>70</sup> The international art community called for Ai's release by organising peaceful sit-ins outside Chinese embassies and consulates.<sup>71</sup> There was also a demonstration in Hong Kong to demand Ai's release.<sup>72</sup></p>
38.	2010/ November	<b>Imprisonment of Zhao Lianhai</b>	Zhao Lianhai is a former Chinese food safety officer and dissident who acted for the victims of melamine-tainted milk formula. Zhao organised gathering of victims, held signs to protest in front of the manufacturers' factories

<sup>67</sup> Interpretation of Paragraph 1, Article 13 and Article 19 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress, Adopted by the Standing Committee of the Eleventh National People's Congress at Its 22nd Session on 26 August 2011

<sup>68</sup> [2011] HKCFA 68

<sup>69</sup> “Au weiwei finds listening devices hidden in Beijing studio”, *The Guardian*, 4 October 2015. Available at <https://www.theguardian.com/artanddesign/2015/oct/04/ai-weiwei-finds-listening-devices-hidden-in-beijing-studio>.

<sup>70</sup> See <http://www.amnesty.org/en/news-and-updates/china-detains-ai-weiwei-warning-against-dissent-2011-04-04>.

<sup>71</sup> See <http://www.blouinartinfo.com/news/story/37494/1001-chairs-for-ai-weiwei-protesters-wouldnt-stand-for-chinese-oppression>.

<sup>72</sup> “香港艾未未塗鴉案首次有人被捕”, *BBC News*, 9 May 2011 . Available at [http://www.bbc.com/zhongwen/trad/chinese\\_news/2011/05/110509\\_hongkong\\_ai\\_weiwei\\_arrests.html](http://www.bbc.com/zhongwen/trad/chinese_news/2011/05/110509_hongkong_ai_weiwei_arrests.html).



			<p>and gave media interviews on the incident. On 10 November 2010, Zhao was sentenced to 2.5 years of imprisonment for “inciting social disorder”. Amnesty International described Zhao as a “prisoner of conscience” because he was punished for vindicating justice.<sup>73</sup></p> <p>When Hong Kong journalists were in Beijing interviewing Zhao’s supporters in December 2010, they were assaulted by district guards. The incident was regarded as an infringement of press freedom.<sup>74</sup></p>
39.	2010/April	<i>De facto</i> Referendum	<p>In January 2010, five Legco members resigned to trigger a by-election, where all eligible voters in the geographical constituencies (“GC”) could vote to fill the vacancies. Given the wide voter base in GCs, the resigning members promoted the by-election as a <i>de facto</i> referendum for Hong Kong citizens to express their desire for genuine universal suffrage. The turnout rate was 17.1%, with all the resigned members re-elected.</p> <p>Huang Minkang, NPC deputy in Hong Kong, stated that the referendum was driven by an ulterior motive to challenge China’s sovereignty, and that he would raise Article 23 legislation in the upcoming NPC deputies meeting.<sup>75</sup></p>
40.	2009/December	Imprisonment of Liu Xiaobo	<p>Liu Xiaobo is a Chinese dissident calling for the end of one-party rule in China. On 8 December 2008, Liu was detained for his participation in publishing the Charter 08 manifesto which advocated, inter alia, more protection of human rights and democratic elections. On 25 December 2009, Liu was sentenced to eleven years’ imprisonment for “inciting subversion of state power”. To this day, Liu’s wife is still under close surveillance.</p> <p>The oppressive persecution has caused an outcry in the international community. On 11 December 2008, the U.S. Department of State called for Liu’s released, followed by the European Union in 2009.<sup>76</sup> Liu is the 2010 Nobel Peace</p>

<sup>73</sup> See <http://www.amnestyusa.org/our-work/latest-victories/ua-31109-chinese-prisoner-of-conscience-released-from-prison>,

<sup>74</sup> “Journalists attacked in front of the house of activist arrested over melamine scandal”, *Asia News*, <http://www.asianews.it/news-en/Journalists-attacked-in-front-of-the-house-of-activist-arrested-over-the-melamine-scandal-20229.html>

<sup>75</sup> “王敏剛提 23 條立法 遏阻「公投」免放肆“, *Oriental Daily News*, 5 March, 2010. Available at [http://orientaldaily.on.cc/cnt/news/20100305/00176\\_015.html](http://orientaldaily.on.cc/cnt/news/20100305/00176_015.html).

<sup>76</sup> “U.S., EU urge China to release prominent dissident”, *Reuters*, 14 December, 2009. Available at <http://www.reuters.com/article/idUSTRE5BD4T220091214>.

			Prize laureate for “his long and non-violent struggle for fundamental human rights in China”. <sup>77</sup>
41.	2009/March	Macau’s implementation of Article 23	<p>Article 23 of the Macau Basic Law is identical to Hong Kong BL’s Article 23.<sup>78</sup> To fulfil the requirements of Macau’s Article 23, the Macau Government enacted the National Security Law, which took effect on 23 March.</p> <p>In the inauguration ceremony of the new Macau CE, Hu Jintao, the then President of PRC, commended Macau for fulfilling the constitutional obligation and recognising China’s sovereignty. Some legislators in Hong Kong treated this as pressurizing Hong Kong to follow suit.<sup>79</sup></p>
42.	2008/ March	Tibetan unrest	On 14 March, a series of violent riots took place in Lhasa, the regional capital of Tibet, which then spread to other Tibetan areas. 13 people were killed. The protest was fueled by discontent in Tibet against the Central Authorities which condemned the revolts as a “separatist sabotage”. <sup>80</sup>
43.	2007/ December	NPCSC’s decision on 2012 CE and Legco Election	The NPCSC handed down a decision which stated that the election of CE and Legco in 2012 “shall not be implemented by the method of universal suffrage”. However, the decision gave the greenlight to elect the CE by universal suffrage in 2017. After universal suffrage of the CE has been implemented, that for the Legco may also be implemented.
44.	2005/ August	Arrest of Ching Cheong	Ching Cheong is a Hong Kong permanent resident who is a journalist with the Straits Times, a Singapore Newspaper. In April 2005, entering China for research purposes, Ching was charged with spying on behalf of a foreign intelligence agency and arrested in Guangzhou. Ching was subsequently sentenced to five years’ imprisonment. Ching was released on parole in 2008.

<sup>77</sup>See [http://www.nobelprize.org/nobel\\_prizes/peace/laureates/2010/xiaobo-facts.html/](http://www.nobelprize.org/nobel_prizes/peace/laureates/2010/xiaobo-facts.html/).

<sup>78</sup> Macau Basic Law Article 23: “*The Macao Special Administrative Region shall enact laws, on its own, to prohibit any act of treason, secession, sedition, subversion against the Central People’s Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organisations or bodies.*”

<sup>79</sup> “胡讚澳門 23 條立法 泛民指對港施壓”, *Metro Daily*, 21 December, 2009. Available at <http://www.metrohk.com.hk/?cmd=detail&id=124598>.

<sup>80</sup> “China Accuses Tibetan Protesters of Killing Innocent People”, *Voice of America*, 27 October 2009. Available at <http://www.voanews.com/content/a-13-2008-03-15-voa2-66744812/562281.html>.

45.	2005/ April	NPCSC's Interpretation of BL Art. 53(2)	<p>In March 2005, Tung Chee-wah, the then Chief Executive of Hong Kong, resigned from the position, leaving approximately a two-year term of office. A question of law arose as to whether his successor would only serve the remaining term or a full five-year under BL Art. 53(2). The then acting Chief Executive requested an interpretation of BL by NPCSC.</p> <p>NPCSC interpreted that, having regard to other provisions of BL, the term of office of the successor should be the remainder of the original term.<sup>81</sup></p>
46.	2004/ April	NPCSC's decision on 2007 CE and 2008 Legco Election	<p>NPCSC handed down a decision which stated that the election of the CE in 2007 and that of the Legco in 2008 shall not be implemented by universal suffrage.</p>
47.	2004/ April	NPCSC's Interpretation of BL Annex 1 Art. 7 and Annex II Art. III	<p>BL Annex I Art. 7 states that “<i>if there is a need</i> to amend the method for selecting CE for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of Legco and the consent of CE, and <u>they shall be reported to NPCSC for approval.</u>”</p> <p>BL Annex II Art. III states that with regard to the formation of Legco, <i>if there is a need</i> to amend the relevant provisions <u>in 2007</u>, such amendments must be made with the endorsement of a two-thirds majority of all the members of Legco and the consent of CE, and they shall be reported to NPCSC <u>for the record.</u></p> <p>In 2004, the NPCSC handed down an interpretation on its own initiative and read into the above-mentioned provisions two more steps in reforming the CE and Legco election method, namely, the CE has to make a report to NPCSC on whether there is a need to reform the election method, and the NPCSC will then make a determination on whether there is such a need.</p>

<sup>81</sup> See “Interpretation of Paragraph 2, Article 53 of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China by the Standing Committee of the National People’s Congress”. Available at [http://www.basiclaw.gov.hk/en/basiclawtext/images/basiclawtext\\_doc20.pdf](http://www.basiclaw.gov.hk/en/basiclawtext/images/basiclawtext_doc20.pdf).

## SUMMARY OF REMAINING CONCERNS WITH 2003 REVISED BILL

The following table summarizes the concerns expressed in various chapters of the book, Fu Hualing, Carole J Petersen and Simon NM Young, *National Security and Fundamental Freedoms: Hong Kong's Article 23 Under Scrutiny* (HKU Press, 2005), on the National Security (Legislative Provisions) Bill with Committee Stage Amendments that stood as at 10 July 2003.

Note: This summary is compiled for the purposes of facilitating the Roundtable discussion only and should not be taken as an authoritative representation of the views of the authors of the respective book chapters.

Crime	Remaining concerns
Treason (s.2)	<ul style="list-style-type: none"> <li>- Dead letter in Western democracies <sup>1</sup></li> <li>Re ss.1(a)(ii):</li> <li>- “Intimidating” the Central People’s Government (CPG) too vague and broad<sup>2</sup></li> <li>Re ss.1(b):</li> <li>- “Instigation” already punishable as inchoate liability at common law<sup>3</sup></li> <li>- “Instigation” ill-defined to possibly include “mere free speech”<sup>4</sup></li> <li>Re ss.1(c):</li> <li>- “Public enemy” includes countries who are merely in “open hostilities”, which is vague, with the PRC<sup>5</sup></li> <li>- “Assistance” ill-defined to possibly include assistance on humanitarian grounds or day-to-day activities of ordinary people (e.g. normal trade with and tax payment to a foreign country), both of which are not expressly excluded from the bill<sup>6</sup></li> <li>Re ss.3 (on extra-terrestrial effect):</li> <li>- All Chinese nationals Hong Kong permanent residents both within and outside Hong Kong are punishable by the treason offence, putting those</li> </ul>

<sup>1</sup> Kent Roach, Ch. 4, p. 121

<sup>2</sup> D.W. Choy and Richard Cullen, Ch. 5, p. 171. See also Albert H.Y. Chen, Ch.3, p.102.

<sup>3</sup> Ibid, p. 171. Note: The Government responded by saying that inchoate liability at common law would not operate satisfactorily because the foreign countries “owed no allegiance to our country” so they could not be committing the substantive offence of “treason”

<sup>4</sup> Ibid, p. 172.

<sup>5</sup> Ibid, p. 173.

<sup>6</sup> Ibid, p. 174.

	with dual nationality or living overseas in a “dilemma” at time of war (e.g. mere tax payment would constitute “assistance” to a public enemy) <sup>7</sup>
Secession (s.2A)	<p>Re ss.1 (on the prohibited acts):</p> <ul style="list-style-type: none"> <li>- “serious criminal means” too wide to possibly cover mere speech, public assemblies and demonstrations, which are not expressly excluded from the bill<sup>8</sup></li> <li>- “seriously endangers the stability of PRC” too vague<sup>9</sup></li> </ul> <p>Re ss.1(a):</p> <ul style="list-style-type: none"> <li>- “basic system of the PRC” uncertain (e.g. one-party dictatorship as part of the “basic system”?)<sup>10</sup></li> <li>- Reference to “PRC Constitution” “unnecessary and inappropriate” because HK courts do not have the jurisdiction to interpret the PRC Constitution, which leaves room for NPCSC to intervene<sup>11</sup></li> </ul> <p>Re ss.1(c):</p> <ul style="list-style-type: none"> <li>- “intimidates” too wide and vague to possibly include mere strong criticisms of Chinese policies<sup>12</sup></li> <li>- Inchoate liability ill-defined such that the full extent of criminal liability “not apparent on the face of the Bill”, producing a chilling effect<sup>13</sup></li> </ul>
Sedition	<ul style="list-style-type: none"> <li>- Dead letter in Western democracies<sup>14</sup></li> </ul> <p>Re s.9A:</p> <ul style="list-style-type: none"> <li>- Falling short of the standards in Principle 6 of the Johannesburg Principles because incitement to commit non-violent acts might be caught and the likelihood (let alone imminence) of acts being incited is not taken into account<sup>15</sup></li> </ul> <p>Re s.9A and s.9C (on proof of intention):</p>

<sup>7</sup> Ibid, p. 176.

<sup>8</sup> Ibid, p 181 – 182. See also Albert H.Y. Chen, Ch.3, p.99 and Kent Roach, Ch. 4, p. 135, 138. *cf.* United Nations (Anti-Terrorism Measures) Ordinance s.2, which excludes “the use of threat of action in the course of any advocacy, protest, dissent or industrial action” from the definition of “terrorism”.

<sup>9</sup> Ibid, p. 183. See Doreen Weisenhaus, Ch.9, p. 285.

<sup>10</sup> Ibid, p. 184.

<sup>11</sup> Ibid, p. 185.

<sup>12</sup> Ibid, p. 184.

<sup>13</sup> Kent Roach, Ch.4, p. 139.

<sup>14</sup> Ibid, p. 121

<sup>15</sup> Albert H.Y. Chen, Ch.3, p.104. See also Kelley Loper, Ch. 6, p.215 for a discussion of incitement to secession and Doreen Weisenhaus, Ch.9, p. 286.

	<ul style="list-style-type: none"> <li>- Serious privacy and freedom of expression concerns because the law enforcement might go to great lengths while looking for evidence of the defendant’s motivation/purpose in proving the offences (e.g. scrutinising the “suspects’ past experiences, associations and other records”)<sup>16</sup></li> </ul> <p>Re s. 9C (handling seditious publication):</p> <ul style="list-style-type: none"> <li>- Unnecessary offence (except to deter the publication industry) as merely a particular means to commit the s.9A offence <sup>17</sup></li> <li>- Clear threat to fundamental freedom of expression because of its “vagueness and overbroad scope”<sup>18</sup></li> </ul> <p>Re relationship with secession:</p> <ul style="list-style-type: none"> <li>- Ambiguity inherent in the secession offence (e.g. definition of “sovereignty” and “serious criminal means”, see below) leads to uncertainty of the scope of the sedition offence (e.g. declaration of support on Taiwan’s independence as a form of sedition?)<sup>19</sup></li> </ul>
Subversion (s.2B)	<p>Re ss.1:</p> <ul style="list-style-type: none"> <li>- “sovereignty” ill-defined such that an interpretation of China’s sovereignty over a territory (e.g. Taiwan/ Tibet) different from the PRC’s interpretation might arise<sup>20</sup></li> <li>- “People’s Republic of China” ill-defined to possibly give rise to conflicting interpretations<sup>21</sup></li> <li>- “force” too vague to possibly include mere expression of opinions<sup>22</sup></li> <li>- “serious criminal means” ill-defined to possibly include non-violent acts (e.g. disruptions of electronic systems)<sup>23</sup></li> <li>- Safeguards in United Nations (Anti-terrorism Measures) Ordinance absent in the bill (e.g. the action or threat must be made for the purpose of advancing a political, religious or ideological cause)<sup>24</sup></li> <li>- Inchoate liability ill-defined such that the full extent of criminal liability “not apparent on the face of the Bill”, producing a chilling effect<sup>25</sup></li> </ul>

<sup>16</sup> Fu Hualing, Ch.7, p. 244.

<sup>17</sup> Ibid, p. 244, 247. See Doreen Weisenhaus, Ch.9, p. 286.

<sup>18</sup> Doreen Weisenhaus, Ch.9, p. 287.

<sup>19</sup> Kelley Loper, Ch. 6, p. 215. See also Kent Roach, Ch.4, p. 135.

<sup>20</sup> Kelley Loper, Ch. 6, p. 211.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid, p. 212. See also Albert H.Y. Chen, Ch.3, p.99 and Kent Roach, Ch.4, p. 135.

<sup>24</sup> Kent Roach, Ch.4, p. 138.

<sup>25</sup> Kent Roach, Ch.4, p. 139.

Theft of state secrets	<p>Re s.16A:</p> <ul style="list-style-type: none"> <li>- “Central Authorities” not defined to possibly include all state organs<sup>26</sup></li> <li>- Protected information overlapping with existing categories, namely security and intelligence information, and defence information<sup>27</sup></li> <li>- “protected information” too vaguely and broadly defined to include commercial or economic information (e.g. negotiations with WTO on trade arrangements) and political information (e.g. the Chief Executive’s Appointment)<sup>28</sup></li> <li>- Information is protected by virtue of falling into a class rather than its content, which might not warrant secrecy or protection<sup>29</sup></li> <li>- No requirement to prove that harm flows from the disclosure of information, but only the disclosure of the class of information which is potentially harmful<sup>30</sup></li> <li>- “national security” ill-defined to possibly catch protecting the PRC from, <i>inter alia</i>, “embarrassment or exposure of wrongdoing”<sup>31</sup></li> <li>- “national security” possibly falls within an “act of state” under Basic Law (BL) Art. 19 such that Hong Kong courts have no jurisdiction to decide if a particular disclosure endangers national security<sup>32</sup></li> <li>- Defence for a reasonable lack of belief that the information falls within the protected category unlikely to succeed given the broadly-defined category<sup>33</sup></li> <li>- Defence based on objective element (i.e. a reasonable lack of belief) contrary to the common law spirit requiring a subjective culpable state of mind<sup>34</sup></li> <li>- No prior publication defence<sup>35</sup></li> <li>- Impose a duty of confidentiality on public servants and government contractors who have left official duties at the time the provision comes into effect<sup>36</sup></li> </ul>
------------------------	---

<sup>26</sup> Johannes Chan, Ch. 8, p. 258

<sup>27</sup> Albert H.Y. Chen, Ch.3, p. 107.

<sup>28</sup> Johannes Chan, Ch. 8, p. 260. See Doreen Weisenhaus, Ch.9, p. 290.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid, p. 261.

<sup>31</sup> Ibid, p.262. See Doreen Weisenhaus, Ch.9, p. 291.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid, p. 263.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid, p. 267.

<sup>36</sup> Ibid, p. 269.

	<p>Re s.18(5A):</p> <ul style="list-style-type: none"> <li>- Bribery as a means of illegal access unnecessary because it would have been caught under the existing provision for “unauthorised disclosure” by a public servant or government contractor<sup>37</sup></li> <li>- Inappropriate to impose criminal liability on a person who owes no duty of confidentiality to the government<sup>38</sup></li> <li>- Dubious availability of the defence of a reasonable lack of belief that the information is not acquired by illegal means because if the information is not released officially, there is always a possibility that it is disclosed illegally<sup>39</sup></li> <li>- The extent of information that can safely be published will “lie at the whim of the government” because to avoid liability, the media (or other parties) would have to confirm with the Government whether the disclosure is authorised, the denial of which leaves the media with imputed knowledge<sup>40</sup></li> <li>- Chilling effect on the media because the safest recourse is not to publish information from unknown sources<sup>41</sup></li> <li>- The media might feel compelled to reveal the source of information to prove the disclosure is authorised<sup>42</sup></li> <li>- No requirement to prove that harm flows from the disclosure of information, but only the disclosure of the class of information which is potentially harmful<sup>43</sup></li> <li>- No prior publication defence leading to possible selective prosecutions<sup>44</sup></li> </ul> <p>Re s. 16A and s.18 (on application on past public servants and government contractors):</p> <ul style="list-style-type: none"> <li>- Unreasonable to impose a “life-long duty of confidentiality on all public servants and government contractors” (when, for example, the information is available in the public domain)<sup>45</sup></li> </ul>
--	--

<sup>37</sup> Ibid, p. 264.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid, p. 265. See Doreen Weisenhaus, Ch.9, p. 293.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid. See Doreen Weisenhaus, Ch.9, p. 296.

<sup>43</sup> Ibid, p. 266.

<sup>44</sup> Ibid, p. 267. See Doreen Weisenhaus, Ch.9, p. 296.

<sup>45</sup> Ibid, p.268.



	<ul style="list-style-type: none"> <li>- “A climate of secrecy among public servants and government contractors” created because the potential liability chills out any risky disclosure<sup>46</sup></li> </ul> <p>Re public interest defence (s. 18(5B)):</p> <ul style="list-style-type: none"> <li>- Application confined only to persons other than public servants and government contractors<sup>47</sup></li> <li>- Not wide enough to cover “exposure of abuse of power by public authority or government (as opposed to a public official)”<sup>48</sup></li> <li>- Unreasonable to impose a requirement that the disclosure should not exceed what is necessary because it is impossible to estimate such an extent at an early stage with only limited information<sup>49</sup></li> <li>- Necessity test too vague to offer any useful guidance to journalists<sup>50</sup></li> </ul>
<p>Proscription of organisations</p>	<p>Re ss.1:</p> <ul style="list-style-type: none"> <li>- “Organisation” too vague to indicate who or what constitutes the organisation to be proscribed<sup>51</sup></li> <li>- Proscription “attaches to a group, rather than actions of any individuals”, such that it is difficult to know whom one can associate with without committing offences<sup>52</sup></li> <li>- Practical differences of someone being involved in an “unlawful society” (which is prohibited from operating under Societies Ordinance s.8) and a “proscribed organisation” unclear<sup>53</sup></li> <li>- Focus placed on “proscription” of a group, rather than its acts, so that a person can risk being convicted without being aware of illegal activities, if any, of the organisation<sup>54</sup></li> <li>- Unnecessary provision given the wide power enjoyed by the Hong Kong government to protect national security<sup>55</sup></li> <li>- Lack of reference to human right concepts (e.g. free speech) in a democratic society when assessing necessity<sup>56</sup></li> </ul>

<sup>46</sup> Ibid, p. 268.

<sup>47</sup> Ibid, p. 274.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid, p. 275.

<sup>50</sup> Doreen Weisenhaus, Ch.9, p. 295.

<sup>51</sup> Lison Harris, Lily Ma and C.B. Fung, Ch. 10, p. 318.

<sup>52</sup> Ibid, p. 318.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid, p. 321.

<sup>56</sup> Kelley Loper, Ch. 6, p. 214.

	<ul style="list-style-type: none"> <li>- Going beyond what is required under Article 23<sup>57</sup></li> </ul> <p>Re ss.3:</p> <ul style="list-style-type: none"> <li>- Mainland standards on threats to national security might influence the Hong Kong standard because it is unlikely that Hong Kong authorities would challenge the Mainland government's findings<sup>58</sup></li> </ul> <p>Re s.8C:</p> <ul style="list-style-type: none"> <li>- Exemptions not inclusive enough (e.g. medical assistance as aiding not excluded)<sup>59</sup></li> <li>- Defences should operate insofar as the defendant has an honest belief<sup>60</sup></li> </ul>
Police powers	<p>Re warrantless power in general:</p> <ul style="list-style-type: none"> <li>- Doubtful necessity given the efficient warrant-based entry and search power in Hong Kong<sup>61</sup></li> </ul> <p>Re Crimes Ordinance (Cap 200) s.14 (on power to conduct warrantless entry to remove seditious publications visible from a public place):</p> <ul style="list-style-type: none"> <li>- Infringing the freedom of expression and privacy<sup>62</sup></li> </ul> <p>Re Crimes Ordinance (Cap 200) s.13 (on warrant-based power to seize sedition evidence):</p> <ul style="list-style-type: none"> <li>- Room for arbitrary searches because there is no requirement for a belief or suspicion that evidence of sedition would be found in the premise<sup>63</sup></li> </ul> <p>Re Police Force Ordinance (Cap 232) s. 50(6) (on police power to search upon arrest):</p> <ul style="list-style-type: none"> <li>- Ambiguously worded on the area which the police is entitled to search ("in or about the place at which he has been apprehended")<sup>64</sup></li> </ul> <p>Re Official Secrets Ordinance (Cap 521) s.11(2) (on power of entry, search and entry for a suspected espionage offence):</p>

<sup>57</sup> Lison Harris, Lily Ma and C.B. Fung, Ch. 10, p. 320.

<sup>58</sup> Ibid, p. 312.

<sup>59</sup> Kent Roach, Ch.4, p. 144.

<sup>60</sup> Ibid.

<sup>61</sup> Simon N.M. Young, Ch. 12, p. 380

<sup>62</sup> Ibid, p. 374

<sup>63</sup> Ibid, p. 383.

<sup>64</sup> Ibid, p. 378.

	<ul style="list-style-type: none"> <li>- No requirement to prove that “evidence of the offence would in fact be found in the premise or that the offence is about to be committed in those premises”<sup>65</sup></li> </ul>
Appeal mechanism	<ul style="list-style-type: none"> <li>- The legality of the mechanism hinges on the court’s ability to grant relief for unlawful conduct and the Secretary for Security’s conduct. “The court’s ability and willingness to undertake this task” may be in doubt.<sup>66</sup></li> <li>- Courts might defer to the Executive on issues concerning national security by not requiring cogent evidence to prove the legitimacy of proscribing an organisation<sup>67</sup></li> <li>- Judiciary becomes the arena to “fix or narrow a potentially overbroad law”<sup>68</sup></li> <li>- If the court claims jurisdiction in this area, National People’s Congress Standing Committee (NPCSC) may intervene through interpreting the Basic Law Art 19<sup>69</sup> to construe “act of state” as including matters such as “proscription or organisations”, excluding Hong Kong courts from exercising jurisdiction<sup>70</sup></li> <li>- Closed trial attracts scrutiny as to its legality for the infringement of right to fair hearings<sup>71</sup></li> </ul>

<sup>65</sup> Ibid, at p. 379.

<sup>66</sup> Lison Harris, Lily Ma and C.B. Fung, Ch. 10, p. 323.

<sup>67</sup> Ibid, p. 327. See Kent Roach, Ch.4, p. 145.

<sup>68</sup> Kent Roach, Ch.4, p. 146.

<sup>69</sup> BL Art 19 (2): “ The courts of the Hong Kong Special Administrative Region shall have no jurisdiction over acts of state such as defence and foreign affairs”

<sup>70</sup> Lison Harris, Lily Ma and C.B. Fung, Ch. 12, p. 327.

<sup>71</sup> Albert Chen, Ch.3, p.115. *cf.* Lin Feng, Ch.11.