

“National Security Law Roundtable Seminar Series VI: Safeguarding National Security – Basic Law Article 23 Legislation Forum” Successfully Organized

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On 4 February 2024, the Public Law and Human Rights Forum of the School of Law at City University of Hong Kong held a seminar titled “National Security Law Roundtable Seminar Series VI: Safeguarding National Security - Basic Law Article 23 Legislation Forum”.

Background

On 30 January 2024, the Hong Kong government announced to commence the legislative procedure to enact local legislation to implement Article 23 of the Basic Law. On the same day, the government issued the “Safeguarding National Security: Basic Law Article 23 Legislation” Public Consultation Document. The aim of this Public Consultation Document is to fulfill the constitutional duty of the Hong Kong SAR to complete enactment of local legislation to implement Article 23 of the Basic Law, and to improve legal system and enforcement mechanisms for safeguarding national security in accordance with the 5.28 Decision of the National People’s Congress and the Hong Kong National Security Law.

The government stated that the purpose of this local legislation is to effectively prevent, suppress and impose punishment for acts and activities endangering national security, thereby better safeguarding the fundamental rights and freedoms (including personal safety) of individuals, and ensuring that the properties and investments in HKSAR are protected.

Regarding acts and activities endangering national security, the Public Consultation Document proposes various recommendations, including improving offences relating to sedition under the Crimes Ordinance, amending the scope of the targeted person under the offence of “incitement to disaffection”, introducing new offences to prevent seditious activities etc. The Document also proposes amendments to relevant legal provisions to protect state secrets, combat espionage activities, and prevent destruction to public infrastructure and computer or electronic systems.

The end of the public consultation period for “Safeguarding National Security: Basic Law Article 23 Legislation” is 28 February 2024. In light of this, the Public Law and Human Rights Forum of the City University of Hong Kong organized this timely forum with a hope to provide the public with a platform to discuss the contents of the Public Consultation Document and to express their opinions freely.

Discussion

The forum was hybrid in nature, and has attracted nearly 40 participants from academia, legal professionals, media, and the public.

The keynote speakers at the forum included Professor Zhu Guobin from the School of Law at City University of Hong Kong, Professor Tian Feilong from the School of Law at Minzu University of China, Dr. Lo Pui Yan Barrister of England and Wales and Hong Kong, and Dr. Liu Linbo, Research Assistant at the Beijing Municipal Academy of Social Sciences.

Professor Zhu Guobin of the School of Law at City University of Hong Kong greeted the audience and opened the forum. In his speech, Professor Zhu pointed out that the current government has finally decided to complete enactment of the local legislation to implement Article 23 of the Basic Law, which is a significant political decision. After years of anticipation, domestic legislation of Article 23 of the Basic Law is an inevitable result, and its necessity is self-evident. He provided a detailed introduction to the legislative principles, specific content, and characteristics of Article 23 of the Basic Law, highlighting three new and forward-looking aspects of the legislation. Finally, Professor Zhu, in a thought-provoking manner, raised several areas of concern in the legislation that warrant public (especially academic) attention, hoping to stimulate public awareness and reflection to improve the legislative proposal.



2Prof. Tian Feilong



1Dr. PY Lo

Following that, Professor Tian Feilong from the Law School at Minzu University of China compared the legislation on Article 23 in 2003 with the current legislation. He identified three normative elements and one factual element for the domestic legislation of Article 23 of the Basic Law, and proposed that the legislation should align with the holistic approach to national security put forward by President Xi Jinping. He believed that the local legislation on Article 23 of the Basic Law is of significant importance within the context of the holistic approach to national security, and careful consideration of the legislative technique is necessary to align it with both PRC law and Hong Kong common law. Lastly, he discussed the potential impacts of the legislation and summarized the issues that the academic community should continue to focus on after the

legislation on Article 23, stating that such legislation could promote academic discussions and research on China and Hong Kong's national security laws.

Dr. Lo Pui Yan Barrister of England and Wales and Hong Kong, then analyzed the Public Consultation Document on Article 23 from a practical perspective. After a detailed examination of the content and provisions of the Public Consultation Document, Dr. Lo suggested that attention should be paid to the actus reus and mens rea of the offences, and a clear boundary is mandated to determine the threshold between criminal acts and non-criminal acts. Additionally, he pointed out the need to consider exceptional circumstances and statutory defence in the legislation. Regarding the protection of state secrets, Dr. Lo suggested the inclusion of a public interest defence but emphasised the need for careful consideration of its scope and requirements. Finally, he raised questions in relation to sedition, treason, and the definition of national security, and encouraged participants to reflect on these issues.



3Dr. Liu Linbo

The last sharing guest of the forum was Dr. Liu Linbo, Research Assistant at the Beijing Municipal Academy of Social Sciences. He pointed out that the legislative environment for Article 23 had undergone significant changes, and international situations had also evolved. With the evolvement of laws and mechanisms to safeguard national security in the PRC, the legislative proposal for Article 23 includes three approaches to handling offences endangering national security. Furthermore, he conducted a detailed comparison of offences specified in Article 23 Public Consultation Document and the National Security Law, and provided five recommendations for the legislation on Article 23, including systemic integration, strengthened prevention, enhanced supervision, clarified scope, and stabilising public confidence.

After the speeches of the keynote speakers, participants actively raised questions and engaged in discussion. Their questions covered various aspects of the Public Consultation Document. The interactive session was open and lively. Several academic and legal perspectives in the Public Consultation Document were also clarified.



This academic forum reflects the Public Law and Human Rights Forum's ability to respond to societal needs in a timely manner, and its ability provide the public with a proactive platform for exchanging ideas on the legislation of Article 23 of the Basic Law in Hong Kong. It aims to enhance public understanding of the legislation and promote constructive discussions in society. In the future, the Public Law and Human Rights Forum will continue to closely follow the legislative process of Article 23 of the Basic Law, actively participate in consultation discussions in different ways, promote awareness, and gather consensus. The public is encouraged to stay updated on the Public Law and Human Rights Forum website (<https://www.cityu.edu.hk/slw/cplr/>).