

回顧與展望 發展新台階

LOOKING
BACK AND AHEAD
NEW DAWN
FOR DEVELOPMENT

國安法律論壇

NATIONAL SECURITY LEGAL FORUM

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匯編 *Proceedings*

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《香港國安法》及《維護國家安全條例》的相繼生效實施開展了「一國兩制」的新篇章，充分體現了維護國家主權、安全、發展利益這個「一國兩制」方針的最高原則，進一步完善了香港特區在維護國家安全上的法治體系，為實現「由治及興」打下了堅實基礎，大力促進香港特區的高質量發展。

2024年適逢中華人民共和國成立75周年，亦是國家主席習近平創造性提出總體國家安全觀10周年，《香港國安法》實施4周年及《維護國家安全條例》在社會各界堅定支持下，於立法會上獲得全票通過，並刊憲生效首年的重要里程碑；律政司在中央政府的大力支持下於2024年6月8日成功舉辦了以「回顧與展望 發展新台階」為主題的國安法律論壇，匯聚各界專家學者、法律精英、社會賢達，深入就有關國安法律開展高水平交流研討，舉辦合時、意義非凡。

「青年興則國家興，青年強則國家強。」本次法律論壇首次加入了「同司長一齊傾」這個環節，讓我有機會與來自不同背景，包括大學生、中學生及青少年制服團隊領袖代表真情對話，並與台下觀眾就不同的國安法律議題進行緊密互動。律政司將繼續充分利用不同平台，全力開展國家安全及法治相關的教育工作，在社會各個群體建立以弘揚愛國愛港為核心、同「一國兩制」方針相適應的主流價值觀。

以高質量發展促進高水平安全，以高水平安全助力高質量發展，發展和安全動態平衡、相得益彰。律政司將全力以赴，以總體國家安全觀為根本遵循，持續推動完善香港特區維護國家安全的法治建設，守正創新；既堅守維護國家安全的底線，也堅持法治原則，充分尊重和保障人權。我深信，香港特區在《香港國安法》及《維護國家安全條例》等維護國家安全法律的保駕護航

前言

下，各界用足用好香港特區法治化、國際化的獨特優勢，乘國家進一步全面深化改革的東風，香港特區必定能鑄就「一國兩制」新輝煌。

為讓市民大眾更易掌握有關國安法律的核心要義、立法背景和目的，促使各界齊心自覺尊重及遵守相關法律，律政司特意將本次國安法律論壇講辭及現場討論彙編及翻譯成書，希望能和更多關心國家、關心香港特區的人士分享講者的真知灼見。



香港特別行政區政府律政司司長
林定國 SBS, SC, JP



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開幕式致辭



律政司



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主辦機構



律政司
Department of Justice
The Government of the Hong Kong
Special Administrative Region



支持機構

中央人民政府駐香港特別行政區聯絡辦公室
中央人民政府駐香港特別行政區維護國家安全公署
中華人民共和國外交部駐香港特別行政區特派員公署





律政司



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國家法律論壇
NATIONAL SECURITY LAW FORUM
11-13 JUNE 2024

開幕致辭辭 Opening Remarks

李家超 大律師樓執業, SBS, PQSM, PMSM
The Hon John LEE Ka-chiu, GCM, SBS, PQSM, PMSM
中華人民解放區香港特別行政區行政長官
Hong Kong, People's Republic of China
Chief Executive of the Hong Kong Special Administrative Region of the People's Republic of China

李家超 大紫荊勳賢 SBS PDSM PMSM

中華人民共和國香港特別行政區行政長官



尊敬的鄭雁雄主任（中央人民政府駐香港特別行政區聯絡辦公室主任）、農融副主任（中央港澳工作辦公室、國務院港澳事務辦公室副主任）、張勇副主任（全國人大常委會香港特別行政區基本法委員會副主任、全國人大常委會法制工作委員會副主任）、董經緯署長（中央人民政府駐香港特別行政區維護國家安全公署署長）、崔建春特派員（外交部駐香港特別行政區特派員公署特派員）、王兆兵副政委（中國人民解放軍駐香港部隊副政治委員）、各位嘉賓、各位朋友：

大家早上好！我很高興出席今日的國安法律論壇。

今年是中華人民共和國成立75周年，是習近平主席提出「總體國家安全觀」的10周年。等待了26年8個月19日，香港在今年三月十九日終於完成《基本法》第二十三條本地立法，我們完成了這

個憲制責任，《維護國家安全條例》在立法會全票通過，補充了特區維護國家安全的短板。我們完成了歷史使命，不負中央所托，不負國家信任。

即將到來的六月三十日，將會是《香港國安法》實施四周年。今日由律政司主辦的論壇，正好讓我們回顧《香港國安法》全面實施四年以來的成就和法理發展，並展望《維護國家安全條例》的實施，維護國家安全的法律制度和執行機制的運作，讓國家安全獲得更有效保障，論壇別具意義。

國安才能港安，國安才能家安。國家安全是社會繁榮穩定、市民安居樂業的根本，跟廣大市民的切身利益息息相關。習近平主席多次指出，安全是發展的前提，發展是安全的保障，沒有安全，沒有穩定，一切都無從談起。習主席並要求我們要做到發展和安全動態平衡，相得益彰。

香港回歸以來，國家安全風險一直存在。由於《基本法》第二十三條本地立法多年未能成功，國家安全漏洞處處，從二〇一二年反國教、二〇一四年非法佔中、二〇一六年旺角暴動，直至二〇一九年的「黑暴」、港版「顏色革命」，以大規模暴動製造動亂，以「攬炒十步曲」攬着全香港和市民跳崖，圖謀控制立法會，無差別否決《財政預算案》，逼使行政長官下台，圖謀奪去行政權和立法權，摧毀《基本法》確立的憲制秩序和香港特區的政治制度，顛覆國家政權，嚴重破壞國家安全。

感謝中央果斷出手，頒令實施《香港國安法》，填補了國安法律大真空的重要部分，並且完善選舉制度，落實「愛國者治港」原則，香港終於回復正常運作，市民才可享受現在的安全和穩定，企業才得以大展鴻圖，我們才可以全力拼經濟、謀發展。

特區政府一直以來盡責履職，在維護國家安全上全力以赴，依法防範、制止和懲治危害國家安全的行為和活動。維護國家安全除了是政府的責任，更是香港全社會的應有之義。

今年三月，在社會各界的共同支持下、在政府相關部門同事的不懈努力下、在立法會的全力和高效審議下，香港終於光榮完成了《基本法》第二十三條的本地立法，完成了一個等待了26年8個月19日的憲制責任和歷史使命。《維護國家安全條例》在立法會全票通過，是香港由治及興征程上的重要里程碑。

《香港國安法》和《維護國家安全條例》兼容互補，發揮「雙法雙機制」的制度優勢，在香港全面構築一個維護安全穩定、促進良政善治的制度保障。現在，我們可以無後顧之憂，輕裝上陣，全力聚焦拼經濟、謀發展、惠民生、添幸福，為香港創建一個更繁榮、更美好的家園。

在世界經歷百年未有的變局下，地緣政治局勢日益複雜，香港面對的國家安全風險也是千變萬化，可以突如其來。違法犯罪分子的活動越趨隱蔽，外部勢力不斷無理指責和橫蠻干預香港的執法行動，潛逃海外的反中亂港分子肆無忌憚勾結外部勢力，挑戰國家安全的底線。我們一定要認識國家安全的複雜嚴峻形勢，牢記國家安全風險的真實性、迷惑性和突發性，不能好了傷口便忘了痛，不能讓傷口再被挖開。

「總體國家安全觀」要求增強憂患意識，做到居安思危，完善國家安全制度體系，加強國家安全能力建設。

因此，我們必須自覺做好內部管理和強化制度，增強社會各界自覺維護國家安全的意識，並在日常生活中不忘防範和制止不利於國家安全的行為和活動。

政府會繼續做好維護國家安全法律的解說工作，不斷推動國家安全教育、愛國主義教育和中華文化教育，建立以弘揚愛國愛港為核心、同「一國兩制」方針相適應的主流價值觀。

展望未來，我們會堅守法治，保障財產，助力營商。香港特區有自行的法律，實行普通法制度，法治堅實強韌。《基本法》明確指出，香港特別行政區享有獨立的司法權和終審權，法院獨立進行

審判，不受任何干涉。同時，《香港國安法》及《維護國家安全條例》也明確規定應當堅持法治原則。

香港維護國家安全的法律特別重視人權，訂明適用於香港的有關國際公約所保障的權利和自由，繼續依法受到保障。這些保障人權自由的原則受明文保障，符合國際標準，具體細緻地貫穿和體現於《香港國安法》及《維護國家安全條例》的條文及規定中。

《維護國家安全條例》也明確指出，必須確保在香港的財產和投資受法律保護，又對特定罪行設定了適當的例外情況和免責辯護。

香港的國安法律保障奉公守法的市民和企業，保障香港長期繁榮穩定。

香港有了維護國家安全的屏障，大大提升營商確定性，投資者可以放心大膽來香港投資興業。

香港會繼續用好「一國兩制」下背靠祖國、聯通世界的得天獨厚優勢，善用作為國家唯一普通法司法管轄區的獨特地位，發揮好「超級聯繫人」和「超級增值人」的角色，實現高質量發展。

香港正在由治及興的新征程，實現由治及興，是香港全社會共同的事業，我們要不斷突破自我、大膽創新，努力推動行業升級轉型，不斷續寫香港的新篇章、新傳奇。

我知道今日律政司舉辦的活動，除了有很多法律界專家出席之外，亦有不少中學生、大學生和青年朋友是座上客。你們年輕而充滿活力，是香港的未來。我希望你們都可以好好把握香港的無限機遇，奮發上進，成為愛國愛港、具備世界視野的未來棟樑。

各位，就讓我們一起發揮好香港多方面的優勢，堅持高質量發展和高水平安全相互促進，不斷提高市民的安全感、獲得感、幸福感。香港將不斷創造新傳奇，成就新輝煌。

預祝今天的論壇圓滿成功！多謝大家。#

鄭雁雄

中央人民政府駐香港特別行政區聯絡辦公室主任



發揮好“雙法雙機制”的 法律實效和威懾作用

尊敬的李家超行政長官，
各位嘉賓，各位朋友：

大家上午好！

在總體國家安全觀10周年之際，在香港國安法實施4周年、維護國家安全條例刊憲生效之際，律政司舉辦這次香港國安法法律論壇，匯聚專家學者、社會賢達，深入開展交流研討，很有必要、很有意義。我謹代表中央政府駐港聯絡辦，對論壇的舉辦表示熱烈祝賀！

在特區政府、立法會以及社會各界的共同努力下，維護國家安全條例順利通過立法，宣告香港國安法與維護國家安全條例、駐港國安公署與特區國安委“雙法雙機制”已經形成，這是總體國家安全觀引領香港除亂、固治、促興的創舉，是新時代“一國兩制”實踐的重大成果。這其中，律政司的同事們做了大量工作，值得充分肯定。我在“4·15全民國家安全教育日”開幕典禮上，就“雙法雙機制”講了一些意見。借此機會，我再與大家分享幾點看法。

第一，“雙法雙機制”進一步築牢香港法治基石。中央和特區堅持依法治港，法治始終是香港營商環境、宜居環境、創業環境的魅力所在。“治國無其法則亂，守法而不變則衰。”構建完備的法律體系，並確保法律體系始終保持與時俱進是當代法治的基本規律、重要經驗。“雙法雙機制”的落地實施，標誌着法治香港步入體系完善、效能可靠的新階段，進一步擦亮了香港法治的金字招牌。“雙法雙機制”是落實中央國安事權、特區憲制責任的有力體現，標誌着香港維護國家安全的法律制度和執行機制得到有力完善，補齊了特區維護國家安全的制度短板，確保香港“一國兩制”實踐在正確軌道上健康運行。香港國安法和維護國家安全條例有機銜接，渾然一體，全面覆蓋了香港基本法第23條禁止的7類危害國家安全行為，清晰界定罪與非罪的邊界，穩定了廣大市民和投資者的預期。“雙法”始終堅持尊重和保障人權，“雙機制”則是嚴格依據“雙法”運行。兩部法律規定的全部罪行，有關執法權力及訴訟程序，在主要普通法司法管轄區均有相應或類似規定，與香港普通法系高度兼容，保障了法律實施的暢順、高效、有序。

第二，落實“雙法雙機制”重在法律實效、威懾作用。“雙法雙機制”是一套有效管用的維護國安安全的法律體系，就是要確保一切危害國家安全的活動和行為得到有力懲治，確保一切非罪行為得到法律的有力保護，彰顯社會的正義和正氣。自香港國安法實施以來，香港警隊“國安處舉報熱線”接獲超過數十萬條舉報訊

息，但拘捕涉嫌危害國家安全人員只有298名，目前僅百餘人被定罪判刑或正等候判刑，13名外逃亂港分子被通緝。5月底，法庭裁定“35+初選案”45人罪成，各界普遍肯定裁決結果，認為向社會傳遞了正確法治觀念，堅定了全社會共同維護國家安全的決心和信心。立好法不容易，用好法更非易事，發揮好“雙法雙機制”作用、全面準確有效執法司法，還有大量工作要做。香港國安法規定了特區維護國家安全的基本法律制度和執行機制，維護國家安全條例進一步完善了具體制度和機制，二者有機統一，不能割裂。實踐中需要通盤統籌“雙法雙機制”的實施舉措，在執行層面做到兼容互補、實現有效銜接。“雙法雙機制”在實踐過程中應清晰把握法律立法原意，針對各類突發情況和事件完善實施細則，精準界定涉事主體的罪與非罪、罪行大小及嚴重程度，精確把握執行方式和程序，精細落實各項法律措施。要突出法律實效，辦理各類國安案件、反制外部勢力干預破壞、依法打擊各類反中亂港活動，都必須嚴格依法執法司法，體現法律的尊嚴和實際效果。不能以過程公正替代結果正義，更不能以悲憫之心替代法律尊嚴。

第三，善用“雙法雙機制”保障香港高質量發展。當今世界正處於百年未有之大變局，香港發展的內外環境正在發生深刻變化，其中既隱含困難和挑戰，更蘊含無限希望與光明前景。“雙法雙機制”的落地實施，標誌着香港維護國家主權、安全、發展利益有了銅牆鐵壁，香港自身有了更加持久安全的發展環境，世界各地的創業者、投資者來港投資興業有了更加穩定的營商環境，香港迎來了全力拼經濟、謀發展、惠民生的最好時期。今年以來，香港經濟持續溫和增長，金融市場健康穩定運行，訪港客流攀升帶動相關行業持續回暖，創新科技等新興產業蓄勢待發，系列盛事活動向世界展示香港優勢魅力，大批國際人才和企業落戶香港，國際商事仲裁理事會大會等全球重量級會議相繼在港舉辦，東方之珠更加光彩奪目，活力之都更勝往昔，一切對香港的造謠污蔑、抹黑攻擊都在事實面前顯得蒼白無力。在香港未來發展的

道路上，“雙法雙機制”將持續發揮重要作用，以高水平安全保障高質量發展，以高質量發展促進高水平安全。

各位嘉賓，各位朋友：

今年是香港回歸祖國27周年，也是香港履行23條立法憲制責任、健步邁向由治及興的關鍵之年。讓我們以對祖國的赤誠之心、對香港的熱愛之情，自覺遵守、維護、用好“雙法雙機制”，讓“雙法雙機制”有機融入香港普通法體系，始終成為法治香港的重要基石，帶動全社會形成共同維護國家安全的良好氛圍，為香港營造更加安全穩定的社會環境，為“一國兩制”實踐行穩致遠作出法治貢獻。

預祝論壇圓滿成功！謝謝大家！#

本文內容為講者所提供的講辭

董經緯

中央人民政府駐香港特別行政區維護國家安全公署署長



推進法治體系建設 堅決維護國家安全

各位嘉賓、各位朋友：

大家上午好！

香港國安法頒佈實施四周年之際，我們共同舉辦論壇，研討交流實施香港國安法的實踐成效和體會認識，對進一步推動香港國安法治建設具有重要意義。借此機會，我謹代表駐港國家安全公署，向與會嘉賓表示誠摯問候！向一直以來支持香港國安法實施和駐港國安公署工作的各界人士和廣大香港同胞表示衷心感謝！

制定實施香港國安法是香港回歸以來“一國兩制”實踐發展的重要里程碑，也是習近平法治思想、總體國家安全觀在香港的生動實踐。法治是最好的營商環境，安全穩定是最好的發展保障。香港國安法治體系不斷健全完善，維護國家安全更加有效，更有利於拼經濟、謀發展，加快推動由治及興。這裡，與大家分享四點感受和意見。

第一，循應然之理，香港國安法開啟特區國安法治體系建設歷史進程。一個國家，在國內進行立法、決定如何立法，這是天經地義的事。在香港，同樣以總體國家安全觀為遵循，適用和內地統一的國家安全概念，但考慮到“一國兩制”的特殊性和香港的實際情況，中央在香港實行特有的維護國家安全法律制度和執行機制。這裡既飽含着“一國兩制”內在的多元一體治理智慧，更體現了中央對香港特區的政治信任。近四年前，香港國安法“一法定香江”，是新形勢下堅持和完善“一國兩制”制度體系的重要標誌性法律，成為落實特別行政區維護國家安全法律制度和執行機制的重要依託。近四年來，推動香港國安法深度落地，充分彰顯法治效能，堅守香港法治優勢，保持香港獨特地位，護佑香港實現由亂到治、邁向由治及興。四年之後，憲法、基本法、全國人大“528決定”、香港國安法、全國人大常委會釋法，以及香港《維護國家安全條例》等本地立法，共同構建起香港國安法治體系，標誌着特區憲制秩序、法律秩序更加完備，為“一國兩制”行穩致遠提供了更為堅實的制度保障。

第二，成制度之全，23條立法為香港國安法補齊本地立法空白。香港國安條例於3月23日刊憲實施。此次立法因應特區內外環境的深刻變化，緊扣維護國家安全實際需要，兼顧保障權利自由、促進經濟社會發展和保持獨特優勢地位，進一步完善相關法律制度和執行機制，有效解決了香港國安法實踐中遇到的一系列極需通過本地立法來加以釐清的重大法律問題，使得香港維護國家安全更加有法可依。實體法上罪刑互補。遵循香港國安法的實

質和精神，突出完整管用，對本地法例中涉國安、普通法罪名進行適應化修訂，對非傳統安全風險進行適度回應，對其他普通法適用國家和地區法律進行合理借鑒，形成了五大罪名框架。程序法上銜接並軌。細化完善了香港國安法的程序性、機制性規定，強化了有關程序規定的可操作性 and 防範制止懲治效果效率，所訂程序適用於所有國安案件。組織法上有效保障。補充了訂立附屬法例、發出證明書及行政指令等規定，實化了國安委職責，有力維護特區行政主導體制。規定了公務人員的協助義務，並從法律層面完善和加強了對維護國家安全人員的保護。

第三，固憲制之基，牢牢守護憲法和基本法確立的特區憲制秩序。香港國安法列入基本法附件三，納入憲法和基本法確立的特區憲制秩序內來實施運行。香港維護國家安全，首要的就是守護好特區憲制秩序。貫徹一個方針，即“一國兩制”方針。做到全面準確、堅定不移，確保實踐不走樣、不變形，方針不會變、不動搖。維護國家主權、安全、發展利益是“一國兩制”方針的最高原則，在這個前提下，香港享有高度自治權。落實一個原則，即“愛國者治港”原則。對管治者的愛國立場和政治資格作出嚴格要求，是基本政治倫理。新選制下的選委會、立法會、行政長官、區議會選舉，充分彰顯香港特色民主先進性、優越性，確保擔任公職人士是堅定愛國者，築牢政治安全、政權安全屏障。堅持一個統一，即維護國家安全的中央根本責任與特區憲制責任相統一。國家安全屬中央事權，中央負有最高責任、最終責任、全面責任。中央通過香港國安法賦予特區維護國家安全的權力，特區行政機關、立法機關、司法機關都應依法履行維護國家安全職責。兩個責任在憲制上是統一的，在本質上是一致的。

第四，行法治之要，在實踐中推動實現“兩個渾然一體”。香港國安條例與香港國安法渾然一體，特區國安委與駐港國安公署執行機制渾然一體，共同發揮作用，才能切實堵住香港維護國家安全的法律漏洞。在“一國兩制”的獨特制度安排中，全面準確實

施香港國安法例，必然會遇到許多複雜的新課題。把握法律位階。香港國安法第六十二條指明，“香港特別行政區本地法律規定與本法不一致的，適用本法規定”。充分發揮香港國安法的凌駕性威力，決不允許任何人、任何機構以任何方式削弱、矮化、架空國安法。把握立法原意。中央充分信任特區、支持特區、尊重特區。通過香港國安法授權特區承擔維護國家安全的主要責任，將處理有關維護國家安全具體問題的權力和責任賦予特區。中央負責處理特區層面難以解決的問題，承擔最後的兜底責任。把握執行機制。“兩個渾然一體”是香港國安法治體系的鮮明特徵。進一步突出中央事權和特區責任“雙保險”，強化中央管轄與特區管轄“雙機制”，劍出一鞘、雙劍合璧，為依法打擊和懲處危害國家安全犯罪行為，發揮出最大功效。

各位嘉賓、各位朋友！

香港由治及興進程中，風險挑戰一刻不會遠離，但大勢不可逆轉、不容阻擋。新時代列車“香港號”的車輪滾滾向前，在法治軌道上推動維護國家安全工作新格局的有利條件前所未有，用國安法治效能鞏固“愛國者治港”新秩序的廣闊空間前所未有，以高水平安全保障高質量發展和高水平開放的歷史機遇前所未有。駐港國安公署始終堅定依法履職，切實發揮職能作用，一如既往全力支持特區履行憲制責任。讓我們攜手並肩，共同譜寫維護國家安全新的篇章！

預祝論壇圓滿成功！

謝謝大家！#

本文內容為講者所提供的講辭

崔建春

中華人民共和國外交部駐香港特別行政區特派員公署特派員



夯實安全根基，助力開放發展

尊敬的李家超行政長官，

尊敬的鄭雁雄主任，農融副主任，張勇副主任，董經緯署長，
各位嘉賓、各位朋友，女士們、先生們：

大家上午好！今年是習近平主席創造性提出總體國家安全觀10周年，也是香港國安法頒佈4周年以及完成基本法第23條立法、徹底終結特區維護國家安全“不設防”歷史的關鍵一年，更是香港邁入全力拼經濟、謀發展新階段的起步之年。本次論壇以“回顧與展望，發展新台階”為主題，非常契合當前形勢和各方期待，

對於香港加快由治及興步伐、積極融入國家發展大局具有重要意義。借此機會，我願與大家分享三點看法。

第一，堅持不懈築牢香港發展的安全根基。習近平主席強調，“越是開放越要重視安全，統籌好發展和安全兩件大事”。“修例風波”的慘痛教訓告誡我們，沒有安全和穩定，發展就無從談起。香港國安法的制定實施是香港由亂到治的“分水嶺”，而基本法第23條立法圓滿完成則開啟香港由治及興“新篇章”。歷史和現實表明，國家安全越穩固，營商環境就越可靠、投資信心越充沛。香港國安法和香港國安條例一起構築維護國家安全的堅強防線，共同成為護衛“一國兩制”的重要法律保障，為香港長治久安築牢“防火牆”，為香港由治及興保駕護航。國安立法是國際通例，但個別國家仍不停針對香港國安法、香港國安條例以及特區政府正當執法行為發表不實言論，甚至威脅採取制裁措施。我們唯有堅持維護國家安全不懈怠，才能凝心聚力謀發展。外交部駐港公署將本着“安危不貳其志，險易不革其心”的精神，堅定捍衛國家主權、安全、發展利益，堅決反對一切強權政治和霸凌行徑，及時對外部干預言行亮劍出擊，與特區政府和社會各界一道，共同守護香港這個美好家園。

第二，堅持以高質量發展保障可持續安全。習近平主席指出，“發展是永恆的主題，是香港的立身之本，也是解決香港各種問題的金鑰匙”。香港由治及興的內外環境正在發生深刻變化，唯有不斷探索新路徑、拓展新空間、增添新動能，才能打開香港發展的新天地，讓發展成果更多惠及全體居民，實現可持續的安全。香港歷來是國際風雲際會之地、中西文化交融之都，在“一國兩制”框架下擁有資本主義制度、國際化中心、自由貿易港地位、普通法制度、完善法治體系等十方面獨特優勢。外交部駐港公署將全力服務香港發展，維護香港獨特優勢，助力香港鞏固提升國際金融、航運、貿易中心地位，加快在法律服務、知識產權、創新科技、人文交流等領域打造國際合作新高地，加快形成新質生

產力，在更高水平上實現安全與發展的深度融合。

第三，堅持維護自身安全與共同安全相統一。我們所處的時代，是一個形勢複雜多變、機遇與挑戰並存的時代，沒有一個國家能實現脫離世界安全的自身安全。2023年底召開的中央外事工作會議對未來我國發展的戰略環境作出重要判斷，指出世界進入新的動盪變革期，但人類發展進步的大方向不會改變，世界歷史曲折前進的大邏輯不會改變，國際社會命運與共的大趨勢不會改變。習近平主席先後提出全球發展、安全、文明三大倡議以及“平等有序的世界多極化和普惠包容的經濟全球化”兩大主張，豐富發展了構建人類命運共同體理念內涵，為國際社會走向長治久安、實現共同發展指明方向、提供路徑。中國外交將堅定踐行總體國家安全觀，在堅持維護自身安全的同時推進國際共同安全，積極參與完善全球安全治理，同各國攜手應對各類安全風險挑戰，為建設一個更加安全、美好的世界作出不懈努力。

各位嘉賓、各位朋友，

維護國家安全事關國家長治久安和香港繁榮穩定，事關香港同胞根本福祉和切身利益，更需要大家共同參與和支持。我們堅信，有偉大祖國作堅強後盾，有香港國安法和香港國安條例保駕護航，有全體香港居民團結奮鬥，香港由治及興新飛躍一定會在更高質量、更有效率、更加公平、更可持續、更為安全的發展中實現，“一國兩制”香港實踐必將譜寫出新的更加絢麗的華章！

謝謝大家！#

本文內容為講者所提供的講辭

林定國 SBS SC JP

中華人民共和國香港特別行政區政府律政司司長



尊敬的李家超行政長官、鄭雁雄主任（中央人民政府駐香港特別行政區聯絡辦公室主任）、農融副主任（中央港澳工作辦公室、國務院港澳事務辦公室副主任）、張勇副主任（全國人大常委會香港特別行政區基本法委員會副主任、全國人大常委會法制工作委員會副主任）、董經緯署長（中央人民政府駐香港特別行政區維護國家安全公署署長）、崔建春特派員（外交部駐香港特別行政區特派員公署特派員）、王兆兵少將（中國人民解放軍駐香港部隊副政治委員）、各位嘉賓、各位朋友：

大家早晨！歡迎大家出席今天由律政司主辦的國安法律論壇「回顧與展望 發展新台階」。首先，我要多謝中央人民政府駐香港特別行政區聯絡辦公室、駐香港特區維護國家安全公署以及外交部駐香港特區特派員公署作為支持機構；更需要特別感謝農融副主任及張勇副主任從北京遠道而來，為我們作主題演講。

《香港國安法》即將迎來實施四周年，而按《基本法》第二十三條制定的《維護國家安全條例》亦已生效兩個多月，今天是溫故知新的好時機。法律是維護國家安全最重要的工具之一，我期望透過今天的活動，對香港維護國家安全法律作出理性和客觀分析，並以此為基礎，建立和鞏固兩個十分重要的自信。

第一，我們應該及必須自信香港維護國家安全法律是實實在在堅持按法治原則制定及執行。

《香港國安法》經歷了接近四年通過香港普通法制度實踐的經驗，累積了具有指導性的法院判決，包括刑事、民事、司法覆核案件。這些判決詳述了判決理由，提供最有力和客觀的證據，顯示香港是確切嚴格按照公認的法治原則，只針對極少數人極端行為；當中最重要的原則是法院以公開透明的司法程序，不受任何干預行使獨立審判權，在充分維護被告人基本權利例如無罪推定的前提下判案。

另一方面，《維護國家安全條例》的具體內容亦充分彰顯它是嚴格按照法治原則所制定：包括對構成罪行的元素作出清晰的界定、僅對基本人權及自由按照適用的國際標準及參考其他普通法地區相關做法而作出必須和合理的限制、不影響無辜第三方的合法權益等。

香港普通法制度體現的法治原則，是香港在「一國兩制」下的獨特優勢，我們絕不會放棄或妥協。在未來，由《香港國安法》和《維護國家安全條例》構成的「雙法雙機制」將繼續秉承法治原則，通過互相銜接、兼容、互補，有效防範、制止和懲治危害國家安全的行為和活動。在今早第一及第二個座談環節，我們將由內地及香港的法律專家，就上述議題向大家作重點分享。

第二，我們應該及必須自信香港維護國家安全法律將會與香港未來的發展產生良性的互動。

香港正處於由治及興新階段。在行政長官帶領下，香港正努力拼經濟、謀發展、惠民生。我們必須牢記安全和發展的關係。我們國家近代歷史慘痛的教訓是「落後就要捱打」。故此，香港必須用好自身在「一國兩制」下享有的獨特優勢，守正創新，積極參與國家高質量發展，推進中華民族偉大復興進程。但我們在謀求發展之同時，不能忘記維護國家安全的必須性和重要性。古人的智慧是：「好戰必亡，忘戰必危」、「生於憂患，死於安樂」。我們必須警惕安全的環境就像空氣，特性是受益不覺、失之難存；雖然我們有賴空氣才能生存，但往往不經意它的存在，甚至誤以為它的存在是理所當然，直至它消失的時候，但可能為時已晚。

安全的環境不是由天賜，而是需要由大家合力建構和不斷維護。我們必須要面對的客觀事實，是一些對國家不友善的勢力，因種種原因，嘗試壓制國家的發展及阻礙國家統一；也因為香港在國家發展中扮演着獨特地位，他們將香港去功能化、去國際化的企圖，昭然若揭；因此而帶來的國安風險，將影響着香港社會的安定及我們每一個人自身的福祉。故此，我們沒有鬆懈的本錢。

安全和發展，有着唇齒相依、相輔相成的關係。高質量的發展必須由高水平的安全來支持和保障；高水平安全帶來的持久安定環境亦必定更有利於高質量發展。按法治原則制定及執行的香港維護國家安全法律，正好提供一個高水平的安全環境令香港能安穩地推展高質量發展。今天下午第三個座談環節，我們將由不同界別，包括金融、貿易、運輸物流的翹楚，訴說香港維護國家安全法律在他們各自的領域如何締造安穩及有利的發展環境。

此外，在今天下午最後一個環節，我亦將會與青年人對話、與現場參加者互動，一起探討一些大家關心和感興趣，涉及香港維護國家安全法律的議題。

我深信建立及鞏固我剛才提及的兩個自信極為關鍵。首先，市民大眾必須先對維護國家安全法律有信心，才能培養持久對相關法律尊重及遵守的自覺性。其次，對國家及香港不友善的勢力，正不斷抹黑、歪曲及攻擊香港維護國家安全法律，意圖削弱香港市民大眾以及其他地區人士，對不單是香港維護國家安全法律而是整個法律制度及法治環境的信心。培養及鞏固市民大眾這方面的自信，才能令大家免於受這些不當言行的影響；同時，亦令我們更有底氣向其他地區人士澄清對香港維護國家安全法律的誤解、釋除相關的疑問。

然而，我必須強調，建立自信必須先掌握相關法律的核心內容、背景和目的，然後以沉着、理性及堅定的態度展現。為此，律政司聯同特區政府其他政策局和部門，在未來會一如既往，不遺餘力，以不同方式推廣及加強維護國家安全法律以及其他涉及香港法律制度和法治的教育。

我希望藉今天機會公布在這方面兩個新舉措。首先，律政司自去年起便籌備《〈香港國安法〉及〈刑事罪行條例〉煽動罪案例摘要》，該《摘要》的英文版已於去年十二月推出，並上載於律政司的網站，最近我們也完成了中文版，中英文版已於今天一同上載於《案例摘要》的專屬網站，大家入場時應該已收到一張書籤，書籤上有該網站的二維碼，歡迎大家覽閱。其次，律政司和保安局繼二〇二一年出版《中華人民共和國香港特別行政區維護國家安全法——文獻匯編》後，最近再將十多篇於二〇二二年至二〇二四年四月間發表、關於《香港國安法》或《維護國家安全條例》的演辭和文章，加上有關《全國人民代表大會常務委員會關於〈中華人民共和國香港特別行政區維護國家安全法〉第十四條和第四十七條的解釋》的文件，結集成一本《文獻匯編2024》，於今天出版，相信大家入場時亦已收到一本，該《匯編》的電子版也已上載律政司及保安局的網站。

香港作為國際化城市，相信不少其他地區的人士對我們的國家安全法律也感興趣；今日亦有外籍朋友在場或在線上觀看，所以我希望以英語作簡短發言。

Distinguished guests, ladies and gentlemen,

Welcome to the National Security Legal Forum "Looking Back and Ahead, New Dawn for Development" organised by the Department of Justice. In today's forum, we aim at making two very important points.

The first point is that Hong Kong has adhered faithfully to fundamental principles of the rule of law under our common law system in enacting and applying the national security law, and we will continue to do so in future. Judicial decisions concerning the Hong Kong National Security Law since its enactment about four years ago provide clear and cogent evidence that key principles such as the court exercising independent power of adjudication, open justice, and the presumption of innocence had been strictly followed. A careful study of the recently enacted Safeguarding National Security Ordinance would demonstrate that essential elements of an offence are defined with sufficient clarity, human rights and freedoms will be fully protected and reasonable restrictions will be imposed if but only if they are really necessary to safeguard national security in accordance with applicable international standard and practice. These fundamental principles under our common law system constitute the unique characteristics and advantages of Hong Kong under the principle of "one country, two systems". There is absolutely no conceivable reason whatsoever why we would shoot ourselves in the foot by giving up these valuable and indispensable principles.

The second point is that our national security law is not only essential but also conducive to the future development of Hong Kong. The Government is working extremely hard to strengthen Hong Kong's status as an international centre in finance, trade, logistics and other areas; and to improve the livelihood of our fellow citizens. History tells us that we cannot afford disregarding national security risks. Indeed, security and development have a symbiotic relationship: one cannot exist without the other, and one will benefit the other. This is sheer logic and common sense. Our national security law based on the principles of the rule of law provides high-standard security to guarantee and safeguard the better and sustainable development of Hong Kong in the long run.

I firmly believe that, at the end of the forum, you will be convinced there is indeed a rational and objective basis for us to have full confidence in our national security law. And beyond any doubt, we can and shall stand tall and hold our heads high.

[*以下是律政司司長林定國資深大律師英語致辭的中譯本：

各位嘉賓、各位朋友：

歡迎大家出席由律政司主辦的國安法律論壇「回顧與展望發展新台階」。今天的論壇，我們旨在帶出兩項十分重要的觀點。

第一，香港在制定和應用國家安全法律時，一直嚴格遵守普通法制度下的法治基本原則，將來亦然。《香港國安法》制定約四年以來，該法的相關司法判決提供清晰而有力地證明了法院行使獨立審判權、司法公開及無罪推定等關鍵原則得到了嚴格遵從。通過仔細研究最近通過的《維護國家安全條例》可以看出，該條例對罪行的必要元素作出足夠清晰的界定，充分保障人權及自由，並僅在確實有必要情況下，方會按照適用的國際標準及慣

例施加合理的限制，以維護國家安全。這些普通法制度的基本原則，構成香港在「一國兩制」原則下的獨有特點及優勢。我們絕無任何理由搬石頭砸自己的腳，放棄這些寶貴而不可或缺的原則。

第二，我們的國家安全法律，對於香港未來的發展，不僅至關重要，更有所助益。政府正極力鞏固提升香港在金融、貿易、物流及其他領域的國際中心地位，並致力惠及民生。歷史告訴我們，我們並無忽視國家安全風險的本錢。事實上，安全和發展，有着唇齒相依、相輔相成的關係。這是顯而易見的邏輯和常識。我們的國家安全法律建基於法治原則，提供高水平的安全，以確保和維護香港更美好及長遠的可持續發展。

本人堅信，論壇結束時，大家都會信服，我們對香港國家安全法律充滿信心確實是有理性和客觀的依據。毫無疑問，我們能夠並應當昂首挺胸，邁步向前。]

最後，我再次感謝大家出席今天的論壇；並預祝今天的論壇圓滿成功，更希望各位有一個充實和愉快的周六。謝謝大家。#

本文內容，除以上中譯本外，為講者所提供的講辭

主題演講





農融

中央港澳工作辦公室、國務院港澳事務辦公室副主任



以高水平安全保障高質量發展 推動香港由治及興開啟新篇章

尊敬的李家超行政長官，
各位嘉賓、各位朋友、各位同事：

大家上午好！

受夏寶龍主任委託參加本次國安法律論壇，我感到非常高興。自2021年以來，香港特區政府連續舉辦香港國安法法律論壇，凸顯對維護國家安全的重視。來自香港內外的各界人士積極參與，取得良好效果！本次論壇是在香港《維護國家安全條例》全票通過實施後召開的，具有特別意義。在此，我謹代表中央港

澳工作辦公室、國務院港澳事務辦公室，代表夏寶龍主任對本次論壇成功舉辦表示熱烈祝賀！

習近平主席指出，“維護國家主權、安全、發展利益是‘一國兩制’方針的最高原則”。今年是習近平主席提出總體國家安全觀10周年。4月15日，香港舉辦“全民國家安全教育日”系列活動。本月，我們即將迎來香港國安法實施4周年。4年來，香港實現由亂到治的重大轉折，重回發展正軌；今年3月，香港完成基本法第23條立法，進一步築牢維護國家安全的法律屏障。兩部國安法律的制定實施，得到了包括在座各位在內的香港各界廣泛支持和積極參與，香港維護國家安全成效顯著。今天，我們在此相聚，回顧過去、總結經驗、展望未來、共謀發展。借此機會，我願意分享幾點看法。

第一，香港國安法律的初心是保安全、護發展，為由治及興提供前提條件。習近平主席指出，“安全是發展的前提，發展是安全的保障”。立法維護國家安全是國際通例。完成香港基本法第23條立法是香港特區維護國家安全的憲制責任。經歷了“非法佔中”“旺角暴動”“修例風波”等風風雨雨，我們更深刻感受到維護國家安全是香港發展的前提。香港國安法開宗明義指出“保持香港特別行政區的繁榮和穩定”這一目的，彰顯護發展的初心。在堅決打擊4類危害國家安全犯罪的同時，堅持罪刑法定、無罪推定等國際通行法治原則、重申保障人權、保護香港居民依法享有的權利和自由，做到了保國家安全與保經濟發展、保民生福祉有機結合。今年出台的香港《維護國家安全條例》與香港國安法有機銜接，進一步築牢香港發展的安全根基。當前，香港各界普遍表達出拼經濟、謀發展的強烈願望，實現由治及興是人心所向、大勢所趨。

第二，香港國安法律的實施成效斐然，為由治及興營造了安全環境。從香港國安法的制定出台，到香港國安條例的通過實

施，香港告別了動盪不安的局面，徹底終結了維護國家安全“不設防”的歷史。**今天的香港**，人心思定、人心向聚，“國安才能港安，國安才能家安”成為普遍共識。**今天的香港**，財產安全、交易秩序更有保障，營商環境更加優良。**今天的香港**，施政環境極大改善，行政立法良性互動、積極有為。**今天的香港**，法治得到捍衛，正義得到伸張。香港繼續蟬聯全球金融中心，總排名亞洲第2位、全球第4位；2023年母公司在海外或內地的駐港公司數量**恢復**至新冠疫情前的高水平；初創企業數目**創下**歷史新高；家族辦公室產業**呈現**蓬勃發展態勢。社會各界尊法守法意識**更加濃厚**、國家觀念深入人心、各方面法律制度**更加優化**。愛國愛港力量眾志成城，凝聚起維護國家安全的強大勢能。執法、檢控、司法人員恪守誓言、竭誠履職，面對外部勢力制裁威脅無畏無懼、持守專業，令所有秉持客觀公義者為之感佩，讓國際社會對香港法治充滿信心。**香港國安條例生效後，必將進一步鞏固香港安定有序、生機勃勃的局面，進一步加快由治及興的發展步伐。**

第三，香港國安法律完善了“一國兩制”制度體系，為由治及興提供了制度保障。“一國兩制”是前無古人的偉大創舉，是香港回歸後保持長期繁榮穩定的最佳制度安排。我們要把中央全面管治權和特區高度自治權有機結合起來。“一國”是“兩制”的前提和基礎，在這個前提下，“馬照跑、舞照跳、股照炒”，香港保持原有的資本主義制度和生活方式長期不變，享有高度自治權。保國家安全，就是保“一國兩制”。國家安全是中央事權，中央對香港有關的國家安全事務負有根本責任，香港特區負有維護國家安全的憲制責任。香港國安法和香港國安條例的制定實施，都是為了全面準確貫徹“一國兩制”方針，與完善選舉制度、重塑區議會制度一道，共同構築起“一國兩制”下特區維護安全穩定、促進良政善治的制度體系，為香港長治久安築牢制度根基。“一國兩制”是基本國策，中央比任何人都珍視和呵護這一制度。中央始終堅定不移、全面準確貫徹“一國兩制”方針。有了香港國安法律作保

障，“一國兩制”必將愈發展現出強大生命力和巨大優越性，為香港創造無限廣闊的發展空間，香港由治及興的前景必將更加光輝燦爛！

第四，香港國安法律強化了香港的獨特優勢，為由治及興提供強勁動力。回歸以來，香港國際金融、航運、貿易中心地位穩固，自由開放雄冠全球，營商環境世界一流。有了國安法律，法治的確定性和社會的穩定性進一步增強，香港可以更好聚焦發展，社會蘊藏的巨大創造力和發展活力將得到充分釋放，香港的獨特優勢將進一步彰顯。近年來，特區政府堅持行政主導體制，將有為政府與高效市場更好結合起來，多措並舉促進發展，提出“八大中心”發展目標。中央政府完全支持香港長期保持獨特地位和優勢。國家“十四五”規劃寫入香港“八大中心”新定位，為香港注入源源不斷的發展動力。**中央支持香港發揮國際金融中心優勢**，強化全球離岸人民幣業務，進一步暢通融資渠道，發展綠色金融。今年發布的5項資本市場對港合作措施、支持特區與內地推出優化“互換通”機制安排，為香港提升國際金融中心地位再添助力。**中央支持香港鞏固提升航運、貿易中心地位，加快建設國際航運和航空樞紐**，進一步發揮香港作為單獨關稅區和自由港的作用。**中央支持香港加快建設國際創新科技中心**，培養發展適合香港稟賦的高新技術產業、吸引先進技術、設備和人才，不斷打造香港新優勢。**中央堅定支持香港發揮聯通內外的優勢，拓展暢通便捷的國際聯繫**，支持香港全面參與和助力“一帶一路”建設、舉辦更多國際會議和活動、與更多國家和地區簽訂自貿協定、盡早加入《區域全面經濟夥伴協定》(RCEP)、推動國際調解院總部落戶香港、着力吸引全球企業和人才來港發展等。

在此，我想強調的是，**中央堅定支持香港保持普通法制度、支持香港鞏固並發揮法治優勢**。習近平主席在慶祝香港回歸祖國25周年大會講話中兩次提到保持普通法制度。近年來，中央進一步支持打造亞太區國際法律及解決爭議服務中心、建設區域知識

產權貿易中心，凸顯了中央對香港法治優勢的重視。法治是香港的“金字招牌”，是國家與香港各界引以為傲的共同財富，是保障廣大香港同胞和外國企業及個人合法權益、維護社會公平正義、保持香港長期繁榮穩定的重要基石。長期以來，香港執法、檢控和司法機構，以及香港的法律執業者，包括來港開展業務的外國法律友人，秉持法治精神，捍衛法治尊嚴，為香港法治做出了巨大貢獻。他們的工作不容干擾、努力不容抹殺！香港的法治不容踐踏、形象不容玷污！我們堅信，有中央堅持“一國兩制”的堅定決心，有社會各界團結一致護法治、保發展的不懈努力，香港獨特地位和優勢必將隨着時代的發展不斷鞏固提升。

第五，香港國安法律助力香港融入國家發展大局，為由治及興開闢新天地。一個強大、繁榮的祖國，是香港最大的靠山和底氣。融入國家發展大局是香港保持長期繁榮穩定的必由之路。有了國安法律，香港能夠更好把握國家發展機遇、更好融入國家發展大局、更好發揮“超級聯繫人”和“超級增值人”角色。中央始終堅定不移支持香港融入國家發展大局。香港回歸以來，中央通過推進《內地與香港關於建立更緊密經貿關係的安排》（CEPA）、支持內地企業赴港上市、推出“自由行”政策、建立互聯互通機制等一系列惠港措施，強有力地推動了香港與內地的經貿往來。近年來，中央進一步支持香港參與國家技術創新中心建設、推出惠港青年8條措施、擴大內地居民赴港“個人遊”政策覆蓋範圍、出台6項便民利企出入境管理政策措施，增開京港、滬港夕發朝至高鐵動臥列車等，不斷深化內地和香港的交流合作。

粵港澳大灣區建設，是習近平主席親自謀劃、親自部署、親自推動的重大國家戰略。作為新發展格局的戰略支點、高質量發展的示範地、中國式現代化的引領地，大灣區為香港發展提供了難得機遇、廣闊空間和強勁動力。在《粵港澳大灣區發展規劃綱要》的統領下，大灣區在建設國際一流灣區和世界級城市群上邁

出堅實步伐。近年來，中央**支持**大灣區推進基礎設施互聯互通，**推動**建成港珠澳大橋，形成“一小時”交通圈；**支持**廣深港高鐵開通運行，形成“軌道上的大灣區”。**支持**規則銜接、機制對接，**出****台**《前海深港現代服務業合作區總體發展規劃》，緊緊圍繞服務香港制定政策、謀劃改革、布局項目；**制定**《粵港澳大灣區國際一流營商環境建設三年行動計劃》，打造市場化法治化國際化一流營商環境。我們要把握國家新一輪改革開放的寶貴機遇，繼續**加快**推進前海、南沙、河套等重大合作平台建設，**深化**基礎設施“硬聯通”；**加快**推動貨物、人員、資金、技術、數據等要素便捷流動，**推進**規則機制“軟聯通”；**加快**促進“雙向奔赴”“雙向投資”，**促進**灣區居民“心聯通”。我們相信，隨着粵港澳大灣區建設的縱深推進，香港與內地一定能夠互促共進，開創高質量發展新局面。

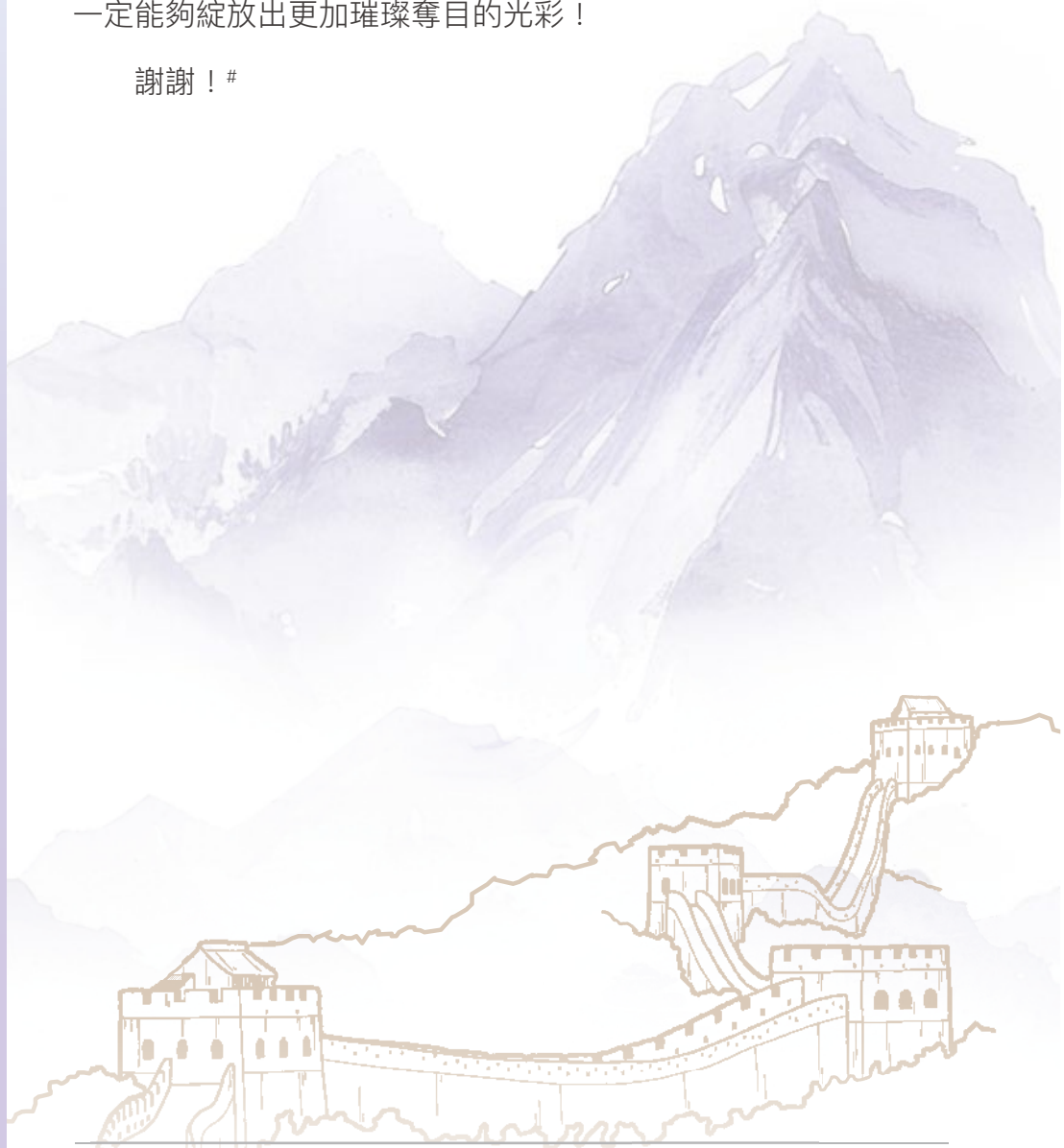
說到這裡，我還想強調的是，香港是國際大都會。回歸以來，在中央支持和特區各界的努力下，來自世界各地的投資者匯聚香港，創業興業，收穫豐碩。香港國安法律從來不是要把香港“鎖起來”，而是為了精準識別盜賊、保護朋友，營造更安全、更自由、更開放、更可預期的營商環境。當前，香港依然是世界最自由、最開放的經濟體，依然擁有國際領先的金融、法律、會計、航運等高水平優質專業服務。金融、經貿、文化等國際盛事接連舉辦，吸引全球頂尖機構和各界精英參加；諸多重量級企業和專業人才相繼落戶香港，大家用真心實意和真金白銀對香港投下信任票。未來，香港還將是一片孕育機遇與財富的熱土，是幹事創業、成就夢想的天堂。我們真誠地歡迎全球各地的創業者、夢想家把握機遇，積極來港投資興業、施展抱負，共享中國和香港發展的時代紅利。

各位嘉賓、各位朋友、各位同事！

站在新起點上，我們要繼續傳承發揚“獅子山精神”，呈現新

氣象、施展新作為，把對國家和香港的熱愛，對更美好生活的嚮往，化成遵守國安法律、維護國家安全的自覺行動，化作高質量發展的不竭動力。我們堅信，有偉大祖國的堅定支持、有“一國兩制”方針的堅定保障、有全體香港市民的團結奮鬥、有廣大國際友人的參與合作，香港由治及興的道路必將越走越寬廣，東方明珠一定能夠綻放出更加璀璨奪目的光彩！

謝謝！#



本文內容為講者所提供的講辭

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全國人大常委會法制工作委員會副主任



依法履職盡責 切實維護國家安全

尊敬的李家超行政長官、鄭雁雄主任，
各位嘉賓，朋友們：

大家上午好！

很榮幸受邀參加為紀念《中華人民共和國香港特別行政區維護國家安全法》制定四周年舉行的國安法律論壇，與大家一起，回顧總結香港國安法實施以來取得的成功經驗，共同展望香港特別行政區由治及興的美好前景。

國家安全是安邦定國的重要基石。四年來，全國人大及其常委會以總體國家安全觀為指導，依據國家憲法和香港基本法，先後行使決定權、立法權和法律解釋權，着力建立健全香港特別行政區維護國家安全的法律制度和執行機制，完善香港特別行政區選舉制度，取得了豐碩的制度成果。以“決定+立法”、“決定+修法”為節點，在各方面的共同努力下，香港局勢實現了由亂到治的重大轉折，社會秩序重返正軌，政治氛圍煥然一新，為“一國兩制”實踐行穩致遠和香港的長期繁榮穩定，奠定了堅實的政治和法治基礎。

構建維護國家安全制度體系，需要中央政府和各地方行政區域協同配合，共同努力。惟有如此，國家方可實現四方無虞，安然如磐。在“一國兩制”方針下，作為直轄於中央人民政府的地方行政區域，香港特別行政區同樣負有維護國家安全的憲制責任。在這裡，請允許我祝賀兩個多月前香港特別行政區立法會全票通過香港特別行政區《維護國家安全條例》，經行政長官簽署已經刊憲實施。這部條例的通過和實施，是香港“一國兩制”偉大實踐進程中一件具有歷史意義的大事，標誌着香港特別行政區最終履行了國家憲法、香港基本法、香港國安法和全國人大有關決定所賦予的憲制責任和法律義務，補齊了香港特別行政區在維護國家安全方面的法律漏洞和制度短板，完成了香港特別行政區維護國家安全法律制度和執行機制建設的“最後一公里”。作為全國人大常委會的工作機構，我們將履行法定職責，遵循法定程序，認真做好香港特別行政區《維護國家安全條例》的備案工作，並將繼續密切關注和全力支持有關法律在香港特別行政區的全面、準確、有效實施。

各位嘉賓、朋友們！

“安不可以忘危，治不可以忘亂”。我們在享受穩定、安寧、富足的社會生活的同時，也不能忘記現有的一切是怎麼來的，是由什麼來守護的。“殷鑒不遠，在夏後之世”。1840年鴉片戰爭後，滿

清王朝、民國政府腐敗羸弱，祖國任由列強侵略分割，人民任由外敵霸凌欺辱。這山河破碎、國破家亡的百年悲慘經歷，至今仍令國人不堪回首。中華人民共和國成立後，中國人民深刻總結近代一百年來國家蒙辱、人民蒙難、文明蒙塵的慘痛教訓，始終將維護國家安全作為國家和民族事業的頭等大事。我國憲法明確規定：所有公民負有維護祖國的安全、榮譽和利益的義務，不得有危害祖國的安全、榮譽和利益的行為。根據憲法，國家制定了一系列維護國家安全的法律法規，不斷充實和完善維護國家安全的法律制度體系。這些法律與香港國安法、香港特別行政區《維護國家安全條例》等法律一道，發揮着預防、制止和懲治任何危害中國國家安全的行為和活動的作用，時刻守衛着國家的安全和人民的利益。

十年前，習近平主席創造性地提出總體國家安全觀，為新時代國家安全提供了強大的思想武器，是香港特別行政區構建維護國家安全新格局、做好維護國家安全各方面工作的根本遵循和行動指南。結合今天的論壇主題，我認為，要全面準確有效地實施香港國安法和香港特別行政區《維護國家安全條例》，關鍵是深刻領悟總體國家安全觀重要思想，切實履行好香港國安法確定的“三方責任”，做到守土有責、守土負責、守土盡責。

第一，中央人民政府對香港特別行政區有關的國家安全事務負有根本責任。“事在四方，要在中央”。國家安全屬於中央事權。包括香港特別行政區在內的所有中國國家安全事務由中央統一負責、統一管理。中央決定國家安全的方針政策和指導原則，判斷國家安全的潛在風險和重點方向，部署國家安全的應對策略和任務分工，對國家安全負總責，承擔最終的責任。對此，香港國安法，特別是第一章和第五章作了系統完備的制度性安排。這些規定將涉及香港特別行政區的維護國家安全事務納入國家安全總體戰略布局，確保了我國國家安全制度體系的統一性、完整性和有效性，落實了維護國家主權、安全、發展利益這一最高原則。

第二，香港特別行政區負有維護國家安全的憲制責任。所謂憲制，是指一個地方在國家憲法規定的政治秩序中的地位。“六合同風，九州共貫”。我國憲法和香港基本法第一條、第十二條確定了香港特別行政區的憲制地位，即香港特別行政區是中華人民共和國不可分離的部分，是直轄於中央人民政府的一個享有高度自治權的地方行政區域。香港國安法規定，維護國家主權、統一和領土完整是包括香港同胞在內的全中國人民的共同義務。在香港特別行政區的任何機構、組織和個人都應當遵守法律，不得從事危害國家安全的行為和活動。同時，香港國安法賦予香港特別行政區行政長官、行政機關、立法機關以及執法、司法機關相應的法定責任，並對香港特別行政區學校、社會團體、媒體、網絡等開展國家安全教育，提高國家安全意識和守法意識提出了明確要求。這些規定充分體現了“一國兩制”方針的“一國”原則，將香港特別行政區的國家安全事務納入國家整體的維護國家安全制度體系和國民教育體系。

第三，香港特別行政區維護國家安全委員會承擔維護國家安全的主要責任。中央依法授予香港特別行政區高度自治權，包括行政管理權、立法權以及獨立的司法權和終審權。這是“一國兩制”的重要內涵。香港特別行政區在行使廣泛的高度自治權過程中，要承擔起維護國家安全的日常責任。這也是“一國兩制”的應有之義。據此，香港國安法專門設立香港特別行政區維護國家安全委員會，授予其履行職責所需要的法定權力，明確其應當承擔的法律責任。這是具有顯著“一國兩制”特色的制度安排，也體現了中央和全國人民對香港特別行政區、對香港同胞的充分信任。

“有功於民，勤力乃事”。在香港特別行政區有效維護國家安全，需要“三方責任”在制度機制層面相互銜接、無縫對接，在實際工作方面相互支持、協同配合，全面準確履職盡責，將中央全面管治權和特別行政區高度自治權有機地結合起來，充分發揮出香港國安法制度設計的應有功效，共同守護好祖國和香港特區的藍天淨土與人民福祉。

各位嘉賓、朋友們！

“一國兩制”事業從偉大構想到成功實踐，走到今天殊為不易，幾代人為之付出了辛勤不懈的努力。今日香港，正迎來難得的歷史發展機遇。我相信，在中央的大力支持下，有社會各界人士共同努力，香港特別行政區一定會順勢而為、乘勢而上，開創新局面，書寫新篇章，實現新飛躍！

謝謝大家！#



本文內容為講者所提供的講辭

座談環節 1

回顧《香港國安法》 的實施及法理發展



主持人

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全國政協委員
香港律師會前會長



簡慧敏議員 JP

各位線上線下的嘉賓和朋友大家早晨。我是香港特別行政區立法會議員簡慧敏，很榮幸獲香港特區政府律政司的邀請，擔任座談環節一的主持人。本節的主題是回顧香港國安法的實施及法理發展。顧名思義，這次我們會集中討論《香港國安法》。

今年是中華人民共和國成立75週年，國家主席習近平在2014年提出了總體國家安全觀，今年剛好是10週年。《基本法》第23條立法順利完成了，並在今年3月23日生效。而香港國安法實施了至今也有差不多4年，可見2024年是意義非凡的一年。提起國家安全，很多人誤以為是遙遠的間諜片橋段，其實國家安全與每一個人是息息相關的。每一個國家都有它的國家安全法，所以習近平主席強調，要保證人民安居樂業，國家安全是頭等大事，而維護國家主權、安全、發展利益，是一國兩制的最高原則。為了堵塞國家安全的漏洞，2020年6月30日，全國人大常委會制定了《香港國安法》，旨在防範制止懲治危害國家安全的行為和活動，實施至今已經近4年。不單從國家層面建立健全香港特區，維護國家安全的法律制度和執行機制，更貫徹保障人權自由和法治這些原則，可謂一法定香江。雖然如此，坊間一直有一些對《香港國安法》存有不少的疑惑，甚至是誤解。例如人大常委會就著《香港國安法》的釋法，會不會損害法院的獨立審判權？《香港國安法》下，人權是否得到足夠的保障？不設陪審團審訊，會不會影響了被告人的權利？《香港國安法》的罪行條文是否夠清晰？一般守法的人會不會誤墮法網等。

其實，經過近4年的實踐，法庭在關於《香港國安法》重點議題上已經累積了不少的案例和經驗。在這個環節，我們有三位專家將為我們從刑事法律和民事法律，包括司法覆核的角度，分享法庭一些重要的案例，藉此回顧《香港國安法》的實施和法理的發展。闡明了中央運用法治思維，法治的手段，制定了《香港

國安法》，充分尊重了一國兩制的安排，體現高度自治和保障人權自由法治這些重大的原則。

同時，我們也會聽到三位專家和我們分享有關的判決，回應剛才我提到的大家關心的一些熱點，幫助社會各界更深入、更準確地理解國家安全法律的要求，以及法庭如何應用這個法律。

接下來讓我簡單介紹三位嘉賓：首先是譚耀豪資深大律師William，他在1994年加入律政署，2012年晉身為副刑事檢控專員，並在2015年獲委任為資深大律師，近年來William為嚴重的暴動案件和相關的上訴案件作出檢控：包括2019年立法會的暴動案，佔中案件和2021年非法集結案，一會兒他會和我們分享危害國家安全罪行的一些重要刑事案例。第二位講者是張天任資深大律師Jonathan，Jonathan是天博大律師事務所的成員，在2020年獲委任為資深大律師，並在2022年獲委任為高等法院暫委法官，他擅長處理商業糾紛，司法覆核等領域的訴訟，稍後他會和我們分享，關於國家安全法律的一些重要民事案例，幫助我們了解在這個法律領域的發展，以及一些關鍵的法律原則。最後一位講者是蘇紹聰博士Thomas，Thomas是全國政協委員，也是香港律師會的前會長，他非常熟悉跨境的爭議，以及涉及中國內地商業上的一些爭議解決等議題，他將從一個比較其他地區相關法律的角度探討香港國安法一些刑事的程序焦點議題，例如保釋的制度，指定法官制度，不設陪審團等等。

好了，事不宜遲，接下來讓我把時間交給譚耀豪資深大律師William。



譚耀豪資深大律師

各位嘉賓、各位先生女士：

引言

1. 本人非常榮幸獲邀參與今日的國安法律論壇，與大家回顧《香港國安法》大約四年以來的實施和發展。自2020年6月30日實施後，《香港國安法》給予執法和檢控機關法律權力，對危害國家安全的行為進行調查和提起檢控，按照法律程序和規定以證明這些極端行為的違法性，並透過法院判處的刑罰阻嚇危害國家安全的行為。今天的分享主要圍繞《香港國安法》生效後，透過執法、檢控和判決有效防範、制止和懲治不同形式危害國家安全的行為，充分反映國家為香港特區訂立《香港國安法》所發揮出「定海神針」的重要作用。

維護國家安全的體系

2. 維護國家安全的法律體系固然是針對危害國家安全的行為，打擊極少數進行極端行為、破壞國家安全的壞分子。香港特區作為國家的一部分，在維護國家安全方面承擔着重要責任。近期香港特區通過了《維護國家安全條例》，履行了《基本法》第23條下的憲制責任，也進一步完善了香港特區維護國家安全的法律體系，特別是該條例的第7條已經明確地列出危害國家安全的相關罪行。

危害國家安全罪行的案例分享

3. 現在我希望給大家分享一些案例，回顧《香港國安法》近四年來的實踐及法理的發展。

《香港國安法》所訂立罪行的相關案例

4. 香港首宗涉及危害國家安全的檢控是2020年的**唐英傑**一案。該案中的被告人面對《香港國安法》下的兩項控罪，分別是煽動

他人分裂國家罪和恐怖活動罪。

5. 案中的被告人，在2020年7月1日（即香港特別行政區成立日），駕駛一輛電單車，車上展示帶有分裂國家口號的旗幟，在當日香港正發生針對《香港國安法》大型示威的情況下，多次衝破警方的防線，更撞向一群組成防線的警務人員，導致三名警務人員受傷。法院在審理案件時，根據法律條文並且充分考慮被告人的行為和案情，裁定他兩項控罪罪名成立。

6. **唐英傑**案是首宗以《香港國安法》起訴及定罪的案件，充分反映了下列的情況：

（一）雖然當時《香港國安法》未曾有法院過往的判例，但相關的罪行條文字眼清晰，在詮釋罪行時，法院根據法律條文的用字，亦可以清楚界定煽動分裂國家罪和實施恐怖活動罪的基本元素。

（二）被告人在《香港國安法》生效後、香港特區成立日作出的行為，無疑是衝擊香港特區作為國家一部分的事實，也公然挑戰香港特區的執法機關。正如法院裁定被告人有罪，這些極端的行為正正是維護國家安全的法律制度必須要禁止的；

（三）法院在量刑時指出，任何分裂國家的行為、特別是帶有分裂色彩的恐怖活動，必須被判處適當並且具阻嚇性的刑罰。法院根據案情的嚴重性，判處被告人入獄9年。

7. **唐英傑**一案之後，法院亦再有處理分裂國家罪和恐怖活動罪的犯案者。從案件的犯罪事實來看，都是涉及少部分人而他們的行為亦是相當極端。

8. 例如**馬俊文**一案，被告人在2020年8月至11月期間，在20次的公開場合和透過互聯網作出煽動他人分裂國家的行為，經審訊後被裁定罪名成立。法院判刑時裁定案情嚴重，判處被告人入獄5年9個月，經上訴後最終改判入獄5年。在該案中，被告人的極端

行為包括以自己曾被拘捕後獲得保釋為例子，向公眾虛假地聲稱作出宣揚「港獨」的行為並不違法，並於保釋期間接受記者訪問，重複煽動他人分裂國家，蔑視法紀。被告人更呼籲針對性向學生、即未來社會棟樑宣揚「港獨」理念等。這些都被上訴法庭確認為構成情節嚴重的關鍵。

9. 值得強調的是法院在**馬俊文**案中提及，《香港國安法》第4條明確指出人權和基本權利須予以尊重及保護，但法院同時強調所有人皆要接受在一個法治社會中，任何個人的自由和權利都不是無止境的。這一點是重要的，因為沒有人會同意，社會會容許以個人自由和權利之名、去進行危害國家安全之實。

10. **馬俊文**案如同**唐英傑**案，涉及的都是被告人在公開場合直接散播「港獨」及危害國家安全的思想。另外一些案件則涉及謀劃甚至開始實施危害國家安全的行為，例如「**光城者**」組織一案。該案涉及多名被告，當中一名被告人承認串謀恐怖活動罪，原訟法庭採納10年為量刑基準，給予認罪和其他求情扣減後，判處被告人6年監禁。法庭在判刑時指出，被告人是計劃的首腦份子和負責招攬他人加入，而計劃包括選擇法院範圍作為爆炸目標，案情極其嚴重，因此即使被告人相對年輕，法院亦必須以阻嚇性刑罰作為主要考慮，以保障社會安全。

11. 試想像若然危害國家安全的謀劃得以實施，後果會是何其嚴重？我們絕不能忽視潛在的風險，否則後果可能不堪設想。及時的執法、檢控和法院判決有效阻止危害國家安全的風險。

12. 《香港國安法》下另外兩類罪行，分別是顛覆國家政權罪和勾結外國或者境外勢力危害國家安全罪。

13. 就顛覆國家政權罪，《香港國安法》第22條禁止任何人組織、策劃、實施或者參與實施以武力、威脅使用武力或者其他非法手段旨在顛覆國家政權的行為。以此罪名提起檢控的案件，包括上星期頒布裁決的「**初選案**」、以及將會審理涉及**支聯會**的案

件。由於法律程序仍在進行中，今天我不會在此詳談這兩宗案件的情況。

14. 但我們可以從一宗區域法院的案例，看到當中的壞分子所曾用的極端手法去顛覆國家政權。在**黃德強**一案中，其中一名被告人承認煽動他人顛覆國家政權罪。案情指被告人組織「集英揚武堂」，透過互聯網、開辦武術課程和儲存武器等，意圖用暴力革命推翻國家政權及特區政府。根據案情，區域法院裁定案件屬於嚴重情節，給予認罪扣減後，連同其他罪行判處被告人監禁5年。

15. 最後，就著勾結外國或者境外勢力危害國家安全罪，一宗涉及這項罪行的案件的檢控程序仍然在進行中，因此今天我同樣不會在此提及該罪行的實施情況。

煽動意圖相關的罪行

16. 最近通過的《維護國家安全條例》與已實施的《香港國安法》共同築起特區維護國家安全的法律制度，修訂和補充了不同形式針對危害國家安全行為的罪行。今天我特別希望談及的是《維護國家安全條例》下第23至26條關於煽動意圖的罪行。這些罪行的前身是《刑事罪行條例》第9至10條下的煽動罪。

17. 其中一個檢控煽動罪的例子是**黎雯齡**一案。多名被告人以香港言語治療師總工會的名義，刊印、發布及展示具煽動意圖的兒童繪本。法庭指出，煽動意圖並非單單源自文字，而是這些文字在兒童腦海中所產生的效果。法庭裁定繪本的內容顯然不承認中華人民共和國已正當地恢復對香港特區行使主權，並引導兒童去憎恨中央和激起他們對中央的離叛，去認為國家和香港特區所做的事都是錯。法庭最終裁定各被告人罪名成立。在判刑時法庭強調，被告人所做的是洗腦工作，引導極年幼的兒童接受他們的煽動主張，在國家和香港特區播下不穩定的種子。考慮到罪行嚴重，法庭以接近當時最高刑罰的21個月作為量刑起點，最終判處

各被告人19個月監禁。

18. 另一宗涉及煽動罪的是**譚得志**一案。被告人面對多項控罪包括煽動罪，經審訊後被裁定大部分罪名成立。被告人提出上訴但被駁回。今天我只會提及上訴法庭判決中的一些觀點：

(一) 上訴法庭裁定根據當時《刑事罪行條例》的成文法，除了法律條文中明確訂明涉及煽惑他人使用暴力的煽動意圖之外，其他法律條文所訂明構成煽動意圖的情況，是無須證明犯案者有煽動暴力的意圖；

(二) 上訴法庭裁定煽動罪是合憲的，有兩個方面。其一是法律條文須具有法律確定性，簡單意思是任何人能夠自行或在獲取法律意見下規範本身的行為，以避免承擔干犯罪行的刑責。上訴法庭裁定煽動意圖的定義具有充分清楚表述的核心，亦有法律確定性；

(三) 就著罪行的相稱性，上訴法庭亦裁定條文沒有超越為達到其合乎法理之目的所需的程度。維護國家安全及公共秩序是制訂此罪行之目的，這對於社會安定、繁榮及發展是不可或缺的，亦確保市民大眾可在安全和平的環境下，行使他們的基本權利及各自追求理想。

《香港國安法》實施四年以來的回顧和展望

19. 綜合上述各宗案例，其實不難發現法院在詮釋維護國家安全相關罪行的條文時，都能夠清楚界定罪行的元素，而法院的判決亦說明相關定罪、判刑的基礎。市民大眾若果有留意案例，認識法律的規定，遵守法紀，其實是不會誤墮法網。

20. 坊間有些說法，虛假地聲稱維護國家安全的法律會剝奪市民大眾的基本權利。其實，一般人根本不會作出危害國家安全的行為，上述案例所提及的犯罪行為，都是遠遠超越了基本權利所容許的底線，亦是明顯地危害國家安全的罪行。

21. 其實我們深切明白，危害國家安全的風險是一點也嫌多，而至今的檢控案例正正反映了香港特區維護國家安全的法律制度行之有效。實施至今大約四年的《香港國安法》加上最近通過的《維護國家安全條例》，相信在未來會繼續充分發揮防範、制止和懲治不同形式危害國家安全行為的作用。

多謝大家！#



張天任資深大律師

引言

1. 《香港國安法》自2022年6月30日在香港特區公布生效以來，香港特區法院就《香港國安法》不同層面發展出一系列案例。
2. 《香港國安法》的獨特之處，在於該法是透過《基本法》附件三直接適用於香港特區的全國性法律，並藉公布而非透過本地立法在香港實施。
3. 在這一節中，本人擬重點指出《香港國安法》若干方面，顯示法院如何協助塑造法理，有助於正確理解此發展中法律領域的主要法律原則。

詮釋

4. 首先，儘管《香港國安法》是全國性法律，但仍須按普通法釋義原則來詮釋：[香港特區 訴 呂世瑜](#) (2023) 26 HKCFAR 332：

本文內容為講者所提供的講辭

第45段：本院在詮釋《基本法》（及延伸至詮釋《香港國安法》）時，採用的是在 **入境事務處處長 對 莊豐源** 案中確立的普通法處理方法。

5. 普通法處理方法，簡而言之，就是因應《香港國安法》的背景和目的，詮釋《香港國安法》文本所用語文，以確定文字所表達的立法意圖。
6. 可見法院並無設計新方法來詮釋《香港國安法》，而是沿用二十多年前在 **入境事務處處長 對 莊豐源** (2001) 4 HKCFAR 211一案中確立已久的普通法釋義做法。
7. 這呼應終審法院在 **黎智英** (2021) 24 HKCFAR 33案中的說法，即參照2020年6月18日提交全國人大常委會關於《香港國安法（草案）》的說明，立法原意是讓《香港國安法》與香港特區的法律並行，尋求與本地法律的「銜接、兼容和互補關係」。
8. 法庭在 **呂世瑜** 案中也提出相同觀點，指出《香港國安法》的立法原意，是將《香港國安法》融入香港特區的法律制度並與之一致並行，除非本地法律被與其不一致的《香港國安法》條文以明文或必然含意的方式取代，否則本地法律如常適用。
9. 《香港國安法》與本地法律可能不一致的，按《香港國安法》第六十二條規定，《香港國安法》條文優先適用。
10. 一如《基本法》，《香港國安法》第六十五條規定，《香港國安法》的解釋權屬於全國人民代表大會（「**全國人大**」）常務委員會（「**全國人大常委會**」）。
11. 一個隨之而來的問題是，全國人大常委會作出的解釋有何效力。就《基本法》而言，有案例裁定全國人大常委會作出解釋時，是在內地制度下行使職責，作出的立法解釋可闡明和

補充法律。若全國人大常委會作出解釋，根據「一國兩制」原則，香港特區法院均須以其解釋為準：**入境事務處處長 對莊豐源** (2001) 4 HKCFAR 211 第222至223頁。

12. 同樣的原則也適用於全國人大常委會對《香港國安法》作出的解釋：**黎智英 訴 香港特區維護國家安全委員會** [2024] HKCA 400 第37段。
13. 該案有關全國人大常委會於2022年12月30日對《香港國安法》第十四及第四十七條作出的解釋（「**《解釋》**」），涉及一名不具有香港全面執業資格的海外律師，是否可以參與處理危害國家安全犯罪案件的問題。
14. 《解釋》於 2022年12月30日作出：
 - (1) 不具有香港全面執業資格的海外律師是否可以就涉及危害國家安全的案件行事，屬於《香港國安法》第四十七條規定需要認定的問題，應當取得行政長官發出的證明書。
 - (2) 如香港特區法院沒有向行政長官提出並取得行政長官發出的證明書，香港特區維護國家安全委員會（「**國安委**」）應當根據《香港國安法》第十四條的規定履行法定職責，對該等情況和問題作出相關判斷和決定。
15. 在該案中，法庭沒有根據《香港國安法》第四十七條取得行政長官發出的證明書。國安委決定：
 - (1) 擬由該海外律師代表被告人一事涉及國家安全，相當可能構成國家安全風險，並且不利於國家安全；及
 - (2) 建議入境事務處處長拒絕上述擬議代表要求獲准工作的申請。

16. 該案被告人尋求在法院質疑國安委的決定。在高等法院首席法官頒下的判案書中，首席法官裁定，無論基於《香港國安法》第十四條的明確措詞，還是從正確理解《基本法》及《香港國安法》的憲制設計來看，國安委的決定均不受司法覆核。該判決經上訴後維持不變。
17. 首席法官的判案書中有幾點值得注意。
18. 首席法官認為，在特定的法律制度下，法院的司法管轄權由憲法（成文或不成文）、憲制文件、常規及相關的法例界定。
19. 香港特區法院的司法管轄權源自《基本法》。香港特區並非主權國家。根據《基本法》第二條，香港特區獲全國人大授權依照《基本法》的規定實行高度自治，享有獨立的司法權和終審權。由此可見，香港特區法院的司法管轄權受《基本法》及其他適用的相關法律（包括《香港國安法》）施加的界限所管轄和規限。換言之，全國人大授予香港特區的高度自治權（包括司法權）的界限亦規限了司法管轄權的界限。
20. 香港特區高度自治的界限，是正確理解香港特區法院對國家安全事宜的司法管轄權界限的關鍵。
21. 起始點必然是，維護國家安全不屬於香港特區自治範圍而是中央事權。在此基礎上，《香港國安法》根據《基本法》第十八條第二款及第三款列入《基本法》附件三，作為適用於香港特區的全國性法律。
22. 香港特區法院（受《基本法》管限）的覆核範圍及權力，由全國人大的賦權及授權所劃定，故香港特區法院（獲授權者）無權質疑或覆核全國人大常委會（授權者）所制定全國性法律《香港國安法》的制度設計。

23. 《解釋》是藉修訂香港法例第159章 **《法律執業者條例》** 在本地實施，並於2023年5月12日生效。第 27B 條現規定，在一般情況下，任何人不得就任何涉及國家安全的案件獲認許為大律師，除非有例外情況，即行政長官有充分理由相信，有關的人就有關案件以大律師身分執業或行事，不涉及國家安全或不會不利於國家安全。

歌曲禁制令

24. 香港法理就《香港國安法》而言的另一重要發展，是關於運用禁制令來貫徹《香港國安法》第八條的規定，即有效**防範、制止和懲治**危害國家安全的行為或活動。
25. 在 **律政司司長 訴 作出申索的註明中第1(a)、(b)、(c)或(d)段所禁止的行為的人** [2024] HKCA 442（上訴法庭判案書於2024年5月8日頒下）一案中，律政司司長以公眾利益維護者的身分行事，申請禁制令，禁止關於一首在互聯網及各社交平台廣泛傳布的歌曲（**「歌曲」**）的四項指明行為。
26. 該歌曲一般稱為《願榮光歸香港》或“Glory to Hong Kong”。就法庭觀察，該歌曲自2019年8月首次發布以來，在暴力示威和分裂國家活動中廣泛傳布和顯著使用，以及仍可在互聯網上任意取覽。該歌曲亦曾被錯誤表述為香港國歌。
27. 禁制令的四項受禁行為是：
- (1) 廣播該歌曲：(i)意圖煽動他人犯分裂國家罪，以及在能構成上述煽動的情況下，或(ii)具煽動意圖，尤其是主張把香港特區從中國分離出去；
 - (2) 廣播該歌曲，從而：(i)使之相當可能被誤會為香港特區的國歌；或(ii)意指香港特區是一個獨立國家並擁有自身的國歌；意圖侮辱國歌；
 - (3) 幫助他人實施或參與任何受禁行為；

(4) 明知而授權他人實施或參與任何受禁行為。

28. 上述四項受禁行為本身均屬違法行為。第三及第四項行為尤其針對允許或提供途徑傳布該歌曲的網絡平台營運商及社交媒體平台。
29. 原訟法庭法官拒絕批予禁制令，主要因為他認為禁制令對遏止該四項受禁行為並沒有真正功用。意圖實施相關犯罪行為的人不大可能會因增設禁制令而受阻嚇。
30. 上訴法庭推翻原訟法庭法官的裁決，表示如果禁制令的協助對刑事法律達致維護國家安全之公共利益目的是必要的，則法庭應批予禁制令。
31. 就此，有關行政機關對國家安全的評估，法庭受《香港國安法》第四十七條的證明書約束；而在其他情況下，法庭會非常尊重評估。
32. 至於以禁制令作為應對措施，由於這是由法庭獨自進行審判的法律問題，法庭將作出自己的判決，同時對行政機關援引法庭管轄權的決定給予相當大的尊重——即行政機關是否認為協助以刑事法律防範和制止危害國家安全的行為，有必要發出禁制令。
33. 法庭行使該酌情權時，亦當牢記其維護國家安全的憲制職責，及《香港國安法》所訂明，須充分運用有關禁制令的衡平法管轄權，以維護國家安全（第85段）。
34. 司法尊重行政機關對國家安全的評估，這概念在普通法確立已久。
35. 這是基於憲制和制度兩方面的理由：
 - (1) **憲制理由**方面，行政機關（而非法院）負有評估和應對國家安全風險的責任。法院的任務是維護法治、執行司

法工作和獨立裁決爭議。在行使司法職能時，法院必須認清行政、立法及司法權力之間的界線。這反映在憲制設計下行政機關與法院不同職能的分配。

- (2) **制度理由**方面，行政機關（而非法院）具備所需經驗、專業知識、資源及獲取信息和情報的途徑，使其最適合就國家安全事宜作出評估判斷。法院的專業知識在於法律，詮釋和應用法律，依法解決憲制上和法律上的問題。由此可見，行政機關與法院在制度能力及專業知識上有所不同。

36. 誠如英國樞密院於100多年前在 *Zamora* 案 [1916] 2 AC 77 的裁決所述：

「那些負責國家安全的機構或人士應當是國家安全要求的唯一裁判者。」

37. 這並非指行政機關基於國家安全考慮所作的決定免受司法審查。

- (1) 須有證據證明該決定建基於國家安全考慮。

- (2) 此點一經證實，凡涉及為國家安全利益所要求，或為保護該等利益所需的行動，法院都不會越俎代庖，除非這是任何合理的行政機關都不會作出的決定。

38. 在尊重行政機關的同時，倘尋求批予該禁制令或其他濟助的措施，涉及受影響者的基本權利，則法院便擔當把關者，須自行裁定是否批予該禁制令或該濟助。這與《香港國安法》第四條相呼應，該條規定香港維護國家安全應當尊重和保障人權，保護香港居民根據《基本法》享有的權利和自由。

39. 基於該案的事實，上訴法庭指出以下數點：

- (1) 該歌曲的作曲人意圖以該歌曲為「武器」，而該歌曲亦的確成為「武器」，被用作推動自 2019 年起困擾香港的暴力示威。該歌曲能有力激發部分社會人士的情緒。它具有合理化甚至浪漫化和美化過去數年在香港發生的非法和暴力行為，激發和重燃強烈情緒及暴力衝突意欲的效果。再者，該歌曲可被意圖煽動分裂國家及煽動叛亂的人用作激發反抗建制的情緒和把香港特區從中華人民共和國分離出去的想法。
- (2) 一如任何國歌，中華人民共和國國歌是國家的象徵和標誌，代表國家的主權、尊嚴、統一和領土完整，並且是中國人民的身分象徵。以被禁止的方式失實表述該歌曲為香港特區的國歌，屬《國歌條例》下的罪行，而且已構成危害國家安全的行為，因為該行為失實表述香港為一個獨立國家，或激發主張香港獨立的情緒。
- (3) 按照行政長官發出的《香港國安法》第四十七條相關證明書，行政長官已評估該四項受禁行為引發國家安全風險，並且不利於國家安全。該證明書對法庭具約束力。從證據亦能得出相同結論。
- (4) 該四項受禁行為有需要立刻加以制止。然而，該歌曲依然可以在互聯網上任意取覽並且廣泛流傳。上訴法庭接納行政機關的評估，即單憑檢控顯然不足以處理有關的嚴重刑事問題，並且有迫切需要以禁制令作為應對措施，以協助刑事法律維護國家安全。此外，以禁制令促使網絡平台營運商將與該歌曲有關的不當視頻從其平台移除是有必要的。此舉將能截斷視頻的傳播渠道，特別是網絡平台營運商已表示，如有法庭命令會願意遵照政府的請求。

《實施細則》

40. 另有些案件涉及民事法院獲要求頒令，以助《香港國安法》在香港特區實施。
41. 《香港國安法》第四十三條列出執法機關辦理危害國家安全犯罪案件時可以採取的廣泛措施。這些措施包括(i) 搜查處所；及(ii) 對用於或者意圖用於犯罪的財產、與犯罪相關的財產，予以凍結。行政長官獲授權會同國安委為採取該等措施制定相關實施細則。
42. 《實施細則》自2020年7月7日起實施。
43. 在**黎智英訴保安局局長** [2021] HKCFI 2804案，被告人被控多項《香港國安法》的相關罪行。保安局局長根據《實施細則》附表3發出通知書，凍結被告人的香港公司股份，而該等財產為保安局局長有合理理由懷疑是《實施細則》附表3所指的「罪行相關財產」。
44. 在該案中，法庭席前的爭議是，禁止「處理」股份是否涵蓋行使該等股份的相關表決權。法庭所給的答案是肯定的，裁定如有關股份已因該通知書而凍結，但依附於該等股份的表決權卻不同時受禁制，實在於理不合。
45. 法庭指出，凍結財產通知書可起多個作用：
 - (1) 保存財產，以便日後或可取得沒收令或充公令；
 - (2) 防止財產被用來資助或協助任何《香港國安法》罪行；
及
 - (3) 防止以任何可能妨礙正在進行的有關《香港國安法》罪行的調查或法律程序的方式處理該財產。
46. 雖然法庭確認公司股東的表決權是受《基本法》保障的財產權，但法庭指出，根據《實施細則》附表3，被告人如認為申

請特許以行使其股份的表決權不會對國家安全構成不利影響，便可提出申請。倘若保安局局長拒予特許，被告人可向法庭尋求裁決。這在防範、制止和懲治《香港國安法》罪行與保護財產權之間取得公正平衡。

47. 在**黎智英訴警務處處長** [2022] HKCFI 2688（上訴時維持原判[2022] HKCA 1574）案，警方根據《實施細則》附表1取得搜查令，獲授權搜查早前從被告人住所檢取兩部流動電話的任何部分數碼內容。被告人聲稱流動電話載有新聞材料，基於《基本法》及《香港人權法案》所保障的新聞自由及發表自由權利，這些材料不應披露。
48. 原訟法庭裁定，搜查令涵蓋可被檢取的新聞材料。上訴法庭維持有關裁決。
49. 上訴法庭認為，儘管新聞材料對新聞自由重要，但新聞材料保護並非絕對。就任何刑事罪行（包括危害國家安全罪行）的調查而言，新聞材料並非免受搜查和檢取。
50. 倘若將新聞材料排除於警方的任何搜查和檢取之外，便會不當地局限警方的調查範圍，並因此而削弱警方調查罪行的效力。這是不利於《香港國安法》有效防範、制止和懲治危害國家安全罪行的立法目的。
51. 上訴法庭指出，法庭擔當司法把關的角色，在公眾利益與基本權利之間作出權衡。法庭可在發出手令時施加條件，也可應受手令影響者的申請而撤銷或更改手令。

總結

52. 上述例子說明，法院對於發展這重要法律領域的法理，以助香港特區維護國家安全，擔當着重要角色。
53. 上述判例表明，我們的司法機構：

- (1) 完全獨立行使其審判權；
- (2) 按已確立的普通法原則詮釋和實施《香港國安法》；
- (3) 確守其《香港國安法》下的憲制職責，有效防範、制止和懲治危害國家安全的任何行為或活動；及
- (4) 在國家安全事宜上尊重行政機關，同時保留其於維護人權、公開司法及公平審訊方面作為司法把關者的重要憲制角色。



蘇紹聰博士 JP

1. 保釋

在香港的普通法制度下，一般刑事案件，法庭除非認為被告有潛逃或再犯案的風險，否則應予被告保釋，是體現「無罪假定」（Presumption of Innocence）的「有利於保釋的推定」（Presumption in favour of Bail）。假如因涉嫌違反《香港國安法》被拘捕及控告，被告人有權申請保釋候審。《香港國安法》第42(2)條訂明，“對犯罪嫌疑人、被告人，除非法官有充足理由相信被告不會繼續實施危害國家安全行為，不得准予保釋。”

那麼，有關《香港國安法》對保釋安排的規定，其保釋門檻是否過高？是否違反“無罪假定”原則？以及是否推翻了關於被告或犯罪嫌疑人有利於保釋的推定？

首先，《香港國安法》第42條規定，香港特區執法及司法機關在適用特區現行法律有關羈押等方面的規定時，應確保危害國家安全犯罪案件公正、及時辦理，有效防範、制止和懲治危害國家安全犯罪。根據《香港國安法》及本地法律，國安案件的犯罪

嫌疑人可以申請保釋，但法官必需要有充分理由相信犯罪嫌疑人、被告人不會繼續實施危害國家安全行為，才得准予保釋。其有別於《刑事訴訟程序條例》有關保釋決定的考慮。若以《香港國安法》的保釋條件作門檻，被告不但要令法庭相信他們會依時到法庭應訊，更要令法庭相信他們在保釋期內，不會再干犯危害國家安全的行為。

也就是說，危害國家安全行為的保釋門檻較普通法下其他一般罪行高。《香港國安法》第42條對“有利於保釋的推定”的一般規則，衍生了一個特別例外情況，訂立了新的較為嚴格的保釋門檻要求。¹

《香港國安法》第42(2)條內的（“除非法官有充足理由相信被告不會「繼續」實施危害國家安全行為，否則不得准予保釋”）

「繼續」僅僅是指導法官在決定是否允許保釋時，應當考慮被告人在被保釋後，會否進行危害國家安全之行為。並非變相形成「未審先囚」或「有罪推定」。相關被告的關押時間不比一般刑事案件長，被告人亦繼續有申請保釋的權利，在不少國安犯罪案件裡也有不少被告獲准保釋候審。因此，並沒有否定「無罪假定」原則。反之，法院在案件判詞中已清晰說明《香港國安法》強調維護國家安全的同時，保障和尊重人權、並堅持法治價值。²

另外，法庭批准保釋與否並不涉及舉證責任，是否准予保釋的決定，屬「法庭運用其判斷或評估而作出的司法工作，而非舉證責任的應用」。就保釋本身的性質，有關是否准予保釋的規則，涉及就被告人未來行為的風險評估，而有關評估在保釋申請聆訊中是無須嚴格證明的。³

¹ 終審法院在 *香港特別行政區 對 黎智英 (HKSAR v Lai Chee Ying)* [2021] HKCFA 3) 判詞第70段指出，《香港國安法》第42(2)條對特區規管批准及拒絕保釋的規則和原則，衍生了一個特別例外情況，為保釋申請加入了嚴格的門檻要求。

² *唐英傑 訴 香港特別行政區 (Tong Ying Kit v HKSAR)* [2020] HKCFI 2133

³ *香港特別行政區 訴 黎智英 (HKSAR v Lai Chee Ying)* [2021] HKCFA 3, 第68段

在適用《香港國安法》第42(2)條時，法院必須首先根據上述原則決定是否「有足夠的理由相信犯罪嫌疑人或被告人不會繼續從事危害國家安全行為」。如果考慮到所有相關材料，法院認為沒有足夠的理由相信被告不會繼續從事危害國家安全的行為，則必須拒絕保釋。⁴

如果法院認為考慮到所有相關材料，它有足夠的理由相信被告不會繼續從事危害國家安全的行為，法院應繼續考慮所有與批准或拒絕保釋相關的事宜，並引用有利於保釋的推定，考慮包括《刑事訴訟程序條例》第9G(2)條所列因素，是否有充分的理由相信被告不會依法歸押，干擾證人或妨礙司法公正等。還應考慮是否應施加旨在確保此類違法行為不會發生的條件。⁵

與其他司法管轄區的比較

在英國國安法⁶下，只要內政大臣有理由相信某人涉及外國勢力威脅活動，便可在不經審訊下施加針對性的「國家威脅預防及調查措施」，所涉及的限制包括對居所、出行、進入區域或地方、活動、使用電子通訊設備、財務、工作或學習等眾多方面，甚至可以要求有關個人接受測謊檢驗。

此外，英國國家安全法賦權警方向司法機關申請延長羈留期至高達14日，賦權警司或以上職級的警務人員可阻止被羈留的人諮詢律師及延遲他們諮詢律師，在法庭的批准下，要求限制個人和其他人的聯繫、使用電子通訊器材轉移或接收資產等。

⁴ 香港特別行政區 對 黎智英 (*HKSAR v Lai Chee Ying*) [2021] HKCFA 3, 第70(d)及(e)段

⁵ 香港特別行政區 對 黎智英 (*HKSAR v Lai Chee Ying*) [2021] HKCFA 3, 第70(f)段

⁶ 英國早於19世紀中期，已有《國安法》。因應政治環境變化，英國議會於2023年7月正式通過最新的《國家安全法案》(The National Security Act 2023)。英國國安法共有6章、逾100條法例，相對於《香港國安法》共66條，賦予的執法權力及涵蓋範圍比香港更大。

有關《香港國安法》第42(2)條下對「充足理由」的要求，控辯雙方均沒有正式的舉證責任，這是法庭須評估與判斷的事宜。但值得注意的是，在其他普通法適用的地區（例如加拿大及澳洲），對部分類別的罪行來說，不但沒有規定控方須舉證證明拒絕保釋的理由，還須被控人負起舉證責任，證明為何不准其保釋外出並繼續扣押是不合理的。⁷

在加拿大 *R v Pearson*⁸一案中，加拿大最高法院的大多數法官裁定，《加拿大刑事法典》第515(6)(d)條中，訂定被控人必須提出因由以證明審前羈留是不合理的要求，沒有違反《加拿大人權憲章》。澳洲法院在 *R v NK*⁹一案中裁定，根據《1914年刑事罪行法令（英聯邦）》第15AA條，在某些案件中，除非法庭信納有例外情況，構成准予保釋的充分理由，否則法庭不得批准保釋，而該條文規定須由申請人舉證令法庭信納該等情況確實存在。¹⁰

在某些司法管轄區，行政機關獲賦權在無需提出檢控的情況下進行長時間的拘留，以防止危害國家安全的行為。例如，新加坡的《內部安全令》¹¹賦予總統行政權力，可基於國家安全，在不經審判的情況下對疑犯進行最高兩年（及可延長）的拘留，這同時亦完全排除了保釋的可能，而在此令下所作的相關決定一般不可以被司法覆核。

⁷ 香港特別行政區 對 黎智英 (*HKSAR v Lai Chee Ying*) [2021] HKCFA 3, 第69段

⁸ *R. v Pearson* [1992] 3 S.C.R 665

⁹ *R v NK* [2016] NSWSC 498

¹⁰ 香港特別行政區 對 黎智英 (*HKSAR v Lai Chee Ying*) [2021] HKCFA 3, 第69段

¹¹ 新加坡的《內部安全令》（*Internal Security Act*，又稱“國內安全法”、“內安法案”簡稱ISA）分為兩部分、共六章。根據《新加坡憲法》第12編第149條，該法案即為“防止顛覆的法律”，主要用於應對內部安全威脅，包括威脅公共秩序、威脅社會和宗教和諧以及顛覆和恐怖活動；通過「先發制人」的方式消除對國家安全的威脅。

2. 指定法官制度

根據《香港國安法》第44條：法官須由特首指定，負責處理危害國家安全犯罪案件。

“香港特別行政區行政長官應當從裁判官、區域法院法官、高等法院原訟法庭法官、上訴法庭法官以及終審法院法官中指定若干名法官，也可從暫委或者特委法官中指定若干名法官，負責處理危害國家安全犯罪案件。行政長官在指定法官前可徵詢香港特別行政區維護國家安全委員會和終審法院首席法官的意見。上述指定法官任期一年。

凡有危害國家安全言行的，不得被指定為審理危害國家安全犯罪案件的法官。在獲任指定法官期間，如有危害國家安全言行的，終止其指定法官資格。

在裁判法院、區域法院、高等法院和終審法院就危害國家安全犯罪案件提起的刑事檢控程序應當分別由各該院的指定法官處理。”

此外，2024年3月通過的《維護國家安全條例》第100條也作出規定，任何涉及國家安全的案件均須由指定法官審理。

就行政長官有權指定法官處理國家安全案件而言，此舉是否干預獨立的司法權？

首先，行政長官在指定法官前可徵詢維護國家安全委員會和終審法院首席法官的意見。終審法院首席法官在合適情況下，亦會就指定法官的人選向行政長官提出建議。而上述指定法官任期只為一年。

根據《香港國安法》第44條，行政長官只訂立負責涉及國家安全案件的指定法官名單，與所有其他類別的案件一樣，最終委派哪一位或哪些指定法官審理個別案件，屬於司法機構獨立行使

的司法職能。行政長官（或政府）在這個過程中是完全不能，也不會干預的。因此，並不能說特首（或政府）直接干預了香港司法體系對國安犯罪案件的審理過程。¹²

事實上，指定專責法官處理特定法律範疇的情況並不罕見。在香港，有專責處理建築和仲裁案件、商業和海事案件的法官。

香港特區終審法院現任首席法官於2022年法律年度開啟典禮中亦表示，「指定法官與其他所有的法官一樣，必須恪守根據《基本法》第一百零四條的規定所作出的司法誓言。根據司法誓言，法官宣誓盡忠職守、奉公守法、公正廉潔，以無懼、無偏、無私、無欺之精神，維護法制，主持正義，為香港特別行政區服務。這意味法官在作出司法決定的過程中，不容有任何政治或其個人因素的考慮。司法誓言在指定法官審理國家安全案件時具約束力，與他們審理其他類別案件並無二致。」

此外，根據基本法第88條相關規定，香港所有法官在經由司法人員推薦委員會推薦之後，都需要由特首任命。而且，所有的法官的入職宣誓中都聲明其將依法全面履行他的司法職責，毫不畏懼、偏袒。¹³

綜上所述，僅僅由於特首訂立負責涉及國家安全案件的指定法官名單，而得出此舉會干預獨立的司法權的結論是毫無根據的。

與其他司法管轄區的比較

在英國 *Campbell and Fell v. the United Kingdom*¹⁴ 一案中，法官強調如果行政機關任命的法官在審判時能夠不受影響或壓

¹² 唐英傑 訴 香港特別行政區 (*Tong Ying Kit v HKSAR*) [2020] HKCFI 2133, 第54段

¹³ 唐英傑 訴 香港特別行政區 (*Tong Ying Kit v HKSAR*) [2020] HKCFI 2133, 第58段

¹⁴ *Campbell and Fell v. the United Kingdom* [1984] ECHR 8

力，這樣的任命方式是允許的¹⁵。同樣，在波蘭 *Henryk Urban and Ryszard Urban v. Poland*¹⁶一案中，法官也強調行政機關任命的法官是允許的¹⁷。

根據由歐洲人權法院於2014年頒布的《歐洲人權公約第6條適用指南獲得公正審判的權利（刑事部分）》(Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial (criminal limb))第58段指出“如果行政機關任命的法官在審判時能夠不受影響或壓力，這樣的任命方式也是允許的。”因此，在沒有發現任何跡象顯示法官受影響或壓力時，允許行政部門指定法官其實是一種國際慣例。

3. 沒有由陪審團審判的權利

根據《香港國安法》第46條，“對高等法院原訟法庭進行的就危害國家安全犯罪案件提起的刑事檢控程序，律政司長可基於保護國家秘密、案件具有涉外因素或者保障陪審員及其家人的人身安全等理由，發出證書指示相關訴訟毋須在有陪審團的情況下進行審理。凡律政司長發出上述證書，高等法院原訟法庭應當在沒有陪審團的情況下進行審理，並由三名法官組成審判庭。”

香港高等法院原訟法院審理的嚴重罪行，一貫採用陪審團制度。這是香港法律體制中重要的特點之一，被告人會在法庭內由社會其他人士來根據案件中的事實，決定案中的被告是否有罪。

有批評指，取消陪審團會使得有政治動機的起訴變得更加容易。也與基本法第八十六條規定「原在香港實行的陪審制度的原則予以保留」相矛盾。

¹⁵ *Campbell and Fell v. the United Kingdom* [1984] ECHR 8, 第79段

¹⁶ *Henryk Urban and Ryszard Urban v. Poland* [2010] ECHR 1903

¹⁷ *Henryk Urban and Ryszard Urban v. Poland* [2010] ECHR 1903, 第49段

首先，這是香港法例賦予律政司司長的權力。法庭已在多宗案件中確認，陪審團審訊的安排並非被告在法律上的必然權利，重要的是律政司司長行使這權力並不會削弱被告人任何合法權利。¹⁸

其次，香港刑法體系中並沒有必須設立陪審團的要求（這個共識早在2010年 *Lily Chiang v Secretary for Justice*¹⁹ 的判例中予以確立）。²⁰

《香港國安法》第46條列明律政司司長發出證書指示相關刑事訴訟毋須設陪審團需要滿足的條件：(1)保護國家機密；(2)案件具有涉外因素；或者(3)保障陪審員及其家人的人身安全等理由。這些考慮因素決定了案件是否適合設立陪審團。《香港國安法》賦予律政司司長去權衡保護被告與保護國家安全或陪審團成員安全的利弊，並從中作出最合適的選擇。這其實是一種靈活高效、解決問題的方式，並不會削弱被告人任何合法權利，包括其獲得公平審訊的權利。

儘管基本法第86條指出“原在香港實行的陪審制度的原則予以保留”，但“保留”的正確理解是保留這個體系，並非保留這個體系的所有組成元素。²¹

正如上訴法庭在 *唐英傑 訴 律政司司長* 一案中指出：“的確在原訟法庭的審訊中設立陪審團是常規審訊模式，但不應視為在刑事法律程序中達致公平審訊的唯一方式。《基本法》第八十七條或《香港人權法案》第十條均無訂明，在陪審團的情況下進行審訊是公平審判中裁定刑事控罪不可缺少的元素。當一發生第三項理由[即保障陪審員及其家人的人身安全等理由]所述的情況，而

¹⁸ *唐英傑 訴 律政司司長 (Tong Ying Kit v SJ)* [2021] HKCFI 1397, 第7(1)及40段

¹⁹ *Lily Chiang v Secretary for Justice* [2010] 13 HKCFAR 208

²⁰ *唐英傑 訴 律政司司長 (Tong Ying Kit v SJ)* [2021] HKCFI 1397, 第7(1)段

²¹ *唐英傑 訴 律政司司長 (Tong Ying Kit v SJ)* [2021] HKCFI 1397, 第28(a)段

導致出現未能通過陪審團以達致公平審訊目的之實際風險，唯一確保達致公平審訊的方法是按照《香港國安法》第四十六條第一款，由三名法官組成審判庭在沒有陪審團的情況下審理案件。此審訊方式符合控方維護公平審訊的合法權益，亦保障被告人獲得公平審訊的憲制權利。”²²

適用於有陪審團參與審訊的程序保障措施，同樣適用於沒有陪審團的情況下進行審理的危害國家安全犯罪案件，確保被告人獲得公平審訊，而被告人一旦被定罪及判刑，亦可循相同的上訴程序提出上訴。在《基本法》、《香港國安法》和《香港人權法案》的保障下，刑事罪行包括涉及《香港國安法》罪行的被告人，均享有接受行使獨立審判權的司法機關進行公正審判的權利。

與其他司法管轄區的比較

部分推行普通法的西方國家亦有類似制度，訂明若涉及嚴重刑事罪行，或陪審團會受到不正當干預的情況下，審訊可不設陪審團，以確保司法公正不受影響。²³

4. 公開審判原則

「公開審判」原則，是指根據《公民權利和政治權利國際公約》第14條，及《香港國安法》第41條作出規定，審判應當公開進行。除非涉及國家機密或公共秩序，否則審判必須在公開法庭進行。涉及國家秘密、公共秩序等情形不宜公開審理的，禁止新聞界和公眾旁聽全部或者一部分審理程序，但判決結果應當一律公開宣佈。

²² 唐英傑 訴 律政司司長 (*Tong Ying Kit v SJ*) [2021] HKCA 912, 第43段

²³ 唐英傑 訴 律政司司長 (*Tong Ying Kit v SJ*) [2021] HKCFI 1397, 第7(3), 10及32段

自《香港國安法》通過至今，涉及《香港國安法》的案件均進行了公開審判、審訊過程公開透明，法庭的決定和判決都會在司法機構的網站上看到，供大眾免費閱覽。市民可以輕易瞭解相關法庭程序和判決理由。其次，在實施及執行《香港國安法》時，《香港國安法》有關條文已被兼容在香港法律的體系內，充分體現了第41條的公開審判精神。實施過程並沒有違反原有的人權保護及法治原則(包括公平、公開審判，對被告及嫌疑人人身自由保障的原則)。因而，與其他普通法地區相較而言，並沒有過於嚴厲。[#]



[#] 本文內容為講者所提供及經編輯修改後的講辭

時間關係，大會希望我用原來的答問環節做一個好簡單的總結。三位嘉賓就《香港國安法》實施的法理發展都作了很精闢及獨到的見解。

譚耀豪資深大律師特別強調，《香港國安法》及《刑事罪行條例》有關罪行的條文其實非常清晰，以及僅針對極少數嚴重危害國家安全的犯罪分子，所涉的案情是極端的，一般人是不會誤墮法網的，而國家安全的案件跟其它刑事案件一樣，控方必須舉證，而且要達到毫無合理疑點的標準，[被告人]才可被定罪。

張天任資深大律師指明了民事案件在國家安全法律上面的法理發展起到重要作用，比如法庭確立了根據《基本法》及《香港國安法》，全國人大常委會有權對《香港國安法》的條文作出解釋，而且香港法院是有責任遵從。按照在一國兩制原則下依循這些解釋，亦都表明了法院行使獨立審判權，根據既定的普通法原則解釋及實施《國安法》，同時亦體現了法庭是充分尊重行政機關對國家安全事務的判斷。

而最後Thomas跟我們分享了《香港國安法》內在刑事程序，特別是保釋制度裏面跟海外不同司法機構作比較。刑事罪行的被告人在《基本法》及《香港人權法案》的保障下，由享有獨立審判權的司法機關進行公平審訊。

時間關係，我們的環節便到此為止，我再次感謝律政司及支持機構悉心安排這個法律論壇，也感謝線上線下的你細心聆聽，多謝大家！



回顧《香港國安法》 的實施及法理發展

副刑事檢控專員
譚耀豪資深大律師



維護國家安全的法律體系

- 針對危害國家安全的行為，打擊極少數進行極端行為、破壞國家安全的壞分子
- 最近通過的《維護國家安全條例》第7條清楚訂明，危害國家安全的罪行包括：
 1. 《香港國安法》下規定的四類罪行
 2. 根據《香港國安法》第43條下訂立、賦予執法機關相關的法律權力的《實施細則》下的罪行
 3. 《維護國家安全條例》所訂下的罪行
 4. 特區的法律下其他危害國家安全的罪行

危害國家安全罪行的 案例分享

唐英傑案

國安法律論壇
NATIONAL SECURITY LEGAL FORUM
6月8日・JUN 8・2024

律政司
DEPARTMENT OF JUSTICE
Department of Justice
The Government of the Hong Kong
Special Administrative Region

- 在詮釋罪行時，法院根據法律條文的用字，清楚界定煽動分裂國家罪和實施恐怖活動罪的基本元素。
- 被告人在《香港國安法》生效後、香港特區成立日作出的行為，無疑是衝擊香港作為國家一部分的事實，也公然挑戰香港特區的執法機關。
- 法院在量刑時指出，任何分裂國家的行為、特別是帶有分裂色彩的恐怖活動，必須被判處適當並且具阻嚇性的刑罰。法院根據案情的嚴重性，判處被告人入獄9年。

案件參考索引：
[2021] HKCFI 2200（裁決）
[2021] HKCFI 2239（判刑）

馬俊文案

國安法律論壇
NATIONAL SECURITY LEGAL FORUM
6月8日・JUN 8・2024

律政司
DEPARTMENT OF JUSTICE
Department of Justice
The Government of the Hong Kong
Special Administrative Region

- 被告人的極端行為包括以自己曾被拘捕後獲得保釋為例子，向公眾虛假地聲稱作出宣揚「港獨」的行為並不違法，並於保釋期間接受記者訪問，重複煽動他人分裂國家，蔑視法紀。
- 被告人更呼籲針對性向學生、即未來社會棟樑宣揚「港獨」理念等。
- 法院在裁決中強調，所有人皆要接受在一個法治社會中，任何人的自由和權利都不是無止境的。

案件參考索引：
[2021] HKDC 1325（裁決）
[2021] HKDC 1406（判刑）
[2022] 5 HKLRD 221（上訴法庭）

關於「光城者」組織的案件

- 涉及多名被告，當中一名被告人承認串謀恐怖活動罪，原訟法庭採納10年為量刑基準，給予認罪和其他求情扣減後，判處被告人6年監禁。
- 該被告人是計劃的首腦份子和負責招攬他人加入，而計劃包括選擇法院範圍作為爆炸目標，案情極其嚴重。
- 即使被告人相對年輕，法院亦必須以阻嚇性刑罰作為主要考慮以保障社會安全。

案件參考索引：
[2024] HKCFI 280（判刑）

「集英揚武堂」案

- 其中一名被告人承認煽動他人顛覆國家政權罪。
- 案情指被告人組織「集英揚武堂」，透過互聯網、開辦武術課程和儲存武器等，意圖用暴力革命推翻國家政權及特區政府。
- 根據案情，區域法院裁定案件屬於嚴重情節，給予認罪扣減後，連同其他罪行判處被告人監禁5年。

案件參考索引：
[2023] HKDC 168（判刑）

「羊村繪本」案

國安法律論壇
NATIONAL SECURITY LEGAL FORUM
6月8日 · JUN 8 · 2024

律政司
Department of Justice
香港特別行政區
The Government of the Hong Kong Special Administrative Region

- 多名被告人以香港言語治療師總工會的名義，刊印、發布及展示具煽動意圖的兒童繪本。
- 法院裁定繪本的內容顯然不承認中華人民共和國已正當地恢復對香港特區行使主權，並引導兒童去憎恨中央和激起他們對中央的離叛。法院最終裁定各被告人罪名成立。
- 法院在判刑時強調，被告人所做的是洗腦工作，引導極年幼的兒童接受他們的煽動主張，在國家和香港特區播下不穩定的種子。
- 考慮到罪行嚴重，法院最終判處各被告人19個月監禁。

案件參考索引：
[2022] 4 HKLRD 657（裁決）
[2022] HKDC 1004（判刑）

譚得志案

國安法律論壇
NATIONAL SECURITY LEGAL FORUM
6月8日 · JUN 8 · 2024

律政司
Department of Justice
香港特別行政區
The Government of the Hong Kong Special Administrative Region

- 被告人面對多項控罪包括煽動罪，經審訊後被裁定大部分罪名成立。
- 上訴法庭的判決：
 1. 上訴法庭裁定根據當時《刑事罪行條例》的成文法，除了法律條文中明確訂明涉及煽惑他人使用暴力的煽動意圖之外，其他法律條文所訂明構成煽動意圖的情況，是無須證明犯案者有煽動暴力的意圖。
 2. 上訴法庭裁定煽動罪是合憲的。法律條文具有法律確定性。
 3. 上訴法庭裁定條文沒有超越為達到其合乎法理之目的所需的程度。

案件參考索引：
[2022] HKDC 208（裁決）
[2022] HKDC 343（判刑）
[2024] HKCA 231（上訴法庭）

《香港國安法》實施四年 以來的回顧和展望

- 法院在詮釋維護國家安全相關罪行的條文時，都能夠清楚界定罪行的元素，而法院的判決亦說明相關定罪、判刑的基礎。
- 市民大眾若果有留意案例，認識法律的規定，遵守法紀，其實是不會誤墮法網。
- 一般人根本不會作出危害國家安全的行為，有關案例所提及的犯罪行為，都是遠遠超越了基本權利所容許的底線，亦是明顯地危害國家安全的罪行。
- 危害國家安全的風險是一點也嫌多，而至今的檢控案例正正反映了香港特區維護國家安全的法律制度行之有效。



回顧《中華人民共和國香港特別行政區 維護國家安全法》（《香港國安法》） 的實施及法理發展

張天任資深大律師（香港天博大律師事務所）

解釋《香港國安法》



香港特區 訴 呂世瑜 (2023) 26 HKCFAR 332

「本院在詮釋《基本法》（及延伸至詮釋《香港國安法》）時，採用的是在 入境事務處處長 對 莊豐源 案 [(2001) 4 HKCFAR 211]中確立的普通法處理方法。」（第45段）



香港特區 訴 黎智英 (2021) 24 HKCFAR 33 第29段

立法原意是讓《香港國安法》與香港特區的法律並行，尋求與本地法律的「銜接、兼容和互補關係」。

香港特區 訴 呂世瑜 (2023) 26 HKCFAR 332 第25段

《香港國安法》的立法原意，是將《香港國安法》融入香港特區的法律制度並與之一致並行，除非本地法律被與其不一致的《香港國安法》條文以明文或必然含意的方式取代，否則本地法律如常適用。

香港特別行政區本地法律規定與本法不一致的，適用本法規定。

本法的解釋權屬於全國人民代表大會常務委員會。



莊豐源 (2001) 4 HKCFAR 211

常委會解釋《基本法》的權力在特區是完全獲得承認及尊重的。實施「一國兩制」原則的《基本法》的效力就是如此。一國之內存在兩制，常委會在不同制度下依照第一百五十八條的規定作出的解釋在特區是具有約束力的，並且是特區制度的一部分。



黎智英訴香港特區維護國家安全委員會 [2024] HKCA 400

「全國人大常委會根據《香港國安法》有權解釋《香港國安法》條文。在內地的大陸法制度下，全國人大常委會就《香港國安法》條文的立法解釋可能闡明或補充法律。香港法院在『一國兩制』原則下有責任依從《解釋》。」（第38段）

不具有香港特別行政區全面執業資格的海外律師是否可以擔任危害國家安全犯罪案件的辯護人或者訴訟代理人的問題，屬於《中華人民共和國香港特別行政區維護國家安全法》第四十七條所規定的需要認定的問題，應當取得行政長官發出的證明書。如香港特別行政區法院沒有向行政長官提出並取得行政長官就該等問題發出的證明書，香港特別行政區維護國家安全委員會應當根據《中華人民共和國香港特別行政區維護國家安全法》第十四條的規定履行法定職責，對該等情況和問題作出相關判斷和決定。

《香港國安法》第四十七條

香港特別行政區法院在審理案件中遇有涉及有關行為是否涉及國家安全或者有關證據材料是否涉及國家秘密的認定問題，應取得行政長官就該等問題發出的證明書，上述證明書對法院有約束力。



**黎智英訴律政司司長 [2023] 3 HKLRD 275，
上訴時維持原判 [2024] HKCA 400**

「……法院均非享有不受限制的司法管轄權，其司法管轄權必然受限於特定法律制度下的憲法及相關法例的規定。法院必須接納此等司法管轄權的限制，按其權限行事，作為其法律制度的憲制秩序之一。這一點對法治的概念及實踐至關重要。」
（第16段）



**黎智英訴律政司司長 [2023] 3 HKLRD 275，
上訴時維持原判 [2024] HKCA 400**

「國安委在《國安法》第十四條下的職責專屬中央政府事權，而中央政府對有關香港特區的國家安全事務負有根本責任，因此監督國安委的權力保留為中央政府專有。就此等屬中央政府事權的事宜，香港特區法院作為地方行政區域的法院，並不獲賦予任何角色或權力，原因是特區法院明顯在憲制上不具備處理此等事宜的資格及能力。」（第35段）

《法律執業者條例》（第159章）第27B條

- (1) 除非有第(2)款指明的例外情況，否則任何人不得根據第27(4)條就任何涉及國家安全的案件獲認許為大律師。
- (2) 上述例外情況是行政長官有充分理由相信，有關的人就有關案件以大律師身分執業或行事，不涉及國家安全或不會不利於國家安全。

《香港國安法》第八條

香港特別行政區執法、司法機關應當切實執行本法和香港特別行政區現行法律有關防範、制止和懲治危害國家安全行為和活動的規定，有效維護國家安全。

歌曲禁制令 - 律政司司長 訴 作出申索的註明中第
1(a)、(b)、(c)或(d)段所禁止的行為的人 (HCA
855/2023) - 初審[2023] HKCFI 1950, 上訴 [2024]
HKCA 442

四項受禁行為是：

- (1) 廣播該歌曲：
 - (i) 意圖煽動他人犯分裂國家罪；或
 - (ii) 具煽動意圖
- (2) 廣播該歌曲，從而：
 - (i) 使之相當可能被誤會為國歌；
 - (ii) 意指香港特區是一個獨立國家並擁有自身的國歌；意圖侮辱國歌；
- (3) 幫助他人實施受禁行為
- (4) 明知而授權他人實施任何受禁行為，或明知而參與任何受禁行為

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司法尊重行政機關對國家安全的評估

憲制理由：行政機關負有評估和應對國家安全風險的責任；法院必須認清行政、立法及司法權力之間的憲制界線

制度理由：行政機關的專業知識及獲取情報的途徑使其最適合就國家安全事宜作出評估判斷



*Zamora*案 [1916] 2 AC 77

「那些負責國家安全的機構或人士應當是國家安全要求的唯一裁判者。」

《實施細則》附表3第3條

保安局局長如有合理理由懷疑某人所持有的任何財產是罪行相關財產，可藉指明該財產的書面通知，指示除根據保安局局長批予的特許的授權外，任何人不得直接或間接處理該財產。

凍結財產通知書的目的

- 為日後沒收或充公保存財產
- 防止財產被用作資助或協助《香港國安法》罪行
- 防止任何不利於正在進行的有關《香港國安法》罪行的調查或法律程序的財產處理

《實施細則》附表1第2條

根據第(2)款發出的手令授權有關警務人員：(a)進入（並在有必要時可使用合理武力進入）和搜查有關地方；(b)檢查、檢驗、搜查、檢取、移走和扣留在該地方而該人員合理地相信屬指明證據的任何物件；(c)扣留在該地方發現的任何人，直至對該地方的搜查已完畢為止。

「指明證據」指屬或包含（或相當可能屬或包含）危害國家安全罪行的證據的任何物件。

結語

回顧香港國安法 的實施及法理發展

蘇紹聰博士

2024年6月8日

- 保釋
- 審判制度
 - 指定法官
 - 陪審團
 - 公平公開審判
- 總結

保釋



- 第42條
 - … 除非法官有充足理由相信[被嫌疑人或被告]不會繼續實施危害國家安全行為的，不得准予保釋。
- 問題
- Tong Ying Kit v HKSAR [2020] HKCFI 2133
- HKSAR v. Lai Chee Ying [2021] HKCFA 3
- 比較

指定法官制度



- 第44條

香港特別行政區行政長官應當從裁判官、區域法院法官、高等法院原訟法庭法官、上訴法庭法官以及終審法院法官中指定若干名法官，也可從暫委或者特委法官中指定若干名法官，負責處理危害國家安全犯罪案件。行政長官在指定法官前可徵詢香港特別行政區維護國家安全委員會和終審法院首席法官的意見。上述指定法官任期一年。
- 問題
- HKSAR v. Lai Chee Ying [2023] HKCFI 1440
- Tong Ying Kit v HKSAR [2020] HKCFI 2133
- Campbell and Fell v the U.K. [1984] ECHR 8
- Henryk Urban and Ryszard Urban v Poland [2010] ECHR 1903
- 比較

陪審團



- 第46條

律政司司長有權基於保護國家機密等理由，發出證書指示相關訴訟無須設立陪審團，而是由三位法官組成審判庭共同判決。

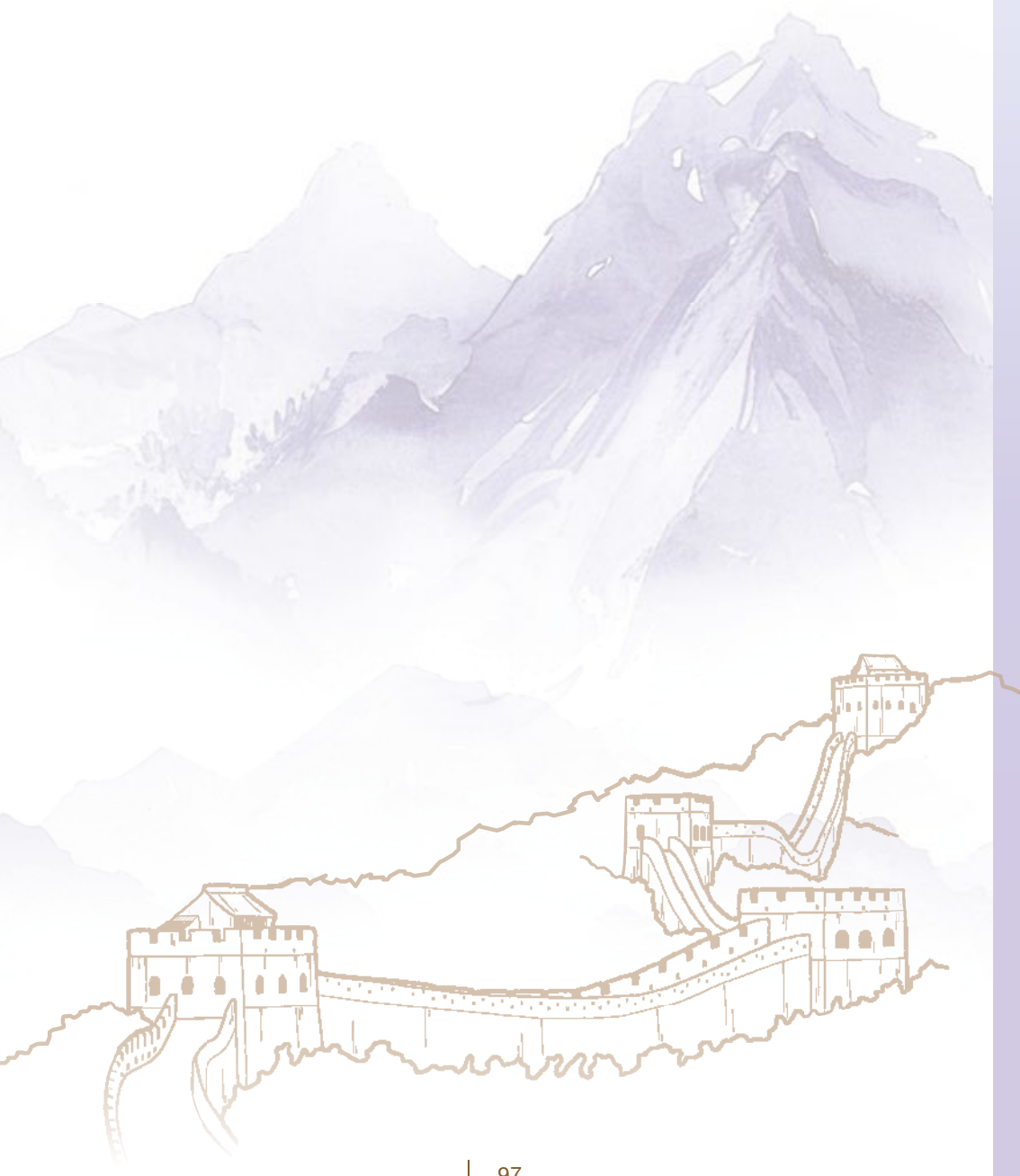
- 問題
- Lily Chiang v Secretary for Justice (2010) 13 HKCFAR 208
- Tong Ying Kit v HKSAR [2020] HKCFI 2133
- Tong Ying Kit v SJ [2021] HKCFI 1397
- 比較

公開審判



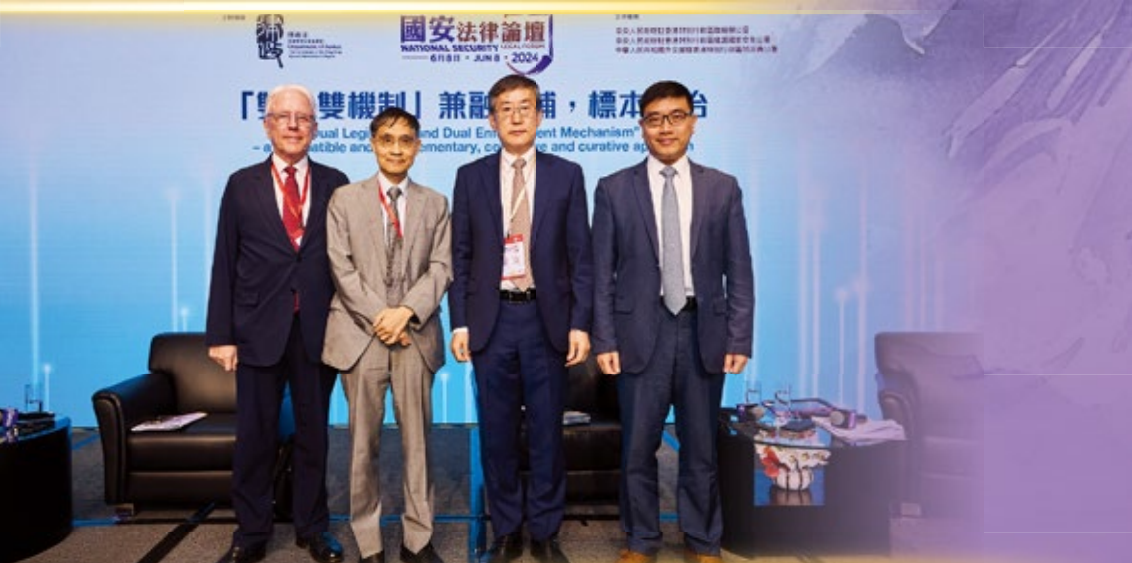
- 第42條
- 現狀





座談環節 2

「雙法雙機制」兼融互補， 標本兼治



座談環節
Panel Session

「雙法雙機制」兼融互補，標本兼治

"Dual Legislation and Dual Enforcement Mechanism"
- a compatible and complementary, corrective and curative approach

江樂士教授 GBS, SC
Professor I Grenville CROSS GBS, SC
資深大學法律學院教授
Honorary Professor, Faculty of Law of The University of Hong Kong

陳弘毅教授 GBS, JP
Professor Albert CHEN Hung-ye GBS, JP
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Honorary Member, Research Association of Hong Kong & Macao Studies
Emerging Dean Lee Yee-Ping and Chair of Constitutional Law in the Department of Law, Faculty of Law of The University of Hong Kong

韓大元教授
Professor HAN Dayuan
全國人大憲法學部特聘教授、國際私法法學特聘教授
全國港澳研究會理事
中國人民大學法學院教授
Member, Committee for the Basic Law of the Hong Kong Special Administrative Region of the Standing Committee of the National People's Congress
Hon. Professor, Chinese Association of Hong Kong & Macao Studies
Professor, School of the Renmin University of China

主持人 Moderator

李浩然博士 MH, JP
Dr The Hon Hoey Simon LEE MH, JP
全國人大常委會港澳事務委員會副主任兼法律事務專員
中華人民共和國香港特別行政區立法會議員
Member, Committee for the Basic Law of the Hong Kong Special Administrative Region of the Standing Committee of the National People's Congress
Member of the Legislative Council, Hong Kong Special Administrative Region of the People's Republic of China



主持人

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基本法委員會委員

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江樂士教授 GBS SC

香港大學法律學院榮譽教授



李浩然博士 MH JP

大家好，我是這一節的主持李浩然，我們這一個環節的討論內容是「『雙法雙機制』兼容互補，標本兼治」。在今年的三月份，我們已經通過了《維護國家安全條例》，亦都在同月二十三日正式生效。這個是標誌著上個世紀80年代《基本法》起草一次非常之重要的延伸事件。

《香港國安法》及《維護國家安全條例》，分別是由國家及香港特區的層面來制定。我們這個環節將會探討兩部法律，如何在制定及演繹上面兼容互補、相輔相成，以發揮好「雙法雙機制」的保障，為香港社會提供高水準的安全。今次的立法是標誌著香港維護國家安全立法完成了由憲制法律、中央立法到特區立法的全鏈條的法制建設，而要做到「雙法雙機制」的保障，就需要《維護國家安全條例》及《香港國安法》實現有機銜接。

《維護國家安全條例》及《香港國安法》有效銜接、兼容及互補，在實體法、程序法、組織法各個方面是體現了《香港國安法》的原則及精神，條例弁言部分明確了《香港國安法》及解釋了其制定依據。導言部分，就明確了《香港國安法》規定的維護國家安全，應當遵守尊重及保障人權的原則、罪刑法定的原則，以及保障辯護權等等的法治原則。

在實體法方面，《維護國家安全條例》規定的罪行與《香港國安法》規定的罪行是不相重合的。落實了《香港國安法》關於危害國家安全罪行的普遍性規定。至於程序法方面，明確適用《香港國安法》的第四章規定的程序，貫徹指定法官制度，並且在《香港國安法》的基礎上進行進一步完善有關的程序規定。

最後，在組織法方面，配合《香港國安法》賦予行政長官的職權及設立香港國安委的規定，進一步細化行政長官行使指令權、發出證明書等等的規範，落實全國人大常委會對《香港國安法》第14條及第47條的解釋。

以下時間，我們有三位的專家與我們進一步去闡述我們剛才所講的內容，他們分別是韓大元教授：韓大元教授是中國人民大學法學院的教授，亦都是全國人大常委會香港基本法委員會的委員，以及全國港澳研究會的副會長。

第二位嘉賓陳弘毅教授：陳弘毅教授是香港大學法學院法律學系鄭陳蘭如基金教授及憲法學講座教授，亦都是全國港澳研究會理事。

至於第三位嘉賓是江樂士教授：他是香港大學法律學院的榮譽教授。

Last but not least, we have Professor Cross with us. He is an honorary professor at the Faculty of Law of the University of Hong Kong.

[*以下是講者上述英語發言的中譯本：

最後，是江樂士教授。江樂士教授是香港大學法律學院的榮譽教授。]

韓教授是會從內地的視角來介紹「雙法雙機制」及其未來發展。

至於陳弘毅教授就會從香港的角度去闡述兩者，從而跟韓教授的內容，形成一個有益的對話。

最後，江樂士教授會從《維護國家安全條例》與國際實踐做一個比較，顯示出我們和一些其他的普通法地區作比較時，香港立法的公道。

Professor Cross may wish to share views on how the Ordinance is in line with international practice.

[*以下是講者上述英語發言的中譯本：

江樂士教授將會就《維護國家安全條例》如何跟國際上的通行做法接軌分享他的看法。]

將時間首先交給韓大元教授。



韓大元教授

維護國家安全的“雙法雙機制”的法理基礎

法律的生命在於實施，法律頒布後需要全社會尊重已生效的法律文本，在法律實施中凝聚社會共識，特別是要發揮司法機關在《維護國家安全條例》（以下簡稱“《條例》”）實施中的功能。隨着《條例》的實施，在“一國兩制”下，香港特區形成了以憲法、基本法和全國人大“5.28決定”為基礎、由《香港國安法》與《條例》共同組成、駐港國安公署與特區國安委有機銜接的“雙法雙執行機制”（以下簡稱“雙法雙機制”）規範格局，需要從法理上進行探討。

一、“雙法雙機制”共同的法規範基礎

在憲法和基本法共同構成的特區憲制秩序下，“雙法雙機制”根本的法律依據是憲法，而香港基本法、全國人大“5.28決定”是共同的法律基礎。這是我們分析“雙法雙機制”法理的基本出發點。

（一）“雙法雙機制”首先要維護國家安全，而國家安全在憲法秩序中居於極其重要地位，憲法構成“雙法雙機制”的根本法律根據。中國憲法上國家安全的規範主要體現在憲法序言、憲法總綱、國家機構與公民的基本權利和義務等不同的文本內容之中。

憲法總綱第28條、29條明確規定了維護國家安全中國家的責任與義務，如第28條規定：國家維護社會秩序，鎮壓叛國和其他危害國家安全的犯罪活動，制裁危害社會治安、破壞社會主義經濟和其他犯罪的活動，懲辦和改造犯罪分子。第29條規定了國家武裝力量對國家的保護義務。

第二章公民的基本權利和義務中，除第54條規定“維護祖國的安全”義務外，第52條還規定“維護國家統一和全國各民族團結”，第53條規定了“遵守憲法和法律”的義務，並通過第51條規定“行使自由和權利的時候，不得損害國家的、社會的、集體的利益和其他公民的合法的自由和權利”。

在第三章國家機構中，憲法對不同的國家機關的職權及其界限做了具體規定，實質上確立了維護國家安全的義務主體。

（二）國家安全是中央事權，中央對香港特別行政區有關的國家安全事務負有根本責任。但考慮到“一國兩制”制度的特殊性和香港特區維護國家安全的實際情況，《基本法》第23條賦予特區自行制定維護國家安全立法的職責。特區負有自行制定維護國家安全立法的職責，這不影響中央依法制定特區維護國家安全立法。

（三）《條例》在弁言中明確立法依據與目的，即“鑑於《中華人民共和國憲法》及以下法律、決定及解釋下有關特區履行維護國家安全的憲制責任以及完善特區維護國家安全的法律的要求——”。同時，《條例》導言在界定國家安全的涵義時，直接引用《中華人民共和國國家安全法》第二條有關國家安全定義，明確國家安全的標準及其權威性，也成為《條例》的重要特色與原則。

總之，以憲法作為根本法律根據，在基本法和全國人大“5.28決定”下，形成《香港國安法》和《條例》同步實施，駐港國安公署與特區國安委有效互動的“雙法-雙機制”格局。

二、“雙法”的規範相互融貫性

（一）作為中央立法的《香港國安法》

《香港國安法》具有鮮明的特色，是一部將組織法、實體法、程序法有機統一的綜合性立法，在立法體例上進行了重大創新。同時，這種具有內地大陸法特色的刑事實體法和程序法在香港普通法制度下實施，也是“一國兩制”在法治實踐過程中表現出的新樣態。

從刑事罪名的規定上看，《香港國安法》規定四大類罪行，即分裂國家罪、顛覆國家政權罪、恐怖活動罪和勾結外國或者境外勢力危害國家安全罪，其中既涉及《基本法》第23條中規定的分裂國家和顛覆中央人民政府兩類罪行，也包含了針對“修例風波”暴露出的國家安全危險和隱患作出的必要補充。

同時，在全國人大“5.28決定”中規定，香港特區應當儘早完成香港基本法規定的維護國家安全立法，清楚說明《香港國安法》與特區本地維護國家安全立法並行適用的關係。

（二）作為特區立法的《條例》

《條例》根據《基本法》第23條規定、全國人大“5.28決定”、《香港國安法》及其解釋制定，《條例》主要規定叛國、煽動叛亂、國家秘密與間諜、危害國家安全的破壞活動、危害國家安全的境外干預及從事危害國家安全活動的組織五類罪行，實現了實體法、程序法與組織性規範的有機結合，在立法框架上與《香港國安法》保持了必要的銜接性。基本法23條立法的公眾諮詢文件指出，《基本法》第23條原則性和概括性規定了七類危害國家安全的行為，但並不意味着香港特區只能針對這七類危害國家安全的行為進行立法。

《基本法》第23條的根本要旨是要求香港特區自行立法維護國家主權、安全、發展利益。因此，香港特區的維護國家安全立

法，應隨著時代發展變化，妥善應對國家當前面對及將來可能面對的傳統和非傳統國家安全風險。香港特區有責任完善維護國家安全的法律體系，以持續有效防範、制止和懲治危害國家安全行為，有效應對非傳統安全領域出現的新型風險。

所以，這五大類犯罪也對本地法律中“叛逆”“煽動”“保守國家機密”“間諜活動”的相關罪行予以調整完善，及時修改完善特區《刑事罪行條例》《官方機密條例》《社團條例》中存在的問題，進行法律規範體系上的必要“適應化”，既銜接上位法律規範，同時結合國家安全面臨的新形勢，參考借鑑其他普通法國家的立法，預防防範在間諜行為、外部干預、網絡空間對公共基礎設施的破壞以及高科技犯罪中所呈現出來的新型國安風險。

《條例》是完全在香港普通法體系下由特區立法機關制定的成文法，對特區原有法律和現行法律作出了必要的修改，既履行基本法23條規定的立法職責，又是一部在立法技術、法律術語以及原則方面維持普通法傳統的特區立法。

（三）“雙法”之間的關係

從總體上看，雙法之間是互相銜接、有效溝通、相互配套、並行適用的有機整體。

（一）《香港國安法》是《條例》制定的依據。《香港國安法》是在國家安全方面的中央立法，特區本地《條例》必須與其保持一致，這是法治穩定性與法律確定性的基本要求，也是在《條例》實施中必須遵循的一條原則。根據《香港國安法》第62條，香港特別行政區本地法律規定與本法不一致的，適用本法規定。這一條款也確立了《香港國安法》相對於香港本地立法的優先適用性，即使《條例》在《香港國安法》通過之後制定，只要涉及維護國家安全等事宜，也應優先適用《香港國安法》的相關規定。從法律位階上，明確《香港國安法》的優位性是理解“雙法”關係的前提與基本原則之一，也是解決“雙法”在實施中可能出

現的相似罪行交叉競合問題的基本規則。

(二) 《香港國安法》與《條例》同步實施、同時適用、互相補足，需要保持“雙法”規範內部的協調性。如前所述，在刑事罪名上兩者的規定有所不同，兩者同步實施既能夠有效覆蓋基本法23條的立法範圍，也能對香港特區原有法律制度中涉及國家安全的相關立法作出與時俱進的補充和修改。所以，在“雙法”實施中，需要將兩者有機統一起來，積極尋求不同規範之間的融貫性，協同發揮維護國家安全法律制度的綜合優勢。《香港國安法》第41、42條有關保釋的規定，在《條例》當中得到了細化，第7部第1分部第3次分部就向獲保釋人施加適當限制對執法權作出多項限制性規定，有效釋除公眾對“執法權力會否不受約束”的疑慮。

(三) 無論是實施《香港國安法》還是《條例》，都需要充分體現尊重和保障人權的原則，將保障特區居民依法享有的自由和權利作為基本原則，在維護國家安全和保障居民自由之間達致合理平衡。《基本法》第三章明確規定特區居民的基本權利，《香港國安法》第4條亦明確規定香港特區維護國家安全應當尊重和保障人權，依法保護香港居民根據《基本法》和兩個人權公約適用於香港的有關規定所享有的包括言論、新聞、出版的自由，結社、集會、遊行、示威的自由在內的權利和自由。

《條例》明確規定的立法三項基本原則之一就是尊重和保障人權，並將這一原則貫穿和體現於整個條例各部分的規定中。無論是“一國兩制”的最高原則，還是法治原則，其精髓與終極目標就是保障人的尊嚴、自由與安全，服務於特區居民的福祉，為居民的安寧、安心、安全的生活創造良好的環境與條件。因此，國家安全與保障居民權利和自由是相輔相成的統一體，不能將兩者隔裂開來，更不能對立起來。

《條例》在立法理念與條文的設計中，始終關注安全與自由

的合理平衡問題。例如，明確國家安全的定義，給予社會合理預期，統一對國家安全的認識；精準針對危害國家安全行為，有效釋除公眾對於行使正當權利和自由是否會違法的疑慮；明確免責辯護條款，有效釋除公眾對“言論和新聞自由會否受限”的疑慮；通過對警權行使訂明清晰的條件及限制，在實體與程序上構建維護國家安全與保障人權之間平衡的機制與程序。

（四）“雙法”與內地國家安全法律體系的區別

在“一國兩制”方針下，在國家安全事務領域、採取的立法形式以及地方立法權等方面，特區“雙法”與內地國家安全法律體系有不同的特質。

在憲法之下，內地維護國家安全法律規範以《國家安全法》為統領，包括傳統安全以及非傳統安全兩大領域的專門立法，形成覆蓋完整的國家安全法律體系。自2014年總體國家安全觀提出以來，共制定了十余部專門法律以強化對政治安全、軍事安全和國土安全等傳統安全領域的保障。如《反間諜法》《國家安全法》《反恐怖主義法》《境外非政府組織境內活動管理法》《網絡安全法》《生物安全法》《數據安全法》等專門法律。

從立法形式上看，內地維護國家安全法律的規範將綱領性與強制性融為一體。以《反間諜法》第5章規定為例，即便部分規範對危害國安行為設定制裁，但相應的刑事罰則仍交由《刑法》規定。為實施這些法律，中央層面制定了《保守國家秘密法實施條例》等行政法規。

從地方立法權看，國家安全屬於中央事權，屬於法律保留事項，非經法律明確授權不得由地方制定國安立法。《國家安全法》第40條第1款和第2款對地方人大及縣級以上地方人大常委會和地方政府分別設定了“保證國家安全法律法規的遵守和執行”以及“管理本行政區域內的國家安全工作”的職責，為制定相關實施細則提供了依據。

與內地相關國家安全法律相比，“雙法”體現出三點不同之處。首先，在事務領域上，“雙法”更多聚焦在政治安全等領域，包含網絡安全等非傳統安全領域。其次，就立法形式論，“雙法”多數規範採取精細化的表述，直接設定了刑事罪行的構成與制裁。最後，《條例》在基本法第23條明確授權下由特區立法機關制定，體現“一國兩制”下中央對特區的高度信任與尊重。

總之，“雙法”相較於內地相關法律的這些特質，彰顯出對“一國兩制”方針的堅持，並充分尊重“兩制”之間的差異。

三、“雙機制”的規範銜接

《香港國安法》確立了中央和特別行政區的“雙執行”機制，明確了“雙機制”的相互配合、相互協作以及良性互動，《條例》將“雙執行”機制進一步具體化，為國安法的有效實施提供程序保障。

（一）中央的執行機制

《香港國安法》在中央層面設立駐港國安公署，依法履行維護國家安全職責，對特別行政區履行維護國家安全的職責進行監督、指導、協調、支援（簡稱“監指協支”）。根據《香港國安法》第40條規定，香港特別行政區對本法規定的犯罪案件行使管轄權，但《香港國安法》第五十五條規定的情形除外。駐港國安公署是中央人民政府在香港特別行政區設立的維護國家安全的機構，是中央為實現國家安全監督和直接管轄的關鍵樞紐，反映了中央對國家安全事務的管治權，有利於協調國家安全整體戰略和香港特區的具體國安措施，以有效保障國家安全。

（二）特區的執行機制

在特區層面，《香港國安法》設立特區國安委等一整套維護國家安全機構，依法處理維護國家安全的具體事務。一般情況下，《香港國安法》規定的危害國家安全犯罪案件均由香港特區

管轄。香港國安委在這一執行機制中起到核心的協調與執行的功能，是連接中央指導與特區執行的橋樑，負責根據香港特區的實際情況管治常規情境下的國家安全事務。香港國安委由行政長官擔任主席，職能包括制定相關政策、指導和協調跨部門國家安全行動，推動香港特區在國安方面的法律和政策有效實施。全國人大常委會對《香港國安法》第十四條和四十七條的解釋再次明確，香港國安委承擔香港特區維護國家安全的法定職責，有權對是否涉及國家安全問題作出判斷和決定。

特區層面的執行機制使《香港國安法》的執行更具靈活性、高效性、針對性和適應性，不僅能夠推動《香港國安法》的精準實施，還可以通過與中央層面執行機制的協調，形成全方位、多層次的國家安全防護網絡。

（三）“雙機制”之間的關係

兩套執行機制職責分工和案件管轄劃分清晰，同時又形成互補、協作和配合關係，共同構成香港特區維護國家安全完整的制度和執行機制的重要組成部分。

（一）駐港國安公署在戰略層面為香港國安委提供指導和支持，確保特區的國安措施與國家的整體安全戰略步調一致；而香港特區國安委則負責執行常規事務。這種互補、協作和配合關係不僅強化了國安法的執行力度，還提升了執行的靈活性和針對性，為香港特區提供了綜合性的國家安全管治體系，有效防範各種內部和外部的安全威脅，既充分體現了國家安全中央事權的屬性，同時體現了中央對香港特別行政區的高度信任。

（二）《條例》110條規定，行政長官會同行政會議可為《香港國安法》第五章關乎駐港國安公署職責的條文訂立附屬法例；《條例》111條還規定行政長官可向特區政府的任何部門或機關或公務人員發佈行政指令，為駐港國安公署依法履行《香港國安法》第五章下的職責提供必需的權利、豁免、便利和配合。

(三) 《香港國安法》實施四年的實踐充分說明，駐港國安公署與香港特區國安委的“雙執行”機制是“一國兩制”原則下的創新實踐，不僅為香港特區的法治發展提供了堅強保障，也為解決“一國兩制”實踐中可能出現的各種複雜問題提供了有效的解決方案。通過這一高效、靈活的配合模式，中央與香港特區共同確保了國家安全的不可侵犯性，有效協調國家利益與地方特色的關係，保持了香港社會的開放和活力，為香港的繁榮穩定提供了堅實基礎。

四、“雙法”格局與“雙機制”的關係

總體上看，“雙法”格局為“雙執行”機制的實施提供了法律基礎，而“雙機制”則保障了“雙法”的有效執行和落實。二者共同構成香港特區維護國家安全的法律制度和執行機制的重要組成部分。

(一) “雙法”格局為“雙執行”機制提供了必要的法律依據和指引。《香港國安法》第二章規定了香港特區維護國家安全的職責和機構，第五章規定了中央人民政府駐香港特區維護國家安全機構；《條例》第110條(1)款(a)項和第111條(1)款(c)項規定了特區政府應如何配合駐港國安公署的工作，第112條規定了香港國安委的判斷和決定權，明確了香港國安委在維護國家安全事務中的權力和職責。這些規定確保“依法治港”原則的實施，使駐港國安公署和特區本地維護國家安全機構能依法有效展開維護國家安全的工作。

(二) “雙執行”機制為“雙法”的有效實施提供了重要的制度支持和保障。“雙執行”機制的運作必然會積累許多寶貴的實踐經驗，為解釋適用“雙法”提供現實依託，綜合考量中央和香港特區的實際情況，協調各方關係，確保法律解釋和適用能充分滿足實際執行的需要。

總之，“雙法”格局和“雙執行”機制在香港特區維護國家安全工作中相互促進、相互支持、相互補充，共同構建了穩健、權威、靈活與統一的有效的維護國家安全體系，為香港的長期繁榮穩定提供了堅強的法治保障。

五、“雙法”與“雙機制”實施中的司法功能

香港特區司法機關通過辦理具體案件來積累總結經驗，為“雙法”的解釋和適用提供實踐檢驗和反饋，從而不斷優化“雙法”格局，增強公眾對香港法治和“一國兩制”成功實踐的信心。在“一國兩制”下，“雙法雙機制”的實施，將給香港普通法下特區司法機關審理案件帶來新問題與新挑戰，對此我們需要加強學理研究，堅持和保持普通法的傳統，尊重香港所享有的獨立的司法權，相信法官的司法判斷與專業精神。

（一）從香港法治的傳統與發展看，“雙法-雙機制”不會影響香港普通法制度，也不會削弱香港普通法的權威性和可預見性，更不會影響香港所享有的獨立的司法權和法治原則。如前所述，依據《香港國安法》，除第55條規定的特殊情形外，特區管轄案件適用《香港國安法》和香港特區本地法律，由本地法院來審理，包括立案偵查、檢控、審判和刑罰的執行等一系列程序性事宜。在香港普通法制度下，法官在審理國安案件時，可參考外國判例，合理平衡安全與自由價值，更多採用目的解釋方法，使法律解釋符合立法原意。而且，《香港國安法》旨在防範、制止和懲治極少數人實施的嚴重危害國家安全的犯罪行為和活動，對於原有法律制度中無涉國家安全的一般案件審理並沒有影響。

（二）《條例》只是對現有已經過時或無法滿足基本法第23條憲制責任的立法進行修改，是成文法上的修改，對普通法下的司法制度並無影響。儘管法院對《香港國安法》這一全國性法律並無終局的、一般的解釋權，但需要在個案中準確把握立法原意，解釋相關概念，做出符合法律原意的判決，使法律概念保持

確定性。對《條例》實施中可能出現的新問題，我們也需要保持耐心，不斷地從個案中積累判例，推動香港普通法維護國家安全法理的逐步發展。

總之，通過《香港國安法》實施四年的實踐，香港法院已積累了審理國安案件的較成熟的司法判例，有經驗、有智慧面對“雙法-雙機制”下出現的新問題，展現普通法與時俱進的法律文化，給公眾帶來穩預期的法治生活，為世界普通法多元發展貢獻來自香港特區的新思考、新素材與新實踐。#



陳弘毅教授 GBS JP

——《香港國安法》與《維護國家安全條例》之互補關係——

全國人大常委會在關於《中華人民共和國香港特別行政區維護國家安全法（草案）》的說明中提到，在起草《中華人民共和國香港特別行政區維護國家安全法》（“《香港國安法》”）的過程中採用了五項工作原則。其中一項原則是「兼顧兩地差異，着力處理好本法與國家有關法律、香港特別行政區本地法律的銜接、兼容和互補關係」。制定《香港國安法》時，已預期香港特別行政區政府會履行其憲制責任制定本地法例，全面貫徹實施《基本法》第二十三條。《維護國家安全條例》現已制定，因此，我們可以進一步研究《香港國安法》和《維護國家安全條例》之間的「銜接、兼容和互補關係」原則。

韓教授已就《香港國安法》和《維護國家安全條例》之間的關係提供了系統性分析。而我將會從貼近實際工作的層面上，探討兩套法例的結合施行在香港如何規管某些危害國家安全活動。

本文內容為講者所提供及經編輯修改後的講辭

我會舉出四個例子加以說明：（一）煽動罪及《香港國安法》中的相關罪行；（二）保護國家秘密的法律；（三）外國干預的法律；（四）反恐怖主義的法律及相關罪行。

煽動罪及《香港國安法》中的相關罪行。根據《基本法》第二十三條，煽動叛亂是應予禁止的其中一項行為。1997年前的香港法律已包括有關煽動的法例，載於《刑事罪行條例》第9及第10條。2020年後，該法例曾在超過30宗案件中用以檢控疑犯。案例顯示，《刑事罪行條例》下的煽動罪，是《香港國安法》所指的其中一項危害國家安全罪行，《香港國安法》的程序相關條文尤其適用。新的《維護國家安全條例》第23至第28條為煽動罪。條文於起草時均以原有的《刑事罪行條例》的相關條文為基礎，該些殖民統治時期制定的條文經作出變更及適應化修改，以供香港特別行政區使用。舉例來說，該殖民統治時期的法律將煽惑他人憎恨或藐視英國君主及殖民統治當局納入刑責範圍，而現在的《維護國家安全條例》則禁止意圖引起對中國的國家根本制度或中國的國家機構的憎恨或藐視，或對其離叛的言論或刊物。

《維護國家安全條例》中的煽動罪行，現在應與《香港國安法》關乎某類煽惑行為的相關條文一併解讀，使該兩套法例可被視為結合施行，以在香港作規管言論及刊物之用。《香港國安法》的相關條文如下：（一）第二十一條（煽動分裂國家）、（二）第二十三條（煽動顛覆國家政權）、（三）第二十七條（宣揚恐怖主義／煽動實施恐怖活動），以及（四）第二十九（五）條（通過各種非法方式引發香港特別行政區居民對中央人民政府或者香港特別行政區政府的憎恨並可能造成嚴重後果）。

保護國家秘密的法律。根據《基本法》第二十三條，竊取國家機密是香港特別行政區應自行立法禁止的行為之一。在這方面，1997年前已有的法例就是以英國相應法例為基礎的《官方機密條例》。值得注意的是，《香港國安法》已經載有關於國家秘密的條文，亦即是第二十九條的第一部分。第二十九條屬《香港

國安法》的主要條文，訂立勾結外國或者境外勢力危害國家安全罪。第二十九條第一部分訂定了為外國或者境外機構、組織、人員竊取、刺探、收買、非法提供涉及國家安全的國家秘密或者情報的罪行。然而，《香港國安法》沒有為竊取或披露不涉及外國勢力的國家秘密訂定條文。《維護國家安全條例》現包含一套保護國家秘密的全面規定，補充了《官方機密條例》及《香港國安法》的原有規定。新的相關規定載於《維護國家安全條例》第29至第40條。全新罪行經已訂立，例如非法獲取國家秘密、非法管有國家秘密，以及非法披露國家秘密。這些條文在國家秘密方面引入新的法律機制，與《維護國家安全條例》第41至第48條與間諜活動相關的罪行的機制各自獨立施行。

外國干預的法律。正如剛才所說，《香港國安法》第二十九條訂定了勾結外國勢力危害國家安全罪。第二十九條的第二部分訂定五個情況，例如請求外國對香港或者中國進行制裁、與外國串謀，或者接受外國的指使、控制、資助或者支援對香港特別行政區政府或者中央人民政府執行法律進行嚴重阻撓。第二十九條因此是針對外國干預香港事務。《維護國家安全條例》現對涉及外國干預的事宜作進一步和更全面的規管。《維護國家安全條例》第6部（尤其是第52至第57條）關乎危害國家安全的境外干預。任何人如意圖帶來「干預效果」，而配合境外勢力作出某項作為；並在作出該項作為時，使用「不當手段」，即屬犯罪。第53條表述了「干預效果」的涵義，當中包括五種情況，例如影響中央人民政府或香港政府制訂或執行任何政策，或影響立法會或法院執行其職能。另一干預效果是干預香港的選舉，這項條文可與涉及對香港特別行政區選舉進行操控、破壞並可能造成嚴重後果的《香港國安法》第二十九（三）條一併解讀。《香港國安法》第二十九條與《維護國家安全條例》境外干預相關條文的綜合效力，意味着身處香港並與外國政府或境外勢力配合或有其他密切關係的人應當謹慎，以確保不會違反當中任何規定。在這方面，我們亦該謹記《維護國家安全條例》的另一條，這項條文與

我們先前討論的言論或刊物有關。有關條文就是《維護國家安全條例》第43(3)條。第43條關乎間諜活動，其中的第3款規定，如任何人勾結境外勢力，發布虛假或具誤導性的事實陳述，意圖危害國家安全，該人即屬犯間諜活動罪。

反恐怖主義的法律及相關罪行。我想提出的最後一個例子，涉及《香港國安法》及本地法律（包括《維護國家安全條例》）中恐怖主義及相關罪行的部分。恐怖主義相關罪行是《香港國安法》訂定的四類罪行之一。該等恐怖主義罪行由《香港國安法》第二十四至第二十八條處理，補充了香港現行並主要包含在《聯合國（反恐怖主義措施）條例》的反恐怖主義法律。雖然《維護國家安全條例》並非直接涵蓋恐怖主義，但值得注意的是，這條例之中題為「危害國家安全的破壞活動等」的第5部（即第49至第51條），涵蓋的作為亦可能屬恐怖主義作為的範圍內。第49條題為「危害國家安全的破壞活動」，把意圖危害國家安全或罔顧是否會危害國家安全而損壞或削弱公共基礎設施訂為罪行。《維護國家安全條例》第50條題為「就電腦或電子系統作出危害國家安全的作為」，禁止與電腦或電子系統有關的危害國家安全作為。《香港國安法》的有關法規與《維護國家安全條例》結合施行，有助保護香港免受恐怖主義或類似恐怖主義的作為所危害，例如涉及公共基礎設施或電腦或電子系統的破壞活動等。自2020年起，事實上亦有根據《香港國安法》及本地反恐怖主義法律而提出檢控。舉例來說，首宗《香港國安法》案件——唐英傑案——內有一項《香港國安法》下的恐怖主義罪行。最近亦有一宗涉及多項罪行的案件，當中包括一項《聯合國（反恐怖主義措施）條例》第11B條下的罪行，現正由高等法院原訟法庭審理。

我暫時所列舉的例子，說明在實體法的層面上，《香港國安法》和《維護國家安全條例》與其他本地法律的結合施行，如何在香港維護國家安全。在餘下的時間，我將略談《維護國家安全條例》在程序事宜及技術細節方面如何跟《香港國安法》兼容互

補。讓我舉出以下例子。

第一，關於在甚麼情況下行政長官可就某行為是否涉及國家安全或某資料是否涉及國家秘密發出證明書，《維護國家安全條例》第115條補充了《香港國安法》第四十七條。根據第115條，即使並無出現相關議題的訴訟，行政長官亦可主動發出該等證明書。第二，《維護國家安全條例》補充了《香港國安法》第四十三條，該條授權行政長官會同國安委就第四十三條涵蓋的事宜制定相關實施細則。《維護國家安全條例》第110條現賦權行政長官會同行政會議，以訂立附屬法例全面實施《香港國安法》和2022年12月全國人大常委會關於《香港國安法》的解釋，並訂立附屬法例實施《維護國家安全條例》本身的條文。第三，《維護國家安全條例》第111條賦權行政長官，就國家安全的工作及行政長官認為有利於維護國家安全的其他事宜向政府部門及公務人員發布行政指令。行政長官亦可就以下事宜發布行政指令，即《香港國安法》所確立、中央人民政府駐香港特別行政區維護國家安全公署所需的權利、豁免、和配合，或為着落實中央人民政府就國家安全而向香港特別行政區發出的指令。最後，《維護國家安全條例》還在其他不同事宜上對《香港國安法》作出補充及補足，例如：串謀犯《香港國安法》所訂罪行的罰則（第109條）、對被控犯《香港國安法》所訂罪行的潛逃者適用的限制（第89至96條）、《香港國安法》罪犯的量刑和監禁期的相關條文（例如在使用緩刑上的限制和對被裁定犯《香港國安法》所訂罪行的人獲提早釋放的限制），以及為從事國家安全工作的政府人員、司法人員及法律人員的私隱提供保護，以及保護他們免受騷擾的相關條文。



《維護國家安全條例》 與其他普通法司法管轄區國家安全法律的比較研究

司長、各位朋友：

感謝律政司司長邀請我參與今天的論壇。隨着《維護國家安全條例》於2024年3月23日刊憲，香港特別行政區提升了維護國家安全安排，並履行了其憲制責任，落實《基本法》第二十三條。儘管部分是既有罪行並已更新，也有些新訂罪行，全部會按相同方式審判。

一如其他普通法地區，除非憑所得證據有合理定罪機會，否則不得起訴任何人。犯罪行為（actus reus）和犯罪意圖（mens rea）必須同時存在。只有審訊時在毫無合理疑點下確定疑犯有罪方可定罪，這是英國和其他地區採用的傳統驗證標準。

此外，英國對《維護國家安全條例》的影響見於多個方面。例如，新罪行「就電腦或電子系統作出危害國家安全的作為」，很大程度上仿照英國。英國《1990年誤用電腦法》（Computer Misuse Act 1990）禁止任何人在沒有合法權限下就某電腦作出作為，而該人意圖（或罔顧是否會）嚴重損害國家安全及該作為會嚴重損害國家安全或造成嚴重損害國家安全的重大風險。英國和香港的這些條文，都是針對黑客竊取機密國安資訊，或控制策略性政府電子系統的情況。不過，有一點不同，香港這新訂罪行最高可判處監禁20年，但英國的則可判處終身監禁。

這類比較很有啟發性，因它顯示出《維護國家安全條例》與其他普通法管轄區國家安全法律的一致程度。這叫針對中國的批評者感到不快，因其可譴責的範圍因此受限。舉例來說，《維護國家安全條例》讓警方可在司法監察下，延長疑犯在調查期間的羈留。如有合理理由相信疑犯聯絡律師會危害國家安全，在經法

院批准下，便可予限制（第78、79條），這些條文與英國當地法律相仿。英國《2023年國家安全法》（National Security Act 2023）規定，警方有權無需手令而逮捕和羈留疑犯達48小時，並可要求法院延長羈留達14天，而獲緊急批准更可長達28天。若疑犯諮詢律師會干擾調查，該法亦會限制這項權利（第27條）。

因此，英國外相卡梅倫勳爵（Lord David Cameron）於2024年2月27日論及《維護國家安全條例》與英國《國家安全法》多處相似時，並無反駁此說。然而，他非但不樂見英國法例影響香港之多，更退而指兩地的諮詢工作和立法程序有別。這是轉移視線，在此兩司法管轄區中，重點都是實質內容，而非程序。

實情上是，2019年香港發生叛亂，敵對勢力聯手要破壞「一國兩制」管治方針，香港僅僅倖免於難。因此，與英國無異，香港需要制定有效的本地國家安全法律來自我保護。這點現已實現，比對之下，有關法例符合所有普通法地區熟知的規範。舉例來說，《維護國家安全條例》有關間諜活動（包括諜報活動）的條文，便與英國和其他地方並無不同，而各國都將竊取國家秘密訂為罪行。

雖然《維護國家安全條例》參考英國之處甚多，但兩者也有差異，至少罰則不同。香港的間諜活動罪最高可判處監禁20年，而英國的相應罪行則可判處終身監禁。在加拿大和新加坡，間諜活動罪最高可判處監禁14年，在澳洲最高可判處終身監禁，而在美國犯罪者則面臨終身監禁或死刑。

至於叛國罪，所有六個司法管轄區的法律目的基本相同，均涉及背叛國家。香港、澳洲、加拿大和英國處之以終身監禁，而新加坡和美國則可判處死刑。

儘管《維護國家安全條例》借鏡海外範例，但仍具香港特色，尤其是在人權方面。它不僅是本地法，也是國際法，我這樣

說是因為它反映了普通法地區共有的目的、慣例和價值觀。然而，與眾不同的是，香港特地在《維護國家安全條例》的施行中加入人權保障，包括《公民權利和政治權利國際公約》（第2條）的公正審判保障，為犯罪嫌疑人確保程序公正。

儘管《維護國家安全條例》如先前2020年《香港國安法》般重視人權，卻仍有其他方面招來負評。例如，《維護國家安全條例》的域外應用一直備受批評，甚至為本身也設相同效力法律的國家所詬病。全球公認，必須遏止境外不法分子造成國家安全威脅，否則可能危及本土存亡。因此，具域外效力的國家安全法律，提供各國所需的保護，使之免受任何國籍的人試圖從境外庇護地施加傷害，其效用已獲廣泛認可。

因此，英國《2023年國家安全法》，在《維護國家安全條例》草擬時，就這方面提供了寶貴的參考資料。英國《2023年國家安全法》新訂一些罪行時，包括破壞活動罪、間諜活動罪和外國干預罪，也決定賦予這些罪行域外效力。該法明確規定，倘該等罪行在英國境外干犯，須負責者不論國籍，一律可被檢控（第36條），香港亦依循英國的做法。故此，難以相信卡梅倫勳爵竟於2024年4月15日批評香港當局「試圖域外應用其國家安全法律」。

此外在美國，域外法權是執法的核心。因此，值得注意的是，美國國務院於2024年2月28日表示，美國「關注香港當局會在其正進行的跨境鎮壓行動中域外應用〔《基本法》〕第二十三條」，旨在「限制美國公民及居民的言論自由」。對此「跨境鎮壓」言論，沒人會比這人更感驚訝，他就是其中一位首當其衝遭受「跨境鎮壓」的受害人——「維基解密」創辦人阿桑奇（Julian Assange）。他被拘留於倫敦貝爾馬什監獄五年多，努力掙脫被引渡美國的未知命運。

美國設法援用其《1917年間諜法》（Espionage Act 1917）的

域外效力來引渡阿桑奇。他任職調查記者，被控以17項罪行，涉及未獲授權而披露美國被指在阿富汗及伊拉克戰爭中作出不法行為的相關資訊。他是一個在美國以外披露資訊的澳洲公民，雖然人在英國，其處境得英國默許，但仍因域外管轄權被追趕。說白一點，阿桑奇為公眾利益發布資訊和揭露不法行為，因此被送入虎口。

美國透過國際法的兩項原則行使域外管轄權。屬人管轄原則使國家能對其公民或居民在境外所犯罪行行使管轄權；而保護管轄原則，則對任何在境外作出危害該國利益活動的個人，不論國籍，均具相同效力。用以對付阿桑奇的正是保護管轄原則，儘管套用美國國務院的話，這形同「跨境鎮壓」。

再者，在澳洲，保護管轄原則已納入涵蓋間諜活動及外國干預的國家安全法律當中。在加拿大，該原則用於打擊間諜活動及叛國行為。因此，保護管轄原則也被納入《維護國家安全條例》屬自然不過。若非如此，便會削弱香港自我保護的能力，遭受心懷不軌者從境外巢穴加害。

事實上，《維護國家安全條例》借鑑海外模式的例子比比皆是。同樣，危害國家安全的破壞活動罪（第49條），與英國《2023年國家安全法》的破壞活動罪（第12條），幾乎如出一轍。兩者條文範圍相同，目的相同，有時甚至措辭也相同。所謂模仿是最真誠的恭維，卡梅倫勳爵大有理由深感恭維。有此感受的，應不只他一人。

2018年，澳洲透過《國家安全立法修正案（間諜活動及外國干預）法》（National Security Legislation Amendment (Espionage and Foreign Interference) Act）引入破壞活動罪。該罪行條文的措辭，與後來《維護國家安全條例》的用詞無異，均禁止意圖（或罔顧是否會）損害國家安全而進行各種形式針對公共基礎設施的破壞活動或植入弱點的行為（澳洲《刑事法典》

第82.3至82.9條）。

最初草擬《維護國家安全條例》時，該條例本身有一項「境外干預」罪。然而，經廣泛諮詢後，政府決定將該罪行改稱為「危害國家安全的境外干預」罪（第52條）。這樣做是為了讓大家安心，並清楚說明商業、學術和文化等領域的正常國際交流將不受影響。構成罪行的行為已清晰說明，故不可能存有誤解，而整個草擬過程同樣地借鑑了海外的有關模式。

再者，雖然香港的境外干預罪條文把具「干預效果」的作為訂為罪行，英國的外國干預罪條文則把作出「受禁行為」的作為訂為罪行，但兩者仍顯著相似。例如，香港的罪行條文解釋何謂作出有關作為所用的「不當手段」（第55條）時，行文大致依循英國相應罪行（第15條）界定「受禁行為」的用詞。兩地就連最高罰監禁14年也相同，但有一點顯著不同。香港的境外干預罪條文規定須有意圖（第52條），而英國的外國干預罪條文所訂的檢控標準較低，任何人僅「罔顧」後果（第13條）已可被檢控，這意味着較易檢控疑犯。

受英國和香港範例的啟發，加拿大目前也正收緊其國家安全安排。加拿大政府正在擴大其外國干預罪的條文範圍，並將其破壞活動罪條文現代化，增加受禁行為的種類，甚至將範圍擴及關乎加拿大人利益的私營基礎設施。加拿大政府表示，其提案將充分尊重人權，這顯示香港的範例已被仔細研究。

儘管卡梅倫勳爵於本年2月28日批評《維護國家安全條例》的煽動罰則更為嚴厲及國家秘密的定義廣闊將會抑制言論自由及新聞自由，但他不必擔心。英國當地政府在1938年為香港引入煽動法時，言論自由未受憲制保障，但如今情況已大為不同。現在，言論自由不僅為《基本法》保障，還受到《公民權利和政治權利國際公約》及《香港人權法案》保障。香港的媒體事業蓬勃，截至2023年12月31日，共有90份日報和376份期刊（包括網

上刊物）在香港營運。國際媒體（包括廣播公司）在此地也有充足人員，他們更從不畏懼發表自身的意見。

英國的《國家安全法》於2023年7月11日獲御准後，軍情五處處長麥卡勒姆（Ken McCallum）感到欣喜。他表示：「我們面對的敵人規模龐大，無所不用其極來對付英國人民和企業。」這也道出香港的實況，但有別於英國，香港切身經歷2019年的黑暴，市民商家淪為攻擊對象。麥卡勒姆續說：「《國家安全法》為我們在職權上帶來重大而改變格局的更新轉化。我們的法律現在與時並進，能應對當今的威脅」。對於香港和《維護國家安全條例》來說，這番話同樣適用。

每位珍視「一國兩制」方針的人，都該感謝《維護國家安全條例》的締造者——律政司司長和保安局局長，以及落實者——立法會群英，感激他們成功制定《維護國家安全條例》。他們完成了歷史使命，國家也因此更為安全。

謝謝大家。



問答環節

李浩然博士：I think we have the first question for Professor CROSS. Here is the question: "Many are concerned that the offence of "external interference endangering national security" under the Safeguarding National Security Ordinance will criminalize the usual normal exchange between different sectors of the society with international community." A response for that. Thank you.

[*以下是講者上述英語發言的中譯本：

我想，第一條問題是給江樂士教授的。問題是：「許多人擔心《維護國家安全條例》的『危害國家安全的境外干預』罪會把社會各界與國際社會之間的一般日常交流視為罪行。」您對此有何回應？謝謝。]

江樂士教授：Well, I did, of course, touch on that point in my speech, and I emphasized how the original definition was extended to external interference which actually endangers national security. That was done in order to make it clear to everybody that usual exchanges with international bodies in areas of culture, art, and so on, business would not be affected by the new legislation. And, of course, in order to ground an offence under this particular provision, there has to be collaboration with an external force to do an act using improper means with an intent to bring about what's called an interference effect.

So it's not ordinary exchanges that we covered. There has to be the use of improper means, there has to be a maligned intent. In other words, improper means is actually defined within the Ordinance and includes such things as using violence. And, of course, traditional cultural and other exchanges with people elsewhere, that don't involve arms, this is not an area where people need to be concerned.

[*以下是講者上述英語發言的中譯本：

其實，我發言時當然曾談及這點，也強調了原來的定義如何延展至實際上危害國家安全的境外干預。此舉是為了向大家述明，與國際機構在文化、藝術、商業等領域的一般交流將不受新例影響。當然，要構成該條下的罪行，必須要有使用不當手段配合境外勢力作出某項作為，和有意圖帶來所謂的干預效果。

因此，我們涵蓋的不是日常交流。換句話說，當中必須有使用不當手段和有惡意的意圖。不當手段在條例中已經有所定義，包括使用暴力等手段。當然，與其他地方人士的傳統文化和其他交流，只要不涉及武器，並不是大家需要擔心的領域。]

李浩然博士：Okay, thank you. Very clear on that.

[*以下是講者上述英語發言的中譯本：

好的，謝謝。回應十分清晰。]

韓教授，有一個問題想問問你的。在《維護國家安全條例》當中所禁止的罪行比香港《基本法》所規定的要多，這當中是甚麼樣的一個邏輯以及法理呢？

韓大元教授：大家都看到，二十三條是禁止了七類危害國家安全的行為，《國安法》是規定了四大類的罪行，條例是規定了叛國、煽動叛亂、國家秘密和間諜等五類罪行。我想它可能的原因，第一是國家安全的風險的一些變化。除了傳統的風險之外，我們也面臨着一個新的、非傳統的國家安全。第二是條例必須跟《國安法》要保持規範地銜接。所以，《國安法》明確規定的四大罪行之外，根據新的國家安全的形勢和香港的一國兩制的特殊性，比《國安法》和《基本法》的二十三條的範圍適當地擴大以應對新的國家安全的風險，我想這個在國家安全的基本理念上是必要的。

當然，我們也要看到這五大類的犯罪並不是一些新設的犯罪。它實際上是對本地法律中的原來的叛逆、煽動、保守國家機密、間諜活動等相關的罪行做了一些必要的調整，或者修改了原有的刑事罪行條例、官方的機密條例、適當條例中的一些問題。所以在我看來，新增加的部分應該說是在法律規範體系上的必要的適應化的一個過程。這樣有利於雙法之間的銜接，也有利於應對新的國家風險，把《基本法》的二十三條進一步加以落實。所以，我們不能只看是不是增加了，實際上增加的部分我想有一些必要性，同時也是基於規範的銜接和法律的一些適用化的需要。

李浩然博士：好，謝謝韓教授。最後一個問題就是想問一問，請教一下關於陳弘毅教授的。這是很熱點的問題，就是有人擔心在維護國家安全條例之下，對政府的施政批評，例如說反對垃圾徵費也有可能誤墮法網，觸犯煽動意圖相關的罪行。想請陳教授作一些解釋回應。

陳弘毅教授：無論是原有的關於煽動罪的刑事罪行條例，以及現在新訂立的《維護國家安全條例》關於煽動罪，當然它有對於煽動罪的定義，包括例如促使他人對於中國國家的根本制度，或者政府機關，或者特區的政府的仇恨或者蔑視。這些有些案例解釋到甚麼情況可能是構成煽動罪的。剛才律政司司長也有提到，現在律政司已經編撰了一些相關案例的匯編，大家可以看看相關案例。照我所知，大約有三十多個案件在2020年之後，涉及到煽動罪的檢控。最出名的剛才講者已經說過的羊村繪本案，還有去到上訴庭的譚得志案，剛才也有講者介紹過。但是大家還可以留意，煽動罪的條文是有一些辯護的理由，例如說明如果相關人士的意圖是希望特區政府或者中央政府改善改良某些政策，或者指出一些政府的犯錯、一些錯誤，希望可以將來有所改正。這些情況是不構成煽動罪的，大家可以看看有關條文的辯護理由。照我所知現在有些報紙在評論版裏面也有加多幾行，那幾行抄自煽動

罪條文的辯護理由，即是說如果這些專欄的文章有甚麼意見，即使是對於政府的批評，但都是屬於法例所規定的辯護理由範圍。由於時間有限我就簡單回應。

韓大元教授：這個是剛才陳教授講的，我是想回應兩句，因為前面沒講。言論自由、表達自由、新聞自由和學術自由，是法治社會重要的一個權利，也是中國《憲法》和《基本法》明確規定的。所以在內地，對地方政府的一些政策、規定，如果市民不認同、有意見，甚至是不滿的話，他也可以提出批評。所以剛才講的，煽動罪的門檻是非常高的，它跟這種言論和表達自由之間，還是可以尋求一個平衡的。我作為北京市人大代表，討論政府工作報告、法院工作報告的時候，我們對政府過去一年的工作、新的一年的工作安排，經常提出一個非常尖銳的批評，因為沒有一個政府的工作是都完美的。所以我想在這個《條例》和《國安法》的規定下，香港市民對政府包括我也關注到，最近垃圾的政策的一些調整等等提出的批評建議，我認為當然是不屬於違反條例的。所以《國安法》僅僅是跟極少數人們的行為有關，絕大多數的市民實際上是只要了解條例規定的話，不會違反它。我這裏面之所以再補充，那就是市民對政府工作的信任：給予信任，希望工作做得更好，那麼他提出的批評、意見、建議，包括尖銳的批評，都是符合一些法治原則，所以我們應該把兩者區別開來。在未來的《條例》和《國安法》的實施當中，我們也要平衡好安全和自由之間的這樣一個關係。這是我想補充的。

李浩然博士：多謝兩位教授。順着兩位教授所說的平衡，我做一個簡單總結。我們「雙法雙機制」的兼容，幾位教授從幾個不同的角度去和大家闡述。實際上要做到這樣，其實起碼有三個平衡我自己認為非常重要。首先就是人權和國家安全需求的一個平衡。第二就是我們中國的國情，我們國家的國情和香港特區的「一國兩制」獨有的區情，以及和國際的一些主流概念的一個平

衡。最後其實就是我們這兩部法律，包括《香港國安法》以及是《維護國家安全條例》的一個很好的平衡，在這方面才能夠達到一個比較好的融合和互補。非常多謝大家，也非常抱歉時間比較緊張，有些問題未必有辦法可以在這裏和大家進一步交流。我想這一節就結束，我將時間交給司儀，多謝大家。



維護國家安全的“雙法雙機制”的法理基礎

中國人民大學“一國兩制”法律研究所

韓大元 所長

2024年6月8日

主要內容

- 一、“雙法雙機制”共同的法規範基礎
- 二、“雙法”規範的相互融貫性
- 三、“雙機制”的規範銜接
- 四、“雙法”與“雙機制”的關係
- 五、“雙法”與“雙機制”實施中的司法功能

一、“雙法雙機制”共同的法規範基礎

➤ 憲法構成“雙法雙機制”的根本法律根據

- 將“雙法雙機制”納入憲法和基本法共同構成特區憲制秩序之內，明確憲法對特區法治基礎的意義。
- 憲法總綱：設定維護國家安全的國家責任和義務
 - 憲法第28條：“國家維護社會秩序，鎮壓叛國和其他危害國家安全的犯罪活動，制裁危害社會治安、破壞社會主義經濟和其他犯罪的活動，懲辦和改造犯罪分子。”
- 公民的基本權利和義務：基本權利限制事由+設定維護國家安全的公民義務
 - 憲法第51條：“……不得損害國家的、社會的、集體的利益和其他公民的合法的自由和權利。”
 - 憲法第54條：“中華人民共和國公民有維護祖國的安全、榮譽和利益的義務……”
- 國家機構：實質上確立維護國家安全的義務主體。

➤ 國家安全屬於中央事權

- 中央對香港特區有關的國家安全事務負有根本責任。
- 《基本法》第23條賦予特區自行制定維護國家安全立法的職責。
 - “一國兩制”制度的包容性、開放性以及“兩制”的尊重。
 - 香港特區維護國家安全的實際情況。
- 特區自行制定維護國家安全立法職責不影響中央制定特區維護國家安全立法。
- 《香港國安法》與《條例》本身明確立法依據、目的以及國家統一的安全標準
 - 《國安法》第1條：根據中華人民共和國憲法、基本法和“5.28”決定——。
 - 《條例》弁言明確其立法依據是：“鑑於《中華人民共和國憲法》及以下法律、決定及解釋下有關特區履行維護國家安全的憲制責任以及完善特區維護國家安全的法律的要求……”
 - 《條例》導言直接引用《中華人民共和國國家安全法》第2條有關國家安全的定義。

二、“雙法”規範的相互融貫性

➤ 作為中央立法的《香港國安法》

- 立法體例上進行重大創新
 - 將組織法、實體法、程序法有機統一的綜合性立法。
 - 將具有內地大陸法特色的刑事實體法和程序法在香港普通法制度下實施。
- 刑事罪名上規定四大類罪行
 - 涉及《基本法》第23條中的分裂國家和顛覆中央人民政府兩類罪行。
 - 針對“修例風波”暴露出的國家安全危險和隱患做出必要補充。
- 《香港國安法》與特區本地維護國家安全立法並行適用
 - 全國人大“5.28決定”：“香港特別行政區應當儘早完成香港特別行政區基本法規定的維護國家安全立法。”

➤ 作為特區立法的《條例》

- 《條例》在立法體例上的特點
 - 根據憲法、《基本法》第23條規定、全國人大“528決定”、《香港國安法》及其解釋制定。
 - 實現了實體法、程序法與組織性規範的有機結合。
 - 在立法框架上與《香港國安法》保持了必要的銜接與兼容。
- 《條例》妥善應對國家當前面對及將來可能面對的傳統和非傳統國家安全風險
 - 調整完善本地法律中“叛逆”“煽動”“保守國家機密”“間諜活動”的相關罪行。
 - 及時修改完善特區《刑事罪行條例》《官方機密條例》《社團條例》中存在的問題。
 - 預防防範在網路空間對公共基礎設施的破壞以及高科技犯罪等領域中呈現出的新型國安風險。
- 《條例》是完全是香港普通法體系下由特區立法機關制定的成文法
 - 既履行《基本法》第23條規定的立法職責，又維持普通法傳統，維護香港法治價值。

➤ “雙法”之間的關係：互相銜接、相互相容、並行適用。

- 《香港國安法》是《條例》制定的依據
 - 《香港國安法》是在國家安全方面的中央立法，《條例》必須與其保持一致。
 - 《香港國安法》第62條確立了《香港國安法》相對於香港本地立法的優先地位與適用性。
 - 《香港國安法》第62條：“香港特別行政區本地法律規定與本法不一致的，適用本法規定。”
- 《香港國安法》與《條例》同步實施、同時適用、互相補足
 - 兩者同步實施有效覆蓋《基本法》第23條的立法範圍，補充修改特區原有法律中涉及國家安全的相關立法。
 - 《條例》從實體、程序與組織法方面，充分體現國安法的原意與精神，如實體法上兩者規定的罪刑不重合；程序法方面，明確適用國安法第四章規定的程序，並在國安法基礎上進一步完善；組織法方面，銜接“雙執行”機制。
 - 在“雙法”實施中，一行為可能觸犯不同法規範時，是否出現法條競合？如出現，普通法下如何保持規範的協調？
- 《香港國安法》和《條例》的實施充分體現法治、尊重和保障人權的原則
 - 《香港國安法》第4條：“香港特別行政區維護國家安全應當尊重和保障人權……”
 - 《條例》確立人權保障原則，平衡安全與自由價值；明確國家安全定義、精準針對危害國安行為、明確免責辯護條款等……

➤ “雙法”與中國內地國家安全法律體系的區別

- 內地國家安全法律體系的特點
 - 內地維護國家安全法律體系以《國家安全法》為統領，包括傳統安全以及非傳統安全兩大領域的專門立法。
 - 自2014年總體國家安全觀提出以來，共制定了十餘部專門法律以強化對傳統安全領域的保障。
 - 內地維護國家安全法律的規範將綱領性與強制性融為一體。
 - 《反間諜法》第5章規定部分規範對危害國安行為設定制裁，具體刑事罰則仍交由《刑法》規定。
 - 國家安全事務，不得由地方立法。
 - 國家安全屬於中央事權，屬於法律保留事項。
- “雙法”與內地相關國家安全法律相比的不同之處
 - 地方立法權：《基本法》第23條明確授權特區立法機關制定，體現“一國兩制”下中央對特區的高度信任與尊重。
 - 國家安全事務領域：“雙法”更多聚焦在國家主權、安全與發展等利益，部分包含網路安全等非傳統安全領域。
 - 立法形式：“雙法”多數規範採取精細化的表述，直接設定了刑事罪行的構成與制裁。

三、“雙機制”的規範銜接

➤ 中央的執行機制

- 《香港國安法》重要制度創新之一是確立“雙執行”機制。在中央層面設立駐港國安公署，依法履行維護國家安全職責，對特別行政區履行維護國家安全的職責進行監督、指導、協調、支持（簡稱“監指協支”）。
- 駐港國安公署是中央在香港特區設立的維護國家安全的機構，是中央為實現國家安全監督和直接管轄的關鍵樞紐，體現了中央對國家安全事務的管治權，有利於協調國家安全整體戰略和香港特區的具體國安措施。

➤ 特區的執行機制

- 《香港國安法》設立特區國安委等一整套維護國家安全機構，依法處理維護國家安全的具體事務。
- 《香港國安法》第40條
 - “香港特別行政區對本法規定的犯罪案件行使管轄權，但本法第五十五條規定的情形除外。”
- 香港國安委在《香港國安法》執行機制中起到核心的協調與執行功能，連接中央指導與特區執行，負責根據香港特區的實際情況管治常規情境下的國家安全事務。
- 香港國安委由行政長官擔任主席，職能包括制定相關政策、指導和協調跨部門國家安全行動，推動香港特區在國安方面的法律和政策有效實施。
- 香港國安委承擔特區維護國家安全的法定職責，有權對是否涉及國家安全問題作出判斷和決定。
 - 《全國人大常委會關於〈香港國安法〉第十四條和第四十七條的解釋》。
- 特區層面的執行機制使《香港國安法》的執行更具靈活性、高效性、針對性和適應性。

➤ “雙機制”之間的關係

- “雙機制”之間的互補關係
 - 駐港國安公署依法為香港國安委提供指導和支持，確保特區國安措施與國家整體安全戰略步調一致。
 - 香港特區國安委則負責執行常規事務，提升了執行的靈活性和針對性。
- 《條例》中“雙機制”的協作配合，將國安法相關規定具體化。
 - 《條例》第110條：“行政長官會同行政會議可為維護國家安全所需，並為更有效地實施以下法律及解釋，訂立附屬法例——(a)《香港國安法》，包括當中第五章關乎中央人民政府駐香港特別行政區維護國家安全公署的職責的條文……”
 - 《條例》第111條：“(1)行政長官可向特區政府的任何部門或機關或任何公務人員發布行政指令，就任何以下事宜作出指示——……(c)為中央人民政府駐香港特別行政區維護國家安全公署依法履行在《香港國安法》第五章下的職責提供必需的權利、豁免、便利和配合……”。
 - 《條例》第115條對國安法第47條行政長官出具證明情形的補充與完善。
- “雙機制”是“一國兩制”原則下的創新實踐，不僅僅是程序機制，是一項維護國家安全制度與機制的完善。

四、“雙法”與“雙機制”的關係

➤ “雙法”和“雙執行”機制相互促進、相互支持、相互補充

- 共同構建起穩健、權威、靈活與統一的有效的維護國家安全機制與體系。

➤ “雙法”為“雙執行”機制提供了有效的法律依據和指引

- 《香港國安法》“第二章 香港特別行政區維護國家安全的職責和機構”“第五章 中央人民政府駐香港特別行政區維護國家安全機構”。
- 《條例》第110條(1)款(a)項和第111條(1)款(c)項規定了特區政府應如何配合駐港國安公署的工作。
- 《條例》第112條規定了香港國安委的判斷和決定權。

➤ “雙執行”機制為“雙法”的有效實施提供了重要的制度支撐和保障

- “雙執行”機制運作中積累的實踐經驗為解釋適用“雙法”提供實踐依託。
- 綜合考量中央和香港特區的實際情況。
- 協調各方關係，確保法律解釋和適用能充分滿足維護國家安全的需要。

五、“雙法”與“雙機制”實施中的司法功能

➤ “雙法-雙機制”不影響法治原則與香港普通法制度

- 特區執行機制下由本地法院適用《香港國安法》與特區本地法律進行審理。
 - 可參考普通司法管轄區判例，合理平衡安全與自由的價值。
 - 可更多採取目的解釋方法，使法律解釋符合立法原意。
- 《香港國安法》不影響特區無涉國家安全的一般案件審理。

➤ 《條例》對普通法下的司法制度並無影響

- 《條例》對現有已經過時或無法滿足《基本法》第23條憲制責任的立法進行成文法上的修改。
- 法院在個案中準確把握立法原意，解釋相關概念，做出符合法律原意的判決，保持法律概念的確定性。
- 不斷地從個案中積累判例，推動香港普通法維護國家安全法理的逐步發展。

結論：

- 法律已公佈實施，要尊重法律文本；
- 法律的生命在於實施，要凝聚法治共識，認真實施《條例》；
- 通過《香港國安法》實施四年的實踐，香港法院已積累了審理國安案件的較成熟的司法判例，有經驗、有智慧面對“雙法-雙機制”下出現的新問題；
- 維持基本法規定香港所享有的獨立的司法權，展現普通法與時俱進的法文化，給公眾帶來穩預期的法治生活，為世界普通法多元發展貢獻來自香港特區的新思考、新素材與新實踐。



《香港國安法》與 《維護國家安全條例》之互補關係

陳弘毅教授
2024年6月



- 起草《香港國安法》時採用「五項工作原則」，其中一項原則是：
 - 兼顧兩地差異
 - 着力處理好《香港國安法》與國家有關法律、本地法律的銜接、相容和互補關係
- 制定《香港國安法》時，已預期香港特區會履行其憲制責任，制定本地法例實施《基本法》第二十三條
- 《維護國家安全條例》現已制定，故可研究《香港國安法》與《維護國家安全條例》之間的「銜接、相容和互補關係」原則

- 韓教授就《香港國安法》與《維護國家安全條例》的關係提供系統性分析
- 《香港國安法》和《維護國家安全條例》結合施行，在香港規管危害國家安全活動
- 下述四例說明兩者的結合施行(實體法層面)：
 - a. 煽動罪及《香港國安法》中的相關罪行
 - b. 保護國家秘密的法律
 - c. 外國干預的法律
 - d. 反恐怖主義的法律及相關罪行

- 煽動叛亂是《基本法》第二十三條所禁止的行為之一
- 1997年前的香港法律已於《刑事罪行條例》中涵蓋有關煽動的法例
- 2020年後，《刑事罪行條例》的煽動罪曾用於超過30宗案件以檢控疑犯
- 《刑事罪行條例》的煽動罪被視為《香港國安法》所指的危害國家安全罪
- 新訂的《維護國家安全條例》現已於第23至第28條訂定煽動罪



- 《維護國家安全條例》的煽動罪條文以《刑事罪行條例》的相關條文為基礎，但經變通以用於香港特區
- 《維護國家安全條例》禁止意圖引起對中國的國家根本制度或中國的國家機構的憎恨或藐視或對其離叛的言論或刊物(及其他行為)。
- 《維護國家安全條例》的煽動罪與《香港國安法》相關條文一併理解：結合施行以規管言論及刊物
- 《香港國安法》相關條文包括：
 - a. 第二十一條－煽動分裂國家
 - b. 第二十三條－煽動顛覆國家政權
 - c. 第二十七條－宣揚／煽動恐怖主義
 - d. 第二十九（五）條－通過各種非法方式引發香港特區居民對中央人民政府或者香港特區政府的憎恨並可能造成嚴重後果



- 竊取國家機密是《基本法》第二十三條所禁止的行為之一
- 1997 年前關於保護國家秘密的法律是以英國法例為基礎的《官方機密條例》
- 《香港國安法》第二十九條的第一部分已載有關於國家秘密的條文
- 《香港國安法》第二十九條訂立勾結外國或者境外勢力危害國家安全罪
- 第二十九條的第一部分涵蓋為外國或者境外組織、人員竊取、刺探、收買、非法提供涉及國家安全的國家秘密或者情報
- 《香港國安法》沒有為竊取或披露不涉及外國勢力的國家秘密訂定條文

- 《維護國家安全條例》現載有保護國家秘密的綜合規則，補充了《官方機密條例》及《香港國安法》的原有規則
- 保護國家秘密的新規則載於《維護國家安全條例》第29至第40條
- 《維護國家安全條例》的新訂罪行包括非法獲取國家秘密、非法管有國家秘密，以及非法披露國家秘密
- 這些條文確立了新的國家秘密法律機制，與《維護國家安全條例》第41至第48條間諜活動罪機制各自獨立施行

- 《香港國安法》第二十九條訂定勾結外國勢力危害國家安全罪
- 第二十九條的第二部分訂明五種涉及勾結外國勢力的情況，包括請求外國制裁、與外國串謀，或者接受外國的指使、控制、資助或者支援對香港政府或者中央人民政府執行法律進行嚴重阻撓
- 第二十九條針對外國干預香港事務
- 《維護國家安全條例》第6部（尤其第52至第57條）對外國干預作進一步規管
- 任何人如意圖帶來「干預效果」，而配合境外勢力作出某項作為（涉及使用「不當手段」），即屬犯罪。



- 「干預效果」定義寬廣，包括影響政府政策／立法會／法院或干預選舉
- 《香港國安法》第二十九條與《維護國家安全條例》境外干預相關條文的綜合效力，與外國政府或境外勢力配合或有密切關係的人應當謹慎
- 《維護國家安全條例》第43(3)條關乎間諜活動，也應予以考慮：勾結境外勢力，發布虛假或具誤導性的事實陳述，意圖危害國家安全



- 恐怖主義相關罪行是《香港國安法》所訂的四類罪行之一
- 《香港國安法》第二十四至第二十八條所處理的恐怖主義罪行，補充了香港原有的反恐怖主義法律
- 先前的反恐怖主義法律主要載於《聯合國（反恐怖主義措施）條例》
- 《維護國家安全條例》第5部（即第49至第51條）涵蓋也可屬恐怖主義行為範圍的行為

- 《維護國家安全條例》第49條把意圖危害國家安全或罔顧是否會危害國家安全而損壞或削弱公共基礎設施訂為罪行
- 《維護國家安全條例》第50條禁止與電腦或電子系統有關的危害國家安全作為
- 《香港國安法》相關法規與《維護國家安全條例》結合施行，有助保護香港免受恐怖主義或類似恐怖主義的行為所危害
- 自2020年以來已根據《香港國安法》及本地反恐怖主義法律提出檢控
- 例子包括：唐英傑案，涉及《香港國安法》的恐怖主義罪；以及最近高等法院原訟法庭正在審理的案件，涉及《聯合國（反恐怖主義措施）條例》第11B條罪行

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- 《香港國安法》和《維護國家安全條例》結合施行，從實體法層面在香港維護國家安全
- 《維護國家安全條例》在程序事宜及技術細節上補充《香港國安法》
- 《維護國家安全條例》第115條補充了《香港國安法》第四十七條，讓行政長官在即使並無相關訴訟的情況下仍可就涉及國家安全或國家秘密的事宜發出證明書
- 《維護國家安全條例》補充了《香港國安法》第四十三條（該條授權行政長官會同國安委制定相關實施細則）

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- 《維護國家安全條例》第110條賦權行政長官會同行政會議，訂立附屬法例實施《香港國安法》和《維護國家安全條例》本身的條文
- 《維護國家安全條例》第111條賦權行政長官，就各項維護國家安全事宜向政府部門及公務人員發布行政指令。
- 《維護國家安全條例》就其他事宜對《香港國安法》作出補充，例如：串謀犯《香港國安法》罪行的罰則、被控《香港國安法》罪行的潛逃者所受的限制、《香港國安法》罪犯的量刑及監禁規定，以及向從事國家安全工作的政府人員、司法人員及法律人員提供私隱保護並使其免受騷擾

國安法律論壇 2024 香港會議展覽中心 2024年6月8日（星期六）

座談環節

「《維護國家安全條例》與其他普通法司法管轄區
國家安全法律的比較研究」

- 江樂士資深大律師

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香港特區 與 英國

- 檢控準則：合理的定罪機會
- 入罪標準：證明無合理疑點
- 英國《1990年誤用電腦法》：《維護國家安全條例》的啟發藍本
- 英國《2023年國家安全法》：關於被捕人所受限制的內容，經調整後納入《維護國家安全條例》
- 「一國兩制」：為確保「一國兩制」長存，按通用普通法規範擬定國家安全法律
- 間諜活動：諜報活動及竊取國家秘密在各地均屬違法
- 間諜活動/叛國罪：《維護國家安全條例》與其他司法管轄區罰則一致

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國家安全：比對西方模式

- 《維護國家安全條例》：重視人權且內容加入《公民權利和政治權利國際公約》
- 域外效力及外國威脅：香港特區的國家安全法律仿照英國、美國、澳洲及加拿大的範例
- 阿桑奇(Julian Assange)：美國根據《1917年間諜法》追究澳洲公民在境外所作的行為
- 國際法：屬人管轄原則及保護管轄原則
- 破壞活動罪：《維護國家安全條例》與英國及澳洲法律相若

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境外干預

- 境外干預必然危害國家安全
- 正常國際交流不受影響
- 《維護國家安全條例》與英國《刑事司法法》：
用詞及實質內容顯著相似
- 《維護國家安全條例》：須有意圖方可提控；
英國《刑事司法法》：罔顧後果足以被控（門檻較低）
- 加拿大：正在擴大外國干預罪及破壞活動罪的範圍

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言論自由及媒體自由

- 《維護國家安全條例》：煽動罪並不威脅合法表達
- 1938年香港引入英國的煽動法：沒有憲制性保障
- 《維護國家安全條例》：強調言論自由及新聞自由
- 香港特區：《基本法》提供全面的憲制性保障
- 香港特區：2023年媒體事業蓬勃，計有90份日報、376份期刊，還有國際媒體和廣播公司：敢於發表意見

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英國《2023年國家安全法》的制定

軍情五處處長麥卡勒姆 (Ken McCallum)：

「我們面對的敵人規模龐大，無所不用其極來對付英國人民和企業……《國家安全法》帶來職權的革新，扭轉局勢。我們的法律現在與時並進，能應對當今的威脅。」

就香港特區及《維護國家安全條例》而言
上述說法同樣適用

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結論



國安法律論壇
NATIONAL SECURITY LAW FORUM
8月18日 - 2024

香港
Department of Justice
Department of Justice

《維護國家安全條例》
— 締造者及落實者完成歷史使命 —
惠及一國兩制 — 國家因此更為安全

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座談環節 3

守穩安全底綫， 助力高質發展



座談環節
Panel Session

守穩安全底綫，助力高質發展

Safeguarding the bottom line for security, facilitating high-quality development

嘉賓 Panelists

主持人 Moderator

盧家培

Mr Paul LOO Kar-pui

Lalansam 首席營運總監
Chief Operating Officer, Lalansam

楊敏德 GBS, JP

Ms Marjorie YANG Mun-tak GBS, JP

區議會主席
Chairman, Tsang Tsou-tou Group

余偉文 JP

Mr Eddie YUE Wai-man JP

香港金融管理局
Chief Executive, Hong Kong Monetary Authority

李臻

Mr Oscar LEE

資深公共事務人員
Experienced Professional in Public Affairs



主持人

李臻

資深公共事務人員



講者

余偉文 JP

香港金融管理局總裁



楊敏德 GBS JP

溢達集團董事長



盧家培

Lalamove 首席運營官



李臻

女士們、先生們，大家下午好。

歡迎來到我們今天法律論壇的第三個座談會環節，這次的主題是「守穩安全底綫，助力高質發展」。一般來說，午休後的第一個環節會是個挑戰，但我相信今天嘉賓們的分享不僅會讓您保持清醒，還會帶來啟發。

有請余偉文先生，香港金融管理局總裁；楊敏德女士，溢達集團董事長；盧家培先生，Lalamove的首席運營官。我是李臻，以前是電視台記者，最近開始從事公共事務，非常榮幸擔任此環節的主持人。

新聞自由與資訊流通對於香港這一些國際金融中心實在非常重要。就此，律政司司長和副司長曾在多個不同場合解釋，法律本身對於違反國安行為有犯罪意圖的要求。舉例說，一個人必須明知而故意非法泄露國家機密，又有意圖危害國家安全，方構成犯罪。

我以前是一名電視記者。我覺得國安法律本身不會影響一般的新聞報導。這個環節主題的關鍵詞是「基礎」及「底綫」。不單是香港，任何社會都必須有堅固的基礎和安全的底綫才能繁榮。在現今快速發展的世界中，地緣政治緊張、技術顛覆和經濟不確定性已成為常態，強調「基礎」及「底綫」的重要性絕不為過。

這個環節小組開始之際，我想邀請大家與我們金融及商界的領導們一起探討一下香港維護國家安全的法律基建如何能夠幫助打造一個更穩定的營商環境，讓香港能夠專注發展經濟、謀求發展、保障人民福祉，充分發揮背靠祖國和緊密聯繫世界的優勢。

接下來，我們先請余偉文先生分享，有請。

大家下午好。

很榮幸受邀參加今天由律政司舉辦的重要論壇。今天，我想跟大家就金融安全以及金融業發展之間的關係，分享一下我們的看法。

首先我想先強調一下金融安全的重要性，它不僅是對金融業，而且對我們整體的經濟，包括香港的經濟，整個祖國的經濟，以及全世界經濟來說都是非常重要的。我也想跟大家分享一下，一個穩定和安全的環境是如何真正促進金融發展，以及我們香港金融管理局（金管局）正在採取哪些措施，以我們來之不易的制度韌性作為基礎，帶領我們的金融業更上一層樓。

金融業是香港經濟非常重要的支柱。在2022年，金融行業的僱員人數高達27萬，佔本港就業人口的7%，卻貢獻了香港本地生產總值的22%。香港的銀行業基本上等於本地生產總值的9倍，而且我們金融業所管理的資產總值更接近是本地生產總值的10倍。這些數據比其他金融中心的數據還要高。

我們的金融業不單止本身規模龐大，而且在整個經濟和社會的運作中也有重要角色。金融機構作為中介，將投資者與需要資金的商業增長和民生需求連接起來，同時提供具回報的投資機會。而且，我們的金融界立足國際金融中心，服務着整個亞太區甚至全世界。我們和全球金融系統緊密相連，因此，任何對香港金融體系穩定性的威脅將牽連甚廣。

以內地改革開放為例，國家從傳統生產貿易走到今天成為環球供應鏈的關鍵一員，從在內地資本市場的直接投資到今天擴展到組合投資，香港都扮演舉足輕重的角色。

此外，香港也是整個亞洲非常重要的融資及資本市場中心。香港不單是世界上其中一個主要的美元結算中心，也是第四大的

金融交易中心以及全球最大的離岸人民幣交易中心。因此，如果香港金融體系的穩定受威脅，內地以致全球市場也可能會受到波及。

在金管局，我們的首要任務是維持穩定及完整的香港貨幣及金融制度。首先，香港的貨幣穩定建基於聯繫匯率制度，透過所謂貨幣發行局制度來維持穩定的港幣匯率。聯繫匯率制度在過去超過40年行之有效，並在面對過去幾十年的市場衝擊及危機時表現出其韌性。

其次，為了確保香港銀行業的穩定性和韌性，我們會密切監察銀行如何管理流動資金和市場風險，以及繼續監管銀行貸款情況。我們的銀行業一直非常穩健，其流動資金和資本比率遠高於國際水平。這些因素讓香港有足夠的緩衝保護，免受其他地方發生的銀行業危機（包括去年三月歐洲和美國銀行業動盪）影響。

第三，在全球聯通的環境下，一個行業或地區的金融衝擊及事件會很容易造成廣泛影響，並且波及其他市場。因此，在密切監察本地金融體系的同時，我們也會與政府和其他金融監管機構，包括海外的監管機構通力合作，密切關注可能產生跨市場和系統性影響的問題或事件，並按需要及時協調，採取相應的應對措施。這有助我們識別和減輕香港貨幣和金融體系面臨的潛在風險和威脅。

最後，信心對於維持金融穩定至為重要。我們的工作還包括與市場參與者和公眾溝通，以回應他們對香港及其作為國際金融中心未來可能存在的一些擔憂和誤解。

我剛才已提及了為什麼確保香港的金融體系的韌性對香港、國家、甚至全球的穩定都有好處。另一方面，穩定和安全的香港也有利於推動金融市場的發展。

許多關於金融業競爭力的研究提到營商環境是一個影響競爭

力的決定性因素，而政治、社會穩定，以及法治，是營造有利營商環境的重要因素。我於2019年10月1日上任金管局總裁，當時正值社會動亂。如果你還記得的話，當時社交媒體上流傳着大量意圖威脅香港金融穩定的謠言。有些人聲稱聯繫匯率制度將會崩潰，有人說資金正流出香港，港幣將會貶值，有些人甚至煽動公眾到銀行提取他們的存款。

如果我們袖手旁觀，這種謠言很快就會在公眾中引起焦慮和恐慌，引來投機者攻擊我們的金融體系，就如我們在1998年亞洲金融危機期間的經歷，讓我們的企業和廣大市民承受不可逆轉的傷害。因此，當時我們採取了迅速和果斷的行動去反駁這些謠言，防止情況失控。

從這一事件可見，社會動亂可如何瞬間牽連及破壞我們的金融體系，並印證落實2020年《香港國安法》以及最近的《維護國家安全條例》的重要性。這些法律能夠讓我們社會更穩定，讓政府和社區可以按照先後緩急，專注於經濟發展，以保持香港繁榮穩定。金融監管機構可以集中精力推出政策措施，支援企業和民生，以及推進建設工作，以保持我們金融業的競爭力。

事實上，香港的金融業一直持續成長。舉例來說，自2020年《香港國安法》實施以後，國際投資者繼續是我們資產及財富管理業務的主要資金來源，佔管理資產的一半以上。過去三年，香港私募股權基金經理、對沖基金經理和家族辦公室的總數增加了24%。儘管市場環境充滿挑戰，香港金融市場的運作一直非常順暢。儘管有說法稱資金正在流出香港，資金仍持續流入。

如果你看一下我們過去五年的銀行系統存款總額，存款總額已經增長超過了21%，所以我們看到資本實際上是流入，而非流出。既然現在我們擁有了來之不易的穩定局面，我們就有責任充分利用這個好時機，使香港的金融業更上一層樓。許多人經常問我這個問題：「何謂國際金融中心？政府和監管機構，包括金管

局，打算如何促進金融市場的進一步發展？」

我認為答案可以歸結為三個因素：「韌性」、「生態系統」和「機遇」。我剛才已經談過我們金融體系的韌性，特別是在我們過去幾年面臨的巨大挑戰，但僅憑這一點並不能成為一個好的金融中心，我們還需要一個豐盈的生態系統去造就機遇。香港享有「一國兩制」下的眾多制度優勢，其中包括植根於普通法的雙語法律體系、獨立的司法機構、前瞻的監管體系、簡單的稅收制度、強大的人才庫，以及資本和資訊的自由流動。

透過我們與內地的獨特政治、地理以及歷史聯繫，我們完全有能力成為連接內地和全世界各地的門戶，不只是一個主要的門戶，甚至是唯一高效的門戶，並將帶來巨大機遇。作為全球領先的離岸人民幣中心，香港一直為內地多項對外開放措施提供一個安全、可靠的試點，讓內地可以試驗這些連接內地和國際金融市場的措施同時，確保金融穩定和安全。透過各項互聯互通計劃，香港成為國家的防火牆和緩衝區，避免跨境資金流動所帶來的風險，從而保障國家的金融安全。

除了內地相關的機會外，香港處於可以把握全球新興領域發展機遇(例如可持續發展和金融科技)的有利位置。作為亞洲最大的可持續發展融資中心，香港一直透過政府的可持續和基礎建設債券計畫，增潤香港的綠色和可持續金融生態系統，並補充相關知識、人才和數據。我們也正加快鼓勵金融機構採用金融科技(fintech)，並且是推行央行數碼貨幣(CBDC)以及數碼資產發展的超前先驅。我們也正在建立基礎設施來支援資料的流通，便利金融服務。

在今天這麼複雜的全球格局下，一個安全及穩定的營運環境對於任何企業都是很重要的。我們現有維護國家安全的法律基建可以為金融業的蓬勃發展提供非常堅實的基礎。金管局會繼續對金融安全和穩定所面對的潛在及突發風險保持警覺，並會繼續完

善我們的監管框架，以配合瞬息萬變的市場需要和國際標準。謝謝。



楊敏德 GBS JP

女士們、先生們，大家下午好。

今天我很榮幸能在這裡分享我對香港如何利用自身獨特優勢，在複雜的全球格局中游刃有餘，推動經濟增長的看法。《基本法》第23條完成本地立法後，正如行政長官李家超先生所說，香港特區政府已履行其憲制責任，落實這項重要法律，為我們繼續拼經濟造就穩定和安全的環境。

遺憾的是，全球環境並非如此穩定。當前動盪的全球地緣政治格局帶來不確定性，但同時也為香港創造獨特的機遇。作為國際貿易樞紐，香港可以把握國家賦予的優勢，充分發揮戰略地位，透過貿易貢獻國家和全球經濟發展大局。

供應鏈由產品、資金和資訊流動三者組成。在全球經濟疲弱之際，提升整個系統的效益相當重要，而三者之中，資訊流動的部分很可能是最為棘手。歸根究底，除了技術困難之外，要創造網絡效應（即有足夠多的用家加入同一個資訊網絡，從而創造對用家而言有價值的網絡）也不容易。隨著自動化、數據分析和人工智能日漸普遍，數碼化的貿易流程實在是大勢所趨。

與許多香港企業一樣，溢達集團的旗艦生產基地設在大灣區的佛山。而最近，溢達獲邀試用SGTraDex，一個由新加坡開發、連接供應鏈生態系統的通用數據基礎設施。雖然目前看來SGTraDex的直接效益乏善可陳，但新加坡顯然正在非常積極推動數碼化數據。另外，今年四月，我國商務部公佈了《推動數字商務

三年行動計劃（2024–2026年）》。由此可見，數碼化的發展不僅能促進香港的貿易，並為我們塑造未來的貿易格局奠定基礎。

大灣區是最強大的製造業樞紐之一，而作為其中一員，我們足以為行業訂立標準。以我所在的紡織及服裝業為例，正正因為我們對供應鏈瞭如指掌，因此可以為行內的電子通訊訂定標準。事實上，溢達獲邀成為「龍頭數字企業」。香港作為貿易的接口，一直處於供應鏈的末端。內地的工廠外移、中國供應鏈向海外伸延，正正為香港造就另一機遇：我們可以藉着內地大量原材料運往海外之時，把握機會向海外進一步推廣我們的標準。

供應週期的長短對供應鏈至關重要，尤其隨着電子商務的興起，商界必須在加快生產和交付方面勇於創新，而政府則有責任透過數碼化重要的貿易文件和確保數據鏈安全，來縮短行政審批所需的時間。我很高興得知在今年較早時間，香港政府修訂了《電子交易條例》，容許政府通知以電子方式發送，而無需再使用掛號信或其他實體方式送達。這是朝着正確方向的一步。我敦促政府進而支持商界保護數碼貿易文件。

為了熟悉相關範疇，我們集團已經使用過幾次電子提單(e-bill of lading)。礙於系統分散，用家往往無法透過同一平台查閱電子提單，而是需要先下載、再透過電子郵件發送予對方，事倍功半。而且，客戶和運營商對電子提單欠缺認知，這方面實在需要進一步的教育及推廣。我們必須有耐心，招聚數碼化所需要的用家，營造網絡效應，讓整個供應鏈系統的效益得以完善。完善整個供應鏈系統的效益，就可持續發展以及保持香港在全球貿易中領導地位而言，是個更為進取卻關鍵的目標。

身為國際商會執行委員會成員，我強烈建議香港政府參考聯合國國際貿易法委員會的《電子可轉讓記錄示範法》(MLETR)，修訂相關法例，打造具建設性的監管環境，為建立香港數碼經濟奠定基礎。

將MLETR納入立法議程，等於向商界發出明確的信號，表明香港在數碼轉型的同時，致力於繼續走在全球貿易的前端。這將同時是向企業發出明確鼓勵轉型的訊號。新加坡在2021年已經把MLETR納入其法例，而日本、德國、美國、泰國和澳洲等許多其他國家也正在透過MLETR為數碼貿易時代做好準備。

從與亞洲開發銀行合作中，中國也對MLETR展現了濃厚興趣。亞行主動支持MLETR在中國落地的研究，至今已經資助中國公務員從事相關研究一年多。而上海和北京的自由貿易區也已經以試點形式試行示範法。

香港作為全球貿易樞紐，必須率先實現無紙化貿易，以維持其全球首屈一指的金融商業中心地位，為其他經濟體系樹立一個強而有力的榜樣，同時開拓更多機會，讓我們的貿易融資和數碼金融在區內和全球市場走得更遠。同時，對於香港乃至全球市場中的本地和國際公司來說，無紙化貿易也可帶來可觀收益。

此外，無紙化貿易將顯著提升不同規模公司的效率和生產力，減省繁瑣的文書工作，讓他們得以專注於核心業務。當香港透過採納示範法優化法例並採用數碼貿易，不僅可以與內地並駕齊驅，更可以鞏固自身作為連接國內與全球市場的重要角色，為國家的整體發展大局作出貢獻，造福全人類。

謝謝。



盧家培

女士們、先生們，下午好。

我很高興能在這裡與大家分享我們從科技和物流角度對國家安全的一些看法。

在此之前，我想先介紹一下我們公司，讓大家更了解我們之所以有這些觀察的原因。大家可能在香港的大街小巷看過我們的車隊，或者你有使用過我們的服務。請記住，我們是橙色的那一家，不是另一家。

我們其實來自香港。我們在超過10年前的2013年成立，然後我們很快拓展到中國內地和海外。我們有兩個品牌：Lalamove是我們的國際品牌，而貨拉拉則是我們的內地品牌。在內地300多個城市裡的貨拉拉都屬於我們集團。

在香港之外，你在海外所看到的所有貼着Lalamove貼紙的也是我們團隊的一部分。我們的業務遍佈東南亞所有主要城市，連南亞都有我們的足跡。此外，我們在南美也有業務，遍及巴西17個城市以及墨西哥城。這就是我們的全球版圖。按月計算，世界各地有超過100萬位活躍於平台的司機與我們合作，以及超過1,200萬用戶。

我們的業務是什麼？我們配對來自用戶的訂單。除了與大家一樣的個人客戶外，中小型企業佔我們客戶的大多數，而中小企同時也是所有主要經濟體的中流砥柱。我們也為較大的企業提供服務。我們通過科技配對最適合的司機和用戶。我們在每個市場都有大量的司機夥伴透過我們的平台賺取可觀的收入維持家庭生計，這對我們服務的所有社會也很重要。

我們運輸的是什麼？包羅萬有。例如在新冠肺炎疫情期間，我們為有需要的人運送了大量的醫療物資。疫情過後，我們的最主要用戶中小型企業，透過使用我們的服務刺激業務增長及生產

力，慢慢復蘇。

剛才已經介紹了我們這種平台可以為社會帶來的影響。大家可以想像到這一切都與國家安全有關。為什麼科技和國家安全息息相關？因為科技不但影響甚廣，其所達之處皆瞬息萬變，翻天覆地的變化可在一瞬間發生。

說到國家間的競爭，過去大家指的國力，可能是軍事實力或經濟實力。如今，一個國家的崛起和繁榮，取決於該國有多先進、投資有多蓬勃、以及科技創新產業有多活躍。中國在許多科技領域，無論是人工智能、5G、電動汽車等，都成就非凡。但凡科技強國，都可為其人民帶來大量高質量的就業機會。這是各國發展的重要推動力。

同時，在科技強國，新興企業可謂雨後春筍，而大批的新企業湧現可能會挑戰固有的營商模式。若然你的國家科技實力雄厚，便如擁有改變經濟格局的重要武器。透過科技，你可以在短時間內顛覆傳統龍頭企業。所以，你可以想像，如果一個科技強國並非我國的友好國家，該國被視為擁有強大武器其實也是言之成理，這就是為什麼科技創新對於維護國家安全非常重要的原因。

香港致力於成為中國的科技中心，我們扮演的角色非常重要，稍後我還會再詳談這一點。

過往國家安全指的可能是保護實體資產或邊境防衛。如今，因為創新科技的發展，戰場已經遠遠延伸至網路數據、太空、深海這些國家安全的新興領域。

數據安全、網絡安全均是重要的國家安全領域，這不僅是政府的責任，也是所有企業和我們每一個人的責任。尤其說到掌握海量數據並擁有大量重要信息的科技公司而言，我們有責任確保數據安全、網絡安全，平台安全、以及用戶資訊的安全。

基礎設施是物流的另一個重要面向。試想在新冠肺炎疫情期間，如果交通依然像2019年的社會動亂期間一樣堵塞，便無法將重要的物資運抵目的地。所有基礎設施，無論是公共設施、機場運營、鐵路系統，都依賴科技驅動。系統安全不容有失。否則，系統會受到未經授權入侵，後果一發不可收拾。

總而言之，說到國家安全，尤其是網絡、數據這些全新的領域，我們每人均有自己的角色。香港致力於成為中國的科技中心樞紐，在引進人才方面我們能扮演非常重要的角色，而且我們也非常了解全球市場的運作。這些都是我們可以發揮作用的領域，透過在香港招聚人才，助力祖國與世界接軌。因此，我們要確保全球市場和不同的人才都了解，不論是從實體還是網上來說，香港都很安全。正如余偉文先生剛才提到的，投資者要有信心香港是安全的，才會來港投資、開展業務，並吸引專才舉家來港工作定居。

國家安全人人有責，謝謝。



問答環節

李臻：三位都提到無論是數碼經濟還是貿易經濟都很重要。我想先問Eddie（余偉文先生），在新的《維護國家安全條例》通過後，初步來說，金融界對此有何反應？你接觸過的銀行家，或者一些金融從業員，無論是香港或是來自海外的，他們又有何反應？

余偉文：首先如剛才所提到，對於一些金融機構來說，他們其中一個對香港很看重或是關注的因素就是這個地方是否穩定。如果一個社會不穩定，安全也有問題的話，他們很難在這裡營運。所以對於我們整體來說，無論是2020年的〔《香港國安法》〕或是剛剛推出的《維護國家安全條例》，他們都是支持的。

我們也做了不少解說工作。在推出新條例之後，我們和政府的不同代表（例如財政司司長）已有兩至三次針對不同階層的金融機構人士（包括總裁和高級管理人員，以及法律或合規部門的同事）的關注，度身定做簡報介紹《條例》。法律或合規部門的同事是我們其中一個重點解說對象，因為他們往往負責寫報告，向所屬的總部解釋這些條例是否會影響他們的安全。我們解說的重點是，《條例》對他們的營運，無論是日常的營運，或是寫研究報告批評香港，又或是對於他們一般的國際業務，也是沒有影響的。

另一個相當有用的舉動，是財政司司長向香港兩個監管機構，即金管局和證券及期貨事務監察委員會（證監會）致函，並由我們轉發給大部分的環球金融機構的總裁。信中，司長言簡意賅地向總裁和他們的董事局給予保證，說明新的條例旨在進一步加強保障我們社會的穩定，並不會對他們現有的營運造成影響，我們幾個監管機構對他們的監管也不會有任何改變。對於眾多企

業的總裁或者董事局來說，這個額外的確立其實是非常安定人心的。發出這封信後，我們也沒有收到很多問題。

過去的兩三個月，我自己也有到歐洲、英國和美國參與了不少會議，也遇見了很多投資者和金融機構的領導。在我參與的研討會或者圓桌會議當中，沒有人對國安的問題表示特別關注或提出問題，他們的關注點反而是內地和香港的經濟如何，我們的機遇如何，現在兩地互聯互通措施的最新發展等。

其中兩三個是我比較熟悉的主要銀行的行政總裁，我問他們對我們新的國安法例有何關注或看法，他們的反應也挺有趣的。第一，他們表示這次23條立法跟2020年〔《香港國安法》通過〕那次有點不同，因為這一次的立法他們一早就預見得到，也沒有覺得很驚奇。第二，他們的律師已幫他們做了很多分析，其中有兩家告訴我，他們就香港的法例和外地的法例做了一個很詳細的比較，而了解到香港的法例並不比別人的法例嚴厲，在某程度上更為寬鬆。參考了這些比較清楚的分析之後，他們感到安心。

但畢竟這是一條新的法例，他們關心法例的落實，我也覺得無可厚非。我們也已經向他們表明，他們任何時候對這方面有疑問或者關注的話，可聯繫我們以及律政司。我覺得接下來的這幾年，溝通很重要。譬如你看到在2020年《香港國安法》之後，我們做了很多溝通。一年後，當他們見到〔《香港國安法》的落實〕果真對他們沒有影響，他們就安心了。這一次我們的23條立法也是一樣。立法之後，如果在實行和溝通的工作上做得好，我自己覺得不單止不會動搖，反而加強了香港作為國際金融中心的地位，因為我們的營運環境更穩定。

李臻：我知道你和司長都很努力四處去解說，而事實是勝於雄辯的。我想問一下 Ms Yang（楊敏德女士），Esquel（溢達）和香港很多企業都深度投入大灣區機遇。從供應鏈層面，以及剛才你提到的數碼貿易而言，甚或數據安全上，香港可以怎樣作出貢獻呢？

楊敏德：香港是一個貿易中心，這是指貨物不一定需要實質的送到香港。舉例說，匯豐是世界最大的貿易銀行，當中很多交易都經過香港，這一點我們必須保持。大家都明白數據是最重要的、價值很高。如果你能夠掌控全球貿易系統中的數據，這將是一個重要優勢，並可以優化整個供應鏈。

最近〔企業家〕馮國經先生剛於香港科技大學成立了一個關於全球貿易供應鏈的管理課程。從此可見，我們是有條件的，但是我們必須抓緊機會去做。其中，〔貿易〕數碼化至今不成氣候，原因是缺乏標準，但是大灣區是有條件去設立行業的相關標準的。

正如溢達一樣，我們一條龍的生產線可以為標準化生產提供參考。就如佛山讓我們做龍頭企業，〔因為對國內的供應鏈來說，〕香港就是最後一站，連接國際貿易，這是佛山辦不到的，一定要通過香港。香港一定要抓緊這個機會，藉著數碼化、資訊化的大趨勢，香港要保持我們作為國際貿易中心的地位。就此，我們必須講求數碼化，而安全是先決條件。而且，實際上數碼貿易相當敏感，因為涉及很多資料，所以我們一定要令大家覺得香港是一個很合適的地方。

在「一帶一路」的規劃下，我們的貿易串連很多地方，並且是貿易的龍頭，所以〔這方面的發展〕一定會得到國家支持。香港要爭取作為不但是紡織服裝，還有在所有行業中標準化的龍頭地位，此事刻不容緩。

李臻：謝謝，楊女士。接下來再問一下Paul（盧家培先生）。大家都提及了與數碼化有關的東西：數碼金融、數碼貿易。而Paul你也特別提及到透過科技提供物流服務。你也提到除了數據安全之外，實體安全也很重要的，比如若路面封閉，你的車輛就走不動了，做不成生意。自你2013年的業務開始，到現在業務遍佈不同的地方，你會如何考量一個國家的安全，或是比較不同地方的國家安全法律，以及這些法律對你的成本的影響？

盧家培：我們每到一個市場去開發時都要遵守當地的法律，也不是說要特別針對當地的國安法，但是很多跟我們營運有關的法律，不論是關於私隱還是資料安全，都是跟國家安全有非常緊密的關係。為了符合當地規定，我們會計劃所需要投入的資源及相應安排、處理資料和保障私隱的方式等。所有我們有踏足的市場都有這些方面的法律。

就如今天很多講者所說，我們香港現在的國安法或者23條立法都是非常合理的，也是跟國際的標準一致，甚至比這些標準寬鬆，也非常符合〔我們的〕需要。在成本方面，正如大家所見，國安法以及23條立法後，香港社會由治及興是非常重要的，而在這方面的投資，特別是人才培訓，或者是我們系統的提升，跟我們企業本身在可持續發展或者是風險管理方面的策略一致。所以我們覺得這些投資不是一項〔額外的〕成本，反而對企業發展非常重要。

李臻：如剛才所說，這個環節最主要的其中一個關鍵字就是要守護住的「底綫」，以及「發展的新台階」。請各位分享一下，你們各自的範疇裡的「台階」和「底綫」是什麼？有請Eddie（余偉文先生）。

余偉文：在金融方面，我們通常會說有幾個主要的發展機遇，這些機遇也是我們金管局過去幾年和接下來這幾年主要聚焦的範圍。第一就是與內地有關的所有金融機遇，不論是互聯互通計劃，或是債券通、股票通、跨境理財通等。這些計劃其實還有很多擴大和深化的空間，我們會繼續在這方面努力。

其他主要機遇的例子包括大灣區的發展，以及同樣重要的人民幣國際化所帶來的機遇。香港是一個最大的境外人民幣中心。如果人民幣在國際間越多人使用，不少有關人民幣的需求，包括流動資金、投資或是融資的需求都會在香港發生。這些全部都會給予香港的金融市場或者金融界大量的機遇，而這些機遇亦吸引了不少金融機構來港。以進駐IFC（位於中環的商業辦公大樓）的公司為例，並不是清一色的內地機構，也有不少來自歐洲、美國的各種機構，包括資金管理、投資機構，又或者是一些中介機構。

當然我們要背靠祖國，但我們也一定要面向國際。除了內地的機遇之外，要令到香港成為一個真正的國際金融中心，〔面臨〕國際大趨勢，我們一定要走得夠快，走得夠前。

這些大趨勢最主要的兩個，第一是數碼化。金融科技如何用數碼科技令金融走得更前和更有效？

我剛才也有說過，我們在七八年前已經開始我們的Fintech journey（金融科技之旅），而一直都有做很多事，包括現在經常使用，而當時推出的轉數快。我們有幾個在國際上走得最前以及被認為是最成熟的主題項目—央行數碼貨幣（central bank digital currency）。其中我們有一個項目叫 mBridge（多種央行數碼貨幣跨境網絡項目），就是我們和人民銀行、阿聯酋、泰國和現在最新加上的沙特阿拉伯五個地方，加上由國際結算銀行（BIS）統籌的項目。mBridge是用央行數碼貨幣做跨境支付，這不只是亞洲，是全球裡走得最前的跨境支付央行數碼貨幣項目。這些項目極為重要，因為我們

會將香港的名字推到環球金融的最前端。人們不只是因為要在內地做生意才想起香港，而是當想到金融科技便想起香港。

除了金融科技之外，我們同樣走得最前的是綠色金融，這是很明顯的大趨勢，所以你看到我們無論是在自己的綠債市場，又或者我們怎樣將技術和綠色融合一起方面〔，也走得很前〕。譬如我們幫政府發行綠債代幣，是世界上（而不只是亞洲內）第一隻政府的代幣化綠債。同樣地，無論是講科技或綠色金融的國際會議，很多時候都會有香港的講者。這非常重要，印證了我們不單只是國家的金融中心，不單只是亞洲金融中心，我們是一個國際金融中心。所以這幾個項目，無論是內地機遇，數碼化和綠色金融，都是我們非常聚焦會繼續發展的幾個範疇。

李臻：坊間不少人都擔心香港的競爭力。你對此有什麼意見？

余偉文：〔不同區域之間〕其實不外乎是競爭或者合作。每一個區域都有各自焦點不同的金融中心，而香港有一個比較獨特的優點，就是我們既是中國的一部分，也是國際金融體系的一個重要組成部分。我們既可以背靠內地開放的機遇，而又充分利用國際的準則和做法，這個特殊的地位，讓我們成為內地各種開放市場或金融措施的「試金石」。而國際投資者，如果他們想投入去內地，譬如資本市場，現在差不多七成的投資都是經過香港股票通或者債券通進入內地。〔這些投資者〕不會去倫敦，不會去新加坡，因為只有香港有這個優勢。

但是我也不會過度強調競爭，〔雖然〕競爭很激烈，但是有很多新的範疇，例如我剛才說的技術或綠色金融，是需要和不同的金融中心合作。所以你會見到無論是跨境支付，或者是如何去推進我們一些轉型金融，都講求大家合作，大家去設立一些全球標準，才真的可以擴大來做。所以我認為在金融中心之間，既有競爭又有合作。

李臻：好，問問Marjorie（楊敏德女士），在製造業或是貿易的層面來說，新台階是什麼呢？是否都是既有競爭又有合作呢？

楊敏德：不如我講一下，為何我今天會在這裡。我本來應該是在別處的，後來我聽聞Eddie（余偉文先生）會在這個座談環節，我是他的一個大粉絲，所以我希望與他同台。因為香港需要的是變通。為什麼我是他們的大粉絲呢？我覺得在這段時間，他們做了很多事情不斷強化、變更和尋找解決方案。說到香港的競爭力，看看這次座談嘉賓的陣容！我有什麼厲害呢？我走過漫漫長路，仍可以今天坐在這裡跟你們聊天[，全靠變通]。

我的公司在2020年的時候，生意只剩下一半。我不能再賣襯衫，[所以決定變通]自己做自己的品牌。得到一群年青僱員協助做到，忽然間將一個品牌由零到現在這三年之內，在國內的市場做了超過一億的生意，其中還有65%是在抖音上做的。我當時還沒聽過什麼叫抖音。透過團隊的變通，雖然我不能賣襯衫，但我可以賣造衣服的自動化機器給其他的工廠，以前可能是競爭的對手，現在可以合作。他們賣襯衫，我們則賣機器給他們。我們也賣新的科技，例如針對污水處理問題，我們賣無水漂染的技術，這些完全是突破。如沒有[2020年的]大災難，我們還在安於現狀地賣襯衫，這正正就是香港人的長處，我們的競爭力來自我們願意變，願意想新的辦法，變則通。

他（盧家培先生）更加不用說，能幹到不得了。我一直都是你的粉絲，之前不認識你，[到現在]我越見越多橙色的車輛。這些真的是香港人的創業精神。所以我想回答你，你看看台上，這就是香港人競爭的資本。

李臻：Paul（盧家培先生），你下一個新的台階會在這裡呢？

盧家培：我在香港有投資，因為我很相信金管局，香港很安全。我也有買Marjorie（楊敏德女士）的襯衫。

我今天看到很多年輕人，讓我說說香港科創公司的機會。香港現在有安穩的環境，有紮實的法律體系，有蓬勃的金融體系，其實香港公司機遇處處。過去那幾年我們說起很多如何在大灣區或者在「一帶一路」的發展機會，我們公司不只是說，我們更會落實計劃。

一間香港的創科公司可以成為內地市場的龍頭，也可以那麼國際化，就是因為香港人有很多機會。香港年輕人有很多機會。只要我們把握機會，想遠一點，想大一點，不只是看香港的市場，也多留意內地發展或者是海外創業的機會。香港是個可以凝聚到資本、人才、資訊，和有清晰法律的地方，是很適合創業的。

另一方面，一間香港公司可以將成功的中國模式帶到全世界不同的市場，讓人們看到原來來自中國的公司可以創造雙贏，你又能賺錢，我們本地的中小企業又可以發展得好，司機合作伙伴也可以糊口。這同時也可視為是睦鄰的工作，讓人看到其實我們懷着善意而來。香港年輕人在創科方面有很多機會，接下來在科學園，或者是數碼港，好像我們這樣的公司應該是會越來越多，機會也會越來越多。

李臻：時間也差不多了。既然Paul已經寄語了年輕人，不如兩位也對我們的年輕人說幾句。先請Eddie（余偉文先生）。

余偉文：最重要的就是擴闊自己的眼界，因為環球經濟金融、社會環境瞬息萬變。好像我剛才所說的金融不只是說銀行業，即使是做投資，你也要懂得科技，要知道數碼化轉型帶來的機遇，要知道如何運用數據，還要懂得綠色金融，什麼叫轉型、綠色、啡色，諸如此類。所以你要知道的東西，是非常多的。

我建議你們要盡量打開自己，容量多一點，多留意你覺得有興趣、和你有關的事，才會比較容易適應一個變化多端的世界。尤其是AI會對各行各業帶來很大影響，大家應該去想一想我們的skill set（技能）應該如何轉變。過去幾年，年輕人都覺得創業、創科非常型格，其實金融也挺酷的，現在的fintech（金融科技），我們的green tech（綠色科技）也做得很好。我們現在不時到大學跟年輕人說，要多留意一下我們金融方面，其實也挺有趣的。

李臻：這很有趣。Marjorie（楊敏德女士）呢？

楊敏德：我的公司是〔內地〕改革開放的時候開始的，當時沒有內銷市場。我有一個新加坡好朋友是當時的經濟發展部長，他說如果我有一個內銷市場，我〔的生意〕就不得了。今天我們有一個很龐大的內銷市場，我希望你們多花點時間去了解，到處去看，這個市場雖然機會處處，但只立足香港的話是不明白的。我希望所有香港的年輕人都着眼去看看，現在我們身邊的消費市場如此巨大，我們從中可以如何善用自己的優勢、用我們獨特的眼光去做事，看清楚商機處處。

李臻：多謝各位的分享，我也更有安全感，並且看到了香港機會處處。我將時間交給司儀，謝謝各位。



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 - Lalamove於2013年成立，其使命是利用科技提供快速、簡單及實惠的送貨服務，賦能社區。
- 我們足跡遍佈全球
 - 我們的業務遍佈全球 **11** 個市場、**400** 多個城市，並且持續擴張業務。



於香港成立

新加坡、中國內地及泰國

菲律賓

越南

馬來西亞及印尼

巴西及墨西哥

孟加拉



2013

2014

2016

2017

2018

2019

2022

創新科技：國家可持續發展的動力

- 科技的性質：**快速、影響深遠且無遠弗屆**
 - 與全球競爭力及商譽密切相關
 - 刺激經濟增長及提高生產力
 - 創造就業機會並改變業務模式
- 事關**國家繁榮與國家安全**：中國必須維護**端到端技術價值鏈**完整
 - 善用先進技術，如人工智能、機械人、5G、電動車、可再生能源
 - 香港角色舉足輕重並可作重要貢獻



維護科技安全

在新興領域裡拓展國家安全概念

除了傳統的安全領域外，還有新興領域如太空安全、人工智能安全、數據安全。



確保網絡及數據安全

對於維持大眾對創科業界的信任與信心，數碼環境安全至關重要

禁止危害國家安全活動



業界的角色

科技業界是維護國家安全的關鍵持分者



《維護國家安全條例》第50條：
嚴禁在沒有合法權限下，意圖透過電腦或電子系統作出危害國家安全的任何行動或活動



維護基礎設施安全

公共基礎設施安全是國家安全不可或缺的一環

保護公共利益及提高社會對各種安全威脅的應變能力

預防基本公共服務中斷

確保重要基礎設施（如機場、貨櫃碼頭、道路系統）的商業通訊安全、個人資料受到保護

保持數據完整性及功能性

由於數據中心及電訊服務是數碼經濟的骨幹，因此在數碼領域堅持嚴格的合規要求至關重要



《維護國家安全條例》第49條：
引入新的罪行，以保護公共基礎設施（如機場）不受惡意破壞或削弱，並打擊透過電腦或電子系統危害國家安全的行為



《維護國家安全條例》第50條：
訂立透過電腦或電子系統進行危害國家安全行為的罪行



國家安全：任重道遠

應對不斷演變的威脅及挑戰

- 貫徹落實國家安全法，打擊新興網路攻擊
- 持續投資發展及監察線上與線下安全

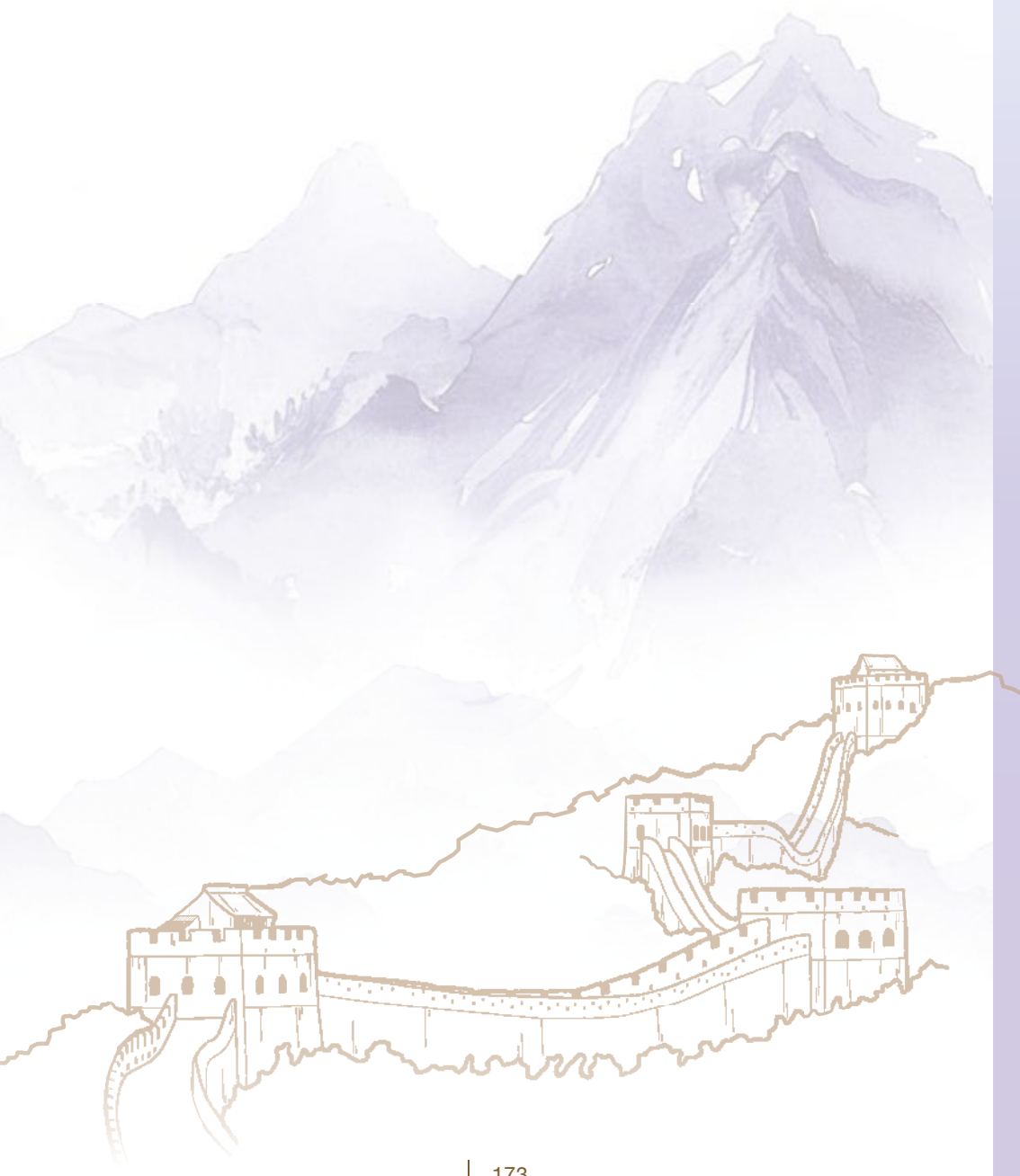
香港的願景：成為國家科技樞紐

- 我們該做甚麼？
 - 國際化
 - 維持大眾信心！
 - 確保科技生態充滿活力，招聚人才、鼓勵創新、便利投資

國安法律論壇
NATIONAL SECURITY
LAW FORUM
2024

香港
HONG KONG
Department of Justice
律政司





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同司長一齊傾



主持人

陳蒞菁

主持人、演員、企業培訓師



講者

林定國

SBS SC JP

中華人民共和國香港特別行政區政府
律政司司長



中學生代表



大學生代表



青少年制服團隊 領袖論壇代表





在本環節的第一部分，主持人邀請現場觀眾透過二維碼，即場回應有關國家安全的問題。圖中所見，現場觀眾正透過手機踴躍回應問題。



律政司司長林定國與主持人陳蒨蓁分享對問題的看法。

說到自國家安全的聯想，大部分現場觀眾(80%)的聯想都是法律條文。司長認為這個聯想非常合理，因為國家安全的保障涉及權利與義務的劃分，而法律是作劃分的合適工具。而且明文法律規範清晰，法律的落實不會受個別官員隨意影響，也對所有企業和市民一視同仁。



本環節第二部分邀請到一名大學生、一名中學生與一名青少年制服團隊領袖論壇代表，與司長及主持人一起探討國安議題。圖中所見，司長與三位年青講者分別就題目所問，寫上自己即時想到的關鍵字，並分享背後的想法。

圖中題目

要有效落實同國家安全有關的法律，你認為最重要是什麼？

司長認為是自覺性，而三位年青講者則分別認為是教育、國民身份認同以及公眾認識。



本環節結束後，年青講者邀請司長及主持人自拍留念。

開幕詞



張國鈞 SBS JP

中華人民共和國香港特別行政區政府律政司副司長



各位嘉賓、各位朋友，還有蒞菁姐姐（座談環節4主持人陳蒞菁）：

大家好！不知不覺，今日的國安法律論壇經已來到尾聲。今日論壇的嘉賓可謂星光熠熠，除了有行政長官及中央駐港機構的領導——鄭雁雄主任、董經緯署長、崔建春特派員——以及林定國司長為我們致開幕辭外，還有農融副主任及張勇副主任為我們作主題演講，更有簡慧敏立法會議員、李浩然博士和李臻先生為我們主持專題研討會，分別與多位重量級嘉賓探討有關《香港國安法》的實施及法理發展、「雙法雙機制」的特點和好處，以及香港特區維護國家安全法律如何為金融界及商界等創造更安穩的環境等重要議題。最後，當然還有律政司司長和幾位青年朋友剛才的互動交流，為我們探討年輕一代在維護國家安全這個重要議題上可扮演的角色。

《香港國安法》的實施及法理發展

通過《香港國安法》實施四年的實踐，香港法院已積累了國安案件較成熟的司法案例。今天參與討論《香港國安法》的實施及法理發展的嘉賓譚耀豪資深大律師、張天任資深大律師及蘇紹聰博士，帶領我們回顧了《香港國安法》重大案件及全國人民代表大會常務委員會關於《中華人民共和國香港特別行政區維護國家安全法》第十四條和第四十七條的解釋。

從這些案例的討論可見，《香港國安法》條文清晰，清楚列出規定的四類危害國家安全的罪行；構成有關罪行的元素、刑罰、減刑因素和犯罪的其他後果亦於《香港國安法》第三章清楚訂明。而《香港國安法》下的保釋及不設陪審團審訊的安排亦與其他司法管轄區的做法相似，並沒有減損被告人公平審訊的權利，更無損法院獨立行使審判權。

另外，法院的案例亦確立了司法機關必須接納行政長官根據國安法第四十七條對某行為是否涉及國安風險的認定，也見到法院對行政機關判斷為應對國安風險而採取的措施的必要性和有效性，亦給予相當大的尊重。這是由於憲制上，法院與行政機關各有不同的職能，各司其職；而體制上，行政機關有必要的經驗、專業知識、資源以及獲取信息和情報的途徑，是最適合評估國家安全問題的部門。事實上，這也是其他普通法地區確立的原則。

「雙法雙機制」

早前生效實施的《維護國家安全條例》完善了香港特區的維護國家安全的法律。《香港國安法》及《維護國家安全條例》分別是由國家和香港特區層面制定。韓大元教授、陳弘毅教授、江樂士資深大律師跟我們探討《香港國安法》及《維護國家安全條例》如何兼容互補，發揮好「雙法雙機制」的保障，並將《維護國家安全條例》的一些要點和其他國家的國安法律作比較。

「雙法雙機制」以《憲法》作為根本法律根據，在《基本法》和全國人大《5.28決定》下，形成《香港國安法》和《維護國家安全條例》同步實施，駐港國安公署與特區國安委有效互動的「雙法雙機制」格局。雙法之間是互相銜接、有效溝通、相互配套、並行適用的有機整體。「雙法」格局為「雙執行」機制的實施提供了法律基礎，而「雙機制」則保障了「雙法」的有效執行和落實。二者共同構成香港特區維護國家安全的法律制度和執行機制的重要組成部分。

而在實際應用上，《香港國安法》和《維護國家安全條例》亦的確有兼容互補、相輔相成之效。以有關煽動罪、保護國家秘密、反境外干預，及反恐怖主義的法律條文為例，《香港國安法》已就一些類近的行為和活動訂立相關罪行，而《維護國家安全條例》則完善了相關罪行並作更進一步、更全面的規管。而在具體執行細節上，《維護國家安全條例》也作出了補充，例如：對潛逃者可施行的措施，以及限制提早釋放被裁定干犯國家安全罪行的囚犯等等。凡此種種，都可見《香港國安法》與《維護國家安全條例》互為補充，與香港現有法律構建好維護國家安全的法律機制，方方面面維護好國家安全。

座談上亦探討了英、美、澳、加的國家安全法律，當中充分顯示各國均把維護國家安全視為頭等大事，美西方國家早已構建起整套維護國家安全的法律體系，除傳統安全領域外，還涵蓋非傳統安全領域如經濟特別是外國投資審查、金融、科技、資訊等，並因應當時情勢而不斷頻繁地進行變更，更普遍具域外效力。可見香港特區的《維護國家安全條例》充分與國際接軌。

助力高質發展

此外，不得不提今天座談會更有幾位來自不同專業界別的翹楚：余偉文總裁、楊敏德董事長，以及盧家培首席營運官。我們今天不僅從法律角度探討國家安全法律，更透過幾位嘉賓的專業

知識，帶領我們從金融和商業的視角了解國家安全法律對各行各業發展的重要。我們了解到香港特區維護國家安全法律機制可以有效減低關鍵的公共基礎建設受攻擊的風險，例如金融中央結算及交收系統，有效保障香港作為國際金融中心的地位。同時，國安法律明文保障新聞自由，在新聞自由與國家安全需要之間取得平衡，令香港可以為不同界別創造一個更安穩的環境，保護所有香港和外來投資者的合法權益，助力香港特區融入國家發展大局，推動香港高質量的可持續發展。

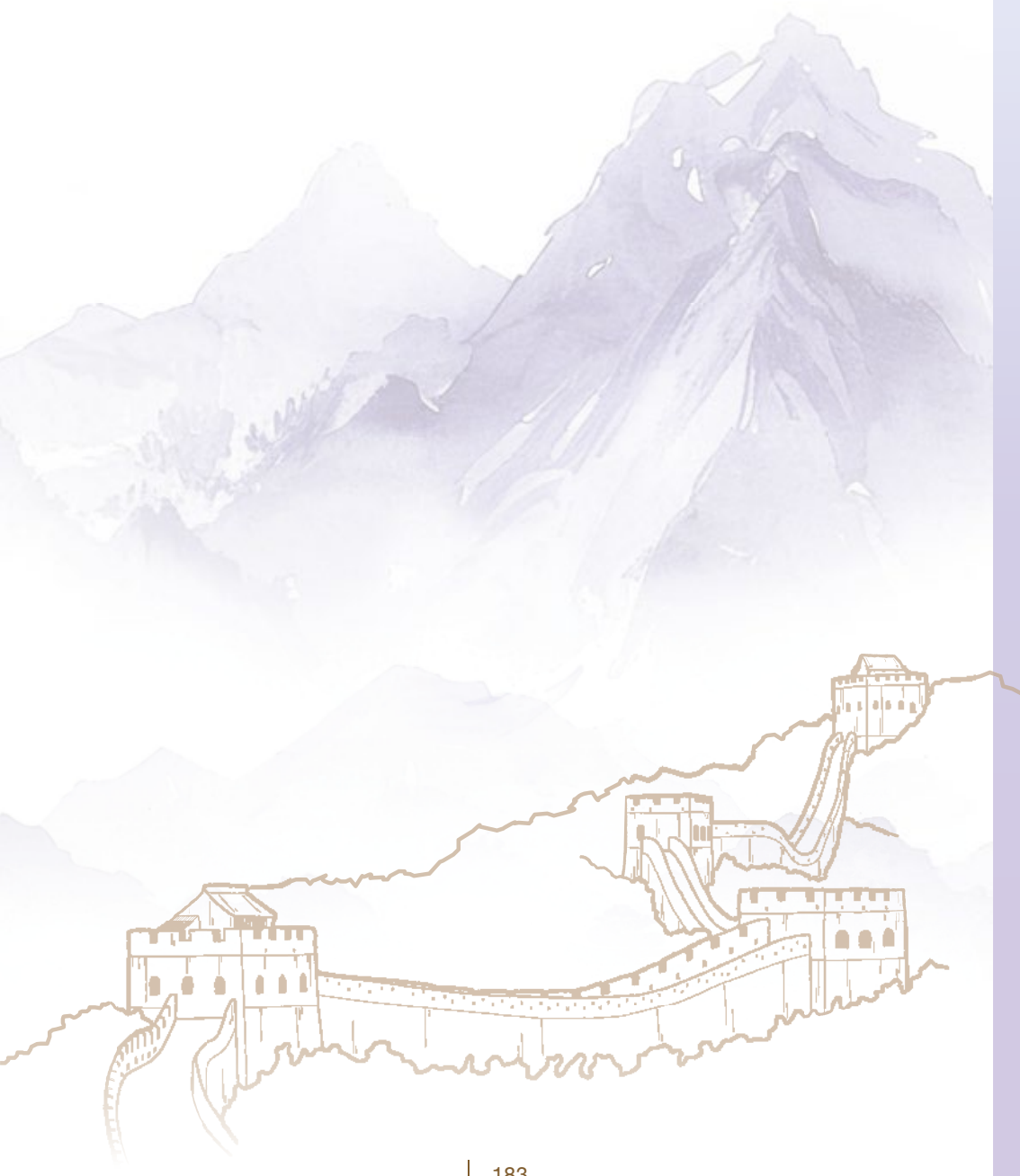
維護國家安全：年輕一代的角色

今天國安法律論壇另一亮點是剛剛的「同司長一齊傾」交流環節。這一節的講者真是「後生仔」的天下，除了台下觀眾互動之外，也有中學生代表、大學生代表、紀律部隊青少年制服團隊代表，一起與律政司司長坦誠分享。我對今天年輕人的分享印象尤其深刻：他們從自己的生活經驗出發，分享了對國家安全的想法，相當貼地。他們不但展示國家安全如何與我們的日常生活息息相關，也分享了我們每一位特別是年青人在國安工作中可以擔當的角色——就是持續加深自己對國家安全的正確認識，並真誠與朋輩分享，已經可以感染身邊的人，為維護國家安全出一分力。

結語

最後，我感謝中央港澳辦、國務院港澳辦和中央各駐港機構的支持，以及各位講者、嘉賓和朋友們的積極參與，讓論壇取得圓滿成功。在今日論壇的各個環節，各位講者從不同角度對國安法律的相關議題進行了深入討論。我在此感謝各位的精闢見解和睿智觀點，你們的分享令大家獲益良多。多謝各位！#

本文內容為講者所提供的講辭





The background of the entire page is a stylized, watercolor-like illustration of a mountain range. The mountains are rendered in various shades of purple, from deep violet to light lavender, creating a sense of depth and atmosphere. The peaks are jagged and layered, with some appearing more prominent than others. The overall effect is a serene yet powerful natural scene.

National Security Legal Forum

Looking Back and Ahead New Dawn for Development

Proceedings

Foreword

The successive implementation and commencement of the Law of the People's Republic of China on Safeguarding National Security in the HKSAR (HKNSL) and the Safeguarding National Security Ordinance (SNSO) have begun a new chapter for “One Country, Two Systems” and fully manifested the highest principle of “One Country, Two Systems” to safeguard national sovereignty, security and development interests. This has further improved the rule of law system of the HKSAR for safeguarding national security, thereby building a solid foundation for advancing from stability to prosperity and greatly facilitating the high-quality development of the HKSAR.

The year of 2024 is the 75th anniversary of the founding of the People's Republic of China, the 10th anniversary of President XI Jinping's innovative proposal of the “Holistic Approach to National Security”, the 4th anniversary of the implementation of HKNSL and an important milestone as the first year since the gazettal and taking effect of the SNSO, which was passed unanimously by the Legislative Council with the unswerving support from all sectors of the community. With the Central Government's strong support, the Department of Justice successfully organized on 8 June 2024 the National Security Legal Forum themed “Looking Back and Ahead, New Dawn for Development”, bringing together experts and scholars, legal elite and community dignitaries from various sectors to engage in an in-depth and high-level exchange of ideas and discussions on national security laws. The forum was held in time with extraordinary significance.

“A nation will prosper when its young people thrive.” For the first time, this legal forum included the session “Chat with SJ”, which offered me the opportunity to have a friendly dialogue with youths from different backgrounds including a university student



representative, a secondary school student representative and a representative of the youth uniformed group leaders, and to interact closely with audience on various legal issues concerning national security. The Department of Justice will continue to fully utilize different platforms and make every effort in taking forward education relating to national security and the rule of law, thereby establishing in all strata of society mainstream values characterized by patriotism with affection for our country and Hong Kong and in conformity with the principle of “One Country, Two Systems”.

By facilitating high-level security with high-quality development and fostering high-quality development through high-level security, a dynamic equilibrium between development and security for their mutual reinforcement can be achieved. The Department of Justice will go all out, adhering to the Holistic Approach to National Security as the fundamental guide, to continuously promote the refinement of the rule of law infrastructure for safeguarding national security in the HKSAR while upholding integrity and embracing innovation. We will firmly uphold the bottom line of safeguarding national security and adhere to the principles of the rule of law principles, while fully respecting and protecting human rights. I firmly believe that under the strong protection of laws on safeguarding national security including the HKNSL and the SNSO, with full and good use of the unique law-based and internationalized advantages of the HKSAR by various sectors of the community and by riding the momentum of the State’s further comprehensive deepening reform, the HKSAR is certain to forge new glories for “One Country, Two Systems”.

To facilitate the general public in grasping the essence, legislative background and purposes of the national security laws, and to enhance self-awareness of all sectors to jointly respect and comply with the

Foreword

relevant laws, the Department of Justice has specially compiled and translated the speeches and on-site discussions of this National Security Legal Forum into proceedings, in the hope of sharing the speakers' insights with more people who care about our country and the HKSAR.



Mr Paul T K LAM, SBS, SC, JP

Secretary for Justice

The Government of the Hong Kong Special Administrative Region



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Opening Remarks





The Hon John LEE Ka-chiu GBM SBS PDSM PMSM

Chief Executive,
Hong Kong Special Administrative Region of the People's Republic of China



The Honourable Mr ZHENG Yanxiong (Director of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region), Mr NONG Rong (Deputy Director of the Hong Kong and Macao Work Office of the CPC Central Committee, and Hong Kong and Macao Affairs Office of the State Council), Mr ZHANG Yong (Vice-chairperson of the Committee for the Basic Law of the Hong Kong Special Administrative Region of the Standing Committee of the National People's Congress; Deputy Director of the Legislative Affairs Commission of the Standing Committee of the National People's Congress), Mr DONG Jingwei (Head of the Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region), Mr CUI Jianchun (Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Hong Kong Special Administrative Region), Major General WANG Zhaobing (Deputy Political Commissar of the Chinese People's

Liberation Army Hong Kong Garrison), distinguished guests and dear friends,

Good morning, everyone! I am very delighted to be here at the National Security Legal Forum today.

This year marks the 75th anniversary of the founding of the People's Republic of China and the 10th anniversary of President XI Jinping's proposal of the "Holistic Approach to National Security". After a wait of 26 years, 8 months and 19 days, Hong Kong finally completed enactment of local legislation to implement Article 23 of the Basic Law on 19 March this year. We have fulfilled this constitutional duty. With the unanimous passage of the Safeguarding National Security Ordinance (SNSO) by the Legislative Council (LegCo), the shortcomings in safeguarding national security in the HKSAR have been addressed. We have fulfilled our historic mission, living up to the mandate from the Central Authorities and the trust of the State.

This coming 30 June will celebrate the 4th anniversary of the implementation of the Hong Kong National Security Law (HKNSL). Today's forum, organised by the Department of Justice (DOJ), is of exceptional significance as it opportunely lets us review the HKNSL's accomplishments and jurisprudential development during its full implementation over the past four years, and look ahead to both implementation of the SNSO and operation of the legal system and enforcement mechanisms for safeguarding national security, which provide more effective protection for national security.

The security of Hong Kong is premised on the security of our Motherland, and the security of our home is premised on the security of our country. National security is fundamental to the prosperity and stability of society as well as its people's well-being to live and work in peace and contentment. It is closely related to the immediate interests of the general public. As repeatedly highlighted by President XI, security is the prerequisite for development and development is the safeguard for security, where there can be no talk of anything without security and

stability. President XI has also asked us to achieve a dynamic equilibrium between development and security for their mutual reinforcement.

National security risks have persisted since Hong Kong's return to the Motherland. Given the thwarted efforts in enacting local legislation to implement Article 23 of the Basic Law over the years, loopholes in national security abounded. From 2012's anti-national education movement, 2014's unlawful Occupy Central and 2016's Mong Kok riot to 2019's "black-clad violence" and Hong Kong version of "colour revolution", disorder was created by way of mass riots. Some even resorted to dragging the entire Hong Kong and its people off the cliff by the "10-step mutual destruction scheme". They did so in a ploy to take control of the LegCo, voting down the Budget indiscriminately and compel the Chief Executive to resign. By doing so, they schemed to seize the executive and legislative powers, destroy the constitutional order and political system of the HKSAR as established by the Basic Law, subvert the State power and seriously undermine national security.

Our gratitude goes to the Central Authorities for their decisive actions in promulgating the implementation of the HKNSL, which filled a significant part of the major vacuum in national security laws, as well as in improving the electoral system to implement the principle of "patriots administering Hong Kong". Hong Kong thus finally resumed its normal operation; only then can its people enjoy the current security and stability, enterprises flourish, and we make every endeavor to strive for economic growth and development.

The HKSAR Government has all along been doing its utmost to performing its duties and functions, and has spared no effort in safeguarding national security by preventing, suppressing and punishing acts and activities endangering national security in accordance with the law. Safeguarding national security is not only the responsibility of the Government, but also the due obligation of the entire Hong Kong community.

With joint support from all sectors of the community, unfailing efforts by colleagues of relevant government departments and the LegCo's full and highly efficient scrutiny, this March finally saw Hong Kong's glorious completion of local legislative exercise to implement Article 23 of the Basic Law. This is the fulfilment of a long-awaited constitutional duty cum historic mission after 26 years, 8 months and 19 days. The unanimous passage of the SNSO by the LegCo is an important milestone in Hong Kong's march from stability to prosperity.

The HKNSL and the SNSO are compatible and complementary, giving full play to the institutional advantages of "dual legislation and dual enforcement mechanism", which has established comprehensive institutional safeguards for maintaining security and stability and promoting good governance. Now, we can move forward without worries or burden and fully focus on pursuing economic growth, advancing development, improving people's livelihood and bringing fulfilment to the people, with a view to creating a more prosperous and better home for Hong Kong.

Given the global changes unseen in a century and increasingly complicated geopolitical situation, Hong Kong faces ever-changing risks to national security, which may well emerge out of the blue. Criminals' increasingly clandestine activities, external forces' incessant unjustified accusations against and barbaric interference in Hong Kong's law-enforcement actions, and unbridled collusion with external forces by the anti-China destabilizing elements who have absconded overseas are all challenges to the bottom line of national security. We must realise the complex and grave situation of national security, and bear in mind the realistic, camouflaging and volatile nature of national security risks. We mustn't forget the pain upon healing or allow the wounds to be dug open again.

The "Holistic Approach to National Security" calls for a heightened sense of crisis, vigilance in peacetime, an improved institutional system of national security, and enhanced capacity building for national security.

Therefore, we must consciously do our best in internal management and system enhancement, raise self-awareness among all sectors of the community in safeguarding national security, and in our daily life remain mindful to prevent and suppress acts and activities that are contrary to the interests of national security.

The Government will continue to take forward the explanatory work regarding the laws on safeguarding national security, and keep promoting national security education, patriotism education and Chinese culture education, in order to build mainstream values characterised by patriotism with an affection for our country and Hong Kong and in conformity with the principle of “One Country, Two Systems”.

Looking ahead, we will uphold the rule of law, protect property and facilitate business operation. With laws of its own, the HKSAR practices the common law system and its rule of law is firm and robust. The Basic Law clearly states that the HKSAR shall be vested with independent judicial power, including that of final adjudication, and that the courts shall exercise judicial power independently, free from any interference. Meanwhile, the HKNSL and the SNSO also expressly stipulate that the rule of law principle shall be adhered to.

The laws of the HKSAR on safeguarding national security attach particular importance to human rights, stipulating that rights and freedoms guaranteed under the international covenants as applied to Hong Kong shall continue to be protected in accordance with the law. The principle of protecting human rights and freedoms is enshrined in statute and is in line with international standards, and is concretely and meticulously covered by the provisions in both the HKNSL and the SNSO.

The SNSO also clearly states that it is a must to ensure that the property and investment in Hong Kong are protected by the law, and provides for appropriate exceptions and defences for specific offences.

Hong Kong’s national security laws protect law-abiding citizens

and enterprises and safeguard Hong Kong's long-term prosperity and stability.

With a shield to safeguard national security in place in Hong Kong, business certainty has been greatly enhanced and investors can invest and set up businesses in Hong Kong without worry and fear.

Hong Kong will continue to leverage its distinctive advantage of having strong support from the Motherland and close connection with the world under "One Country, Two Systems", and capitalize on its unique positioning as the only common law jurisdiction in our country, so as to give full play to its roles as a "super-connector" and "super value-adder" and achieve high-quality development.

Hong Kong is embarking on a new journey from stability to prosperity. To advance from stability to prosperity is the common enterprise of the whole community of Hong Kong. We must keep striving for breakthroughs and bold innovations, and drive upgrade and transformation of industries, in our unceasing efforts to write new chapters and new legends for Hong Kong.

To my knowledge, today's event held by the DOJ is not only graced by the presence of many experts in the legal profession, but also well attended by secondary students, university students and young people. Young and full of vigour, you are the future of Hong Kong. I hope you all can seize the boundless opportunities in Hong Kong and strive hard to rise as future pillars with an affection for our country and Hong Kong and with global vision.

Everyone, let us give full play to the various strengths of Hong Kong and remain committed to the mutual facilitation between high-quality development and high-level security, so as to constantly enhance the sense of security, achievement and satisfaction among citizens. Hong Kong will keep on creating new legends and achieving new glories.

May I wish today's forum every success! Thank you, everyone.

Mr ZHENG Yanxiong

Director, Liaison Office of the Central People's Government in
the Hong Kong Special Administrative Region



Legal effectiveness and deterrence of “dual legislation and dual enforcement mechanism” in full play

The Honourable Chief Executive John LEE Ka-chiu,
Distinguished guests and dear friends,

Good morning, everyone!

At the 10th anniversary of the holistic approach to national security, the 4th anniversary of the Hong Kong National Security Law (HKNSL) in implementation, and the commencement upon gazettal of the Safeguarding National Security Ordinance (SNSO), it is essential and meaningful for the Department of Justice to host this Hong Kong National Security Legal Forum, which brings together experts, scholars, and community dignitaries for an in-depth exchange of ideas and discussions. On behalf of the Liaison Office of the Central People's

Government in the Hong Kong Special Administrative Region (HKSAR), I would like to extend our warmest congratulations on the organisation of the forum!

With the concerted efforts of the HKSAR Government, the Legislative Council and all sectors of the community, the SNSO was smoothly passed into law, which heralds the formation of the “dual legislation and dual enforcement mechanism” comprising the HKNSL, the SNSO, the Office for Safeguarding National Security of the Central People’s Government of the People’s Republic of China in the HKSAR and the Committee for Safeguarding National Security of the HKSAR. This is a remarkable feat guided by the holistic approach to national security in ridding Hong Kong of chaos, reinforcing its governance and fostering its prosperity, and is a major accomplishment for the practice of “One Country, Two Systems” in the new era. In doing so, colleagues of the Department of Justice have made tremendous efforts, which deserve our full recognition. At the opening ceremony of the “April 15 National Security Education Day”, I gave some views on the “dual legislation and dual enforcement mechanism”. Let me take this opportunity to share with you all a few more observations.

First, the “dual legislation and dual enforcement mechanism” has further reinforced the rule of law as a cornerstone for Hong Kong. The Central Authorities and the HKSAR have adhered to the governance of Hong Kong by law, where the rule of law has always been the source of Hong Kong’s charm as a business-friendly, livable and entrepreneurial environment. “A country not ruled by law will descend into chaos, whereas a country that clings to outmoded law will fall in decline.” Establishing a comprehensive legal system and ensuring that it always keeps up with the times are the core principles and key experiences of contemporary rule of law. The implementation of the “dual legislation and dual enforcement mechanism” signifies that the rule of law in Hong Kong has stepped into a new stage, characterized by a comprehensive system and dependable efficiency, and has further burnished the sterling reputation of Hong Kong’s rule of

law. The “dual legislation and dual enforcement mechanism” is a potent embodiment for giving effect to the Central People’s Government’s purview over national security and fulfilling the HKSAR’s constitutional duty. It marks a sound improvement of the legal system and enforcement mechanisms for safeguarding national security in Hong Kong, thereby remedying the shortcomings in the system for safeguarding national security in the HKSAR, and ensuring that the implementation of “One Country, Two Systems” in Hong Kong operates healthily on the right trajectory. Organically converged, compatible and complementary, the HKNSL and the SNSO cover comprehensively the seven types of acts endangering national security prohibited under Article 23 of the Basic Law of Hong Kong, clearly define the boundaries between crimes and non-crimes, and stabilise the expectations of the general public and investors. The “dual legislation” always upholds and respect human rights, while the “dual enforcement mechanism” operates in strict accordance with the “dual legislation”. All the offences provided for in the two pieces of legislation, as well as the relevant law enforcement powers and legal proceedings, are similar to or comparable with those in major common law jurisdictions. They are highly compatible with the common law system of Hong Kong, thus ensuring the smooth, highly efficient and orderly implementation of the laws.

Second, legal effectiveness and deterrence take prominence in the implementation of the “dual legislation and dual enforcement mechanism”. The “dual legislation and dual enforcement mechanism” is an effective and practical legal system for safeguarding national security, which aims to ensure that all activities and acts endangering national security are effectively punished, and that all lawful acts are well protected by law in manifestation of justice and righteousness in society. Since the implementation of the HKNSL, the “National Security Department Reporting Hotline” of the Hong Kong Police Force has received reports in over hundreds of thousand messages, but only 298 suspects endangering national security have been arrested, of whom only a hundred or so have been convicted and sentenced or are

awaiting sentence, while 13 anti-Hong Kong disrupters who have fled the territory are on the wanted list. In late May, the court convicted 45 persons in the “35+ Primary Election Case”. The conviction was positively received across the community in general, saying that it has brought home to society the proper concept of the rule of law, and bolstered the entire community’s resolve and confidence in safeguarding national security. To enact a good piece of law is not easy, and to use it well is even more challenging. Much work remains to be done for giving full play to the “dual legislation and dual enforcement mechanism”, and for the full, accurate and effective law enforcement and administration of justice. The HKNSL stipulates the basic legal system and enforcement mechanisms for safeguarding national security in the HKSAR, whereas the SNSO further improves the specific systems and mechanisms; the two laws are organically integrated and inseparable. In practice, it is necessary to holistically co-ordinate the implementation initiatives of the “dual legislation and dual enforcement mechanism” to attain compatibility and complementarity at the enforcement level and achieve effective convergence. We should also clearly understand the legislative intent of the laws when implementing the “dual legislation and dual enforcement mechanism”, improve the implementation rules to cater for all kinds of contingencies and incidents, precisely define the crimes and non-crimes of the subjects involved as well as the magnitude and gravity of offences, and grasp with precision the enforcement methods and procedures, so as to finely implement the various legal measures. To emphasize the practical effectiveness of the laws, we must strictly adhere to the law in enforcing it and administering justice when the handling of all types of national security cases, countering external interference and sabotage, and combating all kinds of anti-China and anti-Hong Kong disruptive activities, so as to manifest the dignity and practical effects of the law. Procedural fairness can never replace outcome justice, nor can compassion displace legal dignity.

Third, we should make good use of the “dual legislation and dual enforcement mechanism” to secure high-quality development

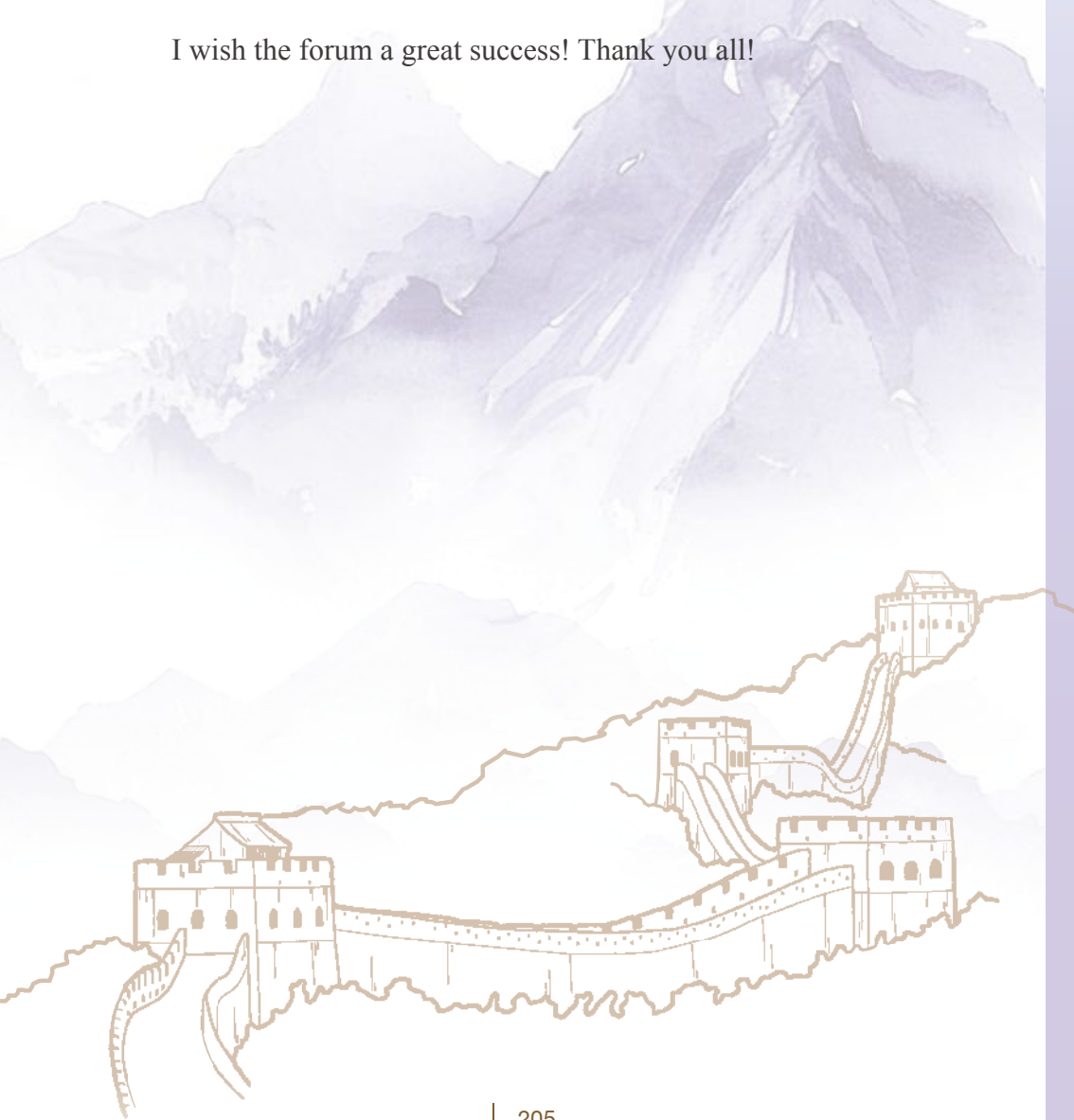
in Hong Kong. Today's world is undergoing unprecedented changes unseen in a century, and the internal and external environments of Hong Kong's development is experiencing profound transformations. This not only entails difficulties and challenges but also holds infinite hopes and bright prospects. The implementation of the "dual legislation and dual enforcement mechanism" signifies an impregnable bastion for Hong Kong to safeguard national sovereignty, security and development interests; a more sustainable and secure environment for Hong Kong's own development; and a more stable business setting for entrepreneurs and investors worldwide to invest and thrive in Hong Kong. Hong Kong thus embraces the best of times in full pursuit of a vibrant economy, development and better livelihoods. This year has seen a steady and moderate growth in Hong Kong's economy; a healthy and stable running of the financial market; a continuous revival of related industries driven by climbing visitor flows here; emerging industries such as innovation and technology poised for development; a series of mega-events showcasing Hong Kong's edges and charms to the world; an influx of international talents and enterprises settling in Hong Kong; and the successive hosting of mega international events such as the Congress of International Council for Commercial Arbitration. They all have added lustre to the Pearl of the Orient, and the vibrant city is more dynamic than ever. All rumours, vilification, smears and attacks against Hong Kong appear feeble and powerless when faced with the facts. On Hong Kong's path to future development, the "dual legislation and dual enforcement mechanism" will continue to play an important role in ensuring high-quality development through high-level security while facilitating high-level security with high-quality development.

Distinguished guests and dear friends,

This year celebrates the 27th anniversary of Hong Kong's reunification with the Motherland. It is also a crucial year for Hong Kong to fulfil its constitutional duty by enacting legislation under Article 23 of the Basic Law in its steadfast stride from stability to prosperity. Let us conscientiously abide by, safeguard and effectively

utilise the “dual legislation and dual enforcement mechanism” with our ardour for the Motherland and affection for Hong Kong. Let the “dual legislation and dual enforcement mechanism” integrate organically into Hong Kong’s common law system, and remain as an important cornerstone for the rule of law in Hong Kong. May this lead the entire community to develop a favourable atmosphere for jointly safeguarding national security, creating a safer and more stable social environment for Hong Kong, and contributing to the rule of law for the steadfast and successful implementation of “One Country, Two Systems”.

I wish the forum a great success! Thank you all!



Mr DONG Jingwei

Head of the Office for Safeguarding National Security of the Central People's Government of the People's Republic of China in the Hong Kong Special Administrative Region



— Advancing the establishment of rule of law system and resolutely safeguarding national security —

Distinguished guests and dear friends,

Good morning, everyone!

At the fourth anniversary of the promulgation and implementation of the Hong Kong National Security Law (HKNSL), we join our efforts in holding this forum to discuss and exchange views on the effectiveness of the implementation of the HKNSL in practice as well as the experience and understanding gained. This is of great significance to the further advancement in establishing the legal system for national security in Hong Kong. On behalf of the Office for Safeguarding National Security of the Central People's Government of the People's Republic of China in the Hong Kong Special Administrative Region

(OSNS), I would like to take this opportunity to extend my sincere greetings to the distinguished guests! Our heartfelt thanks go to everyone from all walks of life and our fellow Hong Kong compatriots, who have been supporting the HKNSL implementation and the work of the OSNS all along!

The formulation and implementation of the HKNSL is an important milestone in the development of the “One Country, Two Systems” practice since Hong Kong’s reunification with the Motherland. It is also the vivid realization of President XI Jinping’s thinking on the rule of law and the application of his holistic approach to national security in Hong Kong. The rule of law provides the best environment for businesses, while security and stability are the best guarantee for development. With Hong Kong’s ever-enhancing national security legal system, we have become more effective in safeguarding national security, which is more conducive to pursuing economic growth and advancing development, and expedites the advancement from stability to prosperity. I wish to share with you four points of thoughts and opinions.

First, logically, the HKNSL has kick-started the historical process of building the legal system for national security in the HKSAR. It is perfectly justifiable for a country to legislate and decide how to legislate for its own affairs. While Hong Kong is also guided by the holistic approach to national security and applies the unified concept of national security as that in the Mainland, the Central Authorities have put in place in Hong Kong a set of distinctive legal system and enforcement mechanisms for safeguarding national security, taking into account the uniqueness of “One Country, Two Systems” and the actual situation in Hong Kong. This not only embodies the governance wisdom of diversity in unity inherent in the “One Country, Two Systems” principle, but also manifests the political trust placed by the Central Authorities in the HKSAR. Nearly four years ago, the HKNSL came into force as a statutory lynchpin for stability in Hong Kong. It is an essential iconic law for upholding and enhancing the “One Country, Two Systems” regime under the new circumstances, and has become an important

basis for the implementation of the legal system and enforcement mechanisms for safeguarding national security in the HKSAR. Over the past four years, it has promoted the thorough implementation of the HKNSL, fully demonstrated the efficacy of the rule of law, upheld Hong Kong's rule of law advantage while maintaining Hong Kong's unique status, and safeguarded Hong Kong's transition from chaos to order, and its progress from stability to prosperity. Four years on, the Constitution, the Basic Law, the NPC's "528 Decision", the HKNSL, the NPCSC's Interpretation, and such local legislation as Hong Kong's Safeguarding National Security Ordinance (SNSO) have jointly built up the legal system for national security in Hong Kong. This signifies more comprehensive constitutional and legal orders in the HKSAR, and provides more robust institutional safeguards for the steadfast and successful implementation of "One Country, Two Systems".

Second is to achieve the full development of a comprehensive system, where the Basic Law Article 23 legislation has filled the local legislative vacuum in national security law of Hong Kong. SNSO came into effect upon gazettal on 23 March. In response to the profound changes faced by the HKSAR both internally and externally, this legislative exercise has closely addressed the practical needs of safeguarding national security, while heeding the protection of rights and freedoms, promotion of economic and social development, and maintenance of Hong Kong's unique advantageous position. By further improving the relevant legal system and enforcement mechanisms, this exercise has effectively resolved a series of major legal issues encountered in the implementation of the HKNSL that urgently need to be clarified through local legislation, ensuring that Hong Kong has a stronger legal basis for safeguarding national security. There is complementarity between offence and punishment in substantive law. In line with the essence and spirit of the HKNSL, the SNSO features comprehensiveness and effectiveness. A framework of five major offences has been established through adaptive revisions of local legislation concerning national security and common law offences, providing an appropriate response to non-conventional security risks,

while drawing reasonable references to the laws of other common law countries and regions. There is alignment and integration in procedural law. The SNSO has refined and enhanced the procedural and institutional provisions of the HKNSL, strengthened the operability of the relevant procedural provisions and the effects and efficiency of the preventive, suppressive and punitive measures, and the procedures set out therein are applicable to all national security cases. Effective mechanisms for safeguarding national security have been put in place. The SNSO has supplemented the provisions on matters such as the enactment of subsidiary legislation, the issuance of certificates and administrative instructions, and solidified the duties and functions of the Committee for Safeguarding National Security of the HKSAR (CSNS), thus robustly upholding the executive-led system of the HKSAR. The obligations of public servants to provide assistance have been stipulated, while the protection for personnel responsible for safeguarding national security has been improved and strengthened from a legal perspective.

Third is to fortify the constitutional basis by firmly guarding the constitutional order of the HKSAR as established by the Constitution and the Basic Law. The HKNSL is included in Annex III to the Basic Law and is implemented and operated within the constitutional order of the HKSAR as established by the Constitution and the Basic Law. The foremost task for Hong Kong in safeguarding national security is to guard its constitutional order. Adherence to one policy, namely the “One Country, Two Systems” policy. We must remain firm to the policy and ensure its full, accurate and unwavering implementation without distortion or deviation, and that the policy remains unchanged and unswerving. The highest principle of the policy of “One Country, Two Systems” is to safeguard national sovereignty, security and development interests. On this premise, Hong Kong will enjoy a high degree of autonomy. Giving effect to one principle, namely the “patriots administering Hong Kong” principle. It is basic political ethics to impose strict requirements on the patriotism and political qualifications of those who administer. The Election Committee Subsector Elections,

the Legislative Council Elections, the Chief Executive Election and the District Council Elections under the new electoral system fully demonstrate the advancement and superiority of Hong Kong's unique democracy, ensure that holders of public office are staunch patriots, and build up a firm safeguard for political and regime security. Adherence to one unity, namely the unity of the Central Authorities' overarching responsibility and the HKSAR's constitutional duty in safeguarding national security. National security is a matter within the purview of the Central Authorities, which have the highest, ultimate and overall responsibility for safeguarding the same. Through the HKNSL, the Central Authorities have conferred upon the HKSAR the powers to safeguard national security, and the executive authorities, legislature and judiciary of the HKSAR shall perform their mandates for safeguarding national security in accordance with the law. These responsibilities and duties are both constitutionally united and fundamentally aligned.

Fourth is to embody the essence of the rule of law in promoting the realisation of the two “compatibility and complementarity” in practice. The HKNSL and the SNSO are compatible and complementary, so are the enforcement mechanisms of the CSNS and the OSNS. Only by playing their roles in tandem, the legal loopholes in safeguarding national security in Hong Kong can be plugged effectively. Under the unique institutional arrangement of “One Country, Two Systems”, a lot of complex new issues will inevitably be encountered during the full and accurate implementation of Hong Kong's national security laws. We must have a good grasp of the legal hierarchy. Article 62 of the HKNSL specifies that “[t]his Law shall prevail where provisions of the local laws of the Hong Kong Special Administrative Region are inconsistent with this Law”. To give full play to the overriding position of the HKNSL, under no circumstances shall any one or any institution weaken, undermine or nullify the HKNSL in any way. We shall thoroughly understand the legislative intent. The Central Authorities have full confidence in the HKSAR, support the HKSAR and respect the HKSAR. Through the HKNSL, the HKSAR is authorised to assume

the primary responsibility for safeguarding national security, and conferred with the power and responsibility for dealing with specific issues in relation to safeguarding national security. The Central Authorities assume the ultimate gate-keeping role and is responsible for handling complex issues that cannot be resolved at the HKSAR level. We shall make good use of the enforcement mechanisms. Two “compatibility and complementarity” is a distinctive feature of Hong Kong’s national security legal system. It further highlights the “dual safeguards” offered by having the authority exercisable by the Central Authorities and responsibilities assumed by HKSAR, and strengthens the “dual mechanism” of the Central Authorities’ jurisdiction and the HKSAR’s jurisdiction. With these two swords unsheathed and joining forces, its effectiveness can be maximized in combating and punishing in accordance with the law criminal acts endangering national security.

Distinguished guests and dear friends,

In Hong Kong’s advancement from stability to prosperity, risks and challenges will always exist but nothing can stop Hong Kong from pushing forward in this irreversible trend. The wheels of the train of “Hong Kong” in the new era are rolling forward, creating unprecedented favourable conditions to advance our work in safeguarding national security on the track of the rule of law; as well as providing unprecedented wide space for consolidating the new order of “patriots administering Hong Kong” through effectiveness of the national security laws. Equally unprecedented is the historic opportunity offered by the high level of protection provided to ensure high-quality development and high-level openness. The OSNS has always been resolutely performing its duties in accordance with the law, effectively serving its functions and fully supporting the HKSAR as usual in discharging its constitutional duty. Together, let us join hands and write a new chapter on safeguarding national security!

May I wish this forum every success!

Thank you!

Mr CUI Jianchun

Commissioner of the Ministry of Foreign Affairs of
the People's Republic of China in the Hong Kong Special Administrative Region



Underpin the foundation for security to facilitate openness in development

The Honourable Chief Executive John LEE,
The Honourable Mr ZHENG Yanxiong (Director of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region), Mr NONG Rong (Deputy Director of the Hong Kong and Macao Work Office of the CPC Central Committee, and Hong Kong and Macao Affairs Office of the State Council), Mr ZHANG Yong (Vice-chairperson of the Committee for the Basic Law of the Hong Kong Special Administrative Region of the Standing Committee of the National People's Congress; Deputy Director of the Legislative Affairs Commission of the Standing Committee of the National People's Congress), Mr DONG Jingwei (Head of the Office for Safeguarding National Security of the Central People's Government

in the Hong Kong Special Administrative Region)

Distinguished guests and friends, ladies and gentlemen,

Good morning everyone! This year marks the 10th anniversary of President XI Jinping's innovative proposal of the holistic approach to national security. It is also the crucial year for the fourth anniversary of the promulgation of the Hong Kong National Security Law (HKNSL), and for the completion of the legislative exercise of Article 23 of the Basic Law to end the history of “vacuum” for safeguarding national security in the HKSAR. This is furthermore the kick-off year for Hong Kong's stride into a new phase of full-throttle efforts to build a vibrant economy and strive for development. With the theme of “Looking Back and Ahead, New Dawn for Development”, this forum is very much in line with the current situation and the expectations of all parties. It is of great significance to Hong Kong in accelerating its pace of transition from stability to prosperity, and in actively integrating into the overall national development. I would like to take this opportunity to share three points with you all.

First, we must persevere in building a solid security foundation for Hong Kong's development. President XI Jinping underlined, “The more open our country is, the more we should attach importance to security, and coordinate and find the right balance between development and security”. The bitter lesson of the “turmoil over introduction of the extradition bill” has admonished us that there would be no room for development without security and stability. The enactment and implementation of the HKNSL was the “watershed” for Hong Kong's transition from chaos to order, while the successful enactment of the Basic Law Article 23 legislation has opened a “new chapter” for Hong Kong's progress from stability to prosperity. History and reality have shown that the more robust national security is, the more reliable the business environment becomes and the greater the confidence in investment. The HKNSL and Hong Kong's Safeguarding National Security Ordinance (SNSO) together have formed a strong defense line for safeguarding national security. Together, they serve as

an important safeguard for “One Country, Two Systems”, building a robust “firewall” for the long-term peace and stability of Hong Kong, and escorting the city’s development from governance to prosperity. While legislating on national security is a general international practice, individual countries have still kept on making untruthful remarks and even threaten to take sanction measures against the HKNSL, the SNSO and the legitimate law enforcement actions by the Government of the HKSAR. Only when we persist relentlessly in safeguarding national security can we pool our minds and efforts to pursue development. The Office of the Commissioner of the Ministry of Foreign Affairs in the HKSAR (OCMFA) is guided by the spirit that “one must not waver his commitment nor give up his pursuit in the face of danger and adversity”. With that in mind, we will steadfastly defend our national sovereignty, security and development interests, resolutely oppose all acts of power politics and bullying, and unsheathe our swords to give timely strikes against words and acts of external interference, in a joint endeavour with the HKSAR Government and all sectors of society to guard this wonderful home of Hong Kong.

Second, we must uphold high-quality development to ensure sustainable security. President Xi Jinping remarked, “Development, an abiding pursuit, is the foundation for Hong Kong’s survival and prosperity, and it holds the golden key to resolving various issues in Hong Kong.” In our transition from stability to prosperity, Hong Kong is facing profound changes both at home and abroad. The only way to open up new horizons for Hong Kong’s development is to constantly explore new paths, expand new spaces and add fresh impetus; hence the fruits of development can better benefit the entire population and achieve sustainable security. Hong Kong has always been a place for global encounters, and a cultural melting pot where East meets West. Under the framework of “One Country, Two Systems”, Hong Kong boasts 10 unique advantages such as its capitalist system, cosmopolitan hub, free port status, common law system, and comprehensive system of rule of law. The OCMFA will do its utmost to serve Hong Kong’s development by preserving its unique advantages. We will do our

utmost to help Hong Kong consolidate and enhance its status as global financial, maritime and trade centres, accelerate efforts to scale new heights of international cooperation in areas such as legal services, intellectual property rights, innovation and technology as well as cultural exchanges, and expedite the formation of new quality productivity, so as to achieve a higher level of deep integration between security and development.

Third, we must staunchly uphold the unity of our own national security with collective security. We live in an era of complex and changeable circumstances, where opportunities and challenges coexist, and where no country can achieve its own security in isolation from world security. The Central Conference on Work Relating to Foreign Affairs held in late 2023 made an important judgement on the future strategic context for China's development. The Conference pointed out that the world has entered a new period of turbulence and transformation; but the general direction of human development and progress will not change; the fundamental logic of advancement in world history through twists and turns will not change; and the general trend towards a shared destiny for the international community will not change. President XI Jinping has successively put forward the three major initiatives on global development, global security and global civilization, as alongside with the two major propositions of "equal and orderly multipolar world" as well as "beneficial and inclusive economic globalization". These have enriched and developed the concept of building a community with a shared future for mankind. They have also charted a direction and provided a path for the international community to achieve lasting peace and stability as well as common development. China will firmly uphold the holistic approach to national security in its diplomacy. While staunchly safeguarding its own security, it will promote global common security by actively participating in the enhancement of global security governance and joining hands with other countries to address various security risks and challenges. By doing so, we will make unremitting efforts to build a safer and better world.

Distinguished guests and friends,

Safeguarding national security is crucial to our country's long-term peace and stability, Hong Kong's prosperity and stability, as well as the fundamental well-being and personal interests of our fellow compatriots in Hong Kong. It requires everybody to join and support the endeavour. We firmly believe that, with the strong backing of our great motherland, the protection given by the HKNSL and the SNSO, and the united strive of all Hong Kong residents, Hong Kong's fresh leap from stability to prosperity can definitely be achieved through development of enhanced quality, efficiency, fairness, sustainability and security. The practice of "One Country, Two Systems" in Hong Kong will definitely write a new and even more splendid chapter!

Thank you!



The Hon Paul LAM Ting-kwok SBS SC JP

Secretary for Justice,

The Government of the Hong Kong Special Administrative Region of the People's Republic of China



The Honourable Chief Executive John LEE Ka-chiu, Mr ZHENG Yanxiong (Director of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region), Mr NONG Rong (Deputy Director of the Hong Kong and Macao Work Office of the CPC Central Committee, and Hong Kong and Macao Affairs Office Of The State Council), Mr ZHANG Yong (Vice-chairperson of the Committee for the Basic Law of the Hong Kong Special Administrative Region of the Standing Committee of the National People's Congress; Deputy Director of the Legislative Affairs Commission of the Standing Committee of the National People's Congress), Mr DONG Jingwei (Head of the Office for Safeguarding National Security of the Central People's Government in the Hong Kong Special Administrative Region), Mr CUI Jianchun (Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Hong Kong Special Administrative Region),

Major General WANG Zhaobing (Deputy Political Commissar of the Chinese People's Liberation Army Hong Kong Garrison), distinguished guests and dear friends,

Good morning, everyone! Welcome to the National Security Legal Forum “Looking Back and Ahead, New Dawn for Development” organised by the Department of Justice today. First of all, I would like to thank the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (HKSAR), the Office for Safeguarding National Security of the Central People's Government in the HKSAR and the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the HKSAR for being the supporting organisations. Further, my special thanks go to Mr NONG Rong and Mr ZHANG Yong for travelling all the way from Beijing to deliver keynote speeches for us.

With the forthcoming fourth anniversary of the Hong Kong National Security Law (HKNSL) in implementation, and the enactment of the Safeguarding National Security Ordinance (SNSO) under Article 23 of the Basic Law in force for over two months now, it is opportune to review the old and learn the new today. Law is one of the most vital tools for safeguarding national security. I hope that through today's event, we can make a rational and objective analysis of the laws on safeguarding national security in Hong Kong, and use this as a foundation to build and strengthen our confidence in two very important aspects.

First, we should and must have confidence that the laws on safeguarding national security in Hong Kong have been enacted and implemented in earnest adherence to the rule of law principles.

The HKNSL has undergone nearly four years of implementation under Hong Kong's common law system, accumulating guiding court rulings covering criminal, civil and judicial review cases. These rulings, with detailed reasons, stand as the most compelling and objective testimony that Hong Kong has indeed acted in strict adherence to

recognized rule of law principles, targeting only the radical acts of a very small minority. Among such principles, the most important one is the courts' exercise of independent judicial power free from any interference in an open and transparent judicial process to adjudicate cases on the premise of full protection for a defendant's fundamental rights, such as the presumption of innocence.

Besides, the specific content of the SNSO also fully demonstrates its enactment in strict accordance with the rule of law principles by, among others: clear definitions on constituent elements of offences; imposition of only essential and reasonable restrictions on fundamental human rights and freedoms in line with applicable international standards and by reference to relevant practices in other common law jurisdictions; no prejudice to the lawful rights and interests of innocent third parties, and so on.

The rule of law principles embodied in Hong Kong's common law system are among Hong Kong's unique advantages under "One Country, Two Systems", which we will never give up or compromise. Going forward, the "dual legislation and dual enforcement mechanism" comprising the HKNSL and the SNSO will continue to uphold the rule of law principles and through their convergence, compatibility and complementarity, to effectively prevent, suppress and punish acts and activities endangering national security. In the first and second panel sessions this morning, we will have legal experts from the Mainland and Hong Kong to share with you the highlights of the above topics.

Second, we should and must have confidence that the laws on safeguarding national security in Hong Kong will interact positively with the city's future development.

Hong Kong is now at the new stage of advancing from stability to prosperity. Under the leadership of the Chief Executive, Hong Kong is striving to boost economy, pursue development and improve people's livelihoods. We must bear in mind the correlation between security and development. A painful lesson from the modern history of our country

is “those who lag behind will suffer blows”. Therefore, Hong Kong must leverage its own unique advantages under “One Country, Two Systems”, uphold fundamental principles and break new grounds, and participate actively in our country’s high-quality development, thereby advancing the great rejuvenation of the Chinese nation. Whilst pursuing development, however, we shall not forget the necessity and importance of safeguarding national security. As the ancient wisdoms go, “warlike pursuits beget demise while oblivion to war entails danger” and “one thrives on vigilance against adversity but perishes in ease and pleasure”. We must be vigilant that a secure environment resembles air—its nature is that we benefit from it without noticing, but once lost, we cannot live without; although we rely on air to live, we often take its existence for granted, sometimes even mistakenly assuming that it is naturally guaranteed, until the moment it disappears, by which time it might be too late.

A secure environment is not a godsend, but requires construction and constant maintenance by the concerted efforts of us all. An objective fact that we have to face is that there are anti-China forces, which for various reasons, have sought to stifle our national development and hinder our national unity. Given Hong Kong’s unique position in national development, their attempts to defunctionalise and deinternationalise Hong Kong have been glaringly obvious. The ensuing risks to national security will impact on the social stability of Hong Kong as well as the well-being of each and every one of us. Therefore, we cannot afford to drop our guard.

Security and development have a symbiotic relationship: one cannot exist without the other, and one will reinforce the other. High-quality development must be supported and guaranteed by high-standard security; and the lasting stable environment brought by high-standard security will certainly further facilitate high-quality development. The laws on safeguarding national security in Hong Kong, which have been enacted and implemented in accordance with the rule of law principles, precisely provide a high-standard secure

environment for Hong Kong to steadily take forward its high-quality development. In the third panel session this afternoon, we will hear from leaders of various sectors including finance, trade, transport and logistics about how the laws on safeguarding national security in Hong Kong have created a stable and conducive environment for development in their respective domains.

Moreover, in the last panel session this afternoon, I will also have a dialogue with young people and interact with floor participants to jointly explore issues of concern and interest relating to the laws of safeguarding national security in Hong Kong.

I strongly believe it is of crucial importance to build and reinforce our confidence in the two important aspects just mentioned. First, the general public must have confidence in the laws on safeguarding national security in order to cultivate sustainable awareness in respecting and complying with the relevant laws. Second, forces unfriendly to our country and Hong Kong have persistently smeared, distorted and attacked the laws on safeguarding national security in Hong Kong, with intent to undermine the confidence of Hong Kong's general public and of people elsewhere in not only the laws on safeguarding national security but also the entire legal system and rule of law environment in Hong Kong. It is only by fostering and reinforcing the general public's confidence in this regard that we can protect everybody from being influenced by such inappropriate remarks or actions; while at the same time, this also serves to embolden us further to elucidate to people elsewhere any misunderstandings about the laws on safeguarding national security in Hong Kong, and to dispel doubts.

However, I must emphasise that in order to build confidence, one must come to grasp with the core content, context and purpose of the relevant laws, and then demonstrate it in a composed, rational and resolute manner. To this end, the Department of Justice and other bureaux/departments of the HKSAR Government will spare no efforts

in the future, as always, to promote and enhance by various means education relating to the laws on safeguarding national security as well as the legal system and rule of law in Hong Kong.

I would like to take this opportunity today to announce two new initiatives in this regard. First, the Department of Justice has been preparing since last year “Annotations of the Hong Kong National Security Law and Sedition Offences in the Crimes Ordinance” (“Annotations”), the English version of which was already launched in December last year and uploaded to the website of the Department of Justice. Recently, we have also completed the Chinese version. Today, both the Chinese and English versions have been uploaded to the dedicated website of the Annotations. Upon admission, everyone here should have received a bookmark on which the website’s QR code is provided for public access. Second, the Department of Justice and the Security Bureau, following the publication of the “Articles and Reference Materials on the Law of the People’s Republic of China on Safeguarding National Security in the HKSAR” in 2021, have recently compiled more than 10 speeches and articles regarding the HKNSL or the SNSO published between 2022 and April 2024, as well as the documents concerning the “Interpretation by the Standing Committee of the National People’s Congress of Article 14 and Article 47 of the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region”, in “Compendium 2024”, which is published today. I believe all of you received a copy upon admission. The e-Compendium has also been uploaded to the websites of the Department of Justice and the Security Bureau.

Given Hong Kong’s status as an international city, I believe that many people from other parts of the world are also interested in our national security laws; and we also have some expatriate friends here or watching online today. Hence, I would like to say a few words in English.

Distinguished guests, ladies and gentlemen,

Welcome to the National Security Legal Forum “Looking Back and Ahead, New Dawn for Development” organised by the Department of Justice. In today’s forum, we aim at making two very important points.

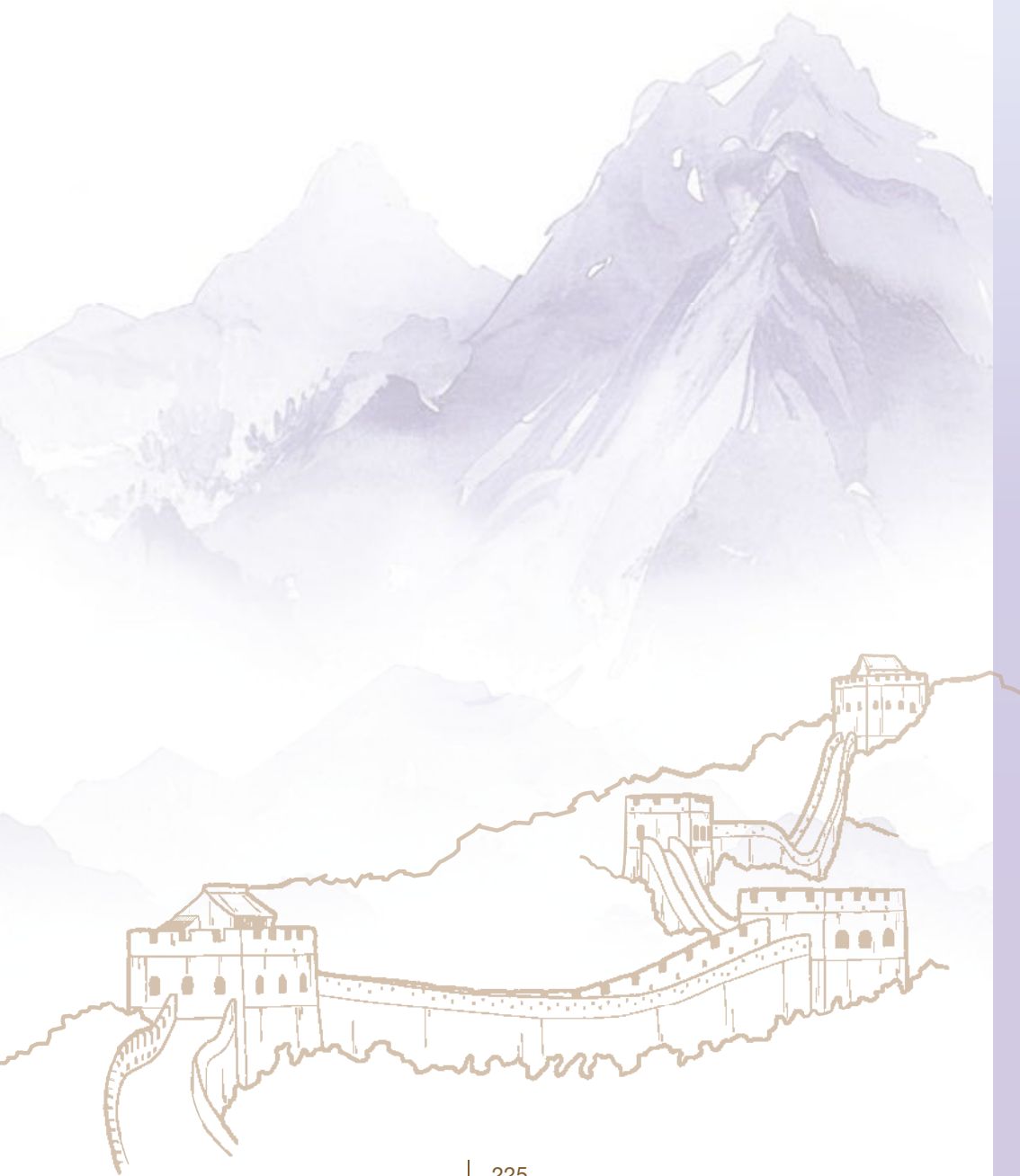
The first point is that Hong Kong has adhered faithfully to fundamental principles of the rule of law under our common law system in enacting and applying the national security law, and we will continue to do so in future. Judicial decisions concerning the Hong Kong National Security Law since its enactment about four years ago provide clear and cogent evidence that key principles such as the court exercising independent power of adjudication, open justice, and the presumption of innocence had been strictly followed. A careful study of the recently enacted Safeguarding National Security Ordinance would demonstrate that essential elements of an offence are defined with sufficient clarity, human rights and freedoms will be fully protected and reasonable restrictions will be imposed if but only if they are really necessary to safeguard national security in accordance with applicable international standard and practice. These fundamental principles under our common law system constitute the unique characteristics and advantages of Hong Kong under the principle of “one country, two systems”. There is absolutely no conceivable reason whatsoever why we would shoot ourselves in the foot by giving up these valuable and indispensable principles.

The second point is that our national security law is not only essential but also conducive to the future development of Hong Kong. The Government is working extremely hard to strengthen Hong Kong’s status as an international centre in finance, trade, logistics and other areas; and to improve the livelihood of our fellow citizens. History tells us that we cannot afford disregarding national security risks. Indeed, security and development have a symbiotic relationship: one cannot exist without the other, and one will benefit the other. This is sheer logic and common sense. Our national security law based on the principles of

the rule of law provides high-standard security to guarantee and safeguard the better and sustainable development of Hong Kong in the long run.

I firmly believe that, at the end of the forum, you will be convinced there is indeed a rational and objective basis for us to have full confidence in our national security law. And beyond any doubt, we can and shall stand tall and hold our heads high.

Last but not least, may I express my gratitude again for your attendance at today's forum, and may I wish it every success. What's more, I wish everyone a fruitful and enjoyable Saturday. Thank you.



Keynote Speeches





Mr NONG Rong

Deputy Director of the Hong Kong and Macao Work Office of the CPC Central Committee, and the Hong Kong and Macao Affairs Office of the State Council



— Ensure High-Quality Development Through High-Level Security And Open a New Chapter of Achieving Governance And Prosperity in Hong Kong —

Chief Executive John Lee,
Distinguished Guests, Friends, Colleagues,

Good morning!

It is a great pleasure for me to attend this National Security Law Forum on behalf of Director Xia Baolong. Since 2021, the Hong Kong SAR government has continuously held legal forums on the Hong Kong National Security Law, highlighting the importance attached to safeguarding national security. People from all walks of life, both inside and outside Hong Kong, have actively participated in the forum, achieving good results. This forum is particularly significant as it is held

after the unanimous passage and implementation of the Hong Kong National Security Ordinance. On this occasion, on behalf of the Hong Kong and Macao Work Office of the CPC Central Committee, the Hong Kong and Macao Affairs Office of the State Council and Director Xia Baolong, I would like to extend my warm congratulations on the successful convening of this forum.

President Xi Jinping pointed out that "The top priority of the principle of One Country, Two Systems is to safeguard national sovereignty, security, and development interests". This year marks the 10th anniversary of the holistic approach to national security proposed by President Xi Jinping. On April 15, Hong Kong held the "National Security Education Day" events. This month, we will celebrate the fourth anniversary of the implementation of the Hong Kong National Security Law. Over the past four years, Hong Kong has made a significant transformation from chaos to governance, returning to the track of development. In March, Hong Kong completed legislation for Article 23 of the Basic Law, further solidifying the legal shield for safeguarding national security. The enactment and implementation of these two national security laws have received broad support and active participation from all sectors in Hong Kong, including those present here today. Hong Kong has scored remarkable achievements in safeguarding national security. Today, we gather here to review the past, summarize our experience, look forward to the future, and jointly advance development and prosperity. On this occasion, I would like to share a few thoughts.

First, the objective of Hong Kong's national security laws is to ensure safety and protect development, providing the prerequisite for achieving governance and prosperity. President Xi Jinping pointed out that "Security is the prerequisite for development, and development is the guarantee of security". It is an international practice to legislate for the maintenance of national security. Completing legislation as stipulated by Article 23 of the Basic Law is the constitutional duty of the Hong Kong SAR for safeguarding national security. Having experienced

events like the "illegal Occupy Central", the "Mong Kok riot", and "turbulence over the proposed legislative amendments to the Fugitive Offenders Ordinance", we deeply realize that maintaining national security is the prerequisite for Hong Kong's development. The Hong Kong National Security Law explicitly identifies its purpose as "maintaining the prosperity and stability of the Hong Kong Special Administrative Region", highlighting its original aspiration to protect development. While resolutely cracking down on four types of crimes endangering national security, it adheres to international rule of law principles such as the principal of legality, presumption of innocence, and reaffirms the protection of human rights, and the protection of the rights and freedoms enjoyed by Hong Kong residents in accordance with law. It has effectively combined safeguarding national security with protecting economic development and people's livelihood. The Hong Kong National Security Ordinance, introduced this year, is fully aligned with the Hong Kong National Security Law, further solidifying the security foundation for Hong Kong's development. Currently, all sectors in Hong Kong have expressed a strong desire to boost the economy and seek development. Achieving governance and prosperity is the aspiration of the people and the trend of the times.

Second, the implementation of Hong Kong's national security laws has been remarkably effective, creating a secure atmosphere for achieving governance and prosperity. From the enactment and implementation of the Hong Kong National Security Law to the passage and implementation of the Hong Kong National Security Ordinance, Hong Kong has bid farewell to a period of turmoil and instability, ending the history of being defenseless in safeguarding national security. Today's Hong Kong is characterized by a desire for stability and unity, upholding the broad consensus that "The security of Hong Kong and the security of our home are premised on the security of the country". Today's Hong Kong witnesses greater protection for property safety and transaction order, a better business environment, a significantly improved governance environment, positive interaction between the executive and legislative branches and their proactive efforts, and the

upholding of the rule of law and justice. Hong Kong's global financial center ranking has returned to second place in Asia and fourth place in the world; the number of companies with parent companies overseas or in the mainland operating in Hong Kong in 2023 has returned to pre-pandemic levels; the number of startups has reached a historical high; and the family office industry is booming. The awareness of respecting and abiding by the law among all sectors of society has become stronger, concepts of the Chinese Nation have been deeply rooted in people's hearts, and various legal systems have been further optimized. The patriotic and pro-Hong Kong forces in the SAR are united, gathering a strong momentum to safeguard national security. Law enforcement, prosecution, and judicial personnel adhere to their oaths, perform their duties with dedication, and face external sanctions and threats with courage and professionalism, earning admiration from all who uphold objectivity and justice, and filling the international community with confidence in Hong Kong's rule of law. With the implementation of the Hong Kong National Security Ordinance, Hong Kong's stable and vibrant environment will be further consolidated, and the pace of achieving governance and prosperity will be further accelerated.

Third, Hong Kong's national security laws have improved the institutional system of One Country, Two Systems, providing institutional underpinning for achieving governance and prosperity. One Country, Two Systems is an unprecedented innovation with great significance and the best institutional arrangement for maintaining long-term prosperity and stability after Hong Kong's return to the motherland. We must ensure both the Central Government's overall jurisdiction over Hong Kong and the SAR's high degree of autonomy. "One Country" is the premise and foundation of "Two Systems". Under this premise, "horses will keep racing, dances and the stock market will continue" and Hong Kong will maintain its capitalist system and way of life unchanged for a long time, enjoying a high degree of autonomy. Safeguarding national security is to safeguard One Country, Two Systems. National security is the Central Government's responsibility,

and the Central Government bears the fundamental responsibility for Hong Kong-related national security affairs, while the Hong Kong SAR is duty-bound under the Constitution to safeguard national security. The enactment and implementation of the Hong Kong National Security Law and the Hong Kong National Security Ordinance aim to fully and faithfully implement the One Country, Two Systems principle, together with improving the electoral system and reshaping the district council system, to jointly construct a system for maintaining security and stability and promoting good administration and governance under One Country, Two Systems, providing institutional underpinning for Hong Kong's long-term stability and prosperity. The Central Government cherishes and cares for One Country, Two Systems more than anyone else, and has always firmly, fully and faithfully implemented the One Country, Two Systems principle. With the guarantee of Hong Kong's national security laws, One Country, Two Systems will undoubtedly demonstrate its strong vitality and great strengths, creating unlimited broad development space for Hong Kong, and the prospect of achieving governance and prosperity will be even more brilliant.

Fourth, Hong Kong's national security laws have strengthened Hong Kong's unique advantages, providing strong impetus for achieving governance and prosperity. Hong Kong is the Pearl of the Orient. Since its return, Hong Kong has maintained its status as an international financial, shipping, and trading center, standing out globally with its free and open environment and world-class business environment. With national security laws in place, the certainty of the rule of law and the stability of society are further enhanced, allowing Hong Kong to better focus on development. The immense creativity and development vitality stored up in society will be fully unleashed, further highlighting Hong Kong's unique advantages. In recent years, the SAR government has adhered to an executive-led system, better combining an active government with an efficient market, has taken multiple measures to promote development, and proposed the goal of developing "Eight Centers". The Central Government fully supports Hong Kong in maintaining its unique position and advantages over the long term. The

14th Five-Year Plan has included Hong Kong's new positioning as "Eight Centers", continuously injecting development momentum into Hong Kong. The Central Government supports Hong Kong in leveraging its advantages as an international financial center, strengthening global offshore RMB business, further facilitating financing channels, and developing green finance. The five measures to enhance capital market cooperation with Hong Kong announced this year and the support for the SAR and the mainland in launching optimized "Swap Connect" arrangements will further enhance Hong Kong's status as an international financial center. The Central Government supports Hong Kong in consolidating and enhancing its status as a shipping and trading center, accelerating the development of an international shipping and aviation hub, and further leveraging Hong Kong's role as a separate customs territory and free port. The Central Government supports Hong Kong in accelerating the development of an international innovation and technology center, cultivating high-tech industries suitable for Hong Kong's endowment, attracting advanced technologies, equipment, and talents, and continuously creating new advantages for Hong Kong. The Central Government firmly supports Hong Kong in leveraging its advantages of internal and external connectivity, expanding smooth and convenient international connections, actively participating in and contributing to the Belt and Road Initiative, hosting more international conferences and events, signing more free trade agreements with more countries and regions, joining the Regional Comprehensive Economic Partnership (RCEP) as soon as possible, promoting the establishment of the International Mediation Institute headquarters in Hong Kong, and focusing on attracting global enterprises and talents to develop in Hong Kong.

Here, I would like to emphasize that the Central Government firmly supports Hong Kong in maintaining the common law system and supports Hong Kong in consolidating and leveraging its rule of law advantages. President Xi Jinping mentioned twice in his speech at the celebration of the 25th anniversary of Hong Kong's return to the motherland that the common law system should be maintained. In

recent years, the Central Government has further supported the establishment of an international legal and dispute resolution services center in the Asia-Pacific region and the construction of a regional intellectual property trading center, highlighting the Central Government's emphasis on leveraging Hong Kong's rule of law advantages. The rule of law is a "Golden Brand" of Hong Kong, and a shared asset that the country and all sectors in Hong Kong take pride in. It provides an important cornerstone for safeguarding the legitimate rights and interests of Hong Kong compatriots and foreign companies and people, maintaining social fairness and justice, and ensuring Hong Kong's long-term prosperity and stability. Over the years, Hong Kong's legal practitioners, including foreign friends practicing law in Hong Kong, as well as Hong Kong's law enforcement, prosecution, and judicial institutions, have upheld the spirit and defended the dignity of the rule of law, and contributed significantly to the rule of law in Hong Kong. Their work should not be interrupted, and their efforts should not be erased! Hong Kong's rule of law should not be infringed and its reputation should not be tarnished! We firmly believe that with the Central Government's unwavering determination to uphold One Country, Two Systems and the relentless and concerted efforts of people from all sectors of society to uphold the rule of law and protect development, Hong Kong's unique status and advantages will continue to be strengthened and enhanced with the development of the times.

Fifth, Hong Kong's national security laws have helped Hong Kong integrate into the national development strategy, opening up new horizons for achieving governance and prosperity. A strong and prosperous motherland is Hong Kong's biggest support and backing. Integrating into the national development strategy is the only way for Hong Kong to maintain long-term prosperity and stability. With national security laws in place, Hong Kong can better seize national development opportunities, better integrate into the national development strategy, and better play the role of "super connector" and "super value creator". The Central Government has always unwaveringly supported Hong Kong in integrating into the national

development strategy. Since Hong Kong's return, the Central Government has vigorously promoted Hong Kong-mainland economic and trade exchanges through measures such as promoting the Closer Economic Partnership Arrangement (CEPA), supporting mainland enterprises to list in the Hong Kong stock market, implementing the "Individual Travel Scheme", and establishing mutual market access mechanisms. In recent years, the Central Government has further supported Hong Kong in participating in the construction of national technology innovation centers, launched eight measures to benefit Hong Kong's youth, expanded the coverage of the "Individual Travel Scheme" for mainland residents visiting Hong Kong, introduced six measures to facilitate entry and exit management for people and enterprises, and opened new high-speed rail overnight sleeper services between Beijing and Hong Kong and between Shanghai and Hong Kong, continuously deepening exchanges and cooperation between the mainland and Hong Kong.

The construction of the Guangdong-Hong Kong-Macao Greater Bay Area is a major national strategy personally planned, deployed, and promoted by President Xi Jinping. As a strategic pivot of the new development paradigm, a demonstration zone for high-quality development, and a leading area for Chinese modernization, the Greater Bay Area provides Hong Kong with rare opportunities, vast space, and strong momentum. Under the guidance of the Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area, the Greater Bay Area has made solid progress in building a world-class bay area and a world-class city cluster. In recent years, the Central Government has supported the Greater Bay Area in promoting infrastructure connectivity, leading to the construction of the Hong Kong-Zhuhai-Macao Bridge and forming a "one-hour" transportation circle; supported the opening and operation of the Guangzhou-Shenzhen-Hong Kong Express Rail Link, forming a "Greater Bay Area on the tracks". The Central Government has supported the alignment of rules and mechanisms, issued the Overall Development Plan for the Qianhai Shenzhen-Hong Kong Modern

Service Industry Cooperation Zone, and focused on serving Hong Kong in policy formulation, reform planning, and project layout; formulated a Three-Year Action Plan for Building a World-Class Business Environment in the Guangdong-Hong Kong-Macao Greater Bay Area, creating a first-class business environment that is based on market principles, governed by law, and up to international standards. We must seize the precious opportunities of the country's new round of reform and opening-up, continue to accelerate the construction of major cooperation platforms such as Qianhai, Nansha, and the Hong Kong-Shenzhen Innovation and Technology Park, deepen the "hard connectivity" of infrastructure; accelerate the promotion of the convenient flow of goods, people, capital, technology, and data, and promote the "soft connectivity" of rules and mechanisms; and accelerate the promotion of "two-way travel" and "two-way investment", facilitating the "heart-to-heart" connectivity of residents in the Greater Bay Area. We believe that with the in-depth advancement of the construction of the Guangdong-Hong Kong-Macao Greater Bay Area, Hong Kong and the mainland will surely reinforce and complement each other, breaking new ground for high-quality development.

In this context, I would like to emphasize that Hong Kong is an international metropolis. Since its return, with the support of the Central Government and the efforts of all sectors in the SAR, investors from all over the world have gathered in Hong Kong, starting businesses and reaping substantial rewards. The Hong Kong national security laws are never meant to "lock up" Hong Kong but to accurately identify thieves and protect friends, creating a safer, freer, more open, and more predictable business environment. Currently, Hong Kong remains the world's freest and most open economy, providing world-class high-quality and high-standard professional services in areas like finance, law, accounting and shipping. Major international financial, economic and cultural events are being held one after another, attracting top financial institutions and business elites from around the world; numerous heavyweight enterprises and professionals are settling in Hong Kong, casting a vote of confidence in Hong Kong with their

sincerity and real capital. In the future, Hong Kong will continue to be a fertile ground for opportunities and wealth, a paradise for entrepreneurship and dreams. We sincerely welcome entrepreneurs and dreamers from around the world to seize the opportunities, invest and start businesses in Hong Kong, fulfill their ambitions, and share the dividends of China's and Hong Kong's development.

Distinguished Guests, Friends, Colleagues,

Standing at a new starting point, we must continue to carry forward the "Lion Rock Spirit", demonstrate new vigor, and achieve new accomplishments. Let us turn our love for the country and Hong Kong, and our aspiration for a better life, into conscious actions of complying with national security laws and safeguarding national security, as well as inexhaustible driving force for high-quality development. We firmly believe that with the strong support of the great motherland, the firm guarantee of the One Country, Two Systems principle, the united efforts of all Hong Kong citizens, and the participation and cooperation of international friends, the path of achieving governance and prosperity in Hong Kong will become broader and broader, and the Pearl of the Orient will surely shine even more brilliantly!

Thank you! #

This is reproduced from the script submitted by the speaker

Mr ZHANG Yong

Vice-chairperson, Committee for the Basic Law of the Hong Kong Special Administrative Region of the Standing Committee of the National People's Congress

Deputy Director, Legislative Affairs Commission of the Standing Committee of the National People's Congress



Due performance of duties and functions in accordance with the law to effectively safeguard national security

The Honourable Chief Executive John LEE Ka-chiu, Mr ZHENG Yanxiong (Director of the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region), distinguished guests and dear friends,

Good morning, everyone!

It is my honour to be invited to join the National Security Legal Forum held to commemorate the fourth anniversary of the enactment of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (HKNSL). Together we will review and summarize the successful experience gained since the implementation of the HKNSL, and jointly look ahead to the

bright outlook for the Hong Kong Special Administrative Region (HKSAR) as it advances from stability to prosperity.

National security is an important cornerstone for peace and stability of a nation. Over the past four years, the National People's Congress (NPC) and its Standing Committee (NPCSC), guided by the holistic approach to national security and in accordance with the Constitution of the People's Republic of China (PRC) and the Basic Law of the HKSAR of the PRC (Hong Kong Basic Law), have successively exercised their decision-making, legislative and legislative interpretation powers, and focused efforts on establishing and improving the legal system and enforcement mechanisms for the HKSAR to safeguard national security and on improving the HKSAR's electoral system, which have all led to fruitful institutional achievements. Following the milestones of "decision + legislation" and "decision + legislative amendment", and with the concerted efforts of all parties concerned, Hong Kong has undergone a major transformation from chaos to governance, with social order back on the right track and political atmosphere revitalized, thus laying a solid political and legal foundation for the steadfast and successful practice of "One Country, Two Systems", and for the long-term prosperity and stability of Hong Kong.

It takes synergies and joint efforts between the Central Government and local administrative regions to build institutional systems for safeguarding national security. Only through this can our country be free from risks at all fronts with rock-solid security. Under the principle of "One Country, Two Systems", as a local administrative region directly under the Central People's Government (CPG), the HKSAR likewise has the constitutional duty to safeguard national security. Here, let me congratulate the Legislative Council of the HKSAR on the unanimous passage of the HKSAR's Safeguarding National Security Ordinance (SNSO) slightly over two months ago, which was signed and promulgated by the Chief Executive through publication in the Gazette. The passage and implementation of the SNSO represents a major event of historical significance on the remarkable journey of practising "One

Country, Two Systems” in Hong Kong. This signifies the HKSAR’s ultimate fulfilment of its constitutional duty and legal obligation conferred under the Constitution of the PRC, the Hong Kong Basic Law, the HKNSL and the relevant NPC decisions by plugging the HKSAR’s legal loopholes and institutional shortcomings in safeguarding national security. The “last mile” in establishing the legal system and enforcement mechanisms for the HKSAR to safeguard national security was thus completed. As a working organ of the NPCSC, we will perform our statutory duties and functions, follow the statutory procedures, and work diligently on the reporting work of the SNSO. We will also continue to closely monitor and fully support the full, faithful and effective implementation of the relevant laws in the HKSAR.

Distinguished guests and dear friends,

“Remain mindful of peril in peacetime, and chaos in times of stability”. While we enjoy our steady, peaceful and prosperous society, we must not forget how this all came to be and what has been guarding it. We don’t have to look far for lessons in history. Following the Opium War in 1840, the Qing Dynasty and the then republic government went so corrupt and weak that our motherland was left to invasion and partition by the foreign powers, and our people to the bullying and humiliation by foreign enemies. This century-long misery of torn landscapes and fallen homeland still brings back unbearable memories for our compatriots. Since the PRC’s establishment, the Chinese people took profound stock of the bitter lessons from the past century, during which the nation suffered humiliation, the people endured suffering and civilisation was tarnished, and have always accorded top priority to safeguarding national security for the cause of the State and the nation. Our Constitution clearly states that it is the duty of all citizens to safeguard the security, honour and interests of the motherland; they must not commit acts detrimental to the security, honour and interests of the motherland. In accordance with the Constitution, the State has enacted a series of laws and regulations on safeguarding national security in an ongoing effort to enrich and improve the legal regime for safeguarding national security. These laws, together

with the HKNSL, the HKSAR's SNSO and other laws, play the role of preventing, suppressing and punishing any acts and activities endangering national security of the PRC, and guards the security of our nation as well as the interests of the people at all times.

Ten years ago, President XI Jinping innovatively put forward the holistic approach to national security, providing a powerful ideological tool for national security in the new era. It serves as the fundamental guideline and action plan for the HKSAR to build a new framework for safeguarding national security and carrying out all aspects of related work. In light of this forum's theme, I think the key to the full, faithful and effective implementation of the HKNSL and the HKSAR's SNSO lies in a thorough understanding of the important ideas of the holistic approach to national security, and in effectively discharging the "tripartite duties" as stipulated in the HKNSL by everyone assuming, fulfilling and staying duly committed to their duties to safeguard our motherland.

First, the CPG has an overarching responsibility for national security affairs relating to the HKSAR. "Localities handle their own business whereas significant matters are left to the central authorities". National security is a matter within the purview of the Central Authorities. All national security affairs of the PRC, including those relating to the HKSAR, come under the unified responsibility and unified administration of the Central Authorities. The Central Authorities decide on policies and guiding principles of national security; judge potential risks and key directions of national security; deploy response strategies and division of tasks on national security; and assume overall responsibility and ultimate accountability for national security. In this regard, the HKNSL, in particular Chapters I and V, has made systematic and comprehensive institutional arrangements. These provisions bring matters relating to safeguarding national security in the HKSAR within the State's overall strategic layout for national security, ensure the uniformity, completeness and effectiveness of our national security system, and give effect to the overriding principle of safeguarding national sovereignty, security and development interests.

Second, the HKSAR has the constitutional duty to safeguard national security. The term “constitutional” refers to the status of a locality within the political order as enshrined in a country’s constitution. “Customs should be aligned and decrees uniformly applied nationwide.” The constitutional status of the HKSAR is recognised in our Constitution and Articles 1 and 12 of the Hong Kong Basic Law, whereby the HKSAR is an inalienable part of the PRC and a local administrative region of the PRC, which shall enjoy a high degree of autonomy and come directly under the CPG. The HKNSL stipulates that it is the common responsibility of all the people of China, including the people of Hong Kong, to safeguard the sovereignty, unification and territorial integrity of the PRC. Any institution, organisation or individual in the HKSAR shall abide by the law, and shall not engage in any act or activity which endangers national security. At the same time, the HKNSL confers corresponding statutory duties on the Chief Executive, the executive authorities, the legislature, the law enforcement agencies and the judiciary of the HKSAR. It also sets out clear requirements for promoting national security education in schools and universities and through social organisations, the media, the internet and other means to raise the public awareness of national security and of the obligation to abide by the law. These provisions fully embody the “one country” principle of the “One Country, Two Systems” policy, and incorporate the national security affairs of the HKSAR into the State’s overall regime of safeguarding national security and national education regime.

Third, the Committee for Safeguarding National Security of the HKSAR assumes primary responsibility for safeguarding national security. The Central Authorities have conferred on the HKSAR a high degree of autonomy in accordance with the law for it to exercise, *inter alia*, executive, legislative and independent judicial power, including that of final adjudication. This is a key element of “One Country, Two Systems”. In exercising its broad and high degree of autonomy, the HKSAR has to assume the day-to-day duty of safeguarding national security. This is also an inherent part of “One Country, Two Systems”. Accordingly, the HKNSL specifically establishes the Committee for

Safeguarding National Security of the HKSAR, conferring on it the statutory powers required for the performance of its duties and functions, as well as specifying the legal obligation incumbent upon it. This is an institutional arrangement distinctly characterized by “One Country, Two Systems”, which also manifests the full trust placed by the Central Authorities and the entire nation in the HKSAR and our Hong Kong compatriots.

“Perform meritorious service for the people and practise diligence at work”. To effectively safeguard national security in the HKSAR, it is crucial that the “tripartite duties” be converged and seamlessly aligned at institutional level, while maintaining mutual support, synergy and co-ordination at practical work, and all relevant duties and functions be fully, accurately and duly performed. This will ensure the organic integration of the Central Authorities’ overall jurisdiction and the HKSAR’s high degree of autonomy, thereby giving full play to the due efficacy of the institutional design of the HKSAR’s national security laws, and enabling the joint safeguard of the blue skies, pristine soil and people’s well-being of the motherland and the HKSAR.

Distinguished guests and dear friends,

It is not easy at all for the cause of “One Country, Two Systems” to have come this far, from a glorious vision to successful practice. Several generations have made painstaking and unremitting endeavours to achieve this. Today, Hong Kong is embracing a hard-won historical opportunity for development. With the strong support of the Central Authorities and concerted efforts across the community, I believe that the HKSAR will definitely forge ahead by riding on the momentum to open up new horizons, write new chapters and scale new heights!

Thank you all!



Panel Session 1: Review of the Hong Kong National Security Law: implementation and the development of jurisprudence



Moderator

The Hon Carmen KAN Wai-mun JP

Member of the Legislative Council,
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Panelists

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The Hon Carmen KAN Wai-mun JP

Good morning to all, distinguished guests and dear friends attending online and physically present. I am Carmen KAN, member of the Legislative Council of the Hong Kong Special Administrative Region (HKSAR). I am very honoured to have been invited by the Department of Justice (DoJ) of the HKSAR Government to be the moderator of Panel Session 1. The topic of this session is “Review of the Hong Kong National Security Law (HKNSL): implementation and the development of jurisprudence”. As the title suggests, this time our discussion focuses on the HKNSL.

This year marks the 75th anniversary of the founding of the People’s Republic of China, and precisely the 10th anniversary of President XI Jinping’s “A Holistic Approach to National Security” proposed in 2014. The enactment of legislation on Article 23 of the Basic Law was completed smoothly and came into force on 23 March this year. And it has been almost four years now since the implementation of the HKNSL. We can see that 2024 is a year of exceptional significance. Speaking of national security, many may by mistake treat it as far-off plots in spy films; the reality is national security closely concerns everyone. Every country has its own national security law. This is why President XI Jinping has emphasized that national security is of top priority to ensure people live and work in contentment and that the top priority of “One Country, Two Systems” is to safeguard national sovereignty, security and development interests. In order to plug the loopholes in national security, the Standing Committee of the National People’s Congress (NPCSC) enacted the HKNSL on 30 June 2020 with the aim of preventing, suppressing and imposing punishment for any act or activity endangering national security, almost four years now since its implementation. The law has not only established and improved the legal system and enforcement mechanisms for the HKSAR to safeguard national security at the State level, but also given effect to such principles as protecting human rights, freedoms and the rule of law. It is thus considered as the legal lynchpin

for the stability of the HKSAR. That said, there have long been quite some doubts, and even misunderstanding, about the HKNSL in the community. For instance, would the NPCSC's interpretation of the HKNSL undermine the independent judicial power of the courts? Are human rights adequately protected under the HKNSL? Would a defendant's rights be affected by a non-jury trial? Are the offences provided under the HKNSL clear enough? Would an ordinary law-abiding citizen be caught by the law inadvertently? So on and so forth.

In fact, after nearly four years of implementation, the courts have accumulated considerable case law and experience on major issues concerning the HKNSL. In this session, we have three experts who will share with us some significant court decisions from the perspectives of criminal law and civil law, including judicial review, to walk us through the implementation and jurisprudential development of the HKNSL. This demonstrates that the Central Authorities, by adhering to the rule of law and adopting a law-based approach in enacting the HKNSL, have fully respected the principle of "One Country, Two Systems", giving effect to such major principles as the high degree of autonomy and the protection of human rights, freedoms and the rule of law.

At the same time, we are also going to listen to the three experts' sharing of the relevant judgments, in response to the hot topics of concern I have just mentioned. This can give all sectors of the community a deeper and more accurate understanding of the requirements of the national security law, as well as how it is applied by the courts.

Let me now briefly introduce the three distinguished guests. The first one is Mr William TAM Yiu-ho, SC, who joined the then Legal Department in 1994. He was promoted to the rank of Deputy Director of Public Prosecutions in 2012 and appointed as Senior Counsel in 2015. In recent years, William has prosecuted major riot cases and handled related appeal cases, including the 2019 Legislative Council riot case, the "Occupy Central" case, the 2021 unlawful assembly case. In a

moment, he will share with us some of the significant criminal cases concerning offences endangering national security. The second panelist is Mr Jonathan CHANG, SC, who is a member of Temple Chambers. He was appointed as Senior Counsel in 2020 and as Deputy High Court Judge in 2022. He specializes in different areas of civil litigation, such as commercial dispute and judicial review. Later on, he will share with us some significant civil cases on national security law, to shed light on the development in this legal area and some key legal principles. Last but not least, we have Dr Thomas SO, JP who is a member of the Chinese People's Political Consultative Conference and also the Past President of the Law Society of Hong Kong. With profound knowledge of cross-border disputes and of issues such as commercial dispute resolution in Mainland China, he is going to adopt a comparative approach to analyse the HKNSL together with the relevant laws in other jurisdictions on some topical issues related to criminal procedure, such as the granting of bail, designation of judges and non-jury trial.

Without further ado, I will now turn the floor over to Mr William TAM Yiu-ho, SC.



Mr William TAM Yiu-ho SC

Distinguished guests, ladies and gentlemen,

Introduction

1. I am most honoured to be invited to take part in the National Security Legal Forum today, to review with you all the implementation and development of the Hong Kong National Security Law (HKNSL) in the past four years or so. The HKNSL has, since it came into force on 30 June 2020, conferred legal powers on law enforcement and prosecuting authorities to investigate and institute prosecution against acts endangering national security, prove in accordance with legal

procedures and provisions the unlawfulness of such radical acts, and deter acts endangering national security through punishment imposed by the courts. I shall focus my sharing today on the effective prevention, suppression and punishment of acts endangering national security in various forms, through law enforcement, prosecution and adjudication since the HKNSL came into effect, which fully reflects the important role played by the State's enactment of the HKNSL for the Hong Kong Special Administrative Region (HKSAR) as a “lynchpin of stability”.

System for safeguarding national security

2. It goes without saying that the legal system for safeguarding national security targets acts endangering national security, cracks down on a very small minority of bad elements who commit radical acts and undermine national security. The HKSAR, being a part of the State, bears an important duty in safeguarding national security. Recently, with the passage of the Safeguarding National Security Ordinance (SNSO), the HKSAR has fulfilled its constitutional duty under Article 23 of the Basic Law, and further improved the legal system of the HKSAR for safeguarding national security, not least by clearly specifying the relevant offences of endangering national security in section 7 of the SNSO.

Case studies on offences endangering national security

3. I would now like to take you through some cases and review the practice and jurisprudential development of the HKNSL over the past four years.

Cases in relation to offences under HKNSL

4. The first prosecution in Hong Kong that concerns endangering national security is the case of **Tong Ying Kit** in 2020. The defendant in that case faced two charges under the HKNSL, namely incitement to secession and terrorist activities.

5. On 1 July 2020 (i.e. the HKSAR Establishment Day), amidst a large-scale protest against the HKNSL in Hong Kong, the defendant in that case, whilst driving a motorcycle on which a flag bearing a secessionist slogan was displayed, repeatedly broke through police checklines, and even rammed into a checkline of police officers resulting in injuries to three of them. The Court adjudicated the case in accordance with the legal provisions, with due regard to his acts and the facts of the case and found the defendant guilty of both charges.

6. **Tong Ying Kit** is the first ever prosecuted and convicted case under the HKNSL, which fully reflects the following:

- (1) Though no prior court decisions on the HKNSL were available at the time, the relevant offence provisions were clearly worded; hence, the Court in construing the offences could clearly define the essential ingredients of incitement to secession and commission of terrorist activities based on the wording of the legal provisions.
 - (2) The defendant's commission of such acts on the HKSAR Establishment Day after the commencement of the HKNSL was undoubtedly in defiance of the fact that the HKSAR is a part of the State, and a blatant challenge to the law enforcement agencies of the HKSAR. As demonstrated by the Court's conviction of the defendant, these radical acts are precisely what the legal system for safeguarding national security must prohibit.
 - (3) The Court in sentencing stated that any secessionist acts, particularly terrorist activities with secessionist overtones, must be punished with appropriate and deterrent sentences. Having regard to the serious nature of the circumstances of the offence, the Court sentenced the defendant to 9 years' imprisonment.
7. After **Tong Ying Kit**, the courts have dealt with other offenders of secession and terrorist activities. As seen from the criminal facts, the cases involve only a small minority of persons whose acts were quite extreme.

8. In **Ma Chun Man** for instance, the defendant committed acts of inciting others to secession on 20 public occasions and via the Internet between August and November of 2020, for which he was convicted after trial. In sentencing, the Court found the nature of the circumstances of the offence serious and sentenced the defendant to 5 years and 9 months' imprisonment, which was eventually substituted with 5 years' imprisonment on appeal. In that case, the defendant's radical acts included these. He falsely represented to the public that advocacy of "Hong Kong independence" was not unlawful by citing his own example of being granted bail after arrest, and whilst on bail during press interviews repeatedly incited others to commit secession and disdain law and order. The defendant even called for the targeting of students, the future pillars of society, for the promotion of concepts such as "Hong Kong independence". All these were held by the Court of Appeal as being material in constituting circumstances of the offence of a serious nature.

9. It is worth highlighting that in **Ma Chun Man** the Court, while noting the clear stipulation in Article 4 of the HKNSL on respect and protection for human rights and fundamental rights, emphasised the need for everyone to accept that freedoms and rights of individuals in a society underpinned by the rule of law are not absolute. This is important because no one would agree that society should allow anyone to do acts endangering national security in the name of individual freedoms and rights.

10. Like **Tong Ying Kit**, the case of **Ma Chun Man** involves a defendant's direct public dissemination of ideas about "Hong Kong independence" and endangering national security. Other cases concern the planning and even commencement of the commission of acts endangering national security, such as the case relating to **the organisation "Returning Valiant"**. That case involved a number of defendants where one of them pleaded guilty to the offence of conspiracy to commit terrorist activities, for which the Court of First Instance adopted 10 years as the starting point and imposed a sentence

of 6 years' imprisonment after reduction for guilty plea and other mitigating factors. In sentencing, the Court noted that the defendant was the mastermind and recruiter of the plan, which included choosing court premises as the target for bombing, thus the nature of the circumstance of the offence was very serious. Therefore, despite the defendant's relatively young age, the Court's primary consideration in sentencing must be deterrence in order to protect public safety.

11. Just imagine, had the plan to endanger national security been carried out, how serious would the consequences have been? We must not overlook the potential risks, or else the consequences could be disastrous. Timely law enforcement, prosecution and court adjudication could effectively prevent the risks of endangering national security.

12. The other two types of offence under the HKNSL are subversion and collusion with a foreign country or with external elements to endanger national security.

13. In respect of subversion, Article 22 of the HKNSL prohibits any person from organising, planning, committing or participating in acts by force or threat of force or other unlawful means with a view to subverting the State power. The prosecution of cases the charge of which is this offence include the **“Primary Election case”** (the verdict of which was delivered last week) and the **“Hong Kong Alliance case”** (trial upcoming). As legal proceedings are still ongoing, I will not go into detail of these two cases today.

14. However, we can see from a District Court case the radical means used by the bad elements in subverting the State power. In the case of **Wong Dennis Tak Keung**, one of the defendants pleaded guilty to incitement to subversion. The facts of the case alleged that the defendant organised the martial arts club “集英揚武堂” with the intent to overthrow the Central Authorities of the State and the HKSAR Government through violent revolution, using the Internet, conducting martial arts courses and stockpiling weapons. Based on the facts of the case, the District Court found the nature of the circumstances serious

and, after reduction for guilty plea, sentenced the defendant to 5 years' imprisonment, together with other offences.

15. Lastly, in relation to collusion with a foreign country or with external elements to endanger national security, since the prosecution of a case relating to this offence is still ongoing, likewise I will not talk about the implementation of that offence today.

Offences relating to seditious intention

16. The recently passed SNSO and the implemented HKNSL have jointly established the legal system to safeguard national security in the HKSAR, amending and supplementing offences of various forms against acts endangering national security. Today, I would like to discuss in particular the offences relating to seditious intention under sections 23 to 26 of the SNSO, which were preceded by the sedition offences under the then sections 9 and 10 of the Crimes Ordinance.

17. One example of prosecution for sedition is the case of **Lai Man Ling**. In the name of the General Union of the Hong Kong Speech Therapists, the defendants printed, published and displayed children's picture books that had seditious intention. The Court noted that the seditious intention stemmed not merely from the words, but from the effects of such words on the minds of children. The Court found that the content of the picture books clearly refused to recognise that the PRC had legitimately resumed exercising sovereignty over the HKSAR, and led the children to hate and excite their disaffection against the Central Authorities, and to think that what the PRC and the HKSAR had done was wrong. The Court eventually found all the defendants guilty as charged. In sentencing, the Court emphasised that what the defendants were doing was brainwashing, leading the very young children to accept their seditious assertions, sowing the seed of instability in our country and the HKSAR. Taking into account the gravity of the offence, the Court adopted a near-maximum term of 21 months as the starting point, and finally sentenced each defendant to 19 months' imprisonment.

18. Another case involving sedition is **Tam Tak Chi**. The defendant faced multiple charges including those of sedition, and was convicted of most of them after trial. The defendant lodged an appeal, which was however dismissed. Today, I will only mention some aspects of the Court of Appeal's judgment:

- (1) The Court of Appeal held that under the then statutory provisions of the Crimes Ordinance, apart from the express provision on a seditious intention to incite persons to violence, the other provisions which specify the circumstances that constitute seditious intentions do not require proof of the perpetrator's intention to incite violence.
- (2) The Court of Appeal held that the sedition charges were constitutional, two aspects are involved. First, legal provisions must be legally certain, which in simple terms means that a person, with advice if necessary, is able to regulate his or her conduct so as to avoid liability of the offence. The Court of Appeal held that the definitions for seditious intention have a sufficiently and clearly formulated core, and are legally certain.
- (3) As for the proportionality of the offence, the Court of Appeal also held that the provision is no more than necessary to accomplish its legitimate aim. Safeguarding national security and preserving public order, which is the purpose of enacting this offence, is indispensable to the stability, prosperity and development of society. It also ensures a safe and peaceful environment for the public to exercise their fundamental rights and pursue their goals.

Looking back and ahead after four years' implementation of the HKNSL

19. From the cases outlined above, it is indeed not difficult to see that the courts have been able to define clearly the elements of offences

when construing the offence provisions relating to safeguarding national security, and that the court judgments have also illustrated the relevant bases for conviction and sentencing. Given public awareness of the cases reported, knowledge of the legal requirements, and compliance with the law, no one will inadvertently break the law.

20. Some people have falsely alleged that the laws on safeguarding national security would deprive the general public of their fundamental rights. As a matter of fact, ordinary people would simply not commit acts endangering national security. The criminal acts mentioned in the aforesaid cases far exceeded the bottom line permissible by fundamental rights, and are plainly offences endangering national security.

21. Indeed, we fully understand that even the slightest risk of endangering national security is unacceptable. The prosecuted cases so far have precisely reflected the effectiveness of the HKSAR's legal system in safeguarding national security. We believe that the HKNSL, which has been in force for about four years now, together with the recently passed SNSO, will continue to give full play for the time to come in preventing, suppressing and punishing various forms of acts endangering national security.

Thank you!



Mr Jonathan CHANG SC

Introduction

1. Ever since the NSL was promulgated in the HKSAR and took effect on 30 June 2022, there has been a body of case law developed by the HKSAR courts in respect of different facets of the NSL.
2. The NSL is unique in the sense that it is a piece of national law applied directly in the HKSAR through Annex III of the BL, and is implemented in Hong Kong by way of promulgation, and not through the enactment of local legislation.
3. What I propose to do in this session is to highlight some aspects of NSL to show how our courts have helped shaped the jurisprudence and to contribute to the proper understanding of key legal principles in this developing area of law.

Construction

4. To start with, notwithstanding the fact that the NSL is a piece of national law, the NSL remains to be construed under common law interpretative principles: *HKSAR v Lui Sai Yu* (2023) 26 HKCFAR 332:

Para 45: The Court's approach to construction of the BL, and by extension of the NSL, is the common law approach as established in *DoI v Chong Fung Yuen*.

5. The common law approach, in short, is to construe the language used in the text of the NSL in order to ascertain the legislative intent as expressed in the language, in light of its context and purpose.
6. One can see that our courts have not devised a new way to construe the NSL. It continues to adopt the well-established common law

approach to interpretation, as set out in *DoI v Chong Fung Yuen* (2001) 4 HKCFAR 211, which was decided over 20 years ago.

7. This echoes what the CFA said in *Lai Chee Ying* (2021) 24 HKCFAR 33 that the legislative intent, by reference to the Explanation of Draft NSL presented to the NPCSC on 18 June 2020, is for the NSL to operate in tandem with the laws of the HKSAR, seeking “convergence, compatibility and complementarity” with local laws.
8. The same point was made in *Lui Sai Yu* that NSL is intended to fit in and to function coherently with the HKSAR legal system, with local laws operating in normal fashion unless they are expressly or by implication displaced by inconsistent provisions of the NSL.
9. In cases of possible inconsistencies between NSL and local laws, NSL art.62 provides that NSL provisions shall be given priority.
10. As with the BL, NSL art.65 provides that the power of interpretation of the NSL shall be vested in the Standing Committee (“NPCSC”) of the National People’s Congress (“NPC”).
11. A natural question which arises is the effect of an interpretation issued by the NPCSC. In the BL context, it has been held that where the NPCSC makes an interpretation, it functions under the Mainland system, where legislative interpretation can both clarify and supplement laws, and that where such an interpretation is issued, the HKSAR courts are bound to follow it pursuant to the “one country, two systems” principle: *DoI v Chong Fung Yuen* (2001) 4 HKCFAR 211 at 222-223.
12. The same principle was applied in the context of an interpretation issued by the NPCSC in respect of NSL: *Lai Chee Ying v The Committee for Safeguarding National Security of HKSAR* [2024] HKCA 400 §37.

13. That case involved an NPCSC interpretation of NSL art.14 and 47 made on 30 December 2022, in respect of whether an overseas lawyer who is not qualified to practise generally in Hong Kong may participate in cases concerning offences endangering national security.
14. The Interpretation was issued on 30 December 2022:
 - (1) Whether overseas lawyers not qualified to practise generally in Hong Kong may act in cases concerning an offence endangering national security is a question that requires certification under NSL art.47 and a certificate from the CE shall be obtained.
 - (2) If the HKSAR Courts have not requested or obtained a certificate from the CE, the Committee for Safeguarding National Security of the HKSAR (“NSC”) shall perform its statutory duties and functions in accordance with NSL art.14 to make relevant judgements and decisions on such situation and question.
15. In that case, the court had not obtained a certificate from the CE under NSL art.47. The NSC decided that:
 - (1) the proposed representation of the defendant concerns national security which is likely to constitute national security risks, and is contrary to the interests of national security; and
 - (2) the Director of Immigration was advised to refuse employment approval application in relation to such proposed representation.
16. The defendant in that case sought to challenge the decision of the NSC in court. In the judgment rendered by the Chief Judge of the High Court, the Chief Judge held that decisions of the NSC are not amenable to judicial review, both as a matter of the clear wording

of NSL art.14, and upon having a proper understanding of the constitutional design of the BL and the NSL. The judgment was upheld on appeal.

17. A few points to note from the Chief Judge's judgment.
18. The Chief Judge held that the jurisdiction of the courts in any given legal system is defined by its constitution (written or unwritten), constitutional documents, conventions and relevant legislations.
19. The HKSAR courts derive their jurisdiction from the BL. The HKSAR is not a sovereign state. Under BL art.2, it is authorised by the NPC to exercise a high degree of autonomy and enjoy independent judicial power, including that of final adjudication, in accordance with BL provisions. Viewed thus, the jurisdiction of the HKSAR Courts is governed by and subject to the limits imposed in the BL and such other relevant laws as may be applicable, including the NSL. In other words, the ambit of the jurisdiction is demarcated by the ambit of the HKSAR's high degree of autonomy including judicial power as authorised by the NPC.
20. The limits of the HKSAR's high degree of autonomy are pivotal to the proper understanding of the limit of the HKSAR Courts' jurisdiction on matters of national security.
21. The starting point must be that safeguarding national security is a matter that goes beyond the boundary of the HKSAR's autonomy and within the purview of the Central Authorities. It was on this footing that the NSL was listed in Annex III to the BL as a national law applicable to the HKSAR in accordance with BL art.18(2) and (3).
22. Since the scope and power of review of the HKSAR Courts (as governed by BL) are delineated by the empowerment and authorization by the NPC, it follows that the HKSAR Courts, being the authorisee, do not have power to question or review the

institutional design of the NSL, which is a piece of national law enacted by the NPCSC, the authorisor.

23. The Interpretation was implemented locally by way of an amendment to the *Legal Practitioners Ordinance* (Cap 159) which came into force on 12 May 2023. Section 27B now provides that generally speaking, a person must not be admitted as a barrister for a case concerning national security unless there is exceptional circumstance, i.e. that the CE has sufficient grounds for believing that the person's practising or acting as a barrister for the case does not involve national security or would not be contrary to the interests of national security.

Song Injunction

24. Another key development in Hong Kong's jurisprudence in the NSL context relates to the use of injunctions to further the imperatives under the NSL art.8, i.e. the effective *prevention*, *suppression* and *punishment* of acts or activities endangering national security.
25. In *Secretary for Justice v Persons Conducting Themselves in Any of the Acts Prohibited under Paragraph 1(a), (b), (c) or (d) of the Indorsement of Claim* [2024] HKCA 442 (CA judgment handed down on 8 May 2024), the SJ, acting as guardian of public interest, applied for an injunction to restrain four specified acts in connection with a song ("**Song**") which is widely disseminated on the internet and various social platforms.
26. That song is commonly known as "Glory to Hong Kong". As observed by the court, since the Song's first publication in August 2019, it was widely disseminated and used prominently in violent protests and secessionist activities, and remains freely available on the internet. It has also been wrongly represented as the national anthem of Hong Kong.

27. The 4 prohibited acts under the injunction are:
- (1) Broadcasting the Song: (i) with the intent or in circumstances capable of inciting others to commit succession, or (ii) with a seditious intention and in particular to advocate the separation of the HKSAR from the PRC;
 - (2) Broadcasting the Song in such a way: (i) as to be likely to be mistaken as the national anthem of the HKSAR; or (ii) to suggest that the HKSAR is an independent state and has a national anthem of her own; with intent to insult the national anthem;
 - (3) Assisting others to commit or participate in any of the prohibited acts;
 - (4) Knowingly authorizing any of the prohibited acts or participate in any of the prohibited acts.
28. All of the above four prohibited acts are unlawful acts by themselves. The third and fourth acts target in particular IPO and social media platform which allow or provide the avenue for the Song's dissemination.
29. The first instance judge refused to grant the injunction mainly because he considered that it was of no real utility in stopping the 4 prohibits acts. Those who intend to commit the underlying criminal acts are unlikely to be deterred by an additional injunction.
30. The CA reversed the judge's decision. It observed that the Court should grant the injunction if its assistance is necessary to help the criminal law achieve its public interest purpose of safeguarding national security.
31. In this regard, in relation to the assessment of national security by the executive, the Court is bound by a NSL 47 certificate; in any other case, it will give great deference to the assessment.

32. In relation to the injunction as a counter-measure, since it is a legal question to be resolved by the court alone, the court will make its own judgment while giving considerable deference to the executive's decision to invoke the court's jurisdiction – in other words, whether the executive considers that an injunction is necessary as an aid to criminal law in the prevention and suppression of acts endangering national security.
33. The Court will also firmly bear in mind its constitutional duty to safeguard national security and the mandate in the NSL to fully deploy the equitable jurisdiction to grant injunctions to safeguard national security in the exercise of that discretion (§85).
34. The concept of judicial deference to executive's assessment on national security is well-established at common law.
35. It is based on both constitutional and institutional reasons:
 - (1) For **constitutional reasons**, it is the executive (and not the court) which has the responsibility for assessing and addressing risks to national security. The court is tasked to uphold the rule of law, administer justice and adjudicate disputes independently. In exercising its judicial function, the court must recognize the boundaries between executive, legislative and judicial power. It reflects the allocation of different functions to the executive and the court under the constitutional design.
 - (2) For **institutional reasons**, the executive (and not the court) has the requisite experience, expertise, resources and access to information and intelligence which make it best suited to making evaluative judgments on national security matters. The court's expertise lies in the law, construing and applying the law, resolving constitutional and legal issues in accordance with the law. It is a recognition of the differences in institutional capacities and expertise possessed by the

executive and the court.

36. As decided by the Privy Council over 100 years ago in the case of *The Zamora* [1916] 2 AC 77:

“Those who are responsible for the national security must be the sole judges of what the national security requires.”

37. That does not mean the executive’s decision based on national security considerations is immune from judicial scrutiny.

(1) There must be evidence to prove that the decision was based on national security considerations.

(2) Once this has been proved, the court will not substitute its own views on what is required in the interests of national security, or what action is needed to protect such interests, unless it is one that no reasonable executive authority could have made.

38. While giving the executive deference, the Court acts as the gatekeeper and is required to make its own judgment on whether to grant the injunction or other relief sought, where a fundamental right of the person affected by the measure is engaged. This echoes NSL art.4 which expressly provides that human rights shall be respected and protected in safeguarding national security in Hong Kong, and the rights and freedoms which the residents of Hong Kong enjoy under the BL shall be protected.

39. On the facts of that case, the CA made the following points:

(1) The composer of the Song has intended it to be a “weapon” and so it had become. It had been used as an impetus to propel the violent protests plaguing Hong Kong since 2019. It is powerful in arousing emotions among certain fractions of the society. It has the effect of justifying and even romanticising and glorifying the unlawful and violent acts inflicted on Hong Kong in the past few years, arousing and rekindling strong

emotions and the desire to violent confrontations. Further in the hands of those with the intention to incite secession and sedition, the Song can be deployed to arouse anti-establishment sentiments and belief in the separation of the HKSAR from the PRC.

- (2) As in the case of any national anthem, the national anthem of the PRC is a symbol and sign of the State. It represents the country with her sovereignty, dignity, unity and territorial integrity and the identity of the Chinese people. Misrepresenting the Song as the national anthem of the HKSAR in the manner proscribed is both an offence under the National Anthem Ordinance and constitutes an act endangering national security as it misrepresents Hong Kong as an independent state or arouses the sentiments for the independence of Hong Kong.
- (3) By the relevant NSL 47 certificate issued by the CE, the CE had already assessed that the 4 enjoined acts pose national security risks and are contrary to the interests of national security. Such certificate is binding on the Court. The same conclusion can also be reached on the evidence.
- (4) There is an immediate need to stop the enjoined acts. However, the Song is still freely available on the internet and remains prevalent. The Court of Appeal accepted the assessment of the executive that prosecutions alone are clearly not adequate to tackle the acute criminal problems and that there is a compelling need for an injunction, as a counter-measure, to aid the criminal law for safeguarding national security. Furthermore, an injunction is necessary to persuade the IPOs to remove the problematic videos in connection with the Song on their platforms. This would allow the circuit to be broken, especially when IPOs have indicated that they are ready to accede to the Government's request if there is a court order.

Implementation Rules

40. There are also cases where the civil courts are asked to make orders to facilitate the implementation of the NSL in the HKSAR.
41. NSL art.43 sets out a wide range of measures available to law enforcement agencies when handling cases concerning offence endangering national security. These measures include (i) search of premises and (ii) freezing of property used, intended to be used or relating to the commission of the offence. The CE is authorized, in conjunction with the NSC, to make the relevant implementation rules for applying such measures.
42. The Implementation Rules came into operation on 7 July 2020.
43. In *Lai Chee Ying v Secretary for Security* [2021] HKCFI 2804, the defendant was charged with a number of NSL related offences. The Secretary for Security issued a notice pursuant to IR Schedule 3 to freeze the defendant's shares in a Hong Kong company, being properties that the Secretary for Security had reasonable grounds to suspect were "offence related property" for the purpose of IR Schedule 3.
44. The issue before the Court in that case was whether the prohibition on the "dealing with" the shares includes the exercise of voting rights in relation to those shares. The Court answered in the affirmative, and held that if the shares are frozen by the notice, it makes little sense for the prohibition not to apply to the voting right attached to the shares.
45. The Court observed that a freezing notice serves a number of purposes:
 - (1) preserve the property so that a confiscation or forfeiture order may be obtained in the future;

- (2) prevent the use of the property in financing or assisting any NSL offence; and
 - (3) preventing any dealing with the property in a manner which may prejudice on-going investigation or proceedings concerning NSL offence.
46. Whilst recognizing that the voting right of a shareholder is a property right protected by BL, the Court observed that under IR Schedule 3, it is open to the defendant to apply for a licence to exercise his voting right in the shares if he takes the view that such action will have no adverse bearing on national security. If the Secretary for Security refuses to grant a licence, the defendant can go before the Court for adjudication. This strikes a fair balance between the prevention, suppression and punishment of NSL offences on one hand, and the protection of property right.
47. In *Lai Chee Ying v Commissioner of Police* [2022] HKCFI 2688 (upheld on Appeal [2022] HKCA 1574), the police obtained a search warrant under IR Schedule 1 which authorized the search of any parts of the digital contents of two mobile phones seized earlier at the defendant's residence. The defendant claimed that the mobile phones contained journalistic materials which should not be disclosed by reason of the freedom of the press and freedom of expression which are rights protected by BL and Hong Kong BOR.
48. The CFI held that the search warrant covers journalistic materials which may be seized. The decision was upheld by the CA.
49. The CA held that despite its importance to the freedom of the press, the protection afforded to journalistic material is not absolute. Journalistic material is not immune from search and seizure in the investigation of any criminal offence including offences endangering national security.
50. If journalistic material is excluded from any search and seizure by

the police, it would unduly limit the scope, and hence reduce the effectiveness, of police investigation. That would not be conducive to the legislative purpose of the NSL to effectively suppress, prevent and punish offences endangering national security.

51. The CA observed that the Court performs a judicial gatekeeping role and carries out a balancing exercise between public interest and fundamental rights. It may impose conditions when issuing a warrant. It may set aside or vary a warrant upon the application by a person affected by it.

Conclusion

52. The above examples illustrate how our courts play a significant role in developing jurisprudence on this important area of law and contributing to the safeguarding of national security in the HKSAR.
53. The decided cases show that our judiciary:
 - (1) is fully independent in exercising its adjudicating powers;
 - (2) construes and implements the NSL in accordance with established common law principles;
 - (3) recognises of its constitutional duty under the NSL to effectively prevent, suppress and impose punishment for any act or activity endangering national security; and
 - (4) gives deference to the executive on national security matters while retains its important constitutional role as the judicial gatekeeper in safeguarding human rights, open justice and fair trial.[#]



[#] This is reproduced from the script submitted by the speaker with editorial changes

Dr Thomas SO JP

1. Bail

Under Hong Kong's common law system, the accused in ordinary criminal cases should be granted bail unless the court considers there is a risk of his or her absconding or re-offending. This embodies the "presumption in favour of bail" under the "presumption of innocence". Where a defendant is arrested and charged for suspected violation of the Hong Kong National Security Law (HKNSL), he or she has the right to apply for bail pending trial. HKNSL 42(2) stipulates that "no bail shall be granted to a criminal suspect or defendant unless the judge has sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security".

So, with regard to the provisions on bail arrangements in the HKNSL, is the bail threshold unduly high? Is it contrary to the principle of "presumption of innocence"? And has it toppled the presumption in favour of bail concerning defendants or criminal suspects?

First of all, HKNSL 42 provides that when applying the laws in force in the HKSAR concerning matters such as detention, the law enforcement and judicial authorities of the Region shall ensure that cases concerning offence endangering national security are handled in a fair and timely manner so as to effectively prevent, suppress and impose punishment for such offence. Under the HKNSL and the local laws, a criminal suspect of an NS case may apply for bail but the judge has to have sufficient grounds for believing that a criminal suspect or defendant will not continue to commit acts endangering national security before granting bail. This is different from the considerations for bail decisions under the Criminal Procedure Ordinance. If bail conditions under the HKNSL are taken as the threshold, defendants not only must convince the courts that they will attend court as scheduled, but also have to satisfy the courts that they will not commit further acts endangering national security whilst on bail.

In other words, the bail threshold for acts endangering national security is higher than that for other ordinary offences under the common law. The general rules on the “presumption in favour of bail” under HKNSL 42 create a specific exception, stipulating a new and more stringent threshold requirement for the grant of bail.¹

In HKNSL 42(2) (“No bail shall be granted to a defendant unless the judge has sufficient grounds for believing that the defendant will not ‘continue’ to commit acts endangering national security”), “continue” merely serves as guidance to a judge, in deciding on whether or not to grant bail, whether the defendant upon release on bail will commit acts endangering national security should be considered. This does not become “pre-trial incarceration” or “presumption of guilt”. The length of detention for these defendants is no longer than that in ordinary criminal cases, and such defendants remain entitled to apply for bail, many of whom have been granted bail pending trial in quite a number of cases concerning NS offences. Thus, there is no denial of the principle “presumption of innocence”. On the contrary, the Court clearly stated in the judgment of a case that the HKNSL protects and respects human rights and adheres to the rule of law values while placing emphasis on safeguarding national security.²

Moreover, the grant or refusal of bail does not involve the application of a burden of proof as the decision whether or not to grant bail is “a juridical exercise carried out by the Court [as] an exercise in judgment or evaluation, not the application of a burden of proof”. The rules as to the grant or refusal of bail by their nature involve a risk assessment as to the conduct of the defendants in the future, an assessment that does not lend itself to strict proof at the bail hearing.³

¹ The Court of Final Appeal observed at paragraph 70 of the judgment in *HKSAR and Lai Chee Ying* [2021] HKCFA 3: “NSL 42(2) creates a specific exception to the HKSAR rules and principles governing the grant and refusal of bail, and imports a stringent threshold requirement for bail applications.”

² *Tong Ying Kit v HKSAR* [2020] HKCFI 2133

³ *HKSAR v Lai Chee Ying* [2021] HKCFA 3, paragraph 68

In applying HKNSL 42(2), the Court must first decide, in accordance with the principles above, whether there are “sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security”. If, having taken into account all relevant materials, the Court concludes that there are no sufficient grounds for believing that the defendant will not continue to commit acts endangering national security, bail must be refused.⁴

If the Court concludes that taking all relevant materials into account, there are sufficient grounds for believing that the defendant will not continue to commit acts endangering national security, the Court should proceed to consider all other matters relevant to the grant or refusal of bail and to apply the presumption in favour of bail; and consider, by having regard to factors such as those set out in section 9G(2) of the Criminal Procedure Ordinance, whether there are substantial grounds for believing that the accused would fail to surrender to custody, or interfere with a witness or obstruct the course of justice, etc. Consideration should also be given to whether conditions aimed at securing that such violations will not occur ought to be imposed.⁵

Comparison with other jurisdictions

Under the UK National Security Act⁶, the Secretary of State for the Home Department (Home Secretary) may impose in a targeted manner “state threat prevention and investigation measures” upon individuals without trial if he/she reasonably believes them to be or have been involved in “foreign power state threat activity”. The restrictions concerned cover a myriad of aspects including residence, travel, entry

⁴ *HKSAR v Lai Chee Ying* [2021] HKCFA 3, paragraph 70(d) and (e)

⁵ *HKSAR v Lai Chee Ying* [2021] HKCFA 3, paragraph 70(f)

⁶ The UK has had its National Security Act since the mid-19th century. The UK Parliament formally passed the latest National Security Act in July 2023 (The National Security Act 2023) in response to charges in political environment. The UK's National Security Act comprises over 100 provisions divided into six parts, provides for greater law enforcement powers and covers a wider scope than the Hong Kong's HKNSL, which contains 66 articles.

into area or place, movement, use of electronic communication device, financial services, work or studies, etc., and even a requirement of the individual to participate in polygraph sessions.

Furthermore, the UK National Security Act empowers the police to apply to a judicial authority for an extended detention of up to 14 days; empowers police officers of at least the rank of superintendent to direct that a detained person may not consult a solicitor or to delay a detained person's consultation with a solicitor; and with the Court's approval, impose restrictions on an individual's association with other persons, use of electronic communication devices, or the transfer of property to or by the individual, etc..

There is no formal burden of proof on either the prosecution or the defence in relation to the "sufficient grounds" requirement in HKNSL 42 (2), which is a matter that the Court has to judge and evaluate. However, it is noteworthy that there are other common law jurisdictions (such as Canada and Australia) where, in respect of certain classes of offences, not only is there no burden of proof on the prosecution to establish grounds for refusing bail, but a burden is placed on the accused to establish why continued detention, rather than release on bail, is not justified.⁷

In the Canadian case *R v Pearson*⁸, the majority of the Supreme Court of Canada ruled that placing the onus on the accused to show cause why his pre-trial detention is not justified in the circumstances set out in section 515(6)(d) of the Criminal Code of Canada does not violate the Canadian Charter of Rights and Freedoms. In Australia, it was held in *R v NK*⁹ that section 15AA of the Crimes Act 1914 (Commonwealth) prevents the court from granting bail in certain cases unless it is satisfied that exceptional circumstances exist to justify bail and this provision requires the applicant to satisfy the court that such circumstances exist.¹⁰

⁷ *HKSAR v Lai Chee Ying* [2021] HKCFA 3, paragraph 69

⁸ *R. v. Pearson* [1992] 3 S.C.R 665

⁹ *R v NK* [2016] NSWSC 498

¹⁰ *HKSAR v Lai Chee Ying* [2021] HKCFA 3, paragraph 69

In some jurisdictions, the executive authorities are vested with powers to impose detention for long periods without charge in order to prevent acts endangering national security. For instance, the Internal Security Act¹¹ of Singapore creates executive powers for the President to authorize detention without charge for a period of up to two years (which can be extended) on grounds of national security. This also rules out bail completely and the relevant decisions taken under the Act are generally not subject to judicial review.

2. System of designated judges

According to HKNSL 44, judges shall be designated by the Chief Executive to handle cases concerning offences endangering national security.

“The Chief Executive shall designate a number of judges from the magistrates, the judges of the District Court, the judges of the Court of First Instance and the Court of Appeal of the High Court, and the judges of the Court of Final Appeal, and may also designate a number of judges from deputy judges or recorders, to handle cases concerning offence endangering national security. Before making such designation, the Chief Executive may consult the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region and the Chief Justice of the Court of Final Appeal. The term of office of the aforementioned designated judges shall be one year.

A person shall not be designated as a judge to adjudicate a case concerning offence endangering national security if he or she has made any statement or behaved in any manner endangering national security. A

¹¹ The Internal Security Act (the “ISA” in brief) of Singapore consists of two parts and six chapters. According to Article 149 of Part 12 of the Constitution of the Republic of Singapore, the Act is a piece of “legislation against subversion” that primarily serves to address threats to internal security, including threats to public order, communal and religious harmony, and subversive and terrorist activities; and to eliminate national security threats in a pre-emptive approach.

designated judge shall be removed from the designation list if he or she makes any statement or behaves in any manner endangering national security during the term of office.

The proceedings in relation to the prosecution for offences endangering national security in the magistrates' courts, the District Court, the High Court and the Court of Final Appeal shall be handled by the designated judges in the respective courts.”

In addition, section 100 of the Safeguarding National Security Ordinance (SNSO) passed in March 2024 also stipulates that a case concerning national security must be adjudicated by a designated judge.

Does this power of the Chief Executive to designate judges to handle cases concerning national security interfere with independent judicial power?

First, before making such designation, the Chief Executive may consult the Committee for Safeguarding National Security of the HKSAR and the Chief Justice of the Court of Final Appeal. The Chief Justice also makes suggestions to the Chief Executive on possible designations where appropriate. The term of office of the aforementioned designated judges shall be one year only.

According to HKNSL 44, the Chief Executive only formulates the list of designated judges to be responsible for handling cases involving national security; and the final assignment of which designated judge or judges to hear individual cases remains the judicial function to be exercised by the Judiciary independently, just like all other types of cases. In such process, the Chief Executive (or the Government) cannot, and will not, interfere at all. Therefore, the Chief Executive (or the Government) cannot be said to have directly interfered with the adjudication of cases concerning NS offences in the Hong Kong judicial system.¹²

In fact, it is not uncommon to designate specialist judges to deal with particular areas of law. In Hong Kong, there are judges designated to

¹² *Tong Ying Kit v HKSAR* [2020] HKCFI 2133, paragraph 54

handle construction, arbitration, commercial and admiralty cases.

The incumbent Chief Justice of the Court of Final Appeal of the HKSAR also said at the Ceremonial Opening of Legal Year 2022 that “designated judges, like all other judges, are subject to the Judicial Oath which all judges are required to take under Article 104 of the Basic Law. Under the Judicial Oath, a judge swears to serve Hong Kong conscientiously, dutifully, in full accordance with the law and with integrity, and to safeguard the law and administer justice without fear or favour, self-interest or deceit. In particular, this means that no political or other personal considerations of the judge can be entertained in the judicial decision-making process. The Judicial Oath is binding on a designated judge when he or she sits on a national security case, just as it is binding on them when hearing other types of cases.”

Furthermore, under Article 88 of the Basic Law, all judges of Hong Kong shall be appointed by the Chief Executive on the recommendation of the Judicial Officers Recommendation Commission. Moreover, all judges are bound by the Judicial Oath taken by them upon their appointment, which requires them to, *inter alia*, discharge their judicial duties in full accordance with the law and without fear or favour.¹³

In light of the above, it is simply unwarranted to conclude from the mere formulation by the Chief Executive of a list of designated judges to be responsible for handling cases involving national security that such a move would interfere with independent judicial power.

Comparison with other jurisdictions

In the English case *Campbell and Fell v. the United Kingdom*¹⁴, the judge emphasized that appointment of judges by the executive is

¹³ *Tong Ying Kit v HKSAR* [2020] HKCFI 2133, paragraph 58

¹⁴ *Campbell and Fell v. the United Kingdom* [1984] ECHR 8

permissible, provided that appointees are free from influence or pressure when carrying out their adjudicatory role¹⁵. Similarly, in the Polish case *Henryk Urban and Ryszard Urban v. Poland*¹⁶, the judge also reiterated that appointment of judges by the executive is permissible¹⁷.

According to *Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial (criminal limb)*, published by the European Court of Human Rights in 2014, paragraph 58 states that “appointment of judges by the executive is permissible, provided that appointees are free from influence or pressure when carrying out their adjudicatory role.” Therefore, absent any indication of influence or pressure on judges, it is indeed an international practice to permit the executive to designate judges.

3. No right to a jury trial

Under HKNSL 46, “[i]n criminal proceedings in the Court of First Instance of the High Court concerning offences endangering national security, the Secretary for Justice may issue a certificate directing that the case shall be tried without a jury on the grounds of, among others, the protection of State secrets, involvement of foreign factors in the case, and the protection of personal safety of jurors and their family members. Where the Secretary for Justice has issued the certificate, the case shall be tried in the Court of First Instance without a jury by a panel of three judges.”

It has been the practice of the Court of First Instance of the High Court of Hong Kong to adopt trial by jury for serious offences. This is one of the most important features of Hong Kong’s legal system, i.e. trial of the defendant in court by fellow members of the community who shall decide, based on the facts, whether the defendant is guilty or not guilty.

¹⁵ *Campbell and Fell v. the United Kingdom* [1984] ECHR 8, paragraph 79

¹⁶ *Henryk Urban and Ryszard Urban v. Poland* [2010] ECHR 1903

¹⁷ *Henryk Urban and Ryszard Urban v. Poland* [2010] ECHR 1903, paragraph 49

There has been criticism that the denial of jury trial would facilitate politically-motivated prosecutions and contradict Article 86 of the Basic Law, which provides that “[t]he principle of trial by jury previously practised in Hong Kong shall be maintained”.

First, this is a power conferred on the Secretary for Justice under the laws of Hong Kong. It has been recognized in a number of cases that an accused does not have a general right to jury trial, what matters is that the exercise of this power by the Secretary for Justice will not undermine any lawful rights of the accused¹⁸.

Second, there is no general right to trial by jury in Hong Kong’s criminal justice system (this is a concurrent finding of various levels of courts involved in the precedent *Lily Chiang v Secretary for Justice*¹⁹ back in 2010)²⁰.

HKNSL 46 sets out the grounds on which the Secretary for Justice may issue a certificate directing a non-jury trial for the relevant criminal case, including: (1) protection of State secrets; (2) involvement of foreign factors in the case; and (3) protection of personal safety of jurors and their family members. These considerations determine the suitability of having a jury in a given case. The HKNSL authorizes the Secretary for Justice to weigh up the pros and cons between protecting the accused, safeguarding national security, and protecting the safety of jury members, and to make the most appropriate decision. This in fact is a flexible and highly effective way of problem-solving, without undermining any of the defendant’s lawful rights including his/her right to a fair trial.

Whilst Article 86 of the Basic Law provides that “[t]he principle of trial by jury previously practised in Hong Kong shall be maintained”, the word “maintained”, on a proper construction, is about the preservation of

¹⁸ *Tong Ying Kit v SJ* [2021] HKCFI 1397, paragraphs 7(1) and 40

¹⁹ *Lily Chiang v Secretary for Justice* [2010] 13 HKCFAR 208

²⁰ *Tong Ying Kit v SJ* [2021] HKCFI 1397, paragraph 7(1)

the continuity of this system, instead of preservation of all the elements of which the system consists²¹.

As the Court of Appeal noted in *Tong Ying Kit v. Secretary for Justice*, “Granted jury trial is the conventional mode of trial in the Court of First Instance, it should not be assumed that it is the only means of achieving fairness in the criminal process. Neither [Article] 87 [of the Basic Law] nor [Article] 10 [of the Hong Kong Bill of Rights] specifies trial by jury as an indispensable element of a fair trial in the determination of a criminal charge. When there is a real risk that the goal of a fair trial by jury will be put in peril by reason of the circumstances mentioned in the third ground [namely, the protection of personal safety of jurors and their family members], the only assured means for achieving a fair trial is a non-jury trial, one conducted by a panel of three judges as mandated by [HKNSL] 46(1). Such a mode of trial serves the prosecution’s legitimate interest in maintaining a fair trial and safeguards the accused’s constitutional right to a fair trial²².”

The same procedural safeguards are in place in offences endangering national security tried without a jury to ensure a fair trial as in a jury trial, and the same appeal procedure is available to a defendant in case of a conviction. As guaranteed by the Basic Law, the HKNSL and the Hong Kong Bill of Rights, defendants charged with criminal offences, including those under the HKNSL, shall have the right to a fair trial by the courts exercising independent judicial power.

Comparison with other jurisdictions

Some Western common law countries also have similar systems, under which a trial may be conducted without a jury where serious criminal offences are involved or where the jury is subject to undue

²¹ *Tong Ying Kit v SJ* [2021] HKCFI 1397, paragraph 28(a)

²² *Tong Ying Kit v SJ* [2021] HKCA 912, paragraph 43

interference, so as to ensure that the administration of justice is not impaired²³.

4. Principle of open trial

The principle of “open trial” refers to the requirement under Article 14 of the International Covenant on Civil and Political Rights and HKNSL 41 whereby a trial shall be conducted in an open court. Unless State secrets or public order is involved, the trial must be conducted in an open court. In cases involving State secrets or public order making trial in an open court not appropriate, all or part of the trial shall be closed to the media and the public but the judgment must be made public.

Since the passage of the HKNSL, all cases involving the HKNSL have been tried in an open court and the trial process has been open and transparent. The court decisions and judgments are made available on the Judiciary’s website for free public access. The public will have no difficulty in following the court proceedings and reasons for the courts’ judgments. Furthermore, during the implementation and enforcement of the HKNSL, its relevant provisions have been made compatible with the body of laws in Hong Kong, in full manifestation of the spirit of open trial under HKNSL 41. The implementation process is in no violation of the existing principles of human rights protection and rule of law (including the principle of fair and open trial and the principle of liberty protection for defendants and criminal suspects). Hence, it is not unduly harsh in comparison with other common law jurisdictions.

²³ *Tong Ying Kit v SJ* [2021] HKCFI 1397, paragraphs 7(3), 10 and 32

The Hon Carmen KAN Wai-mun JP

In view of the time constraint, the organizer would like me to utilize the timeslot reserved for Q&A session to make a brief conclusion instead. Our three panelists have provided their insightful and discerning views on the implementation and jurisprudential development of the Hong Kong National Security Law (HKNSL).

Mr William TAM Yiu-ho, SC has emphasized in particular that the offences provided under the HKNSL and the Crimes Ordinance are actually very clear, and only target an extremely small minority of criminals who endanger national security in cases of extreme circumstances, and so the general public will not be caught by the law inadvertently. And like other criminal cases, national security cases also require the prosecution to prove their case beyond reasonable doubt in order to secure a conviction [of the defendant].

Mr Jonathan CHANG, SC has made clear the importance of civil cases in the jurisprudential development of the national security laws. For instance, it has been held that under the Basic Law and the HKNSL the Standing Committee of the National People's Congress has the power to give interpretation on the HKNSL provisions, which the courts of Hong Kong are obliged to follow. The compliance with such interpretation under the principle of "One Country, Two Systems" also demonstrates the courts' exercise of independent judicial power in construing and implementing the HKNSL in accordance with established common law principles, while at the same time showing full judicial deference to the executive's judgements on national security matters.

Last but not least, Dr Thomas SO, JP has shared with us the criminal procedures inherent in the HKNSL, especially on the granting of bail, by comparing the same with those of other overseas jurisdictions. As guaranteed by the Basic Law and the Hong Kong Bill of Rights, all defendants charged with a criminal offence shall have the

right to a fair trial by the judiciary exercising independent judicial power.

In the interest of time, this is the end of our session. Again, my gratitude goes to the Department of Justice as well as the supporting organizations for the meticulous arrangement of this legal forum. My thanks also go to all of you who have listened so attentively, both online and in person. Thank you all!



Review of the Hong Kong National Security Law: implementation and the development of jurisprudence

William TAM Yiu-ho, SC

Deputy Director of Public Prosecutions

Legal system for safeguarding national security

國安法律論壇
NATIONAL SECURITY
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- It targets acts endangering national security and cracks down on the very small minority of bad elements who commit radical acts and undermine national security.
- Section 7 of the recently passed Safeguarding National Security Ordinance (SNSO) clearly specifies offences endangering national security, which include:
 1. the four types of offences under the Hong Kong National Security Law (HKNSL)
 2. the offences under the Implementation Rules made pursuant to Article 43 of the HKNSL, which vests the law enforcement agencies with the relevant legal powers
 3. the offences under the SNSO
 4. other offences endangering national security under the laws of the HKSAR

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Case studies on offences endangering national security

The case of Tong Ying Kit



- The Court in construing the offences, clearly defined the essential ingredients of incitement to secession and commission of terrorist activities, based on the wording of the legal provisions.
- The defendant's commission of such acts on the HKSAR Establishment Day after the commencement of the HKNSL was undoubtedly in defiance of the fact that the HKSAR is a part of the State, and a blatant challenge to the law enforcement agencies of the HKSAR.
- The Court in sentencing stated that any secessionist acts, particularly terrorist activities with secessionist overtones, must be punished with appropriate and deterrent sentences. Having regard to the serious nature of the circumstances of the offence, the court sentenced the defendant to 9 years' imprisonment.

Case reference indices:
[2021] HKCFI 2200 (Verdict)
[2021] HKCFI 2239 (Sentence)

The case of Ma Chun Man



- The defendant's radical acts included: he falsely represented to the public that advocacy of "Hong Kong independence" was not unlawful by citing his own example of being granted bail after arrest, and whilst on bail during press interviews repeatedly incited others to commit secession and disdain law and order.
- The defendant even called for the targeting of students, the future pillars of society, for the promotion of concepts such as "Hong Kong independence".
- The Court emphasised in the verdict the need for everybody to accept that freedoms and rights of individuals in a society underpinned by the rule of law are not absolute.

Case reference indices:
[2021] HKDC 1325 (Verdict)
[2021] HKDC 1406 (Sentence)
[2022] 5 HKLRD 221 (Court of Appeal)

The case relating to the organisation “Returning Valiant”

- It involves a number of defendants where one of them pleaded guilty to the offence of conspiracy to commit terrorist activities, for which the Court of First Instance adopted 10 years as the starting point and imposed a sentence of 6 years’ imprisonment after reduction for guilty plea and other mitigating factors.
- The defendant was the mastermind and recruiter of the plan, which included choosing court premises as the target for bombing, thus the nature of the circumstance of the offence was very serious.
- Despite the defendant’s relatively young age, the Court’s primary consideration in sentencing must be deterrence in order to protect public safety.

Case reference index:
[2024] HKCFI 280 (Sentence)

The case of “集英揚武堂”

- One of the defendants pleaded guilty to incitement to subversion.
- The facts of the case alleged that the defendant organised the martial arts club “集英揚武堂” with the intent to overthrow the Central Authorities of the State and the HKSAR Government through violent revolution, using the Internet, conducting martial arts courses and stockpiling weapons.
- Based on the facts of the case, the District Court found the nature of the circumstances serious and, after reduction for guilty plea, sentenced the defendant to 5 years’ imprisonment, together with other offences.

Case reference index:
[2023] HKDC 168 (Sentence)

The case of “羊村 picture books”

- In the name of the General Union of the Hong Kong Speech Therapists, the defendants printed, published and displayed children’s picture books that had seditious intention.
- The Court found that the content of the picture books clearly refused to recognise that the PRC had legitimately resumed exercising sovereignty over the HKSAR, and led the children to hate and excite their disaffection against the Central Authorities. The Court eventually found all the defendants guilty as charged.
- The Court in sentencing emphasised that what the defendants were doing was brainwashing, leading the very young children to accept their seditious assertions, sowing the seed of instability in our country and the HKSAR.
- Taking into account the gravity of the offence, the Court finally sentenced each defendant to 19 months’ imprisonment.

Case reference indices:
[2022] 4 HKLRD 657 (Verdict)
[2022] HKDC 1004 (Sentence)

The case of Tam Tak Chi

- The defendant faced multiple charges including those of sedition, and was convicted of most of them after trial.
- Judgment of the Court of Appeal:
 1. The Court of Appeal held that under the then statutory provisions of the Crimes Ordinance, apart from the express provision on a seditious intention to incite persons to violence, the other provisions which specify the circumstances that constitute seditious intentions do not require proof of the perpetrator’s intention to incite violence.
 2. The Court of Appeal held that the sedition charges were constitutional. The legal provisions are legally certain.
 3. The Court of Appeal held that the provision is no more than necessary to accomplish its legitimate aim.

Case reference indices:
[2022] HKDC 208 (Verdict)
[2022] HKDC 343 (Sentence)
[2024] HKCA 231 (Court of Appeal)



Looking back and ahead after four years' implementation of the HKNSL

- The courts have been able to define clearly the elements of offences when construing the provisions on offences relating to safeguarding national security, and that the court judgments have also illustrated the relevant bases for conviction and sentencing.
- Given public awareness of the case reported, knowledge of the legal requirements, and compliance with the law, no one will inadvertently be caught by the law.
- Ordinary people would simply not commit acts endangering national security. The criminal acts mentioned in the relevant cases far exceeded the bottom line permissible by fundamental rights, and are plainly offences endangering national security.
- Even the slightest risk of endangering national security is unacceptable. The prosecuted cases so far have precisely reflected the effectiveness of the HKSAR's legal system in safeguarding national security.

Thank you!



Review of the Implementation and Jurisprudential Development of the Law of the People’s Republic of China on Safeguarding National Security in the HKSAR (“NSL”)

Jonathan Chang SC, Temple Chambers, Hong Kong



Construction of the NSL

HKSAR v Lui Sai Yu (2023) 26 HKCFAR 332

“The Court’s approach to construction of the Basic Law, and by extension of the NSL, is the common law approach as established in *Director of Immigration v Chong Fung Yuen* [(2001) 4 HKCFAR 211].” (at para 45)

HKSAR v Lai Chee Ying (2021) 24 HKCFAR 33 at para 29

Legislative intent is for the NSL to **operate in tandem** with the laws of the HKSAR, seeking “convergence, compatibility and complementarity” with local laws

HKSAR v Lui Sai Yu (2023) 26 HKCFAR 332 at para 25

NSL is intended to **fit in** and to **function coherently** with the HKSAR legal system, with local laws operating in normal fashion unless they are expressly or by necessary implication displaced by inconsistent provisions of the NSL.



NSL Article 62

This Law shall prevail where provisions of the local laws of the Hong Kong Special Administrative Region are inconsistent with this Law.



NSL Article 65

The power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress.

Chong Fung Yuen (2001) 4 HKCFAR 211

The authority of the Standing Committee to interpret the Basic Law is fully acknowledged and respected in the Region. This is the effect of the Basic Law implementing the “one country, two systems” principle. Both systems being within one country, the Standing Committee’s interpretation made in conformity with Article 158 under a different system is binding in and part of the system in the Region.

Lai Chee Ying v The Committee for Safeguarding National Security of the HKSAR [2024] HKCA 400

“The NPCSC has authority under NSL to interpret the provisions of the NSL. Under the civil law system in the Mainland, legislative interpretation by the NPCSC of provisions of the NSL can clarify or supplement the laws. The courts of Hong Kong are bound to follow the Interpretation under the principle of “one country, two systems”. (at para 38)



The question whether overseas lawyers not qualified to practise generally in the HKSAR may serve as defence counsel or legal representatives in cases concerning an offence endangering national security is a question that requires certification under Article 47 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region, and a certificate from the Chief Executive shall be obtained. If the courts of the HKSAR have not requested or obtained a certificate on such question from the Chief Executive, the Committee for Safeguarding National Security of the HKSAR shall perform its statutory duties and functions in accordance with the provisions of Article 14 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region to make relevant judgements and decisions on such situation and question.



NSL Article 47

The courts of the Hong Kong Special Administrative Region shall obtain a certificate from the Chief Executive to certify whether an act involves national security or whether the relevant evidence involves State secrets when such questions arise in the adjudication of a case. The certificate shall be binding on the courts.

***Lai Chee Ying v SJ* [2023] 3 HKLRD 275,
upheld on appeal [2024] HKCA 400**

“... the courts do not enjoy unlimited jurisdiction. Their jurisdiction is necessarily restricted by what the constitution or relevant legislations have prescribed. The courts must accept such jurisdictional limits and can only act within their confines as part of the constitutional order of the legal system in which they operate. That is essential to the concept and practice of the rule of law.”
(para 16)

11

***Lai Chee Ying v SJ* [2023] 3 HKLRD 275,
upheld on appeal [2024] HKCA 400**

“The duties and functions of the NSC under NSL art.14 fall within the exclusive purview of the CPG having the overarching responsibility for the national security affairs relating to the HKSAR. The supervisory power over the NSC is hence reserved to the CPG exclusively. The HKSAR courts, as courts of a local administrative region, are not vested with any role or power over such matters of the CPG because they clearly fall outside the court’s constitutional competence assigned to them under the constitutional order of the HKSAR.” (para 35)

12



Section 27B, Legal Practitioners Ordinance (Cap 159)

- (1) A person must not be admitted as a barrister for a case concerning national security under section 27(4) unless there is exceptional circumstance as specified in subsection (2).
- (2) The exceptional circumstance is that the Chief Executive has sufficient grounds for believing that the person's practising or acting as a barrister for the case does not involve national security or would not be contrary to the interests of national security.



NSL Article 8

In order to safeguard national security effectively, the law enforcement and judicial authorities of the Hong Kong Special Administrative Region shall fully enforce this Law and the laws in force in the Region concerning the prevention of, suppression of, and imposition of punishment for acts and activities endangering national security.

The Song Injunction – *SJ v Persons Conducting Themselves in Any of the Acts Prohibited under Paragraph 1(a), (b), (c) or (d) of the Indorsement of Claim* (HCA 855/2023) – first instance [2023] HKCFI 1950, appeal [2024] HKCA 442

The 4 prohibited acts:

- (1) Broadcasting the Song:
 - (i) with intent to incite others to commit succession; or
 - (ii) with a seditious intention
- (2) Broadcasting the Song in such a way:
 - (i) as to be likely to be mistaken as the national anthem;
 - (ii) to suggest that HKSAR is an independent state and has a national anthem of her own;
with intent to insult the national anthem
- (3) Assisting others to commit the prohibited acts
- (4) Knowingly authorizing any of the prohibited acts, or knowingly participate in any of the prohibited acts



“In relation to the assessment of national security by the executive, the court is bound by a certificate issued by the Chief Executive under NSL 47, if any; or in other cases, will give great deference to the assessment.” (para 85)



“In relation to the injunction as a counter-measure, since it is a legal question to be resolved by the court alone, the court will make its own judgment while giving considerable deference to the executive’s decision to invoke the court’s jurisdiction. The court will also firmly bear in mind its constitutional duty to safeguard national security and the mandate in the NSL to fully deploy the equitable jurisdiction to grant injunctions to safeguard national security in the exercise of the discretion.” (para 85)

Judicial deference to executive's assessment on national security

Constitutional reason: the executive has the responsibility for assessing and addressing risks to national security; the court must recognize the constitutional boundaries between executive, legislative and judicial power

Institutional reason: the executive's expertise and access to intelligence make it best suited to making evaluative judgments on national security matters

The Zamora [1916] 2 AC 77

“Those who are responsible for the national security must be the sole judges of what the national security requires.”



Implementation Rules, Schedule 3, Section 3

Where the Secretary for Security has reasonable grounds to suspect that any property held by any person is offence related property, the Secretary may, by notice in writing specifying the property, direct that a person must not, directly or indirectly, deal with the property except under the authority of a licence granted by the Secretary.



Purposes of freezing notice

- Preserve property for future confiscation or forfeiture
- Prevent use of property in financing or assisting NSL offence
- Prevent any dealing with property which may prejudice ongoing investigation or proceedings concerning NSL offence

Implementation Rules, Schedule 1, Section 2

A warrant issued under subsection (2) authorizes the police officer to: (a) enter (and by the use of reasonable force if necessary) and search the place; (b) inspect, examine, search, seize, remove and detain anything in the place that the officer reasonably believes to be specified evidence; (c) detain any person found in the place until the place has been searched.

“Specified evidence” means anything that is or contains, or that is likely to be or contain, evidence of an offence endangering national security.

Concluding Remarks



Review of the Hong Kong National Security Law: implementation and the development of jurisprudence

Dr Thomas SO

8 June 2024

- **Bail**
- **Trial system**
 - Designated judges
 - Jury
 - Fair and open trial
- **Conclusion**



Bail



- **Article 42**
... No bail shall be granted to a criminal suspect or defendant unless the judge has sufficient grounds for believing that the criminal suspect or defendant will not continue to commit acts endangering national security.
- Issues
- Tong Ying Kit v HKSAR [2020] HKCFI 2133
- HKSAR v Lai Chee Ying [2021] HKCFA 3
- Comparison

System of designated judges



- **Article 44**
The Chief Executive shall designate a number of judges from the magistrates, the judges of the District Court, the judges of the Court of First Instance and the Court of Appeal of the High Court, and the judges of the Court of Final Appeal, and may also designate a number of judges from deputy judges or recorders, to handle cases concerning offence endangering national security. Before making such designation, the Chief Executive may consult the Committee for Safeguarding National Security of the Hong Kong Special Administrative Region and the Chief Justice of the Court of Final Appeal. The term of office of the aforementioned designated judges shall be one year.
- Issues
- HKSAR v Lai Chee Ying [2023] HKCFI 1440
- Tong Ying Kit v HKSAR [2020] HKCFI 2133
- Campbell and Fell v the U.K. [1984] ECHR 8
- Henryk Urban and Ryszard Urban v Poland [2010] ECHR 1903
- Comparison

Jury



- **Article 46**

The Secretary for Justice shall be entitled to issue a certificate directing that the case shall be tried without a jury but by a panel of three judges on the grounds of, among others, the protection of State secrets.

- Issues
- Lily Chiang v Secretary for Justice (2010) 13 HKCFAR 208
- Tong Ying Kit v HKSAR [2020] HKCFI 2133
- Tong Ying Kit v SJ [2021] HKCFI 1397
- Comparison

Open trial



- Article 42
- Status quo

Conclusion

Thank you

Panel Session 2: “Dual Legislation and Dual Enforcement Mechanism” – a compatible and complementary, corrective and curative approach



座談環節
Panel Session

「雙法雙機制」兼融互補，標本兼治

“Dual Legislation and Dual Enforcement Mechanism”
– a compatible and complementary, corrective and curative approach

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Dr the Hon Hoey Simon LEE MH JP

Hello, everyone. I am Hoey Simon Lee, the moderator of this panel session. We will discuss in this session the “dual legislation and dual enforcement mechanism” as a compatible and complementary, corrective and curative approach. This March, we passed the Safeguarding National Security Ordinance (SNSO), which officially took effect on the 23rd of the same month. This marks a very significant extension since the drafting of the Basic Law in the 1980s.

The Hong Kong National Security Law (HKNSL) and the SNSO were respectively enacted at the State level and the HKSAR level. We will in this session consider how the two pieces of legislation work in tandem in a compatible, complementary manner with mutual reinforcement in their enactment and interpretation, so as to give full play to the protection provided by the “dual legislation and dual enforcement mechanism”, creating a high-level security for Hong Kong society. This legislative exercise marks the completion of a comprehensive legal infrastructure for Hong Kong’s national security legislation comprising constitutional law, law enacted by the Central Authorities to legislation enacted in the Special Administrative Region. To fulfil the safeguard under the “dual legislation and dual enforcement mechanism”, it is necessary to realize the organic convergence between the SNSO and the HKNSL.

The SNSO, with its effective convergence, compatibility and complementarity with the HKNSL, embodies the principles and spirit of the HKNSL in terms of substantive, procedural and organization laws. The Preamble to the SNSO explicitly mentions the HKNSL and explains the basis for the enactment of the SNSO. Part 1 “Preliminary” of the SNSO makes clear that human rights are to be respected and protected, a person whose act constitutes an offence under the law is to be convicted and punished in accordance with the law, and such rule of law principles as protection of the right to defence shall be adhered to in safeguarding national security, such principles are also stipulated in the HKNSL.

On substantive law, there is no overlap between the offences under the SNSO and those under the HKNSL. Effect has been given to the general provisions of the HKNSL on offences endangering national security. As regards procedural law, it is clearly stipulated that the procedure under Chapter IV of the HKNSL shall apply, that the system of designated judges shall be implemented, and that the relevant procedural provisions shall be further improved upon the basis of the HKNSL.

The last aspect is organization law. The SNSO ties in with the HKNSL's conferment of functions and powers on the Chief Executive and provisions on the establishment of the Committee for Safeguarding National Security of Hong Kong, and further refines the parameters for the Chief Executive's exercise of powers to issue administrative instructions, certificates and so on to give effect to the interpretation of Articles 14 and 47 of the HKNSL by the Standing Committee of the National People's Congress (NPCSC). During this session, we will have three experts with us to elaborate on what we have just said. They are as follows. Professor HAN Dayuan, who is a professor at the Law School of the Renmin University of China, a member of the Committee for the Basic Law of the HKSAR under the NPCSC, as well as the Vice President of the Chinese Association of Hong Kong & Macao Studies.

The second guest is Professor Albert CHEN Hung-yee, GBS, JP. Professor Albert CHEN is Cheng Chan Lan Yue Professor and Chair of Constitutional Law in the Department of Law at the Faculty of Law of The University of Hong Kong. He is also a Council Member of the Chinese Association of Hong Kong & Macao Studies.

The third guest is Professor I Grenville CROSS, GBS, SC, who is an Honorary Professor at the Faculty of Law of The University of Hong Kong.

Professor HAN is going to take us through the “dual legislation and dual enforcement mechanism”, and its future development, from the Mainland perspective.

As for Professor Albert CHEN, he is going to elucidate both pieces of legislation from the Hong Kong perspective, thus creating a conducive dialogue with Professor HAN’s presentation.

Finally, Professor CROSS is going to compare the SNSO with the international practice to illustrate the reasonableness of Hong Kong’s legislation in comparison with comparable legislations of other common law jurisdictions.

Let me first give the floor to Professor HAN.



Professor HAN Dayuan

— **Jurisprudential basis of the “dual legislation, dual enforcement mechanism” for safeguarding national security** —

The vitality of law lies in its implementation. After a law is promulgated, society-wide respect for the statute in force is required, the forging of social consensus during its implementation, of particular importance is the role the judiciary plays in the implementation of the law. With the implementation of the Safeguarding National Security Ordinance (SNSO), a paradigm known as “dual legislation and dual enforcement mechanism” has been formed in the Hong Kong Special Administrative Region (HKSAR) under “One Country, Two Systems”, based on the Constitution, the Basic Law of the HKSAR (Basic Law) and the “5.28 Decision” by the NPC, by the combination of the Hong Kong National Security Law (HKNSL) and the SNSO, as well as the organic convergence of the Office for Safeguarding National Security of the Central People’s Government (OSNS) and the Committee for Safeguarding National Security of the HKSAR (CSNS). We need to explore this from a jurisprudential perspective.

I. Common legal-normative basis of the “dual legislation and dual enforcement mechanism”

Under the HKSAR’s constitutional order jointly established by the Constitution and the Basic Law, the “dual legislation and dual enforcement mechanism” is legally underpinned by the Constitution, with the Hong Kong Basic Law and the “5.28 Decision” by the NPC as the common legal bases. This is the basic starting point for us to analyse the jurisprudence of the “dual legislation and dual enforcement mechanism”.

(1) The “dual legislation and dual enforcement mechanism” gives primacy to safeguarding national security, which is of paramount importance in the constitutional order, and the Constitution constitutes the fundamental legal basis for the “dual legislation and dual enforcement mechanism”. The PRC’s constitutional norms on national security are mainly embodied in various parts of the Constitution, such as Preamble, General Principles, State Institutions, and Fundamental Rights and Obligations of Citizens.

Articles 28 and 29 of the General Principles of the Constitution, clearly stipulate the duties and obligations of the state in safeguarding national security. For example, Article 28 stipulates that “[t]he state shall maintain public order, suppress treason and other criminal activities that jeopardize national security, punish criminal activities, including those that endanger public security or harm the socialist economy, and punish and reform criminals”. Article 29 makes provision for state’s armed forces obligation to protect the state.

In Chapter II, Fundamental Rights and Obligations of Citizens, besides Article 54 which imposes the obligation “to safeguard the security of the motherland”, Article 52 specifies the obligation to “safeguard national unity and the solidarity of all the country’s ethnic groups”, and in Article 53 the obligation to “abide by the Constitution and the law”. By virtue of Article 51, it is also stipulated that “[w]hen exercising their freedoms and rights, citizens of the People’s Republic

of China shall not undermine the interests of the state, society or collectives, or infringe upon the lawful freedoms and rights of other citizens”.

In Chapter III, State Institutions, the Constitution specifies the functions, powers and scope of various state organs in substance the principal subjects obliged to safeguard national security are established.

(2) National security is a matter within the purview of the Central Authorities, which have an overarching responsibility for national security affairs relating to the HKSAR. Given, however, the uniqueness of “One Country, Two Systems” and the HKSAR’s actual situation in safeguarding national security, Article 23 of the Basic Law entrusts in the HKSAR the duty to enact laws on its own to safeguard national security. The HKSAR’s duty to enact laws on its own to safeguard national security does not preclude the Central Authorities from enacting legislation on safeguarding national security in the HKSAR in accordance with the law.

(3) The preamble of the SNSO specifies its legislative basis and purpose, i.e. “WHEREAS there are requirements under the Constitution of the People’s Republic of China and the following law, decision and interpretation for the HKSAR to perform the constitutional duty to safeguard national security and to improve the law for safeguarding national security in the HKSAR—”. Meanwhile, the Preliminary to the SNSO defines the meaning of national security by directly referring to the definition of the same in Article 2 of the National Security Law of the People’s Republic of China, which makes clear the standard of national security and its authoritative nature, and has also become a key feature and tenet of the SNSO.

In sum, with the Constitution as the fundamental legal basis, and under the Basic Law and the “5.28 Decision” by the NPC, a “dual legislation and dual enforcement mechanism” framework is formed, whereby the HKNSL and the SNSO operate in tandem, and the OSNS and the CSNS interact effectively with each other.

II. Normative compatibility of “dual legislation”

(1) The HKNSL as legislation enacted by the Central Authorities

The HKNSL, with its distinct features, is a comprehensive piece of legislation that organically unifies organization law, substantive law and procedural law, and introduces major innovations into the legislative system. Meanwhile, the implementation of such criminal substantive and procedural law with the characteristics of Mainland continental law under Hong Kong’s common law system is also a new manifestation of the rule of law in practice under “One Country, Two Systems”.

As regards the criminal offence provisions, the HKNSL stipulates four major categories of offences, namely secession, subversion, terrorist activities and collusion with a foreign country or with external elements to endanger national security. These cover not only the two offence categories of secession and subversion against the Central People’s Government as stipulated under Article 23 of the Basic Law, necessary supplements have also been made for addressing the risks and lurking dangers to national security exposed by the “disturbance over proposed legislative amendments in Hong Kong”.

Meanwhile, it is provided in the “5.28 Decision” by the NPC that the HKSAR shall complete the legislation for safeguarding national security as stipulated in the Basic Law as early as possible, this clearly explains the relationship between the HKNSL and the HKSAR’s local legislation on safeguarding national security is one of concurrent application.

(2) The SNSO as legislation enacted by the HKSAR

The SNSO was enacted in accordance with Article 23 of the Basic Law, the “5.28 Decision” by the NPC as well as the HKNSL and its Interpretation. The SNSO mainly provides for five categories of offences, namely treason, sedition and insurrection, state secrets and

espionage, sabotage endangering national security, as well as external interference endangering national security, and organizations engaging in activities endangering national security. The SNSO has organically integrated substantive and procedural law with organizational norms, and maintained the necessary convergence with the HKNSL in terms of legislative framework. The public consultation document on Basic Law Article 23 Legislation points out that Article 23 of the Basic Law stipulates in principle and in general terms seven categories of acts endangering national security, but this does not mean that the HKSAR can only legislate against these seven categories of acts endangering national security.

The fundamental thrust of Article 23 of the Basic Law is to require the HKSAR to enact laws on its own to safeguard national sovereignty, security and development interests. Therefore, laws enacted by the HKSAR to safeguard national security should move with the times, and should be able to properly address the traditional and non-traditional national security risks that our country faces or may face in the future. It is the duty of the HKSAR to enhance the legal system for safeguarding national security as a constant effort to effectively prevent, suppress and impose punishment for acts endangering national security, addressing effectively new types of risks emerging from non-traditional security fields.

Therefore, these five categories of offences have also provided adjustments and improvements to the offences in relation to “treason”, “sedition”, “keeping state secrets” and “espionage” in local laws, by timely amending and improving the HKSAR’s Crimes Ordinance, Official Secrets Ordinance and Societies Ordinance to address the existing problems therein. This is done through the necessary “adaptation” of the legal-normative system in convergence with the norms of the superior law, while taking into account the new situation in national security and drawing on legislation in other common law countries. This serves to avert and prevent new types of national security risks arising from espionage, external interference,

cyber-enabled sabotage against public infrastructure and high-tech crimes.

The SNSO is a statute law enacted by the legislature of the HKSAR entirely under Hong Kong's common law system. It has made necessary amendments to the laws previously in force and existing laws of the HKSAR. By so doing, it has fulfilled the legislative duty stipulated under Article 23 of the Basic Law, while remaining a piece of HKSAR legislation that upholds common law traditions in terms of legislative technicalities, legal terminology and principles.

(3) Relationship between the “dual legislation”

Overall, the dual legislation is an organic whole with convergence, effective communication, complementarity and concurrent application between the two laws.

(1) The HKNSL is the basis for enacting the SNSO. The HKNSL is a law on national security enacted by the Central Authorities, with which the SNSO as a local law of the HKSAR must align. This is a fundamental requirement for rule of law stability and legal certainty, and a principle to be observed in implementing the SNSO. According to Article 62 of the HKNSL, this Law shall prevail where provisions of the local laws of the HKSAR are inconsistent with this Law. This provision also establishes the HKNSL's precedence over Hong Kong's local legislation such that the SNSO, albeit enacted after the passage of the HKNSL, shall give priority to the relevant provisions of the HKNSL insofar as matters relating to safeguarding national security and the like are concerned. In terms of legal hierarchy, specifying the superiority of the HKNSL is one of the prerequisites and fundamental principles for understanding the relationship between the “dual legislation”. This is also the basic rule for addressing the issue of interface between similar offences that may possibly arise in the implementation of the “dual legislation”.

(2) Concurrent implementation and application, and complementarity of the HKNSL and the SNSO require the maintenance of normative internal co-ordination between the “dual legislation”. As aforesaid, the two laws have different criminal offence provisions, and their concurrent application can effectively cover the legislative scope of Article 23 of the Basic Law, while supplementing and amending the relevant laws on national security in the HKSAR’s legal system previously in force to keep abreast with the times. Therefore, in implementing the “dual legislation”, it is necessary to organically unify the two, actively seek coherence between different norms, and synergistically bring into play the composite advantage of the legal system for safeguarding national security. The bail provisions under Articles 41 and 42 of the HKNSL have been refined in the SNSO. Subdivision 3 of Division 1 of Part 7 sets out various provisions restricting enforcement powers in relation to the imposition of restrictions on persons on bail, which effectively allays public concern on “whether or not enforcement powers will be unchecked”.

(3) Be it the HKNSL or the SNSO, its implementation must fully embody the principle of respect and protection for human rights, a fundamental tenet must be to protect the freedoms and rights enjoyed by the HKSAR residents under the law, such that a reasonable balance is struck between safeguarding national security and protecting residents’ freedoms. Chapter III of the Basic Law clearly sets out the fundamental rights of the HKSAR residents. Article 4 of the HKNSL also clearly provides that human rights shall be respected and protected in safeguarding national security in the HKSAR. The rights and freedoms, including the freedoms of speech, of the press, of publication, of association, of assembly, of procession and of demonstration, which the residents of Hong Kong enjoy under the Basic Law of the HKSAR and the relevant provisions of the two human rights covenants as applied to Hong Kong, shall be protected in accordance with the law.

One of the three underlying principles specified in the SNSO is respect and protection for human rights, which is woven and embodied

in the provisions throughout various parts of the SNSO. Whether for the supreme principle of “One Country, Two Systems” or the principle of rule of law, the essence and ultimate goal lies in the protection of human dignity, freedoms and safety, serving the well-being of the HKSAR residents, and creating favourable environment and conditions for them to live in peace, ease of mind and security. Therefore, national security and protection of residents’ rights and freedoms are a mutually reinforcing unity, which should not be severed nor antithesized.

In its design of legislative concepts and provisions, the SNSO remains mindful of a reasonable balance between security and freedoms. Examples include, a clear definition of national security provides society with a reasonable expectation and a unified understanding of national security. Its precise target on acts endangering national security effectively dispels public concern about the lawfulness of exercising legitimate rights and freedoms. Its clear defence provisions effectively allay public concern as to “whether or not freedoms of speech and of the press will be restricted”. By clearly stipulating the conditions and restrictions on the exercise of police powers, the mechanism and procedures to balance safeguarding national security and the protection of human rights are set down substantively and procedurally.

(4) Differences between the “dual legislation” and the Mainland’s legal system on national security

Under the principle of “One Country, Two Systems”, the HKSAR’s “dual legislation” has different features from the Mainland’s legal system on national security in respect of national security fields, legislative form adopted, local legislative power, and so on.

Under the Constitution, the National Security Law is the commander of the Mainland’s norms for the law on safeguarding national security, under which there are specialized laws on two major categories: traditional security and non-traditional security, forming a

legal system on national security with comprehensive coverage. Since the proposal of the “Holistic Approach to National Security” in 2014, a total of over ten dedicated laws have been enacted to strengthen the protection for traditional security fields such as political security, military security, and homeland security. Such specialized laws include: Counterespionage Law, National Security Law, Counterterrorism Law, Law on the Administration of Activities of Overseas Non-governmental Organizations within the Territory of China, Cybersecurity Law, Biosecurity Law, and Data Security Law.

In terms of legislative form, the norms of the Mainland legislation on safeguarding national security are an integration of programmatic and mandatory features. Taking the provisions in Chapter V of the Counterespionage Law as an example, although sanctions are provided for some acts endangering national security under some of the norms, the corresponding criminal penalties are still stipulated by the Criminal Law. In order to implement these laws, administrative regulations such as the Implementing Regulations for the Law on Guarding State Secrets have been formulated at the central level.

In terms of local legislative power, national security is a matter within the purview of the Central Authorities, and a legal reservation item. No national security legislation shall be enacted locally unless expressly authorized by law. In relation to local people’s congresses and standing committees of local people’s congresses at and above the county level as well as local governments, Article 40(1) and (2) of the National Security Law specifies the respective duties of “ensuring the compliance with and enforcement of national security laws and regulations” and “managing national security work within their respective administrative regions”. This provides basis for the formulation of the relevant Implementation Rules.

Compared with the relevant national security legislation of the Mainland, the “dual legislation” displays three differences. Firstly, in terms of the fields covered, the “dual legislation” focuses more on fields such as political security, including non-traditional security fields such

as cyber security. Secondly, in terms of legislative form, most norms of the “dual legislation” are elaborately articulated, directly providing for the constitution and sanction of criminal offences. Lastly, the SNSO was enacted by the legislature of the HKSAR under the specific authorization of Article 23 of the Basic Law, reflecting the Central Authorities’ high degree of trust in and respect for the HKSAR under “One Country, Two Systems”.

In sum, these attributes of the “dual legislation”, as compared with the relevant Mainland laws, manifest the adherence to the policy of “One Country, Two Systems” and the full respect for the differences between the “Two Systems”.

III. Normative convergence of “dual enforcement mechanism”

The HKNSL establishes the “dual enforcement mechanism” of the Central Authorities and the HKSAR, and specifies the complementarity, mutual collaboration, and positive interaction of the “dual enforcement mechanism”. The SNSO has further crystallized the “dual enforcement” mechanism, providing procedural safeguards for the effective implementation of the national security laws.

(1) Enforcement mechanism of the Central Authorities

Established by the HKNSL at the central level, the OSNS performs the mandate of safeguarding national security in accordance with the law by overseeing, guiding, coordinating with, and providing support to the HKSAR in the performance of its duties for safeguarding national security. As stipulated in Article 40 of the HKNSL, the HKSAR shall have jurisdiction over cases concerning offences under this Law, except under the circumstances specified in Article 55 of the HKNSL. The OSNS, as the organ established by the Central People’s Government in the HKSAR for safeguarding national security, is a key pivot for the Central Authorities to exercise supervision and direct jurisdiction over national security. It reflects the Central Authorities’ governance power

over national security matters and is conducive to coordinating the overall national security strategy and the HKSAR’s specific national security measures, with a view to effectively safeguard national security.

(2) Enforcement mechanism of the HKSAR

At the HKSAR level, the HKNSL establishes a whole list of bodies for safeguarding national security such as the CSNS of the HKSAR to deal with specific matters on safeguarding national security in accordance with the law. In general, the HKSAR shall have jurisdiction over cases concerning offences endangering national security under the HKNSL. In this enforcement mechanism, the CSNS plays a core role of coordination and enforcement. It serves as a bridge between the Central Authorities’ guidance and the HKSAR’s enforcement, and is responsible for governing national security matters under normal circumstances in light of the actual situations in the HKSAR. Chaired by the Chief Executive, the CSNS performs such duties and functions including formulating relevant policies, guiding and coordinating inter-departmental operations concerning national security, and advancing the effective implementation of the laws and policies in relation to national security in the HKSAR. The NPCSC’s interpretation of Articles 14 and 47 of the HKNSL further specifies that the CSNS assumes statutory duties and functions for safeguarding national security in the HKSAR and has the power to make judgements and decisions on the question whether national security is involved.

The enforcement mechanism at the HKSAR level provides greater flexibility, effectiveness, focus and adaptability to the enforcement of the HKNSL. This does not only work towards the precise implementation of the HKNSL, but can also form an all-dimensional and multi-tiered national security protection network through coordination with the enforcement mechanism at the central level.

(3) Relationship within the “dual enforcement mechanism”

While there is clear division of duties and delineation of case jurisdiction between the two enforcement mechanisms, there is at the same time a complementary, collaborative and supportive relationship between them. Together they constitute an integral part of the comprehensive system and enforcement mechanism for the HKSAR to safeguard national security.

(1) The OSNS provides guidance and support to the CSNS at a strategic level to ensure that the HKSAR’s national security measures are in line with the state’s overall security strategy; whereas the CSNS is responsible for enforcing routine matters. Such a complementary, collaborative and supportive relationship not only strengthens the enforcement of the national security laws, but also enhances the flexibility and focus in enforcement. It provides the HKSAR with a comprehensive governance system for national security to effectively guard against a wide range of internal and external security threats. This not only fully manifests the fact that national security is within the purview of the Central Authorities, but also demonstrates the high degree of trust that the Central Authorities has reposed in the HKSAR.

(2) Under section 110 of the SNSO, the Chief Executive in Council may make subsidiary legislation for the provisions in Chapter V of the HKNSL concerning the mandate of the OSNS; and section 111 of the SNSO also stipulates that the Chief Executive may issue an administrative instruction to any department or agency of the HKSAR Government or any public servant, for the provision of rights, exemptions, facilitation and support that are necessary for the OSNS in performing its mandate under Chapter V of the HKNSL in accordance with the law.

(3) The implementation of the HKNSL in these four years has amply illustrated that the “dual enforcement” mechanism by the OSNS and the CSNS is an innovative practice under the principle of “One Country, Two Systems”. It provides not only a strong safeguard for the

HKSAR’s rule of law development, but also effective solutions to various complex problems that may arise in the implementation of “One Country, Two Systems”. Through this highly efficient and flexible interface model, the Central Authorities and the HKSAR have together ensured the inviolability of national security; effectively coordinated the relationship between national interests and local characteristics; maintained an open and vital Hong Kong society; and provided a robust foundation for Hong Kong’s prosperity and stability.

IV. Relationship between the “dual legislation” paradigm and the “dual enforcement mechanism”

On the whole, the “dual legislation” paradigm provides a legal foundation for the implementation of the “dual enforcement” mechanism, while the “dual enforcement mechanism” guarantees the effective enforcement and implementation of the “dual legislation”. Together they constitute an integral part of the legal system and enforcement mechanisms for the HKSAR to safeguard national security.

(1) The “dual legislation” paradigm provides the necessary legal basis and guidance for the “dual enforcement” mechanism. Chapter II of the HKNSL stipulates the duties and the government bodies of the HKSAR for safeguarding national security. Chapter V stipulates the office for safeguarding national security of the Central People’s Government in the HKSAR. Sections 110(1)(a) and 111(1)(c) of the SNSO set out how the HKSAR Government supports the work of the OSNS; and section 112 provides for the CSNS’s power of making judgements and decisions, specifying the powers as well as the duties and functions of the CSNS in the affairs of safeguarding national security. These provisions ensure implementation of the principle of “governing Hong Kong in accordance with the law” and enable the OSNS and the HKSAR’s local bodies for safeguarding national security to effectively carry out the work of safeguarding national security in accordance with the law.

(2) The “dual enforcement” mechanism provides important institutional support and safeguard for the effective implementation of the “dual legislation”. From the operation of the “dual enforcement” mechanism, much valuable practical experience will certainly be accumulated, providing practical support for the interpretation and application of the “dual legislation”, fully taking into account the actual situations of the Central Authorities and the HKSAR, coordinating the relationships among various parties, and ensuring that such statutory interpretation and application can fully satisfy the needs in actual enforcement.

In sum, the “dual legislation” paradigm and the “dual enforcement” mechanism are mutually conducive, supportive and complementary in the work of safeguarding national security in the HKSAR. Together they have built a unified and effective system, which is robust and authoritative with flexibility, for safeguarding national security. This has provided strong legal safeguards for the long-term prosperity and stability in Hong Kong.

V. Judicial function in the implementation of “dual legislation” and “dual enforcement mechanism”

The judiciary of the HKSAR accumulates and consolidates experience through handling specific cases, subjecting the interpretation and application of the “dual legislation” to actual practice for results, thereby continuously optimizing the “dual legislation” paradigm and enhancing public confidence in Hong Kong’s rule of law and successful practice of “One Country, Two Systems”. Under “One Country, Two Systems”, the implementation of the “dual legislation and dual enforcement mechanism” will pose new issues and new challenges to the HKSAR judiciary’s adjudication of cases under the common law system in Hong Kong. In this respect, we need to strengthen doctrinal studies; uphold and maintain the common law tradition; respect the independent judicial power of Hong Kong; and have confidence in judges’ judicial judgment and professionalism.

(1) As seen from the tradition and development of the rule of law in Hong Kong, the “dual legislation and dual enforcement mechanism” will not affect Hong Kong’s common law system. It will neither undermine the authority and predictability of Hong Kong’s common law, nor affect the independent judicial power and rule of law principles in Hong Kong. As aforesaid, according to the HKNSL, except under the circumstances specified in Article 55, the HKNSL and the laws of the HKSAR shall apply to, and local courts shall adjudicate on, a series of procedural matters including those related to criminal investigation, prosecution, trial, and execution of penalty, in respect of cases over which the HKSAR exercises jurisdiction. Under Hong Kong’s common law system, judges can make reference to foreign jurisprudence in adjudicating cases concerning national security, strike a reasonable balance between security and liberty values, and give a greater play to the purposive approach of interpretation to bring statutory interpretation in line with the legislative intent. Moreover, the HKNSL aims to prevent, suppress and impose punishment for the criminal acts and activities seriously endangering national security which are committed by a very small minority, and does not affect the adjudication of general cases unrelated to national security under the original legal system.

(2) The SNSO has merely amended provisions in existing legislation which are either outdated or incapable of satisfying the constitutional duty under Article 23 of the Basic Law. Those are statutory amendments, which have no impact upon the judicial system under the common law. While the courts do not have the final and general power to interpret the HKNSL, which is a national law, they are required to accurately grasp the legislative intent in individual cases, interpret the relevant concepts, and give judgments that are consistent with the legal intent, so as to maintain certainty of such legal concepts. As for the new issues that possibly arise from the implementation of the SNSO, we also need to remain patient, and continuously accumulate judicial precedents from individual cases, so as to promote the progressive development of Hong Kong’s common law jurisprudence on safeguarding national security.

In conclusion, through the implementation of the HKNSL in these four years, Hong Kong courts have accumulated a relatively mature body of judicial precedents for adjudicating national security cases. They have the experience and wisdom to tackle new issues arising from the “dual legislation and dual enforcement mechanism” while demonstrating the ever-adapting legal culture of the common law, let the public live a stable and predictable life under the rule of law, and contribute new thoughts, new materials and new practices from the HKSAR to the pluralistic development of global common law.



Professor Albert CHEN Hung-ye GBS JP

Complementarity between the NSL and the Safeguarding National Security Ordinance

In the explanatory speech at NPCSC on the draft NSL, it was mentioned that five working principles were adopted in the course of drafting the NSL. One of them is ‘accommodating the differences between mainland China and the HKSAR, and striving to address the convergence, compatibility and complementarity between this law, and the relevant national laws and local laws of the HKSAR.’ At the time the NSL was enacted, it was already anticipated that the Hong Kong SAR would discharge its constitutional duty to enact local legislation to give full effect to the implementation of article 23 of the Basic Law. The principle of convergence, compatibility and complementarity between the NSL and the Safeguarding National Security Ordinance (NSO) can therefore be studied further, now that the NSO has been enacted.

Prof Han has already provided a systematic analysis of the relationship between the NSL and the NSO. I will turn to the more practical level of how the combined operation of these two laws regulate certain activities that endanger national security in Hong Kong. I will

illustrate this by giving four examples: (1) the law of sedition and related offences in the NSL; (2) the law on safeguarding state secrets; (3) the law on foreign interference; (4) anti-terrorism law and related offences.

The law of sedition and related offences in the NSL. Sedition is one of the acts which should be prohibited according to article 23 of the Basic Law. The pre-1997 laws of Hong Kong already included a law on sedition, which was contained in sections 9 and 10 of the Crimes Ordinance. This law has been used to prosecute suspected offenders in more than 30 cases after 2020. The case law indicates that sedition under the Crimes Ordinance is one of the offences endangering national security for the purposes of the NSL, particularly the application of the procedural provisions of the NSL. Sedition offences are now provided for in sections 23 to 28 of the new NSO. Most of the provisions here were drafted on the basis of the relevant provisions in the existing Crimes Ordinance, but these latter provisions enacted in the colonial era have now been modified and adapted for use in the HKSAR. For example, whereas the colonial law criminalised the incitement of hatred or contempt of the British monarch and the colonial authorities, the NSO now prohibits speech or publications with the intention to bring people into hatred, contempt or disaffection against the fundamental system of the state in the PRC or a PRC state institution. The sedition offences in the NSO should now be read together with relevant provisions in the NSL on certain kinds of incitement, so that the two laws can be regarded as having a combined operation for the purpose of regulating speech and publications in Hong Kong. The relevant provisions in the NSL are following: (1) article 21 (incitement of secession), (2) article 23 (incitement of subversion), (3) article 27 (advocating terrorism/ inciting the commission of terrorist activity), and (4) article 29(5) (provoking by unlawful means hatred among Hong Kong residents towards the Central People's Government or the Hong Kong government which is likely to cause serious consequences).

The law on safeguarding state secrets. According to article 23 of the Basic Law, theft of state secrets is one of the acts to be prohibited by law in the HKSAR. The pre-1997 law on in this regard is the Official Secrets Ordinance, which was based on the corresponding UK legislation. It should be noted that the NSL already contains a provision relating to state secrets, and this is the first limb of article 29. Article 29 is the main provision in the NSL creating the offence of collusion with a foreign country or external elements to endanger national security. The first limb of article 29 provides for the offence of stealing, spying, obtaining with payment or unlawfully providing state secrets or intelligence concerning national security for a foreign country, organisation or individual outside the Mainland, Hong Kong and Macau. However, theft or disclosure of state secrets that do not involve foreign forces is not provided for in the NSL. The NSO now contains a comprehensive set of rules for safeguarding state secrets that supplement the existing rules in the Official Secrets Ordinance and the NSL. The new rules are in sections 29 to 40 of the NSO. New offences have been created, such as the unlawful acquisition of state secrets, the unlawful possession of state secrets, and unlawful disclosure of state secrets. These provisions introduce a new legal regime on state secrets that operate independently of the regime on espionage offences in sections 41 to 48 of the NSO.

The law on foreign interference. As just mentioned, article 29 of the NSL provides for the offence of collusion with foreign forces to endanger national security. Five sets of circumstances are provided for in the second limb of article 29, such as requesting a foreign country to impose sanctions on Hong Kong or the PRC, or conspiring with a foreign country or receiving instructions, control, funding or support from a foreign country to disrupt seriously the implementation of laws by the Hong Kong SAR government or the central government. Article 29 is therefore aimed at foreign interference with Hong Kong affairs. The matter of foreign interference is now further and more comprehensively regulated in the NSO. Part 6 of the NSO (particularly sections 52 to 57) are concerned with external interference endangering

national security. An offence is committed if a person, with intent to bring about an ‘interference effect’, collaborates with an external force to do an act and uses ‘improper means’ when so doing the act. ‘Interference effect’ is broadly defined in section 53 to include five kinds of circumstances, such as influencing the central government or the Hong Kong government in the formulation or execution of any policy, or influencing the Legislative Council or a court in the performance of their functions. Another interference effect is interfering with an election in Hong Kong, and this provision can be read together with article 29(3) of the NSL which refers to rigging or undermining an election in Hong Kong which is likely to cause serious consequences. The combined effect of article 29 of the NSL and the provisions on external interference in the NSO means that persons in Hong Kong who have collaborations or other close relationship with foreign governments or external forces should take precautions to ensure that they do not violate any of these provisions. In this regard, another section of the NSO should also be borne in mind, and this provision is also relevant to speech or publications which we discussed previously. The relevant provision is section 43(3) of the NSO. Section 43 is on espionage, and subsection 3 provides that an espionage offence will be committed if a person, with intent to endanger national security, colludes with an external force to publish a statement of fact that is false or misleading.

Anti-terrorism law and related offences. The last example I would like to give concerns terrorism and related offences in the NSL and local legislation including the NSO. Offences relating to terrorism constitute one of the four types of offences provided for in the NSL. Such terrorism offences are dealt with in articles 24 to 28 of the NSL. They supplement the existing anti-terrorism law in Hong Kong, which is mainly contained in the United Nations (Anti-terrorism Measures) Ordinance. Although the NSO does not directly cover terrorism, it is noteworthy that part 5 of this ordinance (sections 49 to 51), which is entitled ‘sabotage endangering national security etc’, covers acts which may also fall within the scope of terrorist acts. Section 49, entitled

‘sabotage endangering national security’, makes it an offence to damage or weaken a public infrastructure with intent to endanger national security or while being reckless as to whether national security would be endangered. Section 50 of the NSO, entitled ‘doing acts endangering national security in relation to computers or electronic systems’, prohibits acts in relation to a computer or electronic system that endangers national security. The combined operation of the relevant legal rules in the NSL and the NSO serves to protect Hong Kong against terrorism or acts similar to terrorism such as sabotage of public infrastructures or computer or electronic systems. Since 2020, prosecutions under both the NSL and local anti-terrorism law have actually been brought. For example, the first NSL case -- the *Tong Ying-kit case* -- included a terrorism offence under the NSL. More recently, a case involving among others, an offence under section 11B of the United Nations (Anti-terrorism Measures) Ordinance is in the course of being tried in the Court of First Instance.

The examples I have given so far demonstrate how, at the level of substantive law, the combined operation of the NSL and the NSO and other local legislation serves to safeguard national security in Hong Kong. In the remaining time, I will discuss briefly how the NSO supplements or complements the NSL with regard to procedural matters and technical details. I will give the following examples.

First, section 115 of the NSO supplements article 47 of the NSL regarding the circumstances in which the CE may issue a certificate on whether an act involves national security or whether information involves state secrets. According to section 115, the CE may issue such certificates on his own motion even if there is no litigation in which the relevant issues arise. Secondly, the NSO supplements article 43 of the NSL, which authorises the CE in conjunction with the National Security Committee to make implementation rules on the matters covered by article 43. Section 110 of the NSO now empowers the CE in Council to make subsidiary legislation for the purpose of the implementation of NSL generally and the NPCSC interpretation of the NSL in December

2022, well as subsidiary legislation for the implementation of the NSO itself. Thirdly, section 111 of the NSO empowers the CE to issue administrative instructions to government departments and public servants relating to national security work and any matter that the CE considers conducive to safeguarding national security. The CE may also issue administrative instructions relating to the rights, exemptions and support necessary for the Office for Safeguarding National Security of the CPG established by the NSL, or for the purpose of the implementation of any instruction given to the HKSAR by the Central People's Government regarding national security. Finally, the NSO also supplements and complements the NSL on several other matters, such as the penalty for conspiracy to commit an NSL offence (section 109), restrictions applicable to absconders charged with NSL offences (section 89-96), provisions regarding the sentencing and length of imprisonment of NSL offenders (such as restrictions regarding the use of suspended sentence and early release of persons convicted of NSL offences), and provisions on the protection of the privacy of, and protection against harassment of, government, judicial and legal personnel engaged in national security work. #



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**A Comparative Study of
the Safeguarding National Security Ordinance
and the National Security Laws of
Other Common Law Jurisdictions**

Mr Secretary, ladies and gentlemen.

I am grateful to the Secretary for Justice for inviting me to participate in today's forum. With the gazettal of the Safeguarding National Security Ordinance (SNSO) on March 23, 2024, the national security arrangements of the Hong Kong Special Administrative Region have been enhanced, and it has discharged its constitutional responsibility to implement the Basic Law's Art.23. Although some pre-existing offences have been updated, others are new, but they will all be adjudicated upon in the same way.

As elsewhere in the common law world, nobody is prosecutable unless there is a reasonable prospect of conviction on the available evidence. There must be both a guilty act ("actus reus") and a guilty mind ("mens rea"). There will only be a conviction at trial if a suspect's guilt has been established beyond reasonable doubt, the traditional test adopted in the United Kingdom, and elsewhere.

The UK, moreover, has influenced the SNSO in various ways. For example, the new offence of endangering national security in relation to computers or electronic systems owes much to the UK. Its Computer Misuse Act 1990 prohibits any person from doing an unauthorized act in relation to a computer if the person intends to (or is reckless as to whether the act will) cause serious damage to national security, and the act will either cause serious damage to national security or create a significant risk of serious damage to national security. In both the UK and Hong Kong, these provisions address situations where a hacker steals classified national security information, or gains control over strategic governmental electronic systems. One difference, however, is that whereas this new offence is punishable with a maximum of 20

years’ imprisonment in Hong Kong, in the UK it can attract life imprisonment.

This type of comparison is instructive, as it shows the extent to which the SNSO is aligned with national security laws in other common law jurisdictions. This has irked the China critics, whose scope for condemnation is thereby circumscribed. Whereas, for example, the SNSO enables the police, subject to judicial oversight, to seek extended detentions of suspects while investigations are conducted, and, again with a court’s permission, to restrict a suspect’s access to a lawyer if there are reasonable grounds for believing it will endanger national security (ss.78, 79), these provisions mirror the UK’s own law. The UK’s National Security Act 2023 provides the police with the power to arrest and detain a suspect without a warrant for up to 48 hours, to ask the courts to extend the detention for up to 14 days, and then, with emergency approval, for up to 28 days. It also restricts the right of a suspect to consult a lawyer if this will interfere with an investigation (s.27).

When, therefore, the similarities between the SNSO and the UK’s National Security Act were considered by the British foreign secretary, Lord (David) Cameron, on Feb 27, 2024, he did not seek to argue otherwise. However, instead of welcoming the extent to which the UK’s legislation had influenced Hong Kong, he fell back on the line that the consultation exercise and the legislative process in the two places differed. This was a red herring, and in both jurisdictions places it is substance that counts, not process.

And the substance of the matter is that Hong Kong narrowly survived an insurrection in 2019, when concerted efforts were made by hostile forces to destroy its “one country, two systems” governing policy. Therefore, like the UK, it needed to enact effective domestic national security laws to protect itself. This has now been achieved within parameters familiar to the rest of the common law world, as comparisons demonstrate. Thus, for example, the espionage provisions

of the SNSO, including spying, are not dissimilar to those in the UK and elsewhere, and every country criminalizes the theft of state secrets.

Although the SNSO owes much to the UK, there are differences, at least with penalties. Whereas the offence of espionage is punishable with up to 20 years' imprisonment in Hong Kong, the sister offence in the UK can attract life imprisonment. In Canada and Singapore, espionage is punishable with up to 14 years' imprisonment, in Australia the maximum is life imprisonment, while in the US an offender faces life imprisonment or the death penalty.

As regards the offence of treason, the objectives are basically the same in the laws of all six jurisdictions, involving betrayal of country. Whereas the punishment in Hong Kong, Australia, Canada and the UK is life imprisonment, in Singapore and the US the death penalty is also a possibility.

Although it was guided by foreign paradigms, the SNSO has Hong Kong characteristics, notably regarding human rights. It is not only a domestic law but also an international law, by which I mean it reflects the objectives, practices and values of the common law world. However, unlike many other places, Hong Kong has gone the extra mile to ensure procedural fairness for criminal suspects by incorporating human rights guarantees into the SNSO's operations, including the fair trial protections of the International Convention on Civil and Political Rights (ICCPR) (s.2).

Although the SNSO, like the National Security Law for Hong Kong of 2020 before it, is human rights heavy, its provisions have attracted adverse comment elsewhere. Its extraterritorial application, for example, has been criticized, even by countries whose own laws have the same effect. It is recognized globally that national security threats posed by bad actors based elsewhere need to be neutralized, and that a failure to do so can create existential dangers at home. Extraterritorial national security laws, therefore, provide the protections countries need from people of whatever nationality who try to harm them from their

foreign sanctuaries, and their utility is widely acknowledged.

The UK’s National Security Act 2023, therefore, provided valuable guidance in this area when the SNSO was being drafted. Whereas it created new offences, including sabotage, espionage and foreign interference, the decision was also taken to give them extraterritorial effect. It specifically provides that if those offences are committed in a place outside the UK, the person responsible is prosecutable, whatever their nationality (s.36), and Hong Kong has followed the UK’s example. It beggared belief, therefore, that, on April 15, 2024, Lord Cameron criticized the Hong Kong authorities for “having sought to apply their national security laws extraterritorially”.

In the US, moreover, extraterritoriality is central to law enforcement. It was, therefore, remarkable that, on Feb 28, 2024, the Department of State said the US was “concerned that Hong Kong authorities will apply Article 23 extraterritorially in their ongoing campaign of transnational repression”, which was designed to “restrict the free speech of US citizens and residents”. Nobody would have been more surprised by this talk of “transnational repression” than one of its foremost victims, the Wikileaks founder, Julian Assange. He has been detained in London’s Belmarsh prison for over five years, fighting extradition to the US where he faces an uncertain fate.

The US is seeking to extradite Assange by using the extraterritorial reach of its Espionage Act 1917. An investigative journalist, he is accused of 17 offences related to the unauthorized disclosure of information related to alleged US wrongdoing in the Afghanistan and Iraq wars. Although he is an Australian citizen who disclosed the information outside the US, he is being pursued extraterritorially in the UK, which has acquiesced in his situation. To be clear, Assange has been thrown to the wolves for publishing information in the public interest and exposing wrongdoing.

The US exercises its extraterritorial jurisdiction through two principles of international law. Whereas the personality principle

enables a state to assume jurisdiction over crimes committed elsewhere by its citizens or residents, the protective principle has the same effect in relation to individuals of whatever nationality whose activities elsewhere endanger its national interests. It is the protective principle that has been invoked against Assange, albeit in a way, to use US Department of State terminology, that amounts to “transnational repression.”

In Australia, moreover, the protective principle has been incorporated into the national security laws covering espionage and foreign interference. In Canada, it has been deployed to combat espionage and treason. It is, therefore, entirely natural that it has also been included in the SNSO. Had it not, it would have weakened Hong Kong’s ability to protect itself from malign individuals who are trying to harm it from their foreign bases.

Indeed, examples abound of foreign models having influenced the SNSO. Again, the offence of sabotage endangering national security (s.49) bears an almost uncanny resemblance to the sabotage offence in the UK’s National Security Act 2023 (s.12). They share the same ambit, same objectives and, sometimes, even the same terminology. It is said that imitation is the sincerest form of flattery, and Lord Cameron has every reason to feel highly flattered, and he is not the only one.

In 2018, Australia introduced its own sabotage offence in its National Security Legislation Amendment (Espionage and Foreign Interference) Act. In terms not dissimilar to those subsequently adopted in the SNSO, it prohibits all forms of sabotage activities or acts introducing vulnerability against public infrastructure, with intent to (or recklessness as to whether they will) prejudice national security (ss.82.3-82.9 of the Criminal Code of Australia).

When the SNSO was initially drafted, it contained an offence of “external interference” per se. However, following a wide-ranging consultation exercise, the government decided to rename the offence as “external interference endangering national security” (s.52). This was

done to put everybody’s minds at rest, and to make clear that normal international exchanges in areas like commerce, academia and culture would not be affected. The acts that constitute the offence are clearly described so there can be no misunderstandings, and, once again, foreign models influenced the drafting process throughout.

Moreover, although Hong Kong’s external interference law criminalizes acts which have an “interference effect,” and the UK’s foreign interference law criminalizes acts of “prohibited conduct,” there are significant similarities. When, for example, the Hong Kong offence explains the “improper means” of doing the act (s.55), its wording largely follows that used to define “prohibited conduct” in the UK’s parallel offence (s.15). Even the maximum penalty of 14 years’ imprisonment is the same in both places, although there is a striking difference. Whereas Hong Kong’s external interference law requires intent (s.52), the UK’s foreign interference law introduces a lower test, and a person can also be prosecuted if he is simply “reckless” (s.13), meaning it is easier to prosecute a suspect.

Inspired by the UK and Hong Kong paradigms, Canada is now also tightening up its national security arrangements. Its government is in the process of expanding the scope of its foreign interference law, and also modernizing its sabotage law by increasing the types of prohibited conduct, even extending its ambit to private infrastructure that serves the interests of Canadians. It says its proposals will fully respect human rights, which suggests the Hong Kong paradigm has been carefully studied.

Although Lord Cameron complained that the SNSO’s tougher penalties for sedition and the broad definition of state secrets would inhibit freedom of speech and of the press (Feb 28), he need not have worried. When the UK’s local government introduced the sedition law into Hong Kong in 1938 free speech was constitutionally unprotected, but no longer. Free speech is now underpinned not only by the Basic Law, but also by the ICCPR and the Hong Kong Bill of Rights. The city

has a lively media environment, and, as of Dec 31, 2023, there were 90 daily newspapers and 376 periodicals operating in the city (including online publications). International media (including broadcasters) are also very well represented here, and are never afraid to speak their minds.

When the UK's National Security Act received its Royal Assent on July 11, 2023, the Director General of MI5, Ken McCallum, was delighted. He said: "We face adversaries who operate at scale and who are not squeamish about the tactics they employ to target people and businesses in the UK." This is also true of Hong Kong, which unlike the UK, had direct experience of its people and businesses being targeted by black clad mobs in 2019. He then added: "The National Security Act is a game-changing update to our powers. We now have a modern set of laws to tackle today's threat." His words apply equally to Hong Kong and the SNSO.

Everybody who values the "one country, two systems" policy owes a debt of gratitude to the secretaries of justice and security, as architects, and to the leaders of the Legislative Council, as implementers, for the successful enactment of the SNSO. They have discharged their historic mission, and the country is now safer in consequence.

Thank you. #



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Q&A Session

Dr the Hon Hoey Simon LEE: I think we have the first question for Professor CROSS. Here is the question: “Many are concerned that the offence of “external interference endangering national security” under the Safeguarding National Security Ordinance will criminalize the usual normal exchange between different sectors of the society with international community.” A response for that. Thank you.

Professor I Grenville CROSS: Well, I did, of course, touch on that point in my speech, and I emphasized how the original definition was extended to external interference which actually endangers national security. That was done in order to make it clear to everybody that usual exchanges with international bodies in areas of culture, art, and so on, business would not be affected by the new legislation. And, of course, in order to ground an offence under this particular provision, there has to be collaboration with an external force to do an act using improper means with an intent to bring about what’s called an interference effect.

So it’s not ordinary exchanges that we covered. There has to be the use of improper means, there has to be a maligned intent. In other words, improper means is actually defined within the Ordinance and includes such things as using violence. And, of course, traditional cultural and other exchanges with people elsewhere, that don’t involve arms, this is not an area where people need to be concerned.

Dr the Hon Hoey Simon LEE: Okay, thank you. Very clear on that.

Professor HAN, here is a question that we wish to ask you. The offences prohibited under the SNSO are more than those stipulated in the Basic Law of Hong Kong. What is the logic and jurisprudence in this?

Professor HAN Dayuan: Everyone can see that Article 23 prohibits seven categories of acts and activities endangering national security; the National Security Law (HKNSL) stipulates four major categories of offences; and the Safeguarding National Security Ordinance (SNSO) provides for five categories of offences such as treason, incitement to insurrection, State secrets and espionage etc.. I think the possible reasons are these. The first one is some changes in national security risks. Apart from risks in traditional fields, we also face new, non-traditional ones on national security. Secondly, the Ordinance must maintain a systemic convergence with the HKNSL. Therefore, besides the four major categories of offences clearly stipulated in the HKNSL, based on the new situation on national security and the uniqueness of “One Country, Two Systems” in Hong Kong, suitably broadening the scope beyond that of the HKNSL and Article 23 of the Basic Law to cope with new national security risks is, in my view, necessary under the basic concepts of national security.

Certainly, we have to note that these five major categories of offences are not offences newly established. They actually made some necessary adjustments to the original offences relating to treason, sedition, protection of State secrets, espionage etc. under the local law, or made some refinements to the original Crimes Ordinance, Official Secrets Ordinance and relevant ordinances. Thus, in my view, the new additions should be said as a necessary adaptation process within the legal regulatory system. This is conducive to the convergence between the two laws and also in coping with new national risks, in furtherance of the implementation of Article 23 of the Basic Law. So, we must not focus only on whether there are new additions. In fact, the additions are, I think, necessary to some extent and also due to the need for convergence and adaptation of the law.

Dr the Hon Hoey Simon LEE: Alright, thank you, Professor HAN. The last question we would like to ask Professor Albert CHEN. This is a very hot topic, which concerns some people’s worries that criticisms

on government policies, such as in opposition to waste charging, may inadvertently fall foul of the law and commit offences in connection with seditious intention. We would like to invite Professor CHEN for some explanations and response.

Professor Albert CHEN Hung-ye: No matter it is the original sedition offence under the Crimes Ordinance or the sedition offence under newly enacted SNSO, of course there is a definition of sedition, which includes bringing a person into hatred or contempt against the fundamental system of the State, the government authorities or the HKSAR Government. There is case law which explain what situations may constitute sedition offences. As just mentioned by the SJ, the DoJ has now compiled annotations of the relevant case law so you may refer to relevant cases. To my knowledge, there are approximately over 30 cases after 2020 which involved prosecution for sedition offences. The most well-known ones are the case of Sheep Village picture books which was mentioned by a speaker just now and the case of TAM Tak-chi which reached the Court of Appeal and was introduced by a speaker a moment ago. That said, you may also note that defence are provided in the provisions of sedition offence, such as if the intention of the relevant person is to seek improvements or enhancements of certain policies by the HKSAR Government or the Central Government, or to point out some mistakes or errors made by the government with a view to rectifying them in the future. These circumstances do not constitute sedition offence and you may take a look at the defence under the relevant provisions. As far as I know, some newspapers nowadays also include in their commentary sections a few more lines that are copied from the defence under the sedition offence provisions, saying that any views in the articles of the columns, even if they are criticisms against the government, will still fall within the scope of defence stipulated by the Ordinance. Given the time constraint, that is my brief response.

Professor HAN Dayuan: In response to what Professor Chen said just now, I would like to say a few words as it was not earlier mentioned. Freedom of speech, freedom of expression, freedom of the press and academic freedom are important rights in a society underpinned by the rule of law, and are also clearly stipulated in the PRC's Constitution and the Basic Law. Therefore in the Mainland, on some policies and regulations of local government, if citizens disagree, have views, or even are dissatisfied, they can still make criticisms. So, as mentioned just now, the threshold for sedition offence is very high; a balance can still be struck with this freedom of speech and of expression. As a deputy to the Beijing Municipal People's Congress, when discussing the reports of the work of the government and courts, we often make very incisive comments on the work of the government in the past year and the work arrangements for the coming year because no work of the government is all perfect. So I think under the stipulations of this Ordinance and the HKNSL, criticisms and suggestions made by Hong Kong citizens against the Government – including, as I also noted, those on some recent adjustments to the policy on waste and so on – are of course not in breach of the Ordinance in my view. Therefore, the HKNSL only pertains to the acts of a very small minority of people while the vast majority of citizens will not violate it if they understand the stipulations thereunder. What I wish to add here is the citizens' trust in government work: giving trust and hoping that the work can be done better, then the criticisms, views, and suggestions, including incisive criticisms, raised by them will be in line with some rule of law principles. Hence, we should distinguish the two scenarios. In implementing the SNSO and the HKNSL in the future, we also have to strike a proper balance between security and freedom, and that is what I would like to add.

Dr the Hon Hoey Simon LEE: Thank you, two professors. Following the balance mentioned by the two professors, let me give a brief conclusion. On the compatibility of our “dual legislation and dual enforcement mechanism”, the professors have explained from various

perspectives. Actually in order to achieve this, there are at least three balances that I think are very important. Firstly, it is the balance between human rights and national security needs. Secondly, it is about the national affairs of the PRC, the balance between the national affairs of our country, the unique regional affairs of “One Country, Two Systems” of the HKSAR and some international mainstream concepts. Lastly, it is actually about our two pieces of law, including a very good balance between the HKNSL and the SNSO, so we can achieve a better integration and complementarity in this regard. Thank you very much. I am very sorry that the time is rather tight, and some questions might not be further exchanged here with you all. I think this session ends here. I now hand the floor over to the master of ceremonies. Thank you.



**Jurisprudential basis of the
“dual legislation and dual enforcement mechanism”
for safeguarding national security**

**Director of the “One Country, Two Systems” Legal Research Institute of
Renmin University of China
HAN Dayuan**

8 June 2024

Main content

- **I. Common legal-normative basis of the “dual legislation and dual enforcement mechanism”**
- **II. Normative compatibility of “dual legislation”**
- **III. Normative convergence of “dual enforcement mechanism”**
- **IV. Relationship between the “dual legislation” and the “dual enforcement mechanism”**
- **V. Judicial function in the implementation of “dual legislation” and “dual enforcement mechanism”**

I. Common legal-normative basis of the “dual legislation and dual enforcement mechanism”

- **The Constitution constitutes the fundamental legal basis for the “dual legislation and dual enforcement mechanism”**
 - Incorporation of the “dual legislation and dual enforcement mechanism” into the HKSAR’s constitutional order which is jointly established by the Constitution and the Basic Law, the significance of the Constitution to the rule of law foundation for the HKSAR is clarified.
 - General Principles of the Constitution: stipulates the duties and obligations of the state in safeguarding national security
 - Article 28 of the Constitution: “The state shall maintain public order, suppress treason and other criminal activities that jeopardize national security, punish criminal activities, including those that endanger public security or harm the socialist economy, and punish and reform criminals.”
 - Fundamental Rights and Obligations of Citizens: restrictions on fundamental rights + provisions of civil obligations to safeguard national security
 - Article 51 of the Constitution: “...shall not undermine the interests of the state, society or collectives, or infringe upon the lawful freedoms and rights of other citizens.”
 - Article 54 of the Constitution: “Citizens of the People’s Republic of China shall have the obligation to safeguard the security, honor and interests of the motherland...”
 - State Institutions: in substance the principal subjects obliged to safeguard national security are established

- **National security is a matter within the purview of the Central Authorities**
 - The Central Authorities have an overarching responsibility for national security affairs relating to the HKSAR.
 - Article 23 of the Basic Law entrusts in the HKSAR the duty to enact laws on its own to safeguard national security
 - the inclusiveness and openness of “One Country, Two Systems” as well as the respect for “Two Systems”
 - the HKSAR’s actual situation in safeguarding national security
 - The HKSAR’s duty to enact laws on its own to safeguard national security does not preclude the Central Authorities from enacting legislation on safeguarding national security in the HKSAR.
- **The HKNSL and the SNSO specify the legislative basis, purpose and a unified state standard of security**
 - Article 1 of the HKNSL: ...in accordance with the Constitution of the People’s Republic of China, the Basic Law, and the “5.28 Decision”...
 - The preamble of the SNSO specifies its legislative basis, which is: “WHEREAS there are requirements under the Constitution of the People’s Republic of China and the following law, decision and interpretation for the HKSAR to perform the constitutional duty to safeguard national security and to improve the law for safeguarding national security in the HKSAR...”
 - The preliminary to the SNSO refers to the definition of national security in Article 2 of the National Security Law of the People’s Republic of China.

II. Normative compatibility of “dual legislation”

➤ The HKNSL as legislation enacted by the Central Authorities

- introduces major innovations into the legislative system
 - a comprehensive piece of legislation that organically unifies organization law, substantive law and procedural law
 - implementing such criminal substantive law and procedural law with the characteristics of Mainland continental law under Hong Kong's common law system
- stipulates four major categories of offences in criminal offence provisions
 - covering two categories of secession and subversion against the Central People's Government under Article 23 of the Basic Law
 - made necessary supplements for addressing the risks and lurking dangers to national security exposed by the “disturbance over proposed legislative amendments in Hong Kong”.
- Concurrent application of the HKNSL and the HKSAR's local legislation on safeguarding national security
 - NPC “5.28 Decision” : “The HKSAR **shall complete** the legislation for safeguarding national security as stipulated in the Basic Law of the HKSAR **as early as possible**.”

➤ The SNSO as legislation enacted by the HKSAR

- Features of the SNSO in the legislative system
 - enacted in accordance with the Constitution, Article 23 of the Basic Law, the NPC “5.28 Decision” as well as the HKNSL and its Interpretation
 - organically integrates substantive and procedural laws with organizational norms
 - maintains necessary convergence and compatibility with the HKNSL in terms of legislative framework
- The SNSO properly addresses the traditional and non-traditional national security risks that our country faces or may face in the future
 - provides adjustments and improvements to the offences in relation to “treason”, “sedition”, “keeping state secrets” and “espionage” in local laws
 - timely amends and improves the HKSAR's Crimes Ordinance, Official Secrets Ordinance and Societies Ordinance to address problems therein
 - averts and prevents new types of national security risks arising from cyber-enabled sabotage against public infrastructure and high-tech crimes
- The SNSO is a statute law enacted by the legislature of the HKSAR entirely under Hong Kong's common law system
 - fulfilling the legislative duty stipulated under Article 23 of the Basic Law while upholding common law traditions and safeguarding Hong Kong's rule of law values

➤ **Relationship between the “dual legislation”: convergence, compatibility and concurrent application**

- The HKNSL is legislation on national security enacted by the Central Authorities, with which the SNSO must align
- Article 62 of the HKNSL establishes HKNSL’s precedence over Hong Kong’s local legislation in status and applicability
 - Article 62 of the HKNSL: “This Law shall prevail where provisions of the local laws of the HKSAR are inconsistent with this Law.”
- Concurrent application, implementation and complementarity of the HKNSL and the SNSO
 - Their concurrent implementation can effectively cover the legislative scope of Article 23 of the Basic Law, while supplementing and amending relevant legislation on national security in the laws previously in force in Hong Kong
 - The SNSO fully embodies the intent and spirit of the HKNSL from the aspects of substantive law, procedural law and organization law. For example, on substantive law, there is no overlap between the offences under the two laws; as regards procedural law, it is clearly stipulated that procedures under Chapter IV of the HKNSL shall apply and be further improved upon the basis of the HKNSL; as regards organization law, the SNSO converges with the “dual enforcement” mechanism
 - In the implementation of the “dual legislation”, does interface between similar offences arise where the same act may have respectively constituted a breach under each of the relevant offences? If it does, how to regulate the co-ordination under common law?
- Implementation of the HKNSL and the SNSO fully embodies the rule of law and the principle of respect and protection for human rights
 - Article 4 of the HKNSL: “Human rights shall be respected and protected in safeguarding national security in the HKSAR...”
 - The SNSO establishes the principle of protection for human rights and strikes a balance between security and liberty values; clearly defines national security; targets acts endangering national security precisely; stipulates defence provisions clearly, etc.

➤ **Differences between the “dual legislation” and Mainland China’s legal system on national security**

- Features of Mainland’s legal system on national security
 - Mainland’s legal system for safeguarding national security is headed by the National Security Law, under which there are specialized laws in two major categories: traditional security and non-traditional security.
 - Since the proposal of the “Holistic Approach to National Security” in 2014, a total of over ten dedicated laws have been enacted to strengthen the protection for traditional security fields.
 - The norms of the Mainland legislation on safeguarding national security are an integration of programmatic and mandatory features
 - Chapter V of the Counterespionage Law stipulates that while sanctions are provided for some acts endangering national security under some of the norms, the specific criminal penalties are still stipulated by the Criminal Law.
 - No legislation shall be enacted locally as regards national security matters
 - National security is a matter within the purview of the Central Authorities, and a legal reservation item.
- Differences of the “dual legislation” when compared with the relevant national security legislation of the Mainland
 - Local legislative power: enactment by the legislature of the HKSAR under the specific authorization of Article 23 of the Basic Law, reflecting the Central Authorities’ high degree of trust in and respect for the HKSAR under “One Country, Two Systems”.
 - Coverage of national security fields: the “dual legislation” focuses more on national sovereignty, security and development interests, etc., including non-traditional security fields such as cyber security.
 - Legislative means: most norms of the “dual legislation” are elaborately articulated, directly providing for the constitution and sanction of criminal offences.

III. Normative convergence of “dual enforcement mechanism”

➤ Enforcement mechanism of the Central Authorities

- One of the significant institutional innovations introduced by the HKNSL is the establishment of the “dual enforcement” mechanism. Established at the central level, the OSNS performs the mandate of safeguarding national security in accordance with the law by overseeing, guiding, coordinating with, and providing support to the HKSAR in the performance of its duties for safeguarding national security.
- The OSNS, as the organ established by the Central People’s Government in the HKSAR for safeguarding national security, is a key pivot for the Central Authorities to exercise supervision and direct jurisdiction over national security. It embodies the Central Authorities’ governance power over national security matters and is conducive to coordinating the overall national security strategy and the HKSAR’s specific national security measures.

➤ Enforcement mechanism of the HKSAR

- The HKNSL establishes a whole list of bodies for safeguarding national security such as the CSNS of the HKSAR to deal with specific matters on safeguarding national security in accordance with the law.
- Article 40 of the HKNSL
- “The Hong Kong Special Administrative Region shall have jurisdiction over cases concerning offences under this Law, except under the circumstances specified in Article 55 of this Law.”
- In the enforcement mechanism of the HKNSL, the CSNS plays a core role of coordination and enforcement, linking the Central Authorities’ guidance with the HKSAR’s enforcement, and is responsible for governing national security matters under normal circumstances in light of the actual situations in the HKSAR.
- Chaired by the Chief Executive, the CSNS performs the duties and functions of, inter alia, formulating relevant policies, guiding and coordinating inter-departmental operations concerning national security, and advancing the effective implementation of the laws and policies in relation to national security in the HKSAR.
- The CSNS assumes statutory duties and functions for safeguarding national security in the HKSAR and has the power to make judgements and decisions on the question whether national security is involved.
- Interpretation by the NPCSC of Article 14 and Article 47 of the HKNSL
- The enforcement mechanism at the HKSAR level provides greater flexibility, efficiency, focus and adaptability to the enforcement of the HKNSL.

➤ **Relationship within the “dual enforcement mechanism”**

- **Complementary relationship within the “dual enforcement mechanism”**
 - The OSNS provides guidance and support to the CSNS in accordance with the law to ensure that the HKSAR’s national security measures are in line with the state’s overall security strategy.
 - The CSNS is responsible for enforcing routine matters, enhancing the flexibility and focus in enforcement.
- **Collaboration and complementarity of the “dual enforcement mechanism” in the SNSO has crystallized the relevant provisions of the HKNSL**
 - Section 110 of the SNSO: “The Chief Executive in Council may make subsidiary legislation for the needs of safeguarding national security and the better carrying into effect of the following laws and interpretation—(a) the HK National Security Law, including provisions in its Chapter V concerning the mandate of the Office for Safeguarding National Security of the Central People’s Government in the Hong Kong Special Administrative Region...”
 - Section 111 of the SNSO: “The Chief Executive may issue an administrative instruction to any department or agency of the Government or any public servant to give directions in relation to any of the following matters—... (c) the provision of rights, exemptions, facilitation and support that are necessary for the Office for Safeguarding National Security of the Central People’s Government in the Hong Kong Special Administrative Region in performing its mandate under Chapter V of the HK National Security Law in accordance with the law...”
 - Section 115 of the SNSO supplements and perfects the circumstances where the Chief Executive issues a certificate under Article 47 of the HKNSL.
- **The “dual enforcement mechanism” is an innovative practice under the principle of “One Country, Two Systems”. It is not only a procedural mechanism, but also an enhancement in the system and mechanisms for safeguarding national security.**

IV. Relationship between the “dual legislation” and the “dual enforcement mechanism”

- **The “dual legislation” and the “dual enforcement” mechanism are mutually conducive, supportive and complementary**
 - Together they have built a unified and effective mechanism and system, which is robust and authoritative with flexibility, for safeguarding national security
- **The “dual legislation” provides the effective legal basis and guidance for the “dual enforcement” mechanism**
 - HKNSL “Chapter II The Duties and the Government Bodies of the Hong Kong Special Administrative Region for Safeguarding National Security” “Chapter V Office for Safeguarding National Security of the Central People’s Government in the Hong Kong Special Administrative Region”
 - Sections 110(1)(a) and 111(1)(c) of the SNSO set out how the HKSAR Government supports the work of the OSNS.
 - Section 112 provides for the CSNS’s power to make judgements and decisions.

➤ **The “dual enforcement” mechanism provides important institutional support and safeguard for the effective implementation of the “dual legislation”.**

- The practical experience accumulated from the operation of the “dual enforcement” mechanism provides practical support for the interpretation and application of the “dual legislation”.
- The mechanism fully takes into account the actual situations of the Central Authorities and the HKSAR.
- The mechanism coordinates the relationships among various parties and ensures that such statutory interpretation and application can fully satisfy the needs for safeguarding national security.

V. Judicial function in the implementation of “dual legislation” and “dual enforcement mechanism”

➤ **The “dual legislation and dual enforcement mechanism” will not affect the rule of law principles and Hong Kong’s common law system**

- Under the HKSAR’s enforcement mechanism, local courts shall adjudicate cases by applying the HKNSL and the laws of the HKSAR.
 - can make reference to jurisprudence from common law jurisdictions, and strike a reasonable balance between security and liberty values
 - can give a greater play to the purposive approach of interpretation to bring statutory interpretation in line with the legislative intent
- The HKNSL does not affect the adjudication of general cases unrelated to national security in the HKSAR

➤ **The SNSO has no impact upon the judicial system under the common law**

- The SNSO has made statutory amendments to provisions in existing legislation which are either outdated or incapable of satisfying the constitutional duty under Article 23 of the Basic Law.
- The courts accurately grasp the legislative intent in individual cases, interpret the relevant concepts, and give judgments that are consistent with the legal intent, so as to maintain certainty of such legal concepts.
- We continuously accumulate judicial precedents from individual cases, so as to promote the progressive development of Hong Kong’s common law jurisprudence on safeguarding national security.

Conclusion:

- The text of a law must be respected upon its promulgation and putting into effect;
- The vitality of law lies in its implementation. It is necessary to forge social consensus and seriously implement the SNSO;
- Through the implementation of the HKNSL in these four years, Hong Kong courts have accumulated a relatively mature body of judicial precedents for adjudicating national security cases. They have the experience and wisdom to tackle new issues arising from the “dual legislation and dual enforcement mechanism”;
- We should maintain the independent judicial power of Hong Kong prescribed by the Basic Law, demonstrate the ever-adapting legal culture of the common law, let the public live a stable and predictable life under the rule of law, and contribute new thoughts, new materials and new practices from the HKSAR to the pluralistic development of global common law.

Complementarity between the NSL and the Safeguarding National Security Ordinance

Albert H.Y. Chen
June 2024

- One of the “five working principles” adopted in drafting the NSL:
 - Accommodating the differences between mainland China and the HKSAR, and
 - Striving to address convergence, compatibility, and complementarity between the NSL and relevant national and local laws
- NSL was enacted in anticipation of the Hong Kong SAR fulfilling its constitutional duty to enact local legislation to implement article 23 of the Basic Law
- Now that the Safeguarding National Security Ordinance (NSO) has been enacted, the principle of convergence, compatibility, and complementarity between the NSL and the NSO can be studied



- Prof Han's systematic analysis of the relationship between NSL and NSO
- Combined operation of NSL and NSO in regulating activities endangering national security in Hong Kong
- Four examples illustrating the combined operation (at the level of substantive law):
 - a. Law of sedition and related offences in the NSL
 - b. Law on safeguarding state secrets
 - c. Law on foreign interference
 - d. Anti-terrorism law and related offences



- **Sedition** is one of the acts prohibited under article 23 of the Basic Law
- Pre-1997 laws of Hong Kong already included a law on sedition in the Crimes Ordinance
- Sedition under Crimes Ordinance has been used to prosecute suspected offenders in more than 30 cases after 2020
- Sedition under Crimes Ordinance has been considered an offence endangering national security for purposes of the NSL
- Sedition offences now provided for in sections 23 to 28 of the new NSO

- NSO provisions for sedition offences were based on relevant provisions in the Crimes Ordinance but modified for use in HKSAR
- NSO prohibits (among others) speech or publications with intention to bring people into hatred, contempt or disaffection against the fundamental system of the state in the PRC or a PRC state institution
- Sedition offences in NSO to be read together with relevant provisions in NSL: combined operation in regulating speech and publications
- Relevant provisions in NSL include:
 - a. Article 21 – incitement of secession
 - b. Article 23 – incitement of subversion
 - c. Article 27 – advocacy / incitement of terrorism
 - d. Article 29(5) – provoking by unlawful means hatred among HK residents towards the Central People's Government or the Hong Kong government likely to cause serious consequences.

- Theft of **state secrets** is one of the acts to be prohibited according to article 23 of the Basic Law
- Pre-1997 law on safeguarding state secrets was the Official Secrets Ordinance based on UK legislation
- NSL already contains a provision on state secrets in the first limb of article 29
- Article 29 in the NSL creates the offence of collusion with foreign elements to endanger national security
- First limb of article 29 covers stealing, spying, obtaining with payment, or unlawfully providing state secrets or intelligence concerning national security for a foreign country, organization, or individual outside the Mainland, HK and Macau
- NSL does not provide for theft or disclosure of state secrets not involving foreign forces



- NSO now contains comprehensive rules for safeguarding state secrets, supplementing existing rules in Official Secrets Ordinance and NSL
- New rules on safeguarding state secrets in sections 29 to 40 of the NSO
- New offences created in NSO include unlawful acquisition, possession, and disclosure of state secrets
- These provisions establish a new legal regime on state secrets, operating independently of the regime on espionage offences in sections 41 to 48 of the NSO.



- Article 29 of the NSL provides for the offence of **collusion with foreign forces to endanger national security**
- Second limb of article 29 specifies five sets of circumstances regarding collusion with foreign forces, including requesting foreign sanctions or conspiring with, or receiving instructions, control, funding or support from, a foreign country to disrupt seriously the implementation of laws by the HK or central government
- Article 29 targets **foreign interference** with Hong Kong affairs
- NSO further regulates foreign interference in Part 6, particularly sections 52 to 57
- Offence committed if a person collaborates with an external force to do an act (involving “improper means”) with intent to bring about an “interference effect”

- “Interference effect” is broadly defined, including influencing government policies / the Legislative Council / a court, or interfering with elections
- Combined effect of article 29 of NSL and provisions on external interference in NSO requires precautions for those with collaborations or close relationships with foreign governments or external forces
- Section 43(3) of NSO on espionage should also be taken into account: publishing a false or misleading statement of fact in collusion with an external force and with intent to endanger national security

- Offences relating to terrorism are one of the four types of offences provided for in the NSL
- Terrorism offences dealt with in articles 24 to 28 of the NSL, supplementing existing anti-terrorism law in Hong Kong
- Pre-existing anti-terrorism law mainly contained in the United Nations (Anti-terrorism Measures) Ordinance
- Part 5 of NSO (sections 49 to 51) covers acts which may also fall within scope of terrorist acts



- Section 49 makes it an offence to damage or weaken public infrastructure with intent to endanger national security or while being reckless as to whether national security would be endangered
- Section 50 of the NSO prohibits acts in relation to a computer or electronic system that endangers national security
- Combined operation of relevant legal rules in the NSL and NSO serves to protect Hong Kong against terrorism or acts similar to terrorism
- Prosecutions under both NSL and local anti-terrorism law have been brought since 2020
- Examples include the *Tong Ying-kit case*, which included a terrorism offence under the NSL, and a more recent case being tried in the Court of First Instance involving an offence under section 11B of the United Nations (Anti-terrorism Measures) Ordinance.



- Combined operation of NSL and NSO safeguards national security in Hong Kong at the level of **substantive law**.
- NSO supplements NSL with regard to **procedural matters** and **technical details**.
- Section 115 of NSO supplements article 47 of NSL, allowing CE to issue certificates on national security or state secrets even without litigation.
- NSO supplements article 43 of NSL (art. 43 authorises CE in conjunction with National Security Committee to make implementation rules).

- Section 110 of NSO empowers CE in Council to make subsidiary legislation for implementation of NSL and NSO itself.
- Section 111 of NSO empowers CE to issue administrative instructions to government departments and public servants regarding various national security matters.
- NSO supplements NSL on other matters such as penalty for conspiracy to commit NSL offence, restrictions on absconders charged with NSL offences, provisions on sentencing and imprisonment of NSL offenders, and protection of privacy of and against harassment of government, judicial, and legal personnel engaged in national security work.



National Security Law Legal Forum 2024 HKCEC Saturday, June 8, 2024

Panel Session
*“A Comparative Study of the Safeguarding
National Security Ordinance and the
National Security Laws of Other Common Law
Jurisdictions”*

- I Grenville Cross SC

1



HKSAR and UK

- Prosecution criteria: Reasonable prospect of conviction
- Guilty standard: Proof beyond reasonable doubt
- UK Computer Misuse Act 1990: Instructive model for SNSO
- UK NSA 2023: Arrestee restrictions adapted in SNSO
- OCTS: Survival ensured by national security laws crafted within familiar common law parameters
- Espionage: Spying & theft of state secrets illegal everywhere
- Espionage/Treason: SNSO penalties aligned with other jurisdictions

2

National Security: Western Models Compared

- SNSO: Human rights heavy & ICCPR incorporated
- Extraterritoriality & foreign threats: HKSAR national security laws follow UK, US, Australia, Canada paradigms
- Julian Assange: US pursues Australian for acts committed abroad under Espionage Act 1917
- International law: Personality and protective principles
- Sabotage: SNSO similar to British and Australian laws

3

External Interference

- External interference must endanger national security
- Normal international exchanges unaffected
- SNSO/CJA (UK): Significant similarities in terminology and substance
- SNSO: Intent required for prosecution; CJA (UK): recklessness sufficient for prosecution (lower threshold)
- Canada: Expanding scope of foreign interference and sabotage laws

4



Freedom of Speech & of the Media

- SNSO: Sedition offence no threat to legitimate expression
- 1938 HK sedition law (UK): No constitutional protections
- SNSO: Freedom of speech and of the press highlighted
- HKSAR: Basic Law provides constitutional protections across the board
- HKSAR: Lively media environment in 2023: 90 dailies, 376 periodicals, international media & broadcasters: Speak their minds

5



Enactment of UK National Security Act 2023

Director General of MI5, Ken McCallum:

“We face adversaries who operate at scale and who are not squeamish about the tactics they employ to target people and businesses in the UK ... The National Security Act is a game-changing update to our powers. We now have a modern set of laws to tackle today’s threats.”

EQUALLY TRUE OF HKSAR AND OF SNSO

6

Conclusion



**SNSO - HISTORIC MISSION DISCHARGED
BY ARCHITECTS AND IMPLEMENTERS -
GOOD FOR OCTS - COUNTRY SAFER IN
CONSEQUENCE**

7

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Panel Session 3: Safeguarding the bottom line for security, facilitating high-quality development



座談環節
Panel Session

守穩安全底綫，助力高質發展

Safeguarding the bottom line for security, facilitating high-quality development

講者 Panelists

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Mr Paul LOO Kar-pui

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Mr Oscar LEE

Good afternoon, ladies and gentlemen.

Welcome to panel session three of the National Security Legal Forum, “Safeguarding the bottom line for security, facilitating high quality development”. Usually the first session after the lunch break is a bit challenging, but I am sure the esteemed panelists here would not only keep you awake but also keep you enlightened.

Please welcome Mr Eddie Yue, Chief Executive of the Hong Kong Monetary Authority, Ms Marjorie Yang, Chairman of Esquel Group, and Mr Paul Loo, Chief Operating Officer of Lalamove. I'm Oscar Lee. I used to be a TV journalist, but have moved to the public affairs sector recently, and I am so honoured to be the moderator of this session.

Freedom of the press and information flow are surely important to an international financial centre like Hong Kong. In this connection, both SJ and DSJ have explained on different occasions that the law itself has a *mens rea* requirement for offences against national security. For example, one can only be considered to have committed an offence if he knowingly and unlawfully discloses information that is a state secret with the intention of endangering national security.

As a former journalist, I do not see this as a concern to ordinary news reporting. The key words of this session are “foundation” and “bottom line”. All societies, including Hong Kong, must have a solid foundation and a safely guarded bottom line in order to prosper. In today's rapidly evolving world, where geopolitical tensions, technological disruptions and also economic uncertainty are the norm, the importance of these two words cannot be overstated.

As we embark on this panel discussion, I invite you all to engage with our leaders from the financial and commercial sectors to explore how Hong Kong's legal infrastructure in relation to safeguarding national security creates a more stable business environment, so that

Hong Kong may focus on boosting its economy, striving for development and ensuring its people's well-being while fully utilising their advantages of enjoying support of the Motherland and being closely connected to the world.

May we first hear from Mr Eddie Yue. Mr Yue, please.



Mr Eddie YUE Wai-man JP

Good afternoon, everyone.

It is a great pleasure to take part in this important forum organised by the Department of Justice. Today, I would like to share with you our thoughts on the interaction between financial security and the development of our financial sector.

Let me start by highlighting the importance of financial security, not just to the financial sector, but to the economy more broadly, and not just for Hong Kong, but also for our Country, or even for the rest of the world. I would also discuss how a stable and secure environment can actually promote financial development and what we at the Hong Kong Monetary Authority (HKMA) are doing to build on our hard-won resilience and bring our financial sector to the next level.

The financial industry is a very important pillar of Hong Kong's economy. In 2022, the sector employed almost 270,000 people, accounting for 7% of our working population, yet it contributed 22% of Hong Kong's GDP. The size of the banking industry of Hong Kong is equivalent to 9 times our GDP and the size of assets managed by the financial sector is almost 10 times our GDP. These numbers are way higher than other financial centres that you see in this world.

Not only is our financial sector sizeable, it also plays a significant

role in the functioning of the wider economy and society. Financial institutions provide intermediation services, matching the demand and supply of capital to finance business growth and household needs, as well as offering investment opportunities for financial returns. As an international financial centre, our financial sector serves the much wider Asia Pacific region and beyond. We are closely intertwined with the global financial system. The extensive reach of our financial sector means that any threat to the stability of Hong Kong's financial system will have repercussions far beyond Hong Kong.

For example, Hong Kong has been playing an indispensable role in supporting the Mainland's reform and opening up agenda – from the traditional trade and manufacturing to becoming the key player in the global supply chain, and from direct investment to now also portfolio investment into the Mainland's capital markets.

In addition, Hong Kong serves as a key fundraising and capital markets hub for the whole of Asia. As one of the largest US dollar clearing hub, we are the fourth largest FX (financial exchange) hub and the largest global offshore RMB centre. That is why any threat to the stability of Hong Kong's financial system could have spill-overs to the Mainland and also the global markets at large.

At the HKMA, our primary mandate is to maintain the stability and integrity of the monetary and financial system in Hong Kong. First, Hong Kong's monetary stability is anchored by the Linked Exchange Rate System, which maintains the stability of the Hong Kong dollar exchange rate through what we call a Currency Board system. The peg has serviced very well for more than four decades and demonstrated its resilience to the many shocks and market crises over the last few decades.

Secondly, we ensure the stability and the resilience of Hong Kong's banking sector through closely monitoring the banks' management of liquidity and market risk, and maintaining our supervisory efforts on bank lending. Our banking sector continues to be extremely robust, with

liquidity and capital ratios way above international standards. These buffers were a key reason why Hong Kong was unaffected by the multiple banking crises taking place elsewhere, including the European and US banking turmoil that you saw in March last year.

Thirdly, in this highly connected global environment, financial shocks and events in one sector or region can easily be amplified and spilled over into other markets. Because of that, while we keep a close watch on our own local financial system, we also collaborate with the government and other financial regulators, including those overseas, to closely monitor issues or events with possible cross-market and systemic implications, and we take timely coordinated actions as needed. This helps us identify and mitigate potential risks and threats to Hong Kong's monetary and financial system.

Finally, confidence is crucial in maintaining financial stability. Our work also involves communicating with market participants and the public to address potential concerns and misconceptions about Hong Kong and its future as international financial centre.

I have just spoken about why ensuring the resilience of Hong Kong's financial system is good for the stability of Hong Kong, our Country, and even the rest of the world. On the other hand, a stable and safe Hong Kong is also conducive to the development of the financial markets.

Many studies of financial sector competitiveness cite the business environment as a deciding factor, which is largely shaped by the political and social stability and the rule of law. When I first took office as the Chief Executive of the HKMA back on the 1st of October 2019, it was in the middle of the social unrest. If you remember, there were widespread rumours at the time on social media that aimed to threaten Hong Kong's financial stability. Some people claimed that Linked Exchange Rate System would collapse, others were saying that money was flowing out of Hong Kong and that Hong Kong dollar would devalue anytime, some even incited the public to withdraw their savings

from targeted banks.

If left unchecked, rumours of this kind will soon generate anxiety and panic among the public, creating a favourable backdrop for speculative attacks on our financial system as what we had experienced during the Asian financial crisis in 1998, and that would cause irreversible damage to both our businesses and households. So at that time, we took prompt and resolute actions to counter those rumours before they got out of control.

The incident was a vivid example of how social unrest could quickly implicate and cause damage to the financial system. That is why the implementation of the Hong Kong National Security Law in 2020 and more recently the Safeguarding National Security Ordinance is so important. The legislation helps enhance stability in our society, which allows the government and the community to focus on economic and development priorities that are crucial to the prosperity of our city. Financial regulators can focus on rolling out policy initiatives to support businesses and households, and advancing developmental efforts to keep our financial sector competitive.

In fact, Hong Kong's financial sector has continued to grow apace. For example, since 2020, when the Hong Kong National Security Law was enacted, international investors have remained a major source of funding for our asset and wealth management business, accounting for more than half of the assets under management. Over the last three years, the total number of private equity fund managers, hedge fund managers, and family offices in Hong Kong has increased by 24%. Despite a challenging market backdrop, Hong Kong's financial markets have been functioning very smoothly and seeing continued inflows despite a rhetoric that money is flowing out of Hong Kong.

If you look at the total deposits of our banking system in the last five years, total deposits have surged by more than 21%. We are seeing capital actually flowing in, and not out. Now that we have this hard-won stability, the onus is on us to make the most of it and bring Hong Kong's

financial sector to the next level. I'm often asked the question, what makes an international financial centre? What do the government and regulators, including the HKMA, plan to do to promote further growth of our financial markets?

I think the answer boils down to three factors, in fact, three words, "Resilience", "Ecosystem", and "Opportunities". I have already talked about the resilience of our financial system, especially as we face very difficult challenges in the last few years, but that alone does not make a great financial centre, we also need a fertile ecosystem, where opportunities can grow and be captured. Here, we enjoy numerous institutional strengths under "One Country, Two Systems", and these include a bilingual legal system rooted in the common law, an independent judiciary, a forward-looking regulatory system, a simple tax system, a strong talent base, and also free flow of capital and information.

Through our unique political, geographical, and historical connections with the Mainland, we are well-placed to serve as the gateway connecting the Mainland and the rest of the world, not only the dominant gateway and perhaps the only efficient gateway that will bring immense opportunities. As the leading global offshore RMB hub, Hong Kong has been a safe, trusted testing ground for many of the Mainland's opening-up initiatives that connect the Mainland and international financial markets, while ensuring financial stability and security. Through the various connect schemes, Hong Kong serves as the firewall and the buffer zone to prevent any risk arising from cross-border capital flows, which in turn helps to safeguard the financial security of our Country.

Beyond Mainland-related opportunities, Hong Kong is well positioned to capture growth in the emerging areas in the global scene, such as sustainability and fintech. As Asia's largest sustainable financing centre, Hong Kong has been enriching our green and sustainable finance ecosystem through the government's sustainable and infrastructure bond program, and filling gaps in knowledge, talent, and

also data. We are also expediting fintech adoption among financial institutions and are a very, very early mover in Central Bank Digital Currency (CBDC), and also the development of digital assets. We have also been building infrastructure to support better flow of data, which could be used to facilitate the provision of financial services.

In today's very complex global landscape, a safe and stable operating environment is crucial for any business. The legal infrastructure we have in place to safeguard national security provides a very solid foundation for the financial sector to flourish. The HKMA will stay vigilant against potential and emergent risk to our financial security and stability, and we will continue to enhance our regulatory framework to meet evolving market needs and international standards. Thank you very much.



Ms Marjorie YANG Mun-tak GBS JP

Ladies and gentlemen, good afternoon.

I'm honoured to be here today to share my perspectives on how Hong Kong can leverage its unique advantages to navigate the complex global landscape and drive economic growth. After the completion of the local legislative exercise of Article 23 of the Basic Law, as Chief Executive John Lee has stated, the Hong Kong SAR Government has fulfilled its constitutional responsibility to implement this critical legislation, and we have a stable and secure environment to pursue economic growth.

Unfortunately, the environment is not as stable. The current volatile global geopolitical landscape has brought uncertainties, but it also presents unique opportunities for Hong Kong. As an international trade hub, Hong Kong can seize the advantages bestowed by the

nation and fully utilise our strategic position to contribute to the overall development of our country and the global economy through trade.

The supply chain consists of three flows: physical flow, financial flow and information flow. At a time when the global economy is weak, we need to optimise the entire system. Out of the three, the most difficult one is likely the information flow. It is not because of technology, but rather a failure to create the network effect (where a network becomes valuable to each user as a sufficient number of users join the network). As we embrace automation, data analytics, and artificial intelligence, the digitalisation of trade processes is a natural progression.

Esquel, like many other Hong Kong enterprises, has a flagship manufacturing base in Foshan, the Greater Bay Area. Esquel is being invited to start a trial with SGTraDex, a common data infrastructure connecting supply chain ecosystems developed by Singapore. Though we perceive very limited direct benefits so far, you can tell Singapore is very aggressive and is actively pushing for data digitalisation. In April, our Ministry of Commerce unveiled a three-year plan for promoting digital commerce. Therefore, going digital will not only boost trade for Hong Kong, but also position us to shape the future trade landscape.

As part of the GBA, which is one of the most powerful manufacturing hubs, we can set standards. For example, in the textile and apparel industry, which I am in, we know the supply chain well enough to set standards for digital communication. In fact, Esquel has been asked to be a “leading digital enterprise”. Hong Kong has been the last mile of the supply chains as we are the interface through trade. The latest trend of Mainland factories and even the entire Chinese supply chain going overseas gives us another opportunity to promote our standards. As a lot of raw material moves from the Mainland to those overseas locations, we can seize the opportunity to further promote these standards abroad.

Cycle time is critical in the supply chain, especially amid the rise of e-commerce. While we in the private sector must find innovative solutions to speed up manufacturing and delivery, it is the government's responsibility to reduce administrative clearance time by digitalising key trade documents and securing the data chain. I am pleased to see that earlier this year the Hong Kong Government has amended the Electronic Transactions Ordinance to allow government notices to be sent electronically, eliminating the need for registered posts or other physical copies. This is a step in the right direction and I urge the government to extend the same support to the business sector by protecting trade documentation in digital formats.

We have used e-bill of lading a few times for the purpose of educating ourselves on this. Overall, the benefit is limited due to fragmented system landscape where the e-bill of lading often cannot be shared via a platform but need to be downloaded and then sent out via email. E-bill of lading also suffers from the lack of awareness among customers and carriers where additional efforts are needed to educate and convince parties to adopt. We must have patience to gather the density and the network effect to promote digitalisation and ultimately system optimisation of the entire supply chain, which is a far more ambitious but critical target to achieve sustainable development and to maintain Hong Kong's leadership role in global trade.

As an executive board member of the International Chamber of Commerce, I strongly recommend that the Hong Kong Government refer to the Model Law on Electronic Transferable Records (MLETR) under the UN Commission on International Trade Law and make relevant legislative amendment to enhance our digital trade environment because a constructive regulatory environment is the foundation to building Hong Kong's digital economy.

Putting MLETR on the legislative agenda sends a clear signal to businesses of Hong Kong's commitment to remain at the forefront of global trade, even as it transforms with digitalisation. It will send a clear

signal to businesses to make the transition. Singapore has already adopted MLETR into its legislation in 2021, and many others, such as Japan, Germany, the United States, Thailand, and Australia, are preparing themselves for the digital trade era through MLETR.

China, in collaboration with the Asian Development Bank (ADB), has also demonstrated a strong interest in MLETR. The ADB has been actively supporting this MLETR consideration with ongoing initiatives in China, where civil servants have been studying the model laws for more than a year in a program funded by ADB. Free zones in both Shanghai and Beijing have already experimented with the model laws pilots.

As a global trade hub, Hong Kong must take the lead in achieving paperless trade to maintain our position as a premier global financial and commercial centre. It would also set a powerful example for other economies to follow while opening up opportunities to grow our trade finance and digital finance footprint serving the regional and global markets. This transition has the opportunity and potential to yield substantial dividends for both local and international enterprises operating in the Hong Kong marketplace as well as globally.

Also, this would greatly enhance efficiency and productivity for companies of all sizes, allowing them to focus on core business activities rather than burdensome paperwork. By optimising our regulation with the MLETR and embracing digital trade, it not only allows Hong Kong to keep in step with the Mainland, but it can also consolidate its role as a vital link between the domestic and global markets, enabling us to make greater contribution to the nation's overall development as well as serving all mankind.

Thank you very much.



Mr Paul LOO Kar-pui

Good afternoon, ladies and gentlemen.

I am very happy to be here to share with you some of our observations on national security from a technology and logistics point of view.

Before that, I would like to briefly introduce who we are so you may have a better sense of where our observations are from. You might have seen our vehicles running around Hong Kong, or you might have used our service. Remember, we are the orange guy, not the other one.

We are actually from Hong Kong. We started back in 2013, more than 10 years ago, and then we expanded pretty quickly to Mainland China as well as overseas. We operate two brands – Lalamove as our international brand, and Huolala in Mainland China. All the Huolala in more than 300 cities all over Mainland China are part of our group.

If you go overseas, in addition to Hong Kong, all the teams with the Lalamove stickers on are also part of our group. We cover all the major cities in Southeast Asia, as well as South Asia. In addition, we are in Latin America. We are operating in 17 cities in Brazil, and also in Mexico City. That's our global coverage. On a monthly basis, globally speaking, we have more than a million active driver partners and more than 12 million users.

What do we do? We match orders from users. It could be individuals like every one of you, but the majority of our users are small and medium enterprises which are the backbone of all major economies. We also serve larger enterprises. Through technology we create the best match between driver partners and users. In every single market, the huge number of our driver partners, through our platform, are able to earn a decent living for their families, which is important to all the societies that we serve.

What do we deliver? All sorts of things. For example, during COVID, we have delivered a lot of medical materials to those in need.

After COVID, through using our services which stimulates their growth and productivity, the SMEs who form the majority of our users recover after the pandemic.

These are the potential social impacts that a platform like ours can make. As you can imagine, all these are related to national security. Why is technology strongly linked to national security? This is because everything technology touches could proceed at a very fast pace. Also, the coverage is huge. Fundamental changes can take place within a very short period of time.

When it comes to competition among nations, in the past you might define the strength of nations by their military power or economic strength. Nowadays, the success or prosperity of any nation is determined by the extent of advancement, the amount of investment, and the activity of technologies and innovations. China has been doing extremely well in many technological areas, including AI, 5G, electric vehicles, etc. Nations that are strong in technologies can bring a lot of high-quality jobs, not just in terms of quantity but quality, to their people. That is an important growth engine for nations.

At the same time, a lot of new companies may emerge in nations strong in technologies, which may bring changes to the traditional business models. If your country is strong in technologies, they can be important weapons and can change the economic landscape. Through technology, you can swiftly overturn a traditional business even when it has been occupying the vertex for a long period of time. It is reasonable to perceive nations unfriendly to ours with very good technologies as nations equipped with powerful weapons. That is why technology and innovation are important when it comes to national security.

As Hong Kong aspires to be the technological centre of China, we have a very strong role to play. I will come to that later.

In the past, the concept of national security may be confined to securing physical assets or border defence. Nowadays, because of

technology and innovations, the battleground is way beyond those. Cyber data, space, deep sea are all important new frontiers of the battleground when it comes to national security.

Data security, cyber security are very important security areas. It is not just the responsibility of the government, but also all enterprises and every single one of us. Especially for tech companies that run huge amount of data and own a lot of important information, it is our role to ensure data security and cyber security through securing your platform and the information of your users respectively.

Another important aspect concerning logistics is infrastructure. Imagine that during COVID, if roads were still blocked like during the unrest in 2019, important delivery could not be made. Every single infrastructure, including public utility, airport operations, mass transit system, is powered by technologies. You want to make sure our system is secure. Otherwise, unauthorised access can turn things extremely bad in a very short period of time.

To conclude, when it comes to national security, particularly the new fields of national security such as data and information security, we all have a part to play. Hong Kong aspires to be the technological centre for China. We have a very important role in bringing in talents, and we also understand the global market very well. These are the areas where we can play our role and help our motherland in connecting to the world, as well as bringing talents into Hong Kong. For that purpose, we should make sure that the global market and also talents understand that Hong Kong is a safe place, physically and also online. It is important for investors, just like what Eddie mentioned, to feel safe to invest in Hong Kong and to start their business in Hong Kong. The sense of security is also important in attracting talents to come to work, bringing along with their families, in Hong Kong.

When it comes to national security, we all have a role to play. Thank you.

Q&A Session

Mr Oscar LEE: All three of you mentioned the importance of digital economy alongside trading economy. May I first ask Eddie: as the new Safeguarding National Security Ordinance came into place, what was the initial reaction of the financial sector towards it? Among the bankers or those in the financial sector you know, whether local or overseas, what was their reaction?

Mr Eddie YUE: First of all, as I said just now, for the financial institutions, one of their prime concerns about Hong Kong is its stability. It is hard for them to run their businesses in a society with instability or security risks. So broadly speaking, we have their support (on the NSL) in 2020 and on the newly enacted Safeguarding National Security Ordinance.

We also provided thorough explanations. After the new law came into place, we, alongside other government representatives (such as the Financial Secretary) had conducted two to three briefings for practitioners of different levels in financial institutions (including executives and senior management, as well as those in legal and compliance departments) to address their specific concerns. Those in the legal or compliance departments are our important targets, since they are often the ones responsible for reporting to their headquarters on any security risks under the new law. The key message of our briefings was that the Safeguarding National Security Ordinance has no effect on their business operations, whether it is day-to-day operations, compiling research reports which contain criticisms against Hong Kong, or generally their international trading.

What was also helpful was the letter issued by the Financial Secretary to the two regulatory institutions, i.e. HKMA and Securities and Futures Commission, which, through us, was forwarded to directors of global financial institutions. The letter simply provided assurance that the new law was to secure the stability of our society; it does not

interfere with their existing operations or change the monitoring policies of the regulatory institutions. Such affirmation provided effective assurance. We did not receive many queries since then.

In the past two to three months, I had been traveling all over Europe, the UK and the US, attending conferences and meetings with investors as well as leaders of financial institutions. During the seminars or roundtable meetings I attended, questions about national securities were rare. Rather, attendees were more interested in the economies of the Mainland and Hong Kong, our business opportunities, the latest development of our stock connect programmes, etc.

Among them were two to three CEOs of some major banks I am familiar with. I asked them for their views and concerns (of our new law) and found their responses rather interesting. First of all, the legislative exercise in relation to BL23 was different from (the time when the NSL was enacted in) 2020. The BL 23 exercise was no surprise for them this time as they anticipated this course of action. Secondly, their legal advisors had done a lot of analysis for them. Two bankers told me that their legal advisors did a thorough comparison between the laws in Hong Kong and the national security law of other countries. They found that the Hong Kong legislation was not harsher than those in other jurisdictions, in fact, to a certain extent, less stringent. They were more at ease after considering the comparative analysis.

Nevertheless, as it is a new piece of legislation, they also look to us on the implementation, which I consider reasonable. We made it clear to them that they could liaise with us, and the Department of Justice should they have any queries or concerns. I believe communication is crucial in the coming couple of years. As you see, we had done a lot of communication work after the NSL came into effect in 2020. After a year, they saw with their own eyes that it really had no impact on their businesses. It is the same this time with the enactment in relation to BL23. That is, with effective communication and proper implementation, Hong Kong's status as an international financial centre

will not be (adversely) affected but rather enhanced because we are able to provide a stable operating environment.

Mr Oscar LEE: I know you and SJ worked very hard on public education tours. Facts speak louder than words. Ms Yang, Esquel and many other Hong Kong enterprises have gained a firm hold in the Greater Bay Area. In terms of the supply chain, the digital trade, or data security that you have spoken about just now, what and how can Hong Kong contribute?

Ms Marjorie YANG: Hong Kong is a trade centre not only regarding physical commodities. For instance, the HSBC is the world's biggest trading bank, many trades go through Hong Kong. We really need to preserve such edge. Digital data is indeed the most important nowadays. We all know that digital data is highly valuable. If you have the control of data within the world trade system, you have the upper hand, with which you can also optimise the whole supply chain.

Recently, Mr Victor Fung (an entrepreneur) started a global supply chain management programme at the Hong Kong University of Science and Technology. All these show that we are capable, but we must step up our effort. One of the reasons that hold back digitalisation is the lack of benchmark standard, but the GBA has all the criteria to set many standards.

Like Esquel, we use one-stop production line, witnessing how standardisation is done. That is why Foshan considers us a leading enterprise. Hong Kong is the last stop leading to international trade. This is something Foshan cannot do; everything has to pass through Hong Kong. We must seize this opportunity and step up digitalisation. When Hong Kong, being the international trade hub, becomes the strongest in digitalisation, security is, of course, essential. Also data, trade data is very sensitive because it contains a lot of information. Thus it is crucial for us to show everyone that Hong Kong is an appropriate place.

We are a part of the Belt and Road Initiative, our trade connects all sorts of places and we are a leader in trades. Our nation supports (our initiatives in this regard). Hong Kong should strive for the leading position in standardisation, not only in the textile and apparel industry but in all sectors with prompt actions.

Mr Oscar LEE: Thank you, Ms Yang. It is now Paul's turn. All three of you mentioned digitalisation: digital finance, digital trade. Paul, you particularly mentioned logistical services with technology. Apart from cyber security, physical security is pertinent to you. If the roads are blocked, your vehicles could not get through and you will not be able to conduct your business. As your business grows since it began in 2013, how do you compare different countries' national security and their relevant legislation? How does that affect your costs?

Mr Paul LOO: As we enter into new markets, we abide by the local laws. While national security law is not our particular concern, many legislations that affect our operations, including laws on privacy and data security, are closely related to national security. To comply with local regulations, we plan ahead for the resources and arrangement needed, ways to handle information and protect privacy. In fact, all the other places and markets we have set foot on have such laws in place.

As many speakers said today, the Hong Kong NSL and BL 23 legislation are reasonable and consistent with the international standards. They are less stringent and are enacted based on actual needs. As regards the costs, everybody can see that, after the enactment of the NSL and Article 23, it is very important for the whole Hong Kong society to advance into prosperity. The relevant investments, particularly human resources development and system upgrade, align with the enterprise's sustainable development and risk management strategies. Investments in this aspect are not (extra) costs but indeed critical to sustainable development of the enterprise.

Mr Oscar LEE: As we already discussed, the keywords of this session lies in “bottom line” and the “new foundation” for development. May you share with us what would be the “bottom line” and the “foundation” in your respective field? Eddie please.

Mr Eddie YUE: In terms of finance, there are several main develop opportunities we usually refer to which are the areas that we at the HKMA have been (in the past few years) and will be (in the following few years) focusing on. First is all the Mainland-related financial opportunities, including, for example, the various connect schemes, whether you are referring to Bond Connect, Stock Connect or Cross-boundary Wealth Management Connect Scheme. There are still a lot of rooms for deepening and strengthening the connection, which will be our continuous endeavor.

Other examples are the opportunities brought about by the development of the Greater Bay Area or the equally crucial internationalisation of RMB. Hong Kong is the largest offshore RMB trading hub; the more RMB is utilised by the international community, the demand, whether pertaining to liquidity, investment or financing demand will take place here in Hong Kong. These are all opportunities for the Hong Kong financial market or the financial sector. And all these opportunities will attract many financial institutions to Hong Kong. Taking occupants of IFC (a commercial building in Central) as an example, they are not all Mainland enterprises. There are several European and American companies ranging from asset management, general investment companies to intermediary agencies.

While we are supported by the Mainland, we must also engage the world. Apart from garnering opportunities from the Mainland, we must make Hong Kong a real international finance hub. Therefore we stay attuned to all global trends and we get faster and ahead of them.

There are mainly two trends, one is digitalisation. How does fintech utilise the technology of digitalisation to forge ahead and increase efficiency?

As I have already mentioned, seven or eight years ago, we have already begun our Fintech journey. We have come a long way, including the popularly used FPS, which was launched back then. We have several thematic projects which makes us the forerunner in the world and the one having the most mature technology — Central Bank Digital Currency (CBDC). In Project mBridge coordinated by the Bank for International Settlements, the five participants include us, the People's Bank of China, UAE and Thailand as well as the newly joined Saudi Arabia. This multi-CBDC common platform for cross-border payments is not only the foremost in Asia, but a vanguard in the international arena. These projects are extremely important because we are really pushing the name of Hong Kong to the top of global finance. People no longer only think of Hong Kong when considering doing business with the Mainland; whenever they think of fintech, they should also think of Hong Kong.

Another area we are equally advanced is Green Finance; it is obviously a big global trend. We have our own green bond market. We merge technology with going green. We helped our government on the issuance of the tokenised green bond; we offered the first government tokenised green bond in not only Asia but the world. At the same time, you can often find Hong Kong speakers in the international conferences and forums, whether on technology or green finance. This proves that we are not only our nation's financial centre or Asia's financial centre, we are an international financial hub. All these projects, be it opportunities from the Mainland, digitalisation or green finance, are areas of our main focus for further development.

Mr Oscar LEE: A lot of people are worried about the competitiveness of Hong Kong. What are your views?

Mr Eddie YUE: Hong Kong either competes or collaborates with other places. There are different financial centres with various focuses in every region, and the unique advantage of Hong Kong is that while we are part of China, we are also a very important part of the global

financial system. We not only can seize the opportunities of Mainland opening-up, but also make good use of international standards and practices. This very unique status makes Hong Kong the testing ground for Mainland China's new initiatives in liberalising its market or finance. Regarding global investors who are interested in investing in the Mainland (including its capital markets), now approximately over 70% of their investment flows to Mainland China through Hong Kong Stock Connect or Bond Connect. The funds are not going to London or Singapore. Such a competitive edge only exists in Hong Kong.

Although competition is indeed intense, I will not overemphasise competition. In a lot of new areas, like technology and green finance which I just mentioned, we need to cooperate with other financial centres. For example, we would need collaboration on cross-border payment system, or taking forward the transformation of financial system. We need to set a global standard to expand our scale of operation. I can therefore see a competitive yet collaborative relationship between different financial centres.

Mr Oscar LEE: Great. Let me ask Marjorie, what is your next step? What is it in for the manufacturing industry and also in commercial trading? Do you see competition or collaboration?

Ms Marjorie YANG: Why don't I talk about why I am here today? I am supposed to be somewhere else. But then I heard that Eddie is in this panel. I am a big fan of his so I want to be on the same stage with him. Hong Kong needs to be flexible like this. Why am I a fan? Because Hong Kong needs to change and change will bring solutions. I feel that for this period of time, they have really done a lot, going from strength to strength, to change and find solutions. Hong Kong's competitiveness — look at this panel! What good am I? What have I got to offer? I tell you, I have come a long long way to get to be speaking to you today!

In 2020, I had been beaten down to the core; the business of my company dropped 50%. I could no longer sell shirts and (hence I changed my mind to) operate my own brand. All of a sudden, a group of younger employees made it happen. In three years of time, our brand made over one trillion dollars of revenue from scratch out of the Mainland market. 65% of our gain were from TikTok and I didn't even know what TikTok was. Through the team's creativity, although I could not sell shirts, I could sell automated machineries that make shirts. We sell our machines to our past competitors, the manufacturers and factories. We were once competitors but are now collaborating business partners. They sell shirts, we sell them equipment and technological solutions. We are now into (textile dyeing) waste water treatment, selling waterless dyeing technology. This is groundbreaking. But for that calamity (in 2020), we would have been still complacently selling shirts now. This is the winning edge of Hongkongers, our competitiveness stems from our willingness to embrace change, willingness to seek new solutions. Change leads to solutions.

Not to mention him (Paul). He is super capable! I have always been a fan. I didn't know you before, but look at all these orange vans that go about in the streets, there are more and more of them. This is really the spirit of Hong Kong — entrepreneurship. So my answer to you is, look at this panel, this is Hong Kong's competitive edge, our assets.

Mr Oscar LEE: Paul, what is your next new step?

Mr Paul LOO: Personally, I have investments in Hong Kong because I trust HKMA. Hong Kong is really safe. I also bought Marjorie's shirts.

I see a lot of young people here with us today. Let me talk a bit about the opportunities technology innovation companies have in Hong Kong. In here, we have a secure and stable environment, a robust legal system and prosperous financial system. There are plenty of opportunities for companies and businesses in Hong Kong. In the past few years, we talked about how to expand our businesses in the Greater

Bay Area, or the opportunities brought about by the Belt and Road Initiative. We don't just talk about it, but actualise it.

A Hong Kong technology innovation company could become a leading enterprise in the Mainland and turn global because there are a lot of opportunities for Hongkongers. The young people here have a lot of opportunities. We only need to seize those opportunities, dream far, dream high, stay abreast to the many developments in the Mainland or chances to expand overseas, and not limited to the Hong Kong market. Hong Kong is a place where human and capital resources are gathered, information freely flows and legal rules are clear, conducive for business start-ups.

On the other hand, a Hong Kong company can bring to the various different markets in the world a successful Chinese model. Let the others see that companies from China could bring along a win-win situation. That is whilst the company earns profits, the local SMEs flourish and driver partners make a decent living. This also establishes good diplomatic relationships and showing others that we are coming with peace. Young people in Hong Kong enjoy a lot of opportunities on technology innovation. I can foresee that there will be more and more of companies like us in Science and Technology Parks and Cyberport; this entails more and more opportunities.

Mr Oscar LEE: It's almost time. As Paul has encouraged youngsters, perhaps you two can also speak to our youngsters.

Mr Eddie YUE: The most important thing is to widen your horizon because the global economy and environment have been changing constantly and drastically. For example, financial practitioners as well as investors need to also know about the technology and what the opportunities brought by digital transformation are. You need to learn about how to utilise data. You need to know about green finance –what is meant by transformation and what do green and brown represent. You need to know so much more.

Every one of you should at least try to open yourself up, and expand your capacity. Pay attention to anything you are interested in or related to you, so that you can be better adapt to changes. In this ever-changing world with AI's great impact on a lot of industries, we should think about how to change our skill set. I think in recent years, a lot of youngsters think that joining start-ups and working on technology are cool. Actually, finance is quite cool too. Our fintech and green tech are also doing very well. So we are going into universities to extensively promote the finance industry to youngsters.

Mr Oscar LEE: It's interesting. How about Marjorie?

Ms Marjorie YANG: My company was formed at the time of the reform and opening of the Mainland. We didn't have a domestic market back then. I have a good friend in Singapore who was at the time minister of economic development. He said (our business) would be incredible if I had a domestic market. Today, we have a huge domestic market for real. I really hope that you can spend more time to find out more. This market is not easy; if you and I only sit and station in Hong Kong, we would not be able to comprehend. I really hope that our young people could go and explore this enormous consumption market next to us. Leverage our strength and use our unique perspective to look and observe clearly. There are many many business opportunities.

Mr Oscar LEE: Thank you for the insightful sharing. Now I feel safer and know that there are more opportunities in Hong Kong. I'll now hand over to the emcee. Thank you all.



About Lalamove



- Hong Kong homegrown technology startup
 - Founded in 2013, Lalamove is born with a mission to **harness technology** and **empower communities** by making **delivery fast, simple and affordable**.
- Our global footprint
 - We have operations in over **400 cities** across **11 global markets**, and we are still scaling up.



Founded in
Hong Kong

Singapore,
Mainland China
& Thailand

The Philippines

Vietnam

Malaysia &
Indonesia

Brazil &
Mexico

Bangladesh



2013

2014

2016

2017

2018

2019

2022

Technological innovation: the engine of national sustainable growth

- Nature of technology: **fast, far-reaching and no geographical boundaries**
 - Inherently linked to global competitiveness and reputation
 - Stimulate economic growth and productivity
 - Create job opportunities and transform business models
- A matter of **national prosperity and security**: China must protect the integrity of the **end-to-end value chain of technology**
 - Harness advanced technologies like AI, robotics, 5G, EVs, renewable energy
 - Hong Kong has a key role to play and contribute



Safeguarding technology security



Expanding concept of national security in **new-emerging sectors**

Apart from traditional territorial security, there are **new domains** such as space security, AI security, and data security.

Ensure cybersecurity and data security

Safe digital environments are **crucial** for maintaining trust and confidence in the tech sector



Prohibit harmful activities



Safeguarding National Security Ordinance Section 50:

Any actions or activities intended to harm national security via computers or electronic systems without legal authorization are strictly prohibited

Private sector has a role to play

Technology sector is a **key stakeholder** in safeguarding National security



Safeguarding infrastructure security



The security of **public infrastructures** is integral to national security

Protecting public interests and enhancing social resilience against various security threats

Prevent disruption to essential public services

Ensure safe business communication and personal data protection of critical infrastructures such as the airport, container terminals, the road system

Safeguarding National Security Ordinance section 49 introduces new offense to protect public infrastructure (e.g., airports) from malicious damage or sabotage and to combat acts that endanger national security via computers or electronic systems.



Maintain digital integrity and functionality

With data centers and telecommunication serving as the backbone of the digital economy, upholding strict compliance in the digital space is crucial

Safeguarding National Security Ordinance section 50 establishes the offense of conducting acts that endanger national security via computers or electronic systems



National Security: A **bedrock** and a **continuous pursuit**

國安法律論壇
NATIONAL SECURITY
LAW FORUM
2024

香港
HONG KONG
Department of Justice
Legal Services Division

Address evolving threats and challenges

- Deepen the implementation of the National Security Law against emerging cyber attack techniques
- Invest and monitor online and offline security continuously



Hong Kong: Aspiration to be the Nation's technology hub

- What should we do?
 - Internationalise
 - Trust, trust, trust!
 - Ensure a vibrant ecosystem that attracts talents, encourages innovations, and facilitates investment



Panel Session 4: Chat with SJ



Moderator

Ms Astrid CHAN Tsz-ching

Professional Emcee, Actress, Corporate Trainer



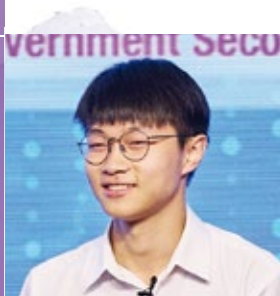
Panelists

The Hon Paul LAM Ting-kwok SBS SC JP

Secretary for Justice,
The Government of the Hong Kong
Special Administrative Region of
the People's Republic of China



Secondary School Student Representative



University Student Representative



Representative of Youth Uniformed Group Leaders Forum





In the first part of this session, the audience at the venue was invited to respond to questions on national security through a QR code. As the picture shows, members of the audience were actively responding to the question through their mobile phones.



The SJ and the moderator Ms Astrid Chan shared their views with regard to the questions.

With regard to the first thing coming to mind when speaking of national security, most (80%) of the audience opted for “legal provisions”. The SJ considered this option reasonable, because the protection of national security requires specifications on rights and duties, and the law is an appropriate tool for such purpose. Further, the

law is express. Its implementation is free from the arbitrary influence of particular government officials, and the law treats all enterprises and individuals equally.



In the second part of the session, a university student, a secondary school student and a representative of Youth Uniformed Group Leaders Forum were invited to explore topics on national security with the SJ and the moderator. In this picture, the SJ and the three youth speakers wrote the keyword they first think of with regard to the question and shared about their underlying thoughts.

In this picture, the question asked was _____

What is the key to the effective implementation of national security laws?

The SJ wrote “self-awareness”. The young speakers respectively wrote “education”, “national identity” and “public awareness”.



After the session, the young speakers took a selfie with the SJ and the moderator.



Closing Remarks



The Hon CHEUNG Kwok-kwan SBS JP

Deputy Secretary for Justice,
The Government of the Hong Kong Special Administrative Region of
the People's Republic of China



Ladies and gentlemen, friends as well as Astrid (Ms Astrid Chan Tsz-ching, Moderator of Panel Session 4),

Good afternoon, everyone! Without our noticing it, today's National Security Legal Forum has come to an end. The Forum today can be said as a star-studded event. Apart from the Chief Executive, Heads of the Central People's Government (CPG) offices in Hong Kong – Mr Zheng Yanxiong, Mr. Dong Jingwei and Mr Cui Jianchun – and the Secretary for Justice the Hon Paul Lam Ting-kwok who delivered the Opening Remarks for us, we have Mr Nong Rong and Mr Zhang Yong who gave us keynote speeches. We also have the Hon Carmen Kan Wai-mun and Dr Hon Hoey Simon Lee who are both Legislative Council Members as well as Mr Oscar Lee hosting the thematic discussion panel sessions for us, discussing respectively with a number of prominent guests important issues such as the implementation and

jurisprudential development of the Hong Kong National Security Law (HKNSL), the features and advantages of the “dual legislation and dual enforcement mechanism”, and how the laws of the Hong Kong Special Administrative Region (HKSAR) on safeguarding national security create a safer and more stable environment for the financial sector, the business sector and so on. Towards the end, of course we had the interactive exchange between the Secretary for Justice and some young folks, which explored for us the roles that the younger generation can play on such an important issue as safeguarding national security.

Implementation and Jurisprudential Development of the HKNSL

Through the implementation of the HKNSL in these four years, Hong Kong courts have accumulated a relatively mature body of judicial precedents for national security cases. Mr William Tam Yiu-ho SC, Mr Jonathan Chang SC and Dr Thomas So who took part in the discussion on the implementation and jurisprudence development of the HKNSL as panelists today have led us to review the major HKNSL cases as well as the Interpretation by the Standing Committee of the National People’s Congress of Article 14 and Article 47 of the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region.

Through discussing on these cases, it can be seen that the HKNSL provisions are clear, explicitly listing four prescribed categories of offences endangering national security; the elements constituting the relevant offences, penalties, mitigating factors, and other consequences for the commission of the relevant offences are also clearly stipulated in Chapter III of the HKNSL. The arrangements for bail and a trial without a jury under the HKNSL are similar to those in other jurisdictions, and do not deprive the defendant of the right to a fair trial, or undermine the courts’ independent exercise of the judicial power.

Furthermore, these cases also established that the judiciary must accept the Chief Executive’s certification issued under Article 47 of the

HKNSL certifying whether an act involves national security risks; it can also be seen that courts have given considerable deference to the executive's assessment on the necessity and effectiveness of measures taken to address national security risks. This is due to the fact that constitutionally, the courts and the executive authorities have different functions with each having its own role to play; and institutionally, the executive authorities, with the necessary experience, expertise, resources and access to information and intelligence, are best placed to assess issues relating to national security. In fact, this is also the principle established in other common law jurisdictions.

“Dual Legislation and Dual Enforcement Mechanism”

The Safeguarding National Security Ordinance (“SNSO”), which came into effect earlier on, has improved the laws of the HKSAR on safeguarding national security. The HKNSL and the SNSO were respectively enacted at the state level and the HKSAR level. Professor Han Dayuan, Professor Albert Chen Hung-yee, and Professor I Grenville Cross SC have discussed with us how the HKNSL and the SNSO work in tandem in a compatible and complementary manner, so as to give full play to the protection provided by the “dual legislation and dual enforcement mechanism”; they have also made comparisons between some of the key points of the SNSO and the national security laws of other countries.

The Constitution is the fundamental legal basis of the “dual legislation and dual enforcement mechanism”. Pursuant to the Basic Law and the NPC's May 28 Decision, the “dual legislation and dual enforcement mechanism” paradigm creates a framework under which the HKNSL and the SNSO are implemented concurrently, and the Office for Safeguarding National Security of the Central People's Government of the People's Republic of China in the HKSAR and the Committee for Safeguarding National Security of the HKSAR effectively interact with each other. The two sets of legislation converge, communicate effectively, complement each other and apply in parallel to form an organic whole. The “dual legislation” paradigm

provides a legal basis for the implementation of the “dual enforcement” mechanism, while the “dual enforcement mechanism” guarantees the effective enforcement and implementation of the “dual legislation”. Together, they constitute the integral parts of the legal system and enforcement mechanisms for the HKSAR to safeguard national security.

In practical application, the HKNSL and the SNSO indeed function in a compatible and complementary manner. Let’s take the statutory provisions on seditious offences, protection of State secrets, countering external interference and anti-terrorism as examples. The HKNSL has already provided for offences against certain similar acts and activities while the SNSO has further refined the relevant offences and provided a more comprehensive regulatory regime. The specific details on enforcement are also supplemented by the SNSO; for example, various measures may be taken against absconders and restrictions are placed on early release of prisoners convicted of offences endangering national security. All these illustrate how the HKNSL and the SNSO complement each other, integrating with Hong Kong’s existing legal framework to establish a robust mechanism for safeguarding national security and ensuring comprehensive safeguard for national security in all aspects.

During the panel session, national security laws of the UK, the US, Australia and Canada were also discussed, which fully demonstrated that all countries regard the safeguarding of national security as a matter of top priority. The US and the Western countries have long established comprehensive legal systems for safeguarding national security, which cover not only traditional national security fields, but also non-traditional national security domains such as economy – particularly foreign direct investment reviews – finance, technology, information and so on; they also evolve continually and frequently in response to the prevailing circumstances and often have extraterritorial effect. It can be seen that the SNSO of the HKSAR is fully in line with the international standards.

Facilitating high-quality development

In addition, I must mention that today's symposium also features several prominent leaders from various professional sectors: Mr Eddie Yue Wai-man, Ms Marjorie Yang Mun-tak, and Mr Paul Loo Kar-pui. Today, we are not only exploring national security laws from a legal perspective, but also through the expertise of our distinguished guests, gaining insights from the financial and business perspectives into the importance of national security laws for the development of various industries. We understand that the HKSAR's legal mechanism for safeguarding national security can effectively reduce the risk of attacks on critical public infrastructure such as the Central Clearing And Settlement System in the financial sector, and effectively safeguard the status of Hong Kong as an international financial centre. At the same time, the national security laws explicitly protect freedom of the press, striking a balance between freedom of the press and the need for national security, so that Hong Kong can create a more stable environment for different sectors; protect the legitimate rights and interests of both Hong Kong and foreign investors; facilitate the HKSAR's integration into China's overall development strategy; and promote high-quality sustainable development of Hong Kong.

Safeguarding national security: roles of the younger generation

Another highlight of today's National Security Legal Forum is the interactive session "Chat with SJ" which took place just now. The majority of the speakers in this session are truly "lads". Besides the interaction with the audience, there were also representatives from secondary school students, university students and youth uniformed groups of disciplined and auxiliary services who openly shared their thoughts with the Secretary for Justice. I am particularly impressed by the sharing of the young people today: they were particularly down-to-earth and shared their thoughts on national security from their own life experiences. Not only had they demonstrated how national security is intertwined with our daily lives, but they had also shared

what role each and every one of us, especially the younger generation, can play in safeguarding national security – which is, by continuous deepening our correct understanding of national security and by candidly sharing it with our peers, we can influence people around us to contribute to safeguarding national security.

Conclusion

Last but not least, I would like to thank the Hong Kong And Macao Work Office of the CPC Central Committee and the Hong Kong And Macao Affairs Office Of The State Council and various CPG offices in Hong Kong for their support, as well as the speakers, distinguished guests and friends for their active participation, which have contributed to the immense success of the Forum. In each and every panel sessions of today's Forum, speakers engaged in in-depth discussions from different perspectives on topics related to national security laws. I would like to express my gratitude for your penetrating insights and wisdom. Your sharing greatly benefited all of us. Thank you.















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