

No Point Postponing

By David Lan (25-11-2002)

On September 24, the Hong Kong SAR government published a consultation paper, seeking public views on proposals to implement Article 23 of the Basic Law. So far the public have been zealous in expressing their views either supporting or disagreeing with the government's legislative proposal while the media have also given very prominent coverage to this matter.

Some members of the community tend to look at the subject from a rather narrow and unbalanced viewpoint, hence painting an overly pessimistic picture of the implementation of Article 23, the negative views expressed include:

1. Enactment of such laws would destroy the "One Country, Two Systems" precept because the consultation paper covers a battle front that is far too wide for Hong Kong;
2. Freedom of expression, freedom of press, human rights and civic rights currently enjoyed by the Hong Kong people will be seriously affected;
3. Powers given to the police are far too broad;
4. The legislative proposals should be shelved indefinitely

Over the years, there have been numerous doomsday prophecies whenever controversial issues concerning Hong Kong were discussed, whether before, during or after the 1997 handover. When the late State leader Deng Xiaoping said in the mid-1980s that the People's Liberation Army (PLA) would be stationed in Hong Kong after the return of sovereignty, some predicted the decision would mean the end of "One Country, Two Systems." They also envisaged the PLA marching along the main streets with machine guns, tracking down dissidents and causing distress to frightened Hong Kong People.

But look at what has really happened. True, the PLA are today stationed here in defence of Hong Kong, and their headquarters also stand at the former Tamar site in the heart of Hong Kong's banking and business district. However, the PLA have won the high respect of the Hong Kong community because they keep a low profile and strictly adhere to the Basic Law and laws of Hong Kong.

Shortly before the return of Hong Kong's sovereignty, an international magazine forecast the death of Hong Kong. Some Hong Kong people even went as far as saying

that they were prepared to become martyrs by spreading the illusion that they would not be allowed to return to Hong Kong if they left the territory after 1997.

Such negative outlooks managed to attract believers at that time both locally and overseas. But five years after reunification, all such suggestions of the imminent erosion of Hong Kong's civil liberties and freedoms have been disproven.

Periodic reports published by the European commission, the British Government, the US Department of State, and the US House of Representatives since 1997 all indicate that the principle of "One Country, Two Systems" has been smoothly and successfully implemented and the rights and freedoms of the Hong Kong people are well protected.

If we look around the world, we notice that every country has to enact laws to protect its sovereignty, territorial integrity and national security. A comparative study of similar offences in other jurisdictions indicates that the most severe penalties imposed for the offences of treason, secession or spying range from life imprisonment in the United Kingdom and Canada to the death penalty in the United States, Singapore and Japan.

In line with the stipulations in the Basic Law, a high degree of autonomy is guaranteed in the HKSAR. The socialist system is not practiced in Hong Kong nor are national laws, including laws on national security, promulgated in Hong Kong. Now, five years after reunification, it is the appropriate time for the HKSAR to implement the Basic Law in full by legislating Article 23.

Hong Kong should feel proud for being entrusted with the duty to enact Laws on its own for Article 23, as this reflects a high degree of trust and respect on the part of the central people's government towards the HKSAR. It would be unthinkable for the provincial or state governments of New York, London or Paris to be entrusted by their respective central government to enact laws to protect national security, sovereignty and territorial integrity.

According to many lawyers, existing laws in Hong Kong already cover most of the offences referred to in Article 23. However, some parts of the existing laws are outdated and do not reflect the new constitutional order, eg the existing law on treason largely protects "Her Majesty the Queen" or "The Crown." Therefore, most of the proposals in the consultation paper shall be modernized and their scope narrowed to the effect that in most cases, the elements of violence or threat of violence or grave

criminal behaviour is required to constitute an offence.

There is no point in postponing indefinitely the enactment of Article 23 as some have suggested. It is unnecessary. If members of the public have concerns or feel uncomfortable with any part of the consultation paper, they may voice their opinions to the Security Bureau.

If a consensus can be reached after it has assessed the public's views, the Security Bureau may then introduce a bill to the Legislative Council. By then the normal legislative procedure will have begun and LegCo will have full opportunity to scrutinize the bill thoroughly, as well as invite members of the public to give their opinions. Legislators can also propose amendments to the bill at that stage.

While I support the implementation of Article 23, I wish to point out that Hong Kong is a world city of Asia, an international financial and trading center, as well as an open and free society, where various freedoms are protected by Article 27 of the Basic Law.

The HKSAR government should, therefore, exercise due diligence in protecting Hong Kong's international reputation by ensuring that the new legislation complies with The International Covenant on Civic & Political Rights and the International Covenant on Economic, Social & Culture Rights as stipulated in Article 39 of the Basic Law.

One final point of advice is that the HKSAR government, when implementing Article 23, should ensure that the overall approach and general spirit of the legislation is as broad and as liberal as possible. But when it comes to the scope of each offence, the approach should be as narrow, specific and precise as possible so that there is no room for the slightest ambiguity or uncertainty.

David Lan is deputy convener of the New Century Forum and a retired HKSAR government official who served as Secretary for Home Affairs from 1997-2000

Originally published on 25 November 2002, China Daily (Hong Kong Edition)