

《香港國家安全法》理論與實踐學術研討會報告  
**Report on “The National Security Law of  
Hong Kong: Theoretical and Practical Perspectives” International  
Online Symposium**

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## 導言

2020年9月11日，由香港城市大學法律學院屬下的公法與人權論壇和中國法與比較法研究中心，以及中國人民大學“一國兩制”法律研究所聯合主辦的“《香港國家安全法》理論與實踐學術研討會”在網上成功舉行。

二十六位來自中國內地、香港以及加拿大的法律專家學者和執業律師獲邀在本次會議上就有關《中華人民共和國香港特別行政區維護國家安全法》(以下簡稱“《香港國安法》”)的問題發言，吸引了超過70名人士旁聽這次網上會議。

這是《香港國安法》實施以來在內地與香港兩地之間舉辦的首次大規模、專題性的學術研討會。

## 開幕

會議首先由香港城市大學法律學院院長及商業法講座教授陳清漢、中國人民大學法學院教授兼全國人大常委會香港基本法委員會委員韓大元，及香港城市大學法律學院教授兼公法與人權論壇主任朱國斌共同致開幕辭。

陳清漢教授首先感謝各位專家學者的出席，並指出由於《香港國安法》的實施引起高度廣泛關注，因此該法應當合比例地、在必要

## Introduction

The Public Law and Human Rights Forum (CPLR) and the Centre for Chinese and Comparative Law (RCCL) of the School of Law of City University of Hong Kong (CityU), together with the “One Country Two Systems” Law Institute of the Renmin University of China (RUC), have successfully convened a large scale international academic conference entitled “The National Security Law of Hong Kong: Theoretical and Practical Perspectives” on 11 September 2020.

Twenty-six legal academics and legal practitioners from Hong Kong, mainland China and Canada gathered on Zoom to discuss their views on a range of topics surrounding the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (hereafter “National Security Law” or “NSL”), which attracted over 70 audiences joining this online symposium.

This was the first large scale academic conference on the NSL held in mainland China and Hong Kong since it came into force.

## Opening Speech

The opening speech was delivered by the Dean and Chair Professor of Commercial Law of CityU School of Law Professor Tan Cheng Han, Professor of RUC Law School and Committee Member for the Basic Law of the HKSAR under the Standing Committee of the National People’s Congress (hereafter “NPCSC”) Professor Han Dayuan, and Professor and Director of CPLR Professor Zhu Guobin.

First of all, Professor Tan thanked all the invited speakers for participating in the online symposium. He pointed out that since the implementation of the NSL has aroused

時才使用，從而贏取社會對其的信心。

韓大元教授指出，自美國發生“911”事件以來，國家安全成為各國普遍關注的問題，各國都在努力平衡安全與自由，而自由與法治仍是最終的追求。但是當保護國家安全和保護自由的權利兩者出現衝突時，如何平衡、如何提供法律程序上有效的保障，仍是法學界共同面對的難題。在《香港國安法》實施過程中，大家有可能對該法的一些規定有不同的認識與看法，這是正常的。但我們需要逐步形成基於法律文本的基本共識，遵循法治原則，包括保障《中華人民共和國香港特別行政區基本法》(以下簡稱“《基本法》”)規定的言論自由、學術自由以及司法獨立原則。這些是法治社會的珍貴價值，在實施《香港國安法》的過程中，應倍加珍惜這些價值。

朱國斌教授表示，《香港國安法》的頒布是“憲制時刻”，對香港有深遠影響。朱教授感到非常驕傲的是，這次是《香港國安法》實施以來第一次組織如此大規模的會議，顯示了大家對國安法問題的強烈興趣，但研究才剛剛開始。他特別感謝各位講者及其他旁聽者參與本次會議。

整個會議分為以下六個環節：

significant public concerns, the law should be applied proportionately and cautiously and only when it is really necessary, so as to win public trust and confidence in it.

Professor Han stated that national security has become a core concern for many countries since the “911” attacks in the United States; they have been working hard to balance national security and freedom, and to pursue freedom and the rule of law. However, academics from all over the world have been facing the same critical question: When there is a conflict between national security protection and the rights to freedom, how to balance between the two, and what are the effective legal measures to deal with such situation? While the NSL has no doubt given rise to extensive debate and concerns worldwide, there is a need to gradually reach a consensus on the text of the law and closely observe the rule of law principle, including the very fundamental elements of the rule of law, including: the right to freedom of expression, academic freedom, as well as the independence of the judiciary as guaranteed by the Basic Law. These valuable elements should be treasured while implementing the NSL.

Professor Zhu described the promulgation of the NSL as a “constitutional moment” which would have far-reaching implications on Hong Kong. He was proud that this academic symposium was the one of the largest scale since the enactment of the NSL, which showed that issues relating to the NSL have aroused great interest and concern to many, and research and study on the relevant issues have just begun. He thanked all speakers and participants for their participation in this symposium.

The symposium was comprised of the following six discussion panels:

## 第一節：《香港國安法》對“一國兩制”政策及香港特區的政治及管治的影響

1. 第一節的主題是，《香港國安法》對“一國兩制”政策及香港特區的政治及管治的影響。本節由中國人民大學法學院韓大元教授主持。
2. 香港大學法律學院陳弘毅教授作了題為《“一國兩制”在香港的實踐和國家安全問題》的報告。陳教授認為，“一國兩制”實施的確出現了問題，偏離了原來的預設軌道。香港曾經歷過經濟低迷；也有過不安定（尤其是佔領中環運動、反對逃犯條例修訂運動（以下簡稱“反修例運動”）期間），根本原因在於市民對特區政府的表現不滿，去年以來的社會運動是很多問題所積累下的情緒的爆發。反修例運動也反映了香港市民對於民主的渴求。但這些要求和中央對香港民主定下的界限之間有着矛盾。
3. 不過，陳教授認為《香港國安法》並不一定能解決上述問題。反之，隨着《香港國安法》的實施將會帶來的難題有：法院如何處理國安法案件？如何將人權標準運用於國安案件？

## Panel 1: Implications of the Hong Kong National Security Law on the “One Country, Two Systems” Policy and HKSAR’s Politics and Governance

1. Our conference began with the discussion of the implication of the NSL on the “One Country, Two Systems” policy and the politics and governance of Hong Kong. This panel was moderated by Professor Han Dayuan.
2. As the first speaker of our first panel, Professor Albert Chen Hung-ye from the Faculty of Law of the University of Hong Kong believed that the implementation of the “One Country, Two Systems” policy has somewhat deviated from its originally intended trajectory. Noting the economic and political instability that the city had been enduring in recent years (especially the turmoil during the Occupy Central Movement and the Anti-Extradition Law Movement), the fundamental cause of Hong Kong’s instability was the citizens of Hong Kong’s dissatisfaction of the performance of the HKSAR Government, and the continual social movements since last year were an emotional outlet for the citizens of Hong Kong to vent their anger and frustration. In addition, the Anti-Extradition Law Movement reflected the fundamental contradiction between the desires of the Hong Kong people for democracy and the Central Government’s bottom line for Hong Kong’s democracy.
3. Professor Chen indicated that the NSL may not be a solution to all the aforementioned policy problems; on the contrary, some other new issues may have emerged as a result of the implementation of the NSL, such as how would the HKSAR courts handle cases involving the NSL and how would international human rights standards be applied in such kind of cases?

4. 英屬哥倫比亞大學 Peter Allard 法學院程潔副教授的報告題目是：《國家安全法之下的香港管治：在集體身份認同危機中的過度規範？》程副教授提出，法律背後的正當性不是法律本身可以提供的，身份認同很重要。國安法不止是懲罰犯罪。我們需要了解，之前在香港有集體身份認同的危機，以至於出現了分離主義和一些對抗與衝突。那麼如何回應？國安法是一種辦法，但不夠，也許還需要其他方法來補足。

5. 對《香港國安法》的關注，以前大家關注其“合法性”，包括立法程序，也包括實體內容——如怎樣調和權利；通過之後，我們應關注這部法律帶來的結構性影響。在國安法之前，香港特區內部有制衡，與中央之間也存在反制的機制或手段，如之前關於《基本法》的解釋問題。《香港國安法》對這些有所改變，如《香港國安法》解釋權、香港特別行政區維護國家安全委員會(以下簡稱“國安委”)免於司法覆核、指定法官等，這些對香港既有憲制結構的改變是巨大的。程副教授認為《香港國安法》帶來的影響主要有：第一，特區行政機關會更依從於中央的指示；第二，立法會的選舉會因為很多人因《香港國安法》而無法參選、無法當選，而被改變；第三，法院會更多尊重中央的意見。未來，中央在香港的存在感會越來越高；但是《香

4. Our second speaker, Dr. Cheng Jie, Associate Professor of Peter Allard School of Law at the University of British Columbia, presented at the conference her research titled “Governing Hong Kong under the National Security Law: Overprescription in the Collective Identity Crisis?”. She highlighted the importance of understanding the crisis of collective identity behind the social and political instability that Hong Kong had experienced, which brought out confrontations and calls for separatism. She believed that the NSL is more than a tool to punish crime. While it may provide a temporary halt to a series of conflicts, it may not be enough to address the series of underlying issues in the city, and more may need to be done.

5. During the process of enacting the NSL, people focused on discussing its legality, including the legislative process and its substantive contents such as how to balance the safeguarding of national security and the protection of rights and freedom; after the NSL was promulgated, we should focus on the structural impacts that this law will bring forth. Even before the promulgation of the NSL, there are already check-and balance mechanisms within the HKSAR and between HKSAR and the Central Government (such as the arrangement with regard to the power to interpret the Basic Law) in place. However, the promulgation of the NSL may lead to certain changes to these mechanisms, such as the power to interpret the NSL, the enjoyment of the Committee for Safeguarding National Security (hereafter “NS Committee”) of immunity from judicial review, as well as the appointment of designated judges to adjudicate cases relating to the NSL. All these changes would lead to significant change to Hong Kong’s existing constitutional structure. Dr. Cheng listed three major impacts that the NSL will impose on the constitutional structure of the HKSAR and its relationship with the Central Government. Firstly, she predicted that the HKSAR Government will

港國安法》頒布的時候並沒有提供管道讓港人更多參與政治，因此身份認同危機不能解決，還會繼續。

6. 香港大學專業進修學院常務副院長（文學及科學）盧兆興教授作了題為《〈香港國安法〉及其對香港政治架構和管治的影響》的報告。盧教授認為，《香港國安法》對香港的政治架構和管治產生了深刻影響。從機構上來說，國安法在港設立了國安委等本地機構，也設立了中央人民政府駐香港特別行政區維護國家安全公署（以下簡稱“國安公署”），這體現了在國安問題上香港與中央的雙重管治結構。
7. 香港城市大學法律學院朱國斌教授作了題為《〈香港國家安全法〉對香港法律制度的影響：初步分析評估》的報告。他認為，《香港國安法》對管治會帶來很多影響，超出人們預期，而且該法的很多條文亦存在很多爭議，如第 29、35、38、55、62、65 條等。

become more compliant with the instructions of the Central Government. Secondly, the elections of the Legislative Council will change by nature since more people may be deemed as not eligible for election due to the NSL. Thirdly, Hong Kong courts will respect the opinions of the Central Government more than before. Similarly, the presence of the Central Government is expected to increase in Hong Kong. However, since the NSL does little in improving the channels of political participation for the people of Hong Kong, the identity crisis is unlikely to be resolved in the near future.

6. Our third speaker, Professor Sonny Lo, Deputy Director (Arts and Sciences) at the School of Professional and Continuing Education (SPACE) of the University of Hong Kong, gave a report on “The National Security Law and Its Impacts on Hong Kong’s Political Structure and Governance.” He believed that the NSL has a profound impact on Hong Kong’s political structure and governance. From the institutional perspective, the establishment of the NS Committee and the Office for Safeguarding National Security of the Central People’s Government in the HKSAR (hereafter “CPG NS Office”) according to the NSL reflects the dual governance of the HKSAR Government and the Central Government on national security matters.
7. Our fourth speaker, Professor Zhu Guobin presented his report titled “The Impact of the National Security Law of Hong Kong on Hong Kong’s Legal System: A Preliminary Analysis and Assessment”. He believed that the NSL will definitely bring numerous impacts to Hong Kong’s governance which are out of expectation of most of the people in Hong Kong. He also pointed out that a number of provisions in the NSL, such as Articles 29, 35, 38, 55, 62 and 65, are indeed controversial.

8. 另外，朱教授指出，從憲法角度評價《香港國安法》對於現行憲法制度與人權法的衝擊，有以下問題：第一，《香港國安法》與《基本法》是什麼關係？；第二，國安公署不受特區管轄，是否意味着國安問題存在兩套管治系統？《香港國安法》是否改寫了中央與特區關係？；第三，內地法的適用與本地法律怎麼協調？；第四，港人的權利如何保障？《香港國安法》如何與國際人權公約協調？；第五，《香港國安法》第 62 條是否賦予該法凌駕性？；第六，本地制度如何吸納《香港國安法》。
  9. 從刑法角度看，朱教授認為有關問題包括：第一，國安罪行與香港刑法的協調，本地刑法需要修改嗎？；第二，《香港國安法》當中使用了一些內地法律概念，那麼香港法院應參考內地刑法理論嗎？對普通法有何影響？；第三，對本地刑事程序的影響，包括本地律師制度等；第四，如個別案件根據《香港國安法》在內地審判，如何保障公正審判？
  10. 朱教授亦認為《香港國安法》對香港司法制度亦構成一些影響：第一，“指定法官”衝擊司法獨立嗎？；第二，國安委免於司法覆核，這造成了法外之地？那麼，這是“國家行為”嗎？；第三，國安公署的行為，不受特區管轄，基於
8. From the constitutional law perspective, Professor Zhu listed out several questions relating to the impacts of the NSL on the existing constitutional system and human rights law: 1) What is the relationship between the Basic law and the NSL?; 2) Given the CPG NS Office is not accountable to the HKSAR Government, whether a system of dual governance on national security matters will be adopted in Hong Kong? Will the NSL re-define the relationship between the Central Government and the HKSAR Government?; 3) How to coordinate the mainland laws that are applicable to the HKSAR with the local legislation of Hong Kong?; 4) How would the human rights of the Hong Kong people be protected and how would the NSL coordinate with the international human rights conventions?; 5) Does Article 62 of the NSL has overriding power?; 6) How could the NSL be absorbed in Hong Kong's local legal system?
  9. From the perspective of criminal law, Professor Zhu pointed out that the relevant issues included: 1) Is it necessary to amend Hong Kong's criminal law so as to make it coordinate with the national security offences under the NSL?; 2) Given mainland legal concepts were adopted in the NSL, should Hong Kong courts refer to Chinese criminal law theories when adjudicating cases involving NSL, and what are the relevant impacts on Hong Kong's common law system?; 3) What are the impacts on Hong Kong's existing criminal procedure, including Hong Kong's lawyers system?; 4) How to ensure a fair trial in national security cases being tried in mainland China?
  10. Lastly, Professor Zhu pointed out the impacts of the NSL on Hong Kong's judicial system, for example: 1) Will designating specific judges to handle cases relating to the NSL affect judicial independence in Hong Kong?; 2) Given the acts of the NS Committee are not subject to judicial review in Hong Kong, will

什麼理由？從《基本法》角度如何解讀？；第四，《香港國安法》第 65 條規定該法的解釋權屬於全國人大常委會，那麼法院在適用該法時不能解釋有關條文嗎？

11. 香港大學專業進修學院人文及法律學院 Danny GITTINGS 副教授作了題為《平行權力還是保留權力：〈香港國安法〉與香港特區高度自治的新模式》的報告。他提出，《基本法》第 23 條使用了“自行”（on its own）立法的表述——《基本法》上還有更多條文採用了“自行”的表述，這是從《中英聯合聲明》直接借用過來的用語。這些授權，意味着中央將權力給了香港，並且僅有香港自己來行使這些權力。但不論過去怎麼理解這個用語，國安法時代，都會有新的理解了，需要以新的模式（mode）來理解香港的高度自治。

12. Gittings 副教授指第一個模式，可以稱為“例外權力模式”（exceptional power mode），即當規定有註明“自行”時，就是特區自己行使權力；如果特區不能行使，則中央保留了相應權力。他認為《香港國安法》可以用這個角度理解，但人大決定沒有體現這個角度。第二個模式，可稱為“平行權力模式”（parallel

Hong Kong become a lawless place as far as the NS Committee is concerned?; 3) Why are acts of the CPG NS Office not subject to the jurisdiction of Hong Kong? How to explain this arrangement under the Basic Law?; 4) The power to interpret Article 65 of the NSL belongs to the NPCSC, will that mean Hong Kong courts do not have the power to interpret provisions of the NSL when adjudicating cases?

11. Our fifth speaker, Mr. Danny Gittings, Associate Head and Associate Professor of the College of Humanities and Law of the School of Professional and Continuing Education (SPACE) of the University of Hong Kong, submitted a report titled “Parallel or Reserved Powers? The National Security Law and a New Model for the HKSAR’s ‘High Degree of Autonomy’”. He pointed out that that the phrase “on its own” as used in Article 23 of the Basic Law actually was directly borrowed from the Sino-British Joint Declaration, and has been inferred as a delegation of power by the Central Government to the HKSAR which can only be exercised by the HKSAR Government on its own. However, in the new era of the NSL, a new mode will be needed to understand and interpret Hong Kong’s high degree of autonomy.

12. According to Mr. Gittings, two paradigms can be used to explain the new era. The first one is the “exceptional power mode”, that is, where the stipulation “on its own” is used, the HKSAR Government is empowered to exercise the relevant power on its own; however, when it is unable to do so, the Central Government will retain the corresponding power. Mr. Gittings was of the opinion that, while such a perspective could be adopted to interpret the NSL, it was not revealed in the Decision of the National People’s Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special



power mode )，即中央隨時可以行使原授予特區行使的權力。有很多例子可以證明這種模式的存在，例如關於《基本法》解釋權方面就存在平行權力配置(例如人大常委會可以解釋任何《基本法》條文)。國務院在 2014 年《白皮書》其實也顯示，特區並無任何獨佔的權力(不能排除中央行使)。

13. 廈門大學法學院魏磊杰副教授作了題為《“港版國安法”與一國兩制的動態調適》的報告。他認為，不再等待香港自行立法，而是由北京直接出手，並非是中央一開始的本意。但在中美進入全面對抗的國際變局下，香港日益成為國家安全的重大隱患，同時也威脅到“一國兩制”的行穩致遠，這讓全國人大主動訂立“港版國安法”勢在必行。國家安全是國家事權，因此中央可以立法。
14. 魏副教授認為《基本法》第 23 條規定特區“應自行立法”中的“應”字表明第 23 條立法是特區的一種憲制責任，而不是特區獨享的一種憲制權力。而且該條文中並無任何字眼規定國家安全的立法只能由特區自行解決，不能通過引入內地《國安法》解決。因此，從“文本解釋”、“立法目的解釋”、“舉重以明輕解釋”這三個方面綜合研判，“港版國安法”都是在“一國兩制”的框架之

Administrative Region to Safeguard National Security (hereafter “NPC Decision”). The second paradigm proposed can be understood as the “parallel power mode”, that is, there is no restriction as to the circumstances where the Central Government can exercise the powers it delegated to the HKSAR. Such kind of parallel power allocation is applied in the power allocation with regard to the interpretation of the Basic Law. For instance, the NPCSC has the power to interpret any provisions in the Basic Law. In fact, the 2014 White Paper of the State Council also stated that, the HKSAR Government does not enjoy any exclusive power. in the understanding of Hong Kong’s current governance model.

13. Our sixth and final speaker of the first panel, Dr. Wei Leijie, Associate Professor of the School of Law, Xiamen University, presented a report titled “The Hong Kong National Security Law and Dynamic Adjustment of “One Country, Two Systems”. He believed that the Central Government did not originally intend to legislate on the issue of national security for Hong Kong, but was rather convinced of the need to do so under the confrontation of the US-China trade war which makes Hong Kong become an increasing threat to China’s national security and the stability of the “One Country, Two Systems” policy. Since national security is a state issue, the jurisdiction of such issue falls under the Central Government.
14. According to Article 23 of the Basic Law, the HKSAR Government “shall enact laws on its own” for the Region’s security. Dr. Wei was of the opinion that this is a constitutional responsibility rather than a constitutional power given to the HKSAR. There is no stipulation that the enactment of Hong Kong’s national security law can only be done by the HKSAR itself, and cannot be passed the national legislature. Dr. Wei suggested that from the three dimensions of “textual interpretation”, “legislative purpose

內，絕非所謂的“改土歸流”並最終導向“一國一制”的制度工具。

## 第二節：全國性法律在香港的適用、《香港國安法》與《香港基本法》的關係

15. 研討會第二節的主題是，全國性法律在香港的適用、《香港國安法》與《香港基本法》的關係。本節主持人是中國政法大學法學院院長焦洪昌教授。
16. 首先，香港城市大學法律學院王書成副教授作了題為《憲法謙抑主義與國安法在香港的適用》的報告。王副教授表示，《香港國安法》的影響很大，在國際上引起的反彈亦很大。現在問題是，該如何實施？實施的前提是法治，也就是司法獨立，是否能夠允許法官按照既有的普通法傳統來處理，發展出適合於香港本地的國家安全普通法？所謂“謙抑主義”就是這樣。能否相信法官的智慧？新加坡的法官也證明了他們有智慧在威權體制之下處理好具爭議性的案件。王副教授呼籲，大家都應該珍視香港的法治，珍視香港。
17. 接下來，來自香港政策研究所的高級研究員林致茵博士作了題為《探討全國性法律在香港適用的問題：以〈香港國安法〉為例》的報告。林博士認為，在

interpretation” and “*argumentum a maiori ad minus*”, the NSL was enacted within the framework of “One Country, Two Systems” rather than something which was enacted as a tool to change “One Country, Two Systems” into “One Country, One Systems”.

## Panel 2: The Application of National Laws in the HKSAR and the Relationship between the Hong Kong National Security Law and the Basic Law of the HKSAR

15. The second panel was moderated by Professor Jiao Hongchang, Dean and Professor, School of Law, China University of Political Science and Law.
16. The first speaker of the second panel was Dr. Peter Wang Shucheng, Associate Professor of the School of Law of City University of Hong Kong, who shared his views on “Constitutional Deferentialism and China’s National Security Law in Hong Kong”. He expressed that the premise of the implementation of the NSL is the rule of law and judicial independence, that is, will judges be allowed to base on the principles of the common law to interpret and develop a set of national security law precedents for Hong Kong? Can we trust the legal wisdom of courts and judges? Dr. Wang said judges in Singapore have proven their ability to properly handle contentious cases under an authoritarian regime, hence, this is not impossible for Hong Kong. He urged everyone to treasure Hong Kong and its rule of law.
17. Our next speaker of the panel, Dr. Lam Chi Yan, Senior Researcher of the Hong Kong Policy Research Institute, gave a report titled “Exploring the Application of National Laws in Hong Kong: The Case of Hong Kong National Security Law”. Dr. Lam was of the opinion that the NSL is an exception under the

“一國兩制”之下，《香港國安法》是很例外的。這是一次由中央來為香港立法的先例，如果需要的話，後續還可能有其他法律。她指出有幾個問題需要提出：第一，《基本法》附件三既有的法律怎麼協調？如果中央立法成為習慣，對於本地法律體系的影響是怎樣的？；第二，《基本法》第 18 條確立了兩種全國性法律進入香港的管道：通過附件三納入，以及緊急狀態時直接適用內地法。但是“附件三管道”沒有提供進行納入的實質標準。第三，過去，全國法與《基本法》的衝突不常見，香港也缺乏經驗來處理這個情形。1999 年的“國旗案”避開了這個問題。但如今，衝突會很常見。《香港國安法》引入了內地法律概念，這讓法官面臨解釋的困難。《香港國安法》在香港直接公布實施，這也是第一次，法院沒有遇到過這種情況，會如何處理？第四，如果後續還有其他國安立法，則本地立法空間將會變得越來越狹窄。

18. 林博士建議，可以確立一些機制，令《香港國安法》服從於《基本法》。例如，發展出解釋《香港國安法》的原則，允許香港本地可以修改《香港國安法》等等。根本目的在於，維繫《基本法》的完整性。

“One Country, Two Systems” policy because this was the first time for the Central Government to legislate for Hong Kong. But given such precedent, there is a possibility that similar situations will happen again in future in case of necessity. She highlighted several relevant issues: Firstly, how should the national laws that are already listed in Annex III of the Basic Law be coordinate with the NSL? Secondly, Article 18 of the Basic Law provides two methods for national laws to be extended to Hong Kong, that is having the national laws listed in Annex III of the Basic Law or direct application of the national laws when Hong Kong was declared in a state of emergency. However, no substantive standards were set for national laws to be extended to Hong Kong by way of being listed in Annex III. Thirdly, while Hong Kong lacked sufficient experience in handling conflicts between national laws and the Basic Law and mainland legal concepts were adopted in the NSL, how would Hong Kong judges interpret the NSL in adjudicating cases? In particular, the NSL is the first national law to be directly applied in Hong Kong — a situation which Hong Kong court has never encountered before. Fourthly, if there is going to be more NSL-related national laws enacted by the Central Government for Hong Kong, the room for local legislation on national security matters will become narrower.

18. Dr. Lam suggested that mechanisms can be established to ensure that the NSL is subject to the Basic Law, for instance, developing the principles to interpret the NSL, authorizing Hong Kong to amend the NSL as time passes, etc. The fundamental purpose of such mechanisms would be to maintain the integrity of the Basic Law.

19. 深圳大學法學院葉海波教授的報告題目是：《香港國安法司法適用的一致性解釋原則 — 基於“列入附件三”的法理分析》。葉教授認為，全國性法律列入附件三，不是對《基本法》的修改，只是一個引介機制；列入附件三的行為不構成對《基本法》正文的修改，應該推定列入行為 — 即列入的全國性法律 — 不改變《基本法》正文確立的原則和框架。列入附件三程序導致一種緊張關係：在形式上，列入附件三的全國性法律因本地化程序在形式上有地方性法律的外表；但在內容上，本地化程序不改變該法律的全國性屬性。這個矛盾導致關於《香港國安法》的種種誤解，如認為《香港國安法》抵觸《基本法》、修改了《基本法》，等等。

20. 在《香港國安法》與《基本法》的關係上，應推定《香港國安法》符合《中華人民共和國憲法》(以下簡稱《憲法》)和《基本法》。對於兩法內容上的不一致，要遵循一致性解釋的原則，要按照《基本法》的精神來解釋《香港國安法》，實現兩者和諧一致。這在某種意義上體現了《基本法》窮盡主義，即是以《基本法》中的價值和原則，透過《香港國安法》來實現國家安全和基本權利保障

19. Our third speaker, Professor Ye Haibo of the Law School of Shenzhen University gave a report titled “The Principle of Consistency Interpretation in Judicial Application of the Hong Kong National Security Law — A Legal Analysis of ‘Listed in Annex III to the Basic Law of the HKSAR’”. Professor Ye commented that listing national laws in Annex III of the Basic Law does not constitute an amendment to the Basic Law; instead, it is only an introductory mechanism. Besides, he was of the opinion that listing national laws in Annex III of the Basic Law does not constitute amendment to the text of the Basic Law, and the national laws being listed in Annex III should be presumed as not making any change to the principles and constitutional framework that have been established by the Basic Law. Moreover, Professor Ye further argued that the procedure of listing national laws in Annex III leads to a tense relationship: As far as formality is concerned, given the national laws listed in Annex III have gone through the process of localization before they are applied in Hong Kong, they have the characteristics of local legislation; however, as far as their contents are concerned, the process of localization did not change their nature as national laws. This contradiction has led to various misunderstandings about the NSL, such as misunderstanding that the NSL contradicts with Basic Law or even amends the latter.

20. Additionally, Professor Ye was of the view that the NSL should be presumed as in conformity with the Basic Law and the Constitution of the People’s Republic of China (hereafter “Chinese Constitution”). Regarding the interpretation of NSL, Professor Ye proposed that the principle of consistent interpretation must be followed, the spirits and principles of the Basic Law should be adopted in interpreting the NSL in order to achieve harmony and consistency between the two laws. By doing so, the balancing of safeguarding national security and protection

的平衡，而不是在《基本法》之外另起爐灶。

21. 中國政法大學法學院的姚國建教授作了題為《論〈香港國安法〉的立法依據及其效力》的報告。姚教授認為，《香港國安法》的立法依據，一般考慮程序性依據和實體性依據，程序性問題(立法權)沒有特別爭議，主要看《立法法》、全國人大及其常委會議事規則。實體性的依據是更受關注的，即以何為依據確定《香港國安法》當中的具體內容。《香港國安法》列明多種立法依據的情形並不是罕見的，但需要弄清不同的立法依據分別提供了怎樣的指引。
22. 姚教授認為，《憲法》在宏觀上提供了立法依據，人大決定是根據《憲法》作出，並指明了《憲法》條文，也具體地設定了《香港國安法》應予落實的內容。而《基本法》則為《香港國安法》提供了全方位的依據：《基本法》中的中央與特區關係、特區政權架構、司法原則與制度及人權保障的內容都是《香港國安法》的依據。上述三者從宏觀到微觀地為《香港國安法》提供了正當性和具體內容的指引。

of fundamental rights on the basis of the values and principles of the Basic Law is revealed through the NSL.

21. Our fourth speaker, Professor Yao Guojian of the School of Law of China University of Political Science and Law gave a report titled “On the Legislative Basis of the Hong Kong National Security Law and Its Effect”. Professor Yao pointed out that, the legislative basis of the NSL includes procedural basis and substantive basis. As far as the procedural aspect (that is the power to legislate) is concerned, it is mainly related to the Law on Legislation and the Rules of Procedure for the NPCSC, which does not lead to much controversies. Greater concern is about the substantive basis, that is the basis to formulate the specific contents of the NSL. He was of the opinion that while situation of listing numerous legislative basis in the legislation as with that in the NSL is not rare, we have to make it clear the directions provided by different legislative basis.
22. Professor Yao believed that the Chinese Constitution does provide legislative power on a macro level because the decision of the National People’s Congress (hereafter “NPC”) to legislate for Hong Kong was made in accordance with the Chinese Constitution. On the other hand, the Basic Law has provided all-encompassing basis for the enactment of the NSL because the provisions in the Basic Law which govern the central-local relations, the political structure of the HKSAR, the judicial principles and judicial systems of the HKSAR, as well as the human rights protections in the HKSAR are also the legislative basis, and will also be the implementation guidance, of the NSL. He pointed out that the Chinese Constitution, the NPC Decision and the Basic Law provide propriety and guidance of the substantive contents to the NSL.

23. 香港城市大學法律學院的 Daniel PASCOE 副教授作了題為《國家安全法作為社會主義法律移植？》的報告。他提出，雖然《香港國安法》體現了很多“社會主義法”的特色，包括豁免司法覆核、刑事罪行立法語言模糊、指定臨時法官等，但並沒有引入內地的“行政處罰”或死刑等 20 世紀典型“社會主義法”元素。他指出《香港國安法》是史上第一例將社會主義法律制度的元素移植進一個已經成熟的普通法法律制度。
24. 本節最後一位發言人是中山大學粵港澳發展研究院曹旭東副教授，他的題目是《論港區國安法與基本法的關係與協調》。曹副教授首先指出《香港國安法》對於香港法律體系的影響涉及兩個方面：第一，《香港國安法》與《基本法》的關係；第二，《香港國安法》與本地法的關係。在會議上他僅討論第一個方面。他認為就《香港國安法》與《基本法》的關係而言，需要討論的是：1) 新法與舊法抑或是特別法與一般法的關係是否適用？；2) 全國人大 5 月 28 日的決定與《基本法》之間如何協調？；3) 列入附件三意味着什麼？；4) 如果《香港國安法》與《基本法》存在衝突該怎麼辦？
25. 對於以上問題，曹副教授認為：1) 無論是新法與舊法還是特別法與一般法的關係都不適用。2) 全國人大即使可以再次行使特區制度設計權，也不能拋開《基
23. Our fifth speaker, Dr. Daniel Pascoe, Associate Professor of the School of Law of CityU, presented a report titled “National Security Law: A Socialist Legal Transplant?”. During his presentation, Dr. Pascoe was of the view that while the NSL embodies various characteristics of socialist legal system, such as immunity from judicial review, abstract language was used in legislating specific offences and the designation of temporary judges, etc., it does not possess the typical socialist legal elements that prevailed in the 20<sup>th</sup> Century, such as administrative punishment as practiced in mainland China and the death penalty. Besides, he pointed out that the NSL is the first case in the world where elements of the socialist legal system were transplanted into the law of a mature common law system.
24. Our sixth speaker, Dr. Cao Xudong, Associate Professor of the Institute of Guangdong, Hong Kong and Macao Development Studies of the Sun Yat-sen University, gave a report titled “On the Relationship and Coordination between the National Security Law and the Basic Law”. Dr. Cao listed out four questions relating to the relationship between the NSL and the Basic Law: 1) Do the principles of “new law prevails over old law” and “*lex specialis derogat legi generali*” apply?; 2) How to coordinate the NPC Decision and Basic Law?; 3) What is the implication of having the NSL listed in Annex III of the Basic Law?; and 4) How to deal with situation where the NSL is in conflict with the Basic Law?
25. With regard to the aforementioned questions, Dr. Cao made the following distinct points regarding the NSL and the Basic Law, included: 1) The principles of “new law prevails over old law” and “*lex specialis derogat legi generali*” are not applicable; 2) Even if the NPC is going to exercise its power



本法》已有的規定。全國人大曾經有過設計特區制度的例外動作（例如當年有關臨時立法會的決定），但是那個決定也特別強調必須尊重《基本法》。今次關於《香港國安法》的決定是第二次追加設計，故也應該尊重《基本法》，而事實上有關的人大決定亦強調了對《基本法》的尊重。3) 《基本法》的地位應該高於《香港國安法》，《香港國安法》列入附件三意味着受制於《基本法》的凌駕性。4) 《香港國安法》與《基本法》兩者不一致之處是真實存在的。關鍵是，不一致之處是否屬於《香港國安法》對《基本法》的補充？而有關的補充如果是“例外補充”，並且過度例外，則不可以。至於誰來處理這種不一致？人大常委會可以，關鍵是香港法院可以嗎？《唐英傑案》中法官有隱晦的認為其有權。但不論誰處理衝突問題，都應堅持“對《基本法》寬泛解釋，對《香港國安法》狹窄解釋”的基本傾向。

### 第三節：從國際法角度探討《香港國安法》的影響

26. 第三節的主題是：從國際法角度探討《香港國安法》的影響。本節由中國人民大學法學院莫於川教授主持。
27. 本節第一位發言人是香港城市大學法律學院的 Fozia Nazir LONE 副教授，她報告題目是《探討關於第三國聯合取消

to amend the institutional design of the HKSAR again, it still cannot abandon or ignore the existing provisions of the Basic Law. For instance, where the Provisional Legislative Council (1997-1998) was formed by the NPC, the Basic Law was well respected. And, in fact, the NPC Decision relating to the enactment of the NSL itself has also emphasizes its respect to the Basic Law; 3) The Basic Law is meant to be upheld above the NSL, given that the listing of the latter in Annex III of the Basic Law infers that it is subject to the overriding power of the Basic Law; 4) While inconsistencies between the NSL and the Basic Law do exist, there are two key questions: a) Whether the inconsistencies constitute a supplement by the NSL to the Basic Law?; and b) In addition to the NPCSC, can the Hong Kong courts deal with such inconsistencies? In the *Tong Ying Kit* case, the court seemed to imply that Hong Kong courts can do so. However, regardless of who is going to deal with the relevant conflicts, according to Dr. Cao, a broad and liberal approach should be adopted in interpreting the Basic Law while a narrow interpretation approach should be adopted in interpreting the NSL.

### Panel 3: The Hong Kong National Security Law in the Context of International Law

26. Our third panel was moderated by Professor Mo Yuchuan of the RUC Law School.
27. The first speaker of our third panel was Dr. Fozia Nazir Lone, Associate Professor of the School of Law of CityU, who gave a report titled “Third States Concerted Cancellation of Hong Kong’s Extradition Treaties: A Reflection”. Soon after the NSL started to be implemented in Hong Kong, the United States and some other countries decided to suspend

與香港的引渡協議的問題》。她提出，  
《香港國安法》實施之後，美國等國家  
暫停了與香港之間的引渡協議，這些國  
家認為《香港國安法》嚴重損害了香港  
的法治。但是，當前還難說這些協議被  
懸置了抑或是取消了。她認為，關於香  
港的引渡問題，應當注意到：1) 香港目  
前關於引渡的法律保障仍然有效；2) 引  
渡要求始終受到各國司法程序的制約；3)  
《香港國安法》之下的罪行大概可能會  
因為屬於具有政治性質的罪行而被拒絕  
引渡。

28. 中國政法大學證據科學研究院施鵬鵬教  
授作了題為《法國反分裂、維護國家安  
全的若干舉措》的報告。他指出，國際  
上很多國家的個別地區都有尋求獨立的  
傾向，這些國家也有反分裂立法，但並  
未引起如《香港國安法》在香港一樣的  
社會反彈。這不僅僅是意識形態的差異  
所致。

29. 施教授認為，香港反修例抗議的背後原  
因是，立法存在正當程序的缺失。不管  
內地還是香港，雖有刑訴法傳統的不同，  
也都應滿足正當程序的要求。內地的刑  
事訴訟的法治程度還在加速發展中，要  
通過這方面的進步打消港人的疑慮。

their extradition treaties with Hong Kong  
because they firmly believed that the NSL has  
greatly harmed the rule of law in Hong Kong.  
For the moment, it is still unclear whether  
these extradition treaties are temporary  
suspended or being terminated. With regard to  
the issue of extradition in Hong Kong after the  
implementation of the NSL, Dr. Lone pointed  
out three observations: Firstly, Hong Kong's  
existing legal protection with regard to  
extradition remains valid; Secondly,  
extradition requests are restricted by the  
judicial processes of different requested  
jurisdictions; Thirdly, extradition requests  
involving offences under the NSL will most  
likely be rejected on the ground of political  
offence exception.

28. Our second speaker, Professor Shi Pengpeng  
of the Institute of Evidence Law and Forensic  
Science of China University of Political  
Science and Law, gave a presentation titled  
“The French Anti-Separatism and National  
Security Measures”. He pointed out that while  
some other countries also have enacted anti-  
secession laws to prevent the splitting-off of  
their territories, the relevant enactment of  
these countries have not provoked fierce  
backlash like Hong Kong does. This proves  
that, according to Professor Shi, the  
controversies in Hong Kong are not only  
attributed to the differences in ideologies.

29. Professor Shi was of the opinion that the  
reason behind Hong Kong's Anti-Extradition  
Law protest was procedural impropriety in  
legislation. He pointed out that, while  
different jurisdictions have different traditions  
with regard to criminal procedure law, the  
condition of procedural propriety has to be  
met. He further explained that the degree of  
the rule of law in criminal proceedings in  
mainland China is accelerating, and progress  
in this area should be enhanced in order to  
dispel Hong Kong people's doubts and  
mistrust towards mainland China's criminal  
justice system.



30. 本節最後發言的是香港城市大學法律學院王江雨教授，他發言的題目是《國際法視角下〈香港國安法〉的合法性與正當性》。王教授列出了與《香港國安法》有關的國際法規範：第一，《中英聯合聲明》。第二，國際人權法，如《公民權利和政治權利國際公約》和《經濟、社會及文化權利國際公約》等；第三，某些習慣國際法。他指出，香港的司法獨立在《中英聯合聲明》之中有明確表示，也體現在《基本法》條文中，國務院在 2014 年《白皮書》中也繼續表示了對香港司法獨立的認可，那麼，他提出兩個問題：《香港國安法》案件是否在香港法院的管轄權之內？這是外交或國防等國家行為嗎？
31. 另外，他提出在評價是否符合國際法之時，是看國內立法的規定還是法律的實施情況？《香港國安法》第 38 條受到很多國際法角度的批評。國際法上有“保護原則”，這個本無問題，但判斷標準在於是否存在“重大利益”、是否存在“必要性”、是否滿足“自救”原則。

#### 第四節：《香港國安法》與香港刑法及刑事訴訟法的對接

32. 研討會第四節的主題是：《香港國安法》與香港刑法及刑事訴訟法的對接。本節由武漢大學法學院秦前紅教授主持。

30. Our third speaker, Professor Wang Jiangyu, Director of RCCL, presented a report on “Hong Kong’s National Security Law under International Law: Legality and Legitimacy”. To begin with, he gave an overview of international legal instruments/norms that are currently associated with the NSL, including the Sin-British Joint Declaration; the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR); and customary international law. After that, he raised two questions: Given the fact that Hong Kong’s judicial independence is expressly guaranteed in the Sino-British Joint Declaration, the Basic Law and the 2014 White Paper of the State Council, would Hong Kong courts have jurisdiction over cases involving the NSL? Are adjudication of cases involving the NSL regarded as acts of states such as defence or foreign affairs?
31. In terms of evaluating the NSL’s compliance with international law, Professor Wang also questioned whether the evaluation should be based on the provisions of the NSL or its actual implementation? He pointed out that Article 38 of the NSL has sparked an international outcry. According to Professor Wang, while it is fine to introduce into the NSL the “protection principle” in international law, the most important thing is the criteria of application of this principle: whether the criteria of “significant interests”, “necessity” or “self-help” is satisfied?

#### Penal 4: Connection Between the Hong Kong National Security Law and Hong Kong’s Criminal Law and Criminal Procedure Law

32. Our fourth panel was moderated by Professor Qin Qianhong of the Wuhan University School of Law.

33. 香港大學法律學院院長傅華伶教授首先報告，題目是：《評香港特區〈唐英傑案〉》。他說，關於《唐英傑案》，截止目前為止有關司法程序的重點在於處理保釋問題。他質疑《香港國安法》第 42 條第 2 款對於保釋採取了反向、否定式規定，是否改變香港既有的“保釋原則”（保釋為原則、羈押為例外）？此外，第 42 條中“繼續”的含義也引發了不同意見（涉及無罪推定原則）。
34. 傅教授指出，本案的判詞總體上接受度比較好。法官認為，《香港國安法》第 42 條對於香港原有的保釋制度沒有太大的、激烈的改變。將來的案件可能有例外，即香港既有法律和《香港國安法》對於保釋規定不一致時，屆時再依據《香港國安法》處理。
35. 另外，從分權的角度，該案件也提出了一些問題：1) 中央與特區的分權，《香港國安法》已經將一些權力移至中央；2) 本地的政府分權；3) 香港法院和人大常委會的分權（解釋權），但法院的固有職權是拿不走的，關鍵是，中央與特區法院之間要進行對話。
33. Our first speaker in this panel was Professor Fu Hualing, Dean & Warren Chan Professor in Human Rights and Responsibilities of the Faculty of Law of the University of Hong Kong. He shared his insights on the case of *Tong Ying Kit* in the HKSAR. In regards to the *Tong Ying Kit* case, according to Professor Fu, the focus has been the bail issue. He was of the opinion that the relevant provision, that is Paragraph 2 of Article 42 of the NSL, actually adopts a reverse and negative approach in handling bail applications, which may be considered as a change to the existing principles Hong Kong courts have been adopting in handling bail applications (i.e., bail will be granted as a principle, detention will be imposed as an exception). Besides, he also pointed out that the word “continue” in paragraph 2 of Article 42 of the NSL also leads to divergent opinions as to whether the principle of the presumption of innocence is reversed under this provision.
34. Professor Fu pointed out that the judgment of the *Tong Ying Kit* case was well accepted in general. The judge held that Article 42 of the NSL does not lead to a drastic change to Hong Kong’s existing bail system. However, future cases may provide exceptions to this case: When inconsistencies between Hong Kong’s existing laws and the NSL with regard to the bail issue emerge in future, the matter should be handled according to the NSL.
35. In addition, Professor Fu believed that the *Tong Ying Kit* case also raised several issues regarding separation of powers. Firstly, as far as the separation of powers between the Central Government and the HKSAR Government is concerned, some of the powers of the HKSAR Government have already been transferred to the Central Government under the NSL. Secondly, the separation of powers within the HKSAR Government. Thirdly, the separation of powers between Hong Kong courts and the NPCSC with regard to the power to interpret the Basic Law. However,

36. 香港執業大律師黃宇逸先生作了題為《從法律從業員角度分析高等法院首個關於〈香港國安法〉的判決》的報告。黃大律師說，《唐英傑案》保釋案由兩位法官完成判詞，一位專業在於憲法行政法案件，另一位是刑法經驗豐富的法官。從法律實踐角度來看，《香港國安法》與《基本法》的潛在衝突不是一個問題，因為法官仍然會認定兩者之間是不衝突的。但從學術上，這個討論或許是有意義的。
37. 中國人民大學法學院陳璇副教授作了題為《顛覆國家政權罪和煽動顛覆國家政權罪的司法適用考察》的報告。陳副教授提出，我們可以從內地刑法上顛覆國家政權罪和煽動顛覆國家政權罪的司法適用狀況中獲得某些啟示，進而正確理解《香港國安法》中的具體罪名。
38. 陳副教授指出，顛覆國家政權罪通常理解是採取暴力等不法的手段使國家政權和社會主義制度歸於覆滅。其構成要件行為不僅包括實施，也包括之前的組織、預謀等行為，推翻對象既可以是政權整體，也可以是部分制度。從內地目前可

Professor Fu commented that since the inherent power of the Hong Kong courts cannot be abolished, there needs to be a dialogue between the Central Government and the Hong Kong courts.

36. Our second speaker, Mr. Anson Wong Yu Yat, Barrister-at-Law of Denis Chang's Chambers, and Member of the Legal Subsector of the Election Committee for the Election of the Chief Executive of the HKSAR for the Term of 2017-2022, gave a presentation titled "The First High Court Judgment on the National Security Law of Hong Kong: A Practitioner's Perspective". He pointed out that the judgment of the *Tong Ying Kit* case was jointly written by two judges with one of them specializes in constitutional and administrative law and the other one specializes in criminal law. As far as the implementation of the NSL is concerned, according to Mr. Wong, the potential conflict between the NSL and the Basic Law does not seem to pose a problem because judges will still consider that there is no conflict between these two laws. Notwithstanding that, however, discussion of this issue is meaningful from academic perspective.
37. Our third speaker, Dr. Chen Xuan, Associate Professor of the RUC Law School, gave a presentation titled "Examining Judicial Application of the Offences of Subversion of State Power and Inciting to Subvert State Power". He stated that judicial application of the crimes of subversion of state power and inciting to subvert state power in mainland China could serve as a reference for correct understanding of the offences under the NSL.
38. As far as the crime of subversion of state power is concerned, according to Dr. Chen, it is commonly referred as the use of violent and illegal means to destruct the state power and the socialist system, and the components of this crime do not only include the implementation of the relevant act, but also

見的以本罪定罪的案件來看，行為人幾乎都是加入了以推翻現政權為目標的特定組織，並且形成了一套相對比較完備的施行顛覆活動的計劃和策略。《香港國安法》第 22 條比內地刑法關於顛覆國家政權罪的規定更為詳盡，但部分內容近似於內地其他罪名，如聚眾衝擊國家機關罪、擾亂國家機關工作秩序罪。對於《香港國安法》第 22 條第（3）項的“嚴重干擾”等規定，應當根據是否達到“顛覆”的危險程度來進行一定的限制解釋。

39. 關於煽動顛覆國家政權罪，陳副教授指出內地多個判例顯示，行為人在網絡上發布激烈言辭，如事出有因（如因認為司法或行政不公而泄憤），並且沒有與以顛覆國家政權為宗旨的組織發生勾連，無證據顯示其言辭具備實質的顛覆意圖，則法院往往比較謹慎，傾向於認為其不構成煽動顛覆國家政權罪，僅會判處尋釁滋事罪成立。

the organization and premeditation of such act. The subject of this crime can be the state power as a whole or part of the relevant system. According to Dr. Chen's observation, the defendants in almost all cases of such crime in mainland China had joined specific organizations whose aim is to subvert the state power, and very often they have also formulated rather comprehensive plans and strategies to implement their subversive acts. As far as Article 22 of the NSL is concerned, according to Dr. Chen, while it is even more detailed than the provision governing the crime of subversion of state power in mainland China's Criminal Law, some of the stipulations are similar to provisions governing other crimes in mainland China's Criminal Law, such as the crime of assembling crowds to attack state organs and the crime of disrupting the work order of state organs. He was of the opinion that provisions such as "seriously interfering" as stipulated in Article 22(3) of the NSL should be restrictively interpreted based on the fact to determine if the act in question was so serious that it could be considered as "subversion".

39. As to the offence of inciting to subvert state power, according to Dr. Chen, many cases in mainland China revealed that if a person disseminated radical comments on the Internet with reasons (such as venting his/her anger towards unfairness of the courts or administrative organs) but does not have any connection with any organizations that aim at subverting the state power, and there is also no evidence that he/she made the relevant comments with the substantive intention to subvert the state power, then the courts will usually adopt a cautious approach and tend to rule that the relevant act does not constitute the crime of inciting to subvert the state power; instead, the defendant may be convicted of the crime of disrupting the social order.

40. 北京大學法學院江湖副教授作了題為《港區國安法中的勾結外國或者境外勢力危害國家安全罪》的報告。江副教授認為，《香港國安法》第 29 條的規定，一部分內地刑法有同樣罪名或概念，另一部分卻是內地沒有的，如第 1 款首段後半句。《香港國安法》上有些條文有削弱原有司法獨立的嫌疑，但絕大多數案件仍然是由特區司法機關處理，因此司法獨立仍然是重要原則。

41. 香港執業大律師羅沛然先生的發言題目是：《跟著錢的氣味：〈港區國安法〉實施所需的介面》的報告。羅大律師重點談了《香港國安法》在香港落實的機制，包括特區架構內的機構、國安公署等。他認為《香港國安法》第 43 條首句包含了轉致條款，引入了現有法律對於警方的授權，那些法律也同時包含了採取相關措施時需滿足的條件。

#### 第五節：《香港國安法》之下的國安機制： 權力與問責

42. 研討會第五節的主題是：《香港國安法》之下國安機制的權力與問責。本節由香港城市大學法律學院朱國斌教授主持。

40. Our fourth speaker, Dr. Jiang Su, Associate Professor of the Peking University Law School, gave a presentation titled “The Offence of Collusion with a Foreign Country or with External Elements to Endanger National Security under the Hong Kong National Security Law”. He was of the opinion that Article 29 of the NSL resembles and possesses a certain degree of similarity with the criminal law of mainland China. Besides, he pointed out that while some of the provisions in the NSL might undermine the judicial independence that has been guaranteed in Hong Kong, since it is believed that a vast majority of cases involving the NSL will still be adjudicated by the Hong Kong courts, he believed that the principle of judicial independence is still valued by the NSL.

41. Our fifth speaker, Dr. Pui Yin Lo, Barrister-at-law (England & Wales and Hong Kong) of Nanyang Chambers, presented a report titled “Follow the Money: Interfaces in the Implementation of the Hong Kong National Security Law”. He focused on evaluating the mechanisms to implement the NSL, including the NS Committee and the CPG NS Office. Besides, he pointed out that the first sentence of Article 43 of the NSL introduces into the NSL provisions in Hong Kong’s existing laws which authorize the Hong Kong police to exercise certain powers in criminal investigation as well as the conditions that the police must meet before they can exercise those relevant powers.

#### Panel 5: National Security Mechanism for the HKSAR under the Hong Kong National Security Law: Power and Accountability

42. Our fifth panel was moderated by Professor Zhu Guobin.

43. 第一位發言人是清華大學法學院屠凱副教授，他的報告題目是《試論港區國安公署的法律責任》。屠副教授認為，關於港區國安公署承擔法律責任的方式，特區駐軍和中央在特區設立的其他機關的經驗可以提供一些參考。過去，特區駐軍的行為基本屬於國防行為，只有駐軍人員非執行職務行為才可能因為引起民事侵權而受到特區法院管轄。而中央在特別行政區設立的其他機關，不屬於《基本法》第 22 條所稱“內地機構”，其工作人員的行為在特區不可訴。至於內地的其他機關，他們在特別行政區活動，尚缺乏充分的法律依據，不可無區別地獲得豁免權，特區政府也不為這些內地機關承擔連帶責任。港區國安公署和上述機關的法律地位有相似之處，也有一些不同。

44. 屠副教授指出，類似於對特區駐軍國防行為和協助維持社會治安行為的區分，港區國安公署依法辦理危害國家安全犯罪案件和該公署在港的其他行為、活動似有區分之必要。港區國安公署及其人員的行為在特區雖然不可訴，但其偵查活動應受一般的法律監督。港區國安公署的其他行為、活動如構成民事侵權，也應有承擔法律責任的機制。

43. The first speaker of our fifth panel was Dr. Tu Kai, Associate Professor of Tsinghua University School of Law, who gave a presentation titled “Study on the Legal Responsibility of the Office for Safeguarding National Security of the Central People’s Government in the HKSAR”. Dr. Tu argued that as far as the legal responsibility of the CPG NS Office is concerned, references may be made to the experiences of the Hong Kong Garrison of the Chinese People’s Liberation Army (hereafter “PLA”) and other organs established by the Central People’s Government in the HKSAR. In practice, acts of the PLA in Hong Kong are considered as acts of national defence and thus not subject to the jurisdiction of the Hong Kong courts; only acts of the members of the PLA when they are not performing their duty could constitute civil liabilities and be subject to the jurisdiction of the Hong Kong courts. As to other offices directly established by the Central Government in Hong Kong [after the handover of Hong Kong], they do not fall within the category of “mainland offices” as provided for in Article 22 of the Basic Law, so the acts of their staff members are not justiciable in the HKSAR. For other mainland offices established in Hong Kong, their acts in Hong Kong lack sufficient legal basis and thus should not be exempted from the jurisdiction of Hong Kong without any differentiation. The SAR Government shall not assume joint liability for [the acts conducted by] these mainland authorities. The legal status of the CPG NS Office has certain similarities as well as differences with the aforementioned offices.

44. Dr. Tu further pointed that it is necessary to distinguish between the CPG NS Office’s acts of handling national security cases in Hong Kong and its other acts and activities, including investigations, in Hong Kong: while the acts of the CPG NS Office and its personnel with regarding to the handling of national security cases cannot be prosecuted in Hong Kong, their acts relating to case

45. 接下來，天津大學法學院王建學教授作了題為《論對駐港維護國家安全公署人員的監察監督》的報告。他認為，國家監察委可以向國安公署派出監察機構或專員。在監察對象上，對於《監察法》應當限縮解釋，應考慮到“一國兩制”方針，不能當然地將監察對象覆蓋至特區本地的所有人員。王教授指出，實施《香港國安法》要平衡國家安全與人權，要注意保障監察監督對象的權利。
46. 武漢大學法學院黃明濤副教授在會議上發表了他與武漢大學法學院研究生楊雨晨先生共同撰寫，題為《香港特區國安委的職權及如何向本地負責》的報告。他認為，港區國安委是在特區層面設立的本地機關，處於香港特區的總體政府架構之中，《香港國安法》雖然僅規定國安委向中央負責，但其也不能完全脫離於來自特區本地的問責。國安委的權力來自於《香港國安法》的授權，包含諮詢、政策制定、立法或授權立法、協調、監督與人事等權力。這些職權的行使應當遵守《香港國安法》的基本原則，如“一國兩制”政策、法治、尊重人權等。而對於國安委行使權力的問責，在

investigation should be subject to Hong Kong's legal scrutiny. Besides, he also considered that there should be a mechanism governing the legal responsibility of the CPG NS Office with regard to its other acts, such as its civil and tort liabilities.

45. Our second speaker, Professor Wang Jianxue of the Tianjin University Law School gave a presentation titled “Supervision of Personnel of the Office for Safeguarding National Security of the Central People’s Government in the HKSAR”. He believed that the National Supervisory Commission under the Central Government may send its agents to the CPG NS Office to supervise the acts of the latter’s personnel in Hong Kong. As far as the target of supervision is concerned, Professor Wang proposed that a narrow interpretation of the Supervision Law should be adopted and the “One Country, Two Systems” policy should also be taken into account, thus not all the CPG NS Office personnel in Hong Kong should be made as subject of supervision. Besides, he further pointed out the importance of balancing national security and human rights protection, as well as the protection of the rights of the supervision subjects when implementing the NSL.
46. Our third and final speaker of this panel, Dr. Huang Mingtao, Associate Professor of Wuhan University School of Law and Deputy Director and Secretary-General of the “One Country, Two Systems” Law Institute of RUC, presented a report titled “The Committee for Safeguarding National Security: Authorities and Accountabilities” which he co-authored with Mr. Yang Yuchen, Postgraduate Student of Wuhan University School of Law. Dr. Huang believed that while the NSL only stipulates that the NS Committee is under the supervision of and accountable to the Central People’s Government, given it was established as a local agency in Hong Kong and forms part of the HKSAR Government structure, it should also be accountable to the

特區層面可以從兩個方面考慮，既有來自於立法會的監督，也有來自於司法機關的審查，具體的問責形式，應結合《基本法》、《香港國安法》，以及“一國兩制”政策的基本精神予以確定。

#### 第六節：《香港國安法》之下香港 特區的人權保障

47. 研討會第六節的主題是：《香港國安法》之下香港特區的人權保障。本節由深圳大學港澳基本法研究中心鄒平學教授主持。
48. 大連海事大學法學院楊曉楠教授首先作了題為《〈香港國安法〉和國際人權公約的適用》的報告。她認為，一方面，《香港國安法》在香港特區的法律地位是低於《基本法》的，而《香港國安法》與國際人權法的關係，部分取決於《香港國安法》與《基本法》的關係。另一方面，國際人權法不止是法律，也決定了國際社會上對於法治的判斷標準。國際人權法可以作為一個調和劑，令《香港國安法》更好地為國際社會所接受。楊教授認為，香港法院在適用國際人權法的過程中，可以對本地執行行為等進

HKSAR to a certain extent. The power of the NS Committee comes from the NSL, such as consulting, making work plans, formulating policies, coordinating major work and significant operations, supervising the law enforcement agencies, etc. With regard to the exercise of its powers, the NS Committee should be supervised by the HKSAR Legislative Council and subject to judicial review of the HKSAR judiciary. As far as the specific form of accountability is concerned, Dr. Huang considered that the Basic Law, NSL and the fundamental spirit of the “One Country, Two Systems” policy should be taken into account.

#### Panel 6: Human Rights Protection in the HKSAR under the Hong Kong National Security Law

47. Our sixth panel was moderated by Professor Zou Pingxue, Director of the Centre for Basic Laws of Hong Kong and Macau Special Administrative Regions of Shenzhen University.
48. Our first speaker of this panel, Professor Yang Xiaonan of the Law School of Dalian Maritime University presented a report titled “Hong Kong National Security Law and the Application of International Human Rights Conventions”. She argued that the NSL is constitutionally ranked under the Basic Law, and therefore its relationship with international human rights law is partly determined by its relationship with the Basic Law. On the other hand, she pointed out that international human rights law is not only law; it is also the standard the international community uses to measure the rule of law level of a jurisdiction. She was of the opinion that international human rights law can serve the effect of harmonization which helps to make the NSL more acceptable to the international community. Professor Yang further pointed out that, in the process of



行審查，採取比例原則的框架，以救濟性解釋為主要的救濟方式。

49. 北京大學法學院左亦魯助理教授作了題為《並非自殺契約：“一國兩制”下的權利保障》的報告。他認為，根據“並非自殺契約”的理念，《憲法》和《基本法》之所以賦予香港高度自治的地位和包括言論自由在內的權利保護，是為了讓“一國兩制”運行得更好，而不是破壞和摧毀“一國兩制”。基於此，他探討了在《香港國安法》通過的背景下，是否可以“不破壞‘一國兩制’”作為香港言論自由保護的中介原則。這項中介原則包含兩個分支：一是“不破壞‘一國’”，二是“不破壞‘兩制’”。希望這一原則在最大化《憲法》和《基本法》中對權利和自由的保護的同時，也可以維護國家主權、安全和發展利益。
50. 最後，廣東外語外貿大學法學院章小杉講師作了題為《將人權“讀入”〈國安法〉》的報告。章講師的主要觀點是，第一，《香港國安法》位於香港本地法律之上、《基本法》之下；第二，《香港國安法》與人權法存在衝突；第三，香港特區法院無權推翻《香港國安法》；

applying international human rights law, the Hong Kong courts may adopt the proportionality principle to review the acts of local enforcement of the NSL in Hong Kong, and use remedial interpretation as the major remedial method.

49. Our second speaker of this panel, Dr. Zuo Yilu, Assistant Professor of Peking University Law School, gave a presentation titled “Not a Suicide Pact: Rights Protection under ‘One Country, Two Systems’”. He believed that, according to the theory of “Not a Suicide Pact”, the reason why the Chinese Constitution and the Basic Law granted Hong Kong a high degree of autonomy and other human rights protections, including the right to freedom of expression, is to ensure the smooth operation of the “One Country, Two Systems”. Due to this reason, he examined the background of the passing of the NSL to see if it is possible to use “not to destroy ‘One Country, Two Systems’” as the mediating principle to protect the right to freedom of expression in Hong Kong. Such mediating principle, according to Dr. Zuo, includes two elements, namely “not to destroy ‘One Country’” and “not to destroy ‘Two Systems’”. He hoped that while maximizing the protection of rights and freedom as guaranteed under the Chinese Constitution and the Basic Law, national sovereignty and security could be safeguarded and the development of the country could be enhanced.
50. Our third and final speaker of this panel, Dr. Zhang Xiaoshan, Lecturer of the School of Law of Guangdong University of Foreign Studies, presented her report titled “‘Reading’ Human Rights into the National Security Law”. Her major arguments included: 1) In Hong Kong’s hierarchy of law, the NSL has a higher status than the local legislation but a lower status than the Basic Law; 2) There is a conflict between the NSL and international human rights law; 3) The Hong Kong courts do not have the power to overrule the NSL;

第四，通過將人權“讀入”《香港國安法》，可以解決《香港國安法》與人權法的潛在衝突。

### 閉幕辭

在全部研討環節完成之後，黃明濤副教授與王江雨教授分別代表會議主辦方作了總結發言。兩位共同感謝了所有與會嘉賓、會務團隊的大力支持。黃副教授呼籲，面對《香港國安法》實施所帶來的新情勢，大家不可自我封閉、不應急躁冒進、也不必過度悲觀。而王教授指出，本次會議進行了非常高水平、有質量的討論，這些聲音應當在更大範圍內、尤其是在國際上被聽到。後續主辦方將通過國內外各種管道發表本次研討會所形成的學術成果。

最後，朱國斌教授代表主辦方宣布本次《香港國家安全法》的理論與實踐研討會圓滿閉幕。

and 4) She believed that one way to resolve the potential conflict between the NSL and the international human rights law is to allow the international human rights law to be “reading into” the NSL.

### Closing Speech

The closing speech was delivered by Dr. Huang Mingtao and Professor Wang Jiangyu on behalf of the organizers of this symposium. Both professors thanked the speakers for their contribution and applauded the quality of academic discussion that was delivered at the symposium. Dr. Huang suggested that people need not be excessively pessimistic about the NSL, and should rather be open-minded. Professor Wang hoped that these high-level discussions could be heard at international level. In addition, they announced that papers presented at this symposium will be published in various channels by the symposium organizers.

Lastly, Professor Zhu, on behalf of the organizers, announced that the online symposium was ended with a great success.