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中國法與比較法研究中心
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「香港特區維護國家安全法」網上研討會報告
Report on the “National Security Law of the HKSAR” Online Symposium

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導論

2020年5月28日，第十三屆全國人民代表大會第三次會議通過了《全國人民代表大會關於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的決定》（以下簡稱「《人大決定》」）。根據《人大決定》，「中央人民政府維護國家安全的有關機關或將在香港特別行政區設立機構」，全國人大常委會將為香港特別行政區制定維護國家安全的法律（以下簡稱「國安法」），並將該法律列入《中華人民共和國香港特別行政區基本法》（以下簡稱「《基本法》」）附件三，由香港特別行政區在本地公佈實施。

《人大決定》引起海內外廣泛關注，亦帶出不少亟待探討的學術問題。

2020年6月5日，香港城市大學法律學院公法與人權論壇（CPLR）與中國法與比較法研究中心（RCCL）聯合舉辦「『香港特區維護國家安全法』網上研討會」，邀得來自中國內地、香港、澳門及海外的專家學者和知名律師，就《人大決定》和「國安法」有關的學術問題展開探討。本次研討會上共有14位講者發表了獨到及發人深思的見解。現遵循匿名原則，將諸位講者在研討會上發表的觀點總結如下。

Introduction

On 28 May 2020, the Third Plenary Meeting of the 13th National People's Congress (NPC) passed the *Decision on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region (HKSAR) to Safeguard National Security* (hereafter "NPC Decision"). According to this NPC Decision, when needed, relevant national security organs of the Central People's Government (CPG) may set up agencies in the HKSAR; the NPC Standing Committee (NPCSC) is authorised to enact a law for the HKSAR to safeguard national security ("National Security Law for the HKSAR", hereafter "NSL") which shall be listed in Annex III of Basic Law of the HKSAR and applied in the HKSAR by way of promulgation.

The NPC Decision has attracted extensive attention and aroused great concerns worldwide. Naturally, it brings forth many academic issues that have to be examined in depth urgently.

On 5 June 2020, 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 jointly organized an online symposium on the "National Security Law for the HKSAR". The symposium brought together leading experts and lawyers from mainland China, Hong Kong, Macau and foreign countries to discuss the relevant academic issues relating to the NPC Decision and the forthcoming NSL. A total of 14 speakers presented insightful and thought-provoking views at the symposium. Following the Chatham House Rule, below is the summary of these presentations while the identities and affiliations of these presenters are not revealed.

《人大決定》的規範分析

1. 有講者指出，應當重視《人大決定》的用語及措辭，充分理解《人大決定》的規範內涵。譬如，《人大決定》第6段授權全國人大常委會「制定相關法律，切實防範、制止和懲治任何分裂國家、顛覆國家政權、組織實施恐怖活動等嚴重危害國家安全的行為和活動」。此處「嚴重」確有實意，意味着不包括輕微行為和活動。也就是說，只有嚴重危害國家安全的行為和活動才會成為有關立法所防範、制止和懲治的對象。因而，香港社會不必過分擔憂。
2. 有講者指出，《人大決定》的引言明確指出這一決定是根據《中華人民共和國憲法》（以下簡稱「《憲法》」）第31條和第62條第2款、第14款及第16款的規定作出的。這是過去30多年來，全國人大首次在「涉港決定」中明確援引《憲法》條文作為法律依據和法理基礎，這進一步從規範層面上明確了「憲法和基本法共同構成香港特區的憲制基礎」的命題。有講者認為，這表明中央在有意識地運用憲法資源處理香港問題，這種做法對「基本法作為防火牆」的傳統認知形成衝擊，也可能帶來一些新的問題。

Normative Analysis of the NPC Decision

1. One speaker opined that due attention should be paid to the wording of the NPC Decision in order to fully understand its normative connotations. For instance, Article 6 of the NPC Decision authorizes the NPCSC to enact relevant laws to “effectively prevent, stop, and punish any secession, subversion of state power, organization of terrorist activities, and other acts and activities that seriously endanger national security”. The word “seriously” here should be taken literally, meaning that minor acts and insignificant activities will not be covered under the NPC Decision. In other words, the targets of the NSL are acts and activities that *seriously* endanger national security which should be prevented, stopped and punished. Therefore, there is no need for the people in Hong Kong to worry too much.
2. A speaker pointed out that the Introduction of the NPC Decision specifies that the Decision was made according to Article 31 and Article 62(2), (14) and (16) of the Constitution of the People’s Republic of China (PRC Constitution). This was the first time in the past 30 years that the NPC has quoted provisions of the PRC Constitution as the legal basis of its “HK-related decisions”, which further affirms the notion that “both the PRC Constitution and the Basic Law jointly form the constitutional basis of the HKSAR”. A speaker commented that such a stipulation means that the CPG is consciously making use of the PRC Constitution to deal with issues relating to the HKSAR, which definitely will pose challenge to the traditional belief that the Basic Law serves the role of a “firewall” between Beijing and the HKSAR. This conceptual change will bring up new problems and controversies.

3. 有講者指出，對比《人大決定》第6段與《基本法》第23條可知，中央立法並沒有取代香港立法。《人大決定》列明的4項內容（即分裂國家、顛覆國家政權、組織實施恐怖活動、外國和境外勢力干預香港特區事務），與《基本法》第23條所載的7項內容（即叛國、分裂國家、煽動叛亂、顛覆中央人民政府及竊取國家機密、外國的政治性組織或團體在香港進行政治活動、香港的政治性組織或團體與外國的政治性組織或團體建立聯繫）重合的部分較少。這意味着香港特區仍然有自行立法的空間。
4. 有講者認為，最後通過的《人大決定》中，將原來草案中的「行為」改為「行為和活動」，旨在給全國人大常委會更大的授權。若《人大決定》沒有寫明「和活動」，則全國人大常委會的立法不可規制有關的活動。也有講者認為，「和活動」三個字雖然引起廣泛關注，但其實沒有必要，因為「活動」本身就是一種「行為」。「依法防範、制止和懲治危害國家安全的行為和活動」是一種語義上的繁複，存在語法問題。將來人大常委會立法應注意法律語言表述的準確性，避免任何可能的語義問題。
3. A speaker maintained that after comparing the NPC Decision with Article 23 of the Basic Law, one would find that the NSL to be formulated by the NPCSC will not replace the Article 23-related legislation to be formulated by the HKSAR legislature. This is because there is not much overlapping between the four kinds of offences listed in the NPC Decision (namely, secession, subversion of state power, organization of terrorist activities and activities of foreign and overseas forces to interfere in the affairs of the HKSAR) and the seven offences listed in Article 23 of the Basic Law (namely, treason, secession, sedition, subversion against the CPG, theft of state secrets, the conducting of political activities by foreign political organizations or bodies in the HKSAR, and the establishment of ties with foreign political organizations and bodies by political organizations or bodies of the HKSAR). In other words, there is still room for the HKSAR to enact laws on its own.
4. One speaker observed that, while only the word “acts” was used in the original draft of the NPC Decision, all references to this word were subsequently replaced by the term “acts and activities” in the finally adopted NPC Decision in order to give the NPCSC more power to legislate on the relevant matters. This is because if the words “and activities” were not included in the NPC Decision, the NPC Standing Committee will not have the authority to legislate to prohibit the relevant activities. The replacement of the word “acts” with the term “acts and activities” in the NPC Decision did arouse great concerns and speculation. Another speaker however remarked that such a replacement is actually unnecessary because “activity” itself is a kind of “act”, and the phrase “prevent, stop, and punish acts and activities that endanger national security according to law” is too cumbersome in

language and grammatically problematic. He hoped that in formulating the future NSL, the NPCSC should use precise legal language to avoid causing ambiguities and confusions in the law.

人大常委會立法的程序

5. 多位講者認為，倘若全國人大常委會制定「國安法」，則應當公開諮詢和聽取香港各界的意見。有講者指出，《中華人民共和國立法法》(以下簡稱「《立法法》」)第36條規定，「列入常務委員會會議議程的法律案，法律委員會、有關的專門委員會和常務委員會工作機構應當聽取各方面的意見」。因此，全國人大常委會應當遵循這一條的要求，公開徵詢香港各界的意見。也有講者認為，全國人大常委會將為香港特區制定的「國安法」是創製性的，《立法法》並沒有明確規定中央為特區立法應當遵循何種程序，第36條是否適用是一個值得討論的問題。
6. 有講者強調，法的有效性建基於公眾對法的認受，制定有重大社會影響的法律，例如「國安法」，應當公開徵詢公眾的意見。
7. 有講者希望，將徵詢的時機提前，即在法律公佈之前徵詢，將徵詢的範圍擴大，即不囿於港區人大、政協委員、特區官員和基本法委員會。過往通常的做

Procedures of the NPCSC Legislation

5. Several speakers agreed that the NPCSC should conduct public consultation and listen to the views of the people in Hong Kong when enacting the NSL. A speaker pointed out that according to Article 36 of the Legislation Law of the People's Republic of China (Legislation Law), "[f]or a bill on the agenda of a session of the Standing Committee, the Law Committee, the relevant specialized committee, and the operating divisions of the Standing Committee shall hear the opinions of all the parties concerned". Following this requirement, he argued, the NPCSC should consult all sectors of Hong Kong society. However, another speaker doubted if Article 36 of the Legislation Law is applicable this time because the NPCSC's formulation of the NSL for the HKSAR is something unprecedented, and the Legislation Law does not expressly provide the procedure for the Central Authorities to follow when it makes laws for its special administrative regions.
6. A speaker pointed out that the effectiveness of the law depends on the extent of its public acceptance. Therefore the public in Hong Kong should be consulted in the making of laws that have significant social impact, such as the NSL.
7. One speaker hoped that the consultation could be done before the promulgation of the law (the previous practice was that, members of the Basic Law Committee would be consulted after the national law

法是，在全國性法律公佈後，列入《基本法》附件三之前，徵詢香港基本法委員會的意見。

8. 有講者表示，若中央就「國安法」公開諮詢香港各界的意見，則有利於釋除香港居民對「國安法」的憂慮，也有利於向外界展示國家對「依法治國」和「一國兩制」的堅持。
9. 有講者指出，《立法法》第 29 條規定，「列入常務委員會會議議程的法律案，一般應當經三次常務委員會會議審議後再交付表決」。「三讀之後表決」雖有例外，但全國人大常委會為香港特區制定「國安法」，應當嚴格遵循「三讀」的要求，確保「程序正義」。

人大常委會立法的原則

10. 5 月 22 日王晨副委員長在全國人大會議上的講話表明，中央出手為香港特區制定維護國家安全法乃是「迫不得已」，不得不出手。因此，有講者認為全國人大常委會將為香港特區制定的「國安法」應當以「必要性」(necessity) 為原則，打擊面不宜過大，否則與「中央迫不得已出手」的敘事 (narrative) 不相符。

was promulgated and before the law was to be listed in Annex III of the Basic Law) and the scope of consultation could be expanded further instead of merely including Hong Kong deputies to the NPC, members of the Chinese People's Political Consultative Committee, officials of the HKSAR Government and Basic Law Committee members.

8. A speaker believed that if the CPG conducts public consultation in Hong Kong with regard to the NSL, it will be helpful not only in removing the worries of the Hong Kong people, but also in sending a strong message to the international community that China has been insisting on “ruling the country in accordance with law” and “One Country, Two Systems”.
9. A speaker remarked that according to Article 29 of the Legislation Law, “[a] bill that has been placed on the agenda of the session of the Standing Committee, in general, shall be deliberated three times at the sessions of the Standing Committee before being put to vote”. Though there may be exceptions to the rule of “deliberation at three sessions”, in formulating the NSL for the HKSAR, however, the NPCSC should strictly follow this rule, so as to ensure procedural justice.

Principles of the NPCSC Legislation

10. In his speech delivered at the NPC Meeting on 22 May 2020, Vice-Chairman of the NPCSC Mr. Wang Chen clearly stated that the CPG decided to formulate the NSL for the HKSAR simply because it is “forced” to do so. Given such speech, a speaker was of the opinion that when formulating the NSL, the NPCSC should adopt the principle of necessity and not to cast the legislative net too wide; otherwise it would be inconsistent with the narrative

that “the CPG is only forced to take action”.

11. 有講者指出，全國人大常委會的立法應當以明確性（precision）為原則，明確界定何為分裂國家、何為顛覆國家政權、何為組織實施恐怖活動、何為外國和境外勢力干預，讓公眾對特定罪名有清晰的認知，以免「誤墮法網」。有講者希望，全國人大常委會立法以香港人熟悉的用語來界定和表述相關的罪名與刑罰。
11. On the other, another speaker thought that the NPCSC’s legislation should follow the principle of precision, i.e., precisely defining the meanings and scopes of coverage of “secession”, “subversion of state power”, “organization of terrorist activities” and “activities of foreign and overseas forces to interfere in the affairs of the HKSAR”, thus allowing the general public to have a better understanding of what kinds of acts/activities amount to those crimes, hence preventing them from unconsciously violating the NSL. To make it even easier for the general public to understand, a speaker proposed that the language and wording used in stipulating the definitions of those offences and their punishments should be familiar to the people in the Hong Kong society.
12. 有講者認為，全國人大常委會立法應當「抓大放小」，即只針對嚴重危害國家安全的行為和活動。有講者指出，全國人大常委會立法應當注意內地與香港在法律思維上的差異，不宜照搬內地刑法的有關規定。
12. A speaker argued that the NPCSC’s NSL should “target the big fish and release the small fish”, namely, aiming only at the acts and activities that seriously endanger national security. A speaker pointed out that the NPCSC should note the difference between the criminal law in mainland China and that in Hong Kong, and should not transplant the mainland penal codes into Hong Kong.
13. 有講者認為，全國人大常委會立法應當以「一國兩制」為原則，捍衛「一國」的底線和安全，確保「兩制」的特色與完整。有講者指出，「法不溯及既往」是一項公認的刑法原則，全國人大常委會為香港特區制定的「國安法」不宜違反或破壞這一原則。
13. A speaker maintained that the NPCSC should take “One Country, Two Systems” as the paramount principle, *viz.*, defending the baseline of “One Country” while preserving the integrity of “Two Systems”. A speaker contended that “non-retroactivity” is a universally acknowledged criminal law principle, thus the NPCSC should not depart from it when formulating the NSL for the HKSAR.

人大常委會立法的底線

Bottom Lines of the NPCSC Legislation

14. 有講者認為，立法可以參照內地、澳門或其他法域的實踐，但是不能突破1997年《中華人民共和國刑法》(以下簡稱「97刑法」)的底線。「97刑法」取消了1979年《中華人民共和國刑法》中的「反革命罪」，並且代之以「顛覆國家政權罪」。有講者強調，全國人大常委會立法應當將私下的表達與公開的表達區分開來，將正常的討論、教學或報導與有政治目的的宣傳和煽動區分開來，將合法(和平)的表達與非法(暴力)的表達區分開來。
 15. 有講者認為，全國人大常委會立法應以《憲法》、《基本法》和《人大決定》為底線：一方面，《憲法》和《基本法》共同構成香港特區的憲制基礎，全國人大及其常委會的任何立法都不宜突破現有的憲制框架；另一方面，《人大決定》是全國人大常委會立法的具體依據(若無全國人大授權，全國人大常委會自身無權制定「國安法」)，也給全國人大常委會立法設定了限制。《人大決定》無疑是一個政治決斷，但是根據《人大決定》而展開的立法活動須在規範框架內進行，故全國人大常委會的立法不應突破《憲法》、《基本法》和《人大決定》設定的規範框架。
14. A speaker argued that while the NPCSC may refer to the criminal laws of mainland China, Macau, or other jurisdictions, it may not go beyond the Criminal Law of the People's Republic of China 1997 (CL 1997). Under the CL 1997, the crimes of counterrevolution which existed in the Criminal Law of the People's Republic of China 1979 were replaced by the crimes of "subverting the political power of the State power or overthrowing the socialist system". A speaker stressed that the NPCSC legislation should draw distinctions between private expressions and public expressions; between ordinary discussion, teaching, and news report from politically motivated propaganda and instigation; and between peaceful/lawful expressions and unlawful/violent expressions.
 15. A speaker argued that the NPCSC should take the PRC Constitution, the HKSAR Basic Law, and the NPC Decision as bottom lines of the NSL. On the one hand, both the PRC Constitution and the Basic Law constitute the constitutional basis of the HKSAR, hence any laws formulated by the NPC or the NPCSC should not go beyond this existing constitutional framework. On the other hand, the NPC Decision is both the specific legislative basis to be relied on by the NPCSC to formulate the NSL (without the authorization of the NPC, the NPCSC itself does not have any power to formulate the NSL) and the document which restricts its legislative power in this case. The NPC Decision is without doubt a political resolution. Nonetheless, the legislative act under the NPC Decision must be carried out according to and within the established framework of legal mandate set by PRC Constitution, the Basic Law and the NPC Decision.

16. 《基本法》第 159 條明確規定：「本法的任何修改，均不得同中華人民共和國對香港既定的基本方針政策相抵觸」。有講者認為，這一條文應作為全國人大常委會立法的底線。修改基本法不得抵觸國家對香港既定的基本方針政策，為香港特區制定的「國安法」更加不得抵觸國家對香港既定的基本方針政策。香港特區享有「獨立的司法權和終審權」，保留原有的普通法制度，是國家對香港既定的方針政策。這一底線不可突破。

「國安法」的執行機制

17. 《人大決定》第 4 段載明「中央人民政府維護國家安全的有關機關根據需要在香港特別行政區設立機構，依法履行維護國家安全相關職責。」多數講者認為，雖然原文表述為「根據需要」（可以設立，也可以不設立），但事實上中央維護國家安全的有關機構將會在香港特區設立機構。但現時的重點是確定這種機構的性質和權限。
18. 有講者指出，機構設置有三種選擇：一是由中央派遣，類似於「監察委」，從機構到人員到程序，全部由中央確定，超脫於本地政治和司法，這種機構對香港現行法律制度的衝擊較大；二是恢復 1997 年前的「政治部」，隸屬於香港警隊，只從事有關政治罪行的偵查，這種機構對香港現行法律制度的影響較

16. A speaker contented that the bottom line of the NPCSC's NSL should be Article 159 of the Basic Law which provides that: "No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong". Since no amendment to the Basic Law should contravene the established basic policies of the People's Republic of China regarding Hong Kong, so needless to say the NPC Standing Committee's NSL also should not violate these basic principles. It is the CPG's established policies to allow Hong Kong to enjoy "independent judicial power, including that of final adjudication" and to preserve its common law system. Such a bottom line, according to the speaker, could not be violated.

Enforcement Mechanism of the National Security Law

17. Article 4 of the NPC Decision specifies that "The relevant organs for safeguarding national security of the Central People's Government will establish institutions in the Hong Kong Special Administrative Region as necessary to perform duties related to safeguarding national security in accordance with the law." Most speakers agreed that even though the original text read "as necessary" (i.e. may or may not), it is certain that the relevant organs for safeguarding national security of the CPG will establish institutions in the HKSAR. At this time, the most important thing is to define the nature and power of such kind of institutions.
18. As far as the nature of these national security institutions was concerned, one speaker noted that there would be three possible scenarios. The first scenario is, as with the National Supervision Committee, an agency in the form of CPG's dispatched institutions whose organization, personnel and operation procedure are decided by the CPG. This

小；三是中央根據《基本法》第 22 條，在香港設置一個機構，指導香港警察執行「國安法」，這種機構對香港現行法律制度的影響適中。第一個選項授予的權力過大，第二個選項授予的權力過小，相較而言，更可能為雙方所接受的是第三個選項，希望中央能夠考慮到香港的情況，採用第三個選項。

agency would act beyond the control of the political and judicial systems of the HKSAR, hence dealing a rather heavy blow to Hong Kong's existing legal system. The second scenario is to "revive" the pre-1997 Special Branch — a unit under the Hong Kong Police specializing in political offences investigation — which might pose relatively fewer challenges to Hong Kong's existing legal system. The third scenario, whose challenge to Hong Kong's existing legal system is relatively moderate among the three options, is for the CPG to establish an institution in Hong Kong pursuant to Article 22 of the Basic Law to direct the Hong Kong Police in enforcing the NSL. The speaker further argued that the first option gives the national security agency too much power and the second scenario gives it too little power. Comparatively speaking, the third scenario should be a more acceptable option for both the CPG and Hong Kong, and thus he hoped that the CPG could take into account the actual situation in Hong Kong and consider adopting this option.

19. 有講者認為，在未來的行政執法中，可將有關罪行分三個層次，由中央和香港協調：最輕度的交由香港警察偵辦，中度的由中央指導香港警察偵辦，最嚴重的由中央親自出手。

19. With regard to future enforcement of the NSL, one speaker proposed three methods of enforcement depending on the severity of the crime concerned and with the coordination between the CPG and Hong Kong: for minor crimes, they could be investigated by the Hong Kong Police; for crimes of moderate severity, they could be investigated by the Hong Kong Police under the direction of the CPG; for the most severe crimes, they could be investigated by the CPG.

「國安法」與香港法院

National Security Law and Hong Kong Courts

20. 有講者希望，堅持「屬地原則」，在香港發生的犯罪活動，不論被告是內地人

20. A speaker advocated that the territorial principle could be adopted with regard to cases involving the NSL, i.e. all criminal

還是香港人抑或是外國人，都由香港法院來審判。

21. 有講者指出，香港法院缺乏審查「國安法」合憲性的權限，因為這是一項中央立法，但香港法院可就具體行政行為的合法性進行審查。
22. 多數講者表示，所謂「外籍法官不能正確理解和適用『國安法』」是一種非常錯誤的認知。國籍和居留權不能作為判斷法官司法能力的標準。《基本法》第92條載明，「香港特別行政區的法官和其他司法人員，應根據其本人的司法和專業才能選用，並可從其他普通法適用地區聘用。」「國安法」不宜排除外籍法官的審判權，否則便有違《基本法》。
23. 對於公開審判問題，多數講者認為，應以公開審判為原則，以不公開審判為例外，涉及國家機密的案件可不公開審判。

「國安法」與 香港居民的權利

24. 根據《基本法》第39條，「《公民權利和政治權利國際公約》、《經濟、社會與文化權利的國際公約》和國際勞工

offenses committed in Hong Kong, regardless of whether the defendants are Hong Kong residents, residents of mainland China, or a foreigner, should be prosecuted in Hong Kong and tried by Hong Kong courts.

21. As for judicial review, a speaker pointed out that while Hong Kong courts do not have the authority to rule on the constitutionality of the NSL because the NSL is legislation formulated by the Central Authorities, they do have the authority to review the legality of the relevant substantive administrative acts made under the NSL.
22. Most speakers expressed the view that the allegation that “foreign judges cannot accurately understand and apply the NSL” is wrong. They argued that nationality and right of abode cannot be used to assess the judicial capability of individual judges. This is because, Article 92 of the Basic Law provides that: “Judges and other members of the judiciary of the Hong Kong Special Administrative Region shall be chosen on the basis of their judicial and professional qualities and may be recruited from other common law jurisdictions”. As such, the NSL should not exclude foreign judges from adjudicating cases related to this Legislation, otherwise it will contravene the Basic Law.
23. Regarding the public trial, most speakers agreed that open trial shall be the principle and closed trial shall be the exception, for instance, cases involving state secrets can be conducted in the form of closed-trial.

National Security Law and Rights of the Hong Kong Residents

24. According to Article 39 of the Basic Law, “[t]he provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic,

公約適用於香港的有關規定繼續有效，通過香港特別行政區的法律予以實施。」在過往的司法實踐中，香港法院曾直接或間接根據兩個國際公約審查香港本地立法的合憲性。

Social and Cultural Rights, and international labour conventions as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region”. In the past, the Hong Kong courts had directly or indirectly invoked these two international covenants to review the constitutionality of legislations enacted by local legislature.

25. 有講者建議，為了避免相關爭議，全國人大常委會在立法之後作出一個審查和聲明，表明「國安法」符合兩個國際公約，這種聲明類似於1990年4月4日全國人大關於《基本法》符合《憲法》的聲明。也有講者表示，現時國家尚未批准公約，因此很難根據公約審查「國安法」。

25. A speaker suggested that to avoid unnecessary disputes, the NPCSC could review the NSL and issue a declaration stating that the NSL is consistent with the two international covenants. A similar declaration had been issued by the NPC on 4 April 1990 to state that the Basic Law is consistent with the PRC Constitution. But another speaker pointed out that since China has not yet ratified the International Covenant on Civil and Political Rights (ICCPR), it would be difficult for it to base on the ICCPR to review the constitutionality of the NSL.

26. 有講者指出，多數的權利並非絕對，公眾也能夠接受「權利是有界限的」，「國安法」應當在各種衝突的法益之間求取平衡。

26. A speaker pointed out that since most rights are not absolute rights and the general public also accept that “rights have limits”, therefore the NSL should strike a balance between competing rights and interests.

國家安全與反恐

National Security and Counterterrorism

27. 《人大決定》第6段將「組織實施恐怖活動」列為懲治對象。有講者指出，對於恐怖主義所侵犯的法益，不同的國家和地區有不同的理解：有些認為是公共安全，有些認為是國家安全，有些認為是公共秩序。

27. Article 6 of the NPC Decision punishes the acts of “organizing terrorist activities”. A speaker pointed out that different jurisdictions have different understandings of the legal interests infringed by terrorism: some jurisdictions consider it as an infringement of the national security of the state, while some other jurisdictions consider it as an attack to public security, and some as a violation of public order.

28. 最開始，普遍的做法是將恐怖主義與國家安全分開，而在「911事件」之後，一些國家（如德國、意大利、新加坡、澳大利亞）開始將恐怖主義犯罪作為一項危害國家安全的犯罪。在內地，狹義的國家安全並不包括反恐。澳門的做法是將國安與反恐分開處理，恐怖主義罪案由普通法院審理，危害國家安全的案件須由中國籍的法官來審理。但澳門與香港的情況不同，這種做法不一定能照搬。

29. 特區反恐立法面臨幾個問題：一是如何區分國家安保範疇的反恐與刑事偵查範疇的反恐；二是處理面對香港特區反恐法中的「除外條款」，這將成為司法合作的難點；三是預防和偵查恐怖主義的特別措施，如臥底、跟蹤、監視、隱名作證等。

國安立法與國際關係

30. 有講者指出，美國對港政策主要受三個因素的影響：一是香港在國際經濟體系中的地位；二是香港作為美國進入中國市場的橋頭堡；三是香港作為美國「和平演變」中國的橋頭堡。

28. At the beginning, the most common practice is to distinguish counterterrorism from national security, whereas, after the “911 Incident”, some countries (such as Germany, Italy, Singapore, and Australia) started to treat terrorism as a crime that endangers national security. In mainland China, the narrow definition of national security does not cover counterterrorism. Macau’s approach is to distinguish national security from counterterrorism, leaving cases involving terrorism to be adjudicated by ordinary courts while mandating cases involving crimes endangering national security to be adjudicated by judges of Chinese nationality. However, given the different situations in Hong Kong and Macau, the same approach may not be adopted in Hong Kong.

29. There are several tricky issues facing the Hong Kong’s counterterrorism legislation: Firstly, how to distinguish counterterrorism in the context of protection of national security and anti-terrorism in the context of criminal investigation; secondly, how to deal with the “exception clause” in Hong Kong’s counterterrorism law which might become a major obstacle in judicial cooperation; and thirdly, how to deal with issues relating to the special measures employed in the prevention and investigation of terrorist activities, such as undercover, trailing of suspects, surveillance and witness concealment in trial proceedings, etc.

National Security Legislation and International Relations

30. One speaker noted the United States’ policy towards Hong Kong is mainly determined by three factors: Firstly, Hong Kong’s international economic status; secondly, Hong Kong’s role as the United States bridgehead to China’s market; and thirdly, Hong Kong’s role as the United States’ bridgehead to the “peaceful transformation” of China.

31. 在過去的一些年裏，客觀的情況發生了變化。美國的精英階層意識到，美國不再是香港的國際金融中心地位的最大受益方，「和平演變」中國已經沒有可能實現。零和的政治遊戲令美國不惜摧毀香港。
31. The international environment has however changed in recent years. The policy elites in the United States have realized that their country is no longer the largest beneficiary in Hong Kong's status as an international financial centre, and "peaceful transformation" of China is no longer possible. Given such a zero-sum political game, the United States might have determined to destroy Hong Kong's privileged position in the international economic system.
32. 《人大決定》公佈後，美國宣佈了一系列制裁措施，但是這些措施在短期內對香港的影響並不大。例如，美國無法單方面取消香港作為獨立關稅區的地位，因為香港作為獨立關稅區的地位並不取決於美國。港幣和美元脫鉤很難實現，因為美元自由兌換是美國一貫奉行的政策，不允許港幣和美元自由兌換意味著美國需要放棄這一政策。資本的自由流動，也不取決於美國方面。美國方面的制裁，可能有實際影響的，是某些技術出口的限制，這可能對香港的高校產生一些影響。總體而言，在短期內，美國方面的制裁對香港的影響不大。至於長期影響，則有待觀察。
32. After the NPC Decision was adopted, the United States announced a series of sanctions. But in the foreseeable future, these measures are unlikely to have significant impacts on Hong Kong. For example, the United States cannot unilaterally revoke Hong Kong's status as a separate customs territory because this status is not determined by the United States. Delinking Hong Kong currency's peg from the US dollar is difficult to achieve because the United States has been pursuing the policy of free convertibility of US dollars, thus prohibiting free conversion between Hong Kong currency and US dollars would mean that the United States has to abandon such policy. Free flow of capital, too, does not depend on the United States. So, the United States' sanctions may only be practical in terms of restricting the exports of certain technologies to Hong Kong, thus affecting the tertiary education institutions in Hong Kong to a certain extent. In short, the United States' sanctions will not have significant impact on Hong Kong in the short run though their long-term effect remains to be seen.

其他尚待釐清的問題

Other Remaining Issues

33. 由於目前沒有公開的法律草案，多數講者認為，相關的問題有待立法者的決
33. Since the NSL draft still has not been made public, many speakers agreed that many issues surrounding the NSL remain

斷。例如，「國安法」的解釋機制如何？是否容許香港法院解釋？還是由中央方面解釋？「國安法」如何與香港特區的法律制度對接？「國安法」會否影響香港與外國的學術交流？如何對待在內地被視為危害國家安全的團體？如何處理口頭宣揚「港獨」的行為？共同犯罪的管轄權如何分配？會否有相關的引渡安排？中央在香港設置的維護國家的機構是否受《基本法》第 22 條的約束？危害國家安全的案件，會否有陪審團參與審理？立法完成後，是否公開相關立法材料，供社會大眾參照，幫助理解「國安法」？

to be determined by the legislators. For instance, what will be the mechanism to interpret the NSL? Should the NSL be interpreted by the Hong Kong courts or by the CPG? How to ensure that the NSL is in line with the legal system of the HKSAR? Will the NSL hinder academic exchange between Hong Kong and other countries/jurisdictions? How will entities being regarded in mainland China as endangering national security be treated under the NSL? How will verbally propagandizing “Hong Kong Independence” be handled under the NSL? How will the jurisdiction issue be handled in joint offences involving mainland China and Hong Kong? Will there be any rendition/extradition arrangement under the NSL? Will the national security institutions to be established by the CPG in Hong Kong subject to Article 22 of the Basic Law? Will there be a jury trial for cases involving crimes endangering national security? After the enactment of the NSL, will the relevant legislative materials be made available for public access, thus helping people to better understand the NSL?