

COMMENT

HONG KONG'S POLITICAL CRISIS OF JULY 2003

The publication on 24 September 2002 of the Hong Kong Government's Consultation Document on *Proposals to Implement Article 23 of the Basic Law* was one of the most important constitutional and legal developments in the short history of the Hong Kong Special Administrative Region (SAR).¹ The three-month consultation exercise on the Document ended in December after a demonstration on 15 December 2002 of nearly 60,000 people against the legislative proposal. In response the Government amended the proposal by giving several major "concessions" on its substance, but rejected the call for a White Bill – a bill published for public consultation but not yet introduced into the Legislative Council. The National Security (Legislative Provisions) Bill, designed to implement Article 23, was introduced into the legislature in February 2003.²

During the Bills Committee's deliberations on the Bill, the Government agreed to some amendments. However, critics said that the amendments were insufficient, and in any event the Government's timetable of passing the Bill in the Legislative Council's week-long meeting beginning on 9 July did not allow sufficient time for deliberation. Meanwhile, the onslaught of SARS (severe acute respiratory syndrome, or atypical pneumonia) in March 2003 distracted public attention from the Bill. As Hong Kong began to recover from the SARS crisis in June, opponents of the Bill woke members of the public up to the fact that the Bill was to be pushed through the legislature in early July.

On 1 July 2003, a hot summer day which was also a public holiday marking the sixth anniversary of Hong Kong's return to China and the last day of the new Premier Wen Jiabao's visit to Hong Kong, half a million Hong Kong residents took to the streets to demonstrate against the Article 23 legislative exercise and to express other grievances against the Tung Chee-hwa administration. Surprised themselves by the large turnout, opponents of the Bill demanded that the Bill be shelved, and planned to organize a rally of tens of thousands surrounding the Legislative Council on 9 July if proceedings on the Bill were to go ahead on that day. The SAR Government finally decided to postpone the Bill – the decision came on the evening of 6 July three hours after the Liberal Party withdrew from the "governing coalition" of political

¹ For discussion of the issues by this author, see Albert H. Y. Chen, "Existing Law may be Good Enough", *South China Morning Post (SCMP)*, 23 Sept 2002, p 18; "Giving a Score to Hong Kong's Human Rights Record", *Yazhou Zhoukan (Asia Weekly)*, 7–13 Oct 2002, p 22 (in Chinese); "Proposals a Credit to '1 Country, 2 Systems'", *China Daily (Hong Kong edition)*, 7 Oct 2002, pp 3–4; "Will Our Civil Liberties Survive the Implementation of Article 23?" *Hong Kong Lawyer*, November 2002, pp 80–88.

² For comments on the Bill by this author, see Albert H. Y. Chen, "How Hong Kong Law will Change when Article 23 of the Basic Law is Implemented" (2003) 33 HKLJ 1.

parties in protest against the Tung administration's original decision on 5 July to give three major "concessions" on the content of the Bill and at the same time to adhere to the 9 July deadline for the passage of the Bill. On 17 July 2003, Chief Executive Tung Chee-hwa announced that the Government would re-open public consultation on the Bill to ensure that its content would receive broad public support before it is passed into law.

The Government's new approach to this legislative exercise is to be welcomed. Since the passing of the age of royal absolutism, law has been understood as the expression of the will of the people rather than the will of the ruler. A democratic legislative process is essential to the law's legitimacy. The principal reason why law is binding on the people is that the people have chosen to make the law for themselves. It would be a flagrant violation of the democratic principle of law-making for a government or legislature to hastily enact a controversial law in the face of extremely strong public opposition.³

Even during colonial times, when Hong Kong did not have elected members in the legislature, the Government practised "consultative democracy" and aspired to make only laws that received broad public support. Forcing the National Security Bill through the legislature in the face of the strongest expression of public opposition to a legislative measure in Hong Kong's history would have been the gravest political error. It would not only be a violation of Western principles of democratic law-making, but also of the colonial principle of consultative government and of the traditional Chinese principle of humanistic rule which assumes that "what the people desire, Heaven will follow" and requires the Son of Heaven to respect the will of the people.

I therefore applaud the Liberal Party's decision on 6 July to withdraw from the "governing coalition" of political parties and to join the Democratic Party and its allies in their call for a postponement of the legislative process, which forced the Government to reverse its original decision. This demonstrates that at a moment of "life and death" for Hong Kong, Hong Kong's fate can lie in the hands not of the Central Government or the Chief Executive, but of legislators and political parties. This momentous event in our constitutional history marks a victory for reason, for Hong Kong's autonomy, and for constitutionalism.⁴

Imagine the following scenario. Tens of thousands of demonstrators surround the Legislative Council on 9 July. The Bill is pushed through. Given that such a large-scale expression of the public will against a single legislative measure is unprecedented in recent world history, the event will receive the

³ This paragraph and the following paragraph are adapted from this author's article: Albert Chen, "A Defining Moment in Hong Kong's History", *SCMP*, 4 July 2003.

⁴ This paragraph and the next few paragraphs are an expanded version of part of this author's article: Albert Chen, "How the Liberals Stopped a Constitutional Crisis", *SCMP*, 8 July 2003.

widest international attention. The perception will be created that the Chinese Government, acting through the Hong Kong Government, is imposing a repressive law on the people of Hong Kong against their will. This would do irreparable harm to the reputation of the Chinese Government, and to the project and reputation of "one country, two systems". It should be noted that Taiwan's President Chen Shui-bin has already used the 1 July demonstration as evidence against the viability of "one country, two systems". The idea, to be impressed upon the minds of hundreds of millions around the world by the passage of a National Security Bill amidst massive public protest, would be that "one country, two systems" is a lie in relation to Hong Kong, and it is perfectly legitimate for Taiwan to resist reunification. Forcing the Bill through the legislature in Hong Kong would therefore jeopardize not only Hong Kong's interest but also China's fundamental national interest in reunification with Taiwan. So long as the national security law is perceived as repressive by the international community and Taiwan, the damage is already done, even if there are no prosecutions under the law soon after the Bill is passed. People will still believe that the law is repressive but is not being strictly enforced for the time being.

When it made the decision on 5 July to proceed with the second and third readings of the Bill as scheduled on 9 July 2003, the SAR Government apparently believed that with the three latest amendments, not many people would join the demonstration on 9 July. This would have been a serious miscalculation based on a gross misreading of the sentiments of the people who demonstrated against it on 1 July. Most of them did not know much about the content of the Bill, or whether the three latest amendments would have covered the major issues. They were unhappy at the unreasonable haste in which the Bill was being pushed through by a small number of government leaders and legislators who showed nothing but contempt for public opinion. Given the revelation on 4 July by Mr James Tien, leader of the Liberal Party, that Beijing did not insist on a deadline of 9 July, people might perceive the Government's insistence on the deadline as another sign of its contempt for the views of the public, even where such views had been expressed by such physical endurance in the heat for long hours by so many people on 1 July. The "three concessions" might be perceived as bribes offered to appease the public rather than based on sound legal policy. Indeed, as some lawyers pointed out already, it was doubtful whether the legal technicalities relating to the implementation of the three concessions could be ironed out in such haste. Many respectable and influential leaders of public opinion in Hong Kong rejected the "three concessions" or "favours" offered in return for the people's acceptance of a legislative process that had been perceived as hasty, unreasonable and oppressive. Demonstrators in the proposed mass protest on 9 July would have a more specific objective (voting against the Bill by their feet)

than those on 1 July. Given these considerations, a big turnout (of the order of tens of thousands) on 9 July would have been likely if the Bill had not been postponed. This prediction can be considered validated by the fact that even after the scheduled reading of the Bill on 9 July was cancelled, approximately 50,000 people still turned out to demonstrate outside the Legislative Council building on the evening of 9 July to protest against the Article 23 legislative exercise and to call for further democratisation of Hong Kong's political system.

The Government's original decision to go ahead with the legislative proceedings on 9 July would have entailed a "lose-lose" situation. I have already considered (above) the scenario of the Bill being pushed through in the midst of a mass protest of the largest scale by international standards (as far as a single legislative measure is concerned), and the loss caused to China's national interest in the international perception and perception in Taiwan of the successful implementation of "one country, two systems" in Hong Kong. Consider the alternative scenario, which is that the Bill is defeated in LegCo in the midst of mass protest. This would strike the most severe blow to the authority of the Hong Kong Government in Hong Kong and irreparably damage its credibility in the eyes of the Central Government. It may precipitate a constitutional crisis. It will also create the possibility that Article 23 of the Basic Law cannot be implemented in the foreseeable future. This is why it is a "lose-lose" situation (no matter whether the Bill is passed) not only for the people of Hong Kong, but also from China's point of view.

Consider the alternative course of action that legislators have now forced the Government to adopt, which is to postpone the final stage of legislating the Bill. There will be more time for further consultation and for the detailed provisions of the Bill to be finalised. Given that the Government has already agreed to give way on the three most controversial sets of provisions that have aroused the strongest opposition, it is to be hoped that the deliberations on the Bill in the next few months will be relatively smooth. More than 100 amendments have been proposed by legislators, but compared to the "three major issues" on which the Government has now given way, the issues raised by these other amendments should be easier to resolve. The Government and the legislators concerned can engage in normal bargaining and give-and-take. I see no reason why, if this process is handled in a competent manner (from the point of view of the legal technicalities) with rational debate and an open mind, it cannot result in an amicable settlement. Then there will be no excuse for a small number of activists to incite massive demonstrations when the second and third readings of the Bill are conducted. Even if they do incite such protest, we can reasonably expect that the scale will be small. The Government's original argument on 5 July that prolonging the legislative process on the Bill would prolong the conflict and prevent the Government from concentrating on Hong Kong's economic development was therefore

completely unsound. It was the Government's originally proposed course of action that would create and escalate political and social conflicts in Hong Kong (completely unnecessarily given the effectiveness of the alternative course of action mentioned above), which would include not only a massive demonstration on 9 July but also further and intensifying conflicts between defenders of the status quo and civil society movements for rapid democratisation in Hong Kong and possibly for getting rid of the National Security Law (if passed but perceived as a repressive law) in future.

We can therefore see that postponing the legislative process on the Bill in this case, plus the three major amendments now proposed by the Government and the coerced reversal of the Government's original decision of 5 July 2003, is a victory for reason and common sense. This course of action enables the crisis precipitated by the 1 July rally to be resolved without the occurrence of large-scale demonstrations attracting worldwide attention. I therefore salute each and every of those legislators who have contributed to coercing the Government to agree to halt the legislative proceedings on the Bill on 9 July. They have done a tremendous service not only to the people of Hong Kong, but also the people of China as a whole who have a stake in the success of "one country, two systems".

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