



BEIJING TURNS THE SCREWS

Freedom of expression in Hong Kong under attack

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Introduction

Ever since the Hong Kong Journalists Association and ARTICLE 19, in 1993, began publishing these annual reports on the state of freedom of expression in Hong Kong, one of our principle concerns has been the efficacy of the 'one country, two systems' arrangement. In particular, we have been concerned about whether the Central Government in China, given its history of antipathy to divergent or dissenting views and systems, would feel compelled in certain circumstances to flex its muscles in the Special Administrative Region (SAR), and if so, what impact this would have on freedom of expression and other associated rights. A key purpose of these reports has been to monitor progress on this front.

Of late, the report card has not been an encouraging one. For the first few years after the handover in 1997, we identified areas where we felt that freedom of expression faced risks and threats, but concluded broadly that despite pressures over a range of issues of sensitivity to the Central Government—Falun Gong, Taiwan, threats to RTHK—this important right was holding its ground, even if it had been weakened. In our last report, things took a turn for the worse with the controversies over national security legislation under Article 23 of the Basic Law. It was our view that the proposed national security laws seriously threatened, circumscribed and ultimately undermined the right to freedom of expression; despite the bill being scrapped, temporarily, China will not be happy until such legislation is firmly in place.

Divided community

Regrettably, the past year under review has raised our concerns to a new level. Driven by its own fears of the huge protest on July 1st 2003, and an increasingly emasculated administration under the chief executive, Tung Chee-hwa, China has sought to impose its will on political developments in the SAR. By starting a pernicious and divisive debate about patriotism (the pressure for political correctness has important implications for free speech), Beijing succeeded in polarising the community, while attacking those in the pro-democracy camp for using the issue of democracy as a cover for their own (unpatriotic) interests, including—it was suggested—to push for independence for Hong Kong. China then abruptly cauterised local aspirations by deciding that full democracy could not be implemented in 2007 and 2008.

Freedom of expression and democracy are in many ways like two sides of the same coin. Certainly, without democracy, freedom of expression (and of the media) is at best a freedom that is granted and tolerated, rather than a right that is entrenched and indivisible. At worst, it is a freedom that can be taken away, or vicariously undermined. During the last year under review, legislators experienced just this—their right to put forward motions of their choice, notably on China's policies towards Hong Kong, was restricted.

In this atmosphere of political intimidation and pressure to conform, the last year under review saw also three radio talk-show hosts walk away from their jobs—providing the community in Hong Kong with perhaps the sharpest reminder to date that interference from Beijing was having a deleterious effect on freedom of expression. Beijing, as we say, is turning the screws.

In this sense we are at a watershed. Our longstanding fears over the efficacy of the 'one country, two systems' formula are being realised. Hong Kong's high degree of autonomy, its tradition of upholding rights, its defining respect for freedom of expression all now face a difficult and questionable future; recognising this, the community has a deep sense of unease.

To be sure, the task of protecting freedom of expression rests partly with journalists, politicians, indeed every and any member of the community that values the principle of a free flow of ideas, opinions and information. But the government, too, has a major responsibility to protect and uphold the right to freedom of expression and other associated rights that sit at the heart of our value

systems. The SAR government has only ever taken that responsibility lightly. If we are to stem the erosion of freedom of expression in Hong Kong, the government must stand up and take the issue seriously. Most importantly, it must as a matter of urgency impress upon Beijing the need for the Central Government to refrain from any actions that might undermine freedom of expression and of the media. Anything less will jeopardise Hong Kong's position not only as a centre for the exchange of ideas and information, but also as a conduit between China and the rest of the world—the very essence of Hong Kong's existence.

Cheung Ping-ling, Chairperson, HKJA

Andrew Puddephatt, Executive Director, ARTICLE 19

Conclusions and recommendations

There has been a marked and worrying deterioration in the political atmosphere in Hong Kong in the second half of the year under review. The first half began, symbolically, with a half-a-million strong protest march on July 1st against the Hong Kong government's controversial national security bill and for the speedy introduction of full democracy—as a way to solve increasing problems of governance. There then followed six months of relative calm, as both the Hong Kong and Chinese governments appeared to take the momentous march and subsequent large-scale protests in their stride. Indeed, in September 2003 the government announced that it was withdrawing the national security bill from legislative consideration.

What happened from January 2004 shattered the illusion of calm, as Beijing sought to impose its will on political developments in Hong Kong. First it launched what became known as the patriotism debate, which was a front for attacks against leading members of the pro-democracy camp, which has been at the forefront of the defence of free expression.

Curbing demands for political reform

The debate soured the atmosphere significantly and paved the way for what many analysts considered to be the real aim—sharply reducing expectations for meaningful political reform. In sharp succession, the Standing Committee of China's NPC ruled that Beijing would have the leading say in Hong Kong's political reform, and then decided that full democracy—a key demand in the July 1st march—could not be implemented in 2007 and 2008.

While the polarised political environment did not pose a direct threat to freedom of expression, the resignation of three prominent talk-show hosts certainly did. The presenters—who were all highly critical of the deteriorating political environment—cited political pressure, intimidation and in one case death threats, as reasons for their resignations. Pressure also came to bear on the ability of legislators to debate motions of their choice, and on the freedom of one legislator in particular, former HKJA chair Emily Lau, to express her views on the question of self-determination for Taiwan.

There has also been talk about the enactment by Beijing of a unification law, which could apply to Hong Kong. Such a law would cover secession—one of the offences in the government's national security bill.

Indeed, there is considerable uncertainty about what will happen to the national security bill, which in its past form posed a significant threat to freedom of expression. The government has set up a working group to discuss the way forward. There is no word yet on when the group will complete its work, or whether it will propose a relatively lenient bill, or one that places Beijing's considerations ahead of those of Hong Kong—in possible breach of guarantees that Hong Kong would enjoy a high degree of autonomy.

The events of the past six months have caused considerable unease in Hong Kong and caused people to question whether the Chinese and Hong Kong governments are still intent on protecting the SAR's core values, including freedom of expression.

With this in mind, the HKJA and ARTICLE 19 call on the Hong Kong government to take the following steps to protect freedom of expression and press freedom in the Hong Kong SAR:

1.1 Strongly encourage the Central Government in Beijing to state unequivocally and publicly that it does not, and will not, tolerate actions by anyone on the mainland, including officials at whatever level, that impinge on or threaten freedom of expression in the Hong Kong SAR, as guaranteed in the Basic Law.

1.2 Refrain from taking any action that may threaten freedom of expression.

1.3 Take all necessary action to investigate allegations of intimidation aimed at suppressing freedom of speech and press freedom.

1.4 Work towards a more harmonious and inclusive society that is tolerant of differences of opinion—even if they are not widely held or are anathema to the Central Government in Beijing.

The HKJA and ARTICLE 19 also call on all journalists and their employers to ensure that self-censorship is not exercised, despite the immense pressures to take a politically correct line—at least one that is sympathetic, if not fully supportive of Beijing's stance on current issues, including the need to slow political reform and focus on economic development.

The HKJA and ARTICLE 19 also note that the government is still working—albeit behind closed doors—on a national security bill. We call on the government to take the following action:

2.1 Ensure that work on the national security bill is undertaken in an open manner, and that full and comprehensive consultation is undertaken during this process.

2.2 Give serious consideration to whether a national security bill is still required, given that Hong Kong neither faces any national security threat nor poses any to the central government in Beijing.

2.3 If the government decides to proceed with a national security bill, it should first release a white paper for full and extensive public consultation. Failure to do so will lead to the same problems that emerged when a bill was first published in February 2003.

2.4 Ensure that adequate safeguards are in place to ensure that national security considerations do not threaten freedom of expression. In this respect, the **Johannesburg Principles on National Security, Freedom of Expression and Access to Information** should be fully implemented, in particular as they relate to the offence of sedition. Broad public interest and prior publication defences should also be incorporated into the Official Secrets Ordinance.

2.5 Enact a **Freedom of Information Ordinance** as soon as possible, as a counterweight to provisions in any national security law and the Official Secrets Ordinance. Such legislation should be based on the principles of maximum disclosure, limited and narrowly drawn exemptions, and an effective appeal mechanism.

SECTION 1

A dramatic change of direction

The year under review (July 1st 2003-June 30th 2004) was meant to have started with the passage of the Hong Kong government's national security legislation, as called for under Article 23 of the Basic Law. This did not take place. The administration decided abruptly, in July, not to put the bill to a vote and then in September to drop the bill altogether. These developments followed a huge protest march on July 1st, which attracted half a million participants. We will examine these developments in Section 4.

Analysts considered the decision to withdraw the bill, and Beijing's apparent relaxed attitude towards the move, to be signs that the new Chinese leadership—under President Hu Jintao and Premier Wen Jiabao—was taking a more mature approach towards popular dissatisfaction in Hong Kong with the SAR government and the national security bill.

*Beijing unhappy
with unpatriotic
Hong Kong*

However, by February 2004, and in the wake of the defeat of pro-government candidates in the November 2003 district council elections and another large rally on January 1st 2004, it had become clear that this was not the case. As Hong Kong moved towards consultation on how the political system should be changed in 2007 and 2008, it became clear that the authorities in Beijing were less than happy with developments in the territory (and in particular with the performance of the Tung Chee-hwa administration), and wished to exercise greater control over events. First, Beijing launched a campaign to promote patriotism in the territory. It then sought an interpretation of the relevant provisions in the SAR's mini constitution, the Basic Law, on constitutional reform, which the Standing Committee of the National People's Congress (NPC) duly delivered—giving the central government a veto over any changes. Then in April 2004, the Standing Committee gave a ruling that severely curtailed the extent of possible changes.

These moves created an atmosphere that was not at all conducive to free expression. The so-called patriotism debate in particular led to attacks against those politicians who are among the most supportive of freedom of speech and of the press. Three prominent radio talk-show hosts, Albert Cheng King-hon, Raymond Wong Yuk-man and Allen Lee Peng-fei, announced that they were pulling out of their programmes. One cited the suffocating political climate; another made it clear that he had faced pressure from mainland officials and friends. And Beijing declared that Hong Kong's Legislative Council should not be allowed to debate motions condemning the work of the NPC or its Standing Committee.

THE ORIGINS OF THE PATRIOTISM DEBATE

The tide turned in late January, with the *Ming Pao* newspaper reporting on a debate between the chief secretary for administration, Donald Tsang, and the head of the One-Country Two-Systems Policy Research Institute, Shiu Sin-por, on whether one-country should take precedence over political reform and whether patriotism should come before democracy.

The state-run mainland news agency, Xinhua, made the campaign official in February, with the release of a statement saying that Hong Kong should be governed by Hong Kong people, with patriots forming the main body of this ruling elite. A number of "principles" were laid out, including those of loving China and Hong Kong, upholding the Basic Law, supporting China's resumption of sovereignty over Hong Kong, and supporting the 'one-country, two-systems' principle. Xinhua said the principles applied to the chief executive, principal officials, executive and legislative councillors and judges.

The commentary alleged also that a small number of people were taking part in activities that were inconsistent with their capacities or were engaging in activities which went against patriotic principles. It went on to allege that some people continued to participate in or lead political organisations aimed at opposing the leadership of the Chinese Communist Party and subverting the central government, using democracy as a shield.

Some pro-Beijing supporters in Hong Kong went further, naming those they considered to be unpatriotic. These included the former chairman of the Democratic Party, Martin Lee Chu-ming (who faced particular criticism over a visit he made to Washington in March 2004 to testify before a Senate committee on the latest developments in the territory); the chairman of the Hong Kong Alliance for Support of Patriotic Democratic Movements of China, Szeto Wah (who has been at the forefront of campaigns to reverse the official verdict on the 1989 pro-democracy movement in China); and legislator Emily Lau Wai-hing of the Frontier party, who has publicly supported the principle of self-determination for Taiwan. (See below.)

The debate, by turns, also became ugly. China's vice commerce minister, An Min, claimed that some people had distorted the debate on patriotism by making what he called ridiculous comments. He also hit out at those who argued that loving the country should not be tantamount to loving the Chinese Communist Party. On a separate occasion he launched a scathing attack on Martin Lee, whom he called a traitor. Mr An also criticised Mr Lee's family background—Mr Lee's late father was a pre-1949 revolution general with the Kuomintang, the rival party to the Chinese Communist Party.

Beijing's supporters in Hong Kong were also at times less than polite. An NPC delegate, Raymond Wu, for example, had to apologise after saying that Hong Kong people were like dogs that had been fed too many biscuits.

There were also suggestions that those who did not support the enactment of a national security law were being unpatriotic. Senior mainland officials during meetings in Beijing in mid-February raised questions to this effect with Hong Kong's chief secretary for administration, Donald Tsang. And Tsang Hin-chi, the sole Hong Kong member of the Standing Committee of the NPC, asserted that Martin Lee, Szeto Wah and Cheung Man-kwong, another democrat, were unpatriotic because they led opposition to the Article 23 legislation.

The patriotism debate, though it continues to simmer, began to lose its fizz in March. Some critics said the aim of the debate had been to dampen expectations of rapid moves towards full democracy, and it would therefore be more constructive to start debating the concrete issue of political reform.

DEMOCRATIC DEVELOPMENT CURTAILED

*NPC Standing
Committee takes
charge*

While the debate on patriotism at times seemed to be obscure, and analysts could only speculate on its aim, the next move by the central government was crystal clear. It announced suddenly in late March that the Standing Committee of the NPC would interpret provisions in the Basic Law governing how changes could be made to the political system. The interpretation would cover the election of the next chief executive in 2007 and the Legislative Council one year later. The pro-democracy camp had been arguing that full democracy within this timeframe was permissible under the Basic Law.

Within two weeks, the Standing Committee had issued its ruling. Any moves to reform the political system, it said, would need prior clearance from Beijing. The ruling angered representatives from the pro-democracy camp and civil rights groups, including the HKJA, who had assumed that Hong Kong would initiate the debate. Indeed, in late 2003 government officials were still insisting that they themselves would set a timetable for the consultation process. This changed abruptly after the chief executive, Tung Chee-hwa, held talks in

Beijing in December 2003; President Hu Jintao and Premier Wen Jiabao expressed serious concerns about any rapid move towards full democracy.

By the end of April 2004, the NPC Standing Committee had made a second ruling, further stifling any meaningful reform. The body said that universal suffrage should neither be adopted for the 2007 selection of the chief executive nor for the election of the (entire) legislature in 2008. Indeed, Standing Committee's 173 members came forward with two additional restrictions. First, they ruled that the proportion of legislators elected from geographical and functional constituencies should remain unchanged at 50:50—despite a provision in article 68 of the Basic Law that full democracy should be achieved “in accordance with the principle of gradual and orderly progress”. Second, they said the so-called split voting system should be maintained. This system lays down that any measure initiated by a legislator must receive majority support from two groups in the Legislative Council—those representing the people and those chosen by functional groups. Together, these mean that the pro-business segment of the legislature—which dominates functional constituencies—can in most cases veto any initiative from the pro-democracy camp.

Pro-democracy groups condemned the ruling, saying it undermined the ‘one-country, two-systems’ principle and Hong Kong’s high degree of autonomy. Nevertheless, in May 2004 the government issued a consultation paper outlining areas where change was permissible. Indeed, the head of the government taskforce handling the issue, chief secretary Donald Tsang, warned that any attempt to go beyond the limits outlined by the NPC Standing Committee would be “futile”.

THE BATTLE FOR HONG KONG’S HEART

The political atmosphere continued to deteriorate following the launch of the patriotism debate in early 2004. One mainland official suggested ominously that the pro-democracy camp was using democracy to seek independence for Hong Kong; another, in a reference to the old colonial days, said some people in Hong Kong were “bananas”—yellow outside and white inside. Yet another—this one based in the SAR—spoke of the need to distinguish “fragrant flowers” from “poisonous grass” in Hong Kong.

Such comments prompted the former chief secretary for administration, Anson Chan, to note that the manner in which Beijing had handled constitutional development issues, “coupled with its public rhetoric and posturing reminiscent of the Cultural Revolution, have left most Hong Kong people puzzled, hurt and frustrated.” This in turn prompted a sharp rebuke from mainland officials and their supporters in Hong Kong.

*Academics and
professionals fight
back*

However, some academics and professionals decided to hit back. In late May 2004, more than 400 academics published an advertisement in the *Apple Daily* newspaper expressing concern over threats to freedom of expression. They pointed in particular to the departure of the three Commercial Radio talk-show hosts and what they called the “sudden transfer” of RTHK presenter Ng Chi-sum from a morning to an afternoon programme. (See section 2 for details). The statement said: “Their presence in popular phone-in programmes is one of the important indicators of freedom of speech in Hong Kong. Today, there is growing alarm at the threat to the freedom of speech and we need to be vigilant against the signs of its erosion.”

A second advertisement was published in the *Apple Daily* and the *Hong Kong Economic Journal* in June. More than 200 professionals and academics signed a statement calling for the defence of Hong Kong’s core values—which they said were being eroded. They listed the values as liberty, democracy, human rights, rule of law, fairness, social justice, peace and compassion, integrity and transparency, plurality, respect for individuals and upholding professionalism.

They noted that the community was “filled with a strong sense of helplessness and rising frustrations”. They also said that Hong Kong’s governance and business environment had deteriorated and that social cohesion was being weakened. One of the signatories, barrister Alan Leong, said Beijing’s interference in Hong Kong’s affairs had undermined confidence and increased polarisation.

There were some bright lights, though, in June. Indications were that Beijing might be prepared to consider a cooling of tensions and a reconciliation with pro-democracy forces, although analysts doubted whether this would be achieved in the crucial run-up to Legislative Council polls in September 2004; Beijing is deeply fearful that the Hong Kong government may lose control of the legislature.

The annual events held to mark the anniversary of the June 1989 crackdown against the Chinese pro-democracy movement also went ahead without trouble. The main event, a candlelight vigil on the evening of June 4th, attracted 82,000 participants—one of the highest turnouts since the vigil was first organised (and well up on the 50,000 turnout for the 2003 event).

Indeed, the strong turnout may well be replicated in a march to be held on July 1st—one year after 500,000 people took to the streets to demand democracy and call for the national security bill to be shelved. This year’s event will focus on democracy—and is likely to attract many people who are frustrated with Beijing’s decision to rule out full democracy in 2007 and 2008. As such, analysts say there is not likely to be a significant cooling of tensions—at least not until after September’s Legislative Council elections.

SECTION 2

Free expression comes under direct attack

Freedom of expression became a direct casualty of the deteriorating political atmosphere. Although readers, viewers and listeners could readily continue to find dissenting views and news stories that might be embarrassing to, or difficult for, the central government, they might find that they were presented in a more cautious way than they would have been a few years ago. However, it was in the controversial area of radio talk-shows that the most dramatic changes took place. Limits were also imposed on freedom of expression within the Legislative Council and attempts were made to rein in discussion about Taiwan politics.

Over a period of just three weeks in May 2004, a total of three popular (and outspoken, and often controversial) talk-show hosts working for the private broadcaster, Commercial Radio, announced they were taking a break from their programmes. Their decisions came amid charges that the political atmosphere had become too suffocating and, in one case, that mainland officials were exerting unwarranted pressure. Radio talk-shows have become barometers of popular discontent, with supporters of Beijing alleging that the hosts fan the seeds of public discontent.

The first to quit was Hong Kong's most popular talk-show host, Albert Cheng, who announced that he was leaving his morning programme, *Teacup in a Storm*, for several months. Mr Cheng said he was depressed about the situation in Hong Kong. "The political climate makes you feel suffocated," he noted; "There's so much pressure—the slanted media, the savage Hong Kong government and the tyrannical central government." He also said that many friends had told him not to criticise the government "as fiercely as before".

*Mr Cheng accuses
journalists of
complicity, too*

Mr Cheng also noted that "many friends from different sectors" had changed their political stance. He pointed in particular to academics and journalists, noting that some senior journalists had attended a forum hosted in Shenzhen by senior mainland officials shortly before the NPC Standing Committee announced its ruling on universal suffrage. Mr Cheng wrote in the *South China Morning Post* that "some of the senior editors seemed to have forgotten their role and were eager to help justify Beijing's high-handed tactics. Instead of confronting the communist cadres, some could only muster peripheral questions, while others buried their heads in their notebooks."

The announcement is likely to see Mr Cheng stay off the airwaves until at least the end of the year, and during several crucial events—the 15th anniversary of the suppression by China of the 1989 pro-democracy movement; a pro-democracy march in Hong Kong on July 1st; and, most crucially, the run-up to the September 12th Legislative Council elections.

The announcement was made just over a month after Mr Cheng's office was vandalised, and followed what he described as daily death threats from people who wanted to silence his criticism of the government. But Mr Cheng said the attack and threats had nothing to do with his decision to leave. (Mr Cheng had previously been seriously injured in a chopper attack outside the Commercial Radio offices in August 1998. No-one was ever brought to justice over that incident.)

It was not the first time that Mr Cheng had temporarily walked away from his programme. He took a two-month break from June 2003 after the Broadcasting Authority (BA) criticised him for withering attacks against senior government officials. The BA's decision to issue warnings prompted a deluge of complaints—many of them supportive of Mr Cheng. But the authority decided against altering its ruling, claiming that it fully respected freedom of speech.

Mr Cheng also cited concerns over whether the government would give a full license renewal to Commercial Radio—given the critical nature of the station’s talk shows. But in late August 2003, the government announced a full 12-year extension for both Commercial Radio and Hong Kong’s other private broadcaster—Metro Broadcast Corporation. The then secretary for commerce, industry and technology, Henry Tang, told a news conference that the government had no intention of using its licensing power to curb freedom of expression.

MORE RESIGNATIONS HIT THE TALK-SHOW BUSINESS

Within 10 days of Mr Cheng’s departure, another popular Commercial Radio talk-show host had quit his job. Raymond Wong Yuk-man said he needed to take a rest, because he was “physically and mentally tired”. Sources close to Mr Wong said he had come under heavy criticism recently. Indeed, Mr Wong was attacked in the tourist area of Tsimshatsui in March 2004; he was not seriously hurt, and four people later appeared in court on assault charges. Mr Wong is well known for his anti-communist stance, and for his criticism of the governments in Hong Kong and Beijing.

The decisions by the two talk-show hosts to leave their shows—albeit, they say, temporarily—prompted Law Yuk-kai, the director of Hong Kong Human Rights Monitor, a respected NGO, to note that the two commentators were “the index of freedom of speech in Hong Kong”. Mr Law said the two were always trying to test the limits and their decision to leave would leave the media and the public “worried about their freedoms”.

Mr Cheng’s slot on Commercial Radio’s morning talk show was taken by Allen Lee—a seasoned politician and NPC deputy. But within two weeks of taking up his new job, Mr Lee too had quit. The former chairman of the (pro-business) Liberal Party said he left in order “to get out of the kitchen” as the temperature was rising. He also noted that the political atmosphere was the worst he had ever experienced.

The pressure of a late night call

Later, during a special Legislative Council hearing, Mr Lee pointed to approaches by mainland officials and friends who wanted, he testified, to discuss the content of his programme—approaches that he rejected. He spoke in particular about a late-night telephone call from a former mainland official who praised his wife and daughter and went on to say that he wanted to talk about his hosting of *Teacup in a storm*. Mr Lee said he feared his family would soon be harassed and therefore decided to quit. “After the telephone call I believed more and more people would want to talk to me. How many times could I say no.... The reason they wanted to see me was definitely because they want to influence me over my work as a programme host.”

In a further twist to the story, a former deputy director of China’s Ministry of Foreign Affairs, Cheng Shousan, revealed that he was the person who had made the late-night call to Mr Lee, but insisted that he did not intend to intimidate the talk-show host. Mr Cheng said: “He (Mr Lee) has created this controversy all by himself.” Mr Lee, for his part, maintained that Mr Cheng had called to exert pressure on him.

Senior Chinese officials also came out to deny that they had been involved in forcing the three talk-show hosts to quit. A state councillor, former foreign minister Tang Jiaxuan, said freedom of expression was not being compromised, although he added—ominously and without naming anyone—that “someone has run into lots of debt and cannot stay any longer in Hong Kong. So he fled to Canada.”

Mr Lee’s resignation also prompted the Hong Kong government to come out with a series of statements on freedom of expression. One such statement read: “We do not see any tightening in the freedom of expression and of the press. The Government will continue to uphold the fundamental rights of Hong

Kong people. The Government also trusts that Hong Kong people will continue to exercise their rights, to give full effect to the freedom that they have.”

However, critics expressed growing concern that the souring political atmosphere, and in particular reports of intimidation against both talk-show hosts and opposition politicians, were far from conducive to the full and proper exercise of freedom of expression. The HKJA itself expressed concern about the resignation of the three talk-show hosts and called on the Hong Kong government to do everything possible to protect freedom of expression.

(On the same day that Raymond Wong made his surprise announcement that he was quitting his programme, the government-funded station Radio Television Hong Kong announced that morning talk-show host, Ng Chi-sum, would be transferred to an afternoon show. This came after pro-Beijing newspapers in Hong Kong launched attacks against Mr Ng, who is considered to have moderate pro-democracy views. However, RTHK insisted that the change was made for operational reasons and had nothing to do with political pressure. There was also talk in the media that RTHK’s director, Chu Pui-hing, might be forced out of his job, although this story was not substantiated.)

FREE SPEECH IN THE LEGISLATURE UNDER FIRE

The Legislative Council also faced constraints over freedom of expression, and in particular over what exactly its members could debate. In January 2004, a former drafter of the Basic Law, mainland academic Xiao Weiyun, said that votes of no-confidence in senior government officials were not allowed under the Basic Law—even though several such votes had previously been held. However, Legislative Council president Rita Fan—who is considered to be close to Beijing—insisted that no-confidence votes were permissible because the Basic Law allowed members to debate issues of public interest.

*Condemned to be
“out of order”*

In late April 2004, former Democratic Party chairman Martin Lee attempted to put forward an amending motion to “strongly condemn” the NPC Standing Committee over its decision to rule out universal suffrage. Although a milder version was eventually proposed by another pro-democracy legislator, Association for Democracy and People’s Livelihood chairman Frederick Fung, Mr Lee said it would have been the first time that the legislature had used the word “condemn” towards Beijing since the 1997 handover. However, he justified the move, saying the Legislative Council was allowed to criticise the NPC for administrative misconduct, citing both the Basic Law and foreign parliamentary practise.

However, Legco president Rita Fan rejected the wording, saying it was “out of order” to criticise the national legislature. Mrs Fan made her ruling after the secretary for justice, Elsie Leung, wrote to her making a similar point—that in view of the constitutional relationship of the two bodies, Legco should not debate a motion or amendment the language or substance of which accused the NPC or the NPC Standing Committee of breach of law or other improper conduct.

In response, Mr Lee said the ruling had damaged Legco’s rights and powers. He threatened future moves by legislators to put forward motions critical of other state bodies. Some newspapers, including the *South China Morning Post*, were also critical of the move, saying it threatened free speech.

However, Mrs Fan was to exercise her veto on two more occasions. First, she blocked part of a motion put forward by another Democratic Party member, Albert Ho. His motion accused the NPC Standing Committee of not conforming to the ‘one-country, two-systems’ principle and undermining the territory’s high degree of autonomy. Mr Ho later agreed—under protest—to drop that particular section. Mrs Fan also blocked an amendment put forward

by Frontier legislator Lee Cheuk-yan that reinserted this wording—although attributing the view to “many people in Hong Kong”.

More ominously, Beijing’s liaison office issued a statement saying that attempts by pro-democracy legislators to introduce critical motions were “an act to challenge the position of the NPC Standing Committee as the standing organ of the country’s highest authority.” A liaison office spokesman went on to say that the motions were “against the constitution and the Basic Law of Hong Kong” and “exceeded the duties and powers given to the Legislative Council under the Basic Law”. He also said that the Standing Committee’s ruling “could not be questioned or challenged”.

Analysts expressed concern that such moves were aimed at curbing the Legislative Council’s freedom of speech. The chairman of the Democratic Party, Yeung Sum, put it more bluntly. He said that Mrs Fan’s rulings would restrict the scope of debate within the legislature.

However, on a more positive note in early June, the legislature backed a motion expressing “grave concern” about the resignation of the three radio talk-show hosts. The debate remained highly politicised, though, with pro-Beijing legislators accusing their pro-democracy colleagues of fabricating claims to smear the mainland, while democrats argued that recent events showed that freedom of expression had already been undermined.

ATTACKS ON OUTSPOKEN LEGISLATOR EMILY LAU

During the period under review, there was also intense verbal sparring over what are the boundaries of freedom of expression on the question of independence for Taiwan. The spat involved two leading politicians—Frontier legislator Emily Lau and executive councillor Leung Chun-ying, who is also a member of the Chinese People’s Political Consultative Conference. Mr Leung has also been tipped as a potential candidate for chief executive.

Independence or self-determination?

The dispute focussed on comments made by Ms Lau during a conference held in Taiwan in August 2003 (a forum organised by the former president of Taiwan, Lee Teng-hui, who is vilified by Beijing for his pro-independence stance). Shortly afterwards, Mr Leung called on Ms Lau—through letters to newspapers—to clarify comments that she supported the right of people in Taiwan to decide whether the island should become independent or not. In particular, Mr Leung called on Ms Lau to clarify whether she supported independence for Taiwan. Mr Leung in February 2004 placed advertisements in several newspapers reiterating his call for Ms Lau to explain her stance on the issue. In response, Ms Lau noted that she had never actively supported independence for Taiwan. Somewhat ambiguously, Mr Leung replied that Ms Lau’s stance was “very obvious”.

Ms Lau later clarified that she neither supported nor was against independence for Taiwan and that she had never supplied manpower, resources or money for such activities. However, Mr Leung said he was not satisfied with this response. This prompted Ms Lau to say: “Mr Leung came out and drew a circle. Things said inside this circle were allowed, but once people fall outside it they have committed mortal sins.... I cannot accept that he has drawn this circle for the people in Hong Kong. It’s like we have no freedom of thought and speech.”

Moves were later made to organise a forum for the two politicians to debate the issue of Taiwan independence, but at press time the event had not taken place. While the issue on the face of it may be seen merely as a spat between two prominent personalities, it has significant implications for freedom of expression insofar as Mr Leung appears to be arguing that people should pull their punches on sensitive issues such as independence for Taiwan. Indeed, Ms Lau made the point that people dared not argue openly on issues that are deemed to be politically incorrect.

In June 2004, Mr Leung turned on another pro-democracy campaigner, barrister Ronny Tong, accusing him in an open letter of suggesting that he would like to see the Chinese Communist Party fall from power so that Hong Kong could enjoy democracy. Mr Leung called on Mr Tong to explain his stance. Mr Tong said in reply that his comments had been taken out of context, and he was not calling for the overthrow of the ruling Communist Party.

SECTION 3

The print media starts to tilt

The debate over the resignation of the three Commercial Radio talk-show hosts might give the impression that the pro-Beijing camp has been receiving a raw deal in the media. This is in fact not the case when coverage in the print media is considered. Indeed, media observers point to very few publications that take a critical stance towards the governments in Hong Kong and Beijing while at the same time showing support for the pro-democracy camp. This became particularly true during the debate early this year on patriotism.

Throughout this period, Hong Kong newspapers devoted extensive space to the discussion about patriotism. Among the points covered were: the insistence by Chinese officials and their supporters in Hong Kong that the territory must be ruled by patriots, as well as their attacks against certain supporters of democracy in the territory; the views of Chinese legal scholars on political reform; the arguments of pro-democracy politicians over patriotism; and the dispute over whether a visit to Washington by Martin Lee, the former Democratic Party chairman, was patriotic or not.

Few dare to challenge Beijing's line

Such controversial debate inevitably further politicised and polarised the local media—itsself already under considerable pressure to conform to Beijing's view of developments in Hong Kong. Indeed, some critics have pointed to a dwindling number of publications that continue to be critical of the central and Hong Kong governments. Those who resist pulling their punches are: *Apple Daily* and *Next Magazine* (both owned by entrepreneur Jimmy Lai) and the *Hong Kong Economic Journal*. All others can now be categorised either as pro-Beijing or (conspicuously) neutral. Observers also say that some newspapers—including the *Oriental Daily News*, its sister publication *The Sun* and the formerly pro-Taiwan newspaper *Sing Tao Daily News*—have taken on a decidedly more sympathetic line towards Beijing.

Seven students from the Chinese University's School of Journalism and Communication—under the supervision of Dr Clement So—carried out a content survey of news articles and editorials in 14 of Hong Kong's daily newspapers during the most important period of the patriotism debate (January 28th to March 8th). They carried out both quantitative and qualitative research, focussing on news headlines. Results were divided into three categories—support for the democracy camp; support for the Beijing camp; and neutral or uncertain. Categorisation was determined by identifying the newsmaker and the victim of criticism, as well as whether emotive words were used. A table setting out the findings is reproduced below.

The researchers found that all newspapers gave unreserved support for the 'one-country, two-systems principle' under which Hong Kong is granted a "high degree of autonomy" within the People's Republic of China. But they offered different views on the relationship between the governments in Beijing and Hong Kong, as well as the definition of patriotism.

However, the three categories (support for democracy, for the Beijing camp, and neutral or uncertain) were not evenly distributed. Unsurprisingly, they tended to be loaded towards the pro-Beijing side. *Apple Daily* and *Ta Kung Pao*—at either end of the political spectrum—gave more news coverage than other newspapers to the debate. Indeed, *Apple Daily* was the rare example of a newspaper giving wholehearted support to the Democratic Party; it also strongly criticised the official Beijing line on patriotism throughout its reports.

Apart from the three traditionally pro-Beijing, pro-Communist Party newspapers (*Ta Kung Pao*, *Wen Wei Po* and *Hong Kong Commercial Daily*), the *Oriental Daily News*, *The Sun* and *Sing Tao Daily News* also openly supported the mainland definition of patriotism. Indeed, the study found that over 70% of

news reports on the patriotism debate in the *Oriental Daily News*, *The Sun* and *Sing Tao* reflected Beijing's line on the issue. And some newspapers, including *Wen Wei Po*, *Hong Kong Commercial Daily*, *Ta Kung Pao*, *The Sun* and *Sing Pao*, gave little or no coverage to news events that were supportive of the Democratic Party.

Indeed, the study found that overall news coverage that was supportive of the pro-democracy camp was overwhelmed by reports that tended to back the pro-Beijing camp. The researchers found that among all news items, 55% were in support of the pro-Beijing camp, whereas only 15% backed the pro-democracy alliance. The rest—30%—was either neutral or it was not possible to determine whether the articles were pro-Beijing or pro-democracy. Those newspapers taking a relatively neutral stand included the *Hong Kong Economic Journal*, *South China Morning Post*, *The Standard* and *Hong Kong Daily News*.

Hong Kong newspapers' coverage of the "patriotism" debate

Selected dates in the period January 28 to March 8, 2004

Newspaper	News items				Editorials and commentaries			
	Support democratic camp	Neutral/uncertain	Support Beijing camp	N	Support democratic camp	Neutral/uncertain	Support Beijing camp	N
HK Commercial Daily	0 (0%)	1 (5.6%)	17 (94.4%)	18	0 (0%)	0 (0%)	8 (100%)	8
Ta Kung Pao	0 (0%)	17 (14.2%)	103 (85.8%)	120	0 (0%)	0 (0%)	14 (100%)	14
Wen Wei Po	0 (0%)	5 (9.4%)	48 (90.6%)	53	0 (0%)	0 (0%)	10 (100%)	10
The Sun	0 (0%)	14 (25.9%)	40 (74.1%)	54	0 (0%)	0 (0%)	5 (100%)	5
Oriental Daily News	1 (4%)	5 (20%)	19 (76%)	25	0 (0%)	0 (0%)	5 (100%)	5
Sing Pao Daily News	0 (0%)	7 (31.8%)	15 (68.2%)	22	0 (0%)	0 (0%)	4 (100%)	4
Sing Tao Daily	2 (3.4%)	15 (25.4%)	42 (71.2%)	59	0 (0%)	6 (37.5%)	10 (62.5%)	16
HK Economic Times	8 (25%)	11 (34.4%)	13 (40.6%)	32	1 (4.8%)	16 (76.2%)	4 (19%)	21
HK Daily News	10 (22.2%)	19 (42.2%)	16 (35.6%)	45	2 (25%)	3 (37.5%)	3 (37.5%)	8
Ming Pao Daily News	12 (21.1%)	15 (26.3%)	30 (52.6%)	57	1 (9.1%)	8 (72.7%)	2 (18.2%)	11
South China Morning Post	8 (19.5%)	27 (65.9%)	6 (14.6%)	41	4 (44.4%)	4 (44.4%)	1 (11.1%)	9
HK Economic Journal	10 (23.3%)	17 (39.5%)	16 (37.2%)	43	3 (37.5%)	5 (62.5%)	0 (0%)	8
The Standard	3 (10%)	19 (63.3%)	8 (26.7%)	30	7 (70%)	0 (0%)	3 (30%)	10
Apple Daily	51 (50%)	38 (37.3%)	13 (12.7%)	102	30 (90.9%)	3 (9.1%)	0 (0%)	33
Total	105 (15%)	210 (30%)	386 (55%)	701	48 (29.6%)	45 (27.8)	69 (42.6%)	162

Source: Student project, Chinese University of Hong Kong

The trend among leading newspapers to adopt a more pro-Beijing line in news coverage was not so pronounced in editorials and commentaries. Among 162 editorials, 42.6% tended towards the pro-Beijing end of the political spectrum, while the others were either neutral or supportive of the pro-democracy camp.

Setting aside the three party publications, several newspapers that tended to present pro-Beijing news coverage sought to strike a balance in their editorials. *Ming Pao Daily News* was the most significant in this respect, with the study categorising the bulk of its editorials and commentaries as neutral. It also found that the two English-language newspapers showed significant editorial sympathy with the views of the pro-democracy camp. Not surprisingly, *Apple Daily* showed almost universal support for that camp.

However, in general terms, the study showed that a majority of Hong Kong newspapers tended to support the definition set down by mainland officials on patriotism, as well as their interpretation on the pace of political reform. Very few newspapers openly objected to or criticised Beijing's interpretation of provisions in the Basic Law on political reform and its implications for Hong Kong's autonomy.

It is clear from this study that more newspapers are adopting a pro-Beijing stance and showing more support for the "One-China" perspective in their reports on the relationship between Hong Kong and Beijing. As to why this has happened, some media analysts point to pragmatism—that it is useless fighting the official Chinese line when Beijing is clearly hardening its approach towards Hong Kong. Others point to a desire to profit from entry to the mainland market, which requires sensitivity to subjects such as democracy, Taiwan and the inner workings of the Communist Party and central government.

Media analysts have already noted a growing trend among some publications to take a more Beijing-friendly line—in particular from the time of the Go West mission in 2001, when the then financial secretary, Donald Tsang, led a delegation at the behest of the mainland authorities to check investment opportunities in China's largely impoverished western regions. Such a trend is in marked contrast to the sharp media criticism seen shortly after a senior mainland official, Wang Fengchao, warned Hong Kong journalists in April 2000 not to report the views of those advocating independence for Taiwan.

It remains to be seen whether more Hong Kong newspapers will tailor their news reports and editorials to Beijing's way of thinking, or whether they will remain relatively neutral in their approach. What is certain is that the main supporter of the pro-democracy camp—*Apple Daily*—will not change its stance—even though it is being squeezed financially by what some observers say is a boycott of advertising space by large and influential property developers.

SECTION 4

Backdown over national security laws

One of the most serious threats to freedom of expression, the National Security (Legislative Provisions) Bill was tabled in the Legislative Council in February 2003. It set out a number of offences to be legislated in Hong Kong according to Article 23 of the Basic Law, which reads as follows:

“The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People’s Government (in Beijing), or theft of state secrets, to prohibit foreign political organisations or bodies from conducting political activities in the Region (Hong Kong), and to prohibit political organisations or bodies of the Region from establishing ties with foreign political organisations or bodies.”

Considerable concern was expressed about the nature of the offences set out in the bill. The HKJA, for one, expressed fundamental opposition to the draft law, arguing that there was no pressing need for the government to legislate on national security offences. But at the same time it stated that if the administration were to press ahead, as expected, the law should contain sufficient safeguards to protect freedom of expression. The HKJA urged the government, in this instance, to adopt the Johannesburg Principles on National Security, Freedom of Expression and Access to Information as the guiding principles for the legislation. Principle 6, for example, states that expression can be punished only if there is an intention to incite violence, a strong likelihood of violence and a direct and immediate connection between the expression and the risk of violence.

The government rejected the call, but did nevertheless publish 12 amendments in June 2003. These included the strengthening of the intent element in the sedition offence and the imposition of a three-year time limit on prosecutions for the handling of seditious publications. However, this limit fell far short of the six months currently stipulated in the Crimes Ordinance for the offence of sedition.

At the time, government officials ruled out further changes of any “policy significance” and insisted that the bill should go to a final vote in July 2003. However, for a number of reasons this was not to be.

HALF A MILLION PEOPLE TAKE TO THE STREETS

Nine days before the Legislative Council was to meet for its final session of the (legislative) year, the Civil Human Rights Front organised a protest march to oppose the enactment of the national security bill. The march was set for July 1st—the sixth anniversary of the handover of Hong Kong to China. The date also coincided with the visit to Hong Kong of China’s premier, Wen Jiabao (who left Hong Kong, however, shortly before the start of the demonstration).

Turnout surprised even the organisers

Analysts expected more than 100,000 people to take part in the march. This proved to be a major underestimate, even by the organisers. The strength of popular discontent was running deep. By day’s end, half a million people had made their way to the central government headquarters from the starting point in Victoria Park. Among the crowd were human rights activists, lawyers, journalists and members of religious groups—but above all ordinary people who were dissatisfied with the performance and actions of the chief executive, Tung Chee-hwa, and his administration.

In reaction, Mr Tung would only say that he was very concerned about the extent of the protest, and that he understood people’s aspirations. But he refused to offer any concessions on the national security bill, saying only that

it was Hong Kong's constitutional duty to enact legislation to protect national security.

However, it was becoming clear that some of the legislators who had supported the bill were starting to waver. The chairman of the Liberal Party, James Tien, said his group would decide its stance after hearing the government's official response to the protest. Another key government ally, the Democratic Alliance for the Betterment of Hong Kong, called for changes to be made to several provisions in the national security bill—including the adoption of a public interest defence in sections on the theft of state secrets, and the scrapping of provisions allowing for bans to be imposed on Hong Kong groups with links to outlawed mainland organisations.

IN CRISIS MODE, THE GOVERNMENT STEPS BACK

On July 5th, following an emergency meeting of the Executive Council, Mr Tung announced three major concessions. The most significant change, for the media especially, was the decision to introduce a public interest defence to the Official Secrets Ordinance, and notably to provisions on the theft of state secrets.

However, the defence was disappointingly narrow in scope. It related only to the disclosure of any unlawful activity, abuse of power, serious neglect of duty or other serious misconduct by a public official, or any serious threat to public order, public security, or the health or safety of the public. The public interest served by the disclosure would also have to outweigh the public interest served by not making the disclosure.

Other concessions included the scrapping of powers allowing the police to conduct emergency entry, search and seizure operations without a court warrant, and provisions allowing the authorities to prohibit local organisations with links to mainland groups that had been banned on national security grounds.

However, at the same time, the chief executive insisted that the bill had to be put to a final vote in the Legislative Council session starting on July 9th. He said the government had a constitutional duty to enact the law, and it was time to complete the legislative process as soon as possible, so that people could "work together to get our economy going again".

Many groups, including the HKJA, said the changes were not sufficient to protect freedom of expression and press freedom. The HKJA insisted that the bill should contain a broad public interest defence, not the kind of narrow defence proposed by the government, plus a prior publication defence.

Critics—including the HKJA—also called for the government to defer debate on the bill—a point reinforced by the chairman of the Liberal Party, James Tien, following a visit to Beijing to meet senior mainland officials. On his return to Hong Kong, Mr Tien called for debate to be put off until the end of 2003. He also noted that mainland officials had no clear preferences on the details of the bill and its timetable—although they did say it had to be passed.

THE GOVERNMENT SHELVES THE BILL

The Liberals find some backbone

The Liberal Party leader was to prompt the government to make a major U-turn. On July 6th, Mr Tien said he was resigning from the Executive Council. His reason: the government had ignored his call to delay the bill. It also emerged that legislative councillors were pushing for the endorsement of a motion deferring debate on the draft bill, and that there appeared to be enough support for the move.

The Executive Council held an emergency session in the early hours of July 7th to discuss the government's now difficult position. The outcome: to defer

the vote to an unspecified time in the future. In announcing the decision, Mr Tung noted calls from the community for more time to study the latest amendments, and in particular the call from the Liberal Party for debate on the bill to be deferred. He also pledged to step up efforts to explain the latest changes in the coming days.

The decision to defer debate was welcomed by many in the community. It also removed pressure on the government over the controversial bill. However, there was political fallout. In mid-July, Mr Tung announced that he had accepted the resignation of the secretary for security, Regina Ip, who had come under severe attack for what critics called her arrogant attitude towards those who opposed the anti-subversion law. Mr Tung noted that Mrs Ip had initially tendered her resignation on June 25th, but this was not accepted. Mrs Ip was replaced by the relatively less combative director of immigration, Ambrose Lee.

A day later, Mr Tung announced that the national security bill—with its various amendments—would be published for another round of public consultation and for further discussion with the Legislative Council's committee examining the draft law. He said the aim of the exercise would be "to win the maximum understanding and support of the community as a whole for this legislation". He also said the timing of a final vote on the bill would depend on the results of the consultation exercise, which was tipped to start in September 2003.

However, even this plan was thrown out in early September 2003, when Mr Tung made the shock announcement that the bill would be removed from the legislative process. This would mean that an entirely new bill would have to be tabled in the Legislative Council, and officials made it clear that this would not happen until after the September 2004 legislative elections. In the meantime, Mr Tung announced that the government's security bureau, which was responsible for the bill, would set up a special working group to study the issue.

The DAB reach a low point

The chief executive said he had decided to scrap the bill because there were continuing public concerns about its contents and because people should focus on economic development. However, independent analysts suggested that the government might have been concerned that continued debate on the bill—even though it could have won sufficient support in the legislature—might harm the electoral prospects of pro-government parties, in particular the DAB, the Democratic Alliance for the Betterment of Hong Kong. (Indeed, the DAB did suffer significant losses in district council elections in November 2003, and are forecast to do poorly in September 2004 legislative elections.)

NATIONAL SECURITY THROUGH THE BACK DOOR?

Several advisers to Beijing have since called on the government to move quickly to re-introduce the national security bill into the legislature following the September 2004 elections. Among them, Chinese People's Political Consultative Conference delegate Lau Nai-keung argued that enactment could help rebuild the strained relationship between Hong Kong and the central authorities in Beijing. A DAB vice-chairman, Ip Kwok-him, said legislators elected in September 2004 had an obligation to pass the national security bill during their four-year term.

There was another twist to the saga. In May 2004, the Chinese government announced that it was considering enacting a law governing national reunification, with particular emphasis on Taiwan. China considers the island to be a renegade province. Hong Kong's national security bill dealt with this issue in the form of the offence of secession, which would outlaw any move to withdraw a part of the People's Republic from its sovereignty, or any move to resist the People's Republic in its exercise of sovereignty over any part of China.

A member of the law committee of the NPC, Xin Chunying, said there was no timetable for enactment of the law and legal experts had not yet decided its contents. But she said it would be applied to Hong Kong. This prompted critics to suggest that the law could be a back-door way to introduce the offence of secession into Hong Kong law, in the absence of Article 23 legislation. They argued that Hong Kong should deal with the matter on its own, as laid down in Article 23 of the Basic Law.

Hong Kong's secretary for justice, Elsie Leung, said it was too early to speculate on whether the reunification law would be applied to Hong Kong, or the nature of its relationship with Article 23 legislation. But she noted that from her understanding, the law was not targeted at Hong Kong.

In the meantime, the Security Bureau's working group is continuing to study Article 23 issues—albeit in a low-profile manner. The secretary for security, Ambrose Lee, has also told the HKJA that there is no timetable for enactment of the national security legislation. What is uncertain is what form any new bill will take—whether it will be based on the amended July 2003 version, or whether it will reflect the more hard-line stance subsequently adopted by the authorities in Beijing and their supporters in Hong Kong.

SECTION 5

Other media developments

While the year under review has been dominated by the deteriorating environment for freedom of expression and the ever-present question of national security legislation, other threats do hang over the media. The Law Reform Commission is expected to report soon on whether it will endorse the creation of a statutory press council to handle privacy complaints against newspapers and magazines. There was mixed news on the law reform front, with the government pressing ahead with changes to an anti-terrorism bill, yet dropping plans to impose restrictions on publishers of indecent material.

Economic conditions improved in the year under review, following an upturn in the economy in the latter half of 2003. This meant stronger profits for newspapers and broadcasters, while the threat of job losses eased—reversing a trend that saw newspapers and magazines folding and the survivors laying off staff in a bid to cut costs.

INVESTIGATION POWERS RATTLE JOURNALISTS

In May 2003, the government published amendments to the United Nations (Anti-Terrorism Measures) Bill. The legislation was drafted to implement a UN resolution on the freezing of property belonging to terrorists and terrorist organisations, as well as conventions on terrorist bombings and acts at sea. However, it was a new section granting special investigation powers to the authorities that rattled journalists.

In a submission to the Legislative Council committee studying the bill, the HKJA argued that the new powers of investigation—and in particular the requirement to furnish information or produce material for an investigation—went beyond the requirements of the UN to prevent terrorist threats. The HKJA expressed particular concern over the power given to the police in the bill to extract information from journalists, and the possibility that they may be forced to reveal sources of information—contrary to the HKJA's code of ethics.

The government sticks to its guns

The government argued that the new investigation powers would be covered by part XII of the Interpretation and General Clauses Ordinance, which sets out special procedures for the search and seizure of journalistic material. The HKJA replied that these procedures may not cover the questioning of journalists, and therefore called either for an exemption for journalists carrying out legitimate journalistic activities, or for the introduction of proper safeguards—by tightening up the provisions allowing the authorities to seek information and providing for an *inter partes* court hearing and proper appeal mechanisms.

The government did make some changes, including stipulating that the secretary for justice herself, instead of a lower-level officer, would have to authorise questioning of journalists and others who may have information about terrorist activities. However, such changes do not alter the fact that journalists may still have to divulge confidential information, and if they refuse could face a stringent one-year jail term. The bill is likely to go to a final vote in the Legislative Council in July 2004, regrettably without further changes of significance.

CONTROVERSIAL ANTI-PORNOGRAPHY PROPOSALS DROPPED

In January 2004, the government announced that it was dropping plans to impose severe restrictions on publications that publish indecent or obscene material. The most controversial proposal was to force such publications to print a diagonal red line across every page if they refuse to carry warnings

about indecent content. Also proposed were hefty fines of up to HK\$2m for newspapers which publish obscene material and HK\$800,000 for those which publish indecent material without a warning.

The secretary for commerce, industry and technology, John Tsang, who handles the issue, explained that four years after the package was first put forward “the public remained divided over the policy”. He also said that existing rules had effectively minimised pornographic influence on youngsters. Mr Tsang noted that officials had doubled the number of inspections of pornographic material and sharply increased the number of seizures of indecent publications under the Control of Obscene and Indecent Articles Ordinance.

However, government sources suggested that the move would have been difficult to implement in an election year. They also noted that mass-market newspapers had dropped or toned down “prostitution guides”, and coverage of the activities of nightclubs and massage parlours had dropped substantially. The number of complaints to the Obscene Articles Tribunal was also down—from a high of 3,044 in 2002 to 1,997 in 2003.

The HKJA and other media groups expressed concern about the proposals when they were first unveiled in the year 2000. The HKJA called the package draconian and argued that the government should use existing legislation to tackle the problem. This now appears to be the stance of the government.

JOURNALISTS FACE HEAVY-HANDED POLICE TREATMENT

Past annual reports have highlighted a trend by the police to take a tougher approach towards demonstrators and journalists covering protests. There was another incident in the early hours of April 2nd 2004. The police carried away two journalists from the immediate scene of a protest after about 300 demonstrators moved to the Central Government Offices to express their dissatisfaction on hearing news of an interpretation by the NPC Standing Committee of Basic Law provisions relating to political reform.

The 300 protesters were among about 3,000 demonstrators who gathered in Chater Garden in Central on the previous evening to protest against the interpretation. The smaller group marched to the Central Government Offices and decided to stay after about 30 students managed to enter the grounds. The police removed the students early in the morning. Then at about 6.30am, they moved in to remove the others, who were gathered outside the main entrance to the government complex.

It was during this final operation that the police moved in on journalists covering the protest and police operation. About half of the 60 journalists present refused to move to another location, because it would have been further from the scene of the protest. Two of the journalists were carried away during the operation, while a third said an officer slapped him. One of the journalists who was carried away—a photographer with the *Apple Daily*—lodged a formal complaint with the police.

*The police:
ambiguous law
enforcers?*

The HKJA protested against the police action, saying officers had used excessive force. This, it argued, had seriously hindered press freedom and the public’s right to know. The HKJA went on to say that the police action had harmed Hong Kong’s image and status as an international centre for information. For their part, the police argued that minimum force was used in the operation. And following a meeting with representatives of four journalists’ groups, including the HKJA, police commissioner Dick Lee pledged to strengthen communication with the media.

However, the HKJA remains highly concerned about the incident, in particular as it followed another incident in April 2002 in which two journalists were handcuffed during an operation to clear right of abode demonstrators from

Chater Garden. The police were trying to move journalists to a designated area away from the area where the operation was taking place.

The HKJA at the time expressed concern about the increasing use of designated media zones, saying they should be used only in special circumstances such as the visit of high-risk dignitaries or when an event takes place inside a closed area. The April 2004 incident clearly showed that the police had not learned from the earlier incident.

GOVERNMENT IMPOSES NEW PRESS PASS SYSTEM

Government officials revealed to media representatives in July 2004 that they were looking into the possibility of introducing a press pass system for entry to the Central Government Offices. This followed chaotic scenes at the government headquarters earlier that month as reporters tried to interview the then financial secretary, Anthony Leung, who had just resigned over a scandal involving his purchase of a luxury car shortly before he announced duty increases for such vehicles in his budget. It also followed a general tightening up of security at the offices, with the erection of a fence surrounding the complex and tighter identification checks for those entering. The only press pass system in place at that time was for entry to the Legislative Council building.

Media organisations, including the HKJA, expressed concern about the move, arguing that it would open the door for other government institutions, such as the police, to introduce similar press pass systems. Most media representatives argued that it should be sufficient for reporters to produce their workplace identification documents to obtain entry.

However, the government ignored such arguments, introducing the system from January 2004. The HKJA urged journalists and media organisations not to apply for the cards—which were not essential for entry, as reporters could still obtain daily press passes—albeit from a location further from the main entrance to the complex.

Indeed, an incident on April 2nd highlighted the problems of the system. Journalists wanted to go to the Central Government Offices following the forced removal of demonstrators who were protesting against Beijing's decision to block universal suffrage in 2007 and 2008 (see above). Those who had press passes were able to gain speedy access to the headquarters to interview the chief secretary, Donald Tsang. Those who did not have such cards missed Mr Tsang, because they had to obtain daily passes from the more distant location.

The HKJA argued that such treatment was discriminatory and called for the press pass system to be scrapped. However, the government ignored the HKJA's letters on the subject, and as time passed, more media organisations submitted applications for such passes.

Discriminatory media treatment

The HKJA deplors the introduction of the press pass system. It is symptomatic of a tightening of controls over journalists who are covering government-sponsored events. For example, the administration now requires journalists to apply in advance to cover an increasing number of news events, in particular those involving mainland officials—including those who are not top leaders or functionaries.

GALAXY SETS UP SHOP; TWO OTHER PAY TV OPERATORS QUIT

Four years after the government awarded licenses to five pay-TV operators, the biggest, Galaxy Satellite Broadcasting, started offering services. It had been a long road starting in July 2000, when the government awarded the licenses to break the monopoly of i-Cable Communications, which is run by the Wharf Group. The delay was caused by a government stipulation that Galaxy—owned by the dominant terrestrial broadcaster TVB—had to sell a 51% stake to

another concern. This was achieved in February 2003, through a sale to the American satellite services provider Intelsat. This paved the way for Galaxy to launch its service in February 2004.

Galaxy is seen as the major rival to i-Cable, which has been operating since 1993. This is because of Galaxy's access to TVB's huge library of Chinese-language content. Given the limited nature of the market, it was not surprising that two more pay TV operators—Yes TV and TV Plus—announced that they were pulling out, citing expensive license fees and the heavy investment needed for decoders. Yes TV had already taken the plunge, investing HK\$40m in its service after paying a license fee of HK\$1.37m. It will continue to offer a broadband service.

The withdrawals meant that Galaxy was the only survivor from the government award of five licenses in July 2000. Star TV and Hong Kong Network TV had already pulled out. But it will not be entirely a two-horse race, given technological advances. Two other operators—PCCW's NOW Broadband TV and City Telecom's Hong Kong Broadband Network—offer competition, albeit through a broadband system. PCCW had previously offered a video-on-demand service, but this failed to generate sufficient interest.

Media analysts say that i-Cable and Galaxy are likely to be the winners in the battle for viewers. Jimmy Lam of Kim Eng Securities said i-Cable would lead the market, but faced falling subscriber numbers and declining average revenue per user. But Peter Schloss of Mediavast said he was betting on Galaxy, as it has local content. However, he was speaking before i-Cable announced that it had paid a hefty—though undisclosed sum—for exclusive rights to screen popular English, Spanish and German football matches.

TERRESTRIAL BROADCASTERS EYE CHINA MARKET

Media organisations in Hong Kong have long been eyeing the lucrative market in mainland China, given the limits on market expansion in Hong Kong. This has been particularly true for the two major terrestrial TV stations—ATV and TVB. ATV was given a broadcasting license in Guangdong in July 2002 and reached an agreement for the sharing of advertising revenue in late 2003. In May 2004, the Hong Kong government granted the broadcaster a satellite pay-television license, which should allow it to broadcast into other parts of China.

However, the dominant terrestrial TV broadcaster, TVB, is still waiting for permission to broadcast in Guangdong province. Reports say that the station should soon receive the go-ahead, and may link up with a Guangdong broadcasting group so that it can share advertising revenue. This is important as although TVB programmes are received in Guangdong, it does not receive any advertising revenue. Indeed, cable operators splice out Hong Kong advertising, which is replaced with Guangdong material. The profits for this go to the cable operators, not TVB.

In another development, Hong Kong pay TV operator i-Cable Communications was given approval in May 2004 to broadcast a 24-hour information and entertainment channel on a cable network in Shenzhen. In return, i-Cable will broadcast a Shenzhen news and entertainment channel in Hong Kong. Each broadcaster will receive advertising revenue from the link-up.

Media analysts say that pressure is on for Hong Kong TV companies to expand their reach in Guangdong and other parts of mainland China. But at the same time, they warn that content may be affected, as broadcasters have to ensure that programming is acceptable to the regulatory authorities on the mainland.

STILL WAITING FOR DIGITAL TV

In December 2003, the government issued a second consultation document on the introduction of digital terrestrial broadcasting in Hong Kong. The first was

published in December 2000, to gauge industry views on whether this new technology should be pursued. The second document proposed that the existing terrestrial broadcasters—TVB and ATV—should introduce digital services over a two-year period starting in 2006. It also recommended the use of a European standard—a sore point among the broadcasters who wish to wait and see what standard mainland China adopts.

The HKJA made a submission urging the government to ensure that public service broadcasting is incorporated in the new arrangements. It noted that the development of digital broadcasting would give an opportunity for further media diversification, and that this should include the existing public service broadcaster, the government-funded Radio Television Hong Kong (RTHK). It also called on the government to encourage other organisations, including potential community broadcasters, to develop new services—a position rejected so far by the government.

The HKJA took its position on digital broadcasting after attending a seminar organised by the International Federation of Journalists in Sri Lanka in December 2003. The seminar focussed on public broadcasting in Asia. It issued a final declaration—endorsed by the HKJA—seeking to strengthen public broadcasting throughout the region. In particular, the declaration said that governments have a responsibility to ensure a viable environment for the development of independent and viable public broadcasters that inform, educate, empower and entertain.

ARTICLE 19, the Global Campaign for Free Expression

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HONG KONG JOURNALISTS ASSOCIATION

The Hong Kong Journalists Association (HKJA) is the only industry-wide union of journalists in Hong Kong.

The HKJA promotes the right to freedom of expression and actively focuses on a range of press freedom and ethics concerns. As a trade union, the HKJA focuses on labour rights, pay issues, health and safety, and training.

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