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Hong Kong's Media Freedoms:

Some Question Marks

Mak Yin-ting

Over the past few years, the government has amended a number of media-related laws, sometimes on its own volition, but more often under intense pressure from groups like ourselves. For example, wide-ranging changes were made to the laws governing television and radio, to take away the power of the government to vet and prohibit TV and radio programmes.

Late last year, the government announced changes to the Crimes Ordinance, as it relates to the offences of treason and sedition. The government also announced two new offences - subversion and secession - which are stipulated in Article 23 of the Basic Law, Hong Kong post-1997 constitution. The government, in many ways, is bringing forward these changes as an example for the post-1997 government to follow when it enacts its own laws prohibiting treason, sedition, subversion against the government in Beijing, secession and the theft of state secrets.

The most significant change to the Crimes Ordinance is the stipulation that there must be a violent intention, before an individual can be prosecuted. In particular, the offence of sedition is liberalised to make it clear that there must be an intention of causing violence or creating public disorder or a public disturbance. It also stipulates that a person can be charged with the offence of subversion if he or she does any unlawful act with the intention of overthrowing the government of the United Kingdom "by force". The aim is to ensure that an individual cannot be convicted for the mere expression of opinion.

The Journalists Association must study the bill further before coming to conclusions on its merits. However, it should be noted that some groups are unhappy that the existing Hong Kong government is adding the new offences of subversion and secession to the Crimes Ordinance. They argue that this should not be the duty of the existing government.

One more vital point which I must mention is China's opposition to the bill. Chinese officials have insisted that Article 23 offences should be enacted by the Special Administrative Region government, and the Hong Kong government should not make significant changes to the Crimes Ordinance at this stage.

This view has significant support in the Legislative Council, with a number of legislators who are close to China refusing to take part in committee deliberations about the bill. Indeed, it is now doubtful whether the Council will endorse the government bill, given that a majority of members also sit on the provisional legislature, which was chosen in late December by the overwhelmingly pro-Beijing selection committee. The provisional legislature will take over from the Legislative Council once China resumes sovereignty over Hong Kong.

As we have always argued, the definition of the existing treason and sedition offences is too wide and ill-defined. It should also be noted that China's understanding of these offences is far more stringent than Britain's. Further, there is no concept of subversion and secession in the common law system. If the Hong Kong government allowed the existing legislation to remain in place, it would be easier for the authorities to prosecute dissidents who merely expressed their own opinions.

There was one other development of significance in December. Britain and China agreed on the localisation of the Official Secrets Act. However, the Journalists Association is dissatisfied with the contents of the localised bill. There has been no liberalization of this law, which prohibits the unauthorized release of government information in six specific areas. In particular, we believe that the law should include public interest and prior publication defences, to ensure better protection for the free flow of information.

Future Under A Conservative Leader

Even if existing media-related legislation were to survive the transfer of sovereignty with only minor changes, the press might still face great uncertainty. One may argue that with the same group of bureaucrats in place in Hong Kong after the handover, there should be no problems. But the fact is that the degree of leniency, or strictness, in enforcing laws is subject to change according to the political atmosphere created by the governing body.

Let me give you an example. Before 1967, the administration imposed tough controls on the Hong Kong media. Newspapers had to be submitted for scrutiny before they could be sold, and one pro-Beijing newspaper was even closed temporarily. However, official attitudes changed when China's Cultural Revolution spilled

into Hong Kong. Civil servants realised that the support of the media was important for calming society at times of crisis. The press then enjoyed a higher degree of freedom, even though the old laws remained on the statute book.

In this regard, the attitude of the chief executive of the Special Administrative Region, as well as that of Chinese leaders, is of vital importance. The problem is that the chief executive, Tung Chee-hwa, has exhibited strong conservative tendencies. The Democratic Party, which is the most representative party in the Legislative Council, has accused him of always toeing the Chinese government line. It is a fact that Mr Tung prefers closed-door consultation, rather than open confrontation, to solve problems between Hong Kong and China. He has even said that open quarrelling in the Legislative Council "is not a good thing".

On media freedom, Mr Tung has stated that "the Special Administrative Region government will maintain freedom of the press as this is part of our way of life. At the same time, the media need to uphold the standards of responsible reporting. They should report in a more objective and fair manner".

Mr. Tung's emphasis on responsible reporting is worth examining. This emphasis is reasonable, insofar as there is an undoubted need for certain sections of the media to reconsider their policy on the coverage of such issues as homicides and suicides, and the use of sensational photographs. But harm could follow if responsibility is taken to mean toeing the dominant political line, in the name of national unity or the territory's prosperity and stability. His emphasis on unity and stability therefore arouses concern.

The most recent test case for Mr. Tung concerns proposals submitted by the legal subgroup of the Preparatory Committee. The group proposed earlier this month that vital sections in the Bill of Rights should be deleted, and that the Societies and the Public Order ordinances should be scrapped, to bring them into line with the Basic Law.

The Bill of Rights Ordinance was enacted in 1991, and the other two laws were amended in the following few years to bring them into line with the human rights law. It seems that the preparatory committee wants to reinstate the former versions of these laws, which barred societies from having links with foreign organizations and which forced organisers of demonstrations to seek police permission before they could march or hold a rally. In

short, the reinstatement of such powers would mean a considerable tightening of controls over freedom of expression.

Last week (January 21-27, 1997) Mr. Tung endorsed the preparatory committee proposals, saying it was important to strike a balance between freedom of expression and security considerations. He went on to suggest that Hong Kong would be following the example of countries such as Britain and America if prior approval was needed for public assemblies.

There has been widespread criticism of the preparatory committee proposals, even from friends of China. Some of them have pledged to press the preparatory committee to reconsider its stand on the Public Order and Societies ordinances. They have argued that these laws have not harmed public order in Hong Kong. We hope that such efforts will bear fruit.

Mr Tung has just announced the line-up of his Executive Council, which will advise him on policy matters, and it is dominated by pro-Beijing and pro-business elements. This is also the case with the provisional legislature, which will replace the existing Legislative Council, with its strong element of popular representation. The provisional legislature, on the other hand, was selected by a 400-member committee, which itself was chosen by the preparatory committee.

Nevertheless, the Hong Kong Journalists Association will persist in its efforts to persuade the post-handover government of the wisdom of taking a liberal attitude towards the media.

We have already submitted to Mr Tung a 10-point agenda for action on freedom of expression. The main theme of the agenda is to urge the chief executive and his government to uphold freedom of expression and liberalise restrictive laws. In particular, the document calls on them to ensure that mainland legal concepts are not imported into the Hong Kong common law system. This specifically refers to Article 23 offences, as mentioned above.

We hope that Mr Tung will take a hands-off approach towards the media, to ensure that existing freedoms can be preserved and expanded. To this end, we are seeking a meeting with him, to put across our views. However, after a month or so, no date has been fixed. I wonder what is the priority of freedom of the press in his agenda.

In addition to worries about the legal environment, some individual incidents have also caused great concern to Hong Kong journalists. One of the most worrying was the detention in

China Sets Parameters For Press Freedom

September 1993 of a journalist working for the local newspaper, Ming Pao. The reporter, Xi Yang, was accused of revealing details of planned gold sales and interest rate movements. To us here, he was doing his job as a reporter - going for a scoop. To the Chinese authorities, on the other hand, he was stealing state secrets.

In March 1994, the Chinese authorities jailed him for 12 years. This dealt a severe blow to the morale of journalists in Hong Kong, who feared the move was aimed at warning off reporters from prying too deeply into mainland Chinese affairs.

Mr Xi has since been released from jail, and he is now back with us in Hong Kong. This is very good news for Hong Kong journalists, but it leaves a number of questions unanswered. Was this a case of China bowing to pressure from media organizations and groups, such as ourselves; was it the result of lobbying efforts by individuals who are close to China; or was it part of a campaign by China to get the Hong Kong media on its side at a crucial time in the territory's history?

However, there is more China can and should do. First, it should respect the way that Hong Kong journalists operate on the mainland. And second, it should lift restrictions on the operations of these reporters. At the moment, a journalist has to apply in advance to report in China. This means that critical journalists can be barred from entry, and indeed in one case, the entire reporting team of one Chinese-language newspaper, the Apple Daily, has been prevented from working in China, apparently because Beijing dislikes its owner. '

At this point, I should also touch on one other significant development over the past month. I mentioned earlier the preparatory committee proposals to scrap or amend 25 Hong Kong laws. Not included on this list are three broadcasting laws, which were originally targeted for revision by a predecessor to the preparatory committee. If the former colonial versions had been reinstated, they would have granted the government sweeping powers to vet and prohibit radio and television programmer.

The release of Mr Xi and the decision not to re-impose colonial broadcasting laws are positive developments. But there have also been negative phenomena, including attempts by China to set new journalistic parameters by spelling out certain "no-go" areas for journalists.

The most recent statement was made by China's Vice-Premier and Foreign Minister, Qian Qichen, during the close of

the sixth plenary session of the Preparatory Committee last November. He stated that press freedom should be protected by Hong Kong laws. But he said rumours and personal attacks should not be regarded as press freedom. He further explained that there were objective criteria in judging right and wrong, and different professions should be governed by professional ethics recognized by society.

However, the explanation did not square with criticism sounded by legal scholars in Hong Kong. According to these scholars, the law cannot deal with personal attacks, and there is a grey area between criticism and personal attack.

Similar restrictive ground rules were spelt out last May by the director of China's Hong Kong and Macau Affairs Office, Lu Ping, who stated in an interview with America's Cable News Network that the Hong Kong media would not be permitted to advocate "two China's" or write about Hong Kong or Taiwan independence. However, he never made clear the difference between advocacy and objective reporting.

It would seem that from China's point of view, any call for independence for a part of the country would go against the principle of "one country". However, history has demonstrated that thorough discussion of different ideas through the media, no matter how marginal they are, does no harm to Hong Kong.

I remember in the early 1980s when the Sino-British talks on the future of Hong Kong were underway, some people proposed that Hong Kong should become independent. Debate on this issue followed, but it subsided after a while, and Hong Kong's prosperity was left unaffected.

Media Self Censorship

It has become obvious that China will try to set new parameters within which the relatively free Hong Kong media will have to operate after the handover. However, it is essential for us all to uphold press freedom. It is our right because China has promised Hong Kong a high degree of autonomy under the one-country two-systems concept, and freedom of expression has been promised in the Basic Law. Nevertheless, there are problems within the media industry itself.

According to a survey co-sponsored by the Hong Kong Journalists Association and conducted among journalists in early 1995, 90 percent of respondents believed there was self-censorship

in the industry, and a surprising one-third admitted that they themselves had exercised self-censorship. They also indicated that greater "care" would be taken in dealing with criticism about China, when compared with that directed against the Hong Kong government.

While the clandestine nature of self-censorship means that it is difficult to pin down actual examples, there has at the same time been little evidence to suggest that the situation has improved. Television documentaries vilified by the Chinese government have been bought and then never broadcast, popular but critical TV programmes have been axed, and critical columns and cartoons have suddenly disappeared from the pages of newspapers.

I have pointed out some gloomy trends regarding the future of freedom of expression in Hong Kong. This has to be seen in particular in the light of China's own policy of placing internal stability top of its agenda. This is already having an adverse effect on the mainland media.

However, there are some rays of light. One is China's open-door policy. When China opens up, and there is no sign that this will change, it has to consider international reaction to its policies. Therefore, concern from the international community is important.

The other is the way the Chinese media are changing. After much interaction with the Hong Kong media, journalists in China have become more energetic about seeking news. I hope these changes will help to ease the minds of Chinese leaders. ■