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REPORT ON THE OPINIONS CONCERNING THE TRANSLATION OF
THE DRAFT BASIC LAW FOR SOLICITATION OF OPINIONS

Introduction

After passing the Basic Law, the National People's Congress will publish its official English version. This is an established policy. Judging from the historical background of Hong Kong and looking forward to its future, one would readily admit the significance of the English translation of the Basic Law. Since Hong Kong is a cosmopolitan city, the people of other countries would have to understand the Basic Law through this English version. Furthermore, it is unlikely that after 1997 the Chinese language can be introduced comprehensively into the judicial system all at once. To say the least, higher courts may still have to rely on English when adjudicating cases before them. Hence, the provisions of the Basic Law invoked will most probably be in English. Article 81 of the Draft Basic Law also provides that "[the Court of Final Appeal in the Hong Kong Special Administrative Region] may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal." The Basic Law to which the judges from other common law jurisdictions would refer would naturally be in English. The importance of this English translation is thus evident.

Though different in status from its Chinese original, the English version of the Basic Law will be widely used in the community and courts of the Hong Kong Special Administrative Region. Hence, the work of translating the Basic Law is of long-term and vital significance.

When the Draft Basic Law was published, the Secretariat of the Drafting Committee in Beijing provided an English translation so that those who are not conversant with Chinese may also express their views on the Draft Basic Law. The English version has facilitated consultation on the Basic Law. With this translation, foreign experts and scholars could conduct studies concerning the Basic Law and "one country two systems".

With the revision of the Draft Basic Law, some of the translation problems which we have identified may disappear and new problems may arise. A presentation of the problems in the existing translation and of the proposed solutions to them may, however, serve as reference for the translators of the Basic Law and be helpful to the future translating of the Basic Law.

This report is in two sections. The first section is on problems affecting the entire translation. It is hoped that the authorities concerned will, in respect of these general problems, lay down some principles for the translators to follow. The second section is on problems concerning individual articles. The opinions and suggestions listed in this section were

collected during the consultation period. Many of these problems cannot be solved until some principles governing the general problems are decided on. During the consultation period, the Hong Kong Translation Society submitted a thorough review on the English translation of the Draft Basic Law. Its specific views on the articles are incorporated into the second section of this report (see opinions/suggestions whose source is B-233).

General Problems

This section offers a brief discussion on some principles concerning the English translation of the Draft Basic Law. The opinions collected by the Secretariat on this subject are summarized into the following categories with illustrative examples.

1. Restriction imposed by the Sino-British Joint Declaration

Though the Basic Law and the Joint Declaration are different in nature (the former is a domestic law of China with its English version being secondary to its Chinese version; the latter is an international agreement with both versions equal in status), the contents of the Basic Law must be consistent with the Joint Declaration. In order to avoid unnecessary queries or speculations from people who are sensitive to political implications, the translation of any terms or provisions in the Basic Law which are identical to those in the Joint Declaration should, as far as possible, follow the English version of the Joint Declaration. There are, however, some provisions where the Chinese and English versions of the Joint Declaration do not exactly agree. For instance, in Section XIII of Annex I to the Joint Declaration, the Chinese version means "freedom of procession" but in the English version of the Joint Declaration, it reads "freedom of demonstration". The same applies to Article 26 of the Draft Basic Law which is probably under the influence of the Joint Declaration. The choice of words in the English version of the Joint Declaration may not be the best. For instance, it has been pointed out that the Chinese verb dichu (抵觸), translated as "contravene" in Article 8 and Paragraph 2 of Article 10 of the Draft Basic Law, where it is provided that no laws in the HKSAR shall "contravene" the Basic Law) should not adopt the English equivalent used in the Joint Declaration (i.e. "contravene") because the English verb "contravene" normally applies to a situation where a person, an organization or an act violates a law, but does not apply to a situation where a law is inconsistent with another law. In the latter situation, "contradict" or "is repugnant to" is more commonly used. Is it necessary to adopt the English equivalent used in the Joint Declaration? If it is found that for some provisions, copying from the English version of the Joint Declaration is inappropriate or there may be a better translation, can the translators of the Basic Law break away

from the English version of the Joint Declaration? There should be a definite policy regarding these questions.

Problems in the original

Some provisions in the Draft Basic Law are vague or inconsistent. For instance, the term "policies" as in the "basic policies of the PRC regarding Hong Kong" is fangzhen zhengce (方針政策) in Chinese which literally means "guiding principles and policies". Without further explanation from the drafters, it is difficult for the translators to differentiate between "guiding principles" and "policies", or to decide whether it should be translated as "policies and principles". In many provisions of the Draft Basic Law, "on its own" is the English equivalent of the Chinese term zixing (自行) but in Article 159 "on its own" is also used for translating dandu (單獨). It is difficult for the translators to decide if the use of dandu is deliberate or is only an inconsistency in the original. If it is the former case, an expression different from "on its own" should be used in the English version; if it is the latter case, "on its own" may be used for translating both zixing and dandu.

In some cases, a comparison between the Chinese and the English versions of the Draft Basic Law shows that the English translation is in greater detail than the Chinese original. For example, in Article 71(3) the English version "time and duration" is more specific than the Chinese original shijian (時間) (which generally means "time", though "duration" is also a possible interpretation). Sometimes, elaboration by the translator may be controversial as it would lead to discrepancy between the original and the translation. For example, in Article 67 hunhe xuanju (混合選舉) meaning "mixed elections" is translated as a combination of direct and indirect elections" whose scope of meaning is much narrower than the original. The Chinese version does not specify the modes of elections: apart from a combination of direct and indirect elections, it may be a combination of different kinds of direct elections or a combination of different kinds of indirect elections. Without a clear and precise original, the translation can hardly be accurate. Any elaboration by the translators to make the translation more precise is likely to result in discrepancy between the two versions, either in the degree of thoroughness or in meaning. Hence, for some provisions, no improvement on the translation is possible unless the Chinese original is made clear. On the other hand, in cases where the original is deliberately expressed in more general terms, the translation should reflect this style and no elaboration should be made.

Some comment that the Chinese word yuan (原) which frequently appears in the Draft Basic Law is extremely vague, and so is its English equivalent "previous" which does not specify a definite time and may cause confusion. In fact, this is a

problem with the choice of words in the original rather than a translation problem. For detailed discussion on this problem, please refer to Part III of the Report on Laws and Policies, and Other Issues Concerning the Principles of Drafting the Basic Law (Volume 4 of the Consultation Report).

3. Different ways of translation adopted by the mainland and Hong Kong

In the English version of the Draft Basic Law, some terms are different from what they are commonly called in Hong Kong. For instance in the Annexes, fading tuanti(法定團體) and jiefang zuzhi(街坊組織) are generally translated as "statutory bodies" and "Kaifong associations" in Hong Kong. But in this English version, they are translated as "corporate bodies" and "area committees". An opinion even proposes that "Hong Kong" should read "Xianggang". This is not a matter of right and wrong but the reader of the English version of the Draft Basic Law might think that "corporate bodies" are different from the "statutory bodies" commonly referred to in Hong Kong, that "area committees" are a new kind of organizations, and that "Xianggang" is the name of a new place. Though the Basic Law is a law of the PRC-drawn up and passed by the National People's Congress, it will mainly be implemented in Hong Kong. Its English version, in particular, will mostly be used in Hong Kong and internationally. Hence, the terms commonly used in Hong Kong and terms which are more familiar to the international readers should be adopted.

4. Political implications

The English version of the Draft Basic Law does not have a consistent approach towards the new names of government bodies and posts. In some cases, the new names are vastly different from the old ones. For example the present Legal Department and Attorney General will be called the Department of Justice and Secretary of Justice after 1997 though there is only a slight change in their Chinese names. There are also slight changes to the Chinese names of the post-1997 Legislative Council and district courts, but their English names remain unchanged. Probably, these names are changed in order to reflect the decolonization process. If the English translation is also expected to show this political implication, the best arrangements would be to ask the drafters to state their considerations which influenced the changes of these names. With the drafters' explanation, the translators could make their judgments accordingly.

5. Simple errors

Since there was little time left for translation, mistakes were inevitable. It has been pointed out that some translated provisions are not faithful to the Chinese original, e.g. in Article 65, the executive authorities

referred to in the original are the previous (i.e. pre-1997) executive authorities, whereas the translation refers to the post-1997 executive authorities of the Hong Kong Special Administrative Region. In addition, there are inconsistencies in the use of terms in the translation. For example, jumin (居民) is translated as "residents" throughout the Draft Basic Law except for only one clause: in Article 72(8), it is translated as "inhabitants". We are not sure if the translators would really want to make this translation of jumin distinct from the rest of the translations of the term. In the heading of Chapter III, yiwu (義務) is translated as "duties" whereas in the provisions of the same chapter (i.e. Article 42) and in Article 172 of Chapter X yiwu is translated as "obligation(s)". This seems to be an example of negligence. These errors can easily be corrected. With close scrutiny and repeated revisions, the translation will be free from this kind of problem.

problems in Individual Articles

The following opinions and suggestions on the English version of the Draft Basic Law were collected during the consultation period. After collation, they are listed according to the order of the relevant articles. The source is indicated after each opinion/suggestion (see the code number of the submission in brackets). These opinions and suggestions are not necessarily in line with the views of the Secretariat of the CCBL. The Secretariat of the CCBL will provide, as appropriate, supplementary or different views (see opinions/suggestions whose source is SEC) for the reference of the Secretariat of the Drafting Committee.

Preamble

Opinions

The tense in "was occupied by Britain" is wrong because the use of past tense implies that Hong Kong was occupied by Britain for a period of time in the past and that Hong Kong is no longer occupied by Britain. (C3-381)

Support is expressed for the use of past tense in "was occupied by Britain" because by the time the Basic Law officially takes effect, occupation by Britain will become history. (SEC)

Suggestions

The first sentence of Paragraph 1 should read: "Hong Kong, which has been part of Chinese territory since ancient times, has been occupied by Britain since the Opium War of 1840." or "Hong Kong, which has been part of Chinese territory since

ancient times, has been British territory since the Opium War of 1840."

Reason: The translation should either specify the period of occupation or employ the present perfect tense to denote the continuous occupation by Britain. Lack of clarity in this may lead people to assume that the British occupation became sovereignty after the unequal treaties. (C1-159)

- In line 4 of Paragraph 1, "Government of the People's Republic of China" should read "government of the People's Republic of China".

Reason: According to the style of the English version, if "government" follows the name of the place, a capital "G" will be used, e.g. "Hong Kong Government"; if "government" precedes the name of the place, a small "g" will be used, e.g. "government of Hong Kong". (SEC)

- In line 8 of Paragraph 2 and line 5 of Paragraph 3. "basic policies" should read "basic principles and policies".

Reason: The expression used in the Chinese original is composed of two words: fangzhen zhengce (方針政策).

Note: The English version of the Draft Basic Law is identical to that of the Sino-British Joint Declaration. (B-233)

Chapter I

Article 2

Suggestion

- The article should read: "The National People's Congress... to exercise a high degree of autonomy and to enjoy executive power, legislative power, independent judicial power, and final adjudicative power. in accordance with the provisions of this Law."*

Reason: The expression "in accordance with this Law" governs not only "a high degree of autonomy", but also all the "powers". (B-233)

* In the quoted text, the part with no amendment is shown by ellipsis dots "...".

Article 5

Opinion

There is some discrepancy in meaning between the Chinese and the English versions of this article. According to the English translation, the rights and freedoms of the residents and other persons in the Region depend on the laws passed by the legislature. (Horizontal discussion within the CCBL:H1-2-0505(E))

Article 6

Opinions

The word "take over" does not have the meaning of "taking forcible possession of", which is implied in the original. At least the term "requisitioned properties" should be used. The English version of the Joint Declaration uses the word "deprivation" (see line 6, Paragraph 1, Section VI, Annex I to the Joint Declaration). (B-233)

The Chinese and the English versions of the Draft Basic Law seem to be inconsistent. First, the word "properties" in the English version seems to refer only to land and real estate, whereas the Chinese word caichan(財產) may refer to assets of all kinds. Second, yifa zhengyong(依法徵用) in the Chinese version obviously means that private properties are lawfully requisitioned by government authorities, but the English version may be interpreted as the government's requisition of private properties or a private firm's acquisition of another private firm. It is hoped that the applicability of this article can be clarified. (B-95)

Suggestion

The article should read: "...and compensation for lawfully commandeered properties shall be protected by law. The compensation for lawfully commandeered properties shall be... the real value of the properties concerned..." (B-233)

Article 7

Suggestions

The expression "the state property of the People's Republic of China" should be simplified to read "the property of the State" in order to be consistent with the Chinese version.

"... and for their lease or grant to..." should read "... and for their lease or allotment to..."

Reason: Though the word "grant" is also used in the English

version of the Joint Declaration (see line 1 of Paragraph 1 of Annex III), the original word pi(批) does not mean "granting (i.e. giving the possession of) the land and natural resources to" the applicant for his private use and enjoyment, but simply "allotting them to" him for whatever purpose, perhaps to build a playground as a donation to the public. (B-233)

Article 8

Suggestion

- "rules of equity" should read "law of equity".

Note: The English version of the Draft Basic Law is identical to that of the Joint Declaration (line 2, Section II, Annex I). (B-233)

Article 10

Suggestion

- Paragraph 2 should read: "No law enacted by the legislature of the Hong Kong Special Administrative Region shall contravene the Basic Law."

Reason: To avoid confusion, "this Law" should read "the Basic Law". (C1-159)

Chapter II

Article 11

Suggestions

- Line 3 should read "and is directly under the Central People's Government." (B-233)
- The article should read: "The Hong Kong Special Administrative Region is a local administrative region of the People's Republic of China. It comes directly under the Central People's Government and shall enjoy a high degree of autonomy."

Reason: The English version of the Draft Basic Law cannot fully and accurately reflect the concept regarding the enjoyment of "a high degree of autonomy". (A1-300, B-238)

- The article should read: "The Hong Kong Special Administrative Region is a local administrative region of the People's Republic of China, which enjoys a high degree of autonomy and

comes directly under the Central People's Government."

Reason: same as above. (SEC)

Article 12

Suggestion

The term "foreign affairs" should read "diplomatic affairs".
(A1-712, B-238)

Article 13

Suggestions

Paragraph 1 should read: "The Central People's Government is responsible for administering the defence affairs of the Hong Kong Special Administrative Region." (B-233)

Line 2 of Paragraph 2 "...and disaster relief" should read "and in disaster relief". (SEC)

The term "nation-wide laws" should read "the laws applicable throughout the country".

Reason: "nation-wide" describes the application of laws and not the laws themselves. (SEC)

"All expenses for the garrison" should read "All expenses incurred by the maintenance of the garrison".

Reason: In English, the original meaning should be expressed in this way. (SEC)

Article 15

Suggestions

"...shall, on its own, manage public finance..." should read "...shall, on its own, manage its public finance...". (B-233)

The term "urban planning" should read "urban and rural planning" or "city planning". (A1-300, D-238)

The term "meteorology" should read "astronomy and meteorology". (D-238)

Article 16

Opinion

- It was noted that the Chinese and the English versions of Paragraph 3 were inconsistent in meaning. (Point 14.2 in the Collection of Views of the Special Group on the Relationship between the Central Government and the HKSAR of the CCBL Regarding Chapters I, II, VII, and IX of the Draft Basic Law)

Article 17

Opinions

- The word "and" is used between the "National People's Congress" and the "Standing Committee of the National People's Congress" in the Chinese version. But in the English version the word "or" is used. (A1-300)
- The use of "and" in the Chinese version implies that laws enacted by the NPC as well as laws enacted by the Standing Committee of the NPC are included. If translated as "and" in the English version, it would mean laws enacted by the NPC and the Standing Committee of the NPC together. The use of "or" in the English version, on the other hand, can convey the meaning of the original. (SEC)

Suggestions

- Paragraph 1 should read: "The laws of the Hong Kong Special Administrative Region shall be the Basic Law,...".

Reason: To avoid confusion, "this Law" should read "the Basic Law". (C3-381)

- Paragraph 5 should read: "... the application of the above-mentioned laws in the Hong Kong Special Administrative Region." (B-233)

Article 18

Opinion

- In Paragraph 2, "over all cases in the Region" is a mistranslation because the meaning of "in the Region" is not found in the original. (C1-797)

Suggestions

- Paragraph 2 should read: "... the restrictions on their jurisdiction imposed by Hong Kong's previous legal system shall be maintained." (B-233)

"in any legal proceeding" should read "in any legal proceedings". (B-233)

Article 20

Suggestion

"Chinese nationals" should read "Chinese citizens".

Reason: In the United Kingdom Memorandum (a) of the Joint Declaration, the English equivalent of the term gongmin(公民) is "citizens". (B-233)

Note: In fact, in Section XIV of Annex I to the Joint Declaration, the equivalent of gongmin is "nationals". However, in the Constitution of the People's Republic of China (Beijing China, Publishing House of Law, 1986), gongmin is translated as "citizens". (SEC)

Article 21

Suggestion

In line 4 of Paragraph 2, "thereof" should read "of the Hong Kong Special Administrative Region".

Reason: The Chinese original of the Basic Law clearly says "the government of the Hong Kong Special Administrative Region", whereas "thereof" is a little ambiguous. (B-233)

Article 22

Opinion

There are some discrepancy between the Chinese and English versions of this article. (C-731)

Suggestion

The article should read: "...any act which undermines national unity or subverts the Central People's Government."

Reason: The Chinese original does not contain the word "designed to". (Horizontal discussion within the CCBL H1-1-0504(E), B-233)

Chapter III

Heading

Suggestion

- "Duties" should read "Obligations".

Reason: The Chinese word yiwu (義務) is translated as "obligations" elsewhere in the Draft Basic Law (in Article 42 of the same chapter and Article 172 of Chapter X). (SEC)

Article 23

Suggestions

- ", or Hong Kong residents for short," should read "(hereinafter referred to as 'Hong Kong residents')".

Reason: The expression "or...for short" is seldom used in legal language. (SEC)

- "Chinese nationals" should read "Chinese citizens" (B-233)

Reason: See the reason under Article 20.

- Paragraph 2 should read: "The above-mentioned residents shall have...and shall be qualified to..." (B-233)

Article 24

Opinion

- The Chinese term caichan zhuangkuang (財產狀況) is mistranslated as "property status" which means chanve zhuangkuang (產業狀況) in Chinese. In everyday usage, caichan generally refers to money and all kinds of belongings, whereas chanve refers to properties in general. The relationship between caichan and chanve is as follows: the former may include the latter and the latter is only part of the former. As a legal term, caichan refers to the sum total of money, belongings, and civil rights and duties, and can be divided into tangible (money and belongings) and intangible (real right, creditor's right, inventor's patent right, etc.) ones. As an economic term, chanve refers to all kinds of production or may refer only to industries. Hence, caichan zhuangkuang and chanve zhuangkuang are vastly different in meaning. Confusing the two will lead to tremendous and serious problems. (C1-187, C3-389)

Suggestion

- "property status" should read "economic status". (Horizontal discussion within the CCBL H1-2-0505(E))

Article 26

Opinion

- This article should include freedom of procession and of demonstration. But the Chinese version of the Draft Basic Law only mentions "procession" while its English version only mentions "demonstration", just like the case of Section XIII of Annex 1 to the Joint Declaration. (C1-418)

Article 27

Suggestions

- Paragraph 1 should read: "...of Hong Kong residents shall not be violated." (B-233)
- In Paragraph 2, "...shall be prohibited" should read "...is prohibited".

Reason: "shall be prohibited" could imply that some legislation is required for it to be prohibited. (C3-2190)

Article 29

Suggestion

- The second half of the second sentence should read: "... except that the relevant authorities may censor communication in accordance with legal procedures to meet the needs of public security or of investigation into criminal offences."

Reason: Shifting the emphasis back to the original intention. (B-233)

Article 31

Opinion

- There is serious discrepancy in meaning between the Chinese and English versions of this article. According to the English translation, Hong Kong residents shall have the freedom to carry out and participate in the said activities only in public. (Horizontal discussion within the CCBL H1-2-0505(E), C3-389)

Article 34

Suggestion

- "access to the courts" should read "instituting legal proceedings in court".

Reason: In legal language, "access to the courts" is indeed for the purpose of "instituting legal proceedings". But "access" is still an indirect way of putting it, whereas the Chinese original uses the specific expression "instituting legal proceedings", which has no other broader meanings. Therefore the suggested version may be more appropriate here than the one used in the English version of the Draft Basic Law which is identical to that of the Joint Declaration (line 1, Paragraph 2, Section XIII, Annex I). (B-233)

Article 36

Suggestion

- The article should read: "The freedom of marriage and voluntary family planning of the Hong Kong residents shall be protected by law."

Reason: "Voluntary family planning" may not be the most ideal translation, but "to raise a family freely" is too colloquial and does not have an exact legal meaning.

Note: The expression used in the Joint Declaration (last line, Paragraph 1, Section XIII, Annex I) is "...the freedom to marry and the right to raise a family freely." (B-233)

Article 38

Suggestions

- "Through legislation" should read "in legislation" (A1-692)
- "...as applied to Hong Kong shall be implemented through legislation by the Hong Kong Special Administrative Region" should read "...applicable to Hong Kong shall be implemented through the laws of the Hong Kong Special Administrative Region."

Reason: The original implies that not all the provisions are applicable to Hong Kong, but those that are shall be implemented. Though "implemented through legislation" sounds more reasonable, but the original word falú (法律) means "laws" not "legislating" which would be lifa (立法).

Note: The expression "as applied to" used in the Draft Basic Law is identical to that in the English version of the Joint Declaration (last line, Paragraph 4, Section XIII, Annex I). (B-233)

Article 39

Suggestions

- "public safety" should read "public security". (B-233)
- "for the safeguarding of" should read "for safeguarding". (B-233)

Article 40

Suggestion

- The word "the" should be added before "New Territories". (SEC)

Chapter IV

Article 43

Suggestion

- "... is the head" should read "...shall be the head". (B-233)

Article 44

Suggestion

- "Chinese national" should read "Chinese citizen".

Reason: See the reason under Article 20. (B-233)

Article 45

Suggestion

- "in the light of actual situation" should read "in the light of the actual situation". (SEC)

Article 46

Suggestion

- "two terms" should read "two consecutive terms". (Horizontal discussion within the CCBL H1-1-0504(E))

Reason: In order to express the meaning of the original accurately, "consecutive" should be added. (SEC)

Article 47

Suggestion

- "Chief Justice" should read "chief judge".

Reason: At present, only the chief judge of the Supreme Court is called "Chief Justice" in Hong Kong. He is the judge of the highest rank and there is only one Chief Justice in Hong Kong. In the Draft Basic Law, both the chief judge of the Court of Final Appeal and the chief judge of the High Court are referred to as "Chief Justice" in Hong Kong. That is, there will be at least two Chief Justices in Hong Kong after 1997, or one might think that since there is only one Chief Justice in Hong Kong, the post of Chief Justice in both the High Court and the Court of Final Appeal will be filled by one person. In fact, the Chinese original shouxi faguan (首席法官) is only a general term, rather than a specific title. If a general term, e.g. "chief judge", is also used in the English version, confusion with the present title can be avoided. (A2-191, SEC)

Article 48

Opinions

- In Paragraph (7), gongzhi ren yuan (公職人員) is translated as "public servants", and in other articles gongwu ren yuan (公務人員) is also translated as "public servants". Hence in the English version, the two terms are not differentiated. Is there any substantial difference in meaning between the two Chinese terms? If there is, the English version should also show the difference. (SEC)

Suggestions

- In Subparagraph 2 of Paragraph (3), "bills on budgets" should read "budgets".

Reason: The word "bills" is not necessary in English. (SEC)

- In Subparagraph 2 of Paragraph (5), "...at or above the

director level" should read "...at or above the bureau level".
(B-233)

Reason: The original refers to the government organ, rather than the office bearer.

Article 50

Suggestion

- In the last sentence of Paragraph 2, "...in each term of office" should read "in each term of his/her office".

Reason: To be consistent with other articles. (B-131)

Article 51

Suggestion

- "budget bill" should read "budget".

Reason: The word "bill" is not necessary in English. (SEC)

Article 53

Suggestions

- "Secretary of Justice" should read "Attorney General". (B-102)

- "assumed by Administrative Secretary, Financial Secretary, Secretary of Justice" should read "discharged by the Administrative Secretary, Financial Secretary or Secretary of Justice". (SEC)

Article 55

Opinion

- Strictly speaking, "public figures" and the original shehui renshi (社會人士) (which refers to members of the public) have different meanings. The term "public figures" refers to well-known people in the community and not members of the public. (SEC)

Suggestion

- "Chinese nationals" should read "Chinese citizens".

Reason: See the reason under Article 20. (B-233)

Article 60

Opinion

- The Basic Law provides that the judicial system previously practised in Hong Kong shall be maintained except for changes consequent upon establishment of the Court of Final Appeal. In this article, the translation "Department of Justice" may be misleading because the terms of reference of the "Department of Justice" in China are vastly different from those of the Legal Department in Hong Kong. (A2-191)

Suggestion

- Paragraph 1 should read: "The head of the government of the Hong Kong Special Administrative Region shall be the Chief Executive of the Hong Kong Special Administrative Region."

Reason: Shifting the emphasis according to the original. The sentence structure of Article 43 is "The Chief Executive of the Hong Kong Special Administrative Region is...". The use of the same structure in this article is confusing. (B-233)

Article 61

Suggestion

- "Chinese nationals" should read "Chinese citizens".

Reason: See the reason under Article 20. (B-233)

Article 62

Suggestion

- "Article 14" should read "Article 15".

Reason: Correction according to the original. (B-233)

Note: The number has been corrected in the reprint. (SEC)

Article 63

Suggestion

- "shall institute criminal prosecutions independently" should read "shall handle criminal prosecution work independently". (B-233)

Article 64

Suggestion

- "in the following respects" should be deleted from the first sentence; "législature" in line 4 should read "Legislative Council".

Reason: Correction according to the original. (B-233)

Article 65

Suggestion

- The article should read: "The previous system of executive authorities establishing advisory bodies shall be maintained."

Reason: The English version of the Draft Basic Law is totally wrong: (1)The "previous system is to be maintained, not "the establishment of advisory bodies". (2)The English version does not say who establishes the advisory bodies. (3)The "executive authorities" in the Chinese original refers to the pre-1997 executive authorities, not "the executive authorities of the Hong Kong Special Administrative Region". (B-233)

Article 67

Opinion

- Within one article (or even one paragraph), both "methods for forming the Legislative Council" and "methods for constituting the Legislative Council" are used. The use of terms ("forming" and "constituting") should be consistent. In this article, the word "Methods" as in "Methods for Constituting the Legislative Council" is plural, but in the table of contents and Annex II, the singular form is used: "Method for Constituting the Legislative Council". This should also be consistent. (SEC)

Suggestion

- "a combination of direct and indirect elections" should read "mixed elections".

Reason: The original does not specify that it is a combination of direct and indirect elections. (B-233)

Article 68

Suggestion

- "of members" should be deleted.

Reason: The Chinese original does not have the word "members".
(B-233)

Article 70

Suggestion

- "Chinese national" should read "Chinese citizen".

Reason: See the reason under Article 20. (B-233)

Article 71

Suggestion

- "and duration" should be deleted from Paragraph (3).

Reason: The Chinese word shijian (時間) can mean "time" or "duration" or both, but not necessarily both. (B-233)

Article 72

Suggestions

- In Paragraph (8), "inhabitants" should read "residents".

Reason: Legally speaking, "inhabitants" is quite different from "residents" in terms of their rights and so forth. The word "residents" has been used to translate jumin (居民) elsewhere in the English version of the Draft Basic Law. (B-233)

- In Paragraph (9), "Chief Justice" should read "chief judge".

Reason: See the reason under Article 47. (A2-191)

- In Paragraph (9), "on the motion initiated jointly by one-fourth of the members of the Legislative Council and passed by the Council, may be established to carry out investigations" should read "may be established on the motion initiated jointly by one-fourth of the members of the Legislative Council and passed by the Council, to carry out investigations". (B-233)

Article 78

Suggestions

- "under any of the following circumstances" should be moved to the beginning of Paragraph 1. That is, the beginning of Paragraph 1 should read: "Under any of the following

circumstances, the president of the Legislative Council...".

Reason: The expression "no longer qualified to serve under" is very awkward and misleading. (B-233)

"censored" should read "censured".

Reason: "censored" is the wrong word. (B-233)

Article 79

Suggestion

- "are" should read "shall be". (B-233)

Article 80

Opinion

- "Court of the First Instance" is clumsily-named. (A2-191)

Suggestion

- "are" should read "shall be". (B-233)

Article 81

Suggestions

- "is" should read "shall be". (B-233)

- "Court of Final Appeal in the Hong Kong Special Administrative Region" should read "Court of Final Appeal of the Hong Kong Special Administrative Region".

Reason: "Of" is the proper preposition because this is not a case of a "Court of Final Appeal in Beijing" and a "Court of Final Appeal in Hong Kong". (B-233)

Article 83

Suggestion

- "precedents in other common law jurisdictions" should read "precedents of other common law jurisdictions". (B-233)

Article 88

Suggestions

- "Chief Justice" should read "chief judge".

Reason: See the reason under Article 47. (A2-191)

- "Court of Final Appeal in the Hong Kong Special Administrative Region" should read "Court of Final Appeal of the Hong Kong Special Administrative Region".

Reason: See the reason under Article 81. (B-233)

Article 89

Suggestions

- "Chief Justice" should read "chief judge".

Reason: See the reason under Article 47. (A2-191)

- "High Court in the Hong Kong..." should read "High Court of the Hong Kong...".

Reason: See the reason under Article 81. (B-233)

Article 90

Opinion

- "The previous system of...members of the judiciary other than judges of the Hong Kong Special Region shall be maintained" implies that "the previous system of... judges of the Hong Kong Special Administrative Region shall not be maintained". Since it is the "previous system", how can it be "of the Hong Kong Special Administrative Region"? Obviously, the provision is illogical. In fact, the Chinese original also has this problem. Hence, the original should first be improved on before the problem in the English version could be resolved.

Article 91

Suggestion

- "professional qualities" should read "professional abilities".

Note: The English version of the Draft Basic Law is identical to that of the Joint Declaration (line 6, Paragraph 3, Section III, Annex I). (B-233)

Article 92

Suggestion

- "...with pay, allowances, benefits..." should read "...with salaries, allowances, welfare benefits...".

Note: The English version of the Draft Basic Law is identical to that of the Joint Declaration (line 4, Paragraph 1, Section IV, Annex I). (B-233)

Article 93

Suggestions

- "The Hong Kong Special Administrative Region shall..." should read "The government of the Hong Kong Special Administrative Region shall...". (B-233)

Reason: Correction according to the original. (SEC)

- "benefits" should read "welfare benefits".

Note: See the note under Article 92. (B-233)

Article 94

Suggestions

- The article should read: "The Hong Kong Special Administrative Region may...maintain contact on judicial matters with the judicial organs of other parts..."

Reason: According to the original, the SAR, not its "judicial organs" may maintain "contact". The Chinese word lianxi (联系) is only a matter of communication, whereas the word "relations" used in the English version carries a much wider and deeper meaning. (B-233)

Article 96

Opinion

- There is some discrepancy in meaning between the Chinese and English versions. (Horizontal discussion within the CCBL H1-2-0505(E))

Article 99

Suggestion

- "...with pay, allowances, benefits..." should read "...with salaries, allowances, welfare benefits...".

Note: See the note under Article 92. (B-233)

Article 100

Suggestions

- "previously serving" should read "who have been serving or previously served in the public service".

Reason: The spirit of the article probably does not include those "previously served", but the Chinese word yuan (原) does. In any case, the meaning of "previously serving" in the English version is not clear as to whether they "have been serving", or "had been serving", or "were previously serving". (B-233)

- "Chinese nationals" should read "Chinese citizens".

Reason: See the reason under Article 20. (B-233)

- "the Secretary and Deputy Secretaries of Departments" should read "the Secretaries and Deputy Secretaries of Departments". (SEC)

Article 101

Suggestion

- "benefits" should read "welfare benefits".

Note: See the note under Article 92. (B-233)

Article 102

Suggestion

- "pay" should read "salary".

Note: See the note under Article 92. (B-233)

Article 104

Opinion

- To avoid confusion, what the word "they" in the English version refers to should be specified. (A1-186E)

Chapter V

Article 105

Opinion

- The English is too clumsy. (A1-186E)

Suggestions

- In Paragraph 1, "the principle of measuring expenditure by revenues" should read "the principle of regulating expenditure according to revenue". (B-233)
- Paragraph 2 should read: "...over a number of fiscal years, maintain a basic balance between its total revenue and total expenditure".

Reason: "taken as a whole" and "budgetary" are not in the Chinese version, but the word "total" is.

- Paragraph 3 should read: "The rate of increase of revenue and expenditure in the budget of the Hong Kong Special Administrative Region shall not, in principle, exceed the gross domestic product growth rate over a number of fiscal years."

Reason: (1) The expression "in principle" is put at the very end of the Chinese original, therefore starting the translated paragraph with this expression amplifies its significance too much. (2) The term "budgetary revenues" is a little awkward, and besides, the word "budget" covers both "revenue" and "expenditure". (3) It is clearer to retain the Chinese term "rate of increase" after the GDP, instead of simply "that of". (4) The expression "taken as a whole" in the English version cannot be found in the Chinese original. (B-233)

Section II

Suggestion

- The heading "Money and Finance" should read "Finance and Monetary Affairs". (B-233)

Article 110

Suggestion

- "governed by law" should read "prescribed by law".

Reason: To maintain consistency with Article 108 and other places. Besides, "prescribe" and "govern" have different meanings. (B-233)

Article 111

Suggestion

- "No exchange control policies" should read "No foreign exchange control policies". (B-233)

Article 115

Opinion

- The meaning of this article is more precisely conveyed in the English translation, and the idea of "backed up by a reserve fund" is not expressed in the Chinese original. (Horizontal discussion within the CCBL H1-2-0505(E))

Article 117

Suggestion

- In the second sentence of Paragraph 2, "safeguard" should read "protect".

Reason: "protect" is a better word for translating baozhang (保障). (B-102)

Article 123

Opinions

- The word "necessary" is not found in the original. (SEC)
- The word "necessary" is too strong and does not provide any objective standard. It is difficult for the government to guarantee that this requirement will definitely be met. (B-97)

Article 127

Suggestion

- The article should read : "As regards leases of land granted during the period from 27 May 1985 to 30 June 1997, and leases of land without the right of renewal but renewed, which extend beyond 30 June 1997 but not beyond 30 June 2047,..."

Note: The expression "expire not late than" in the Draft Basic Law is identical to that in the English version of Annex III (2) to the Joint Declaration. (B-233)

Article 128

Suggestions

- The word "person" in line 3 should read "lessee".

Reason: The word "lessee" is used in the Chinese original.

Note: The English version of the Draft Basic Law is identical to that of the Joint Declaration (line 10, Paragraph 2, Annex III). (B-233)

- The word "person" in line 6 should read "lessee".

Reason: In the English version, there are three "persons" and it is not clear who the last "person" is. Besides, the word "lessee" is used in the Chinese original.

Note: The English version of the Draft Basic Law is identical to that of the Joint Declaration (line 13, Paragraph 2, Annex III). (B-233)

Article 132

Suggestion

- The article should read: "With the exception of foreign warships, whose entry into the Hong Kong Special Administrative Region requires ... Government, all other ships may enter into and depart from the ports of the Region in accordance with its laws."

Reason: The Chinese original mentions only foreign warships entering the SAR, whereas "access" used in the English version of the Draft Basic Law as well as that of the Joint Declaration (line 1, Paragraph 3, Section VIII, Annex I) would include both entry and exit. (B-233)

Article 135

Suggestions

- In the last sentence of Paragraph 1, "...concerning nationality marks..." should read "...concerning aircraft nationality marks...". (B-233)

- In Paragraph 2, "Access" should read "Entry".

Reason: See the reason under Article 132. (B-233)

Article 137

Suggestion

- "...make arrangements providing for air services..." should read "...make arrangements to provide air services...".

Reason: The word tigong(提供) in the original means "to make available", not "to make a proviso or stipulation".

Note: The English version of the Draft Basic Law is identical to that of the Joint Declaration (line 1, Paragraph 2, Section IX, Annex I). (B-233)

Article 138

Suggestions

- In line 1 of Paragraph 1 and line 2 of Paragraph 2, "air service agreements" should read "civil air service agreements".

Reason: The word "civil" is in the original. (B-233)

Note: The English version of the Draft Basic Law is identical to that of the Joint Declaration. (SEC)

- In line 3 of Paragraph 3 "in air service consultations with foreign governments..." should read "in air service negotiations between the Central People's Government and foreign governments".

Reason: The expression "between the Central People's Government and foreign governments" is in the original. (B-233)

Article 139

Opinion

- There is some discrepancy between the original and the translation of Paragraph (3). The translation is not as precise as the original. (C1-692)

Suggestions

- "air service agreements" should read "civil air service agreements".

Reason: The word "civil" is in the original. (B-233)

- Paragraph (3) should read: "negotiate and conclude provisional arrangements with foreign states or regions with which no civil air service agreements have been concluded." (B-233)

Note: The Chinese text of the Draft Basic Law is an improved version of the corresponding Chinese provisions in the Joint Declaration. But the English version of the Draft Basic Law is identical to that of the Joint Declaration, i.e. the corresponding English provisions in the Joint Declaration are not improved on accordingly. (SEC)

Article 140

Suggestions

- "air service agreements" should read "civil air service agreements".

Reason: The word "civil" is in the original. (B-233)

- In Paragraph (3), "under the air service agreements" should read "in accordance with the civil air service agreements". (B-233)

Article 141

Suggestion

- The article should read: "Airlines incorporated in Hong Kong prior to the establishment of the Hong Kong Special Administrative Region and having their principal place of business in Hong Kong, and civil aviation related businesses may continue to operate."

Reason: The English is very awkward.

Chapter VI

Article 142

Opinion

- The Chinese terms jiaoyu zhidu (教育制度) in Article 142 and jiaoyu tizhi (教育體制) in Article 143 are both translated as "educational system". The meanings of the different terms should be explained and the English version should be revised according to the Chinese original. (A2-283)

Article 143

Suggestions

- "educational system" should read "educational structure".

Reason: To be differentiated from the term "educational system" in Article 142. (8-749)

- "the system of academic awards" should read "the system of awarding academic degrees".

Reason: Though the English version of the Draft Basic Law is identical to that of the Joint Declaration, adding the word "degrees", which is specifically used in the Chinese original, may define the situation more precisely. (B-233)

Article 144

Opinions

- Regarding the first sentence, the English version is clearer than its Chinese original because under a normal interpretation of the word "may", this clause would be taken to mean that institutions will be able to retain their autonomy, while the Chinese version may have an interpretation like "may be permitted to retain...". (A1-191, B-49)
- The use of "may" in Paragraph 1 of the English version instead of "will" implies that there is something dubious about this article. The word ke (可) which is used repeatedly in the Chinese original is also unclear. (C3-3197)

Article 145

Suggestion

- The article should read: "The government of the HKSAR shall promote the development of medical and health care services and the development of both Western and Chinese forms of healing and encourage community organizations and individuals to provide health care services of various kinds."

Reason: The word "medical" is by common usage taken to mean "relating to the medical (allopathic) profession" and the word "medicine" is understood to mean "the practice of medicine (allopathy)". The Chinese original uses a general term meaning health care. The words "medicine" and "medical" should not be used in the English translation to mean healing in the general sense. In addition, the word "traditional" is used in the English version when referring to Chinese medicine, but no equivalent is used in the Chinese original. "Traditional" would be understood to mean something that is of long standing. By using the term, any new or modern form of Chinese medicine would be excluded. (B-164)

Article 150

Suggestion

- Paragraph 2 should read: "Persons who have obtained professional qualifications or qualifications for professional practice prior to the establishment of the Hong Kong Special Administrative Region may retain the same." (B-233)
- In line 3 of Paragraph 3, "and these organizations" should read "and these recognized professional organizations". (B-233)

Article 152

Suggestion

- "medicine" should read "health care".

Reason: See the reason under Article 145. (B-164)

Article 155

Suggestion

- "specific circumstances" should read "practical condition".

Reason: "specific circumstances" in the English translation is an misinterpretation. It should be translated as "practical condition" according to the Chinese version. (B-102)

Article 156

Opinion

- The style of the English version is inelegant (with all those "nons" as prefixes), but it is also unclear. What, after all, are the principles of "non-subordination"? (C1-731)

Suggestion

- "non-subordination" should read "organizational non-subordination".

Reason: Addition of the word "organizational" may better define "non-subordination", which is an unfamiliar concept in the west. (B-233)

Note: The English version of the Draft Basic Law is identical

organizations or conferences, whose participation is limited to states and whose agenda concerns appropriate fields affecting the Region, as members of delegations of the government of the People's Republic of China or in such other capacities as may be permitted by the Central People's Government and the international organizations or conferences concerned, and to express their views under the name 'Hong Kong, China'."

Reason: The English version of the Draft Basic Law (identical to that of the Joint Declaration) says representatives of the SAR may participate as X or may attend in the capacity of Y. But according to the Chinese original, it should be: the SAR may send representatives to participate as X or in the capacity of Y. (B-233)

In Paragraph 2, "conferences not limited to states" should read "conferences whose participation is not limited to states".

Note: The English version of the Draft Basic Law is identical to that of the Joint Declaration (line 6, Paragraph 1, Section XI, Annex I). (B-233)

In Paragraph 3, "...the Hong Kong Special Administrative Region shall continue..." should read "...the Hong Kong Special Administrative Region may continue...".

Reason: The word in the Chinese original may be translated as "may" or "shall", but "shall" is obviously inappropriate.

Note: The English version of the Draft Basic Law is identical to that of the Joint Declaration (line 14, Paragraph 2, Section XI, Annex I). (B-233)

Paragraph 3 should read: "...China is a participant and Hong Kong is also a participant in one manner or another."

Reason: canjia (参加) an organization does not necessarily mean joining it as a member. The Chinese original uses the same word in the same manner for the PRC and Hong Kong, but the English version of the Draft Basic Law (identical to that of the Joint Declaration) presumes that the PRC always participates as a member, whereas Hong Kong always simply "participates". (B-233)

Paragraph 4 should read: "...appropriate manner in those international organizations in which Hong Kong is a participant in one manner or another, but the People's Republic of China is not."

Reason: same as above. (B-233)

Article 161

Opinion

- Strictly speaking, "or becomes" in "...China is or becomes a party..." in the English version of the Draft Basic Law is not a faithful translation because the Chinese verb has no tense and "is" indicates an existing fact, whereas "becomes" indicates a future event. But addition of the word "becomes" is quite appropriate here. (B-233)

Suggestions

- The word "application" in line 1 should read "applicability".
 Note: The English version of the Draft Basic Law is identical to that of the Joint Declaration (line 1, Paragraph 2, Section XI, Annex I). (B-233)
- In Paragraph 2, "...but which are implemented in Hong Kong may continue to be implemented" should read "but which are applicable in Hong Kong may continue to be applicable".
 Reason: The Chinese original clearly uses the word "applicable" and "applicable" does not automatically mean already "implemented" or to be "implemented" in the future.
 Note: The English version of the Draft Basic Law is identical to that of the Joint Declaration (line 7, Paragraph 2, Section XI, Annex I). (B-233)

Article 162

Suggestion

- "...to all Chinese nationals who hold permanent identity cards of the Region, and travel documents..." should read "...to all Chinese citizens who hold permanent identity cards of the Region, and other travel documents...".
 Reason: Making the word "citizen" consistent and supplying the missing word. (B-233)

Article 163

Suggestion

- "visa exemption agreements" should read "mutual visa exemption agreements".
 Reason: Supplying the missing word. (B-233)

Article 166

Suggestion

- "of its own" should be deleted.

Reason: The expression is not in the original. (B-233)

Note: The English version of the Draft Basic Law is identical to that of the Joint Declaration (last paragraph, Section I, Annex I). (SEC)

Article 170

- "basic policies" in the last paragraph should read "basic principles and policies".

Reason: The expression used in the Chinese original is composed of two words: fangzhen zhengce (方針政策)(B-233).

Annexes

Suggestions

- "corporate bodies" should read "statutory bodies";
- "non-corporate bodies" should read "non-statutory bodies";
- "business circles" should read "commercial and industrial sectors";
- "philanthropic institutions" should read "charitable institutions";
- "area committees" should read "Kaifong associations";
- "street vendors' organizations" should read "hawkers' organizations";
- "district general elections" should read "general elections by geographical constituencies";
- "political figures of former times" should read "former officials and councillors".

Reason: Adopting the terms commonly used in Hong Kong. (SEC)

Conclusion

The submissions received during the previous consultation period are generally on the contents of the Draft Basic Law. Only a small number of submissions are on the English translation of the

Draft Basic Law and the majority of them are rather fragmentary. This report, apart from serving as reference for the translators of the Basic Law, is to draw the attention of the parties concerned in the community (such as lawyers, translators and scholars) to the problems in translation mentioned above. It is hoped that more specific and comprehensive views on the English version will be submitted during the next consultation period.

《基本法（草案）徵求意見稿》 翻譯意見報告

前言

在一九九零年通過基本法後，人大將頒佈一份正式的基本法英文本，這是個既定的政策。無論從香港的歷史背景來看或展望香港的未來，基本法英譯本都是十分重要的。香港作為一個國際城市，其他國家的人士要通過這英文本來了解香港的基本法，而且香港在九七年後的司法制度很難一下子全面使用中文，至少在較高級的法院審案時可能仍要使用英文，所以律師以英文陳詞時所引用的基本法就是其英文本，而且《基本法（草案）徵求意見稿》第八十一條規定：“終審法院可根據需要邀請其他普通法適用地區的法官參加審判。”其他普通法適用地區的法官要參考基本法時，自然是用基本法的英文本，可見這英譯本的重要性。

基本法英譯本雖然與中文本地地位不同，但將會在香港特別行政區的社會和法庭中廣泛使用。因此，基本法的翻譯工作實在有長遠和重要的意義。

《基本法（草案）徵求意見稿》公佈時，北京草委秘書處提供了英譯本，令不諳中文的人士也能對《基本法（草案）徵求意見稿》發表意見，有利於基本法的諮詢工作，外國專家學者也因此而得以進行有關基本法及一國兩制的研究。

《基本法（草案）徵求意見稿》原文經修改後，我們現在看到的一些翻譯問題或會消失，但也有可能出現新的翻譯問題。如果能指出現有譯本的問題，建議解決的方法，就能為基本法譯者提供參考資料，對以後基本法的翻譯工作有一定的幫助。

本報告分為兩部分。第一部分討論一些影響到整個翻譯工作的問題，有關方面最好能就這些整體問題訂出一些原則，使譯者有所依歸。第二部分是個別章節條文的翻譯問題，這部分列出的意見和建議是諮詢期收集所得。很多個別問題是要在決定了整體問題的取向後，才可解決的。在諮詢期間，香港翻譯學會就《基本法（草案）徵求意見稿》的英譯本提交了一份詳細的意見書，其中對各條文的具體意見已納入本報告第二部分（見出處是B-233的意見）。

整體問題

在這部分，本處把有關《基本法（草案）徵求意見稿》英譯本的意見，歸納成若干類別，並舉出一些較明顯的例子，概括說明一些原則性的問題。

（一）《中英聯合聲明》造成的限制

雖然基本法與《中英聯合聲明》性質不同（前者是中國內部法律，中、英文本有主次之分；後者則是國際條約，中、英文本具同等地位），但基本法的內容卻必須符合《中英聯合聲明》，

為了避免令對政治特別敏感的人士產生不必要的疑惑和揣測，基本法內如有詞彙或條文與《中英聯合聲明》內的相同，翻譯時最好能參照《中英聯合聲明》的英文本，但《中英聯合聲明》有些地方，中英文本不是完全一致的，例如《中英聯合聲明》附件一第十三節，中文本的“遊行自由”，英文應是“freedom of procession”，但在《中英聯合聲明》的英文本卻變成“freedom of demonstration”（即示威自由）。《基本法（草案）徵求意見稿》第二十六條也有同樣情況，很可能就是受了《中英聯合聲明》的影響。《中英聯合聲明》英文本的用字也不一定最理想。例如有意見認為《基本法（草案）徵求意見稿》“抵觸”一詞（如第十條第二款“香港特別行政區立法機關制定的任何法律，均不得與本法相抵觸”。第八條“除與本法相抵觸[的法律]外...”），不宜跟從《中英聯合聲明》的英文本譯作“contravene”，因為“contravene”通常是用於某人、物或行為觸犯法律的情況，而不是用於某法律抵觸另一法律的情況，後者多會用“contradict”或“repugnant to”。是否一定要按照《中英聯合聲明》英文本的做法呢？如果發覺照抄《中英聯合聲明》英文本可能不妥，或有更好的譯法，可否不參照《中英聯合聲明》英文本的做法呢？基本法的譯者不得不就這些問題定下一個翻譯方針。

（二）原文毛病造成的限制

《基本法（草案）徵求意見稿》有些地方意思含糊或前後不一致。例如原文“政策方針”一詞，意思很籠統，如非得到原文作者解釋確實含意，實在難以確定“方針政策”是否應分開作“方針”和“政策”，或兩者應怎樣區別。又例如多數條文都規定香港特別行政區可自行這樣，自行那樣，但第一百五十九條卻不用“自行”，而用“單獨”。改用“單獨”是否有特殊的意義？如有，又與“自行”有什麼實際的分別？在翻譯時，英文仍用“on its own”，（“自行”的英譯），還是要用另一譯法把“自行”和“單獨”加以區別，這是原文前後不一致對翻譯造成的困難。

如把《基本法（草案）徵求意見稿》的中英文本作一比較，就會發現有些條文的英譯比原文更詳細，例如第七十一條（3）“決定開會時間”便譯作“To decide the time and duration of meetings”，把“開會時間”兩個可能的意思，即什麼時間開會（time）和開會所需時間（duration）全部譯出。這是因為原文意思不明確，譯文加以補充，但有時譯者的補充，可能會令中英文不一致，引起爭議，例如第六十七條“混合選舉”譯作“a combination of direct and indirect elections”便縮窄了原文的意思，因為中文沒有指明是哪種選舉形式，除了可以是混合直選與間選外，還可以是混合多種不同形式的直接選舉，或混合多種不同形式的間接選舉。可見原文必須清楚，譯文才可明確，否則，即使譯者自行補充，也只會造成中英文詳略不同，甚至意思不一的毛病。所以有些地方是先要把原文改得更明確，才談得上改善譯文。如果原文是故意籠統的，譯文也應反映這起草精神，不作演繹補充。

另有意見認為《基本法（草案）徵求意見稿》常用“原來”的“原”字，意思含糊，英譯本的“previous”也一樣不能指示明確時間，容易出現混淆的情況。其實這不是翻譯問題，而是原文措詞的問題，有關這問題的討論，詳見另一專題報告：“法律與政策，及基本法其他一些起草原則的問題：Ⅲ．‘原有’、‘原在’的定義”[諮詢報告（4）]。

(三) 內地與香港的譯法不同

在《基本法（草案）徵求意見稿》的英譯本內，有些名稱與香港一般叫法不同，例如附件中的“法定團體”和“街坊組織”，香港一般譯作“statutory bodies”和“Kaifong associations”，但北京的譯本卻用“corporate bodies”和“area committees”。有意見甚至建議將“Hong Kong”改為“Xianggang”。這些譯法沒有明顯對錯之分，但或會令英譯本的讀者以為“corporate bodies”與香港常見的“statutory bodies”不同，而“area committees”則是種新的組織，或“Xianggang”是個新的地方名。基本法雖是中國的法律，由人大起草和通過，但主要還是在香港實行，尤其是英文本，則多會在香港和國際上使用，所以似乎應該採納香港地道的或國際上慣用的英文叫法。

(四) 政治方面的含義

《基本法（草案）徵求意見稿》英譯本對特區政府機關和職位的新名稱，似乎並沒有貫徹的做法，有時候變動很大，如現在的“律政署 (Legal Department)”和“律政司 (Attorney General)”九七年後稱為“律政司”和“律政司長”，譯作“Department of Justice”和“Secretary of Justice”。有時英文名稱卻跟現用的一樣，例如立法局九七年後稱為立法會議；地方法院九七年後稱為區域法院，但英文本卻沿用現有的名稱：“Legislative Council”和“district courts”。這些名稱的改變可能是為了反映香港的非殖民地化過程 (decolonization)，如果英譯本要照顧這個政治方面的含義，最好能在起草時說明更改各名稱時所考慮的因素，以便翻譯時作出適當的判斷。

(五) 粗疏的毛病

由於翻譯的時間倉猝，難免有錯漏的地方。有意見指出英文本有些條文與中文本不符，例如第六十五條，原文的行政機關是指原來（即九七年前）香港的行政機關，但譯文則指九七年後香港特別行政區的行政機關。此外，譯文又有用詞不統一的毛病。例如“居民”一詞在整本基本法都譯作“residents”，但單單在第七十二條第(8)項中的“居民”卻譯作“inhabitants”。究竟譯者是否要故意突出在該條“居民”一詞的含意與其他地方不同？實在不敢肯定。但“義務”一詞，在第三章的題目中譯作“duties”，而在同一章的條文（即第四十二條）和第十章的第一百七十二條卻譯作“obligation”，則似乎是譯者粗心之過。這些毛病比較容易糾正過來，譯文經過反覆審閱修改後，便不會再有這類問題了。

個別條文的問題

以下是在諮詢期收集到有關《基本法（草案）徵求意見稿》英譯本的意見和建議。經整理後，按條文次序列出，在每項意見和建議後，都註明出處（見括號內的文件編號），這些意見和建議不一定是本處同意的。在有需要的地方，本處加上補充或不同的意見（見出處SEC的意見），以供草委秘書處參考。

《序言》

意見

- “was occupied by Britain” 的時態不對，因為過去式意味着香港曾被英國佔領一段時間，但現在已非佔領地。(C3-381)
- 贊成英譯本“was occupied by Britain” 的過去式時態，因為到基本法正式生效時，香港特別行政區已成立，英國的佔領已成歷史。(SEC)

建議

- 第一款第一句改為：“Hong Kong, which has been part of Chinese territory since ancient times, has been occupied by Britain since the Opium War of 1840.” 或 “Hong Kong, which has been part of Chinese territory since ancient times, has been British territory since the Opium War of 1840.”

理由：應採用現在完成式時態或說明佔領日期，否則容易給人錯覺，以為英國已取得對香港的主權。(C1-159)

- 第一款第四行 “Government of the People’s Republic of China” 改為 “government of the People’s Republic of China”。

理由：根據英譯本的體例，“government”在地方名後用大楷，如“Hong Kong Government”；在地方名前用小楷，如“government of Hong Kong”。(SEC)

- 第二款第八行和第三款第五行的 “basic policies” 改為 “basic principles and policies”

理由：原文“方針政策”是由兩個詞構成的。

附註：《基本法（草案）徵求意見稿》英文本與《中英聯合聲明》英文本用字相同。(B-233)

《第一章》

第二條

建議

- 改為：“The National People’s Congress ...to exercise a high degree of autonomy and to enjoy executive power, legislative power, independent judicial power, and final adjudicative power, in accordance with the provisions of this Law.”

理由：“依照本法規定”應放在適當位置，以表示不但實行高度自治要依照本法規定，享有各權力也要依照本法規定。(B-233)

第五條

意見

- 這條的中文意思和英文意思不同，若根據英文本，特區居民和其他人所享有的權利和自由，決定於立法機關所通過的法律。(諮委會內橫向討論會H1-2-0505)

① 在引文中，沒有修改的部分只用省略符號“...”表示，以突出有修改的地方。

第六條

意見

- "take over"不能表達強行佔用的意思，而原文卻有此含意。最低限度也應譯作"requisitioned properties."《中英聯合聲明》則用"deprivation"（見《中英聯合聲明》英文本附件一第六節一段六行）。(B-233)
- 至於第六條的意向，《基本法（草案）徵求意見稿》中、英兩種文本似乎並不一致。第一，“財產”一詞在英文本中似乎專指土地和房地產，而在中文本當然可解釋為包括各種形式的資產。第二，“依法徵用”一詞在中文本中顯然是指由政府當局合法徵用私有財產，但在英文本中則可解釋為既指政府徵用私有財產，又指一家私人公司收購另一家私人公司。希望澄清這一條文的適用性。(B-95)

建議

- 改為：“... and compensation for lawfully commandeered properties shall be protected by law. The compensation for lawfully commandeered properties shall be ... the real value of the properties concerned ...” (B-233)

第七條

建議

- 把“the state property of the People's Republic of China”簡化為“property of the State”，以求與中文本一致。(A1-300)
- “...and for their lease or grant to ...”改為“... and for their lease or allotment to ...”。

理由：雖然《中英聯合聲明》英文本附件三第一段第一行也用“grant”字，但原文“批”的意思不是“授予 (grant) 土地和自然資源，供申請人享用和作私人用途”而是撥給 (allot to) 申請人作任何用途，如為公益興建遊樂場。(B-233)

第八條

建議

- “rules of equity”改為“law of equity”。

附注：《基本法（草案）徵求意見稿》英文本與《中英聯合聲明》英文本（附件一第二節二行）用字相同。(B-233)

第十條

建議

- 第二款改為：“No law enacted by the legislature of the Hong Kong Special Administrative Region shall contravene the Basic Law.”

理由：為免引起誤解，“本法”在這裡宜譯作“the Basic Law”。(C1-159)

《第二章》

第十一條

建議

- 第三行改為 "and is directly under the Central People's Government." (B-233)
- 改為: "The Hong Kong Special Administrative Region is a local administrative region of the People's Republic of China. It comes directly under the Central People's Government and shall enjoy a high degree of autonomy."

理由: 英文本原來的句法未能充分和正確反映 "享有高度自治權" 的意念。 (A1-300, B-238)

- 改為: "The Hong Kong Special Administrative Region is a local administrative region of the People's Republic of China, which enjoys a high degree of autonomy and comes directly under the Central People's Government".

理由: 同上。 (SEC)

第十二條

建議

- "外交事務" 一詞譯作 "diplomatic affairs"。 (A1-712, B-238)

第十三條

建議

- 第一款改為: "The Central People's Government is responsible for administering the defence affairs of the Hong Kong Special Administrative Region." (B-233)
- 第二款第二句 "... and disaster relief" 改為 "and in disaster relief"。 (SEC)
- 把第三款的 "nation-wide laws" [全國性法律] 改為 "the laws applicable throughout the country"。

理由: "nation-wide" 是形容 "application [of laws]" 而不是 "laws"。 (SEC)

- 第四款 "All expenses for the garrison" 改為 "All expenses incurred by the maintenance of the garrison"。

理由: 符合英文慣用的表達方式。 (SEC)

第十五條

建議

- "...shall, on its own, manage public finance..." 改為 "...shall, on its own, manage its public finance..."。 (B-233)
- "urban planning" 改為 "urban and rural planning" 或 "city planning"。 (A1-300, D-238)
- "meteorology" 改為 "astronomy and meteorology"。 (D-238)

第十六條

意見

- 第三款英文本的字義和中文本不同 (諮委中央與香港特別行政區的關係專責小組對《基本法(草案)徵求意見稿》第一、第二、第七及第九章的意見匯編 14.2)

第十七條

意見

- “全國人民代表大會”與“全國人民代表大會常務委員會”之間，是個“和”字，但英文本卻用“or”，意思不同。(A1-300)
- 中文用“and”是表示人大和人大常委會制定的法律都包括在內，英文如直譯“and”意思就變為：人大和人大常委會一起制定的法律。英文本用“or”卻反而可以表達原文的意思。(SEC)

建議

- 第一款改為：“The laws of the Hong Kong Special Administrative Region shall be the Basic Law, ...”。
- 理由：為免引起誤解，“本法”在這裡宜譯作“the Basic Law”。(C3-381)
- 第五款改為：“... the application of the above-mentioned laws in the Hong Kong Special Administrative Region.” (B-233)

第十八條

意見

- 第二款：“over all cases in the Region”有翻譯錯誤，因為原文並無“in the Region”的意思。(C1-797)

建議

- 第二款改為：“...the restrictions on their jurisdiction imposed by Hong Kong's previous legal system shall be maintained.” (B-233)
- 第三款的“in any legal proceeding”改為“in any legal proceedings”。(B-233)

第二十條

建議

- “Chinese nationals”改為“Chinese citizens”。
- 理由：《中英聯合聲明》中文本英方備忘錄(a)“公民”一詞在英文本是“citizens”。(B-233)
- 附注：其實《中英聯合聲明》中文本附件一第十四節“公民”一詞在英文本是“nationals”，但中國憲法的英譯本(The Constitution of the People's Republic of China, Beijing China, Publishing House of Law, 1986)則把“公民”譯作“citizens”。(SEC)

第二十一條

建議

- 第二款第四行 "thereof" 改為 "of the Hong Kong Special Administrative Region".
理由：原文清楚說明是“香港特別行政區政府”，但 "thereof" 卻含糊不清。(B-233)

第二十二條

意見

- “禁止任何破壞國家統一和顛覆中央人民政府的行為”一句，英譯與原文有出入。(C1-731)

建議

- 改為：“...any act which undermines national unity or subverts the Central People's Government.”
理由：原文沒有 "designed to" 的意思。(諮委會內橫向討論會 H1-1-0504, B-233)

《第三章》

題目

建議

- "Duties" 改為 "Obligations"

理由：“義務”在《基本法（草案）徵求意見稿》其他地方（同一章的條文（即第四十二條）和第十章的第一百七十二條）都譯作 "obligations"。(SEC)

第二十三條

建議

- ", or Hong Kong residents for short, " 改為 "(hereinafter referred to as 'Hong Kong residents')".
理由：法律用語較少用 "or ... for short"。(SEC)
- "Chinese nationals" 改為 "Chinese citizens"。(B-233)
理由：見第二十條理由。
- 第二款改為："The above-mentioned residents shall have...and shall be qualified to ..." (B-233)

第二十四條

意見

- “財產狀況”被誤譯為“產業狀況”(property status)。根據日常用法，“財產”泛指金錢和各種財物，而“產業”則指一般物業。兩者的關係是：“財產”可以包括“產業”，“產業”只屬於“財產”一部分。作為法律名詞，“財產”指金錢、財物及民事權利、義務的總和，可分為有形財產(金錢、財物)和無形財產(物權、債權、發明權等)。作為經濟名詞，“產業”指各種生產事業，也可以單指工業。由此看來，“財產狀況”和“產業狀況”的區別就更大了。把兩者混淆，問題就更大、更嚴重。(C1-187, C3-389)

建議

- “財產狀況”宜譯作“economic status”。(諮委會內橫向討論會H1-2-0505)

第二十六條

意見

- 本條應包括“遊行”(procession)和“示威”(demonstration)的自由，但《基本法(草案)徵求意見稿》的中文本只提“遊行”，英文本則只提“示威”，一如《中英聯合聲明》附件一第十三節的情況。(C1-418)

第二十七條

建議

- 第一款改為：“... of Hong Kong residents shall not be violated.” (B-233)
 - 第二款“... shall be prohibited”改為“... is prohibited”。
- 理由：“shall be prohibited”表示需經立法才能禁止。(C3-2190)

第二十九條

建議

- 第二句後半部分改為：“... except that the relevant authorities may censor communication in accordance with legal procedures to meet the needs of public security or of investigation into criminal offences.”

理由：根據原文把重點校正。(B-233)

第三十一條

意見

- 本條的中文意思和英文意思有嚴重分歧。根據英文條款，香港居民只有公開進行有關活動的自由。(諮委會內橫向討論會H1-2-0505, C3-389)

第三十四條

建議

- “access to the courts”改為“instituting legal proceedings in court”。

理由：在法律用語中，“access to the courts”確是為了“instituting legal proceedings in court”。但“access”始終是間接的表達方法，而原文卻用明確的字眼：“向法院提出訴訟”，沒有其他廣泛的含義。因此建議中的表達方法可能比《基本法(草案)徵求意見稿》(即《中英聯合聲明》附件一第十三節第二款一行)英文本的更合適。(B-233)

第三十六條

建議

- 改為：“The freedom of marriage and voluntary family planning of the Hong Kong residents shall be protected by law.”

理由：“voluntary family planning”未必是最理想的譯法，但“to raise a family freely”卻太口語化，而且沒有準確的法律含義。

附註：《中英聯合聲明》英文本（附件一第十三節一款末行）所用的字眼是：“the freedom to marry and the right to raise a family freely”。（B-233）

第三十八條

建議

- “through legislation” 改為 “in legislation” (A1-692)
- “... as applied to Hong Kong shall be implemented through legislation by the Hong Kong Special Administrative Region” 改為 “... applicable to Hong Kong shall be implemented through the laws of the Hong Kong Special Administrative Region.”

理由：原文的含義是：並非所有規定都通用於香港，但適用的則通過特區法律予以實施。雖然英文本“implemented through legislation”聽起來比較合理，但原文卻用“法律”二字(laws)而不是“立法”(legislation)。

附註：《基本法（草案）徵求意見稿》英文本的“as applied to”與《中英聯合聲明》英文本（附件一第十三節四款末行）用字相同。（B-233）

第三十九條

建議

- “public safety” 改為 “public security”。（B-233）
- “for the safeguarding of” 改為 “for Safeguarding”。（B-233）

第四十條

建議

- 在 “New Territories” 前面加上 “the”。（SEC）

《第四章》

第四十三條

建議

- “... is the head” 改為 “... shall be the head”。（B-233）

第四十四條

建議

- “Chinese national” 改為 “Chinese citizen”。（B-233）

理由：見第二十條理由。

第四十五條

建議

- "in the light of actual situation" 改為 "in the light of the actual situation". (SEC)

第四十六條

建議

- "two terms" 改為 "two consecutive terms". (諮委會內橫向討論會H1-1-0504)
理由：加上 "consecutive" 才能表達連任的意思。 (SEC)

第四十七條

建議

- "Chief Justice" 改為 "chief judge".

理由：現在香港把最高法院的首席法官，即首席按察司，稱為 Chief Justice，是地位最高的法官，全港只有一位。但《基本法（草案）徵求意見稿》英文本把終審法院和高等法院的首席法官都稱為 Chief Justice，即九七年後的香港同時會有最少兩位 Chief Justices，又或者有人會以為既然 Chief Justice 全港只有一位，九七年後終審法院和高等法院的首席法官會由同一個人擔任。其實中文“首席法官”只是一個統稱，而不是一個特定職銜，如果英文也譯作一個統稱 chief judge，就能避免與現在的職銜混淆。
(A2-191, SEC)

第四十八條

意見

- 第(7)款“公職人員”譯作 "public servants"，而在其他條文的“公務人員”也譯作 "public servants"，所以英文本根本沒有“公職人員”與“公務人員”之分。究竟原文在這裡用“公職人員”一詞是否有特殊意義？如有，英文本便要把兩者區別開來。 (SEC)

建議

- 第(3)款第二段 "bills on budgets" 改為 "budgets".
理由：“財政預算案”一般譯作 "budgets"，不需加 "bills" 字。 (SEC)
- 第(5)款第二段 "... at or above the director level" 改為 "... at or above the bureau level". (B-233)
理由：原文是“局級或局級以上”，而不是“局長級或局長級以上”。 (SEC)

第五十條

建議

- 第二款末句 "... in each term of office" 改為 "in each term of his/her office".
理由：以求行文統一。 (B-131)

第五十一條

建議

- "budget bill" 改為 "budget".

理由：“財政預算案”一般譯作 "budget" 不需加 "bill" 字。(SEC)

第五十三條

建議

- "Secretary of Justice" 改為 "Attorney General". (B-102)

- "assumed by Administrative Secretary, Financial Secretary, Secretary of Justice" 改為 "discharged by the Administrative Secretary, Financial Secretary or Secretary of Justice". (SEC)

第五十五條

意見

- 嚴格來說，"public figures" 與原文的“社會人士”不同。"public figures" 即公眾人物的意思，是社會人士所熟悉的人物，而不是社會人士。(SEC)

建議

- "Chinese nationals" 改為 "Chinese citizens".

理由：見第二十條理由。(B-233)

第六十條

意見

- 基本法規定原在香港實行的司法體制，除因設立終審法院而產生變化外，予以保留。本條把“律政司”譯作 "Department of Justice" 可能引起誤解，因為 "Department of Justice" 在中國的職權範圍與香港 "Legal Department" 的大不相同。(A2-191)

建議

- 第一款改為："The head of the government of the Hong Kong Special Administrative Region shall be the Chief Executive of the Hong Kong Special Administrative Region."

理由：根據原文的重點調動句子結構。第四十三條的結構已是 "The Chief Executive of the Hong Kong Special Administrative Region is ...", 如果本條又一樣，則會造成混淆。(B-233)

第六十一條

建議

- "Chinese nationals" 改為 "Chinese citizens".

理由：見第二十條理由。(B-233)

第六十二條

建議

- "Article 14" 應改為 "Article 15".

理由：根據原文更正。(B-233)

附註：英譯本重印時已作更正。(SEC)

第六十三條

建議

- "shall institute criminal prosecutions independently" 改為 "shall handle criminal prosecution work independently". (B-233)

第六十四條

建議

- 刪去第一句末的 "in the following respects"; 第四行的 "legislature" 改為 "Legislative Council".

理由：根據原文更正。(B-233)

第六十五條

建議

- 改為："The previous system of executive authorities establishing advisory bodies shall be maintained."

理由：英譯本完全錯誤，因為 (1) 繼續保留的是原來制度 (previous system) 而不是 "the establishment-of- advisory bodies"; (2) 英譯本沒有指出諮詢組織由誰設立; (3) 原文的行政機關是指九七前香港的行政機關，但英譯本卻是 "the executive authorities of the Hong Kong Special Administrative Region". (B-233)

第六十七條

意見

- 在同一條 (甚至同一段) 中，有時用 "methods for forming the Legislative Council"，有時卻用 "methods for constituting the Legislative Council"，是否可以統一 "forming" 與 "constituting"。在本條 "Methods for Constituting the Legislative Council" 的 "Methods" 是眾數，但在《基本法 (草案) 徵求意見稿》的目錄和附件二卻用單數："Method for Constituting the Legislative Council"，因此也需要把兩者統一。(SEC)

建議

- "a combination of direct and indirect elections" 改為 "mixed elections".

理由：原文是“混合選舉”，沒有指明是混合直選與間選。(B-233)

第六十八條

建議

- 刪去 "of members" 一字。

理由：原文是“立法會議每屆任期”，而不是“立法會議成員每屆任期”。 (B-233)

第七十條

建議

- "Chinese national" 改為 "Chinese citizen"。

理由：見第二十條理由。 (B-233)

第七十一條

建議

- 刪去第 (3) 款的 "and duration"。

理由：原文“時間”可解作 "time" 或 "duration"，但不一定同時包括兩個意思。 (B-233)

第七十二條

建議

- 第 (8) 款的 "inhabitants" 改為 "residents"。

理由：就法律而言，"inhabitants" 與 "residents" 的含義（如兩者所享有的權利）不同。在《基本法（草案）徵求意見稿》英文本的其他地方，“居民”都譯作 "residents"。

(B-233)

- 第 (9) 款 "Chief Justice" 改為 "chief judge"。

理由：見第四十七條理由。 (A2-191)

- 第 (9) 款 "on the motion initiated jointly by one-fourth of the members of the Legislative Council and passed by the Council, may be established to carry out investigations" 改為 "may be established on the motion initiated jointly by one-fourth of the members of the Legislative Council and passed by the Council, to carry out investigations"。 (B-233)

第七十八條

建議

- 把第一款最末的 "under any of the following circumstances" 搬至全款之首，即 "Under any of the following circumstances, the president of the Legislative Council ..."。

理由："no longer to serve under" 十分别扭，而且容易引起誤解。 (B-233)

- "censored" 改為 "censured"。

理由："censored" 是用字錯誤。 (B-233)

第七十九條

建議

- "are" 改為 "shall be"。 (B-233)

第八十條

意見

- "原訟法庭" 譯作 "Court of the First Instance" 太累贅。 (A2-191)

建議

- "are" 改為 "shall be" (B-233)

第八十一條

建議

- "is" 改為 "shall be"。 (B-233)
- "Court of Final Appeal in the Hong Kong Special Administrative Region" 改為 "Court of Final Appeal of the Hong Kong Special Administrative Region"。
理由：用 "of" 才正確，因為原文的意思不是 "Court of Final Appeal in Beijing" 與 "Court of Final Appeal in Hong Kong" 之分。 (B-233)

第八十三條

建議

- "precedents in other common law jurisdictions" 改為 "precedents of other common law jurisdictions"。 (B-233)

第八十八條

建議

- "Chief Justice" 改為 "chief judge"
理由：見第四十七條理由。 (A2-191)
- "Court of Final Appeal in the Hong Kong Special Administrative Region" 改為 "Court of Final Appeal of the Hong Kong Special Administrative Region"。
理由：見第八十一條理由。 (B-233)

第八十九條

建議

- "Chief Justice" 改為 "chief judge"。
理由：見第四十七條理由。 (A2-191)
- "High Court in the Hong Kong ..." 改為 "High Court of the Hong Kong ..."。
理由：見第八十一條理由。 (B-233)

第九十條

意見

- 英文本 "The previous system of ... members of the judiciary other than judges of the Hong Kong Special Administrative Region shall be maintained." 即是說: "The previous system of ... judges of the Hong Kong Special Administrative Region shall not be maintained." 既然是 "previous", 又怎會是 "of the Hong Kong Special Administrative Region" 呢? 可見譯文在邏輯方面有問題。其實中文本也有這問題: "香港特別行政區... 原有的任免制度繼續保持。" 所以先要改善原文, 才可解決譯文的邏輯問題。
(SEC)

第九十一條

建議

- "professional qualities" 改為 "professional abilities".
附註: 《基本法(草案)徵求意見稿》英文本與《中英聯合聲明》英文本(附件一第三節三款六行)用字相同。(B-233)

第九十二條

建議

- "... with pay, allowances, benefits ..." 改為 "with salaries, allowances, welfare benefits ...".
附註: 《基本法(草案)徵求意見稿》英文本與《中英聯合聲明》英文本(附件一第四節一款四行)用字相同。(B-233)

第九十三條

建議

- "The Hong Kong Special Administrative Region shall ..." 改為 "The government of the Hong Kong Special Administrative Region shall ...". (B-233)
理由: 根據原文更正。(SEC)
- "benefits" 改為 "welfare benefits".
附註: 見第九十二條附註。(B-233)

第九十四條

建議

- 改為: "The Hong Kong Special Administrative Region may ... maintain contact on judicial matters with the judicial organs of other parts ..."
理由: 原文是 "香港特別行政區可... 進行聯系" 而不是其司法機關可進行聯系。英譯本所用 "relations" 一字比原文 "聯系" 一詞的意義更廣。(B-233)

第九十六條

意見

- 本條的中文意思和英文意思有分別。(諮委會內橫向討論會H1-2-0505)

第九十九條

建議

- "... with pay, allowances, benefits ..." 改為 "... with salaries, allowances, welfare benefits ...".

附註：見第九十二條附註。(B-233)

第一百條

建議

- "previously serving" 改為 "who have been serving or previously served in the public service".

理由：本條的精神或許不包括 "previously served" 的公務人員，但中文“原”字卻有這個意思。無論如何，英文本 "previously served" 的意思並不清楚，不知道是 "have been serving" 或 "had been serving" 或 "were previously serving"。(B-233)

- "Chinese nationals" 改為 "Chinese citizens"

理由：見第二十條理由。(B-233)

- "the Secretary and Deputy Secretaries of Departments" 改為 "the Secretaries and Deputy Secretaries of Departments"。(SEC)

第一百零一條

建議

- "benefits" 改為 "welfare benefits"

附註：見第九十二條附註。(B-233)

第一百零二條

建議

- "pay" 改為 "salary"

附註：見第九十二條附註。(B-233)

第一百零四條

意見

- 英文本中的 "they" 字所指為何，應加以說明，免生誤會。(A1-186E)

《第五章》

第一百零五條

意見

- 英文行文太累贅。 (A1-186E)

建議

- 第一款 "the principle of measuring expenditure by revenues" 改為 "the principle of regulating expenditure according to revenue"。 (B-233)
- 第二款改為: "... over a number of fiscal years, maintain a basic balance between its total revenue and total expenditure"。

理由: 原文沒有 "taken as a whole" 和 "budgetary" 的意思。原文的 "總" 字, 英文本沒有譯出來。 (B-233)

- 第三款改為: "The rate of increase of revenue and expenditure in the budget of the Hong Kong Special Administrative Region shall not, in principle, exceed the gross domestic product growth rate over a number of fiscal years."

理由: (1) 原文 "以...為原則" 放在句末, 英譯本卻把 "In principle" 放在句首, 過份強調了這個意思。(2) 英譯本 "budgetary revenues" 的叫法有點生硬, 而且 "預算" 是包括 "收" 和 "支" 的。(3) 在 GDP 後譯出原文 "增長率" 的意思比只用代名詞 "that of" 更清楚。(4) 原文沒有 "taken as a whole" 的意思。 (B-233)

第二節

建議

- 題目 "Money and Finance" 改為 "Finance and Monetary Affairs"。 (B-233)

第一百一十條

建議

- "governed by law" 改為 "prescribed by law"。

理由: 與第一百零八條及其他條文用字統一, 而且 "prescribe" 和 "govern" 根本意思不同。 (B-233)

第一百一十一條

建議

- "No exchange control policies" 改為 "No foreign exchange control policies"。 (B-233)

第一百一十五條

意見

- 本條的英文意思較中文意思準確, 而 "backed up by a reserve fund" 一詞未能在中文條文中表達出來。 (諮委會內橫向討論會 H1-2-0505)

第一百一十七條

建議

- 第二款第二句 "safeguard" 改為 "protect".

理由: "protect"即中文“保障”,較"safeguard"為宜。(B-102)

第一百二十三條

意見

- "necessary"意思是原文沒有的。(SEC)
- 英文本中 "necessary"一字過於強硬和沒有客觀標準,政府難以保證必能達到此項要求。(B-97)

第一百二十七條

建議

- 改為: "As regards leases of land granted during the period from 27 May 1985 to 30 June 1997, and leases of land without the right of renewal but renewed, which extend beyond 30 June 1997 but not beyond 30 June 2047, ..."

附註:《基本法(草案)徵求意見稿》英文本的 "expire not later than" 與《中英聯合聲明》英文本(附件三第(2)款)用字相同。(B-233)

第一百二十八條

建議

- 第三行 "person" 改為 "lessee".

理由:原文是“承租人”。

附註:《基本法(草案)徵求意見稿》英文本與《中英聯合聲明》英文本(附件三第二款第十行)用字相同。(B-233)

- 第六行 "person" 改為 "lessee".

理由:英文本出現了三種 "persons",不知道這個 "person"何所指,而且原文在這裡也用“承租人”。

附註:《基本法(草案)徵求意見稿》英文本與《中英聯合聲明》英文本(附件三第二款第十三行)用字相同。(B-233)

第一百三十二條

建議

- 改為: "With the exception of foreign warships, whose entry into the Hong Kong Special Administrative Region requires ... Government, all other ships may enter into and depart from the ports of the Region in accordance with its laws."

理由:原文在第一行是“進入香港特別行政區”,但《基本法(草案)徵求意見稿》英文本和《中英聯合聲明》英文本(附件一第八節三段一行)所用的 "access"卻包括進和出兩個意思。(B-233)

第一百三十五條

建議

- 第一款末句 "... concerning nationality marks ..." 改為 "... concerning aircraft nationality marks ...". (B-233)
- 第二款 "Access" 改為 "Entry".
理由：見第一百三十二條理由。 (B-233)

第一百三十七條

建議

- "... make arrangements providing for air services ..." 改為 "... make arrangements to provide air services ...".
理由：原文“提供”不是“provide for (規定)”的意思。
附註：《基本法（草案）徵求意見稿》英文本與《中英聯合聲明》英文本（附件一第九節第二款一行）用字相同。 (B-233)

第一百三十八條

建議

- 第一款第一行、第二款第二行的 "air service agreements" 改為 "civil air service agreements".
理由：原文是“民用航空運輸協定”，需補譯“民用”二字。 (B-233)
附註：《基本法（草案）徵求意見稿》英文本與《中英聯合聲明》英文本用字相同。 (SEC)
- 第三款第三行 "in air service consultations with foreign governments ..." 改為 "in air service negotiations between the Central People's Government and foreign governments".
理由：根據原文更正，原文是“中央人民政府在與外國政府商談...時”。 (B-233)

第一百三十九條

意見

- 第(3)款“與沒有簽訂民用航空運輸協定的外國或地區談判簽訂臨時協議”譯為 "negotiate and conclude provisional arrangements where no air service agreement with a foreign state or with another region is in force", 很明顯地不見了原文的“與”字，至於“外國或地區”改變了意思，而仔細讀起來，亦覺得與原文有相當的出入，譯文的意思亦不及原文的明確。 (C1-692)

建議

- "air service agreements" 改為 "civil air service agreements".
理由：原文是“民用航空運輸協定”，需補譯“民用”二字。 (B-233)
- 第(3)款改為： "negotiate and conclude provisional arrangements with foreign states or regions with which no civil air service agreements have been concluded." (B-233)

附註：《基本法（草案）徵求意見稿》中文本把《中英聯合聲明》中文本的有關條文改良過，但英文本卻與《中英聯合聲明》英文本用字相同，沒有相應地改良《中英聯合聲明》的有關英文條文。（SEC）

第一百四十條

建議

- "air service agreements" 改為 "civil air service agreements"。
理由：原文是“民用航空運輸協定”，需補譯“民用”二字。（B-233）
- 第(3)款"under the air service agreements" 改為 "in accordance with the civil air service agreements"。（B-233）

第一百四十一條

建議

- 改為："Airlines incorporated in Hong Kong prior to the establishment of the Hong Kong Special Administrative Region and having their principal place of business in Hong Kong, and civil aviation related businesses may continue to operate."

理由：《基本法（草案）徵求意見稿》英文本語句生硬。（B-233）

《第六章》

第一百四十二條

意見

- 第一百四十二條的“教育制度”和第一百四十三條的“教育體制”英文均譯為 "educational system"，這是有問題的，應闡明其意義，並依照中文本修訂英文本的用詞。（A2-283）

第一百四十三條

建議

- “教育體制”應譯作 "educational structure"。
理由：以別於第一百四十二條的“教育制度” (educational system)。（8-749）
- "the system of academic awards" 改為 "the system of awarding academic degrees"。
理由：《基本法（草案）徵求意見稿》英文本雖與《中英聯合聲明》英文本用字相同，但原文指明是“學位制度”，所以譯 "degrees" 比較準確。（B-233）

第一百四十四條

意見

- 第一句英文本較中文本明確，因為英文本的 "may"，意思是 "will be able to"，中文本“可”的意思則可解作 "may be permitted to"。（A1-191, B-49）

- 英文本的第一段用 "may" 而不用 "will", 意味本條文有一些值得懷疑的地方, 而中文多次用 "可" 字, 亦是很含糊。 (C3-3197)

第一百四十五條

建議

- 改為: "The government of the HKSAR shall promote the development of medical and health care services and the development of both Western and Chinese forms of healing and encourage community organizations and individuals to provide health care services of various kinds."

理由: "medical" 一般的意思是 "relating to the medical (allopathic) profession [有關醫療(對抗療法)的]", 而 "medicine" 則解作 "the practice of medicine (allopathy) [行醫(對抗療法)]"。原文 "醫療衛生" 則是個一般名詞, 有更清楚的意思 (health care)。譯文不宜用 "medicine" 和 "medical" 來表達這個一般的意思, 因這兩個字另有專門的解法。此外, 譯文所用 "traditional" 一字是原文沒有的, 而且 traditional 可解作有悠久歷史的, 如果用這個字, 就會排除任何新的或現代的中國醫藥。 (B-164)

第一百五十條

建議

- 第二款改為: "Persons who have obtained professional qualifications or qualifications for professional practice prior to the establishment of the Hong Kong Special Administrative Region may retain the same."

(B-233)

- 第三款第三行: "and these organizations" 改為 "and these recognized professional organizations"。 (B-233)

第一百五十二條

建議

- "medicine" 改為 "health care"。

理由: 見第一百四十五條理由。 (B-164)

第一百五十五條

建議

- "specific circumstances" 改為 "practical condition"。

理由: 英譯本的 "specific circumstances" 是誤解, 應照中文本的意思譯為 "practical condition"。 (B-102)

第一百五十六條

意見

- 英文本用字不講究（例如用上很多以“non”做前綴的詞），有些地方意思不清楚，例如“non-subordination”。（C1-731）

建議

- “non-subordination” 改為 “organizational non-subordination”。

理由：“non-subordination”的觀念在西方並不常見，而且也不能表達“互不”的意思。

（B-233）

附註：《基本法（草案）徵求意見稿》英文本與《中英聯合聲明》英文本（附件一第十三節三款六行）用字相同。（SEC）

《第七章》

第一百五十八條

建議

- “in negotiations at the diplomatic level” 改為 “in diplomatic negotiations”。

理由：原文“外交談判”即“diplomatic negotiations”，不必跟從《中英聯合聲明》英文本（附件一第十一節一款四行）的用字，譯作“negotiations at the diplomatic level”。（B-233）

第一百五十九條

意見

- 在《基本法（草案）徵求意見稿》英文本的其他條文，“自行”都譯作“on its own”，但本條原文是“單獨”（與《中英聯合聲明》英文本做法相同），英文本卻一樣譯作“on its own”，不知道原文的“自行”與“單獨”是否可以互換使用，或各有特殊含義。（B-233）
- “世界各國”在第一百五十七條譯作“foreign countries”，但在本條第三行卻譯作“states”（與《中英聯合聲明》英文本做法相同），因此有前後不一致的問題。（B-233）

建議

- 第四行“in the appropriate fields”改為“in such fields as”；刪去最末的“fields”字。

理由：雖然《基本法（草案）徵求意見稿》的英文本與《中英聯合聲明》英文本的有關條文用字相同，但原文沒有“appropriate”的意思。（B-233）

第一百六十條

建議

- 第一款改為：“The Hong Kong Special Administrative Region may send representatives to participate in international organizations or conferences, whose participation is limited to states and whose agenda concerns appropriate fields affecting the Region, as members of delegations of

the government of the People's Republic of China or in such other capacities as may be permitted by the Central People's Government and the international organizations or conferences concerned, and to express their views under the name 'Hong Kong, China'."

理由：英文本（與《中英聯合聲明》英文本的有關條文相同）的意思是 "representatives of the SAR may participate as X or may attend in the capacity of Y"，但根據原文，應該是 "the SAR may send representatives to participate as X or in the capacity of Y"。 (B-233)

- 第二款 "conferences not limited to states" 改為 "conferences whose participation is not limited to states"。

附註：《基本法（草案）徵求意見稿》英文本與《中英聯合聲明》英文本（附件一第十一節一款六行）用字相同。 (B-233)

- 第三款 "... the Hong Kong Special Administrative Region shall continue ..." 改為 "... the Hong Kong Special Administrative Region may continue ..."。

理由：根據原文可譯作 "may" 或 "shall"，但 "shall" 在這裡卻顯然是不適當的。

附註：《基本法（草案）徵求意見稿》英文本與《中英聯合聲明》英文本（附件一第十一節第二款十四行）用字相同。 (B-233)

- 第三款改為："... China is a participant and Hong Kong is also a participant in one manner or another."

理由：原文“參加”不一定指成為 "member"。原文對中華人民共和國和香港特別行政區都用“參加”，但在英文本（與《中英聯合聲明》英文本用字相同），中華人民共和國“參加”就一定是 "member"，而香港特別行政區“參加”則只用 "participate"。 (B-233)

- 第四款改為："... appropriate manner in those international organizations in which Hong Kong is a participant in one manner or another, but the People's Republic of China is not."

理由：同上。 (B-233)

第一百六十一條

意見

- 嚴格來說，"... China is or becomes a party" 的 "or becomes" 並不忠於原文，因為中文沒有時態，"is" 表示現在的事實，"becomes" 則表示未來的事情。但譯文在這裡加上 "becomes" 卻頗為恰當。 (B-233)

建議

- 第一行 "application" 改為 "applicability"。
附註：《基本法（草案）徵求意見稿》英文本與《中英聯合聲明》英文本（附件一第十一節第二款一行）用字相同。 (B-233)
- 第二款 "... but which are implemented in Hong Kong may continue to be implemented" 改為 "but which are applicable in Hong Kong may continue to be applicable"。

理由：原文是“適用” (applicable)，而“適用”不一定指已“實行” (implemented) 或將繼續“實行”。

附註：《基本法（草案）徵求意見稿》英文本與《中英聯合聲明》英文本（附件一第十一節第二款七行）用字相同。（B-233）

第一百六十二條

建議

- "... to all Chinese nationals who hold permanent identity cards of the Region, and travel documents ..." 改為 "... to all Chinese citizens who hold permanent identity cards of the Region, and other travel documents ...".

理由：在本條以前的條文，“Chinese nationals”都改為“Chinese citizens”，所以這裡也應改為“Chinese citizens”，以求統一。此外，還需補譯原文“其他”二字。（B-233）

第一百六十三條

建議

- "visa exemption agreements" 改為 "mutual visa exemption agreements".

理由：補譯“互免簽證協議”的“互”字。（B-233）

第一百六十六條

建議

- 刪去 "of its own".

理由：原文沒有 "of its own" 的意思。（B-233）

附註：《基本法（草案）徵求意見稿》英文本與《中英聯合聲明》英文本（附件一第一節末款）用字相同。（SEC）

第一百七十條

- 末款 "basic policies" 改為 "basic principles and policies".

理由：原文“方針政策”是由兩個詞構成的。（B-233）

《附件》

建議

- "corporate bodies" 改為 "statutory bodies";
- "non-corporate bodies" 改為 "non-statutory bodies";
- "business circles" 改為 "commercial and industrial sectors";
- "philanthropic institutions" 改為 "charitable institutions";
- "area committees" 改為 "Kaifong associations";
- "street vendors' organizations" 改為 "hawkers' organizations";

- "district general elections" 改為 "general elections by geographical constituencies";
 - "political figures of former times" 改為 "former officials and councillors".
- 理由：採納香港慣用的叫法。(SEC)

結語

上次諮詢期收到的書面意見，一般都是針對《基本法（草案）徵求意見稿》的內容，討論英譯本問題的只佔少數，而且大部分都是較零碎的。希望本報告除了供基本法譯者參考外，還能令社會有關人士（如律師、翻譯工作者、學者）注視以上的英譯問題，在下次諮詢期對基本法的英文本提出更多具體而全面的意見。