

立法會
Legislative Council

LC Paper No. CB(2)1680/03-04
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by the Administration)

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Panel on Constitutional Affairs

**Minutes of special meeting
held on Wednesday, 28 January 2004 at 4:00 pm
in the Chamber of the Legislative Council Building**

- Members present** : Hon Andrew WONG Wang-fat, JP (Chairman)
Dr Hon David CHU Yu-lin, JP
Hon Cyd HO Sau-lan
Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Fred LI Wah-ming, JP
Dr Hon LUI Ming-wah, JP
Hon NG Leung-sing, JP
Hon Margaret NG
Hon James TO Kun-sun
Hon HUI Cheung-ching, JP
Hon Bernard CHAN, JP
Hon SIN Chung-kai
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
Dr Hon LAW Chi-kwong, JP
Hon TAM Yiu-chung, GBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon IP Kwok-him, JP
Hon Audrey EU Yuet-mee, SC, JP
- Members absent** : Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP

Hon CHEUNG Man-kwong
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan
Hon LAU Wong-fat, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Hon WONG Sing-chi
Hon LAU Ping-cheung
Hon MA Fung-kwok, JP

Public officers attending : Mr Donald TSANG
Chief Secretary for Administration

Ms Elsie LEUNG
Secretary for Justice

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Clement C H MAK
Permanent Secretary for Constitutional Affairs

Mr Joseph LAI Yee-tak
Deputy Secretary for Constitutional Affairs

Mr Raymond TAM
Principal Assistant Secretary for Constitutional
Affairs

Ms Julina CHAN
Principal Assistant Secretary for Constitutional Affairs

Clerk in attendance : Mrs Percy MA
Chief Council Secretary (2)3

Staff in attendance : Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Miss Millie WONG
Senior Council Secretary (2)4

Action

I. Review on constitutional development after 2007

(LC Paper Nos. CB(2)1003/03-04(01), CB(2)1093/03-04(01) and CB(2)1107/03-04(01))

The Chairman said that the purpose of this meeting was to continue discussion with the Task Force on Constitutional Development (Task Force) before its visit to Beijing. The Task Force had provided a paper on progress made in meeting the public (LC Paper No. CB(2)1107/03-04(01)).

Consultation within the Hong Kong Special Administrative Region (HKSAR) and with the Central Authorities

2. Dr YEUNG Sum asked whether the Task Force had come to any consensus on the issues on principles and legislative process, as a result of the views received from the public so far. He also asked when the Task Force would visit Beijing, and whether the Task Force would announce the timetable for the review on constitutional development and publish a consultation document after the visit.

3. Chief Secretary for Administration (CS) reiterated that constitutional development of the HKSAR must accord with the following three areas of principle as enshrined in the Basic Law and set out in the paper previously provided to the Panel (LC Paper No. CB(2)1003/03-04(01)) -

- (a) issues of principle relating to the relationship between the Central Authorities and HKSAR;
- (b) that constitutional development should accord with the "actual situation" and the principle of "gradual and orderly progress"; and
- (c) the principles of "giving consideration to the interests of all sectors of society" and "facilitating the development of capitalist economy" as mentioned by Mr JI Pengfei in 1990.

4. CS said that the Task Force had so far met with eight different groups and individuals. These groups and individuals were more interested to discuss issues on the legislative process. Most of them had not had in-depth discussions on the issues of principle, but they agreed that discussion on these issues was important and would submit their specific views to the Task Force shortly. The Task Force would further meet with some 50 groups and individuals in the coming weeks, and it was expected that the first round of meetings might be completed at the end of February or in early March 2004.

5. CS further said that arrangement was being made for the Task Force to meet with the Central Authorities after the Chinese New Year holiday. The

Action

Task Force would listen to the views of the public and the Central Authorities on the issues of principle and legislative process. After the Task Force had a better grasp of the major concerns of the public and the Central Authorities regarding issues of principle and legislative process, it would work out the next step to be taken and consider the timetable. CS hoped that the work relating to constitutional development could proceed in a systematic manner in order that a legal foundation could be established for further discussions of specific proposals. CS assured members that the Task Force would make conscious efforts aiming to complete the whole exercise, including the necessary legislative work, before 2007.

6. Mr NG Leung-sing suggested that the 800 members of the Election Committee prescribed in Annexes I and II to the Basic Law should also be invited by the Task Force to give their views, as the Election Committee should play an important role in the constitutional development of HKSAR.

7. CS said that the Task Force welcomed views from different parties, and agreed to consider Mr NG's suggestion.

8. Mr TAM Yiu-chung asked whether the Task Force could provide a summary of views of the eight different groups and individuals, and whether the Task Force would consider organizing round-table discussions in future with a view to achieving consensus.

9. CS responded that most of the views expressed by the groups and individuals had been reported in the media, and some of them had provided written submissions. As regards the format of discussion, CS said that the current arrangements were working well, and other formats such as round-table discussions could be considered in future if necessary.

10. Mr Howard YOUNG said that many organizations were not too interested in discussing the issues of principle and legislative process. He asked when the Task Force would discuss specific reform proposals.

11. CS responded that it was the focus of the Task Force to listen to views on issues of principle and legislative process at this stage, before proceeding to the next stage of its work. Some of the groups and individuals met by the Task Force had also given views on specific proposals, and the Task Force would take note of their views.

Achieving consensus

12. Mr Andrew CHENG said that the Task Force had ignored the public's strong aspirations for electing CE and LegCo Members by universal suffrage in 2007 and 2008 respectively, as reflected in recent opinion polls, and had made

Action

deliberate efforts to stall democratic development in the HKSAR. To illustrate his point, Mr CHENG said that one of the issues on legislative process identified by the Task Force was whether there was a need to invoke Article 159 of the Basic Law if the amendment procedures as prescribed in Annexes I and II were used. However, this particular issue was raised by the Task Force simply because of two newspaper articles. Mr CHENG expressed concern about the situation and asked about the criteria and methodology to be adopted by the Task Force in assessing whether consensus had been reached on the relevant issues.

13. CS said that constitutional development was a complex matter, particularly in the situation of Hong Kong given its history and status as the SAR of the People's Republic of China. It was inevitable that the public and the Central Authorities would have different views on the matter. CS hoped that the Hong Kong community could discuss the issues of principle and legislative process identified by the Task Force in a rational and receptive manner, and not to belittle contrary views or make speculation. CS further said that it was important for consensus to be achieved on the relevant issues as this would provide a good foundation for further work on constitutional development and discussions on specific proposals. The Task Force would therefore like to deal with the different views within the community on the relevant issues at an early stage, irrespective of the source of the viewpoint and the position of the Government on the issues.

14. CS said that in his view, consensus would be achieved when an option was acceptable to all parties, although it might not completely meet the wishes of all parties. In further response to Miss Margaret NG, CS said that consensus would be reached by LegCo if two-thirds of its members were in support of proposed amendments to the methods of selecting CE or forming LegCo as prescribed in Annexes I and II to the Basic Law.

15. Ms Audrey EU referred to the five issues on legislative process set out in the paper provided for the Panel meeting on 15 January 2004 (LC Paper No. CB(2)1003/03-04(01)). She said that since then, there had been wide discussions in the community on these issues and broad consensus was that these issues were non-issues. Ms EU asked what specific issues the Task Force would discuss with the Central Authorities during its forthcoming visit to Beijing, and what outcome the Task Force would expect to achieve.

16. CS said that while there might be broad consensus on the issue relating to Article 159, there were different views in the community on some other issues on legislative process, e.g. what legislative process should be used for amending the methods for selecting CE and for forming LegCo, and whether the method for forming the third term LegCo should apply to the fourth and subsequent terms of LegCo if a consensus could not be reached on the method for the formation of LegCo after 2007. CS reiterated that the role of the Task Force was to listen to

Action

the views of the Hong Kong community and to consult the Central Authorities on the relevant issues. A common understanding reached on the relevant issues would be conducive to discussions of any specific proposals at a later stage. CS added that the Task Force had so far only met eight different groups and individuals, which represented a very small number of the parties it had invited for meetings.

17. Ms Audrey EU referred to the excerpts of the two newspaper articles quoted by the Administration as examples in support of the viewpoint that there might be a need to invoke Article 159 if the amendment procedures in Annexes I and II were used (LC Paper No. CB(2)1093/03-04(01)). Ms EU said that she had read the two articles, and commented that the article in Hong Kong Economic Times was quoted out of context, and the article in Ta Kung Pao did not provide any justifications in support of the viewpoint.

18. CS said that in addition to the two examples quoted, some other individuals held similar views. He explained that the purpose for the Task Force to set out different views on the issues on legislative process was to facilitate the public to deliberate.

19. Referring to paragraph 5 of the paper (LC Paper No. CB(2)1107/03-04(01)) which stated that certain groups and individuals preferred to have discreet meetings with the Task Force, Miss Margaret NG expressed concern whether the views given at these meetings would be publicized. She pointed out that any views received by the Task Force would affect its consideration of whether consensus had been reached on the relevant issues, and should be made public.

20. CS responded that the Task Force would respect the wish of groups or individuals to remain anonymous. However, their views received by the Task Force, especially their substantive views which had influence on the Task Force's thinking, and the rationale in support of such views would be made known to the public.

21. Mr Albert HO raised three questions. First, he asked whether the purpose of the Task Group's forthcoming visit to Beijing was to discuss with the Central Authorities the legal issues. Secondly, he asked whether the Task Force would only listen to the views of, but not to receive orders from, the Central Authorities. Thirdly, he asked whether the Task Force had any means to resolve differences in opinion between the HKSAR and the Central Authorities with a view to achieving consensus.

22. CS said that while discussions with the Central Authorities would focus on issues of principle and legislative process, the Task Force would also listen to any other views expressed. Although the task of the Task Force was not

Action

expected to be easy, he was confident that consensus would eventually be achieved if all the relevant parties could hold discussions in an open, sincere and rational manner and work towards a common objective. As regards resolving differences in opinion, CS said that the Task Force would work out more specific arrangements after listening to the views from the public and the Central Authorities, and would keep the Panel informed of progress.

Interpretation of the Basic Law

23. Mr James TO said that the recent statements made by one of the Mainland legal experts, Professor XIAO Weiyun, had implied that the Executive Authorities, the Legislature and the Judiciary of the HKSAR had been wrong in interpreting the Basic Law. He asked whether the HKSAR Government would correct or refute the statements made by Professor XIAO. CS responded that the statements made by the two Mainland legal experts, including Professor XIAO, were of reference value to the Task Force, like any other views given by legal experts and the public of Hong Kong.

24. Mr TO queried whether the stance of the Government not to correct or refute the statements made by Professor XIAO was appropriate and in the best interests of the HKSAR. CS said that there were different views on the issues of principle and legislative process in the Mainland and HKSAR. The HKSAR Government did not wish to state its position on these issues at this stage so as not to pre-empt the on-going consultation.

25. To follow up Mr TO's concern, Mr SIN Chung-kai asked CS to clarify whether motion debates held by LegCo calling for a vote of no confidence against principal officials had contravened the Basic Law.

26. CS explained that under the Basic Law, the appointment and removal of principal officials were nominated by CE and approved by the Central People's Government (CPG). Motion debates held by LegCo had no legal effect and would not affect or change the powers of CE and CPG in the appointment and removal of principal officials under the Basic Law.

II. Date of next meeting

27. Members agreed to discuss the following items at the next regular meeting of the Panel on 16 February 2004 at 2:30 pm -

- (a) Polling and counting arrangements for 2004 LegCo elections; and
- (b) Guidelines on election-related activities issued by the Electoral Affairs Commission.

Action

28. The meeting ended at 5:05 pm.

Council Business Division 2
Legislative Council Secretariat
12 March 2004