

**President's ruling on
motion on "Regretting the decision of the
Standing Committee of the National People's Congress to rule out
universal suffrage in the years 2007 and 2008"
proposed by Hon Albert HO Chun-yan for debate at the
Legislative Council meeting on 19 May 2004**

Hon Albert HO Chun-yan has given notice to move the following motion at the Council meeting on 19 May 2004:

(Translation)

"That, in view of the objection of the people of Hong Kong at large to the decision of the Standing Committee of the National People's Congress ('NPCSC') to rule out flatly the selection of the Chief Executive by universal suffrage in the year 2007 and the election of all the Members of the Legislative Council ('LegCo') by universal suffrage in the year 2008 in Hong Kong, and to maintain the existing ratio between LegCo Members returned by functional constituencies and Members returned by geographical constituencies through direct elections, as well as the procedures of separate voting on bills and motions introduced by individual Members, this Council considers that the decision of NPCSC not only does not conform to the basic principles of 'one country, two systems' and 'a high degree of autonomy', but also completely ignores Hong Kong people's general aspirations for democracy; this Council expresses regret about and dissatisfaction with such decision, and calls upon the people of Hong Kong to continue striving for democracy with all might and never give up."

2. It is public knowledge — since Mr HO and some Members have openly told the media, that the proposed motion has been submitted as a sequel to the Ruling I made on 30 April 2004 on Hon Martin LEE Chu-ming's proposed amendment to the motion moved by Hon Frederick FUNG Kin-kee at the Council meeting held on 5 May 2004.

Advice of Counsel to the Legislature

3. In line with my usual practice, I have sought advice from the Counsel to assist me in considering the proposed motion. For the sake of completeness, his advice is reproduced in the following paragraph.

4. Counsel to the Legislature advises that:

"Hon Albert Ho's proposed motion may be divided into four parts:

- (a) a purportedly factual account of an expression of objection by people of Hong Kong at large to the Decision of the NPCSC to rule out flatly the selection of the CE by universal suffrage in the year 2007 and the election of all the Members of LegCo by universal suffrage in the year 2008 in Hong Kong, and to maintain the existing ratio between LegCo Members returned by functional constituencies and Members returned by geographical constituencies through direct elections, as well as the procedures of separate voting on bills and motions introduced by individual Members;
- (b) expresses the view that LegCo considers that the Decision of NPCSC:
 - (i) does not conform to the basic principles of "one country, two systems" and "a high degree of autonomy"
 - (ii) completely ignores Hong Kong people's general aspirations for democracy;
- (c) expresses regret about and dissatisfaction with the NPCSC Decision; and
- (d) urges the people of Hong Kong to continue striving for democracy with all might and never give up

Leaving aside the first part of the proposed motion which contains the "factual account", the main thrust of the proposed motion as demonstrated by the textual structure of the proposed motion is to invite the Council to agree:

- (a) to express the view that LegCo considers that the Decision of NPCSC-
 - (i) does not conform to the basic principles of "one country, two systems" and "a high degree of autonomy"; and
 - (ii) completely ignores Hong Kong people's general aspirations for democracy;
- (b) to express regret about and dissatisfaction with the NPCSC Decision; and

- (c) to urge the people of Hong Kong to continue striving for democracy with all might and never give up.

It is reasonably clear from the terms of the proposed motion that it is directed at the Decision of NPCSC promulgated on 26 April 2004. This proposed motion appears different from the proposed amendment motion sought to be moved in Council on 5 May 2004 by Hon Martin Lee in that Hon Albert Ho's proposed motion is directed at the Decision of NPCSC while Hon Martin Lee's proposed amendment motion was directed at the NPCSC's conduct of allegedly abusing its power and seriously damaging the "one country, two systems" and "Hong Kong's high degree of autonomy". However, having considered the substance of the two motions, that part of Hon Albert Ho's motion which invites the Council to express the view that it considers that the Decision of the NPCSC does not conform to the basic principles of "one country, two systems" and "a high degree of autonomy" puts the motion into the same category as Hon Martin Lee's motion in that both motions are directed at NPCSC.

According to the President's ruling made on 30 April 2004 on Hon Martin Lee's proposed amendment motion, it is out of order for LegCo to debate a motion involving accusatory expressions against the character of NPCSC or the acts of NPCSC undertaken according to law which would be likely to degrade it in the public estimation. The issue which requires the President's consideration under the circumstance is whether to express the view that NPCSC's decision does not conform to the basic principles of "one country, two systems" and "a high degree of autonomy" amounts to an accusatory expression which would be likely to degrade NPCSC in the public estimation.

The principle of "one country, two systems" is stipulated in the Preamble to the Basic Law as the principle under which "the socialist system and policies will not be practised in Hong Kong". This principle is enshrined in Article 5 of the Basic Law which provides that "The socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life shall remain unchanged for 50 years". The terms of Article 5 of the Basic Law are substantially the same as the provisions contained in Section I of Annex I to the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong (JD). The expression "high degree of autonomy" is found in

Paragraph 3(3) of the JD. Paragraph 3(3) provides that "The Hong Kong Administrative Region will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government". Article 2 of the Basic Law provides that "The National People's Congress authorizes the Hong Kong Special Administrative Region to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provision of this Law". In the context of the proposed motion, the passing of a motion which contains the expression "this Council considers that the decision of NPCSC ... does not conform to the basic principles of 'one country, two systems' and 'a high degree of autonomy'" by the Council is tantamount to LegCo accusing the NPCSC of having acted not in accordance with law and in breach of the JD. This appears to be an accusation no less serious than an accusation of violation of the Basic Law. Unless the President finds that there is a more plausible construction of the substance of the proposed motion which does not justify putting the proposed motion into the category of motions involving accusatory expressions against the character of NPCSC or the acts of NPCSC undertaken according to law, it seems clear that on the principles which the President ruled Hon Martin Lee's motion out of order, this part of the proposed motion should likewise be ruled out of order."

My opinion

5. In the Ruling I made on 30 April 2004, I set out in detail the constitutional relationship between the NPC/NPCSC and HKSAR/HKSAR Legislative Council, and asked myself, apart from the question of scope (Mr LEE's proposal being an amendment to a motion):

- (a) whether it was in order for this Council to debate the motion (in the form of an amendment) which related to the exercise of NPCSC's power concerning the HKSAR and, if so,
- (b) whether the terms of the motion were in order.

In considering these question, I was mindful of my duty as guardian of the rights and privileges of Members, including their freedom of speech in Council.

6. I concluded that, depending on the specific terms of a proposed motion, it is not entirely impossible for a motion relating to a state organ to be admitted for debate in the Council. However, I ruled that it was out of order for the Legislative Council to debate a motion involving accusatory expressions

against and condemnation of the character of NPCSC or the acts of NPCSC undertaken according to our country's Constitution and the Basic Law, which would be likely to degrade it in the public estimation.

7. The same considerations should therefore apply in assessing the admissibility of Mr HO's proposed motion.

8. Mr HO's proposed motion seeks to make the following proposition:

That, as Hong Kong people at large object the decision of the NPCSC regarding Hong Kong's constitutional development, this Council:

(a) considers that:

(i) the NPCSC's decision does not conform to the basic principles of "one country, two systems" and "a high degree of autonomy (for Hong Kong)",

(ii) the NPCSC's decision completely ignores Hong Kong people's aspirations for democracy;

(b) expresses its regret and dissatisfaction with the decision; and

(c) calls upon the people of Hong Kong to continue striving for democracy.

9. I am in agreement with Counsel to the Legislature's analysis of the proposed motion, in particular his detailed opinion on that part of the motion which asks the Council to express the view that the NPCSC's decision does not conform to the basic principle of "one country, two systems" and "a high degree of autonomy". I accept his advice that it is out of order for the Legislative Council to express this view as it amounts to an accusatory expression against the acts of NPCSC undertaken according to law which would be likely to degrade the NPCSC in the public estimation.

10. As regards the other parts of the motion, my views are:

(a) The description in the preamble of the reaction of Hong Kong people at large to the NPCSC's decision is purported to be a fact. It is for the mover of the motion to substantiate this assertion in order to win Members' support. It is in order.

(b) It is not out of order to seek to criticize the NPCSC's decision as having the effect of indicating that the NPCSC has ignored people's aspirations, as it does not amount to making an

accusatory expression against the character of NPCSC or its act undertaken according to law.

- (c) In view of the nature of the proposition in the last part of the motion, that is, inviting the Council to express regret and dissatisfaction with the decision of the NPCSC and calling upon the people of Hong Kong to continue striving for democracy, and in the context of the motion, the expressions used are not at odds with the principles I have adopted.

Ruling

11. Having considered all the circumstances, I rule under Rule 30(3)(c) of the Rules of Procedure that the proposed motion is out of order in its present terms, and should be returned to Mr HO. However, I am prepared to waive the required notice for Mr HO to submit for my approval, by 5.00 pm on Monday, 10 May 2004, a replacement motion with the words "not only do not conform to the basic principles of 'one country, two systems' and 'a high degree of autonomy', but also" deleted.

(Mrs Rita FAN)
President
Legislative Council

7 May 2004