

立法會
Legislative Council

LC Paper No. CB(2) 431/04-05
(These minutes have been seen
by the Administration)

Ref : CB2/PL/CA

Panel on Constitutional Affairs

Minutes of meeting
held on Monday, 15 November 2004 at 2:30 pm
in the Chamber of the Legislative Council Building

Members present : Dr Hon LUI Ming-wah, JP (Chairman)
Hon Jasper TSANG Yok-sing, GBS, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Hon LEE Cheuk-yan
Hon Martin LEE Chu-ming, SC, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon Fred LI Wah-ming, JP
Hon Margaret NG
Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
Hon James TO Kun-sun
Hon CHEUNG Man-kwong
Hon CHAN Yuen-han, JP
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon WONG Yung-kan, JP
Hon Howard YOUNG, SBS, JP
Dr Hon YEUNG Sum
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon CHOY So-yuk
Hon Andrew CHENG Kar-foo
Hon Timothy FOK Tsun-ting, GBS, JP
Hon TAM Yiu-chung, GBS, JP

Hon Abraham SHEK Lai-him, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Frederick FUNG Kin-kee, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon LI Kwok-ying, MH
Dr Hon Joseph LEE Kok-long
Hon Daniel LAM Wai-keung, BBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon MA Lik, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Dr Hon KWOK Ka-ki
Dr Hon Fernando CHEUNG Chiu-hung
Hon CHEUNG Hok-ming, SBS, JP
Hon WONG Ting-kwong, BBS
Hon TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Patrick LAU Sau-shing, SBS, JP
Hon Albert Jinghan CHENG
Hon KWONG Chi-kin
Hon TAM Heung-man

Members absent : Hon LAU Chin-shek, JP
Hon Albert CHAN Wai-yip

Public officers attending : Items IV and V

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 Chi-yuen
Principal Assistant Secretary for Constitutional Affairs

Ms Julina CHAN Woon-yee
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

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Action

The Chairman said that having reviewed the proceedings of the first meeting, he would like to draw members' attention to some of the rules that would help the smooth conduct of Panel meetings. A copy of the Chairman's speaking note is in the **Appendix**.

2. In response to some members' questions, the Chairman said that he was aware that the rules regarding contents of speeches and behaviour of Members during meeting could not be enforced at Panel meetings in the same way as at Council meetings. However, as the Panel Chairman, it was his responsibility to ensure that Panel meetings were conducted in a smooth and efficient manner, and to draw members' attention to the relevant rules.

I. Confirmation of minutes of meetings

(LC Paper No. CB(2)105/04-05 – Minutes of meeting on 12 October 2004

LC Paper No. CB(2)199/04-05 – Minutes of meeting on 18 October 2004)

3. The minutes of the meetings held on 12 and 18 October 2004 respectively were confirmed.

II. Information papers issued since the last meeting

4. Members noted that the following papers had been issued since the last meeting –

(a) LC Paper No. CB(2)130/04-05(01) – Submission on constitutional development from the Society of Professional Trainer for Occupational Health and Safety Ltd;

(b) LC Paper No. CB(2)205/04-05(01) – A case summary referred to this Panel by the Complaints Division concerning the views of a member of the public (Mr CHAN) on the procedures of voting on bills and motions in LegCo;

Action

- (c) LC Paper No. CB(2)212/04-05(01) – The Administration’s reply concerning Hon Albert CHAN’s suggestion to invite representatives from the Standing Committee of the National People’s Congress to discuss with the Panel issues relating to constitutional development; and
- (d) LC Paper No. CB(2)213/04-05(01) – The Administration’s reply to Hon Audrey EU’s request for information on the expenditure for the 12 constitutional development seminars and group discussions held between May and August 2004 by the Constitutional Development Task Force.

III. Report by the Chairman on meeting arrangements for regular meetings

(LC Paper No. CB(2)76/04-05(01) – Letter dated 19 October 2004 from Hon Audrey EU

LC Paper No. CB(2)200/04-05(01) – Result of the survey on duration of future regular meetings of Panel)

5. The Chairman said that in response to the letter from Ms Audrey EU concerning future arrangements for regular meetings of the Panel, two surveys had been conducted to gauge members’ views on the number of regular meetings held monthly and the duration of the meeting respectively. The result of the first survey indicated that the majority of members preferred the Panel to maintain one regular meeting per month. The result of the second survey indicated that more members preferred the duration of the regular meetings to be three hours or less. The Chairman stressed that while the Panel would hold one regular meeting per month, it could hold special meetings as and when required.

6. Some members said that given the large Panel membership and the controversial and important issues to be discussed by the Panel, limiting the duration of the regular meeting to three hours was undemocratic as it had the effect of restraining members from giving views. They maintained the view that the duration of the regular meeting should be four hours. Some members said that although they had opted for a two-and-a-half-hour meeting, a three-hour meeting was also acceptable to them.

7. Ms Audrey EU said that she was disappointed at the survey results in that only one regular meeting would be held each month. Nevertheless, if additional meetings could be held in the form of special meetings, she would accept the arrangement.

Action

8. As members had different views on whether the duration of regular Panel meetings should be three or four hours, the Chairman decided to put the matter to vote. 29 members voted for three hours, and 19 members voted for four hours, as the duration of regular Panel meetings. The Chairman declared that future regular meetings of the Panel would be scheduled for three hours and the new arrangement would take effect from December 2004. In the event that some of the agenda items could not be dealt with at a meeting, members agreed that the Panel would consider the need to hold special meeting on a case-by-case basis, taking into account the urgency and importance of the items involved.

IV. Items for discussion at the next meeting

(LC Paper No. CB(2)200/04-05(02) – List of outstanding items for discussion

LC Paper No. CB(2)200/04-05(03) – List of follow-up actions

LC Paper No. CB(2)204/04-05(01) – Paper provided by the Administration on “Proposed timetable for discussion of issues in the 2004/2005 legislative session”)

9. Members agreed that the following items should be discussed at the next meeting to be held on 20 December 2004 –

(a) Review of the conduct of the 2004 Legislative Council election;
and

(b) Political party law.

10. Some members suggested that a special meeting could be held in December 2004 to discuss the Fourth Report of the Constitutional Review Task Force (the Task Force), which was expected to be released before the end of 2004. In response to members, Secretary for Constitutional Affairs (SCA) assured members that the Legislative Council (LegCo) would be informed of the release of the Fourth Report in advance of the media briefing.

V. Motion proposed by Dr Hon Fernando CHEUNG Chiu-hung

(LC Paper No. CB(2)137/04-05(01) – Wording of the motion proposed by Dr Hon Fernando CHEUNG Chiu-hung)

11. The Chairman said that members had agreed at the meeting on 18 October 2004 that the motion proposed by Dr Fernando CHEUNG be dealt with at this meeting. The wording of the proposed motion was as follows –

Action

“鑒於香港特別行政區的政制改革應獲得廣大香港市民的共識和支持，本會要求政府應就2007及2008年政改方案盡快進行全民公投，而公投之方案中應包括全民直選。”

(Translation)

“That, as constitutional reform in the Hong Kong Special Administrative Region should have the consensus and support of the community at large, this Panel requests that the Government should conduct as soon as possible a referendum on the constitutional reform proposals for 2007 and 2008, and such proposals should include direct election by universal suffrage.”

12. At the invitation of the Chairman, Dr CHEUNG said that he had proposed the motion at the last meeting after a lengthy discussion by the Panel on the public consultation conducted by the Task Force on the methods for selecting the Chief Executive (CE) in 2007 and for forming LegCo in 2008 (the “electoral methods”) and the ways to ensure that the proposals on electoral arrangements for 2007 and 2008 would have the consensus and support of the Hong Kong community at large. SCA had told members that in conducting consultation on the Third Report of the Task Force, 12 discussions sessions were held and attended by some 870 participants from different sectors of society. Based on the views collected at these discussion sessions, the Task Force would draw up more specific proposals for further consultation. Some members had questioned the representativeness of the views collected and suggested that a referendum was the best way to gauge whether a proposal was widely accepted by the community. It was under these circumstances that he had proposed the motion on referendum.

13. Dr CHEUNG further said that since the last meeting, he and the pan-democratic Members had been put under scathing attacks for raising the motion. CE had issued a statement earlier in that afternoon saying that the motion “is inappropriate, is inconsistent with the established legal procedures, is impractical and is misleading to the public. Proposing a referendum will seriously undermine the prevailing harmony in the community and will affect the cordial relationship between the Central Authorities and the Hong Kong Special Administrative Region (HKSAR). Moreover, it will not help promote the healthy development of democracy in Hong Kong. The HKSAR Government will not consider any suggestion on constitutional development that departs from the Basic Law and the decision of the Standing Committee of the National People’s Congress (NPCSC Decision) on dealing with the electoral methods in 2007 and 2008”. The Director of the Liaison Office of the Central People’s Government in HKSAR had issued a similar statement.

Action

14. Dr CHEUNG added that he was aware that at present, there was no law to regulate the conduct of a referendum. The referendum he proposed was in fact consultative in nature and non-binding. It sought to provide an avenue for the people of Hong Kong to give views on the proposed “electoral methods”. In his view, a referendum was a fair, scientific and positive way to gauge whether a proposal was widely accepted by the community. Using a referendum to decide a national policy or a proposal was common in democratic countries. The attacks launched on him and the pan-democratic Members were exaggerated, distorted and unjust. He did not see how a consultative referendum could be unconstitutional, inconsistent with legal procedures and misleading to the public. Dr CHEUNG said that if the Government respected the wish of the people of Hong Kong, it should not be fearful of a referendum. After all, the result of a referendum would provide useful reference for the Government and Members in considering the electoral arrangements for 2007 and 2008. He urged members to support his motion.

15. Dr YEUNG Sum said that the criticisms made by CE were unfounded and misleading to the public. At the last meeting, SCA informed the Panel that the Task Force hoped that a consensus would emerge within the community after the release of the Fourth Report and that the Fifth Report would put forward the mainstream proposal for further public discussion. Against this background, the pan-democratic Members were in support of Dr CHEUNG’s motion that a referendum be conducted to ascertain whether members of the public supported the mainstream proposal or otherwise. He could not understand why a referendum, which provided an opportunity for members of the public to express views on the mainstream proposal and for the Administration to verify whether its mainstream proposal was widely accepted by the community, was considered by CE to be a challenge to the Basic Law and the NPCSC Decision. In his view, conducting a referendum was appropriate and reasonable, and would provide a mandate for the Government to implement its proposal. Dr YEUNG added that Members of the Democratic Party fully supported the motion.

16. Dr YEUNG further said that some people had compared the referendum proposed by Dr CHEUNG with the recent referendum conducted in Taiwan. Unlike the referendum in Taiwan which was legally binding and sought to pave the way for independence, the referendum proposed by Dr CHEUNG was not legally binding. In addition, the people of Hong Kong and the pan-democratic Members had never requested the Government to introduce a law on referendum, nor had they had any intention to seek the independence of the region. Given that there was no legal status for the referendum, the criticisms that the referendum was “playing with fire” and contravened the Basic Law were groundless. Dr YEUNG said that Dr CHEUNG had been subjected to unreasonable criticisms for proposing the motion on referendum which merely provided an avenue for the public to express views on the Government’s

Action

proposals on the “electoral methods”. He questioned whether the people of Hong Kong could no longer express dissenting views, bearing in mind that Hong Kong was an open society where people had always enjoyed the freedom of expression.

17. Mr LEE Wing-tat echoed Dr YEUNG’s views and criticized the Task Force for conducting sham consultation in that members of the public were not given an opportunity to express views at the discussion sessions on the Third Report. He said that despite the Government’s attempt to outlaw moves to hold a referendum and to suppress dissenting views, the public’s aspiration for universal suffrage had not subsided.

18. Mr Ronny TONG said that the accusations that the motion on referendum was unconstitutional and contravened the Basic Law were very serious accusations, especially when they were made by the Government. As a legal practitioner, he disagreed with the accusations, as the motion proposed by Dr CHEUNG merely requested the Government to conduct a referendum to gauge the people’s views on constitutional reform proposals. Mr TONG pointed out that under Article 39 of the Basic Law, the provisions of the International Covenant on Civil and Political Rights (ICCPR) relating to the people’s right of expression and participation in public affairs such as constitutional reform should apply to Hong Kong and should be implemented through the laws of HKSAR.

19. Mr TONG further said that the motion was silent on how the referendum should be conducted. If the Government agreed to provide a legal framework for the conduct of a referendum, it could introduce the necessary legislation for passage in LegCo. If necessary, the Government could stipulate in legislation that such a referendum had no binding effect. Mr TONG added that from the way the Government had handled the motion on referendum, he had the feeling that the Government was repeating its actions taken on the Bill on National Security, i.e. ignoring the views of the public, inflating the issues out of proportion and making exaggerated accusations. Mr TONG cautioned that such actions would only polarize the community.

20. Mr Frederick FUNG made three points. Firstly, he supported the motion on the understanding that the referendum was non-binding and consultative in nature. Secondly, while the NPCSC Decision might be binding on the HKSAR Government, the people of Hong Kong still had the right to give views on the “electoral methods” including their views on universal suffrage in 2007 and 2008 by way of a consultative referendum. Thirdly, Dr CHEUNG’s motion requested the Government, in conducting a referendum on constitutional reform proposals, should include the option of universal suffrage in 2007 and 2008. One should not pre-empt the result of the referendum at this stage. In any event, the result would provide useful

Action

reference for the Central Authorities and HKSAR Government to decide on the “electoral methods”. In the event that the public supported the proposal on universal suffrage, it would be for the Central Authorities to decide whether the proposal was worth pursuing. If it considered that the views of the public should not be ignored, it could resort to amending the NPCSC Decision.

21. Mr TAM Yiu-chung said that he had just received a written submission from the Hong Kong Island Federation concerning the motion on referendum outside the LegCo Building. The Federation did not support the motion and he shared its views which were as follows –

- (a) Referendum (公投) was not an ordinary means for consulting the public. It had a statutory meaning in that the public would vote on important public issues of a country. It also had special significance in constitutional law. In a unitary state, the power of a local government was conferred by the central government. A local government should not conduct a referendum which would harm its relationship with the central government;
- (b) There was no legal basis for a referendum (公投). Neither the Basic Law nor the constitution of the People’s Republic of China provided for the conduct of a referendum. In addition, Annexes I and II to the Basic Law already set out the procedures for amending the “electoral methods”. A referendum on the “electoral methods” did not comply with the Basic Law; and
- (c) Article 158 of the Basic Law stipulated that the power of interpretation of the Basic Law was vested in NPCSC. As NPCSC had made a decision on universal suffrage in 2007 and 2008 on 26 April 2004, a referendum (公投) which sought to overturn the NPCSC Decision contravened the Basic Law.

22. In response to Mr TAM Yiu-chung, Mr Albert HO made the following points –

- (a) A binding referendum (公決) was different from a non-binding referendum (公投). A binding referendum (公決) was conducted under the authority of constitutional or statutory law and had binding effect. While a binding referendum (公決) could be held on questions of sovereignty or self-determination and major constitutional issues, it could also be held on other important issues, e.g. it was not uncommon for Switzerland to conduct referendums on issues relating to internal affairs. Hence, the assumption that a non-binding referendum (公投) must be related to the question of sovereignty was groundless;

Action

- (b) A consultative referendum (公投) was non-binding. It was a scientific and objective method to collect public views on important public policy issues to help the Government decide the way forward. The referendum (公投) proposed by the pan-democratic Members fell under this category and was therefore non-binding. Hence, there should be no question of a consultative referendum (公投) not complying with the Basic Law; and
- (c) it was questionable whether the result of a consultative referendum (公投) could overturn the NPCSC Decision.

23. Mr TAM Yiu-chung responded to Mr Albert HO by making the following clarifications –

- (a) His earlier comments referred to referendum (公投) only;
- (b) Mr Albert HO appeared to have mixed up referendum (公投) with “opinion poll”. In his view, referendum (公投) was a means to decide on an important public policy issue of a country by voting. It therefore had constitutional significance;
- (c) While HKSAR could exercise a high degree of autonomy, there were matters which HKSAR could not decide internally unless authorized by the Central Authorities. He expressed concern about any attempt to make use of a referendum to overturn the NPCSC Decision.

24. Ms Emily LAU expressed support for the motion. She said that the referendum proposed by Dr CHEUNG was more than an opinion poll, as the public was given the opportunity to vote on a proposal of their choice. She said that the Administration should put forth any mainstream proposal in parallel with the proposal for universal suffrage for public consultation. As NPCSC had made a decision on the “electoral methods” without consulting the people of Hong Kong, it was time for the people of Hong Kong to put forward views through a referendum.

25. Dr KWOK Ka-ki said that he was aware of the background to Dr CHEUNG’s motion and supported the spirit of the motion. However, he and two other pan-democratic Members could not vote in support of Dr CHEUNG’s motion because they were uncertain about the legal and constitutional basis for conducting a referendum. They, however, would continue to pursue implementation of universal suffrage in 2007 and 2008. Dr KWOK said that he was disappointed about the statement issued by CE as

Action

the Government was once again apathetic about the aspiration of the community. Dr KWOK said that he would consider proposing a motion calling on the Government to carry out a comprehensive and in-depth opinion poll on universal suffrage in 2007 and 2008, before implementing its proposals on the electoral arrangements for 2007 and 2008.

26. Ms Margaret NG said that she could understand why the Government did not favour a referendum as it did not want to face the public's aspiration for universal suffrage. However, the accusations that the referendum contravened the Basic Law and was inconsistent with the established legislative procedures were unfounded.

27. Mr LEUNG Kwok-hung said that the right of the people of Hong Kong to vote at elections by equal and universal suffrage, as provided in the ICCPR, was enshrined in the Basic Law. However, the Government had failed to discharge its duties as it had refused to implement the relevant provisions of the ICCPR through the laws of HKSAR after the reunification. The purpose of Dr CHEUNG's motion was to request the Government to employ a scientific and fair method to gauge the views of the people of Hong Kong on universal suffrage in 2007 and 2008 so that the Central Authorities would be aware of the aspirations of the Hong Kong community. Mr LEUNG further said that it was impractical of the Government to think that the NPCSC Decision and the voting mechanism of LegCo which could be manipulated by Members returned from "small circle elections" would discourage the people of Hong Kong from pursuing universal suffrage, and the lack of a law on referendum could deprive the right of the Hong Kong community to express its views on important issues. He would introduce a private bill on referendum in the near future. Mr LEUNG added that he supported the motion.

28. Mr James TIEN said that in some western countries, the elected President or the ruling party preferred to hold referendums on issues with long term implications, e.g. the question of the independence of Quebec and the adoption of Euro by the United Kingdom as its currencies. As far as Hong Kong was concerned, Mr TIEN said that the support of the people towards universal suffrage in 2007 and 2008 before the adoption of the NPCSC Decision on 26 April 2004 was very clear. He believed that NPCSC was well aware of the public's aspiration for universal suffrage in 2007 and 2008 when making its decision. However, NPCSC had ruled out universal suffrage in 2007 and 2008 having taken into account other considerations. Hence, the Liberal Party did not consider it necessary for a referendum to be conducted on the matter as it would serve no useful purpose. Mr TIEN considered that at present, all parties should strive to come up with an acceptable proposal for the electoral arrangements for 2007 and 2008 and to pursue the election of CE by universal suffrage in 2012. He added that the Liberal Party would not support the motion.

Action

29. Responding to Mr TIEN's comment on the need for conducting a referendum on universal suffrage in 2007 and 2008, Dr YEUNG Sum pointed out that the referendum referred to in the motion was meant to cover both the Task Force's mainstream proposal and the option of direct election by universal suffrage.

30. Mr LEE Cheuk-yan pointed out that the pan-democratic Members who were returned by geographical constituency elections had received support from 60% of the voters in the 2004 LegCo election. He asked SCA whether the Administration agreed that the Hong Kong community at large was in support of universal suffrage in 2007 and 2008, and NPCSC had blatantly ignored the aspiration of the Hong Kong community when making its decision.

31. Mrs Selina CHOW disagreed with some members' comments that the result of a referendum was no more than a reference for the Central Authorities and the HKSAR Government, and pointed out that a non-binding referendum also had political implications. She said that unless Hong Kong could pursue constitutional development on its own, it should strive to reach a consensus with the Central Authorities on the electoral arrangements for 2007 and 2008. Illustrating her point with the quotation from Mr LAU Chin-shek at the Council meeting on 10 November 2004 that "one cannot clap with one hand", she stressed that it was important for Hong Kong to establish a dialogue with the Central Authorities. She considered that holding a referendum was not beneficial to the people of Hong Kong or conducive to the democratic development in Hong Kong.

32. Mr Albert CHENG said that there was a need to conduct a referendum on universal suffrage because the Central Authorities and the HKSAR Government did not accept that there was public demand for universal suffrage in 2007 and 2008. The Task Force had merely followed the NPCSC Decision and the instruction of the Central Authorities and had ignored the wish of the people. The motion proposed by Dr CHEUNG sought to request the Government to use a scientific and objective method to gauge the public's views on universal suffrage. However, the Central Authorities had sensitive reactions towards the referendum motion and branded it as an act to call for the independence of Hong Kong. Mr CHENG stressed that the pan-democratic Members had no intention whatsoever to seek for the independence of Hong Kong. These accusations were ignorant and untrue. Mr CHENG further said that while Members of the pro-Government camp could easily veto the motion, he called upon them to vote for democracy and not to buckle under political pressure. Mr CHENG indicated that he would support the motion, but not any amendments to the motion which departed from the original intention of the motion.

Action

33. Mr LEUNG Yiu-chung said that the Government had repeatedly said that it would collect views from the community with a view to formulating a mainstream proposal on the electoral arrangements for 2007 and 2008. However, the views of some 870 participants of the discussion sessions on the Third Report could not represent the views of the community at large. He pointed out that the way the Task Force had conducted its consultation on the Third Report had a negative impact on the community, as the public was only allowed to give views on issues within the parameters of the NPCSC Decision. In his view, a referendum could prevent the Government from distorting the public views and give a clear indication on the consensus of the community on constitutional reform proposals. Mr LEUNG expressed support for the motion.

34. Mr Abraham SHEK said that that as the NPCSC had made its decision on universal suffrage in 2007 and 2008, it was not necessary to conduct a referendum on the matter. Members belonging to The Alliance would not support the motion.

35. Mr Alan LEONG said that some members who objected to Dr CHEUNG's motion had commented that the result of the referendum might have the effect of overturning the NPCSC Decision and should not be supported. From the legal and constitutional point of view, he did not think that the NPCSC Decision could not be overturned. In addition, the Chinese leaders, President HU Jintao and Premier WEN Jiaobao had stated, on different occasions, that they would exercise power for the people, feel as the people feel and work for the good of the people (權為民所用，情為民所繫，利為民所謀). In this connection, NPCSC, being the highest organ of state power, should respond to constant changes in public sentiment. Hence, it would not matter even if the referendum would attempt to overturn the NPCSC Decision.

36. Mr LEONG further said that one of the key principles of democracy was to accommodate divergent views. But he could not tolerate comments which were untrue and distorted. In this connection, he commended Mrs Selina CHOW and Mr James TIEN for their courage in admitting that the motion on referendum was not a legal issue, but a question of whether the HKSAR Government should challenge the decision of and exert political pressure on the NPCSC, and whether such actions were not pardonable. On Mrs Chow's reference to "one cannot clap with one hand", Mr LEONG said that he was not aware that the Central Authorities had made any gestures so far to indicate that it was willing to clap hands or dance with the people of Hong Kong. In fact, the Central Authorities had yet to have any dialogue with the majority of the pan-democratic Members who were in support of universal suffrage in 2007 and 2008, and some Mainland officials had commented that those in pursuit of democratic development were contemplating to turn Hong Kong into an independent political entity. Mr LEONG expressed support for

Action

Dr CHEUNG's motion which would deal with public opinions which had not been addressed or had been distorted.

37. Mr Martin LEE briefly explained the proposals relating to the development of the political structure as contained in the second draft of the Basic Law which was prepared in February 1989. He said that in the second draft, a binding referendum (公決) was proposed to be held for the registered electors to decide whether LegCo and CE should be directly elected in 2011 and 2012 respectively. If negated, the referendum would be repeated once every ten years. The reason for him to make reference to the second draft of the Basic Law, which had not been adopted, was to illustrate that the Central Authorities had more confidence in Hong Kong and took a far more open attitude towards universal suffrage at that time. On Dr CHEUNG's motion, Mr LEE said that under common law, what was not forbidden in the law was permissible. Hence, the conduct of a referendum was not unconstitutional. He considered that CE and the HKSAR Government had the responsibility to convince the Central Authorities that they should have faith in the people of Hong Kong on the issue of constitutional development.

38. In response to members' views, SCA reiterated the position of the Administration that any changes to the "electoral methods" must comply with the Basic Law and the NPCSC Decision. In addition, any amendments to the "electoral methods" required the consent of three parties, i.e. a two-thirds majority of LegCo Members, CE and NPCSC. Any proposal which sought to introduce a new requirement was unnecessary and inappropriate. Regarding Mr Martin LEE's remarks in paragraph 37 above, SCA said that the fact remained that the Basic Law had not provided for the conduct of a referendum.

39. In response to the question raised by Mr LEE Cheuk-yan, SCA said that it was a fact that members of the pan-democratic camp obtained over 60% of the votes in the September elections. NPCSC had taken account of the views of the public when making the decision. NPCSC noted that while there was a consensus in the community that constitutional development should proceed, there was a lack of consensus as to whether universal suffrage should be implemented in 2007 and 2008. Any attempt to overturn the NPCSC Decision to or seek to provide the public with a false hope of universal suffrage in 2007 and 2008 was not in the interest of the people of Hong Kong. The pragmatic approach was to get the best possible package of reforms within the parameters set by the NPCSC Decision. SCA added that in accordance with Annexes I and II to the Basic Law, any amendments to the "electoral methods" required the support of two-thirds majority of LegCo Members. In other words, the concerted effort of Members returned by functional constituencies and geographical constituencies respectively was required for democratic development. He would make the best endeavour to solicit support from LegCo Members on the mainstream proposal, which hopefully would emerge from the community around mid-2005, with a view to achieving consensus.

Action

40. SCA further said that in his view, a referendum was not the answer to democratic development. SCA stressed that Hong Kong could not pursue democratic development alone; it must work together with the Central Authorities. Recently, the social atmosphere in Hong Kong had improved. HKSAR should continue to establish mutual trust and communication with the Central Authorities so as to provide a good basis for discussion on constitutional development. The Central Authorities had enhanced communication with different political parties and LegCo Members in recent months. HKSAR should seek to build on this foundation. He urged members not to support the motion on referendum.

41. Dr Fernando CHEUNG said that SCA's reply had not answered Mr LEE Cheuk-yan's question. Dr CHEUNG further said that if people were not given the right to express their views through a referendum, then the so-called "One Country, Two Systems", "Hong Kong people ruling Hong Kong" and "Hong Kong to exercise a high degree of autonomy" were no more than slogans.

42. The Chairman said that a vote should be taken on the motion. Mr LEE Cheuk-yan said that SCA had not responded to his question. In addition, he would also like to respond to SCA's reply. Mr Martin LEE, Mr LEE Wing-tat and Mr Albert CHENG said that they would also like to respond to what SCA had said. Mr James TIEN questioned whether members were allowed to express further views after the mover had responded. If so, he would also like to speak again. The Chairman agreed that Mr LEE Cheuk-yan, Mr Martin LEE, Mr LEE Wing-tat, Mr Albert CHENG and Mr James TIEN would be allowed to speak again before voting.

43. Mr Abraham SHEK said that the meeting had already passed the scheduled time. The Chairman sought members' views as to whether the meeting should continue until a vote on the motion was taken, or a decision on the motion should be deferred until the next meeting. Some members supported that a vote should be taken immediately as a debate on the motion had been conducted for more than two hours. Some members said that the meeting should be extended as they had further views to put forth. The Chairman decided that a special meeting would be arranged to continue discussion on the motion and to deal with the remaining items on the agenda.

(Post-meeting note: A special meeting has been scheduled for 4:30 pm on 29 November 2004)

44. The meeting ended at 5:50 pm.

Council Business Division 2
Legislative Council Secretariat
15 December 2004

政制事務委員會

第二次會議的開場白

2004.11.15

現在舉行的是政制事務委員會第二次會議。我相信各位都同意，第一次會議開得很成功。成功的意思是能發言的人都能夠有機會發表意見，暢所欲言；想做事的人，也有機會進行，直到有結果。作為委員會，這是很重要的。在這裡，我想指出，雖然立法會的議事規則和內務守則，一般而言，並沒有明文規定涵蓋事務委員會的會議，但是有些規則都適用於事務委員會的會議，有利於維持會議有秩序按程序進行，極有參考價值。其中有兩點請大家留意。首先，在以後的會議發言，請不要使用冒犯性及侮辱性言詞，不要指責另一議員有不正當動機，否則不符合規則。(請看議事規則第 41 條第(4)和(5)和第 43 條)。因為維持議會理性論政的文化，至為重要。其次，事務委員會的秘書及法律顧問，都是立法會委派來協助委員會的事務，協助主席的工作(請看議事規則第 6 和第 7 條)，請大家不要對他們橫加指責或發洩不滿，這對他們是不公平的。

最後我想提醒大家，這個委員會龐大，議題極富爭議，開會時好多人都想發表意見。為著令大家都有機會講話，請各位發言時要精簡，不要提與該題目無關的事宜(請看議事規則第 41 條第(1)和第 43 條)，不要冗贅煩厭地重提本身或其他議員的論點，希望會議能夠按計劃進行。