

立法會
Legislative Council

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(These minutes have been seen
by the Administration)

**Subcommittee to Study the Administration's Proposals
for the Methods for Selecting the Chief Executive in 2007
and for Forming the Legislative Council in 2008**

**Minutes of the sixth meeting
held on Saturday, 19 November 2005 at 9:00 am
in the Chamber of the Legislative Council Building**

Members present :

- Hon TAM Yiu-chung, GBS, JP (Chairman)
- Hon Howard YOUNG, SBS, JP (Deputy Chairman)
- Hon Albert HO Chun-yan
- Hon Martin LEE Chu-ming, SC, JP
- Dr Hon LUI Ming-wah, SBS, 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, SBS, JP
- Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
- Dr Hon Philip WONG Yu-hong, GBS
- Hon Jasper TSANG Yok-sing, GBS, JP
- Dr Hon YEUNG Sum
- Hon Miriam LAU Kin-ye, GBS, JP
- Hon Emily LAU Wai-hing, JP
- Hon CHOY So-yuk, JP
- Hon Andrew CHENG Kar-foo
- Hon Abraham SHEK Lai-him, JP
- Hon LI Fung-ying, BBS, JP
- Hon Tommy CHEUNG Yu-yan, JP
- Hon Audrey EU Yuet-mee, SC, JP
- Hon LEE Wing-tat
- Hon LI Kwok-ying, MH
- Hon Daniel LAM Wai-keung, BBS, JP
- Hon Alan LEONG Kah-kit, SC
- Hon CHEUNG Hok-ming, SBS, JP

Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Patrick LAU Sau-shing, SBS, JP
Hon KWONG Chi-kin
Hon TAM Heung-man

**Members
absent** : Hon James TIEN Pei-chun, GBS, JP
Ir Dr Hon Raymond HO Chung-tai, S.B.St.J., JP
Hon LEE Cheuk-yan
Dr Hon David LI Kwok-po, GBS, JP
Hon Fred LI Wah-ming, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai, JP
Hon WONG Yung-kan, JP
Hon LAU Kong-wah, JP
Hon LAU Wong-fat, GBM, GBS, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon Frederick FUNG Kin-kee, JP
Hon Vincent FANG Kang, JP
Hon WONG Kwok-hing, MH
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon MA Lik, GBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung
Dr Hon Fernando CHEUNG Chiu-hung

**Public Officers
attending** : Mr Stephen LAM
Secretary for Constitutional Affairs

Ms Elsie LEUNG
Member, Constitutional Development Task Force

Mr Joseph LAI
Deputy Secretary (Constitutional Affairs)

Mr Raymond TAM
Principal Assistant Secretary for Constitutional Affairs

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

Staff in attendance : Mr Jimmy MA
Legal Adviser

Mr Arthur CHEUNG
Senior Assistant Legal Adviser 2

Mrs Eleanor CHOW
Senior Council Secretary (2)4

Ms Fanny LO
Legislative Assistant (2)3

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I. Matters arising

(LC Paper No. CB(2)434/05-06(01) – Administration's response to the issues raised by members at the meeting on 15 November 2005)

At the invitation of the Chairman, Secretary for Constitutional Affairs (SCA) briefed members on the paper provided by the Administration in response to the following questions raised by members at the meeting on 15 November 2005 –

- (a) what would be the methods for selecting the Chief Executive (CE) and for forming the Legislative Council (LegCo) (the “two methods”) in 2012 and thereafter if no consensus could be reached on the “two methods” then; and
- (b) whether the “remainder of the term” arrangement proposed in the draft motion in Annex B to the Fifth Report would only apply to the third term CE elected in 2007 and not to CEs of subsequent terms.

The “two methods” after 2007/08

2. On the methods for selecting CE and for forming LegCo after 2007/08, members noted from paragraph 5 of the Administration’s paper that if the current package of proposals for the 2007/08 elections was not endorsed, in accordance with clause 4 of the Interpretation made by the Standing Committee of the National People’s Congress (NPCSC) in April 2004, the provisions in Annexes I and II to the Basic Law (BL) regarding the “two methods” would still be applicable, until further amendment was made. On the other hand, if the current package was endorsed, and before the ultimate aim of universal suffrage was attained, CE would, before each CE election and LegCo election, submit a report to the Central Authorities on whether there was a need to make amendment to the “two methods”, and the relevant decision to be made by NPCSC in response to the report would address the question of the

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relevant provision to be followed in the “two methods” in the event that there was no consensus. The “two methods” would not go backwards.

3. Ms Margaret NG said that if Members endorsed the package of proposals, it would mean that they also endorsed the relevant procedure, i.e. for CE to make a report to the Central Authorities before each CE election and LegCo election, and for NPCSC to make a decision on the “two methods”. Some members, including Dr YEUNG Sum, Mr LEE Wing-tat and Mr TONG Ka-wah, questioned whether the procedure implied that the Central Authorities could make amendment to the “two methods” unilaterally.

4. SCA explained that the procedure was in accordance with clause 3 of the NPCSC Interpretation in April 2004, which provided that CE would make a report to NPCSC regarding whether there was a need to make an amendment to the “two methods”, and NPCSC would, in accordance with the provisions of Articles 45 and 68 of BL (BL 45 and 68), make a determination in the light of the actual situation in Hong Kong and in accordance with the principle of gradual and orderly progress. He stressed that it was clear that any proposed amendments to the “two methods” would require the tripartite consensus of the Central Authorities, CE and LegCo as stipulated in Annexes I and II to BL.

5. In response to Dr YEUNG Sum on the meaning of the phrase “the ‘two methods’ will not go backwards”, SCA explained that even if there was no consensus on making any amendments to the “two methods” in 2012 and thereafter, in accordance with the BL principle of gradual and orderly progress, the “two methods” could not go backwards. In other words, the prevailing provisions on the two elections would be followed. He agreed to provide a written response to clarify this point.

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(Post-meeting note : The written response of the Administration was issued to members vide LC Paper No. CB(2)463/05-06(01) on 22 November 2005.)

6. Ms Margaret NG, however, pointed out that the two draft motions in Annexes B and C to the Fifth Report were worded in such a manner that they would only apply to the “two methods” in 2007/08, and not to those beyond 2007/08. Hence, the “two methods” for 2007/08, if endorsed, were not applicable to the terms in 2012 and thereafter. She asked why the two motions were so worded. SCA responded that limiting the scope of the two draft motions to the “two methods” in 2007/08 was consistent with the relevant provisions of the NPCSC Interpretation and Decision in April 2004.

7. Ms Margaret NG expressed disagreement. She was of the view that while the NPCSC Decision stipulated that amendments could be made to the “two methods” in 2007/08, it did not preclude amendments to be made to the terms subsequent to 2007/08. She asked whether the Central Authorities had been consulted on the Administration’s understanding. Ms Elsie LEUNG, a member of the Constitutional

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Development Task Force, advised that the Administration had consulted the Legislative Affairs Commission of NPCSC on the matter. Ms NG requested the Administration to advise in writing when such consultation took place and the response of the Legislative Affairs Commission.

(Post-meeting note : The written response of the Administration was issued to members vide LC Paper No. CB(2)510/05-06(01) on 26 November 2005.)

The mechanism for amending the “two methods”

8. Mr CHEUNG Man-kwong pointed out that under the current arrangement for amending the “two methods”, LegCo had neither the power to move motions to propose amendments to the “two methods” nor the power to amend the motions put forth by the Administration. Mr CHEUNG considered this to be an affront to LegCo whose Members had public mandate. Mr CHEUNG further commented that the report prepared by CE on whether there was a need to amend the “two methods” should be endorsed by LegCo before submission to NPCSC.

9. Mr CHEUNG was also dissatisfied that LegCo had not been consulted on the content of the package of proposals in the Fifth Report before its publication, although the Administration was well aware that it needed to get the support of a two-thirds majority of LegCo Members on the proposals. Mr LEE Wing-tat shared Mr CHEUNG’s view, adding that the Administration, as the proponent of the current proposals, should shoulder all the responsibilities if they were negated by LegCo.

10. SCA responded that CE would take into account public views and aspirations on constitutional development when preparing the report for submission to NPCSC. The report was only concerned with whether there was a need to amend the “two methods” and did not contain any proposal on how to amend them. The endorsement of LegCo would be required when concrete proposals were put forth by the Administration. SCA added that while the current package was proposed by the Administration, LegCo had the power to vote on it. Both the Administration and LegCo therefore had a responsibility.

11. On the comment that LegCo had not been consulted on the package of proposals before its publication, SCA said that the proposals, which provided the maximum degree of democratic elements within the framework laid down by BL and the NPCSC Decision in April 2004, were the outcome of wide consultation and discussion both within and outside LegCo. He added that discussion on the proposals was being held with LegCo through the meetings of this Subcommittee. He noted that only about two months was allowed for such discussion. He explained that this tight timeframe was due to time having been taken to conduct the CE by-election earlier in the year.

12. Mr Albert HO said that under the existing mechanism for amending the “two methods”, democratic development would be brought to a halt if the three parties

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could not resolve their differences. If democratic development remained stagnant and the rising aspirations of Hong Kong people to take part in politics were not satisfied, there would be increasing social discord which might culminate in a revolution. He asked whether the Administration would consider resolving the current impasse by holding a referendum to ascertain public views on the package of proposals.

13. SCA responded that if LegCo endorsed the current package, the impasse would be resolved and democratic development in Hong Kong would be taken forward. He added that the proposed 10 new LegCo seats would also provide more opportunities for Hong Kong people to take part in the political process.

14. Referring to an article by Professor WANG Zhen-min in the November 2005 issue of the Bauhinia Magazine, Mr LEE Wing-tat asked whether the Administration agreed with Professor WANG that the ultimate power to amend the “two methods” rested with NPCSC. As it was stated in the article that the power of CE and LegCo to make amendments to the “two methods” provided under Annexes I and II to BL was in fact delegated by NPCSC, Mr James TO asked whether, from the legal point of view, NPCSC could revoke the power delegated to CE and LegCo and directly make amendments to the “two methods”.

15. SCA said that he had not read Professor WANG’s article and in any case, he did not consider it appropriate for him to comment on it. He assured Mr James TO that any amendment to the “two methods” would be made in accordance with Annexes I and II to BL and the Interpretation and Decision adopted by NPCSC in April 2004, and that both the Hong Kong Government and LegCo had their respective roles to play in the process.

Electorate base of the Election Committee and functional constituencies

16. Mr TONG Ka-wah said that the Administration could enhance the democratic representation in the two elections by way of local legislation, e.g. by expanding the electorate base of the Election Committee (EC), reorganizing the EC subsectors, and expanding the electorate base of the functional constituencies (FCs) by replacing corporate voting with individual voting. Implementing these proposals did not involve amendments to BL. Mr TONG and Ms Margaret NG asked whether the Administration was committed to amending local legislation to take forward Hong Kong’s democratic development, irrespective of the result of LegCo’s voting on the proposed package in December.

17. SCA advised that the Administration reckoned that the current proposals on expanding the role of District Council (DC) members in the “two methods” provided the maximum degree of enhancement of democratic representation which was achievable at the present stage. If the package of proposals was endorsed by LegCo, amendments would have to be made to the relevant local legislation, such as the Chief Executive Election Ordinance and the Legislative Council Ordinance, so as to give

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effect to the proposals. The Administration was prepared to discuss with LegCo issues that had to be dealt with in local legislation in respect of the two elections in 2007/08, such as the electoral method to be adopted in the DC FC and the number of members to be allocated to the EC subsectors, etc. Apart from these, the Administration did not have other proposals to expand the electorate base of EC and FCs at this stage.

18. Ms Emily LAU said that the crux of enhancing democratic representation was to expand the electorate base of EC and FCs. She considered that it would be a significant step forward to increase the electorate of EC from the current 160,000 to around 1.6 million, which was about 50% of the total number of registered voters. She found the Administration's proposal to increase the number of EC members by merely 800 to be unacceptable. Ms LAU further pointed out that when the Second Report of the Constitutional Development Task Force was released, the Administration had indicated that consideration could be given to replacing corporate voting of FCs with individual voting. She considered it unacceptable that the Administration had now changed its stance on the matter. As for the Administration's proposal to increase the number of FC seats from 30 to 35, Ms LAU was of the view that such arrangement would make it even more difficult for the FC system to be abolished in future.

19. In response, SCA reiterated that the proposed package provided the maximum possible degree of democratic elements. The key feature of the proposed package was to increase the democratic representation of the two elections by enhancing the participation of DC members in EC and in LegCo. The proposal that all DC members be included in EC would mean that more members of EC would be directly elected by over three million voters in Hong Kong. The proposal not to further increase "traditional" FC seats and to allocate all the five newly-added FC seats to the DC FC would likewise enhance the representativeness of LegCo. As for the composition of FCs, SCA advised that if corporate voting for FCs was replaced by individual voting, and if all employees of FCs were included in the electorate, most of the FCs would become, in practice, "employee constituencies". This would not be consistent with the original intention of setting up FCs.

20. Ms Emily LAU questioned whether the inclusion of appointed DC members into EC would contravene Article 3 of Annex I to BL which stipulated that the delimitation of the various sectors of EC should be prescribed by an electoral law enacted by HKSAR in accordance with the principles of democracy and openness.

21. Ms Elsie LEUNG responded that more than 80% of DC members were returned by direct elections, and they had a public mandate. Moreover, DC members came from different strata of the community and the composition of DCs reflected the spirit of "balanced participation". In the view of the Administration, both appointed and elected DC members were entrusted with the same functions and powers, and it would be unfair to exclude appointed DC members from the proposed electoral methods.

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22. Ms Emily LAU and Mr CHIM Pui-chung pointed out that voters who had voted for the incumbent DC members were not aware that the DC members would be given voting right in the CE election and to elect among themselves five LegCo Members.

23. SCA advised that the next DC election would be held at the end of 2007, before the 2008 LegCo election. As for the CE election, under the existing arrangement, DC members already had a role to play in the election as 42 EC members were currently returned through election by DC members from among themselves.

Timetable for universal suffrage

24. Mr Martin LEE said that LegCo should be the forum for discussing issues pertaining to the implementation of universal suffrage, and it was disrespect to LegCo that these issues were discussed instead by the Commission on Strategic Development (CSD), whose members were appointed by CE and did not have public mandate. Dr YEUNG Sum expressed doubt whether any consensus on timetable for universal suffrage could ever be reached through discussions in CSD. Mr Martin LEE urged the Administration to work out a timetable for universal suffrage as soon as possible.

25. SCA responded that issues concerning constitutional development in Hong Kong could of course be discussed in LegCo. However, LegCo was currently focusing on the work relating to the electoral arrangements in 2007/08. In the meantime, the Administration had tasked the CSD to initiate discussion on issues such as the models and the road map for implementing universal suffrage. As members of CSD were drawn from a wide cross section of the community, a broad consensus on the implementation of universal suffrage would gradually emerge through discussions of CSD. He stressed that CSD was a forum for discussion. Any proposal to amend the two electoral systems to be put forth by the Administration would have to be discussed and voted on in LegCo. As for the request for a timetable for universal suffrage, SCA advised that the Administration was not in a position to formulate such a timetable at this stage as it was outside the scope of the NPCSC Decision in April 2004 and there was no consensus in the community on the issue. He urged members to support the current package which would bring progress to Hong Kong's democratic development.

26. Ms Emily LAU pointed out that all major political parties in LegCo had reached a consensus on the implementation of universal suffrage in 2007/08 not long ago. If the Administration had then made a proposal to introduce universal suffrage in 2007/08, it would have secured the two-thirds majority support of all LegCo Members. Dr YEUNG Sum added that support for universal suffrage in 2007/08 was then part of the platform of some political parties during their election campaign. However some Members who used to support universal suffrage in 2007/08 had changed their position due to pressure from the Central Authorities. Dr YEUNG added that conditions in Hong Kong were ripe for introducing universal suffrage and Hong Kong people should not be asked to wait indefinitely for its implementation.

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27. Mr Abraham SHEK enquired about the occasion on which the majority of LegCo Members had indicated their support for universal suffrage in 2007/08. The Chairman clarified that the matter had not actually been put to a vote in LegCo. Mrs Sophie LEUNG told the meeting that when the Liberal Party decided to amend its platform in respect of universal suffrage in 2007/08, it had done so openly through a press briefing. Mr CHAN Kam-lam said, on behalf of the Democratic Alliance for Betterment of Hong Kong and Progress of Hong Kong (DAB), that support for universal suffrage was indeed part of the platform of DAB before the handover. However, over the past decade, DAB observed that there were still controversies within the community on the timetable for universal suffrage, and therefore considered that 2007/08 was not an appropriate time for implementation of universal suffrage. Mr CHAN added that to preset a timetable for universal suffrage was meaningless as its implementation would ultimately depend on the actual situation of the society. Hence, he was of the view that it was necessary first to create the favourable conditions required for introducing universal suffrage. Mr Abraham SHEK expressed agreement with Mr CHAN.

Remainder term

28. Referring to paragraph 6 of the Administration's paper on the term of office of a new CE elected in a by-election, Mr Martin LEE pointed out that it was clear that under BL 46, a CE might serve for either a term of five years or two terms of 10 years. However, the NPCSC Interpretation in April 2005 had introduced the "remainder term" arrangement whereby a new CE elected in a by-election should serve the remainder term of the preceding CE and might only serve for one further term after the expiry of the remainder term. Mr LEE considered that whether the remainder term was counted as "a term" should be determined by the length of the remainder term. In his view, a remainder term should only be counted as "a term" if it lasted for 2.5 years or more.

29. SCA responded that the legislative intent of BL 46 was that a CE might only serve for not more than two consecutive terms and might not serve for more than 10 years. The view of the Administration was, therefore, that a new CE elected under a BL 53(2) situation might only serve for one further term after the expiry of the remainder term, and the remainder term was counted as "a term".

II. Date of next meeting

30. The Chairman informed members that the next meeting would be held on 22 November 2005 at 8:30 am.

31. The meeting ended at 12:32 pm.