

立法會
Legislative Council

LC Paper No. CB(2)597/05-06
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by the Administration)

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Panel on Constitutional Affairs

**Minutes of special meeting
held on Friday, 21 October 2005 at 4:30 pm
in the Chamber of the Legislative Council Building**

Members present :

- Dr Hon LUI Ming-wah, SBS, 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
- Hon Margaret NG
- Hon Mrs Selina CHOW LIANG Shuk-ye, GBS, JP
- Hon CHEUNG Man-kwong
- Hon Bernard CHAN, JP
- Hon CHAN Kam-lam, SBS, JP
- Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP
- Hon LEUNG Yiu-chung
- 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, GBM, GBS, JP
- Hon Miriam LAU Kin-ye, GBS, JP
- Hon Emily LAU Wai-hing, JP
- Hon CHOY So-yuk, JP
- Hon Timothy FOK Tsun-ting, GBS, JP
- Hon TAM Yiu-chung, GBS, JP
- Hon Abraham SHEK Lai-him, JP
- Hon LI Fung-ying, BBS, JP
- Hon Audrey EU Yuet-mee, SC, JP
- Hon LEE Wing-tat
- Hon Daniel LAM Wai-keung, BBS, JP

Hon MA Lik, GBS, 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 KWONG Chi-kin
Hon TAM Heung-man

Members attending : Hon James TO Kun-sun
Hon SIN Chung-kai, JP

Members absent : Dr Hon David LI Kwok-po, GBS, JP
Hon LAU Chin-shek, JP

Public Officers attending : Item I

Mr Rafael HUI Si-yan
Chief Secretary for Administration

Ms Elsie LEUNG Oi-sie
Member of the Constitutional Development Task Force

Mr Stephen LAM Sui-lung
Secretary for Constitutional Affairs

Mr Clement MAK Ching-hung
Permanent Secretary for Constitutional Affairs

Mr Raymond TAM Chi-yuen
Principal Assistant Secretary for Constitutional Affairs

Ms Joyce HO
Principle 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

Ms Fanny LO
Legislative Assistant (2)3

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I. Constitutional development after 2007 – Briefing by the Constitutional Development Task Force on the Fifth Report of the Task Force

(The Fifth Report of the Constitutional Development Task Force : Package of Proposals for the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008

Appendices I – IV to the Fifth Report of the Constitutional Development Task Force and a pamphlet on "Highlights" of the Report

Statement by the Chief Secretary for Administration on the Fifth Report of the Constitutional Development Task Force at the Council meeting on 19 October 2005

LC Paper No. CB(2)115/05-06(01) – Transcripts of the press conference held by the Constitutional Development Task Force on the Fifth Report on 19 October 2005

LC Paper No. CB(2)115/05-06(02) – Transcript of the media session held by the Chief Executive on the Fifth Report on 19 October 2005

LC Paper No. CB(2)115/05-06(03) – Background brief prepared by LegCo Secretariat on "Constitutional development after 2007"

LC Paper No. CB(2)119/05-06(01) – Paper provided by the Administration on "The Fifth Report of the Constitutional Development Task Force : Package of Proposals for the Methods for Selecting the Chief Executive in 2007 and for Forming the Legislative Council in 2008")

Members noted that the Fifth Report of the Constitutional Development Task Force (the Task Force), which put forth a package of proposals on the methods for selecting the Chief Executive (CE) and for forming the Legislative Council (LegCo) (the “two methods”) in 2007 and 2008 respectively, was

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released on 19 October 2005. Chief Secretary for Administration (CS) had also made a statement on the Fifth Report at the Council meeting held on that day.

Issues raised by members

Consultation and opinion poll

2. Mr LEUNG Yiu-chung and Mr Albert HO asked about the criteria adopted in formulating the package of proposals. They pointed out that there were views received during consultation that universal suffrage should be introduced for the two elections. The Task Force, however, had not addressed this issue in the Fifth Report.

3. CS responded that since its establishment in January 2004, the Task Force had been gathering views from different sectors of the community openly and widely through various channels. The Third Report had set out the areas which might be considered for amendments in respect of the “two methods”, and the Fourth Report summarised the views and proposals put forth by members of the community on the possible amendments to be made to the “two methods”. The proposed package in the Fifth Report was a product of wide and open public consultation conducted in stages. The proposed package had taken into account the major public views on the need to broaden the electorate base and enhance democratic representation in the two elections.

4. Secretary for Constitutional Affairs (SCA) supplemented that the Task Force had published four reports and carried out wide public consultation in stages. Over the past 18 months or so, the Task Force had received over 2 200 submissions from the public. During the consultation period of the Fourth Report, the Task Force commissioned the Home Affairs Department to organise a number of open forums and regional forums to facilitate discussion by different sectors of the community on the issues set out in the Fourth Report. Over 730 individual participated in these forums. Representatives of the Constitutional Affairs Bureau (CAB) also attended three public hearing sessions of the LegCo Panel on Constitutional Affairs as well as meetings of all the 18 District Councils (DCs). SCA further said that following each round of public consultation, the Task Force had published, in the appendices to its reports, written submissions received, including those expressing support for universal suffrage. The appendices were also uploaded onto the Constitutional Development website. The work of the Task Force was highly transparent.

5. CS said that the Standing Committee of the National People’s Congress (NPCSC) had decided that the elections in 2007 and 2008 should not be by means of universal suffrage. The proposals put forth in the Fifth Report did not, therefore, pursue this option. In his view, the package of proposals had struck the right balance amidst the various views submitted by different sectors of the community and had responded to the aspirations of the community on

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constitutional development. CS said that after the publication of the Fourth Report, Members had requested the Administration to conduct an opinion poll to assess public views on the issue. The Task Force had subsequently commissioned, through the Central Policy Unit, an independent polling agency to conduct the poll. The objective of the poll was to ascertain the level of public support for and acceptance of the major elements of the package of proposals to be put forward by the Task Force. The poll results suggested that generally the proposed package was accepted by the majority of the public.

6. Mr LEE Cheuk-yan said that the Task Force attempted to manipulate public opinion in the poll as many of the questions were posed as leading questions. He asked whether the Administration would assess public support by conducting a poll on the specific proposals put forth in the Fifth Report. CS responded that he would observe closely the public response to the proposals.

7. Ms Margaret NG pointed out that respondents were only asked to consider one proposal, i.e. the Administration's proposals, in the poll. She said that the acceptance level would have been different if they were given more choices. She requested the Administration to advise on the parties responsible for the design of the questionnaire for the poll and the auditing work of the results of the poll.

8. Some members, including Mr CHEUNG Man-kwong, Mr LEUNG Yiu-chung and Mr LEE Cheun-yan, pointed out that if the Administration considered that its proposals were acceptable to the community at large, there was no need for CS to "beg for votes". They pointed out that it was the people of Hong Kong who needed to beg for democracy from Beijing.

9. CS explained that he believed the proposals were generally supported by the public because the proposals had due regard to the interests of different sectors of the community. Nevertheless, it remained the fact that the proposals required the endorsement of a two-thirds majority of LegCo Members. The statement about "begging for votes" was made because the Government indeed might not be able to secure enough votes from Members for its proposals to be passed by the Council.

10. Ms Margaret NG and Mr TONG Ka-wah asked whether the Administration would conduct public consultation on the specific proposals put forth in the Fifth Report. CS said that Members had just agreed that a subcommittee should be formed under the House Committee to study the proposed package. The Subcommittee would provide a forum for discussion between the Administration, Members and the public. SCA supplemented that the Administration was prepared to listen to Members' views regarding other arrangements such as the allocation of seats among subsectors of the Election Committee and the delineation of geographical constituencies (GC), although these issues would only be dealt with in the context of local legislation at a later stage.

Proposals to broaden the representativeness of the “two methods”

11. Some members, including Dr YEUNG Sum, Mr CHEUNG Man-kwong and Mr Albert HO, questioned the basis for introducing the package of proposals to amend the “two methods”. Under the proposed package, the number of members of the Election Committee would be increased to 1 600, of whom 529 were DC members. As regards the composition of LegCo, the five additional functional constituency (FC) seats would be returned through election by DC members. CS said that the proposals had taken account of the views of Members that broadening the electoral base was more important than increasing the membership of the Election Committee and the number of LegCo seats. The proposed package had broadened the electoral base of some FCs to three million voters in Hong Kong.

12. Dr YEUNG Sum said that he could not support the proposals because 102 out of the 529 DC members were appointed by CE. He expressed concern about “planting votes” in the Election Committee as DC members appointed by CE would likely vote for him if he sought re-election in a subsequent term. He considered that any appointment system was immoral and unfair, and the proposals could not promote democracy. Dr YEUNG Sum and Dr KWOK Ka-ki pointed out that their idea of broadening the electoral base of the two elections was by means of universal suffrage.

13. CS responded that as incumbent DC members appointed in 2003 had no idea that their role would be enhanced in the CE election in 2007, there was no question about “planting votes” by the incumbent CE even if he sought re-election. In fact, DC members who were members of the Election Committee had already exercised their voting right in the CE election in 2005. CS further pointed out that as the roles and functions of both appointed and elected DC members were the same, it would be unfair to deprive the right of appointed DC members to vote in the two elections in 2007 and 2008 under the proposed package. CS reiterated that universal suffrage for the two elections in 2007 and 2008 had been ruled out by NPCSC. Although the Administration’s proposals would not achieve the ultimate aim of universal suffrage immediately, it was a substantive and significant step towards that goal. He said that the Administration was serious and sincere in taking forward constitutional development.

14. Mr James TIEN and Mrs Selina CHOW said that Members belonging to the Liberal Party initially had reservation about the proposal to allocate the five newly added FC seats to DC members. However, having studied the proposal, they came to the view that the proposal adhered to the principles of “balanced participation”, “gradual and orderly progress”, and in the light of “actual situation in Hong Kong”, and was better than establishing five traditional FCs. The Liberal Party had therefore accepted the proposal. It realised that if the

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proposals for the “two methods” were not passed, there would be no progress on the constitutional development in Hong Kong. The Liberal Party hoped that universal suffrage would be implemented for the CE election in 2012. Mr TIEN asked whether the number of appointed members in the 2007 DC elections would remain at 102. CS replied that appointed membership would be retained in the 2007 DC elections, but he was not in a position to elaborate further on the issue.

15. In response to members’ question about CE’s remark that the proposed package was not easy to come by, CS explained that the Administration had taken into account many factors, including the interests of different sectors of the community, views of Members, the framework laid down in the Basic Law and the NPCSC Decision, etc., before it could come up with a pragmatic proposal that would have the chance of gaining the support of a two-thirds majority of LegCo Members and the acceptance of the Central Authorities. It was indeed a trying task for the Administration.

Timetable for universal suffrage

16. Some members, including Mr LEE Wing-tat, Ms Emily LAU, Mr CHEUNG Man-kwong, Mr Albert HO, Dr Fernando CHEUNG and Dr KWOK Ka-ki, expressed concern that the Fifth Report did not provide a timetable for attaining universal suffrage. They pointed out that without a target date, different sectors in the community would not be able to make the necessary preparation, e.g. encourage political talents to participate more actively in political and public affairs. They said that the Administration had the responsibility to reflect to the Central Authorities the need for a timetable for universal suffrage, despite the fact that NPCSC had ruled out universal suffrage in 2007 and 2008. Dr Fernando CHEUNG asked whether the Administration had done its best to convince the Central Authorities and whether it was the view of the Administration that the people of Hong Kong was not mature enough to exercise “one person one vote” in an election.

17. CS said that Hong Kong people were of high calibre as demonstrated in their handling of various matters. The quality of people and the implementation of universal suffrage, however, were two different issues. The Administration had done its best to reflect the aspiration of the public for universal suffrage to the Central Authorities. However, there were still different views within the community on the timetable for attaining universal suffrage. There were views that universal suffrage for both CE and LegCo elections should be introduced in 2012. There were also views that it should be introduced in 2017 or even later. On the other hand, there were still voices in the community calling for the Central Authorities to reconsider introducing universal suffrage in 2007 and 2008. There were also views that there was no need to set any timetable. It was clear that views on the issue remained diverse in the community and that it would be quite difficult to reach a consensus in the near future.

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18. CS further said that it was necessary to create favourable conditions and provide the necessary supporting measures in order to attain universal suffrage. These conditions and supporting measures included, among others, the availability of a pool of political talents, provision of avenues for those who were capable of and committed to participating in the political and public affairs, etc. Only when the conditions were ripe and the supporting measures ready, and the community had reached a high degree of consensus on the pace of introducing universal suffrage, would a timetable for introducing universal suffrage be meaningful.

19. CS said that as he had explained at a press conference, the conditions were like pieces of a jigsaw puzzle which, if put together within a reasonable period of time, would form a picture indicating how the political system in Hong Kong was going to evolve and where it was heading. This would include how the legislature would be constituted. The legislature should be constituted in accordance with, among other considerations, the principles of balanced participation and “looking after the interests of different strata of the community”. CS further said that the Basic Law provided that the ultimate aim for constitutional development was universal suffrage. The Administration would continue to move forward in this direction step by step. It would set up a panel on political development under the Commission on Strategic Development to examine the roadmap to attain universal suffrage. At this stage, the proposed package was a major step forward towards this goal.

20. Some members, including Mr LEE Wing-tat, Mr Albert HO and Mr TONG Ka-wah, held the view that the Government’s proposal to discuss the roadmap to universal suffrage at the Commission on Strategic Development was a delaying tactic. The so-called “pieces of jigsaw puzzle” and “conditions were not ripe” were excuses of the Administration not to set a timetable for universal suffrage. Mr LEE Wing-tat pointed out that the fact that the eight new Members of the Executive Council were not members of political parties indicated that the Administration did not have any intention to take forward constitutional development. Mr Martin LEE said that if universal suffrage was implemented in Hong Kong in 2012, it would be 22 years after the promulgation of the Basic Law which provided for the ultimate aim of universal suffrage. He asked the Administration to provide a written response on what countries or places, with a commitment to implement universal suffrage, had taken such a long time to achieve the goal.

21. Mr Martin LEE asked whether setting a timetable for universal suffrage by the Government of Hong Kong Special Administrative Region (HKSAR) at this juncture would contravene the Interpretation and Decision of NPCSC made on 6 and 24 April 2004 respectively. Ms Emily LAU pointed out that Annexes I and II to the Basic Law provided a mechanism for introducing changes to the “two methods” after 2007, and that the Government of HKSAR had the duty to

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fight for universal suffrage for the interests of the community.

22. Ms Elsie LEUNG, Member of the Task Force, said that the NPCSC Interpretation and Decision were related to the “two methods” for 2007 and 2008. The Interpretation made on 6 April 2004 required CE to make a report to NPCSC if there was a need to make an amendment to Annexes I and II to the Basic Law. Following the CE’s report made to NPCSC on 15 April 2004, NPCSC promulgated its Decision on 26 April 2004 that the “two methods” in 2007 and 2008 should not be by means of universal suffrage. SCA supplemented that it was beyond CE’s power to come up with a timetable for universal suffrage because the NPCSC Decision only allowed for changes to the “two methods” in 2007 and 2008. The Central Authorities had not authorised CE to handle constitutional reform after 2008. In addition, a timetable for introducing universal suffrage could not be decided by the Government of HKSAR unilaterally. Even though LegCo could discuss the timetable or roadmap, but under the present circumstances it would have no legislative effect under the Basic Law.

23. Mr TAM Yiu-chung asked why the Administration had referred to in paragraph 5.31 of the Fifth Report the suggestion of setting up a “bicameral system” in the legislature, given that the framework laid down in the Basic Law did not provide much room for development in that direction. CS explained that this was one of the suggestions received during consultation. At this stage, the Administration did not have any view on this issue. The “bicameral system” was quoted as an example of possible systems of legislature after the introduction of universal suffrage. This would be one of the areas to be explored by the Commission on Strategic Development.

Amendment to the proposals for the “two methods”

24. Mr TONG Ka-wah and Mr CHEUNG Man-kwong expressed concern about CS’s remark that there was no room for amendment to the main elements of the proposals. They said that they could not support the proposals which did not set a timetable for introducing universal suffrage, and which provided for the participation of appointed DC members in selecting CE in 2007 and electing among themselves six LegCo Members in 2008. They asked whether the Administration would not budge no matter how strong the public opposition was.

25. CS explained that his remark was made two days ago when the Fifth Report was released. Given that the proposals put forth were grounded on public views, had struck the right balance amidst the various views submitted by different sectors of the community, and had responded to the aspirations of the community on constitutional development, he did not see the need for any amendment to the main elements of the proposals at this stage.

Legislative timetable and legal issues

26. Ms Margaret NG and Dr Fernando CHEUNG asked about the legislative timetable for implementing the package of proposals and the time available for Members to consider the motions after they were formally presented to LegCo.

27. CS explained that the Administration's plan was to formally present to LegCo the motions on the amendments to Annexes I and II and to strive to obtain LegCo's endorsement not later than December 2005. After the relevant proposals had received the endorsement of LegCo and the consent of CE, and after they had been reported to NPCSC for approval or for record, the Chief Executive Election (Amendment) Bill would be introduced into LegCo in January 2006 to prescribe, under local legislation, the detailed arrangements regarding the method for selecting CE. The Administration would strive to have the Bill passed by LegCo by early May 2006 at the latest, so that relevant subsidiary legislation could be amended thereafter, and for the relevant work to be completed by mid-July 2006.

28. Ms Audrey EU raised the following issues –

- (a) regarding the statement that “ the Amendments appended to the motions are the bills referred to in the Interpretation of the NPCSC on 6 April 2004” (paragraph 7.02 of the Fifth Report refers), to explain the use of motions rather than a bill to effect the amendments to Annexes I and II to the Basic Law;
- (b) to clarify CS's remark that there was no room for amendment to the main elements of the proposals, and advise whether the proposal that candidates for the office of CE would be nominated jointly by not less than 200 members of the Election Committee could be amended;
- (c) to explain why the provision to provide for the term of office of a CE elected in the situation under Article 53(2) of the Basic Law was proposed to be dealt with by way of amendment to Annex I to the Basic Law (draft motion at Annex B to the Fifth report refers); and
- (d) having regard to the remark made by the Secretary for Justice at the press conference on 19 October 2005, to clarify whether the two draft motions in Annexes B and C to the Fifth Report would be presented to LegCo as two separate motions or one motion, and in the case of the former, whether separate votes were proposed to be taken on the two motions.

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29. On paragraph 28(a) above, Ms Elsie LEUNG responded with the following –

- (a) According to clause 3 of the NPCSC Interpretation on 6 April 2004, bills(法案) on the amendments to the “two methods” should be introduced by the Government of HKSAR into LegCo. However, in Chinese law, “motion (議案)” included “bill (法案)” and the two terms were interchangeable; and
- (b) There were two stages regarding the procedures for amending the provisions of Annex I and Annex II to the Basic Law. The first stage (i.e. endorsement of a two-thirds majority of all the LegCo Members and the consent of CE) would take place in Hong Kong. The second stage (i.e. NPCSC approving or acceptance for the record the amendments proposed by Hong Kong) would take place in the Mainland. The amendments did not yet have legal effect when they were passed by a two-thirds majority of LegCo Members and had received the consent of CE. They would be given legislative effect only after approval or acceptance for the record had been given or made by NPCSC. It was, therefore, inappropriate for them to be introduced into LegCo or promulgated by way of local bills, because the purpose of a local bill was to codify or change the legal position in local legislation. As a corollary, the normal LegCo process for scrutiny of local bills was not applicable to any proposed amendments to the two Annexes, since they were not local legislation. It was appropriate for them to be introduced into, and to be endorsed by, LegCo by way of motions.

30. Ms Audrey EU requested the Administration to provide a written response to the issues raised.

(Post-meeting note : The Administration’s response to the issues raised in paragraphs 7, 20 and 28 above was issued to members vide LC Paper No. CB(2)283/05-06(01) on 3 November 2005.)

Other issues

31. Mr MALik asked about the procedure for the continuation of the election proceedings in the situation where there was only one validly nominated candidate for the CE election. CS explained that the Task Force had proposed that the election proceedings for an uncontested election should be similar to those in a contested election. As to whether the candidate should obtain the support of the majority of the Election Committee members, it was a matter for further discussion.

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32. Ms Emily LAU pointed out that the Administration would have difficulty in implementing policies which were not supported by political parties. To this end, she questioned why the statutory requirement that CE should not have political affiliation was not removed. She also questioned why corporate voting was not replaced by individual voting under the proposed package.

33. CS responded that the Task Force was of the view that, 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. In the longer term, FCs would be abolished in order to achieve the ultimate aim of universal suffrage.

34. The meeting ended at 6:12 pm.

Council Business Division 2
Legislative Council Secretariat
6 December 2005