

**President's ruling on
motion on "The 4 June incident"
proposed by Hon LEUNG Kwok-hung for debate at the
Legislative Council meeting on 16 May 2007**

Hon LEUNG Kwok-hung has given notice to move the following motion for debate at the meeting of the Legislative Council (LegCo) on 16 May 2007:

(Translation)

"That this Council condemns the prime culprit of the bloody crackdown on the pro-democracy movement in 1989, and demands that the Chinese Communist Government thoroughly investigate the '4 June massacre' to ascertain who should be held responsible, as well as release political prisoners, end one-party dictatorship and return political power to the people."

Advice of Counsel to the Legislature

2. I have sought the advice of the Counsel to the Legislature to assist me in considering the proposed motion.

3. Regarding the first part of the motion, i.e. "that this Council condemns the prime culprit of the bloody crackdown on the pro-democracy movement in 1989", Counsel advises that the key issues for consideration are whether the identity of the "prime culprit" may be discerned from the context of the proposed motion, and if yes, whether such identified body or institution is one which, according to established procedural principles, may or may not be made a subject of condemnation in a proposed motion. Counsel also advises that on an objective reading of "the bloody crackdown on the pro-democracy movement in 1989", it appears reasonable to conclude that the expression is referring to the incident which occurred at Tiananmen Square on 4 June 1989. This incident was referred to in the State Council's Report on the Work of the Government submitted to, and approved by, the National People's Congress (NPC) at its meeting held from 20 March to 5 April 1990 (the Report).

4. Counsel points out that in that Report, various parties were mentioned for their substantial contributions made to "the ending of the unrest and disturbance (平息動亂暴亂)" (terms used in the Report). These parties included the Chinese Liberation Army, the military police and the public security police (中國人民解放軍、武警部隊和公安幹警). The Report also stated that "The facts have proved that the policy decisions and measures adopted by the Chinese Communist Party and the Chinese Government for

ending the unrest and disturbance were correct (事實證明，中國共產黨和中國政府為平息動亂暴亂所採取的決策和措施是正確的).".

5. Counsel considers that from this Report, it is clear that all the parties mentioned above, including the Central People's Government (CPG), did have a role to play in the Tiananmen Square incident. The Member's reference to the "prime culprit", though unspecified in the proposed motion, can be identified clearly by any fair-minded person as to have included the CPG.

6. Counsel has also referred to the principles which I have adopted in my ruling in relation to a Member's proposed amendment to a motion with expressions having the effect of accusing the Standing Committee of the National People's Congress (NPCSC) of having breached the law and abused its power, and condemning the NPCSC for the alleged acts. The principles which I adopted were that:

- (a) freedom of speech in LegCo is not without bounds¹;
- (b) 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, provided that it meets the requirements of the relevant instruments and rules²; and
- (c) it is out of order for LegCo to debate a motion involving accusatory expressions against the character of the NPCSC or the acts of the NPCSC according to law, which would be likely to degrade it in the public estimation³.

7. Counsel points out that the above principles are founded on the constitutional relationship between the two state organs (i.e. the NPC and the NPCSC) and the Hong Kong Special Administrative Region (HKSAR). The same principles may apply to the proposed motion as there is a constitutional relationship between the CPG and the HKSAR in the context of the Constitution of the People's Republic of China (the Constitution) and the Basic Law.

8. My attention has been drawn to Article 85 of the Constitution which provides that "The State Council, that is, the Central People's Government of the People's Republic of China is the executive body of the highest organ of state power, it is the highest organ of state administration.". The CPG's functions and powers are provided in Article 89 of the Constitution. Insofar

¹ See paragraph 22 of the President's ruling dated 30 April 2004 on the amendment proposed by Hon Martin LEE Chu-ming, SC, JP to the motion on "Requesting the Chief Executive to submit a supplementary report to the Standing Committee of the National People's Congress" moved by Hon Frederick FUNG Kin-kee at the Council meeting of 5 May 2004

² See paragraph 23 of the above ruling

³ See paragraph 24 of the above ruling

as it relates to the CPG's relationship with the HKSAR, it is provided in Article 12 of the Basic Law that "The Hong Kong Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government.". There are also articles in the Basic Law which provide for the relationship between the CPG and the HKSAR in specific contexts reflecting that the HKSAR, whilst enjoying a high degree of autonomy, comes directly under the CPG.

9. It is Counsel's view that a proposed motion which contains an expression of condemnation for acts done or decisions made by the CPG should be subject to similar restrictions that apply to motions (or amendments thereto) directed at the NPC or the NPCSC in view of the constitutional relationship between the CPG and the HKSAR as reflected in the Constitution and the Basic Law.

10. On the basis of the above analysis and for reason that the first part of the proposed motion is seeking to condemn a body or an institution including the CPG for its decisions or acts, Counsel advises that the President may consider the first part of the proposed motion out of order and return it to the Member under Rule 30(3)(c) of the Rules of Procedure.

11. Regarding the second part of the proposed motion where it "demands that the Chinese Communist Government end one-party dictatorship and return political power to the people", Counsel's advice is as follows:

- (a) there is no state organ provided in the Constitution which bears the name of "Chinese Communist Government"; and
- (b) assuming that "Chinese Communist Government" means the CPG, the proposed motion, if passed, would signify the making of a demand to the CPG that it should "end one-party dictatorship and return political power to the people". Under the Constitution, the Chinese Communist Party is the only political party which exercises leadership of the country. A demand to "end one-party dictatorship" (an expression used by the Member which indicates that he acknowledges that a one-party system is currently in existence) is tantamount to demanding the CPG to end the system enshrined in the Constitution. This would be an act contrary to paragraph 3 of Article 5 of the Constitution which provides that "All state organs, the armed forces, all political parties and public organizations and all enterprises and institutions must abide by the Constitution and the law. "

12. Counsel advises that as this Council is the legislature of a special administrative region established in accordance with Article 31 of the Constitution, it would not be in order under the Council's Rules of Procedure to debate a motion which, if passed, would signify the making of a demand to the CPG that it should end the one-party system enshrined in the Constitution. Moreover, under Article 62 of the Constitution, the function and power to amend the Constitution and to supervise the enforcement of the Constitution lie exclusively with the NPC.

13. Regarding the demand to "thoroughly investigate the '4 June massacre' to ascertain who should be held responsible", Counsel points out that in all the motions on the same subject debated in the Council in previous years, the term "4 June incident" was used.

14. As regards the other demand made in the second part of the proposed motion that "political prisoners" be released, Counsel advises that in light of the title of the motion and reading the proposed motion in its context, "political prisoners" should be understood to confine to those who are related to the 4 June incident. They are people in respect of whom HKSAR residents are taking an interest. For example, they may be Hong Kong residents or people whose detention has caused concern of such a magnitude in the HKSAR that it has become a public interest issue in the HKSAR.

My opinion

15. The proposed motion bears the title "The 4 June incident". This is a well-known description of the incident which occurred at Tiananmen Square on 4 June 1989. Although there are various other descriptions of the same incident depending on one's standpoint, it is clear to me that where the proposed motion refers to "the bloody crackdown on the pro-democracy movement in 1989", it is referring to that incident.

16. Having made clear that the focus of the proposed motion is on the 4 June incident, the next issue that I need to consider is against whom the condemnation is directed, since the expression "prime culprit" is used by the Member without pointing it specifically to an individual or institution. The State Council's Report on the Work of the Government submitted to the NPC on 20 March 1990 mentioned various parties for their substantial contributions to "the ending of the unrest and disturbance" and stated that the decisions and measures adopted by the Government were correct. I agree to Counsel's analysis, and consider that "prime culprit" as used in the proposed motion can be identified clearly by any fair-minded person as to have included the CPG.

17. Article 12 of the Basic Law provides that "The Hong Kong Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come

directly under the Central People's Government.". Given the constitutional relationship between the CPG and the HKSAR, and LegCo being part of the HKSAR, I take Counsel's advice that it is out of order for LegCo to make accusatory expressions or expressions of condemnation against the CPG. This is the principle that I applied in my previous rulings on accusatory expressions made against another state organ, namely the NPCSC.

18. In view of the above considerations, I cannot allow the wording "that this Council condemns the prime culprit of the bloody crackdown on the pro-democracy movement in 1989" as it is an expression of condemnation against the CPG.

19. As regards the expression used to demand the Government to "end one-party dictatorship and return political power to the people", I am also in agreement with Counsel's analysis.

20. This Council is the legislature of a special administrative region established in accordance with Article 31 of the Constitution. It would not be in order for the Council to debate a motion which, if passed, would signify the making of a demand to the CPG that it should end the one-party system as enshrined in the Constitution, thereby demanding the CPG to act contrary to it as the CPG must abide by the Constitution.

21. As regards the other expressions used in the proposed motion, my views are:

- (a) in line with the principle that I have relied on to rule the first part of the proposed motion out of order, I consider that to identify the 4 June incident as the " '4 June massacre' " is out of order in the context of the proposed motion. It would cause the perception that the Council is making such an accusatory expression against the CPG that it would degrade the CPG in the public estimation. However, I am prepared to accept a replacement, such as "4 June incident", which has been the expression used in this Council to refer to the same incident for some years;
- (b) there is no state organ provided in the Constitution which bears the name of "Chinese Communist Government". If the proposed motion is passed, I would have difficulty in requesting the Government of the HKSAR to follow up the matter. Moreover, given the constitutional relationship between the CPG and the HKSAR, if this Council wishes to make a demand to the CPG, it is only proper that it should be addressed by its official name; and

- (c) I take Counsel's advice that in light of the title of the proposed motion and reading it in its context, "political prisoners" should be understood to confine to those "political prisoners" who are related to the 4 June incident. This should be clearly expressed in the proposed motion.

Ruling

22. 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 Hon LEUNG Kwok-hung. However, I am prepared to waive the required notice for Mr LEUNG to submit for my approval by 12:00 noon on Tuesday, 8 May 2007, a replacement motion with the following terms: "That this Council demands the Central People's Government to thoroughly investigate the 4 June incident to ascertain who should be held responsible and to release the related political prisoners.".

(Mrs Rita FAN)
President
Legislative Council

7 May 2007