立法會
Legislative Council

LC Paper No. CB(2)1652/09-10(02)

Ref. : CB2/HS/2/09

Subcommittee on Package of Proposals for the Methods for Selecting the Chief Executive and for Forming the Legislative Council in 2012

Information paper prepared by Legislative Council Secretariat on the reservation in respect of Article 25(b) of the International Covenant on Civil and Political Rights

This paper provides a historical account of developments on the issue of the reservation made in respect of Article 25(b) of the International Covenant on Civil and Political Rights ("ICCPR").

The reservation in 1976

2. Article 25(b) of ICCPR provides that every citizen shall have the right and the opportunity to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors. When the Government of the United Kingdom extended ICCPR to Hong Kong in 1976, the following reservation was added -

> "The Government of the United Kingdom reserve the right not to apply sub-paragraph (b) of Article 25 in so far as it may require the establishment of an elected Executive or Legislative Council in Hong Kong …".

Enactment of Article 39 of the Basic Law in 1990

3. In 1990, the Basic Law ("BL") was enacted. BL 39 provides that the provisions of ICCPR as applied to Hong Kong shall remain in force and shall be implemented through the laws of Hong Kong.

Enactment of the Hong Kong Bill of Rights Ordinance in 1991

4. In 1991, the Hong Kong Bill of Rights Ordinance (Cap. 383) ("BORO") was enacted. Article 21 of BORO mirrors Article 25 of ICCPR and the reservation made in respect of Article 25(b) is specifically provided for in section 13 of BORO.

The case of Lee Miu Ling v Attorney General in 1995

5. In *Lee Miu Ling v Attorney General* (1995) 5 HKPLR 181, the plaintiffs applied for a declaration that the legislative provisions relating to functional constituencies ("FCs") in elections of members of Legislative Council ("LegCo") infringed BORO. The plaintiffs did not argue that BORO outlawed FCs altogether and accepted through their legal representatives that FCs could live in harmony with the Bill of Rights. Their primary complaint was that some people could vote in a geographical constituency and also in a FC while other people could only have one vote in a geographical constituency and the arrangement was contrary to Article 21(b)[1] (mirroring Article 25(b) of ICCPR), which guarantees equality of rights.

6. In construing the provisions of BORO, Keith J followed the established principles in the decisions of the Court of Appeal in *R v Sin Yau Ming* [1992] 1 HKCLR 127 and the Privy Council in *Attorney-General of Hong Kong v Lee Kwong Kut* [1993] AC 951 that provisions of BORO have to be given a generous and purposive construction and that guidance can be obtained from the decisions of supra-national tribunals such as the United Nations Human Rights Committee. Keith J further observed that the rights which BORO guarantees are subject to such reasonable limits as can be demonstrably justified in a free and democratic society and it is for the Government to justify any legislative provision which is found to infringe the rights guaranteed by BORO.

7. Keith J rejected the application on the basis that Article VII(3)[2] of the Letters Patent, on its proper construction, permitted the enactment of laws which confers on persons of a particular description the right to vote in addition to a geographical constituency vote, and BORO does not fetter the supreme power of the Sovereign. While the judgement does not turn on section 13 of BORO, Keith J made an obiter dictum that section 13 of the BORO[3](which mirrored the reservation made against Article 25(b) of ICCPR) was, to the extent that it related to LegCo, a dead letter, after the Letters Patent were amended to provide for a wholly elected LegCo in 1995.[4]

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[1] Article 21: Every permanent resident shall have the right and the opportunity, without any of the distinctions mentioned in article 1(1) and without reasonable restrictions -
(a) ……
(b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
(c) …….

[2] Article VII(3) provides that "Nothing in this Article shall be construed as precluding the making of laws which, as regards the election of the Members of the Legislative Council, confer on persons generally or persons of a particular description any entitlement to vote which is in addition to a vote in respect of a geographical constituency."

[3] Section 13 of BORO provides that "Article 21 does not require the establishment of an elected Executive or Legislative Council in Hong Kong."

[4] On appeal, this decision was affirmed. The Court of Appeal did not express any opinion on Keith J's view on the reservation in respect of Article 25(b) of ICCPR.

Fourth Report in respect of Hong Kong under ICCPR submitted by the British Government in 1995

8. In its concluding observations issued on 3 November 1995 after consideration of the fourth periodic report in respect of Hong Kong under ICCPR submitted by the Government of the United Kingdom, the United Nations Human Rights Committee ("UNHRC") took the view that once an elected LegCo was established, its election must conform to Article 25 of the Covenant notwithstanding the reservation made by the United Kingdom that Article 25 did not require establishment of an elected Executive or Legislative Council. UNHRC considered that the electoral system in Hong Kong did not meet the requirements of Article 25, as well as Articles 2, 3 and 26 of the Covenant. It underscored in particular that only 20 of 60 seats in LegCo at that time were subject to direct popular election and that the concept of FCs, which gave undue weight to the views of the business community, discriminated among voters on the basis of property and functions. UNHRC considered such arrangement clearly constituted a violation of Articles 2(1), 25(b) and 26.

9. In its supplementary report in respect of Hong Kong under ICCPR issued in May 1996, the Government of the United Kingdom maintained its view that the present network of FCs must be seen as a transitional stage in the evolution of Hong Kong's political system. The ultimate aim, as declared in BL 68, was the election of all Members of LegCo by universal suffrage.

Application of the ICCPR to Hong Kong Special Administrative Region in 1997

10. On 20 June 1997, the Government of the People's Republic of China notified the United Nations Secretary-General in a Note that -

> "In accordance with the Joint Declaration of the Government of the United Kingdom of Great Britain and North Ireland and the Government of the People's Republic of China on the Question of Hong Kong signed on 19 December 1984 (hereinafter referred to as the Joint Declaration), the People's Republic of China will resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997. Hong Kong will, with effect from that date, become a Special Administrative Region of the People's Republic of China. …… Furthermore, it is provided that both in Section XI of Annex I to the Joint Declaration and Article 153 of the Basic Law that international agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may continue to be implemented in the Hong Kong Special Administrative Region."

11. In this connection, the Government of the People's Republic of China informed the United Nations Secretary-General that the provisions of ICCPR as applied to Hong Kong shall remain in force beginning from 1 July 1997 and that the formalities required for the application of the treaties listed in the Annexes to the Note,

including all the related amendments, protocols, reservations and declarations, to the Hong Kong Special Administrative Region ("HKSAR") have been carried out separately.

First Report on HKSAR under ICCPR in 1999

12. After consideration of the first report on HKSAR under ICCPR, UNHRC issued its concluding observations on 15 November 1999. UNHRC reiterated its concern expressed in its concluding observations in respect of the fourth periodic report submitted by the Government of the United Kingdom that the electoral system for LegCo did not comply with Articles 2(1), 25 and 26 of the Covenant.

13. In paragraph 275 of its second report of HKSAR under ICCPR, the Administration explained that it noted the concerns of UNHRC but it respectfully maintained the position that commentators had overlooked the reservation entered in respect of Article 25 when the Covenant was extended to Hong Kong. The Administration remained of the view that the electoral system was appropriate to Hong Kong's circumstances and gave rise to no incompatibility with any of the provisions of the Covenant as it applied to Hong Kong.

14. At the Council meeting on 8 December 1999, Ms Emily LAU raised an oral question on "Modifying the electoral system". In her response to Members' question as to whether the reservation made against Article 25(b) would be retained when the Chief Executive ("CE") was to be selected by universal suffrage, the then Secretary for Justice advised that Article 25(b) did not apply to the selection of CE which was a separate matter in relation to whether or not the reservation would be retained.

Second Report on HKSAR under ICCPR in 2006

15. In its concluding observations issued on 30 March 2006 after consideration of the second report on HKSAR, UNHRC still considered that the electoral system in Hong Kong did not meet the requirements of Article 25, as well as Articles 2(1) and 26 of the Covenant. The Administration made the following responses -

(a) For proper perspective, it should be pointed out that, when the Covenant was applied to Hong Kong in 1976, a reservation was made not to apply article 25(b) in so far as it might require the establishment of an elected Executive or Legislative Council in Hong Kong. This reservation continues to apply; and

(b) Notwithstanding this reservation, BL promulgated by the National People's Congress in 1990 clearly states that universal suffrage is the ultimate aim of Hong Kong's constitutional development. Thus, the final goal of Hong Kong's evolution towards democracy originates from

BL, and not the Covenant. Both the Central Authorities and the Government are fully committed to achieving the ultimate aim of universal suffrage in accordance with BL and the relevant Interpretation and Decision of the Standing Committee of the National People's Congress of April 2004.

16. When the Panel on Home Affairs discussed the aforementioned concluding observations issued by UNHRC and the Administration's responses, some members urged the Administration to review and withdraw the reservation made against Article 25(b) of ICCPR. They considered that the provision applied once LegCo elections were held, pointing out that such view had been upheld by the court in its judgment.

17. The Administration maintained its view that insofar as LegCo elections were concerned, the reservation made against Article 25(b) of ICCPR which had existed when ICCPR was extended to Hong Kong still applied. The electoral system for the formation of LegCo was appropriate to the circumstances of HKSAR and did not give rise to incompatibility with any of the provisions of ICCPR as they applied to the territory.

Further question raised at the Council meeting on 2 July 2008

18. At the Council meeting on 2 July 2008, Ms Emily LAU raised an oral question on "Selection of CE and election of Members of LegCo by universal suffrage". In her supplementary question, Ms LAU asked the Secretary for Constitutional and Mainland Affairs ("SCMA") whether the reservation in respect of Article 25(b) of ICCPR "will be observed eternally and will never be discarded". SCMA reiterated that universal suffrage would be implemented in Hong Kong just because of BL, not ICCPR.

The recent case of Chan Yu Nam v Secretary for Justice in 2009

19. In *Chan Yu Nam v Secretary for Justice* (HCAL32/2009 and HCAL55/2009), the applicants also did not seek to challenge the constitutionality of FCs in the elections for LegCo. The only subject of challenge was that of corporate voting in FCs for elections of LegCo. In rejecting applicants' argument that the provisions in relation to corporate voting under the Legislative Council Ordinance (Cap. 542) were inconsistent with Article 21(b) of BORO (mirroring Article 25(b) of ICCPR), Andrew Cheung J was of the view that, as far as domestic law is concerned, Article 25(b) of ICCPR assumes constitutional significance only by virtue of BL 39. In his view, BL39 "provides for the continued application of ICCPR to Hong Kong after 1997 as it applied to Hong Kong at the time the Basic Law was enacted". There had been elections for FC in Hong Kong comprising, among other things, corporate voting which was not regarded by the British Government or the then Hong Kong Government to be inconsistent with the provisions of ICCPR and quite plainly it was

considered that the reservation of British Government relating to Article 25(b) of ICCPR had the effect of permitting elections for FCs in general and corporate voting in particular to be practised in Hong Kong.

20. In his judgement, Andrew Cheung J also considered Keith J's obiter dictum that the reservation in relation to Article 25(b) of ICCPR was spent. Andrew Cheung J was of the view that Keith J was addressing the position in Hong Kong in 1995 when the Letters Patent had been amended to provide for a wholly elected legislature and his view did not affect the position back in 1990 when BL was promulgated and the application of ICCPR to Hong Kong was still subject to the British reservation and thus there was no question of the reservation having become spent at that time even under Keith J's reasoning.

Latest question raised at the Council meeting on 28 April 2010

21. In his oral question on "LegCo FCs" raised at the Council meeting on 28 April 2010, Mr Albert HO asked, among others, about the Administration's stance regarding the FC system being transitional in paragraph 461(b) of the first report of HKSAR submitted to UNHRC under ICCPR in 1999. In his reply to a supplementary question, SCMA advised that in spite of the reservation made against Article 25(b) of ICCPR, the HKSAR Government had made it clear that the future universal suffrage model should comply with BL and the principles of universality and equality. An extract from the Official Record of Proceedings of the Council meeting (floor version) is in the **Appendix**.

Legislative Council Secretariat
28 May 2010

葉劉淑儀議員：*主席，如果財政司司長真的有研究一下主權財富基金的背景及目標，他便會知道爭取較高回報只是其中之一的目標，很多國家及地區在有大量盈餘下，也會成立一個主權財富基金，來希望達到一些社會及經濟目標，例如是鞏固中產，以及扶助優勢產業的。*

以香港來說，財富管理、資產管理應該是我們金融業的其中一個優勢環節。我知道業界的投資管理界別其實很希望政府可以成立一個單獨的主權財富基金，讓它們也可以有機會做生意，而不止是把機會交給金管局。正如陳茂波所說，當局如果投資在對沖基金、私募投資，當中的風險其實是很高的。我想問財政司司長的是，會否以更宏觀的角度，即鞏固中產、扶助優勢產業和增加香港比較優勢的角度，來作一個較深入的研究，而不要一口便拒絕呢？

財政司司長：主席，我剛才也回答了這項質詢。任何投資活動，只要是合乎我們的投資目標，我也是不會排除的。

陳鑑林議員：*主席，司長剛才一再回答，表示外匯基金須保證對美元資產有十足支持及應付它的流動資金。我們有五千多億元的儲備，相對來說，這與外匯基金支持美元資產方面是沒有甚麼關係的。我想知道的是，司長會否考慮把儲備以另一些方式投資，確保我們善用現有的財金資源呢？*

財政司司長：主席，也是同一個答案，如果是合乎我們的投資目標，我們是不會排除任何類型的投資的。

主席：最後一項口頭質詢。

立法會功能界別
Legislative Council Functional Constituencies

6. 何俊仁議員：*主席，1999年，香港特別行政區政府("特區政府")就《公民權利和政治權利國際公約》("《公約》")向聯合國提交報告。報告第461(b)段載明："功能界別制度只是一項過渡安排。一如《基本法》*

第六十八條訂明，香港政制發展的最終目標，是要全部立法會議員皆由普選產生"。此外，2007年12月29日，全國人民代表大會常務委員會("人大常委會")通過《關於香港特別行政區2012年行政長官和立法會產生辦法及有關普選問題的決定》("《決定》")。該《決定》載明："在行政長官由普選產生以後，香港特別行政區立法會的選舉可以實行全部議員由普選產生的辦法"。就此，政府可否告知本會：

(一) 現時是否仍然維持功能界別制度只是一項過渡安排的立場；若然，有否評估繼續將功能界別的存廢問題留給下一屆政府處理，會否令在這方面的社會矛盾日益加深；及

(二) 有否評估於2020年或以後繼續維持功能界別制度是否違反《基本法》第六十八條及2007年人大常委會的《決定》？

政制及內地事務局局長：主席，

(一) 特區政府的一貫立場是現時立法會功能界別的選舉模式，並未符合普及和平等的原則，在實行立法會普選時不能繼續現有的選舉安排。

雖然現屆特區政府只獲人大常委會授權處理2012年兩個選舉的有關安排，但在2012年行政長官和立法會產生辦法的公眾諮詢中，我們亦收集了有關普選的意見，並已作出歸納和總結，建議下屆政府積極跟進，認真研究相關建議。

另一方面，特區政府提出了一套2012年兩個產生辦法的建議方案，充分借助民選區議員具備的廣泛民意基礎，來增加兩個產生辦法的民主成分，為落實普選鋪路。特別在立法會選舉方面，我們建議把議席數目由60席增至70席，恪守不增加"傳統"功能界別的原則；除了增加5個地區直選議席外，5個新增功能界別議席，全數由民選區議員以比例代表制互選產生。

如果立法會通過建議方案，2012年立法會將有接近六成的議席由地區直選或間選產生，"傳統"功能界別議席只剩約四成，這個議席比例能讓立法會更有機會就功能界別問題達成共識。

(二) 立法會普選時如何處理功能界別的問題，社會不同界別和立法會不同黨派對這問題仍然分歧很大，有意見認為應取消功能界別議席，亦有意見認為可擴闊功能界別議席選民基礎，例如以"一人兩票"的形式，登記選民便可一票投地區、一票投功能界別。

在有關2012年兩個選舉產生辦法的公眾諮詢期間，香港中文大學香港亞太研究所進行的民意調查顯示，約半數受訪市民認為普選立法會時，功能界別選舉應該取消；約37%認為應該保留。但是，香港大學民意研究計劃進行的民意調查則顯示，約40%受訪市民認為不應該全面取消立法會功能界別，約36%則認為應該取消。

由此可見，如何處理功能界別的問題，確實是香港社會有需要尋求共識的一項議題，須用時間來作深入討論以凝聚共識。在現階段，我們對於在實行立法會普選時，取消或保留功能界別並未能作最後決定，但已清楚表明，將來的普選模式必須符合《基本法》與普及和平等的原則。

我們希望香港社會在未來數年，共同本着理性、務實和包容的態度，來研究這個問題及凝聚共識。我們是樂見近期特區社會在這方面有更理性的探討。

何俊仁議員：*主席，在1999年，特區政府向聯合國人權委員會就《公約》提交的報告，是否單單只是代表特區政府呢？這份報告是中華人民共和國所提交的報告的一部分，當中的內容，包括有關功能界別過渡至普選的安排，很明顯應該不單是代表特區的立場，我有理由相信中央政府看過，也同意這個立場，然後才讓它形成一份報告 —— 中國連同香港特區的整份報告 —— 提交至聯合國。*

主席，我想問的是，在1999年後，在2004年、2005年所提交的第二份報告，當中似乎沒有再提到功能界別是否一項過渡到普選安排這立場。在今天的答覆中，政府只表示功能界別是有新功能界別及"傳統"功能界別之分，接着又說現時沒有任何結論來取消功能界別。

就1999年的報告中有關功能界別制度是一項過渡安排的說法，局長能否重申這種說法仍然是特區政府的立場？如果是，這是否代表當我們

在2020年全部普選立法會議員 —— 根據政府所說的時間表 —— 便已再沒有任何形式的功能界別？如果局長的答覆是否定的，表示立場已經改變，或我們對過渡的安排有所誤解，他便應告訴我們，當年對聯合國所作的陳述是否已不再是政府的立場，或當年所說是錯誤的，並有誤導的後果？

政制及內地事務局局長：主席，我在主體答覆中其實已經答覆了何俊仁議員的質詢。既然他依然希望我再作出進一步說明，我便再就這數方面作出回應。

第一，我們現時這個選舉制度，不論是立法會或行政長官的選舉制度，均有需要過渡至普選的最終目標，這是很清楚的。第二，要達致普選的最終目標，不同黨派也有自己的立場及理念；在立法會內，大家是要互動的。行政長官領導的特區政府，在適當的時間，每5年一任，均要向立法會提案，然後由立法會作出討論及表決。

對於2020年要如何落實普選，屆時是要保留或取消這些功能界別，大家仍要繼續討論，也要繼續提出意見。然而，在今時今日，沒有人可以作出結論，說到了2020年時是要取消或保留這些功能界別。不過，我們很明確的立場是，現有功能界別的選舉安排，並未符合普及和平等的原則。

在1999年之後，我們也多次討論這些問題，而最關鍵的一個時段，我認為便是在2007年的時候，我們就有關普選的《綠皮書》進行了一項公眾諮詢。在當時的12月，在我們完成這個公眾諮詢的一段時間後，行政長官向中央提交了報告，報告的第5段是這樣寫的："我們在《綠皮書》內詳述了香港特區政制發展的憲制基礎及政治體制的設計原則，並且向香港社會指出，在達至最終普選目標的過程中，以及在制定落實普選的模式時，必須根據《基本法》有關規定及原則，考慮有關方案能否符合：(1)國家對香港的基本方針政策；(2)政制發展的四項原則，包括兼顧社會各階層利益、有利於資本主義經濟的發展、符合循序漸進的原則及適合香港實際情況；及(3)普及和平等選舉的原則。"

所以，主席，我給何俊仁議員最直截了當的答覆便是，大家今天要共同努力，凝聚共識，把2012年的政制方案通過，為香港的政制踏前一步。這樣，我們便有更好的條件，在2017年、2020年落實普選。

主席：你的補充質詢是否未獲答覆？

何俊仁議員：*主席，他完全沒有回答我的補充質詢。我的補充質詢其實很簡單，便是1999年報告書內有關功能界別是一項過渡至全面普選的安排的說法，是否仍然正確的？這句說話是否仍代表政府的立場？我要強調的是"過渡安排"。*

政制及內地事務局局長：主席，我已經回答了，我說現有的選舉制度，包括行政長官和立法會的選舉制度，均是要過渡至最終普選的目標，在2017年落實行政長官普選，以及2020年落實立法會普選。但是，至於我們如何達至這個普選的模式，我們是有一個程序，有《基本法》本身的規定，特區政府要提案，立法會要表決，經過這個過程後，才有最終的答案。任何一個黨派今天不能要求中央政府或特區政府，在未經過這個程序，在香港社會、議會內外未經過討論和表決，便預設一個答案的。

李永達議員：*主席，局長說話很流利、很暢順，但他說了數分鐘我也不知道他在說了些甚麼。事情很簡單，他提交了報告，何俊仁主席便問他有沒有改變立場，但他卻說5個程序。即使是有5個程序，但現在只是問局長政府的立場。如果他覺得不應該有任何形式 —— 是"任何形式"這4個字 —— 的功能界別存在，他便這樣說好了。如果他說不是，我們2020年仍有某種形式的功能界別存在的，他便直說吧，何須顧左右而言他呢？說了十多二十分鐘也沒有答案。請他告訴我們，2020年是否有某種形式的功能界別存在呢？還是任何形式的功能界別也沒有呢？主席，就是這麼簡單。*

政制及內地事務局局長：主席，李永達議員是從政多年的，他應知道政治的議題、政制的議題是不會一個人說了便算的。即使我今天想給他一個最終的答案，我也不可以這樣做，因為特區政府須尊重議會、須尊重《基本法》。現在尚未到提案說如何落實普選立法會的時候，但我們是很認真地做了多年的公眾諮詢和討論，在每一個階段，對於大家提出的意見，我們都是很忠心地向大家交代的。

現時社會上就如何落實立法會的普選有數種意見，有人說一人一票，取消所有功能界別的議席；有人說一人兩票或一人多票。如果是一

人兩票，便是一票投地區、一票投功能，這樣投票權便會較均等。但是，泛民黨派卻認為這樣仍未夠均等，因為提名權不夠均等。這方面便顯示確實存在爭議性，大家要討論，而最終有一天要在這個議會裏表決，才可以有答案。可是，現時討論也未完成，又未到表決，泛民黨派卻希望中央政府或特區政府預早提供一個模擬答案(model answer)，我們是不能這樣做的，因為特區政府和中央政府皆要尊重《基本法》，尊重香港本身是有憲制的角色來討論、表決這件事。

李永達議員：*主席，他又花了我7分鐘。我的問題很簡單，我不會問新的東西，我便只有一個問題。在未有五部曲前，政府也可以有立場的，難道他做事沒有立場的嗎？政府的立場是.....*

主席：請重複你的問題。

李永達議員：*.....立場是，有某種形式的功能界別存在，抑或是任何形式的功能界別都不存在呢？主席，我問的便是這一點。*

政制及內地事務局局長：主席，我們的立場是非常明確的，在立法會2020年達至普選時，選舉的模式是要符合普及和平等原則。如何落實普及和平等原則，便要經過《基本法》五部曲的程序，大家要討論、要辯論、要提案、要表決。

張文光議員：*主席，何俊仁這項質詢只有一個關鍵點，便是"功能界別制度只是一項過渡安排"。特區政府對聯合國的報告的這項承諾，有否改變過？是否曾"轉軚"？所謂過渡，意思即是現在有、遲早沒有，沒有功能、便有普選。如果政府說，這份報告的立場還是真的，那麼我便要求政府，即局長作出兩個選擇、做兩件事：第一，他便跟我一起讀一次，這樣讀 ——"功能界別制度只是一項過渡安排，(眾笑)一如《基本法》第六十八條訂明，香港政策發展的最終目標，是要全部立法會議員皆由普選產生"。如果他不讀，即是他隨時想"轉軚"，我便想罰他抄這一段100次，可以送給大家留為紀念。*

主席：你的補充質詢是甚麼？

張文光議員：*他選擇哪一樣呢？(眾笑)*

政制及內地事務局局長：主席，我知道張文光議員是一位老師，他在多年來曾教導很多好學生，我讀書時其實也算是一個好學生。我又邀請張文光議員，不如跟我讀2007年特首向人大常委會提交的報告第5段 —— "我們落實普選時，有關方案能否符合國家對香港的基本方針政策、政制發展的四項原則、普及和平等選舉的原則。"

張文光議員：*主席，他沒有回答我的補充質詢，因為我的補充質詢是要他讀出來的，現在他不讀，那麼他會否罰抄100次？不過，我只是想說，是否我讀完他那一段，他便肯讀我那一段，以及確認呢？*

主席：張議員，我相信局長已經作答。你要求他從兩件事中選擇其一，但他兩者都不選。*(眾笑)*

張文光議員：*主席，那麼，他可否站起來回答說，他兩者均不選呢？*

主席：張議員，局長已經作答。

劉慧卿議員：*主席，這是一個非常嚴肅的問題，便是問普選的定義，是一定有預設答案的。按國際標準，當局在1999年向聯合國提交報告時，內地是仍未提交的，因為它仍未確認《公約》。主席，今年又要再提交報告了，雖然局長剛才讀的，是人大常委會自行定出的定義，但也表示要符合普及而平等的原則。雖然主體答覆的第一句說這是"一貫立場"，但其實已更改了立場，因為在1999年的報告中，當時是斬釘截鐵地表示，功能界別是過渡的安排，將來是會實行普選的。但是，主席，當局已經"褪軟"。*

我想問當局，今年再提交報告給聯合國時，會否說1999年的說法是誤導的？當局的看法是，雖然現時的做法是不符合普及平等原則的，但民意似乎認為將來只要一人兩票便行了。此外，主席，最近我也聽到內地派了很多人前來跟律師、教授討論釋法的問題，將來一旦釋法了，功能界別便完全符合普及而平等的原則了。會否將這一點也一併告訴聯合國呢？

政制及內地事務局局長：主席，我相信劉慧卿議員有點危言聳聽。人大常委會已作出決定，這個決定是向前看的，較1999年的決定更前衞。1999年，我們回歸不足兩年，還是在第一屆立法會的年代，我們現在已經是第四屆立法會了。在第四屆立法會之前，我們已經有人大常委會2007年12月的決定，有普選時間表。在1999年，如果劉慧卿議員提出這項普選的議題，不論是誰擔任政制事務的局長，均無法給她答案，說我們何時會有普選。但是，今天有答案了，而且較諸1999年的時候是更明確的。我們雖然在《公約》第25(b)條下，是有一項豁免的條款，但特區政府依然確認，我們到了普選行政長官、普選立法會的時候，是要符合普及和平等的原則的。既然是要符合普及和平等的原則，大家便要本着大家的理想、理念和公眾的支持，在這個議會內，最後在2017年之前、在2020年之前表決，而不是今天預設一個答案。

劉慧卿議員：*他是完全沒有回答的，我問他在今年提交給聯合國的報告中，會否表明在1997年時的立場是錯誤的，現在"褪軚"呢？會否告訴聯合國，現在正醞釀釋法，令功能界別也屬於普選呢？*

主席：劉慧卿議員，我們不應把這項質詢變為另一項有關政制，包括功能界別存廢的辯論。

劉慧卿議員：*可是，主席，我向他提出了問題，他卻沒有回答。*

主席：劉慧卿議員提出了一項簡單的問題，是有關特區政府向聯合國提交的下一份有關我們人權發展的報告的。局長，請作答。

政制及內地事務局局長：主席，我就兩方面再回應。第一方面，我們向聯合國提供的任何報告，均一定符合《基本法》，亦會反映人大常委會就政制議題作出普選時間表的決定，更會反映我們香港的最新情況。另一方面，我也要跟劉慧卿議員說，不要經常那麼危言聳聽，在沒有事實基礎之下便說聽到人大常委會會就普選的議題進一步釋法，從何而來這樣的一個消息呢？我也未曾聽過。

主席：本會就這項質詢已用了超過24分鐘.....

(何俊仁議員站起來)

主席：何議員，你有甚麼問題？

何俊仁議員：*主席，你可否給我1分鐘，讓我澄清我剛才的說話？我想糾正一些內容。*

主席：你要澄清甚麼？

何俊仁議員：*我在質詢中，曾說1999年的報告是連同中華人民共和國的報告一起提交的，我是說錯了，劉慧卿議員是對的。中國政府並未確認《公約》，所以並沒有提交報告。這跟《經濟、社會及文化權利國際公約》是一起提交報告的做法不同，不過，我仍然維持那一句，便是我們的報告中有關政制的部分，是中央政府應該看過和同意的。*

主席：何俊仁議員已經作出更正，這項質詢亦到此為止。有關政制發展，尤其是功能界別的存廢，我相信議員會有很多其他場合進行辯論的。

口頭質詢到此為止。