

立法會
Legislative Council

LC Paper No. CB(2)1961/99-00
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Ref : CB2/PL/CA

**Legislative Council
Panel on Constitutional Affairs**

**Minutes of special meeting
held on Saturday, 1 April 2000 from 9:00 am to 11:00 am
in Conference Room B of the Legislative Council Building**

Members Present : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon LEE Wing-tat
Hon Margaret NG
Hon Jasper TSANG Yok-sing, JP
Hon Howard YOUNG, JP
Dr Hon YEUNG Sum
Hon Ambrose LAU Hon-chuen, JP

Members Absent : Hon Ronald ARCULLI, JP
Hon CHEUNG Man-kwong
Hon Gary CHENG Kai-nam, JP
Hon SZETO Wah

Public Officers Attending : Mr Michael M Y SUEN
Secretary for Constitutional Affairs

Mr Bassanio SO
Acting Deputy Secretary for Constitutional Affairs (2)

Ms Doris HO
Principal Assistant Secretary for Constitutional Affairs (4)

Clerk in Attendance : Mrs Percy MA
Chief Assistant Secretary (2)3

Staff in Attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Mr Paul WOO
Senior Assistant Secretary (2)3

Action
Column

I. Remarks made by the Secretary for Constitutional Affairs (SCA) on Taiwan presidential election

With the agreement of the Chairman, Ms Emily LAU took the opportunity to request SCA to clarify his recent remarks concerning the Taiwan presidential election as reported by the media. She said that SCA's dismissal of the high turnout rate at the election on the grounds that "black gold politics" was a common practice in Taiwan was unfair.

2. SCA explained that he was asked by the media on what Hong Kong could learn from the experience of the Taiwan election. In responding to the question, he had said that what Hong Kong would learn would be reflected in the arrangements to be adopted for the 2000 LegCo election. He had also indicated that Hong Kong should not learn practices such as buying votes. However, the media had quoted him out of context by reporting only part of his reply.

3. Ms Emily LAU was of the view that the type of political system adopted by a place would have an impact on the voters' turnout in an election, i.e. whether the elected candidate(s) would have real power. In this respect, she referred to the low turnout rate in the past LegCo elections and said that the Administration should consider increasing the pace of democracy by implementing direct election of LegCo Members.

4. Dr YEUNG Sum said that an area which Hong Kong should learn from Taiwan was the time taken for completing the count. In the recent presidential election, the result was announced a few hours after the close of poll. SCA said that for the coming LegCo election, the Administration was in fact considering whether reference could be made to the counting arrangements adopted in Taiwan.

(SCA left the meeting at this juncture)

II. Development of the Hong Kong Special Administrative Region (HKSAR)'s political system

5. On the way forward, members discussed and agreed on the following -
- (a) the Panel should prepare a report after considering all the written submissions and submit the report for consideration of the Council;
 - (b) in view of the limited time available for the Panel to study the issues, the report should reflect the views received by the Panel as well as the Panel's recommendations and consensus views, if any, on particular issues;
 - (c) the Chairman of the Panel would move a motion to debate the report at the Council meeting on 14 June 2000. The wording of the motion would be decided at a later stage; and
 - (d) the agreement of the House Committee would be sought for the allocation of a debate slot for moving the motion (the deadline for submission of an application for a debate slot for the Council meeting on 14 June 2000 was 20 May 2000).
6. The meeting then proceeded to discuss the written submissions received by the Panel. In this connection, the Chairman referred members to the summary prepared by the Secretariat (LC Paper No. CB(2)1498/99-00(01))

Submission from Dr Anthony B L CHEUNG
(LC Paper No. CB(2)1076/99-00(01))

Ministerial system, contract system for appointing principal officials and executive-legislature relationship

7. Dr YEUNG Sum said that he agreed with Dr Anthony CHEUNG that major government policy advisory committees should be opened to Legislative Council (LegCo) Members. This would enhance LegCo Members' understanding of the intention behind certain policy and legislative issues as well as facilitate the Administration in gauging the public's views on those matters.

8. Dr YEUNG also agreed with Dr Anthony CHEUNG that the Chief Secretary for Administration should hold regular meetings with LegCo Members who were leaders of major political parties. He said that in some democratic countries, the practice for the ruling party to hold regular meetings with the opposition party was proven to be useful in that very often differences between the parties could be ironed out during the process. He noted that regular meetings between the Chief Secretary and LegCo Members had ceased after the re-unification and he hoped that such meetings could be resumed. Ms Emily LAU added that it might be easier for the Administration to get the support of LegCo on certain issues if discussions between the Administration and LegCo Members could take place at an early stage of policy formulation.

9. Mr TSANG Yok-sing said that he supported in principle most of the short-term and long-term measures proposed by Dr Anthony CHEUNG. However, fundamental questions would need to be addressed. For example, on the proposal that Executive Council (ExCo) Members should be more visible politically, how would the delineation of duties and responsibilities between ExCo Members and the policy Secretaries in formulating and defending government policies should be drawn. Also, the proposal of appointing principal officials on political contracts as "ministers" by the second term of the Chief Executive (CE) would need to be further examined as to whether the principle of collective responsibility should continue to apply, or whether the ministers should be removed from office whenever they committed a serious policy or administrative mistake.

10. Dr YEUNG Sum opined that appointment of people from the business sector as ministers should better be avoided because of possible conflict of interests. Ms Emily LAU expressed a different view. She said that those people should not be discriminated in this respect. Otherwise, it would end up in a situation where only civil servants would be appointed. She said that the important issue hinged on the existence of an effective mechanism to prevent abuse. The Chairman shared her view.

11. The Chairman said that he disagreed to Dr Anthony CHEUNG's view that there should not be overlapping membership between ExCo and LegCo. He pointed out that overlapping membership was not prohibited under the Basic Law (BL). It was a matter for the person concerned to decide whether he should accept the appointment as ExCo Member and hence be bound by the rules of confidentiality and collective responsibility. The Chairman also considered that as a transitional measure before the emergence of a ministerial system, ExCo Members could be in charge of particular policy portfolios.

12. On the proposal to implement a contract system for appointing principal officials by the second term of the CE, the Chairman said that an important issue which needed to be decided was whether the contract should provide for a fixed term of office and compensation upon termination. He said that "political appointment" meant that the appointees could be removed from office at any time without compensation.

13. Miss Margaret NG cautioned that the term "political appointment" was complex in meaning. In her opinion, political appointment meant something more than a system of appointing government officials with or without a fixed term of office or a sanction mechanism etc. It also carried the connotation that the appointee shared the same political beliefs as the person who appointed him and that the former should step down when the latter no longer remained in office. Miss NG suggested to avoid the use of the term in the report of the Panel. If the term was to be used in any future consultation, its meaning should be clarified to avoid misunderstanding.

14. Miss Margaret NG opined that similar to their counterparts in the private sector, principal government officials should not be provided with permanent tenure of office. She agreed that under a contract system of appointing principal officials, the terms of the contract should provide that the appointee could be removed from office immediately without compensation where there was a justifiable cause.

15. Mr TSANG Yok-sing said that while a contract system could provide a mechanism for removing an official from office at any time, the question was whether the removal was fair under a system where policy formulation and implementation was a matter of collective responsibility. He also opined that a contract system of appointment would add little to improve executive/legislature relationship.

16. The Chairman said that in contrast to a system of permanent appointment, a contract system provided a new incentive for the executive authorities to become more responsive and accountable to the legislature and the public. Echoing the Chairman's view, Ms Emily LAU said that the sentiment of government officials towards accountability would be different when they faced a greater risk of termination of appointment under a contract system. Regarding the issue of executive/legislature relationship, Ms LAU opined that it was likely to remain a problem unless the Administration could secure a stable majority support from LegCo. She said that one way to achieve that was to appoint members of the major political parties as ministers.

17. Mr TSANG Yok-sing pointed out that BL 103 specified that "*The appointment and promotion of public servants shall be on the basis of their qualifications, experience and ability. Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service, including special bodies for their appointment, pay and conditions of service, shall be maintained...*". He considered that the proposal of appointing principal officials under a contract system should be looked into in the context of, firstly, the constraints imposed by the reference to "Hong Kong's previous system...should be maintained" in BL 103, and secondly, whether the introduction of a new system of appointment of principal officials would amount to a breach of BL 103. In addition, he pointed out that the term "public servants", instead of "civil servants", was used in this Article. It was also not clear whether "public servants" covered "principal officials" referred to in BL 61.

18. Ms Emily LAU sought Senior Assistant Legal Adviser's (SALA) view on whether the proposal of appointing principal officials under a contract system would be in breach of BL 103.

19. SALA said that there were two main approaches in considering whether an act was consistent with the BL. One was if there was no express prohibition the act was consistent. The other was express authorization was required. In principle, as the BL was a constitutional document and a national law of the People's Republic of China, it would be more prudent to adopt the latter view.

20. The Chairman pointed out that the Hong Kong Bar Association had expressed the view that what was not expressly forbidden in the law should not be regarded as a violation of the law. He tended to support the Bar Association's view.

21. Miss Margaret NG opined that under the principle of a high degree of autonomy of the HKSAR, BL 103 should be interpreted with flexibility. She agreed that whether a concrete proposal was in breach of the BL should be considered in the light of the BL provisions including BL 103.

22. Mr LEE Wing-tat said that he was not too worried about BL 103. He pointed out that there were precedents of appointing principal officials from outside the civil service on contract, such as the appointment of Ms Elsie LEUNG as the Secretary for Justice and Dr YEOH Eng-kiong as the Secretary for Health and Welfare. He said that he was in support of a contract system of appointment which provided for sanctions of the appointees for commission of serious mistakes or misconduct.

23. Mr Ambrose LAU said that BL 103 set out the general principle of preserving the previous system for the public service which should be adhered to. Whether or not a proposal for change was in contravention of BL 103 would have to be examined on a case-by-case basis. He added that details of the previous system of appointing civil servants on contracts should be looked into to facilitate understanding of the requirements of BL 103.

24. Mr Howard YOUNG said that while the proposal of implementing a contract system for the appointment of principal officials was worthy of consideration, it should better be considered in the overall review of the HKSAR's political system instead of on a piece meal basis. He added that the review should be a comprehensive one and should start well before 2007.

Election of LegCo Members

25. Mr TSANG Yok-sing said that he doubted that increasing the number of LegCo seats to say 100 or 120 to provide a greater chance for the "elite" members of the community to be elected to LegCo could allay the concerns of the business sector about direct election by universal suffrage. He said that the anxiety of members of the business community was likely to remain so long as they perceived direct election as only benefiting the grass-root sectors at the expense of the business sector.

26. Dr YEUNG Sum pointed out that a proportional representation system for direct election was adopted in Taiwan and some other western democratic countries. He said that the perception that direct election would lead to incessant demands from the grass-root sectors for better welfare benefits and higher taxation etc. had not been borne out by experience in other political systems. He added that the provisions in Chapter V of the BL, such as BL 107 and 108, provided the necessary safeguards for the upkeep of the economy of the HKSAR.

27. Mr Howard YOUNG said that the Liberal Party had previously preferred to follow the model specified in the BL on the composition of LegCo. However, he agreed that the proposal to increase the number of LegCo seats could be considered in the longer term, particularly following the dissolution of the two municipal councils. In addition, the proposal could in some way address the concerns of certain sectors of the community.

28. Ms Emily LAU said that the Frontier did not support one of the alternatives proposed by Dr Anthony CHEUNG that LegCo should compose of 30 seats directly elected on a geographical constituency (GC) basis and 30 functional constituency (FC) seats on a universal franchise basis (each voter was eligible to

vote in both one GC and one FC). She said that FC elections were unfair elections which conferred a special privilege on certain classes of the community and therefore should be abolished.

29. Ms Emily LAU agreed with Dr Anthony CHEUNG that both the CE and LegCo should be elected by universal suffrage so that each could claim to derive political mandate and legitimacy from the people. She added that enhancing the role of LegCo in policy formulation would help achieve a genuine balance of powers between the executive authorities and the legislature.

30. The Chairman remarked that Dr Anthony CHEUNG's proposal of election of 30 LegCo Members on a FC basis by universal franchise suffered the problem of defining voter eligibility in respect of particular FCs. Besides, the size of eligible voters could vary significantly among different FCs. The Chairman said that he had previously proposed a similar but simplified model to reform the FCs by grouping the 30 seats into five constituencies of six seats with voters being eligible to vote in all five FCs.

31. Mr TSANG Yok-sing said that he tended to support the option that half of the LegCo seats should be directly elected on a GC basis and the other half under a territory-wide single-list voting system so as to achieve mixed representation of local and territory-wide interests. He added that the usefulness of this option would increase as the size of LegCo expanded.

Submission from Mr YU Tong
(LC Paper No. CB(2)1076/99-00(02))

Executive-led system of government

32. In his submission, Mr YU Tong expressed the view that an executive-led system of government was ineffective and should be abolished.

33. Ms Emily LAU said that the BL had not prescribed an executive-led government for the HKSAR. She opined that the BL should be interpreted in the spirit of achieving a balance of powers between the executive authorities and the legislature.

Submission from Hong Kong Christian Institute
(LC Paper No. CB(2)1076/99-00(03))

Accountability of the CE and principal officials

34. Ms Emily LAU said that she supported the view that the CE should appear before LegCo more frequently to answer questions raised by LegCo Members.

35. The Chairman said that the BL specified that the CE should be accountable to the Central People's Government and the HKSAR, while the Government of the HKSAR (i.e. the executive authorities) should be accountable to LegCo. It was not certain whether executive authorities included the CE. The Chairman expressed the view that it should be the Chief Secretary for Administration rather than the CE who should appear before LegCo to explain policies and answer queries from LegCo Members. The Chairman pointed out that in France, the prime minister appointed by the president was the one answerable to the French parliament.

36. Echoing the Chairman's view, Mr TSANG Yok-sing said that he was also in doubt whether for the CE to appear before LegCo to answer queries was the appropriate way to manifest the requirement of the BL that the HKSAR Government should be accountable to LegCo.

Referendum

37. Ms Emily LAU said that she supported the view that a referendum should be conducted on the constitutional reform in Hong Kong.

Submission from Professor Joseph Y S CHENG
(LC Paper No. CB(2)1111/99-00(02))

Election of LegCo Members

38. On Professor Joseph CHENG's proposal to expand the size of LegCo to 90 seats and the number of directly elected seats to 60 after 2007, Ms Emily LAU reiterated her stance that FC elections should be abolished and that all LegCo seats should be directly elected.

39. The Chairman said that he believed that the method of returning a certain proportion of LegCo Members through FC elections as proposed by both Dr Anthony CHEUNG and Professor Joseph CHENG was meant to be a transitional measure only. He added that Professor CHENG's proposal as mentioned in paragraph 38 above had the effect of enhancing the chance of the elite class to seek representation in the LegCo.

40. Mr TSANG Yok-sing opined that the "non-grass-root" sectors might not find the proposal attractive as it was unlikely to guarantee them a majority representation in the LegCo.

Ministerial system of government

41. Miss Margaret NG said that a ministerial system was not a panacea for enhancing accountability of government, so long as the CE had the ultimate say in appointing and removing the ministers. She pointed out that in some jurisdictions, resignation or dismissal of senior government officials followed certain established parliamentary traditions or "constitutional conventions". She considered that a similar approach could be adopted in the HKSAR.

42. Mr TSANG Yok-sing said that the effectiveness of a ministerial system depended on what specific problems it was intended to solve. Where the problem hinged on differences between the CE and principal officials on major policy issues, implementing a system of appointing ministers from outside the civil service might not be a solution.

III. Date of next meeting

43. The next meeting was scheduled for 8 April 2000 at 9:00 am. to continue discussion of the written submissions.

44. The meeting ended at 11:35 am.

Legislative Council Secretariat
2 May 2000