

立法會
Legislative Council

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**Legislative Council
Panel on Constitutional Affairs**

**Minutes of special meeting
held on Saturday, 4 March 2000 at 9:00 am
in the Chamber of the Legislative Council Building**

Members Present : Hon Andrew WONG Wang-fat, JP (Chairman)
Hon Emily LAU Wai-hing, JP (Deputy Chairman)
Hon Margaret NG
Hon Howard YOUNG, JP
Hon LEE Wing-tat
Dr Hon YEUNG Sum
Hon SZETO Wah

Member Attending : Hon NG Leung-sing

Members Absent : Hon Ronald ARCULLI, JP
Hon CHEUNG Man-kwong
Hon Gary CHENG Kai-nam
Hon Jasper TSANG Yok-sing, JP
Hon Ambrose LAU Hon-chuen, JP

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

Mr Robin IP
Deputy Secretary for Constitutional Affairs (2)

Ms Doris HO
Principal Secretary for Constitutional Affairs (4)

By Invitation : Pun Yue Industrial & Commercial Fellowship
Ms SO Wai-ching
Secretary

Hong Kong Professional Teachers' Union
Mr CHAN Hung
Secretary General

Shun Tak Fraternal Association
Mr SUEN Kwok-lam
Director

Kwun Tong Resident Association
Mr LOK Chiu-chan
Secretary

Hong Kong Bar Association
Mr Johannes CHAN
Mr Philip DYKES, SC

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

Staff in Attendance : Mr Jimmy MA
Legal Adviser

Mr Paul WOO
Senior Assistant Secretary (2)3

**Action
Column**

I. Development of Hong Kong Special Administrative Region's political system

The Chairman welcomed the deputations to the meeting and invited them to present their views.

2. The gist of the deputations' views was summarized in the following paragraphs.

Hong Kong Professional Teachers' Union
(LC Paper No. CB(2)1284/99-00(01))

- (a) Development of Hong Kong's political system was closely related to the pace of democratization which was subject to restrictions under the Basic Law (BL). If there was a consensus view of the public to increase the pace of democratization in Hong Kong, the Government of the Hong Kong Special Administrative Region (HKSAR) should have the will and determination to convey the people's wish to the Central Government, and seek changes of the BL, if necessary, to put that wish into practice;
- (b) There would be no true accountability of the executive to the legislature without a directly elected Chief Executive (CE) and democratization of the Executive Council (ExCo). A CE not elected by the people of Hong Kong and the "ministers" appointed by him did not have a strong popular mandate. Therefore, a pre-requisite for the implementation of a ministerial system of government was the election of the CE by universal suffrage; and
- (c) Election of the CE and all Members of the Legislative Council (LegCo) by universal suffrage should be implemented as soon as possible.

Pun Yue Industrial & Commercial Fellowship Association Ltd.
(LC Paper No. CB(2)1141/99-00(04))

- (a) Political and constitutional developments in Hong Kong should be subject to the major premise of maintaining the stability and prosperity of Hong Kong. Any radical approach would harm the long-term interests of the community. Moreover, the present state of political consciousness of the people of Hong Kong did not warrant any sudden change; and
- (b) The Association was in support of a step-by-step-approach for the future development of the political system in Hong Kong under the blueprint outlined in the BL. It objected to any proposal to change the political system now.

Shun Tak Fraternal Association
(LC Paper No. CB(2)1141/99-00(03))

- (a) The political structure as set out under the BL was designed to preserve the long-term prosperity and stability of Hong Kong. The Association opposed to immediate and precipitous changes to the present structure; and
- (b) Constitutional developments should take place gradually and under the

guiding principles of "one country, two systems" and "Hong Kong people ruling Hong Kong". As issues relating to political reform concerned every people and sector in Hong Kong, the Government should conduct wide-ranging consultations on those matters.

Kwun Tong Resident Association

(LC Paper No. CB(2)1141/99-00(07))

- (a) The BL had already specified the direction of political development in Hong Kong. It was not desirable to amend the BL in this regard;
- (b) The Association was of the view that implementation of a "ministerial system" or a "party government" would contravene the BL. At this stage, political parties in Hong Kong lacked the competence and expertise to deal with issues affecting the daily livelihood of the people. Therefore, to adopt a "ministerial system" or a "party government" would result in a situation of "the mediocre ruling Hong Kong". The Association supported a gradual process of political development and the continuation of an "executive-led" system in Hong Kong;
- (c) The executive-legislature relationship could be improved by enhancing communication between the two branches and by appointing outside persons as principal officials on contract basis; and
- (d) The second term CE should not be elected by universal suffrage and the composition of LegCo before 2007 should follow that outlined in the BL. It was not appropriate to decide on when and how CE and all LegCo Members should be elected by universal suffrage at this point in time. A review should be conducted in 2007, and any concrete proposals could be made after the community had arrived at a consensus on the matter.

The Hong Kong Bar Association

(LC Paper No. CB(2)1284/99-00(02))

- (a) Development of HKSAR's political system was both a political and constitutional/legal issue. As a professional body, the Association would confine its view to the legal dimension;
- (b) There was no support for "executed-led government" in BL, if this meant that the executive should prevail over the Legislature. In fact, the constitutional framework clearly endorsed the principle of separation of powers. Article 64 of the BL (BL 64) provided that the HKSAR Government was accountable to LegCo and the situations set out in BL 64 should not be exhaustive of the scope of the accountability;

- (c) The public should be widely consulted on any system of executive government, be it ministerial or otherwise. Any system adopted must comply with the requirement of accountability to both LegCo and the HKSAR as set out in BL;
- (d) An effective system of accountability of principal officials would require a system of sanction or removal from office;
- (e) BL 68 required a progress in the formation of LegCo towards election of all Members by universal suffrage. To freeze the composition of LegCo as that in its third term after 2008 would be contrary to BL 68. The ultimate aim of election of all LegCo Members by universal suffrage must be achieved well before the end of the 50-year period guaranteed by the BL;
- (f) The international obligation under the International Covenant on Civil and Political Rights (ICCPR) had been incorporated in BL 39. According to the United Nations Human Rights Committee, the electoral system for LegCo did not comply with the ICCPR. The concept of functional constituency (FC), which gave undue weight to the "elitist" sectors, discriminated amongst voters on the basis of property and functions;
- (g) Given the long history of direct election in Hong Kong, the interim nature of FC election as well as the requirement of progress in the political development in the HKSAR towards universal suffrage, LegCo could be constituted entirely by geographical constituency (GC) election by universal suffrage after the third term. Alternatively, the people of Hong Kong should be given the opportunity to decide on this question, and the most appropriate means to do so was by way of a public referendum;
- (h) In view of the short history of election of CE, the question of how CE should be selected after 2007 was also an appropriate subject for a public referendum; and
- (i) The formation of the nomination committee for the selection of CE should be open, transparent, participative, broadly representative of all walks of society and with a degree of checks and balances. Any proposal must be easy to implement. All members of the Election Committee should be returned by either direct or indirect election, and at least half of the members should be returned by GC election by universal suffrage.

3. The meeting proceeded with discussion with the deputations.

System of government and executive-legislature relationship

4. Mr SZETO Wah asked why in the opinion of the Kwun Tong Resident Association that the implementation of a "ministerial system" or a "party government" would result in Hong Kong becoming an autonomous or semi-autonomous political entity. Mr LOK Chiu-chan replied that both systems were meant for the sovereign states. They should not be adopted in Hong Kong which was not a sovereign state but a Special Administrative Region of the People's Republic of China. Furthermore, the Chinese system of Government was a unitary system as opposed to a federal system adopted in some other countries. A "ministerial system" or "party government" could only be practised under the latter system.

5. Ms Emily LAU also queried the view expressed by Kwun Tong Resident Association that implementation of a "party government" would contravene the BL. She said that there was no mention in the BL that a "party government" was forbidden in Hong Kong. She sought the Bar Association's view on this point.

6. Mr Johannes CHAN responded that it was a basic legal principle that anything that was not prohibited by the law was legal. The BL did not deviate from this principle.

7. Ms Emily LAU sought the Bar Association's view on whether BL 43, which required the CE to be accountable to the Central People's Government and the HKSAR, had been complied with, and how the objective of BL 43 could be achieved.

8. Mr Philip DYKES said that the Bar Association had not drawn any conclusion as to whether or not the CE had been acting in compliance with BL 43. The Association was primarily concerned with identifying problems which, in its view, were inherent in the issue of accountability, and it had avoided making a particular preference for a particular system to enhance accountability, be it ministerial or otherwise. He said that according to the Bar Association, the requirement for accountability under BL 43 was a legal requirement. But whether that should be implemented by legal, constitutional or other measures was a matter of debate, since the requirement itself was inherently vague in practical terms. He pointed out that paragraphs 8 to 10 of the Bar Association's submission set out some proposed methods which might be relevant to the discussion of how the Government could demonstrate accountability.

9. Mr Philip DYKES added that the BL contained certain goals and objectives. In his opinion, it was part of the responsibility of the CE, as head of the HKSAR Government, to advise the public what the Government considered were the principal objectives of the BL, and what changes were likely to come about in the process of achieving those objectives.

10. The Chairman said that it appeared that the scope of accountability of the CE and the HKSAR Government was not exhaustive under the present formulation of BL 43.

11. In response to Legal Adviser concerning BL 73(9) which provided a mechanism for impeaching the CE on ground of serious breach of law or dereliction of duty, Mr Philip DYKES replied that BL 73(9) could be viewed as one of the provisions in the BL underpinning the requirement of accountability in BL 43. He remarked that if ultimately the CE were to be elected by universal suffrage, the democratic principle of election was that the CE should be accountable to the people who had elected him.

Election of CE and LegCo Members

12. Mr Howard YOUNG pointed out that at the time when the United Kingdom ratified the ICCPR on Hong Kong's behalf as a signatory to the Covenant, it had made reservation that Article 25 of ICCPR did not require establishment of an elected Executive or Legislative Council in Hong Kong. He asked the Bar Association whether such reservation as then applied to Hong Kong was still in force.

13. Mr Philip DYKES advised that according to the United Nations Human Rights Committee, it was aware of such reservation. Yet, the Committee took the view that once an elected legislature was established, its election must conform to the requirements set out in Article 25 of ICCPR which specified, inter alia, that every citizen should have the right and opportunity to vote and to be elected at elections by universal and equal suffrage. Such right and opportunity should be free from the distinctions mentioned in Article 2 of ICCPR and other unreasonable restrictions. Therefore, on the formation of LegCo by election, the above-mentioned reservation could not be relied upon as a reason for not complying with Article 25 of ICCPR.

14. Mr NG Leung-sing said that while BL 68 specified that there should be a progress in relation to the method of formation of LegCo, it also required that the progress should be "gradual and orderly" and in the light of the actual situation in the HKSAR. The same principle also applied in relation to the method of selecting the CE (BL 45). He opined that the implementation of any changes in a "gradual and orderly" manner was important in the consideration of constitutional and political reform in Hong Kong.

15. Mr Johannes CHAN said that the view of the Bar Association was that Hong Kong had a long history of direct election since 1991 when geographical constituency (GC) election was first introduced. By the end of the third term of LegCo in 2008, people in Hong Kong had at least 17 years of experience in direct election. This had not included experience in direct election of members of the District Boards which went back to 1982, and direct election of members of the Urban Council which dated

back to 1887. Concerning the composition of the second and third terms of LegCo, there would be a gradual reduction of Members returned by the Election Committee (EC), coupled with a corresponding increase in the number of Members returned by GC through direct election. Given these considerations, the Bar Association saw no inconsistency with the principle of gradual and orderly progress if LegCo was to be constituted entirely by GC direct election after the third term.

16. Legal Adviser took the opportunity to seek the views of the Bar Association on the EC provided for in Annexes I and II of the BL. He said that the function of the EC provided for in Annex I was to elect the CE, whereas that provided for in Annex II was to return six Members of the second term LegCo. Annex II also stated that the EC mentioned therein referred to the one provided for in Annex I, except in the case of the first LegCo. Although there was no express provision under the Legislative Council Ordinance (Amendment) Bill 1999 on whether the EC which would return six LegCo Members in 2000 was the same EC for selecting the CE in 2002, he said that the two ECs should be the same from the plain and literal meaning of Annexes I and II. However, the Administration still reserved its position on the matter as advised by the Secretary for Constitutional Affairs on a number of previous occasions. Mr Johannes CHAN said that he agreed in principle to the view of the Legal Adviser.

17. Mr NG Leung-sing said that as the term of office of the EC provided for in Annex I of BL was five years, the term of office of the EC established in 1998 would therefore end in 2003. If another EC was established for the purpose of selecting the CE in 2002, this might give rise to legal challenges in court for breach of the BL.

18. The Legal Adviser pointed out that the function of the EC formed in 1998 was to elect 10 Members to the first term of LegCo in accordance with the "Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region". This EC was different from the EC provided for in Annex I or Annex II of the BL.

19. Referring to the Bar Association's comments on the method for selecting or electing members to the EC, Mr NG Leung-sing was of the view that the existing arrangements had already complied with paragraph 3(2) of Annex I of the BL which stipulated that "*Corporate bodies in various sectors shall, on their own, elect members to the Election Committee, in accordance with the number of seats allocated and the election method as prescribed by the electoral law*".

20. Mr Johannes CHAN said that the Bar Association had no intention to advocate a particular time schedule for a decision to be made on a new method for returning members of the EC. However, it held the view that the present methods, which varied greatly from sector to sector and within sector, were undesirable. Besides, whereas BL 45(2) specified a nomination committee for the selection of the CE which was broadly representative in accordance with democratic procedures, the formation of

the nomination committee and the nomination procedures were unclear. The Bar Association was supportive of a standardized set of fair, open and transparent procedures.

Public consultation on political reform

21. Miss Margaret NG expressed the view that although the BL had imposed some restrictions on the course of political reform, the requirements were not totally devoid of flexibility as to how that course should take, so long as it followed the general direction prescribed by the BL. She said that every party who shared an interest in the important issue of political reform should voice their views and concerns. She sought the deputations' views on how to encourage public participation in this regard.

22. Mr CHAN Hung said that he was disappointed to find that the Administration had yet to proceed to conduct a comprehensive consultation exercise on political development in Hong Kong. He was also concerned that public enthusiasm in political affairs had declined since the re-unification. He opined that this could be accounted for by the fact that people had come to believe that any opinion which was considered by the Government as not fitting squarely with the BL would be ignored, and that there were insurmountable obstacles in amending the BL. He stressed that only if the Government assured to the satisfaction of the community that it was committed to take full heed of the public's views would the public be prepared to speak up on the issue, and the best method to get the consensus view of the community on important issues relating to political and constitutional reform was by way of a referendum.

23. Mr SUEN Kwok-lam and Mr LOK Chiu-chan considered that the Government should conduct a wide-ranging public consultation as soon as possible. Other concerned parties such as Members of LegCo should also assist in soliciting public opinion by organizing discussion forums and through other channels.

24. Mr SUEN Kwok-lam added that it was out of his expectation that only five organizations were in attendance of the Panel meeting to express their views.

25. Ms Emily LAU said that the Administration had far more resources than the Panel alone to conduct a comprehensive public consultation on the issue of political reform in Hong Kong. She agreed that the Administration should start embarking on the consultation without further delay.

26. Dr YEUNG Sum said that three prominent businessmen had recently made some comments on direct election and FC election which bore relevance to the present discussion of political reform. He specifically referred to the view of Mr Peter WOO as quoted in the media that the political interests of the top 500 000 salary earners who accounted for almost 90% of Hong Kong's salaries tax revenue should be protected.

To do so, the FC election should be preserved. Dr YEUNG opined that the implication of that view was that the rich should have more privileges than the ordinary members of the public with respect to representation in LegCo. This was contrary to the fundamental human right principle that every person should have equal political and voting rights, free from any distinction based on possession of wealth and property. He proposed that the three businessmen to be invited to give their views on the matter to the Panel.

27. The Chairman advised the meeting that the present consultation exercise was conducted by the Panel. The LegCo Secretariat had placed advertisements in two newspapers to invite public submissions. Separate invitations had been made to the two legal professional bodies and the relevant departments and faculties of local tertiary institutions. He added that so far more than 20 written submissions had been received, and the submissions would be considered in detail by the Panel at future meetings. The Panel would hear the views of a number of other deputations at the Panel meeting scheduled for 20 March 2000. On Dr YEUNG's suggestion, the Chairman said that he did not consider it necessary to invite specific individuals to give views to the Panel. Members could take note of the public views reported by the media by way of the newspaper cuttings circulated to them by the Clerk.

28. Ms Emily LAU echoed the Chairman's view. She said that she had personally contacted two of the three businessmen referred to by Dr YEUNG, but without avail.

29. Ms Emily LAU further expressed the view that the mass media had an important role to play in promoting public participation in matters concerning the development of political system in Hong Kong. She said that the media should give broad coverage of the views of all parties concerned, and be non-selective in their reporting.

30. Mr NG Leung-sing suggested that the Panel could consider inviting the 38 sectors of the EC to send representatives to present their views to the Panel. Ms Emily LAU did not support the proposal as she considered that those bodies were the privileged classes which had a vested interest in representation in LegCo.

31. Dr YEUNG Sum and Mr LEE Wing-tat opined that it would take a long time for the public to form their own views and for public involvement to gather momentum on the subject of political reform. Mr LEE considered that as public consultation was a time-consuming process, it was necessary for the Administration to draw up a timetable for the consultation exercise at an early opportunity. In his view, the public consultation should be conducted not later than the end of 2000. He stressed that the Administration must work according to an appropriate timetable so that there could be no excuse of time constraints for not being able to implement any concluded view on political reform that represented the consensus of the community. He enquired whether the Administration could make an assurance in this regard.

32. In response to members, Secretary for Constitutional Affairs (S for CA) said that the Administration was fully aware of the importance and complexity of the issues relating to the development of the political system in Hong Kong. The issue of public consultation on political reform was also the subject of the motion debate held by LegCo recently. In fact, he had explained the Administration's position on the matter in his speech made at the debate. It was the decision the Panel to consult the public on the matter first, following the passage of the motion.

33. SCA added that the Administration was aware of the need for a review of the method for the formation of LegCo after the third term which was not specified in the BL, and the work that needed to be done before 2007. While the Administration had yet to draw up a timetable for the review, including the timing for a public consultation if conducted, S for CA assured members that there was sufficient time to complete the necessary process including implementation of any recommendations arising therefrom.

II. Date of next meeting

34. Members agreed that another special meeting should be held on 1 April 2000 at 9:00 am to discuss the written submissions received by the Panel and to consider the way forward.

35. The meeting ended at 11:30 am.

Legislative Council Secretariat
31 March 2000