立法會 Legislative Council

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Paper for House Committee meeting on 5 October 2001

Report of the Panel on Constitutional Affairs

Remarks made by the Acting Secretary for Constitutional Affairs during the debate on the motion moved by Hon LEUNG Yiu-chung under Article 159 of the Basic Law at the Council meeting on 4 July 2001

Purpose

This paper reports on the Panel's dissatisfaction with certain remarks made by the Acting Secretary for Constitutional Affairs (Ag SCA) during the debate on the motion moved by Hon LEUNG Yiu-chung under Article 159 of the Basic Law (BL 159) at the Council meeting on 4 July 2001.

Background

- 2. BL 159 stipulates that the power to propose bills for amendment to the Basic Law shall be vested in the Standing Committee of the National People's Congress (NPC), the State Council and the Hong Kong Special Administrative Region (HKSAR). Amendment bills from the HKSAR shall be submitted to the NPC by the delegation of the Region to the NPC after obtaining the consent of two-thirds of the deputies of the Region to the NPC, two-thirds of all members of the Legislative Council (LegCo) of the Region, and the Chief Executive of the Region.
- 3. At the Council meeting on 4 July 2001, Hon LEUNG Yiu-chung moved a motion to seek the consent of the Council to forward proposed amendments to the Basic Law to the delegation of the HKSAR to the NPC, for submission to the NPC.

Remarks made by the Secretary for Constitutional during the debate

4. In the course of discussing the item of "Mechanism for amending the Basic

Law" at the meeting of the Panel on Constitutional Affairs on 17 July 2001, members made reference to the speech made by Ag SCA during the debate on Hon LEUNG Yiu-chung's motion. A verbatim transcript of Ag SCA's speech is in the **Appendix**.

- 5. Some members expressed strong dissatisfaction that Ag SCA had said that "Mr LEUNG Yiu-chung has claimed (聲稱) to move a resolution for amending the Basic Law in accordance with Article 159 of the Basic Law". They pointed out that the words "聲稱" were used several times in the speech. They considered that as the President of LegCo had allowed Mr LEUNG to move the motion, not only was Ag SCA's statement disrespectful to the President, it also amounted to a challenge to the decision of the President. There was also the view that using the words "聲稱" implied that the Administration considered Hon LEUNG Yiu-chung's motion "illegal".
- 6. The Administration explained that there was no question of the Administration not respecting the decision of the President. Ag SCA had represented the Administration to attend the Council meeting on 4 July 2001 and had spoken on the motion. His statement reiterated the Administration's position that in the absence of a mechanism agreed to by all parties concerned, Mr LEUNG's motion was premature from the constitutional angle and could not be regarded as a proper way to set in train the procedure for amending the Basic Law.
- 7. The Administration further explained that according to a number of commonly used Chinese dictionaries, the words "聲稱" meant "聲言", "公開表示" or "公開地用語言或文字表示". The Administration did not, and had no intention to, attach any other meaning to the words.
- 8. The Panel did not accept the Administration's explanations. Given the seriousness of the matter, members agreed that it should be brought to the attention of the House Committee.

Advice sought

9. Members are invited to consider whether the Chairman of the House Committee should be requested to raise the matter with the Chief Secretary for Administration.

Legislative Council Secretariat 25 September 2001

Verbatim transcript of Acting Secretary for Constitutional Affairs's speech at the Council meeting on 4 July 2001

政制事務局局長:主席,今次是梁耀忠議員繼去年1月,第二次**聲稱**根據《基本法》第一百五十九條將修改《基本法》的決議案提上議程。 我有責任就決議案的本質,重申政府的立場。我亦會就決議案的內容 闡述政府的看法。

主席,《基本法》第一百五十九條一款訂明,《基本法》的修改權屬於全國人民代表大會。第二款則訂明,《基本法》的修改提案權屬於全國人民代表大會常務委員會、國務院和香港特別行政區("特區")。特區的修改議案,須經特區的全國人民代表大會代表三分之二多數、特區立法會全體議員三分之二多數和特區行政長官同意後,交由特區出席全國人民代表大會的代表團向全國人民代表大會提出。但是,《基本法》第一百五十九條並沒有就具體運作機制作出規定。

《基本法》是特區的憲制性法律,修改《基本法》是一件重大的事情,訂定修改《基本法》的機制亦同樣事關重大,這些事情都必須審慎處理。

就制訂修改《基本法》機制,政府與立法會政制事務委員會("委員會")做了不少工夫。委員會亦舉行了兩次公開聽證會。

我相信各位議員都明白,制訂《基本法》機制的問題,在特區內, 是涉及立法會、港區人大代表和行政長官三方面的互動關係,這些都 不是單方面可自行解決的問題,我們必須與各有關方面充分商討。

至於涉及中央方面的問題,我們更須先諮詢中央。例如就港區人大代表如何履行《基本法》第一百五十九條所訂明的職責,我們須瞭解人大常委會辦公廳會否就港區人大代表履行《基本法》第一百五十九條的職責方面頒布更詳盡的執行職務的辦法,或由港區人大代表方面自行訂立議事規則這個問題。我們現時所採取的工作程序是由特區政府研究、分析和廣泛諮詢,並與立法會及中央商討,然後提出建議

方案,我們認為這是較為穩妥的做法。特區政府一方面和立法會就此 共同努力,另一方面自 1999 年年初開始便已就這課題與中央政府展 開商討。

我們明白有個別議員希望特區政府能盡快制訂一套修改《基本法》的機制。現時我們正處於和中央商討的階段。中央政府的看法是,訂定修改《基本法》機制是一個重要的課題,必須慎重處理。中央政府已答允研究有關課題,並表示由於當中有不少問題涉及全國人大有關的安排,須與全國人大方面一起研究。特區政府會繼續跟進這件事。

當梁耀忠議員去年1月**聲稱**根據《基本法》第一百五十九條提出 議案時,政府已清楚表明我們的立場。主席,請容許我在此重申政府 的立場,就是我們認為在現階段,未經各有關方面商定機制以前,梁 議員所提出的議案只是他個人的建議。有關決議案從憲制的角度來 看,是不成熟的,不能被視為一個恰當開展修改《基本法》程序的做 法。

主席,現在我會就決議案的內容闡述政府的看法。

《基本法》對行政長官的產生辦法和相關的原則已有清楚的規定。《基本法》第四十五條訂明行政長官在特區通過選舉或協商產生,由中央人民政府任命。行政長官的產生辦法根據特區的實際情況和循序漸進的原則而規定,最終達至由一個有廣泛代表性的提名委員會按民主程序提名後普選產生。這是《基本法》所訂明的目標。

《基本法》附件一對行政長官的產生辦法有具體的規定。行政長官由一個具有廣泛代表性的選舉委員會根據《基本法》選出,由中央人民政府任命。2007年以後各任行政長官的產生辦法如需修改,須經立法會全體議員三分之二多數通過,行政長官同意,並報全國人大常委會批准。

主席,特區的政制發展是一個關乎香港社會整體利益的重要課題。正如行政長官在去年的施政報告中指出,"《基本法》規定的政治體制,體現了尊重歷史、尊重現實的精神,並且確立了循序漸進的原則,讓特區成立後,政治體制有 10 年時間鞏固根基,可以透過實踐累積經驗,再走出下一步。三年多以來,社會上一直有不同的聲音,有主張加快政改的,也有擔心香港政治環境變化過於急劇的。政制發

展十分重要,牽涉層面甚廣,而且關乎全局,因此需要有一個醞釀的過程,營造適當的條件和環境,通過實踐來達至成熟的意見。"以上是行政長官在施政報告中所說的話。

主席,我們認為現時不是適當的時機,討論更改行政長官的產生辦法。我們當前的急務是要全力爭取立法會通過《行政長官選舉條例草案》,為明年的行政長官選舉訂立本地的立法基礎。

第二任行政長官選舉將於 2002 年 3 月下旬舉行,距今只約 9 個月的時間。我們希望立法會可在 7 月 11 日休會前通過《行政長官選舉條例草案》。由於時間緊迫,當主體法案獲立法會通過後,我們會盡快完成草擬一連串的附屬法例,就行政長官選舉的細節,作出詳細的規定。

日後,我們必須考慮特區的實際情況,並根據《基本法》第四十五條循序漸進的原則和附件一的有關規定,檢討特區的政治體制。我們定會給予社會人士充分機會發表他們的意見。我們希望透過全面的討論,社會人士會對特區政治架構的未來發展提出成熟的意見,並取得共識。

今天梁耀忠議員在未經各有關方面商定妥善的機制以前,再次**聲** 稱根據《基本法》第一百五十九條,把事前未經廣泛諮詢亦未經立法 會詳細研究的修改《基本法》議案提上議程,並要求立法會就此表決, 肯定不是一個妥善的做法。

主席,基於我剛才提出的種種原因和考慮,政府反對梁耀忠議員今天的議案。謝謝主席。