

Extract from the minutes of the House Committee meeting on 17 October 2003

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V. Report of the Subcommittee to prepare for the appointment of the Select Committee to inquire into matters relating to the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority

(LC Paper No. CB(2)85/03-04)

20. Referring to paragraphs 5 to 10 of the paper, Dr LAW Chi-kwong, Chairman of the Subcommittee, said that members had divergent views on the wording of the draft terms of reference prepared for discussion at the Subcommittee meeting on 15 October 2003. While the Subcommittee considered that the proposed scope was appropriate and flexibility should be allowed for the proposed select committee to conduct its inquiry, some members were of the view that reference to "senior" ("高層") officers should be deleted, to avoid sending a wrong message to the public that the proposed select committee had a pre-determined view from the outset that senior officers of the Government and the Hospital Authority (HA) were culpable of blunders in the handling of the SARS outbreak. Some other members, however, considered that the word "senior" ("高層") should be retained in order to respond to the public call for finding out whether, and if so, which senior officers of the Government and HA should be held accountable. They were also of the view that deleting the word "senior" ("高層") would create anxiety amongst all employees of the Government and HA. This would be unfair, as decisions on the handling of the SARS outbreak were invariably made by senior officers of the Government and HA.

21. Dr LAW Chi-kwong further said that a vote was taken by the Subcommittee on the proposed terms of reference. Four members were in favour of retaining the word "senior" ("高層"), while five members were in favour of deleting it. The Subcommittee therefore proposed the following terms of reference for the House Committee's consideration -

"To inquire into the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority in order to examine the performance and accountability of the Government and the Hospital Authority and their officers in that regard."

"調查政府與醫院管理局對嚴重急性呼吸系統綜合症爆發的處理手法，藉此審視政府與醫院管理局及其人員在此方面的表現及須承擔的責任。"

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22. Dr LAW added that the Subcommittee agreed that the areas of concerns to be investigated should be left to the select committee to determine. The Subcommittee also agreed that the proposed terms of reference were not intended to include examination of treatment protocols adopted in treating SARS patients, and adjudication on the legal liability of any individual or any party summoned to attend as witnesses.

23. Dr LAW said that the proposed motion for the appointment of the select committee was set out in Appendix II to the paper. The Subcommittee proposed that the motion should be moved by him as Chairman of the Subcommittee at the Council meeting on 22 October 2003 or 29 October 2003, depending on whether any Member(s) would consider proposing amendment(s) to the motion. Dr LAW added that that the President's permission would have to be sought for the requisite notice period to be waived.

24. Dr LAW further said that the Subcommittee's recommendations on the practice and procedure, size and the procedure for nominating the Chairman, Deputy Chairman and members of the proposed select committee were detailed in paragraphs 14 to 17 of the paper.

25. Ms Emily LAU said the proposed scope of inquiry appeared very wide, and the select committee might not have sufficient time to complete its inquiry before the end of the current term. Ms LAU asked whether the Subcommittee had identified any specific areas of concern that would be covered in the inquiry. Ms LAU further said that to be fair to all parties concerned, it might be necessary to provide the draft report or any part of it to certain witnesses for comments, before the select committee finalised the report.

26. Dr LAW Chi-kwong responded that the Subcommittee was of the view that the inquiry could either focus on major events or stages of development in the SARS outbreak. Dr LAW agreed that individuals and organisations concerned should be allowed to comment on the select committee's observations and conclusions, before the select committee finalised its report. As regards the timeframe of the inquiry, Dr LAW considered that the select committee should aim to complete its hearings by April 2004, and submit its report to the Council in June/July 2004.

27. Dr LAW added that in the event that the inquiry could not be completed before the end of the current term, the select committee would still need to submit a report to the Council. It would be for the Council of the next term to decide whether it would appoint another select committee to continue with the inquiry.

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28. Ms Emily LAU said that there should be a dedicated team of experienced staff to provide support services for the select committee, and additional resources should be sought if necessary.

29. The Secretary General responded that a dedicated team comprising one Chief Assistant Secretary and up to three Senior Assistant Secretaries would be deployed to provide support services for the select committee. The Legal Adviser added that he and other legal staff in the Legal Service Division would fully assist the select committee in its inquiry. He pointed out that the select committee could engage the services of professionals and experts to assist in the inquiry, if necessary.

30. Referring to the procedure for the nomination of Members to the select committee proposed in paragraph 17 of the paper, Miss Margaret NG said that it was important for the select committee to conduct its work in a fair and transparent manner. Miss NG further said that Members who had been involved in, or invited to attend, the inquiries conducted by the SARS Expert Committee and/or the review panel of HA on the SARS outbreak should make such declarations, if they were nominated to the select committee.

31. Dr LAW Chi-kwong said that Members who wished to give evidence to the select committee should not join the select committee, as this could give rise to conflict in roles, and undermine the impartiality and integrity of the select committee.

32. Mrs Selina CHOW said that members of the select committee should make their best efforts to attend all its meetings. Dr YEUNG Sum concurred with Mrs CHOW. He added that any Member(s) belonging to the Democratic Party who joined the select committee would be fully committed to the work of the select committee.

33. Referring to the proposed terms of reference, Ms Emily LAU asked whether the select committee would make recommendations on how existing systems should be improved, and how individuals who were found to be culpable of blunders in the handling of the SARS outbreak should be punished.

34. Dr LAW Chi-kwong responded that although the Subcommittee had not discussed this issue, the proposed terms of reference did not preclude the select committee from making such recommendations.

35. Dr LAW Chi-kwong said that the public was not satisfied that the Expert Committee and the review panel of HA had found no individual culpable of negligence or maladministration in the handling of the SARS

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outbreak. There was therefore high public expectation that the proposed select committee should find out whether any individuals should in fact be held responsible and accountable.

36. Dr LAW further said that his personal view was that, as the inquiry would focus on the performance and accountability of senior officers of the Government and HA, the terms of reference of the select committee should clearly reflect its focus, so as not to raise public expectation of the scope of the inquiry unnecessarily. Dr LAW was in favour of retaining the word "senior" ("高層") or replacing it with the expression "officers at policy-making and management levels" ("決策及管理階層"). Dr LO Wing-lok suggested that the expression "officers at policy-making and management levels" be added to the terms of reference.

37. Ms Emily LAU, Mr Andrew WONG, Ms Cyd HO, Mr Andrew CHENG and Dr LO Wing-lok expressed support for the proposed motion to include reference to "officers at policy-making and management levels", in order to set out clearly the focus of the inquiry.

38. Mr Michael MAK declared that he was an employee of HA. Mr MAK said that the scope of the inquiry should be confined to examining the responsibility and accountability of officers at policy-making and management levels in the handling of the SARS outbreak. The reference to such officers should therefore be made in the terms of reference of the select committee. This would avoid giving the impression that the inquiry would look into the performance of officers at all levels.

39. Mr Andrew WONG asked whether there would be conflict of interest for Mr Michael MAK, who was an employee of HA, to propose adding "senior officers" or "officers at the policy-making and management levels" to the proposed terms of reference of the select committee.

40. Mr Michael MAK said that he was an employee of the Kwai Chung Hospital, and that both the Hospital and he himself had not been directly involved in the handling of the SARS outbreak. Miss Margaret NG and Mr Albert HO were of the view that since Mr MAK had not been directly involved in the handling of the epidemic, there would not be any conflict of interest for him to participate in the discussion of the proposed scope of inquiry.

41. Mr Martin LEE said that having or not having the word "senior" ("高層") in the motion would not make much difference. Mr LEE considered that while the proposed select committee should not have a pre-determined view that senior officers of the Government and HA were culpable of blunders in their handling of the SARS outbreak, the question of

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accountability would invariably apply more to the senior officers than to the junior officers. Mrs Selina CHOW and Mrs Sophie LEUNG concurred with Mr LEE.

42. Dr TANG Siu-tong said that reference to "senior officers" or "officers at policy-making and management levels" should not be made in the proposed terms of reference, to avoid giving the impression that the proposed select committee had a pre-determined view, and to allow flexibility for the proposed select committee to invite officers at all levels to give information. He added that it was difficult to define what "senior officers" meant.

43. Mr IP Kwok-him said that Members belonging to the Democratic Alliance for Betterment of Hong Kong considered the wording of the proposed motion appropriate. Mr IP added that as the proposed wording already implied that senior officers would be the focus of the inquiry, it was not necessary to add any reference to "senior officers".

44. Miss CHAN Yuen-han said that it was not necessary to retain the word "senior" ("高層") in the proposed motion, as long as the focus of the inquiry was to examine the performance and accountability of the Government and HA and their senior officers. Nevertheless, she had no strong views about adding the expression "officers at policy-making and management levels" to the motion.

45. Dr YEUNG Sum said that it was not necessary to retain the word "senior" ("高層") in the proposed terms of reference. Dr YEUNG further said that accountability referred to both "administrative accountability" and "political accountability", and the two were not mutually exclusive. Dr YEUNG pointed out that as the accountability system for principal officials had been implemented for some time, the public was not satisfied that the SARS Expert Committee had not found any individual(s) to be accountable. He was of the view that the proposed select committee should find out whether any individual(s) should be held accountable, both politically and/or administratively, for any blunders or maladministration in the handling of the SARS outbreak.

46. Ms Emily LAU said that the proposed select committee should not limit its scope to examining the accountability of principal officials, as this would unduly restrict its inquiry to a few individuals.

47. Dr LAW Chi-kwong said that the Subcommittee had not discussed the definition of "accountability". He considered that "accountability" should be interpreted in a broad sense, and should not be confined to "political accountability".

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48. At the request of Mr IP Kwok-him, the Chairman suspended the meeting for five minutes to enable Members to discuss among themselves.

(The meeting resumed at 4:10 pm.)

49. Dr LO Wing-lok proposed that the proposed terms of reference be amended by adding the words "at policy-making and management levels", as follows -

"To inquire into the handling of the Severe Acute Respiratory Syndrome outbreak by the Government and the Hospital Authority in order to examine the performance and accountability of the Government and the Hospital Authority and their officers at policy-making and management levels in that regard."

“調查政府與醫院管理局對嚴重急性呼吸系統綜合症爆發的處理手法，藉此審視政府與醫院管理局及其決策及管理階層人員在此方面的表現及須承擔的責任。”

50. The Chairman put Dr LO's proposal to vote. The result was that 20 Members voted in favour of, 14 Members voted against the proposal, and two Members abstained from voting.

51. The Chairman said that the proposed motion for the appointment of the select committee would be amended accordingly.

52. Members agreed that the proposed motion should be moved at the Council meeting on 29 October 2003. Members also agreed that the President's permission be sought for the requisite notice period to be waived. The Chairman reminded Members that the deadline for giving notice of amendments, if any, to the proposed motion was Wednesday, 22 October 2003.

53. Members also endorsed the recommendations of the Subcommittee detailed in paragraphs 11, 14 and 17 of the paper.

54. The Chairman said that subject to the passing of the proposed motion at the Council meeting on 29 October 2003, nomination of Members to the select committee would be made at the House Committee meeting on 31 October 2003.

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