

**Speech by the Secretary for Justice, Ms Elsie Leung,
in a motion debate on “Regretting the decision of the
Standing Committee of the National People’s Congress
to rule out universal suffrage in the years 2007 and 2008”
moved by the Hon Albert Ho Chun-yan
at the Legislative Council on Wednesday, 19 May 2004**

Madam President,

This motion is based on a false premise. Although some people in Hong Kong may object to the recent NPCSC decision, I do not agree that “the people of Hong Kong at large” disagree with it. That statement is far too sweeping. Hong Kong is a pluralistic society and views on important issues are seldom uniform.

2. In any event, the fact that some people may object to the decision does not justify the motion’s assertion that the decision “completely ignores Hong Kong people’s general aspirations for democracy”. That assertion is unfounded. People’s aspirations were fully considered. But other equally important considerations also affect our constitutional development. In particular, the rule of law demands that such development must proceed in accordance with both the substantive and procedural principles laid down in our constitution.

3. Although many people in Hong Kong may feel disappointed that universal suffrage will not be achieved in 2007 or 2008, the fact is that the Basic Law never promised that this would be the case. Articles 45 and 68 of the Basic Law expressly provide that universal suffrage is the ultimate aim. They also expressly provide that the electoral arrangements “shall be specified in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress”.

4. Those principles must be adhered to. As I will demonstrate, the steps taken so far, including the NPCSC decision, are in strict accordance with those principles. If one understands these fundamentals, there is no basis for regret or dissatisfaction. The ultimate aim remains the same: universal

suffrage.

5. Before dealing with the basis of the NPCSC's decision, I would like to remind honourable members, firstly, of the constitutional basis of the NPCSC's role in the development of our electoral arrangements and, secondly, of the extensive public consultation that took place before the NPCSC's decision was made.

NPCSC's role

6. First the NPCSC's constitutional role. China is a unitary state. This means that all power flows from the Central Authorities. The Hong Kong SAR was established, and the systems to be implemented here were determined, by the National People's Congress. The legal status of the HKSAR is set down in Articles 1, 2 and 12 of the Basic Law : Hong Kong is an inalienable part of the People's Republic of China; its high degree of autonomy is authorized by the National People's Congress and shall be exercised in accordance with the provisions of the Basic Law; and the HKSAR comes directly under the Central People's Government.

7. Article 11 of the Basic Law expressly states that the systems and policies practised in the HKSAR shall be based on the provisions of the Basic Law. The underlying purpose of those systems and policies was to ensure the implementation of the basic policies of the PRC regarding Hong Kong. These include the upholding of national unity and the maintenance of the prosperity and stability of Hong Kong.

8. The political structure of the HKSAR is laid down in the Basic Law and cannot be unilaterally amended by Hong Kong. Nor can any constitutional development that affects the political system of Hong Kong take place without the consent of the Central Authorities.

9. This role of the Central Authorities is expressly set out in Annexes I and II of the Basic Law. Even if there is a need for change in our electoral methods, that change cannot be effected unless a consensus is reached, by the

three parties referred to, on arrangements that are consistent with the Basic Law. The NPCSC is one of those parties.

Public consultation

10. I turn now to the extensive public consultation that took place.

11. One function of the Constitutional Development Task Force has been to listen to the views of the public on relevant issues. Before publishing its First Report on 30 March this year, the Task Force had met with 77 organisations and individuals to listen to their views on the relevant issues of principle and legislative process. The organisations and individuals included political parties, political groups, trade unions, chambers of commerce, academics, members of the former Drafting Committee for the Basic Law, members of the Committee for the Basic Law, non-affiliated members of the Legislative Council, and representatives of local organisations. The Task Force also met with members of the District Councils and the Election Committee in groups.

12. On 15 April, the Task Force published its Second Report, which dealt with the three issues of principle. By that date, the Task Force had met with 86 organizations and individuals; its website had been visited by the public about 190,000 times; and it had received from the public around 730 letters, facsimiles and e-mails, expressing views on the issues of principle and legislative process. That report expressly referred to “many views that the ‘actual situation’ should constitute the prevailing aspirations of the general public – that is the realisation of universal suffrage in 2007 and 2008”. However, quite properly, the report also referred to views that differed from this.

13. The Task Force then formed its own view of what the “actual situation” of the HKSAR is. It decided that “actual situation” includes not only public opinions, but also factors such as the legal status of the HKSAR, the present stage of constitutional development, economic development, social conditions, the understanding on the part of the public of “One Country, Two

Systems” and the Basic Law, public awareness on political participation, the maturity of political talent and political groups, as well as the relationship between the executive authorities and the legislature. This conclusion – that “actual situation” does not refer only to public opinion on the question of universal suffrage – is, I believe, an entirely justifiable one.

14. Having considered all the views submitted to it, the Task Force concluded that the Chief Executive should submit a report to the NPCSC, recommending that the methods for selecting the Chief Executive and for forming the Legislative Council be amended.

15. In mid-April this year, the Chief Executive did submit such a report and recommendation to the NPCSC, and in it he endorsed the views and conclusions of the Task Force.

16. I pause here to emphasize that the Task Force’s reports, and the Chief Executive’s report to the NPCSC, fully reflected public opinion in Hong Kong. As I mentioned earlier, the views expressed were diverse. They ranged between two extremes. At one extreme were those who wanted universal suffrage in 2007 and 2008, and at the other extreme were those who strongly opposed this. Such views were reflected in toto to the NPCSC. Given such divergent views, there appeared little chance that a consensus on universal suffrage could be reached and for legislation to be promulgated in time for the 2007 and 2008 elections.

The NPCSC interpretation

17. The interpretation of Annexes I and II of the Basic Law by the NPCSC is an important element in recent developments, since it provided for the report by the Chief Executive to the NPCSC, and for the decision by the NPCSC. There is no doubt about the lawfulness, constitutionality and binding effect of that interpretation.

18. As I explained in my speech in this Council two weeks ago, the power of interpretation is conferred on the NPCSC by Article 67(4) of the PRC

Constitution, which is re-iterated in Article 158 of the Basic Law. The Court of Final Appeal has determined that the NPCSC's power of interpretation applies to any provision in the Basic Law; that it can be exercised on the initiative of the NPCSC; and that any interpretation of the Basic Law by the NPCSC is binding on Hong Kong courts.

19. The interpretation of the two annexes to the Basic Law was not only lawful but has also clarified NPCSC's position on Hong Kong's constitutional development for 2007 and 2008. In addition, it has removed doubts over the meaning of important aspects of the annexes. These included doubts as whether amendments could be made in the year 2007, and over the procedures involved in deciding whether there is a need for change.

20. The interpretation also made it clear that, if no consensus were reached on changes to be made to the two Annexes, the arrangements set out in those Annexes would continue to apply in 2007 and 2008. This underlines the need for consensus-building if change is to be effected.

The NPCSC decision

21. The NPCSC decision that is the subject of this motion was made in response to the Chief Executive's report to it. As I said earlier, that report endorsed the content of the two reports of the Task Force, which themselves reflected public opinion.

22. Before the NPCSC made its decision, a delegation from the NPCSC visited Shenzhen on 21 and 22 April 2004, and met Hong Kong delegates to the NPC, Hong Kong members of the CPPCC, members of the public (including members of political parties), academics and members of the Committee for the Basic Law, representatives from the Article 45 Concern Group, lawyers, and the Task Force. The NPCSC had also available to it, all the submissions and representations made by the public to the Task Force on this subject.

23. As required by the Basic Law, the NPCSC's decision was made in

the light of actual situation in the HKSAR and in accordance with the principle of gradual and orderly progress. It is important to remember that the NPCSC made two rulings in its decision. The effect of the first ruling is referred to in the motion. However, the second ruling is entirely ignored in the motion. The second ruling was to the effect that, subject to the limitations in the first ruling, “appropriate amendments that conform to the principle of gradual and orderly progress may be made” to the electoral methods set out in Annexes I and II of the Basic Law.

24. This is important. In omitting the second ruling, the motion seriously underestimates the extent to which Hong Kong people’s general aspirations for democracy were taken into account by the NPCSC. If one studies the speech by the Deputy Secretary-General of the NPCSC, Mr Qiao Xiao-yang, given at a forum in Hong Kong on 26 April this year, it is apparent that these aspirations were indeed taken into account. I quote –

“According to my understanding, various sectors of Hong Kong society have very much the same views that the democratic development of Hong Kong should move forward continually. They all think that the methods for selecting the Chief Executive in 2007 and for forming the Legislative Council in 2008 should be amended.”

The second ruling by the NPCSC fully reflected that broad consensus.

Reasons for the rulings

25. On the question whether universal suffrage for the two elections should be adopted in 2007 and 2008 Mr Qiao noted, accurately, that there was a divergence of views. He concluded, however, that if universal suffrage for the two elections were implemented in those years, “that would clearly deviate from the path of gradual and orderly progress as stipulated in the Basic Law and be inconsistent with the provisions of the Basic Law”.

26. According to Mr Qiao, “the key to resolving the divergence and

disputes on the issue of constitutional development in Hong Kong is to strictly follow the path laid down in the Basic Law in an unbiased and pragmatic spirit to strive for the truth”.

27. Since that was the approach adopted by the NPCSC, the decision to rule out universal suffrage in 2007 and 2008, whilst allowing for amendments which support “gradual and orderly progress”, is not a cause for regret or dissatisfaction. Those who believe in the rule of law and constitutionalism should accept the decision.

28. The NPCSC’s decision to maintain the existing ratio between members returned by functional and by geographical constituencies, and the procedures for voting on bills and motions in this Council, is justified in the introductory paragraphs of that decision. They explain that any change to the electoral method must be conducive to the balanced participation of all sectors and groups of society, to the effective operation of the executive-led system, and to the maintenance of the long-term prosperity and stability of Hong Kong. They also state that it remains to be seen how the move this year to a Legislative Council that has equal numbers of members from geographical constituencies and from functional constituencies will impact on the operation of Hong Kong society as a whole, and on the executive-led system.

29. I believe those to be fair comments, and that the decision to retain in 2008 the 50/50 proportion and the current voting methods in this Council to be a prudent and responsible political decision. Of course, some people may disagree. Some people may think that their views have been ignored. But that was not the case. The speech by Mr Qiao Xiao-yang devoted several paragraphs to the extent to which the NPCSC considered the views from different sectors. However, difficult choices had to be made, and it was the responsibility of the NPCSC to make those choices. As Mr Qiao emphasized, “[p]ublic opinion is an essential reference factor in formulating policies, but is not the one and only criterion for judgment. A government completely led by opinion polls is an irresponsible government.”

Legal effect of the decision

30. The NPCSC's decision does not purport to have legislative effect. However, it is a formal decision by the permanent body of the country's highest organ of state power, acting within its constitutional powers. There is therefore no doubt about the legal effect of this decision.

31. The NPCSC has the power, both under the Annexes of the Basic Law and under its Interpretation, to decide whether any particular amendment is consistent with the Basic Law. In particular, it has the power to decide whether a particular amendment is specified "in the light of the actual situation in the Hong Kong Special Administrative Region and in accordance with the principle of gradual and orderly progress".

32. Since the NPCSC has that power, there is no legal reason why it cannot exercise it at the beginning of the process, rather than at the end. The merits of the approach adopted are that –

- (1) it sets the parameters for a debate on possible reforms that are consistent with the Basic Law;
- (2) it may help to prevent a continuous argument between extreme views, which would not result in any consensus being reached, but which might affect Hong Kong's stability; and
- (3) it prevents unconstitutional reforms being put forward by the HKSAR which would be vetoed by the NPCSC, possibly leaving insufficient time for other reforms to be agreed upon and implemented.

Democratic aspirations

33. The final paragraph of the NPCSC's interpretation should not be overlooked. It reaffirms that the democratic system of the Hong Kong SAR will certainly be able to progress forward incessantly, and ultimately attain the aim of universal suffrage. This is entirely in accordance with the aspirations of Hong Kong people.

34. Universal suffrage in Hong Kong is a common aim of the Central Authorities, the Hong Kong SAR Government, and Hong Kong people. But we need to work together to achieve that goal. There must be dialogue, not confrontation. We must look forwards, not backwards.

Conclusion

35. Madam President, I have explained the legality and merits of the NPCSC decision. When the issue is considered dispassionately, there is no cause to express regret about, or dissatisfaction with, that decision. I disagree with those negative elements of this motion. However, I have no problem with its call to the people of Hong Kong to continue striving for democracy. Let us strive together, but accept that the pace of change must comply with the criteria laid down in the Basic Law.

36. For the reasons I have given, I would urge members to vote against this motion, and against the amendments proposed by the Hon Leung Yiu-chung.