

MR HU SHENG'S REPORT ON THE ENLARGED CHAIRMEN'S MEETING

(9 January 1989)



Members,

Mr Ji, Chairman of the Drafting Committee, asked me to prepare a report on the enlarged chairmen's meeting held in December last year to be presented at this plenary session of the Drafting Committee.

After the consultation exercise on the "Draft Basic Law of the Hong Kong Special Administrative Region for Solicitation of Opinions" (DBLSO) ended, individual subgroups of the Drafting Committee for the Basic Law held meetings in November last year to seriously study the opinions and suggestions put forward by people from various sectors in Hong Kong and on the mainland regarding the amendment of the DBLSO. The subgroups then further amended the articles of the DBLSO. At the enlarged chairmen's meeting held in December last year, the articles amended by the subgroups were examined one by one. Having affirmed the amendments put forward by the subgroups, the enlarged chairmen's meeting made some modifications to the articles in its preparation of the "Revised Draft Basic Law of the Hong Kong Special Administrative Region for Solicitation of Opinions" to be submitted to this plenary session for discussion. In this revised draft, there are altogether 160 articles, twelve less than those in the DBLSO. As the convenors of the subgroups have already presented to you their reports on the amendments to the articles earlier on, I will not repeat those amendments but will give you a brief report on some of the modifications made to the articles by the enlarged chairmen's meeting. I ask the plenary session to examine my report together with those of the subgroups.

I. With respect to the General Principles, the enlarged chairmen's meeting made four modifications:

(1) The order of Articles 4 and 5 of the DBLSO has been reversed so that the previous Article 4 is grouped with Articles 6 and 7 on the economy. This is a more logical presentation.

(2) Article 6 of the DBLSO has been amended to read: "The Hong Kong Special Administrative Region shall protect the right of private ownership of property in accordance with law." The provisions of the previous Article 6, after slight modification, are presented as Article 104 in Chapter V on economy. This amendment has primarily taken into consideration the fact that general principles should be fundamental, hence they should not be too specifically written. The protection of private ownership of property is a fundamental principle of the capitalist system and should therefore be included in the chapter on general principles. It is more appropriate to provide for the details of

the protection of private ownership of property in the chapter on economy.

(3) Chapter VIII on the regional flag and regional emblem has been removed. The provisions on the regional flag and regional emblem are now presented as Article 10 under the General Principles.

(4) The phrase "the policies and systems practised in the Hong Kong Special Administrative Region" in the previous Article 10 is now amended to read "the systems and policies practised in the Hong Kong Special Administrative Region" in Article 11. The phrase "and the relevant policies" is added after "legislative and judicial systems". With these amendments, the provisions are expressed in a more precise manner.

II. With respect to Chapter II on the relationship between the Central Authorities and the HKSAR, only one amendment has been made: the order of the second and third paragraphs of Article 13 has been reversed so that the two paragraphs on the responsibility of the Central Authorities for foreign affairs are grouped together.

III. With respect to Chapter III on the fundamental rights and duties of the residents, two articles have been amended. The clause "to challenge in the courts" as in the provision "Hong Kong residents shall have the right to challenge in the courts the actions of the executive organs or their personnel" in the previous Article 34 has been amended to read: "to institute legal proceedings in the courts against the actions..." in the present Article 35. The provision "Hong Kong residents shall have the right to social welfare; the welfare benefits of the working people shall be protected by law" in the previous Article 36 has been amended to read: "Hong Kong residents shall have the right to social welfare as prescribed by law;\* The welfare benefits of the labour force shall be protected by law."

\* Translator's note: In the Basic Law (Draft), the punctuation mark ";" is replaced by a fullstop.

IV. With respect to Chapter IV on the political structure, the wording of three provisions has been amended. The provision: "The term of office of members of the Legislative Council of the Hong Kong Special Administrative Region shall be four years." in Article 68 has been amended to read: "The term of office of the Legislative Council of the Hong Kong Special Administrative Region shall be four years, except the first term which shall be two years." The amendment proposal to change Paragraph 2 of Article 71 to: "To decide on the agenda, but the bills introduced by the government must be given priority for inclusion in agenda." has been modified to read: "To decide on the agenda, giving priority to bills introduced by the government for inclusion in the agenda." The term "district organizations which are not local organs of political power" in Article 96 has been amended to "district organizations which are not organs of

political power".

With respect to the provision on legal practice in Article 93 in the present draft, some members put forward their view at the enlarged chairmen's meeting that it was not quite appropriate to lay down the provision on legal practice in the section on judicial organs because lawyers are not judicial personnel. They held the view that the provisions on professional organizations and professional qualifications in the present Article 141 should also be applicable to lawyers. The enlarged chairmen's meeting did not reach a decision on this question. It is hoped that this plenary session will discuss the issue.

V. With respect to Chapter V on the economy, the Subgroup on Economy proposed merging Sections 1, 2 and 3 of Chapter V of the DBLSO. The enlarged chairmen's meeting accepted this proposal. The new section is now entitled "Public Finance, Monetary Affairs, Trade, Industry and Commerce". In addition, the provision on the protection of property rights of legal persons is put under Article 104.

VI. With respect to Chapter VI on education, science, culture, sports, religion, labour and social services, two provisions have been amended:

(1) The first paragraph of Article 140 originally reads: "The government of the Hong Kong Special Administrative Region shall not interfere in the internal affairs of religious organizations and shall not restrict religious activities which do not contravene the laws of the Region." On the basis of the proposal put forward by the Subgroup concerned, the clause "restrict the freedom of religious belief" has been inserted before "interfere in the internal affairs of religious organizations".

(2) Article 144 now provides: "...shall, on its own, formulate laws and policies on the development and improvement of this system...." which is an improved version of the previous provision: "...shall formulate, on its own, policies on the development and improvement of this system...". This amendment has taken into consideration that the social welfare system is not only a government policy, many of its aspects are stipulated by law.

VII. With respect to the formation of the first Government and the first Legislative Council, it was discussed at the enlarged chairmen's meeting whether the issue should be presented as an annex to the Basic Law. Taking into consideration that the method for the formation of the first Government and the first Legislative Council must take effect before 1 July 1997, and that the Basic Law and its Annexes will only take effect on 1 July 1997, it was proposed that the method for the formation of the first Government and the first Legislative Council should be presented as a special decision of the National People's Congress to be published at the same time when the Basic Law is adopted.

Accordingly, the enlarged chairmen's meeting revised the wording of Article 159 in Chapter IX of the present draft.

VIII. With respect to the Committee for the Basic Law, the enlarged chairmen's meeting studied the proposal put forward by the Subgroup on the Relationship between the Central Authorities and the HKSAR regarding the establishment of the Committee for the Basic Law of the HKSAR under the Standing Committee of the National People's Congress. The meeting preliminarily decided on the following: the Committee will be a working committee under the Standing Committee of the National People's Congress. It will comprise twelve members appointed by the Standing Committee of the National People's Congress. Six of them will be from the mainland and six from Hong Kong (including members of the legal profession). The term of their office will be five years. It will be stipulated that: "Hong Kong members shall be Chinese citizens who are permanent residents of the Hong Kong Special Administrative Region and shall be nominated jointly by the Chief Executive, President of the Legislative Council and Chief Justice of the Court of Final Appeal of the Region for appointment by the Standing Committee of the National People's Congress". The function of the Committee for the Basic Law will be: "to study questions concerning the implementation of Articles 17, 18, 157 and 158 of the Basic Law of the Hong Kong Special Administrative Region and submit its views thereon to the Standing Committee of the National People's Congress."

IX. As to how policy provisions should be dealt with, during the consultation exercise, many people in Hong Kong and on the mainland proposed putting certain policy provisions in Chapters V and VI in an annex. The Subgroup on Economy and the Subgroup on Education, Science and Culture both studied the issue at their own meetings held in November last year. Members of the Subgroup on Economy were unanimous that these provisions should not be put in an annex whereas the Subgroup on Education, Science and Culture only agreed to put Articles 156 and 157 of the DBLSO in an annex. In the "Revised Draft Basic Law of the Hong Kong Special Administrative Region for Solicitation of Opinions" submitted to this plenary session for discussion, the policy provisions remain in Chapters V and VI. How to better handle this issue awaits further discussion and the decision of the plenary session.

The Secretariat of the Drafting Committee for the Basic Law has compiled three reference papers on the related issues for your consideration. The first reference paper is a collection of the opinions on the political structure and other issues put forward by individual members. The second reference paper is a collection of the opinions on the political structure and other issues put forward by members of the public and organizations in Hong Kong at the time of the enlarged chairmen's meeting. The third reference paper is a reprint of the explanation of the terms "acts of state" and "facts of state" supplied by the Consultative Committee for the Basic Law.

This report is now submitted to the plenary session for examination.

