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11 February 2004

**BY HAND**

The Hon Donald Tsang, GBM, JP  
Chief Secretary for Administration  
Central Government Offices,  
Lower Albert Road,  
Hong Kong.

Dear Secretary,

I have the pleasure to enclose ten copies of Opinion No.2 "Towards Consensus" of the Article 45 Concern Group which has just been published. The Concern Group has also launched its website at [www.article45.com](http://www.article45.com) for the purpose of disseminating information and useful materials on the political reform debate, and to provide a forum discussion.

Our Opinions are available on-line, but we shall be happy to provide you or your colleagues with additional copies any time.

Yours sincerely,

(Signed)

Margaret Ng  
for and on behalf of the  
Article 45 Concern Group

Encl.

c.c. (1) Ms. Leung Oi Sie, Elsie, GBM, JP  
Secretary for Justice

(2) Mr. Lam Sui Lung, Stephen, JP  
Secretary for Constitutional Affairs



(基本法) 四十五條關注組

第2號意見書

ARTICLE 45

Concern Group

Opinion No. 2

## Towards Consensus

Since our last pamphlet, broad consensus has emerged on a number of important issues. They are: -

- i. It is not contrary to the Basic Law to introduce universal suffrage for the selection of the Chief Executive in 2007;
- ii. It is not necessary to amend the Basic Law to introduce universal suffrage to Hong Kong by 2007;
- iii. "Actual situation in the Hong Kong Special Administration Region" is one of the most important guiding principles;
- iv. Political reform ought to be "gradual and orderly" but there must be "progress" in the real sense;
- v. The Central Government should be involved in discussions with Hong Kong people on political reforms.

**The SAR Government raised 5 questions on procedure. What are your answers to them?**

They present no real difficulties, and only need to be answered briefly:-

- (a) *What legislative process should be used for amending the methods for selecting the Chief Executive and for forming the Legislative Council as set out in Annex I and Annex II to the Basic Law?*

The procedure to amend the method of selection is already set out in Annex I and Annex II. Local legislative implementation of such amendments is for LegCo with the consent of the CE. Central approval and

recording of such amendment are matters for the National People's Congress. Procedure is there to facilitate, not frustrate, the amendment.

- (b) *Whether there is a need to invoke Article 159 of the Basic Law if the amendment procedures as prescribed in Annex I and Annex II are used?*

No.

- (c) *Initiation of amendments relating to the methods for selecting the Chief Executive and for forming the Legislative Council*

The same answer to (a) applies.

- (d) *Whether the method for forming the 3rd term Legislative Council as prescribed in Annex II may apply to the 4th term and subsequent terms of the Legislative Council?*

Yes; the method for the 3rd term plainly continues until and unless it is amended according to Annex II.

- (e) *How the phrase "subsequent to the year 2007" should be understood?*

The complete phrase is "the terms subsequent to the year 2007". We have explained in our Opinion No. 1 why this means starting from the 3rd term of the CE in 2007. The Government's position as announced in November 2003 is the same. Hardly anyone seriously advances a different view.

**From your answers, does it mean that Central Government has no role, or only a passive role, to play in this process?**

Not at all. For the method for selecting the CE, we need the final approval of the Standing Committee. This makes it important for mutual

understanding to develop between the SAR and Central Government.

**What are the guiding principles for political development?**

They are found in Articles 45 and 68 of the Basic Law, and can be simply stated as follows: The ultimate aim is the selection of the CE by universal suffrage upon nomination by a broadly representative nominating committee in accordance with democratic procedure (Article 45); and the election of all members of LegCo by universal suffrage (Article 68);

The only guiding principles are "the actual situation in the HKSAR" and "gradual and orderly progress". "Actual situation" refers to the current state of affairs in Hong Kong and is a factual question. "Gradual and orderly progress" is judged practically, in the context of the actual situation in Hong Kong.

**What is the model proposed by the Article 45 Concern Group for achieving universal suffrage election of the CE in 2007?**

In our Opinion No.1, we suggested a simple and practical model based on making minimum change to the existing system, either by converting the present Election Committee to a nomination committee whose only function is to nominate any candidate with the endorsement of say, 5% of its members, or by giving power to LegCo to nominate any candidate with the endorsement of say, 5 members. The general electorate will vote on all candidates thus nominated on a one-person-one-vote basis. This model is gaining wide consensus from all sides in the community.

**Is the Concern Group's model compatible with the principle of "gradual and orderly progress"?**

Yes. Reform envisaged in Article 45 comprises 2

elements: "universal suffrage" and "nomination by a broadly representative nominating committee in accordance with democratic procedures". There is no half-way house for "universal suffrage". Our proposal, however, recommends minimum change to the Election Committee to achieve universal suffrage in 2007. There is still a long way to go to achieve the ultimate goal set out in Article 45.

**How is this related to "actual situation in the HKSAR"?**

The actual situation in Hong Kong is that the Government is dysfunctional because the CE has no moral or political mandate even though he has legal and constitutional authority conferred upon him. Hong Kong people overwhelmingly demand universal suffrage, and have shown themselves to be eminently rational, mature and responsible voters who attach great importance to Hong Kong's economic success and stability, and good relation with Central Government. There is no evidence to suggest that with universal suffrage, the majority of the electorate will vote for irresponsible candidates who favour breaching provisions in the Basic Law on the financial principles the HKSAR is required to follow. The change to the present government structure is small but the effect will be at once beneficial.

**Does "ultimate" aim mean "towards the year 2047"?**

No. "Ultimate" aim means the final objective and is not a reference to time. The Basic Law does not say when the ultimate aim should be achieved. It all depends on the actual situation in Hong Kong.

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Electronic version available at [www.article45.com](http://www.article45.com);  
[www.margareting.com](http://www.margareting.com).

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《基本法》四十五條關注組  
第2號意見書  
**ARTICLE 45**  
**Concern Group**  
Opinion No. 2

## 邁向共識

自我們發表第1號意見書後，社會上已在不少重要問題上形成共識，包括：—

- i. 在2007年推行普選行政長官，並不違反《基本法》；
- ii. 要在2007年展開普選毋須修改《基本法》；
- iii. "根據香港特別行政區的實際情況"是一項極為重要的指導原則；
- iv. 政制改革要"循序漸進"，但必須有實際的"進"；
- v. 中央政府應該參與香港居民的政制改革討論。

特區政府就《基本法》中有關政制發展立法程序曾提出5個問題，關注組如何作答？

這些問題並不複雜，只需簡短回應：—

- (a) 對《基本法》附件一及附件二中行政長官及立法會產生辦法的修改當用甚麼立法方式處理？

有關程序已載於附件一及附件二。在本地立法實施有關的修改，應按立法會程序進行，由行政長官同意；中央批准有關的修改或備案，則應按全國人民代表大會的程序進行。程序是為推行修改而非阻撓修改而設，不可本末倒置。

- (b) 如採用附件一和附件二所規定的修改程序，是否無須援引《基本法》第一百五十九條的規定？

不須。

- (c) 有關修改行政長官及立法會產生辦法的啟動。

請參閱問題(a)的答案。

- (d) 附件二所規定的第三屆立法會產生辦法是否適用於第四屆及其後各屆立法會？

是：第三屆立法會的產生辦法顯然會一直沿用下去，直至按附件二作出修改。

- (e) 「二零零七年以後」應如何理解？

整句應為「二零零七年以後各屆」，我們已於第1號意見書中解釋為何應理解為由2007年第三屆行政長官開始。政府於2003年11月亦曾公開表示認同這理解，沒有人真正提出異議。

以上的答案，是否表示中央政府在政制檢討過程中全無參與角色，或只有消極角色？

絕對不是。特區行政長官的產生辦法，既然最終須取得人大常委會的批准，特區與中央政府的相互了解和溝通自然重要。

政制發展有甚麼指導原則？

《基本法》第45及68條已清楚明確訂立指導原則，即：

行政長官最終由「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（第45條）；而立法會全部議員亦同樣最終由普選產生（第68條）。

唯一的指導原則是「根據香港特別行政區的實際情況」以及「循序漸進」。「實際情況」指的是香港現時的形勢，是個事實問題；「循序漸進」必須按香港的實際情況作實際的判斷。

四十五條關注組建議2007年普選行政長官按甚麼模式？

在第1號意見書中，我們提出了一個簡單和實際的模式，就是對現行架構作最少改動，將現行的選舉委員會轉變為提名委員會，同時規限其作用為提名任何獲得百分之五委員會成員提名的候選人，或授權立法會提名任何(比

方說)獲得5位立法會議員簽名支持的候選人，然後由全港合資格的選民以一人一票方式投票普選。這個模式在社會各界獲得愈來愈廣泛的共識。

關注組所建議的模式是否符合“循序漸進”的原則？

是。第45條所預設的改革包括兩部分：“普選”，及由“一個有廣泛代表性的提名委員會按民主程序”提名。“普選”是沒有中途站的。然而我們的建議只求達致在2007年推行普選，就對現制不作不必要的改動。要完全達致第45條所指的最終目標，仍有大段距離。

這與香港特別行政區的“實際情況”有甚麼關係？

香港的實際情況是，現行的政府根本無法正常運作，行政長官雖然獲賦予憲制和法定的權力，但無法在政治上或精神道德上建立威信和得到支持。絕大多數香港市民要求普選，亦一直表現出他們是理性、成熟和有責任感的選民，重視香港的經濟發展和穩定，以及與中央政府維持良好關係，完全沒證據顯示倘實行普選，大部分選民會投票支持一些不負責任的候選人，違反《基本法》內有關規定香港特區必須依從的理財原則的條文。事實上，關注組的建議，對現行政府架構作出很少的改動，但卻能帶來立竿見影的功效。

“最終”目標是否指“2047年”？

不是。“最終”目標指的應是最高的目標，而並非指時間。《基本法》並無指明何時應達致最終目標，這要視乎香港的實際情況而定。

二零零四年二月

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## 邁向共識

### Towards Consensus



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