

A shred of hope?

Joseph Wong says Leung's report to Beijing is so out of touch with the political realities in Hong Kong that it offers people little comfort in their long struggle to achieve universal suffrage

To those unaware of recent events in the Legislative Council or the increased political tension in society, the two recently released government reports on political reform convey the following impression: that Hong Kong people are satisfied with the present composition and performance of Legco, hence no reform is needed; and that most of them agree to the general principles laid down by Beijing for electing Hong Kong's chief executive by universal suffrage in 2017.

Such an impression bears little relation to the political reality Hong Kong faces today. And it offers little comfort to the democratic aspirations of the Hong Kong people, particularly the young and politically active.

It is true that during the consultation period, the public focused on the method for electing the chief executive and did not have much to say regarding the 2016 Legco election. But it is far-fetched, bordering on being dishonest, for the government to deduce a "no need to amend" consensus from the lack of public response.

In fact, the pan-democratic parties, which received more than half of the votes



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cast in the 2012 election, proposed substantial changes to the method for forming the legislature in 2016, such as by increasing the proportion of directly elected seats (presently fixed at 1:1 with functional constituency seats). Although these views are mentioned in the report, they do not seem to carry any weight when the government makes its own conclusion.

This conclusion of public opinion is conveniently used by Chief Executive Leung Chun-ying in his report to the Standing Committee of the National People's Congress. On that basis, he recommends that the Standing Committee take no decision to amend the existing composition of Legco. This recommendation is flawed in two respects.

First, one principle laid down by Beijing is that the ultimate aim of electing all law-

makers by universal suffrage must be achieved through "gradual and orderly progress". The 2007 Standing Committee decision says this can only happen after the implementation of universal suffrage for the chief executive election in 2017.

The next Legco election after the 2017 chief executive election will be in 2020. If there is no progress in making the 2016 Legco election more democratic, particularly in reducing the number of "small-circle" functional constituency seats, it would only add to the suspicion that the promise of universal suffrage is no more than a carrot on a stick.

More importantly, the way functional constituency members exercise their disproportionate voting power, as seen in the recent case of funding for the northeast New Territories development project, has damaged the credibility of what is supposedly a people's institution. The filibuster acts of some radicals, coupled with the tug of war between the pro-establishment and democratic camps, have brought normal working relations between the government and Legco to breaking point, something only Leung refuses to acknowledge.

If nothing is done to redress this structural imbalance in Legco, I foresee more bitter infighting, and the next chief executive, however elected, would be unable to deliver his policies effectively. This would lead to more social instability.

The government's standstill recommendation in respect of the 2016 Legco election may be an indication that the arrangements for 2017 would ultimately remain as before. Here's why.

The chief executive's report says that it is "the mainstream opinion" that the power of the nominating committee "should not be undermined or bypassed directly or indirectly". This effectively rules out any form of civic nomination of candidates, which is embodied in the three most popular "non-mainstream" proposals.

The report also says that "the community generally agrees that the chief executive should be a person who loves the country and loves Hong Kong" without mentioning the glaring lack of consensus on how such love could be validated objectively. If the Standing Committee attempts to turn patriotism into a practical requirement, it will stir up a major controversy.

In highlighting certain views expressed during the consultation, the chief executive's report lends support to the stance adopted by various Chinese officials on the likely composition and working of the nominating committee.

First, the report says that "relatively more views" agree that the composition of the committee should be decided by refer-

ence to the existing method of forming the current Election Committee, that is, composed of four sectors in equal proportions. Likewise, "quite a number of views" prefer to keep the size of the nominating committee the same as that of the Election Committee—1,200 members—or no more than 1,600.

Second, the report says that "quite a number of views" agree that the nominating procedures should reflect "majority rule", and meet the requirement of the nominating committee to nominate as an organisation. This is set in contrast with "some" or "other" proposals that aim to allow the participation of candidates not endorsed by Beijing.

Leung has formally commenced the five-step process of political reform in a politically correct manner, highlighting the so-called "mainstream views" while underplaying the strong views expressed by the hundreds of thousands of people who cast their votes in the Occupy Central "referendum" or participated in the July 1 march.

He has effectively halted any further democratisation of Legco, with, I fear, dire consequences. He has also made it easier for the Standing Committee to lay down

the parameters for a China model of universal suffrage for the election of the chief executive.

Most Hong Kong people would find it hard to accept that universal suffrage means no more than choosing one person from a list of candidates decided collectively by an unrepresentative nominating committee. This arrangement would be perceived as no better and probably worse than the previous small-circle election of the chief executive: its nominating procedures at least did not exclude the participation of "unpatriotic" candidates.

Hong Kong people have waited a long time for universal suffrage, a promise laid down in the Basic Law which was passed almost a quarter of a century ago. People of my generation remember the following lyrics from a Beatles song, "... *The many ways I've tried, but still they lead me back, To the long winding road.*" So we can understand why the younger generation does not want to wait any longer.

Let us hope reason will prevail when the Standing Committee hands down its decision on the way forward.

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Revived spirit

Peter Kammerer says by going beyond the façade of conservation, heritage officials got it right with PMQ, offering hope for other projects



Pull down old buildings and you tear out a community's heart. That's what successive Hong Kong governments have been doing for generations, with the result that in urban areas, our city's spirit is in tatters. Neighbours barely talk, creativity is difficult to find and diversity can only be found on the fringes of society. It's therefore a surprise to encounter much of what has been lost germinating in two buildings halfway along Hollywood Road above Central.

The low-rise buildings on Aberdeen Street comprise PMQ, the former Police Married Quarters, a complex built in 1951 and converted under a government revitalisation project into a creativity hub. If the blueprint of old had been applied to the site, it would have been bulldozed to rubble and dust and replaced by an upmarket residential block. But the heritage consciousness sparked by the demolition of the old Star Ferry pier in 2006 got in the way and some rare pondering took over. Smarting from the backlash of a few botched heritage projects, the development model of putting earning revenue above all other factors was turned on its head.

What Hong Kong has gained as a result is a rare government heritage success story: preservation of a historic site, creation of a place for artists to sell their wares, an interesting exhibition space and some cool places to shop, eat and drink. It's not a Bohemian paradise for art lovers, but it moves in the right direction. Perhaps what so many European cities have and we do not will be closer to attainment in 2016 with the opening of the old Central Police Station as a place for artists.

I'm setting aside suspicions that what drove the revitalisation of PMQ was the nostalgia of Hong Kong Chief Executive Leung Chun-ying and his predecessor, Donald Tsang Yam-ken. Both grew up in flats at the police quarters, their fathers having been officers. Instead, I prefer to think that a genuine desire by authorities to preserve our past was the impetus, the first government school having occupied the site from 1889 (modern China's founding father, Sun Yat-sen, was a pupil of the school when its premises there were being built). Few traces remain and the 1951 structures in its place are not architecturally noteworthy, but represent a time and place in our history that has long gone elsewhere.

A development system that has put the government in league with developers through property sales has ensured an insensitivity to our past. The conversion of the former Marine Police headquarters in Tsim Sha Tsui to 1881 Heritage has preserved the buildings, but destroyed the site and context. Murray House was disassembled in 1982, granite stone by stone, from where the Bank of China headquarters now stands, and faithfully reconstructed in 2001 on the Stanley waterfront, but its expensive restaurants and shops make it off-limits for all but the well-heeled. Imagine both as havens for artists, places to craft and display local works. They would still attract tourists, but ones of a kind more appreciative of the Hong Kong experience.

PMQ proves the model of old doesn't always have to apply. Let's hope that the old Central Police Station follows suit—and Murray House still has a chance.

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International law can provide answers to vital questions about flight MH17

Stephen Hall says Ukraine could refer attack to international court for war crimes trial

As the world continues to absorb the shock of the destruction of Malaysian Airlines flight MH17 and its 298 passengers and crew, there are two questions which are foremost in almost everyone's mind. What caused this disaster, and who will be criminally punished?

International law is relevant to both questions.

Under international law, Ukraine is responsible for conducting the necessary disaster investigation because the crash occurred in its territory. However, the wreckage is in an area controlled by pro-Russian separatist militias who are suspected of being responsible for destroying the aircraft.

There are also plausible reports of tampering with the crash site by the same militias.

The United Nations Security Council has therefore passed a resolution demanding a "full, thorough and independent international investigation into the incident in accordance with the international civil aviation guidelines and for appropriate accountability".

To this end, the Security Council stressed the need "for all parties to grant immediate access by investigators to the crash site to determine the cause of the incident". This last requirement is obviously addressed mainly to the separatist militias.

The International Civil Aviation Organisation, a UN agency, has accepted a Ukrainian request for assistance in the investigation.

There are already a number of known facts. There seems little doubt that MH17 was shot from the sky by a surface-to-air missile. The missile was almost certainly fired from Ukrainian territory under the control of pro-Russian militias. As MH17 was flying at 10,000 metres when it was destroyed, the missile must have been part of a relatively sophisticated military weapons system.

It seems reasonably certain that no communication was made with MH17 by the authors of the missile attack. Within



Criminal liability will certainly attach to the person who 'pushed the button'

minutes of the strike on MH17, there was a social media posting by a militia commander boasting that a Ukrainian military aircraft had been shot down—that posting was quickly removed when the wreckage turned out to be MH17.

Who, then, can international law hold accountable for the attack on MH17?

An international war crime can occur only in the context of an armed conflict. There is little doubt that the "protracted armed violence" in eastern Ukraine between organised pro-

Russian separatists and Ukrainian government forces satisfies the definition of an armed conflict for the purposes of international criminal law.

However, criminal liability differs depending on whether the armed conflict is international or internal to one country. A somewhat wider range of conduct is criminalised in the case of international armed conflicts. We cannot yet classify the armed conflict as international in character, because Russia denies involvement in the fighting, notwithstanding Ukrainian government claims to the contrary.

At the very least, the fighting in eastern Ukraine is a non-international armed conflict.

Among the war crimes in a non-international armed conflict are "violence to life and person" of any "persons taking no active part in the hostilities", and "intentionally directing attacks... against individual civilians not taking direct part in hostilities" (Article 8 of the International Criminal Court statute).

Firing a missile at a civilian airliner en route from the Netherlands to Malaysia would certainly fall within the scope of these crimes. In this context, "intentionally" would mean firing the missile at the aircraft without taking reasonable steps to ascertain that it was not a civilian plane.

Criminal liability will certainly attach to the person who "pushed the button", and also to any person who gave the order to fire the missile.

Not only that, but the rules on "superior responsibility" mean that a war crime can also be committed by a person in a position to give orders to those who committed the crime. The crime must have been committed by people under his effective authority and control, he must have known or should have known that the crime was about to be committed, and he must have failed to take all reasonable and necessary steps to prevent the crime.

The superior will also be criminally liable if, after the crime was committed, he fails to "submit the matter to the competent authorities for investigation and prosecution" (Article 28 of the ICC statute). In other words, the superior will commit a war crime if he seeks to cover up a war crime by one of his subordinates.

International law permits Ukraine to try these offences before its own courts. Alternatively, and although Ukraine is not a party to the treaty establishing the International Criminal Court, it could make a declaration referring the missile attack on MH17 to the International Criminal Court.

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In South America, Xi eases the way for bilateral trade

Kamilia Lahrchi notes China's focus on deals to improve transport

President Xi Jinping's (习近平) visit to Argentina over the weekend has further eased access to key commodities for China, to support its thriving economy, while strengthening its influence in Latin America.

Xi and President Cristina Fernandez de Kirchner inked 19 agreements on finance, energy, infrastructure, agriculture, trade and cooperation.

The most significant deals included a US\$11 billion currency swap, a US\$4.7 billion investment in hydroelectric dams in Patagonia and a US\$2.1 billion project to revamp a dilapidated freight railway crucial to transporting commodities.

This year marks the 10-year anniversary of the China-Argentina strategic relationship.

China is Argentina's second-largest commercial partner after Brazil, with Sino-Argentine bilateral trade reaching US\$17.3 billion last year.

Most Chinese investment in infrastructure in Argentina and Latin America as a whole is done with the aim of boosting transport efficiency and the flow of commodities to China. Since most of the production takes place in the countries' interior, the construction or expansion of terminals, ports and railways, as well as the modernisation of equipment, is necessary for China to secure transport of commodities to its shores.

Thus, renovating Argentina's Belgrano Cargas railway equipment and infrastructure is key to Beijing's growth. This 10,000km network, the "veins of

the country", connects 13 of 23 provinces as well as the port of Buenos Aires. It transports cement, coal, metals, wood, sugar, grains, water and wine.

Argentina is an important supplier of agricultural products to China: it was Beijing's principal provider of soya bean oil and peanut oil last year. Argentina has abundant natural resources and is the world's third-largest producer of soya beans and corn. This is a resource the Asian giant needs, as it has limited arable land in per capita terms.



Xi's courtship is lifting relations between Beijing and resource-rich nations to a new level

In addition, "Argentina is a stepping stone for China to invest in South America", said Sun Bai, president of the board of directors of China Machinery Engineering Corp, during a forum on the economic cooperation between China and Argentina in Buenos Aires on Saturday. Some 150 Chinese businessmen who travelled with Xi gathered at the event.

Indicative of China's keenness to be a financial power in the region, the central banks of both countries signed a currency-swap deal, allowing

the two to exchange local currencies of up to US\$11 billion. Argentina can use yuan to pay for Chinese imports, which relieves the pressure due to the country's scarcity of US dollars. It has been unable to tap global capital markets since it defaulted on its bonds in 2001.

For Latin American states, Beijing is a major commercial partner that offers economic and political support at a relatively low cost. Importantly, it does not set any political or moral conditions.

For instance, Argentina buys railway material from China after getting a 10-to-12-year loan from Chinese banks with a reasonable interest rate and the first two years for free.

Beijing also provides an alternative source of financing to countries shut out of international credit markets and reluctant to trade with the US, like Venezuela and Cuba.

Xi is also visiting Venezuela, a key investment market for Chinese energy and financial projects, to ink more agreements, and will conclude his tour on Wednesday in Cuba, China's ideological partner.

Commodity-hungry China is indisputably increasing its clout in Latin America. Xi's courtship is lifting relations between Beijing and resource-rich nations to a new level. "Great distances do not erase intimate friendships," he stressed, citing an old Chinese poem.

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