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To: Constitutional Development Task Force:

My views on the issues you raised are as follows. You can publish my name but please do not publish my email address.

A1(1) Hong Kong is an inalienable part of China

Hong Kong is an inalienable part of China. Yet this "part" is special. According to Article 2, the Hong Kong SAR is to exercise a high degree of autonomy. This "part" is not the same as the rest of China, and it is guaranteed in the Basic Law.

The term "high degree" means everything under the sun (including constitutional affairs) except those specified (i.e. foreign affairs and defence). In all other aspects of life, China and CPG shall not involve in the affairs of Hong Kong. In other words, Hong Kong has the right to decide on its own constitutional matters.

Article 4 of the Basic Law further states that the Hong Kong SAR shall safeguard the rights and freedoms of the residents of HK. That should include political rights and freedoms. If the HKSARG fails to do so, or if it is not doing it with its utmost effort, it is not fulfilling its constitutional duties. As election and universal suffrage are basic political rights, HK residents should not be denied these political rights.

A1(2) HKSAR comes directly under the CPG

The full text of Article 12 reads: "The HKSAR shall be a local administrative region of PRC, which shall enjoy a high degree of autonomy and come directly under the CPG". Therefore, even though it is under the CPG, it enjoys a high degree of autonomy, including autonomy on the election of Chief Executive and the legislature.

According to Annex I of the Basic Law, "If there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for approval."

According to Annex II of the Basic Law, "With regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this Annex, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for the record."

It is obvious from the texts that the CPG does not play a part in the process of amendments to the selection methods of both the CE and the legislature. The HKSAR is to make its own decisions. The CPG does not have a role in the deliberation and decision-making process. The role of CPG(NPC) is restricted to approving/disapproving the amendments (in the case of selecting the CE), or just noting the amendments for record purposes (in the case of the legislature).

A(1)(3) The Chief Executive (CE) is appointed by the CPG. He is accountable to both the CPG and the HKSAR

In the past few years, this has proved to be an impossible task -- the CE to be accountable to both the CPG and the HKSAR. The CPG is the "boss", while the residents of HKSAR are not, so there is a tendency for the CE to take heed only to the words of CPG, and fail to be accountable to HK.

Therefore, only by directly electing the CE, and thus making the residents his "bosses", can the CE be accountable to both the CPG and the HKSAR.

A(2)(1) What should "actual situation" constitute?

"Actual situation" means two aspects:

(1) the performance of the existing CE -- which is very dissatisfactory, as indicated consistently in surveys after surveys. This is "smoking-gun" proof that the existing system of selecting the CE is not working.

(2) there is popular demand for change. The demonstrations on July 1, 2003 were sufficient proof.

A(2)(2) How "gradual and orderly progress" should be understood?

It should be understood based on the Basic Law. "Gradual and orderly progress" means the maximum extent that is set within the restrictions of the Basic Law. In this regard, Annex I of the Basic Law stipulates that:

"If there is a need to amend the method for selecting the Chief Executives for the TERMS subsequent to the year 2007, such amendments must be made..."

The CE for the term subsequent to 2007 means the CE subsequent to Mr. CH Tung. As the Basic Law stipulates, we are free to change the selection method for that particular CE (and subsequent ones). For that CE to be elected, an election has to be held in 2007. An election in 2007 is therefore within the gradual and orderly process as defined by the Basic Law.

The same holds true for LegCo. According to Annex II of the Basic Law: "With regard to the method for forming the Legislative Council of the Hong Kong Special Administrative Region and its procedures for voting on bills and motions after 2007, if there is a need to amend the provisions of this Annex, ..." After 2007, we are free to make changes to the election method for LegCo.

A3(1) Meet "the interests of the different sectors of society"?

There are so many sectors in society. It is not just economic. It is also social. Men, women, different age groups, expatriates who can vote, bachelors, widows, divorcees, parents, environmentalists, tenants, homeowners,... the list goes on and on. The only way to cover all the "different sectors" is through

universal suffrage.

A(3)(2) "Facilitate the development of the capitalist economy"?

History has proved that the capitalist economy works best with a democratic system. Both economic and political resources should be allocated freely by each and every individual. Choices should be rested freely with individuals -- including political choices.

B1. What is the most appropriate legislative procedure for amending the methods for selecting the CE and forming the LegCo set out in Annexes I and II:

Amendments to Annexes I and II and local legislation are needed. This is especially true for Annex II. Annex II explicitly provides that we can amend it.

B2. Do we need to follow the procedures set out in Article 159 of the Basic Law, if we amend the methods for selecting the CE or forming the LegCo as specified in Annexes I and II of the Basic Law?

No. Annexes are different from the main body of the Basic Law. Annex I and II explicitly stipulate their own processes of amendments. According to Annex II, the amendments only need to be reported to the NPC for RECORD. For Annex I, the amendments are to be made within HK and to be reported to CPG for approval.

B3. How should any amendment relating to the methods for selecting the CE and for forming the LegCo be initiated?

According to Annexes I and II, since any changes have to be endorsed by a majority of LegCo and the consent of the CE. Therefore, the amendments should be initiated in the LegCo by the HKSARG.

B4. Whether the method for formation of the third term LegCo could be used for the fourth term LegCo, if no consensus were reached on whether to amend the method for forming the LegCo after 2007?






Yes. It is the best reference we can have.




B5. Whether the phrase "subsequent to the year 2007" should be understood to include 2007?

The CE of the TERM "subsequent to the year 2007" means the CE after Mr. CH Tung, and will have a term until 2012 (i.e. after 2007). What the Basic Law refers to is the TERM of CE, rather than the year taking office. It is commonly understood that the CE after Mr. CH Tung has a TERM subsequent to 2007.

Regards,

Terry Leung

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