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To: <views@cab-review.gov.hk>

Subject: Constitutional Development: My Views





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Re Question A1, of course Hong Kong is an inalienable part of China and the HKSAR comes directly under the CPG. This is stated in the Basic Law and there can be no argument to the contrary. But the CE is accountable to both the CPG and the HKSAR, as stated in the Basic Law; he is not just accountable to the CPG, though this often appears to be the case in practice. Neither Articles 43 nor 45 of the Basic Law appear to prioritize his accountability, which suggests that the CE should be equally accountable to the HKSAR as he is to the CPG. Abiding by the principles of Articles 1, 12, 43 and 45 of the Basic Law should not cause problems with the development of Hong Kong's political structure. And indeed Article 45 specifically provides for this, as does Annex I.

As regards "one country, two systems," there is nothing in the Basic Law that prioritizes "one country" over "two systems," so therefore it must be possible to have, in the HKSAR, a political system that is different to that existing in China. This means that Hong Kong's political structure can develop along lines which are quite different to China's, but still be in accordance with the principles of "one country, two systems."

Although the HKSAR comes directly under the CPG, Article 12 of the Basic Law also states that it shall "enjoy a high degree of autonomy," with Articles 13 and 14 specifying the responsibilities of the CPG and the HKSAR. No reference is made to the CPG being responsible for the development of the HKSAR's political structure, although Articles 45 and 68 and Annexes I and II set out the involvement of the CPG and the National Peoples Congress in this respect, though not their responsibilities.

Re Question A2, "actual situation" means the "existing, present or current position" in the HKSAR, which in this context relates to the methods for selecting the CE and forming LegCo. Since 1 July last year, the "actual situation" in Hong Kong in relation to the selection of the CE and the forming of LegCo is quite clear: this is that many, if not a majority of people in Hong Kong want universal suffrage for the election of the CE in 2007 and LegCo in 2008.

As regards "gradual and orderly progress," "gradual" means "slowly progressive," "orderly" means either "regular sequence" or "disciplined, well-conducted, well-behaved" and "progress"/"progressive" means "advancement, moving forward, proceeding by stages." So the "principle of gradual and orderly progress" for the selection of the CE and the forming of LegCo implies a step-by-step, well-conducted progress towards the ultimate aim of universal suffrage. The Basic Law was promulgated in April 1990, almost 14 years ago and came into effect on 1 July 1997, almost 7 years ago. Since coming into effect, the method for the formation of LegCo has developed gradually, in accordance with the Basic Law. For the CE to be elected by universal suffrage in 2007, on nomination by a representative nomination committee and for LegCo to be elected by universal suffrage in 2008 does not appear to be contrary to the "principle of gradual and orderly progress," as surely 10 years and 11 years respectively must by any definition be gradual!

Re Question A3, there is no reason why "the interests of different sectors of society" cannot be met in a democratic political system, with the election of the CE and LegCo by universal suffrage. It is extremely unlikely that voters in the HKSAR would vote for a CE who did not, in their views, represent the best interests of Hong Kong society and, in any event, the representative nomination committee would ensure that only suitable candidates were nominated. Also, political parties, or independents would be free to contest the LegCo elections to represent the interests of their constituents, including businessmen, as happens in most developed economies in the West. Functional Constituencies are not democratic and should be replaced by universal suffrage: the business community should stop its protectionist activities and should instead start to consider how it can compete on a level playing field with other constituencies.

As regards the facilitation of "the development of the capitalist economy," most, if not all, capitalist economies have democratic political systems with universal suffrage. The development of their capitalist economies does not seem to be adversely affected by their democratic political systems. On the contrary, they probably benefit from it. Why should Hong Kong be any different? Why can't Hong Kong develop its capitalist economy under

a democratic universal suffrage political system? Hong Kong's economy is likely to benefit under such a system; the only losers would be the businessmen who support the retention of Functional Constituencies - but all they would lose would be power, influence and prestige, not profits!

Re Question B1, as the procedures for amending the methods for the selection of the CE and forming LegCo are already set out in Annexes I and II, there is no need to Amend Annexes I and II: local legislation is all that is necessary.

Re Question B2, as amendments to the Basic Law are not required to amend the methods of selecting the CE and forming LegCo, as they are already provided for in the Basic Law, Article 159 is not relevant in this respect.

Re Question B3, initiation of amendments relating to the methods for selecting the CE and forming LegCo should, in the first instance, be carried out by genuine public consultation, with an independent monitoring procedure to ensure that that the results are correctly and truthfully presented, with no government input on the results or their analysis.

Re Question B4, the method for the formation of the third term LegCo should NOT be used, if no consensus were to be reached on the method of of forming LegCo after 2007, as the method for the formation of the third term LegCo was NOT representative. A much more representative method needs to be found.

Re Question B5, the phrase "subsequent to the year 2007" clearly includes 2007, as the reference relates to a "political year," beginning on 1 July and ending on 30 June, starting on 1 July 1997, when the CE assumed office: his terms of office "shall be five years" and he may "serve for not more than two consecutive terms," i.e 10 years. From this it can be seen that the 10 years expires on 30 June 2007. So the term "subsequent to 2007" means subsequent to the term ending on 30 June 2007. Therefore, the term "subsequent to the the year 2007" means as from 1 July 2007 and thus "includes 2007."

John Shannon
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