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**Date:**2004/02/26 Thu PM 05:23:41 CST  
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Constitutional Development Task Force

With respect to your invitation of the 23rd inst to express views on constitutional development, please my comments see below.

Kind regards,

Aidan Goddard

### **Submission to the Constitutional Development Task Force ? 26 February 2004**

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#### ***Preamble***

As a Hong Kong resident I have followed the recent debates about local democracy with a good deal of interest. What I believe is important to grasp at the outset is that the Basic Law has fully legitimised the practice of democratic government in China albeit confined to within the borders of the HKSAR. This means that since 1997, in accordance with the new 'One Country Two Systems' principle, China has embraced two legitimate forms of government, and not one, as was the case prior to 1997. Within that context, therefore, one need only defer to the provisions of the Basic Law in order to understand the implementation of the principle.

Having said that one cannot totally ignore the consequences of the development and exercise of democratic government in the HKSAR for the whole of China. Increasingly, many mainland residents now ask why their fellow citizens in Hong Kong should be permitted to enjoy the individual benefits of democratic government, which they are unable to enjoy. For that reason, I can understand the sensitivity of the matter for the whole of China. As an aside, this might be assisted if attempts were made by the CPG to promote as much understanding of the Basic Law on the Mainland as in the HKSAR.

- A1. (1) That Hong Kong is an inalienable part of China in accordance with Article 1 needs no further debate.
- (2) That Hong Kong comes directly under the CPG also needs no further debate other than to note that the CPG can only legitimately exercise its authority as provided for in the Basic law.
- (3) This raises the question of just exactly how the Chief Executive (CE) is made

accountable to the CPG and the HKSAR, particularly so in the case of the latter. I imagine that issues regarding the perceived unpopularity of the current CE and Government have added an inordinate degree of publicity to the issue. A number of incidents immediately come to mind that seem to question the effectiveness of the current CE. One could consider the unwise and failed attempts to change the language of instruction in secondary schools at a time when the foreign language skills of Mainland students are vastly improving and out performing Hong Kong students. Then there was the attempt to gloss over the seriousness of the ?insider trading like? activities of the former Financial Secretary in the Cargate scandal. Then came along the very poor response to the SARS epidemic, which sadly led to the avoidable deaths of many Hong Kong residents. Currently the announcement that billions of dollars in public funds are to be transferred to a select body of property developers in a scenario, which appears to represent little more than a contrivance, seriously questions the exercise of accountability. The perceived inability to hold the CE fully accountable for many of the actions of the present Government represent for me the greatest challenge to its role to serve the people of the HKSAR.

A2 (1) It is not a question of what the ?actual situation? should constitute, but what indeed it does actually constitute. One need not guess what the actual situation may or may not be, as one has only to analyse the structure of Hong Kong society and take it as it is. The actual situation is that the HKSAR practices a democratic form of government as provided for in the Basic Law and as evidenced by the rule of law and an independent judiciary. One could also add the prevalence of low taxes, freedom of self-expression, freedom of travel, a hardworking population, which respects the rule of law, an efficient and corrupt free police force, an effective anti-corruption body, a reasonably transparent Government and a professionally trained civil service. If that does not seem to make sense one can take the analysis a stage further and compare the same factors with current experience on the Mainland where quite often the very opposite is predominantly the case and which serves to make the Mainland society politically far less stable than that of the HKSAR.

(2) It is, therefore, within that context that the interpretation of ?gradual and orderly progress? can and must be understood, because no other understanding would be true, fair, honest, or indeed in any way useful. Immediately one can appreciate how important it is that the Government of the HKSAR be held fully accountable to both the CPG and the HKSAR. Therefore, any progress must always promote and enhance the distinctive qualities of Hong Kong society within China and in no way lead to a diminution of the quality of government and public life enjoyed by residents of the HKSAR.

A3 (1) One must first identify just exactly what the different sectors of society are along with the interests of those sectors. There is no doubt that as every single resident has an interest in promoting prosperity and peaceful stability in Hong Kong most interests will be shared in common. Once that is appreciated the question of special interests necessarily arises and how one should address them. Attempts have been made through the development of functional constituencies to address special interest sections of society and this has seemed to work reasonably well. However, as they represent essentially special interests, one has to question to what extent they alone can promote the development of the democratic form of government in the HKSAR. My feeling is that it is probably not enough to sustain the law making process, which lies at the heart of the democratic form of government and that a longer-term solution is necessary. This is already recognised in Mr Ji Pengfi's

statement that: ??? a democratic system that suits Hong Kong's reality should be gradually introduced???. Of course this brings us the essence of the whole current debate, which quite frankly is difficult to address in terms of actual planning and timetable. What is important though is that both the CPG and the CE publicly reassert their commitment to the democratic form of government in the HKSAR as being the only form of government that can and will promote gradual and orderly progress in the context of the actual situation. Once that important point is clarified, it should be possible to move on and actually engage in the said progress in a gradual and orderly manner acceptable to the residents of the HKSAR.

(2) The development of the 'capitalist economy' is inextricably linked to the preservation and improvement, where possible, of the actual situation. The reality is that because Hong Kong was previously governed by a Colonial administration, it did enjoy the fruits of the democratic process as evidenced by the actual situation. In essence, a system of law, which developed in a foreign fully-fledged democracy, was transplanted into Hong Kong life. It is also a matter of reality that since 1997, this nexus has been severed and Hong Kong must achieve gradual and orderly progress without the benefit of the earlier relationship. Just exactly how this is to be achieved is less an issue than the commitment to maintaining and promoting the democratic form of government. In that respect, Hong Kong legislators are quite capable of rising to the challenge. The 'reality' of life in Hong Kong is synonymous with 'the actual situation'. By promoting the actual situation one facilitates the development of the capitalist economy, because without those qualities Hong Kong could not and would not have prospered to the extent that it has. Indeed without that support, one would be forced to ask if Hong Kong could sustain its success into the future, notwithstanding the impact of certain economic developments, which lie outside the remit of any Government.

With respect to issues on legislative process, I feel it is somewhat too early in the day to address them with any degree of precision. What is important though is that the principles are first understood and agreed. In the absence of such agreement (in the sense of a meeting of minds) it would be futile to get into what are essentially small details. Once the principles have been clarified, the legislative process itself will become more or less self-evident. If there is any doubt one need only defer to the Basic Law, because that and that alone is the substantive law.

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