

FROM : TAM, WAI-CHU, MARIA

To The Acting Secretary to the Commission  
on Strategic Development FAX 2123 1960  
Dear Sir,

As explained earlier I have to attend to a prior engagement. Please accept my  
apologies for my absence on 29th November 2005.

I would, however, like to refer to certain background papers and issues to assist  
members to a better understanding of some principles in respect of our political  
system.

#### Comments on Paper No 1

1. The source of power for the establishment of the SAR and the administration of the  
SAR, as we all know, is from the Central Government.

I would like to point out that the Basic Law in Article 2 states straightforwardly that  
"The National People's Congress authorizes the Hong Kong Special Administrative  
Region" to exercise certain functions.

This is a delegation of power, not a separation of power.

If we act outside the scope of this delegation of power, then the Central Government  
has the inherent power to correct the situation, e.g. through an interpretation of the  
Basic Law.

2. It is widely believed that Hong Kong people's right to universal suffrage is a basic  
human right.

In actual fact the right is derived from the Basic Law because when Britain signed the  
International Covenant on Civil and Political Rights, it specifically reserved the right  
"not to apply: (i) Sub paragraph (b) in so far as it may require the establishment of an  
elected legislature in Hong Kong..."

Even in the Sino-British Joint Declaration, both sides agreed that the legislature "shall  
be constituted by elections". There is no mention of universal suffrage.

It is the Basic Law that makes first mention of universal suffrage. There is, therefore,  
no equivocation about where Hong Kong people's right to universal suffrage is  
derived from.

The conditions set down in the Basic Law follow those outlined by the Chairman of the

Basic Law Drafting Committee, Ji Peng-fei. They form a total package and should be taken in similar fashion. Thus there should be no dispute about where the right to universal suffrage is derived from.

This also explains why direct elections could not be introduced until after the Basic Law was promulgated in 1991. This was also after the "through-train" had originally been agreed to between China and Britain.

## Comments on Paper No 2

3. The preliminary paper on models to be adopted after universal suffrage is attained gives a very comprehensive picture of a design for a political structure. It may, however, be useful to bear in mind that the role of the legislature as perceived by the Basic Law warrants a more detailed description. Such a description is to be found in Professor Hiao Wei-ren's speech of 17 January 2004 (at page <sup>MT</sup> 6), a copy of which is attached.

This same speech also provides some useful material for a better understanding of the relationship between the legislative and executive authorities.

4. The main thrust of this paper is how universal suffrage can be applied to the formation of the Legislative Council. The main body of the paper discusses whether a bicameral system is suitable for Hong Kong and if so, what kind of bicameral system.

I fully agree that we should study this carefully, in addition to consideration of a road-map towards a fully-elected legislature through universal suffrage.

Careful consideration should be given to whether Functional Constituencies should be phased out or how a substitute could be devised for them.

It is generally believed that we have either the option to eliminate Functional Constituencies altogether or go for a Bicameral System.

A third option could be universal suffrage with designated seats with candidates nominated by Functional Constituencies. This is to ensure representation of the interests of various sectors of the community and candidates with the relevant expertise to match the division of work undertaken by various government bureaux.

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For instance, such a Nomination Committee could nominate candidates for direct election on the basis that the platforms presented to the Nomination Committee would be the same as those presented to the voters at large.

The separate voting mechanism now in place can be retained to ensure check and balance of various viewpoints and interests.

I wish to point out that maintenance of a capitalist economy is the most important feature of the Basic Law. This is specifically referred to in Articles 105, 107 and 109 of the Basic Law.

These views would be most relevant to any discussion on political reforms.

I shall be happy to participate in discussion of all issues raised at subsequent meetings.

Thank you for your information.

Yours Sincerely,

Man Tin

(TAM WAI CHU)

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