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Macao's political system during the transition: continuity
or convergence?

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Paulo Cardinal

MACAO'S POLITICAL SYSTEM DURING THE TRANSITION: CONTINUITY OR CONVERGENCE?*

Paulo Cardinal

I – Introduction

Any discussion about Macao's political system during the transition must be preceded by an explanation of some of the ideas bounding this subject.

There is an overriding need to specify what is meant by "transition", or "transition period"; and in the same way, define the nature and legal force of the well-known "convergence theory"; meaning, convergence with the Basic Law of the future Macao Special Administrative Region of the People's Republic of China (PRC).

* This article is the sole responsibility of the author. The opinions expressed herein are purely personal and do not bind any other party.

These are some of the concepts necessary for an overall understanding of the issue in hand.

Once this preliminary path is thru, it's important to briefly describe the Territory's current political system and the political system of the Macao Special Administrative Region, as it is established in the Basic Law, bearing in mind, the international treaty from which it sprung: the 1987 Sino-Portuguese Joint Declaration on the Question of Macao.

Finally, I shall equate whether Macao's political system should stake its future in continuity or, on the contrary (because this is what it really means), should it undergo a change in order to converge with the Basic Law.

II – The Transition Period

There has not always been a single, clear, interpretation of the concept of transition or transition period. In fact, in its simplest, most basic construction, it has been suggested that the transition period began when the Sino-Portuguese Joint Declaration came into effect in January 1988 and will end on 19 December 1999.

In other words, the transition period will last for the same extended period of time as the transfer of sovereignty over Macao¹ from the Portuguese Republic to the People's Republic of China. Linked to this opinion is a lack of conviction as to the efficacy, or even validity, of the Sino-Portuguese Joint Declaration.

This restrictive interpretation, should it be adopted, culminates by proposing that the Sino-Portuguese Joint Declaration will cease to have effect on December 19th, 1999. On the following day, as the transition period will have ended, it will no longer make sense to invoke the *jus*

¹ The Sino-Portuguese Joint Declaration refers to this period of time in point 3.

international diploma which created and regulated that same transition period. Effectively, if it is accepted that the Sino-Portuguese Joint Declaration is what legitimises the transition period, and then it must also be true that once this period comes to an end, the Sino-Portuguese Joint Declaration will no longer have any purpose.

This view is based on an isolated, hermetic interpretation of Point 3 of the Sino-Portuguese Joint Declaration, lewd from the remaining text of the treaty.

In the same way, comparisons could be made with the Joint Liaison Group. Although it will last past December 20th, 1999, it will only operate until January 1st, 2001². Once again, Macao is following the path of Hong Kong³, the main difference being that Macao's Joint Liaison Group will have approximately two weeks – barely enough time to pack away the files – while their counterparts in Hong Kong will benefit of about two and a half years' to finish their work. This theory does not, however, follow the Sino-Portuguese Joint Declaration letter and spirit. In fact, transition period **must be understood** as the entire time thru which the contracting parties, Portugal and the People's Republic of China, are bounded by the international treaty they decided to sign.

The Sino-Portuguese Joint Declaration, undoubtedly, constitutes a limitation on the sovereignty over the enclave. It is, however, a limitation freely created and desired by those two sovereign states under the regular performance of their *jus* international powers.

There are two reasons why the existence of this limitation on China's full exercise of sovereignty cannot be used as a basis for arguing that the Sino-Portuguese Joint Declaration will cease to be effective. Firstly, this

² Sino-Portuguese Joint Declaration, Annex II, part II, point 4.

³ For more on this issue and a critique, see Manuel Escovar Trigo, "*A Transição na Declaração Conjunta, População e Desenvolvimento em Macau*".

is a limitation, which already affects the Portuguese Republic, and secondly contracting parties freely on it. They are, thus, self-imposed limitations translated into convention.

The framework of the Sino-Portuguese Joint Declaration varies; it fluctuates in rigour depending on the situation in which it is applied and to whom it is being addressed. In other words, the ways in which it can be applied are variable.

Effectively, then, the obligations created by the Sino-Portuguese Joint Declaration vary according to whether they deal with Portugal or China.

First and foremost is the obligation to transfer the exercise of sovereignty over Macao from Portugal to China. Other obligations arise as a result of this.

Consequently there is a wide range of obligations, as provided for in the various sections of point 2: “*The Government of the People’s Republic of China declares that... the People’s Republic of China will pursue the following basic policies regarding Macao.*” There follows a list of eleven important “policies” which will define the future Macao Special Administrative Region. The list closes with a twelfth, which, while reiterating what is stipulated in the text of Article 2, stresses that “*The above-mentioned basic policies... will be stipulated in a Basic Law... and they will remain unchanged for fifty years.*”

In addition to the obligations binding the People’s Republic of China and those binding Portugal, there are still others, which are directed simultaneously towards both parties, such as the creation of a Joint Liaison Group *ex vi* Article 4 and Annex II, point 1.

One of Portugal’s obligations consists of promoting economic development and preserving Macao’s social stability⁴.

⁴ For more on this package of obligations, see Alberto Costa, “*Continuidade e mudança no desenvolvimento jurídico de Macau à luz da Declaração Conjunta Luso-Chinesa*”, *Revista Jurídica*, n.º 1, p. 54.

Now that the obligations enshrined in the Sino-Portuguese Joint Declaration have been identified – albeit not exhaustively – it is immediately apparent that they are not directed uniformly to both parties, nor are they to be fulfilled within a uniform period of time. Nor does this period expire with the transfer of the exercise of sovereignty. In fact, the obligations of the People’s Republic of China and, indirectly those of the Macao Special Administrative Region, last throughout the fifty years following the resumption of [China’s] sovereignty over Macao.

This is a second transition period⁵.

As such, in addition to the period which has already been described, and which is possibly easier to grasp, the Sino-Portuguese Joint Declaration effectively indicates another, longer, period under the terms explained.

In conclusion it can be said that the Sino-Portuguese Joint Declaration enshrines a transition period stretching from its implementation to the last day of the fifty years following China’s resumption of sovereignty over Macao. This period can be divided into a further two periods, the first lasting until 19 December 1999 and the second beginning on 20 December of the same year and lasting for fifty years.

It is important to remember that the validity and efficacy of this international treaty do not expire on 20 December 1999⁶. On the contrary, a new period will commence marked by a shift in the principal holder of power from Portugal to the People’s Republic of China.

The Sino-Portuguese Joint Declaration will remain a prominent

⁵ See Manuel Escovar Trigo, *op. cit.*, pp. 368 *et. seq.*; Francisco Gonçalves Pereira, “*Declaração Conjunta, modelo de transição e reforma da Administração*”, in *Revista Jurídica*, n.º 11, pp. 78 *et seq.*

⁶ Nor obviously with the approval of Basic Law. See Arnaldo Gonçalves, Macau, “*No triângulo das relações externas da China com o Ocidente pós 1999 – O Estatuto político-constitucional*”, in *Revista Administração*, n.º 21, p. 590; Manuel Escovar Trigo, *op. cit.*, p. 374. There is a further theory which is rather less current and which views the transition in two periods, the first beginning with the implementation of the SPJD and the second following approval of the Basic Law. This theory does not include a third transition period.

source of law for the Macao Special Administrative Region⁷. Its norms characterised as “policies” embodying China’s post-99 obligations, may genuinely constitute “material limits” on the legislative power responsible for drafting (and amending) the Basic Law. Thus, Gomes Canotilho sees the Sino-Portuguese Joint Declaration as playing a role in guaranteeing, directing, stimulating and interpreting the future Macao Special Administrative Region⁸.

Now that this clarification has been provided, justified by less conventional interpretations of the provisions of the Joint Declaration, it should be noted that the transition period of concern in this study is, naturally, the first period. In other words, it is the first sub-period, as the political system of the second has already been defined in the Basic Law of the Macao Special Administrative Region.

It is in the light of the political system outlined in the Basic Law that I propose to investigate whether the present system should converge or rather remain unchanged until 19 December 1999. In other words, I shall consider “how the Basic Law of the Macao Special Administrative Region may condition the development of Macao’s political system from the present until the end of the century⁹.”

III – Convergence with the Basic Law

The so-called principle of convergence with the Basic Law has been

⁷ See Alberto Costa, *op. cit.*, p. 64, note 7; Jorge Costa Oliveira, “*A continuidade do ordenamento jurídico de Macau na Lei Básica da futura Região Administrativa Especial*”, *Revista Administração*, n.ºs 19/20, pp. 24 and 25; Paulo Cardinal, “*O sistema político de Macau na Lei Básica – separação e supremacia do executivo face ao legislativo*”, *Revista Administração*, n.ºs 19/20, p. 80.

⁸ J. J. Gomes Canotilho, “*As palavras e os homens – reflexões sobre a Declaração Conjunta Luso-Chinesa e a institucionalização do recurso de amparo de direitos e liberdades na ordem jurídica de Macau*”, *O Direito*, Oct. 94, pp. 7 and 8.

⁹ Rui Afonso, speech to the parliamentary committee on the Problems of Localisation and Legal Autonomy in Macao, Assembly of the Portuguese Republic, 1994, p. 113.

widely discussed and defended. This principle can be translated as the need for all aspects of Macao's life to be guided by the Basic Law, i.e. legislative reforms.

This exercise appears to have lead some jurists and members of the former Basic Law drafting committee, to assume another idea, that of the prior validity of that document. This seems to be a somewhat obscure association of concepts: convergence does not necessitate prior validity¹⁰.

It is debatable whether it is possible to speak of convergence with the Basic Law, at least in an imperative sense.

On the other hand, in the course of the preparatory work, the text of the Basic Law should have been shaped or, perhaps, made to converge with the legal system of which it will be a part and not to create a new one. This is not always obvious in several of the solutions, which were, eventually, enshrined.

The principle of convergence with the former system is that which can most easily be supported.

In any legislative reform, the Basic Law can be regarded as a reference point for *mens legi*. It has undeniable, on-going reference value in terms of legislative policy, but nothing more can be attributed to it. If it is believed that there is a requirement to conform with the text and solutions of the Basic Law then clearly a limitation is imposed, even at the level of lawmaking which the bodies of Macao's own government and, ultimately, the Portuguese organs of government have been constitutionally endowed.

We must take care to avoid making the convergence theory as simplistic in the application of the principles stipulated in the Sino-

¹⁰ Here, as elsewhere in point III, I follow the same line of argument as presented in "*Determinantes e linhas de força das reformas legislativas em Macau*", a paper given during the Seminar on the legal systems of Macao and mainland China and their relationship, Beijing, November 1994.

Portuguese Joint Declaration¹¹.

This desideratum is indefensible from the point of view of maintaining the constitutional order in force. If, for instance, a certain norm were found not to converge with the Basic Law *quid juris*, would it be flawed? What control mechanism exists? What sanction could be applied? The reply can only be that there would be no flaw and it would not be subject to any sanction.

Further, it can always be said that not all legislation has to be drafted for the future, especially, but not exclusively, legislation at a constitutional level, namely that dealing with the restructuring of the political system.

In any case, we must reject the theory of prior validity of the Basic Law. The fact that it was passed in March 1993 did not imply any mechanism for prior validity¹². Rather, it should be regarded as being in a period of *vacatio legis*, albeit unusually long.

In concluding this section, it can be confirmed that until 20 December 1999 the Basic Law of Macao has no definite force nor does it have any legal place of application – the Macao Special Administrative Region. Consequently, until that date, it is not a source of law for the territory of Macao.

If this is the case, as I believe it to be, then any claim of contravention under the terms of Article 145 shall not, except for special exceptions, which have been provided for, have retroactive effect¹³.

This is an issue, which undoubtedly has practical implications. For instance, taking the example of a law approved in, say, November 1994 which is subsequently declared as contravening the Basic Law in November

¹¹ Francisco Gonçalves Pereira, speech given to the parliamentary committee mentioned above, p. 125.

¹² Anabela Ritchie, speech during the 1st Seminar on “*O processo de localização do sistema jurídico de Macau*”, Macao Law Faculty, p. 7; Manuel Escovar Trigo, *op. cit.*, p. 374; Paulo Cardinal, “O Sistema...”, *cit.*, p. 81.

¹³ Manuel Escovar Trigo, *op. cit.*, p. 374.

2002, from what point then would this contravention be effective? From November 1994, December 1999 or November 2002? Is this a case of acquired rights *quid juris*?

IV – The Political System in the Territory of Macao

I shall now provide a brief description of Macao's political system¹⁴, which, should be recalled, has been described as “the first republic of the Orient”¹⁵.

An initial examination, which can be termed “institutional”, reveals that the system is fairly complex, particularly in respect of the production of legal norms for the Territory. In fact, there are five bodies with powers to carry out political functions (legislative or other similar duties): the Assembly of the Portuguese Republic, the Portuguese Government, the Legislative Council of Macao, the Governor of Macao and, heading the system, the President of the Portuguese Republic.

Therefore, in addition to the bodies of Macao's own government, the system also involves the Portuguese Government, (which orders the application of legislation and has a seat in the Joint Liaison Group discussions, in which Macao appears to be the object of the international treaty rather than a subject within it), and the Portuguese parliament which also orders the application of legislation and reviews the Organic Statute. This is the extent of their respective roles in the political system.

As far as concerns the President of the Republic, he is, in some respects, the enclave's head of State. He has significant powers such as appointing and dismissing the Governor and Under-Secretaries and

¹⁴ For more information on Macao's political system, see Jorge Morbey, “*Macao 1999 – O Desafio da Transição*”, Lisbon, 1990; Vitalino Canas, “*Preliminares do estudo da Ciência Política*”, O Direito, Macao 1992, pp. 209 *et. seq.*; Oliveira Rocha, “*Sistema política de Macau*” (photostated lectures), Macao Law Faculty. For historical background, see Jorge Noronha e Silveira, “*Subsídios para a história do direito constitucional de Macau*”, O Direito, Macao, 1991.

¹⁵ Almerindo Lessa, “*A história e os homens da primeira república democrática do Oriente*”, Macao, Imprensa Nacional, 1974.

representing Macao in international relations.

If an attempt is made to fit this into a traditional model, it is an atypical system¹⁶. Nevertheless, if purist are set aside, this system can be regarded, with its essential differences, as having been constructed on a model of a semi-presidential system of government¹⁷. In fact, none of its constituent parts are intended to be supreme, there is a distribution of its legislative functions, the Executive answers to the Assembly and can be extinguished on the orders of a third body, the President.

All the same, this system is clearly somewhat removed from the present state initiated with the review of the Organic Statute which, despite maintaining several powers in the Portuguese bodies, introduced a strong element of independence to Macao's political system, both in terms of institutions, and also of the current situation.

A second examination reveals a simpler, more "local" system. Effectively, the bodies of Macao's own government are almost the only players in the system, even in the case of lawmaking. The key features of the system should be outlined, from what is still an institutional perspective, albeit tempered with some real truths.

The Governor who holds executive and legislative powers and also represents Portugal's sovereign bodies with the exception of the courts heads the organic system. He is assisted in his duties by a consultative body, which is partially elected: the **Consultative Council**.

The post of Governor is the only executive body given that, formally, there is no government. He may delegate his executive powers, as has always been the case, to the Deputy-Secretaries, and is responsible for conducting the general policies of the territory. He has exclusive, authorised (by the Legislative Council) and concurrent legislative powers. He may not

¹⁶ Vitalino Canas, *op. cit.*, pp. 265 and 266.

¹⁷ Paulo Cardinal, "*O Sistema...*", *cit.*, p. 85, note 19.

make laws on matters that have been reserved to Portugal's sovereign bodies or to the Legislative Council, unless, in the case of the latter, they concern matters of relative reserve and a law has been passed authorising this.

The **Legislative Council** is the body with the most democratic features. The population of Macao in free, direct and increasingly universal elections elects the majority of its members.

It has a primarily legislative function as the system's legislative body *par excellence*. It also has some powers of political control.

It has at its disposal a considerable set of reservations on legislative power although not as wide-ranging as a hurried reading of article 31 of the Organic Statute would indicate. The matters subject to reserved powers are divided into those of absolute reservation (of which there are only a few) and relative reservation, the majority. Naturally, it has cumulative legislative powers in all matters not reserved to Portugal's sovereign bodies or to the Governor.

Powers of the Legislative Council over the Governor:

- to approve the Finance Act - in other words, to authorise the collection of revenue and public spending;
- to pass a vote of no confidence in government action;
- to submit legal documents issued by the Governor to the Constitutional Court to evaluate their constitutionality and legality;
- to ratify, refuse, rectify or demand amendment of Decree-Laws of the Governor;
- to authorise the Governor to contract and offer loans and to furnish guarantees;
- to issue opinions on all matters concerning the Territory.

Members of the Legislative Council may also submit questions on any activities of the Governor or the Administration.

Powers of the Governor over the Legislative Council:

- to submit legal documents issued by the Legislative Council to the Constitutional Court to evaluate their constitutionality;
- to promulgate laws;
- to exercise the power of political veto;
- to exercise the power of veto due to unconstitutionality;
- to propose to the President of the Portuguese Republic the dissolution of the Legislative Council;
- to appoint seven members.

In closing, we can state that the system outlined in the Organic Statute is marked by a balance¹⁸ between the two bodies, although the Governor has slightly more powers, and also by the potential for arbitration, in the case of conflict, by the Portuguese President.

A third, “*realpolitik*” examination suggests, nevertheless, the appearance of another player on the stage or, as it was, in the antechamber of the system: the Sino-Portuguese Joint Liaison Group. This combined body has gradually penetrated the political system of the Territory of Macao. It has, to some degree, upset the system. It could be said that a triangular system has been adopted with the Joint Liaison Group in one corner; the Legislative Council and Governor in the other two corners of this local triangle. The Sino-Portuguese Joint Declaration has legitimised it.

The question as to the scope and limitations on its activities within the political system must be posed. Annex II, point I, Article 1 of the Sino-Portuguese Joint Declaration states that it is to be a consultative body with no powers to intervene in or supervise the administration of Macao. Its powers are to carry out consultations on the application of the Sino-Portuguese Joint Declaration¹⁹, on matters related to the transfer of powers

¹⁸ Vitalino Canas, *op. cit.*, pp. 262 *et. seq.*

¹⁹ Given that the Basic Law is the main embodiment of the obligations stipulated in the Sino-Portuguese Joint Declaration and as such an application of the treaty, should it not have been discussed

over Macao in 1999, and on other similar matters such as, for example, the open clause in article 2, d).

Nevertheless, according to public information and news reports, its activities seem to have gone beyond this consultative nature, particularly in the field of lawmaking. In fact, it has already been argued that the legislative bodies of the territory should not be able to produce legislation, which contradicts what is agreed in the Joint Liaison Group, but rather only suggest amendments²⁰. This theory is not tenable if the constitutionally established regime for distributing powers is considered²¹.

Even if the international agreements signed in the Joint Liaison Group are accepted as valid and effective, they should not be able to violate or prevent the application of constitutional principles such as those in the Organic Statute of Macao that endow legislative powers. Taking into account the international constitution in force in Macao, the norms of conventional international law must conform to constitutional norms. This is particularly important when the powers of bodies not represented on the Joint Liaison Group are in question. The increasing activities of the Joint Liaison Group are not at issue here²²; merely the possibility that they might damage the current system of powers.

V – The political system of the Macao Special Administrative Region

in the Joint Liaison Group meetings, despite China's unilateral insistence that it represented an act of sovereignty?

²⁰ For a critique, see Paulo Godinho, “*Infracção ao Código*” in Ponto Final weekly, 4 November 1994, p. 17; and “*As Garantias do GLC*” *idem*, 11 November 1994, p. 17.

²¹ A broader context is presented in Pedro Horta e Costa/Sérgio de Almeida Correia, “*Por uma política de tradução jurídica e produção legislativa bilingue no actual contexto do período de transição*”, Revista Administração, n.º 7, p. 134, note 5.

²² Concerning this increase, see Jorge Costa Oliveira, “*Checks on the executive action in Macao: the powers and functions of executive government*”, CCCS, 1994, pp. 125 and 126.

The political system of the Macao Special Administrative Region marks a disruption in the current political system in terms of titles, requirements for holders of political office, powers, and the relationship between the Executive and the Legislature.

Despite the fact that the system briefly described in the Sino-Portuguese Joint Declaration is to be allowed to continue, the Basic Law does not follow the solutions, which are currently enshrined.

The system is based on two blocks: the legislature and the executive, the latter consisting of the Chief Executive, the Government and the Executive Council.

This structure is similar to that which exists at present. The division appears to be based on a balance, which does not, however, exist.

In fact, a heavier emphasis is placed on the Chief Executive (who heads the Government and the Executive Council) than on the Legislative Council²³. Specifically, the Chief Executive has the power:

- to return bills to the Legislative Council for reconsideration (article 51);
- to dissolve the Legislative Council if:
 - (i) the above-mentioned bills are confirmed;
 - (ii) the Legislative Council refuses to pass a budget;
 - (iii) the Legislative Council refuses to pass any bill (article 52);
- to not authorise members of the government, amongst others, to testify or give evidence even when requested to do so by the Legislative Council (article 50, n.º 15);
- to decide on the priority of the issues to be submitted to the Legislative Council (article 47, n.º 2);
- to not consent to the introduction of bills relating to government

²³ Paulo Cardinal, “*O Sistema...*”, *cit.*, pp. 93 and 94; Francisco Gonçalves Pereira, “*Da Declaração Conjunta à Lei Básica*”, *Revista Macau*, 2nd series, n.º 1, p. 48.

policies (article 75)²⁴.

On the other hand, members may not introduce bills relating to the following subjects:

- revenue and public expenditure;
- the political structure and operation of the Government (both *ex vi* article 75);
- the method for electing members of the Legislative Council (Annex II, article 2).

Furthermore, there are few mechanisms designed to give balance to the system and, in any case, these are ineffectual and difficult to put into operation:

- the statement that the Government is accountable to the Legislative Council is not accompanied by any sanctions (article 66);
- the special procedure for investigating the Chief Executive does not give the Legislative Council any real powers given that the power to make this decision is held by the Central People's Government. In addition, it is an extremely complicated process (article 71, n.º 7).

There is still the mechanism described in article 54. This, however, is difficult to put into operation and can only be used in extreme situations. The system as envisaged might, due to a praxis less accustomed to systems not centred on a single body, allow conditions that could bring it into line with others in the region described as "strong-arm democracies" with a strong capitalist bent^{25 26}.

²⁴ This could include an amalgamation of virtually all the remaining activities and policies of the Macao Special Administrative Region, which are not controlled by other similar clauses, article 103 *et. seq.*

²⁵ See "*Democracy and growth*", *The Economist*, 27th August 1994, pp. 15 to 17 and the table shown on p. 16.

²⁶ It is interesting to note that in Hong Kong's case, the Basic Law system is less disruptive and even includes some mechanisms for remedying any imbalances which might occur but these were not adopted for Macao where the initial system was already more balanced and democratic. Albert Chen, "*From colony to Special Administrative Region: Hong Kong's constitutional journey*", in *The Future of the*

The future system also marks a disruption in the titles it will use: Chief Executive and Executive Council. This is also the case in the juxtaposition of requirements for holding public office, for example nationality. A similar circumstance occurs within the structure of the future administration with the institutionalisation of a plural executive body: the Government (article 61).

Finally, at least according to the interpretation provided by jurists who were members of the Basic Law drafting committee, and despite there being various interpretations of the Basic Law²⁷, there has been a genuine revolution with the removal of legislative powers from the Chief Executive²⁸.

It is only in the future that the normative depth of administrative regulations will be revealed and whether, as is the case with the Chinese State Council, “provisional” norms will be issued.

VI – Continuing or Converging with the current political system

At this point, it must be asked whether the current political system should continue up to 1999 or whether it ought to be amended to make it converge with the Basic Law.

Law in Hong Kong, pp. 112 *et. seq.*; Gary Ngai, “*Macao em transição — a preservação da sua identidade no próximo século*”, Revista Administração, n.º 24/25, pp. 229 to 301. For information on the democratic features of Macao’s political system, see William Rich, “*Hong Kong: Revolution without change*”, Hong Kong Law Journal, vol. 20, n. 3, p. 209; Roda Mushkat, “*Can Macao legitimately claim a Hong Kong style international legal status?*”, paper given in Macao, 1994.

²⁷ Paulo Cardinal, “*O sistema...?*”. *op. cit.*, pp. 89 *et. seq.*; Paul Fifoot, “*One country, two systems - mark II: from Hong Kong to Macao*”, International Relations, 1994, p. 4. This is not such a clear issue, however.

²⁸ It should be mentioned, with regard to the legally unnecessary localisation of the laws, that it has been claimed that only laws re-approved by the legislative body will continue after 1999. For the good of convergence...

It should be understood that a new, restrictive, interpretation of the Sino-Portuguese Joint Declaration cannot be included here, Rui Afonso, *op. cit.*, pp. 115 and 116, as well as the unilateralisation of this reductive interpretation and implementation of the Sino-Portuguese Joint Declaration, Francisco Gonçalves Pereira, paper *cit.*, p. 122.

The convergence theory is not, as has been shown, wholly compelling but neither can it be denied that it has positive aspects. This is why the question must still be posed.

In any case, the transition should be as smooth as a train travelling along a single-track - the only change being the engine. However, in this case, the carriage is travelling down the line to one destination while the whistle on the engine is blowing in another location. Only when the carriage and engine are coupled/uncoupled will it be determined whether the train has come off the rails or stayed on track.

The system should, in the event of the Organic Statute being reformed, remain the same. However, if on the contrary, it is amended to make it converge, this would involve abandoning a deep-rooted system, joint responsibility for rejecting its democratic tendencies, a tacit ratification of the divergence from and strains imposed by the Basic Law on the model which existed prior to the Sino-Portuguese Joint Declaration and the desertion of a traditional system of sharing legislative powers²⁹.

“Everything to be gained in Macao’s transition on 20th December 1999 could take place without basic changes to a private political system whose efficiency has already been duly tested”³⁰.

This statement, written in 1990, brims with political sense but for the fact that it rests on the legitimate expectation that the Basic Law should conform to the models in the territory of Macao and the Sino-Portuguese Joint Declaration.

In the future, we can but try, through practical experience, to achieve what has been denied by the future norms; consolidating democratic ways of life, debate and discussion in the most democratic body (even if it is only partly elected), and letting them take root and grow³¹.

²⁹ If the Governor’s legislative powers are withdrawn, the agreed policy for localising the laws would be seriously affected given basically normal ratio of drafting of laws.

³⁰ Jorge Morbey, *op. cit.*, p. 81.

³¹ Anabela Ritchie, speech to the Republic of Portugal’s Assembly, identified above, pp. 19 to 20.

