

Symposium on The Hong Kong Basic Law

Preface

Nine years from now, in 1997, the British Government will take the historic step of relinquishing control over the Crown Colony of Hong Kong. Britain has governed parts of present day Hong Kong since 1842, when the Qing Emperor ceded Hong Kong Island to Great Britain by the Treaty of Nanking. In 1860 China ceded a small portion of the Kowloon Peninsula and some outlying islands to Great Britain by the Treaty of Peking. Later, under the 1898 Convention of Peking, China leased additional land to Great Britain for 99 years, which today is called the New Territories. The New Territories comprise certain other outlying islands, the remainder of the Kowloon Peninsula and a large area of land adjacent to the peninsula. The People's Republic of China (PRC) has maintained that the nineteenth century agreements are invalid and that China never ceded *de jure* sovereignty over any part of Hong Kong to Great Britain.

The lease of the New Territories will expire in 1997. In contemplation of the termination of the lease, negotiations between Great Britain and the PRC on the future of Hong Kong began in 1982. On December 19, 1984, Great Britain and the PRC signed the Joint Declaration on the Question of Hong Kong (Joint Declaration), pursuant to which Great Britain declared it will "restore" sovereignty to China and the PRC declared it will "resume" sovereignty over all Hong Kong at midnight on June 30, 1997.

The Joint Declaration provides for the enactment of a second and ultimately more significant document concerning the PRC's governance of Hong Kong: the Basic Law of the Hong Kong Special Administrative Region (SAR). The Basic Law is to be a unique piece of legislation. It constitutes the vehicle chosen by the PRC Govern-

ment to embody the institutional framework, substantive rules and procedural guidelines designed to maintain Hong Kong's stability and continue its prosperity after 1997. The Basic Law will implement the "one country, two systems" principle, which is embodied in Article 31 of the 1982 PRC Constitution and is enunciated in the Joint Declaration. The Basic Law represents an effort to create, within the PRC's socialist political and legal structure, legal rules and procedures that preserve a capitalist economic order as well as protect the individual rights and expectations embedded in current political and social practice in Hong Kong. In the Joint Declaration, the PRC declared that "the basic policies regarding Hong Kong will remain unchanged for fifty years."

As the Basic Law must be reviewed and enacted by the National People's Congress (NPC), it will be PRC internal law subject to the PRC Constitution. As such, the Basic Law, as well as the other laws that will govern post-1997 life and commerce in Hong Kong, necessarily offer a sharp contrast to any existing PRC laws. Creation of this parallel system of Chinese law adds significance and complexity to an analysis of the Basic Law.

The lengthy process of negotiating and drafting the Basic Law began in 1985. The Basic Law Drafting Committee was selected by the Standing Committee of the NPC and includes 35 members from the PRC and 23 from Hong Kong. In addition, the Basic Law Consultative Committee, comprised of members drawn from various sectors of Hong Kong society, was convened to act as a sounding board during the drafting process. The work of the Drafting Committee has already attracted close attention and has stimulated extensive debate and speculation. The first formal draft of this quasi-constitutional statute is scheduled for release in May 1988. At this opportune moment, the *Journal of Chinese Law* is pleased to publish this symposium on the Hong Kong Basic Law, which the editors believe will provide further information and fuel additional debate on the issues surrounding the Basic Law and Hong Kong's future.

The first of these articles is authored by Zhang Youyu, a member of the Basic Law Drafting Committee, a member of the NPC and Director of the China Law Institute. Professor Zhang presents an authoritative overview of the Basic Law, emphasizing four principles that become recurring themes in the articles that follow: upholding the "one country, two systems" principle, preserving Hong Kong's stability and prosperity, permitting the Hong Kong people to administer Hong Kong and ensuring conformity with the Joint Declaration. Denis Chang, a member of the Hong Kong Basic Law Consultative

Committee and former Chairman of the Hong Kong Bar Association, identifies areas in which the PRC will have to apply these four principles with a delicate touch. He suggests that, although the general principles have gained broad acceptance in Hong Kong, their implementation is not likely to be without controversy or difficulty, particularly with respect to China's credibility and Hong Kong's economic stability. Liu Yiu Chu, a member of the Basic Law Drafting Committee, a delegate to the NPC and a Hong Kong solicitor, provides some specific examples of legal questions that have arisen during the drafting process. Her comments indicate that a consensus has not yet been reached on such significant issues as judicial interpretation of the Basic Law and appellate review of decisions of the Hong Kong SAR courts.

A central problem around which these uncertainties revolve is the relationship between the Central Government of the PRC and the Government of the Hong Kong SAR. Wu Jianfan, a member of the Basic Law Drafting Committee, a Research Fellow at the Chinese Academy of Social Sciences and Director of the China Law Society, addresses this relationship in his article which highlights the unusual position that Hong Kong will hold after 1997. Professor Wu describes how China's system of government will continue to be a unitary one; additionally, he discusses concepts which are often associated with a federal political system. Hungdah Chiu of the University of Maryland Law School examines the prospects for the PRC/Hong Kong SAR relationship serving as a model for a future link between the PRC and the Government of the Republic of China (Taiwan). Despite the PRC's high hopes for such a development, Professor Chiu concludes that the possibility is remote.

The alignment of some of the actual beams and girders in the Hong Kong SAR political edifice is explored by Xiao Weiyun, also a member of the Basic Law Drafting Committee and Professor of Law at Beijing University. Professor Xiao examines the basic principles that the PRC will implement in the Hong Kong SAR and outlines some specific features of the SAR political framework. A commentary on this crucial topic is also provided by Thomas Chan of the Centre of Asian Studies at the University of Hong Kong, who summarizes various proposals for the structure of the SAR government and outlines the flow of political authority in a useful diagram.

The issue of civil liberties in Hong Kong has attracted considerable attention since the Joint Declaration was signed. Wang Shuwen, a member of the Basic Law Drafting Committee and Director of the Legal Research Institute at the Chinese Academy of Social Sciences,

delineates the fundamental rights and obligations of residents and non-residents of the Hong Kong SAR. He notes that these rights and obligations may not be altered or restricted except as provided by law. Albert Chen, Lecturer in Law at the University of Hong Kong and a Hong Kong solicitor, concludes the symposium with a description and analysis of a series of recent controversies surrounding civil liberties in Hong Kong. Professor Chen relates these controversies to a widespread reaction to the Joint Declaration.

In designing this symposium, the *Journal of Chinese Law* invited contributions on various aspects of the Basic Law from numerous individuals representing divergent perspectives. While the following articles do not represent all segments of opinion in Hong Kong, they do constitute a broad range of viewpoints on this important topic. Articles on other legal issues in Hong Kong may appear in subsequent issues of the *Journal of Chinese Law*. The editors of the *Journal of Chinese Law* are confident that together the articles in this symposium provide information and insight that will stimulate penetrating debate as the drafters and other interested parties continue in their search for the optimal legal framework to ensure Hong Kong's continued health and wealth.

The Editors
Journal of Chinese Law
April 1988