

# The Reasons for and Basic Principles in Formulating the Hong Kong Special Administrative Region Basic Law, And Its Essential Contents and Mode of Expression

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## I. REASONS FOR DRAFTING THE HONG KONG BASIC LAW

### A. *Introduction*

Hong Kong has always been Chinese territory. However, since late in the Qing Dynasty, it has been ruled by Great Britain. Recently, after peaceful negotiations, the Chinese and British governments signed the Joint Declaration on the Hong Kong Question (Joint Declaration).<sup>1</sup> This agreement stipulates that on July 1, 1997, Great Britain will restore Hong Kong to China, and China will simultaneously resume the exercise of its full sovereignty over the region.<sup>2</sup>

After control of Hong Kong is returned to China, Hong Kong will become an internal administrative region. It goes without saying that all else being equal, Hong Kong would be treated in the same way as all other parts of China. That is, generally applicable national laws would apply to Hong Kong. Thus, what need is there for a Hong Kong Special Administrative Region (SAR) Basic Law? The Basic Law is needed because Hong Kong's historical background and socio-economic circumstances differ from those of other parts of China. Thus, we must enact exceptional laws appropriate for this exceptional area.

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1. The Joint Declaration of the Government of the People's Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland on the Question of Hong Kong, Sept. 26, 1984, 23 I.L.M. 1366 (1984) [hereinafter Joint Declaration].

2. *Id.*, paras. 1, 2.

*B. Hong Kong's Special Circumstances and  
"One Country, Two Systems"*

Hong Kong's long history of capitalism coupled with moderate economic prosperity have caused the Hong Kong people to become accustomed to the capitalist lifestyle. In addition, the Hong Kong people have some misgivings and fears concerning China's current socialist system. Some people even fundamentally oppose this system. If China attempted to force the socialist system on Hong Kong, political turmoil would undoubtedly be difficult to avoid, and damage to the now flourishing economy would result. This consideration was the genesis of China's adoption of the guiding policy of "one country, two systems" (*yi guo liang zhi*).

This policy is in accordance with the Constitution of the PRC. Article 31 of the Constitution allows for the creation of special administrative regions, such as the Hong Kong SAR, stipulating that unlike other regions of China the SARs will enjoy a high degree of autonomy.<sup>3</sup> In addition, the Joint Declaration clearly states, "The current social and economic systems in Hong Kong will remain unchanged, and so will the life style."<sup>4</sup> Of special significance in this regard is Annex I to the Joint Declaration, which elaborates the PRC government's policies regarding Hong Kong.<sup>5</sup> It clearly states that "[a]fter the establishment of the Hong Kong SAR, the socialist system and socialist policies shall not be practiced in the Hong Kong SAR and that Hong Kong's previous capitalist system and life style shall remain unchanged for 50 years."<sup>6</sup>

Following this course will preserve both Hong Kong's current prosperity and its continuing stability, which will in turn benefit the socialist economic construction of the nation and, in particular, the policy of opening to the outside world. The process of preserving Hong Kong's capitalist system must comply, of course, with the Constitution. Article 31 adds that "[t]he systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress (NPC) in the light of the specific conditions."<sup>7</sup> Thus the Basic Law will be an exception to the national laws, formulated to meet the special circumstances of the region.

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3. The Constitution of the People's Republic of China, art. 31 (1982) [hereinafter PRC CONST.].

4. Joint Declaration, *supra* note 1, para. 3(5).

5. Elaboration by the Government of the PRC of Its Basic Policies Regarding Hong Kong, Annex I to the Joint Declaration, *supra* note 1, sec. I [hereinafter Annex I].

6. *Id.*

7. PRC CONST., *supra* note 3, art. 31.

### C. *A Law, Not a Constitution*

At this juncture it is necessary to understand that the Hong Kong Basic Law will be legislation enacted pursuant to the PRC Constitution, and the Basic Law is not in and of itself a "constitution." Although the Basic Law will have the highest legal effect among Hong Kong's laws, it will neither be constitutional in character, nor, in any way, be placed on an equal plane with the PRC Constitution. Hong Kong's status — that of a highly autonomous SAR — will be conferred upon it by the national Constitution. It could not be otherwise, for China is a unitary country, not a union or a federation. Hong Kong, therefore, cannot be a component of a federal republic as in the German Federal system, nor a constituent republic of a larger union as in the Soviet system, nor a federal state as in the American system.

Moreover, under both British and Chinese administration Hong Kong has never had its own constitution. Hong Kong still has no power to formulate one. Hong Kong will enjoy a high level of autonomy, but only by virtue of the exceptional status conferred on it by the PRC Constitution and not by any inherent power it possesses. This conforms with Article 31 of the Constitution, noted above, which quite clearly stipulates that the Hong Kong Basic Law will be a form of legislation. Annex I of the Joint Declaration expands on this notion, specifying that besides the Basic Law, the laws of the Hong Kong SAR will include those previously in force in Hong Kong and those enacted by the future SAR legislature.<sup>8</sup>

The drafting process further demonstrates the statutory character of the Basic Law. In fact, the current drafting of the Basic Law is the responsibility of the Hong Kong SAR Basic Law Drafting Committee, established specifically for this purpose by decision of the NPC (which alone possesses legislative power in China).<sup>9</sup> The Basic Law Drafting Committee is directly responsible to the NPC and its Standing Committee. Its members include Hong Kong people from all sectors of the community. Each member was appointed by decision of the Standing Committee of the NPC. When the Basic Law Drafting Committee completes its draft, this draft will be submitted to the NPC for evaluation and enactment.<sup>10</sup> For these reasons, the draft Basic Law can be nothing but a statutory law. There are those who

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8. Annex I, *supra* note 5, sec. II, states: "The laws of the Hong Kong SAR shall be the Basic Law, and the laws previously in force in Hong Kong and laws enacted by the Hong Kong SAR legislature as above."

9. PRC CONST., *supra* note 3, art. 58.

10. *See Id.* at art. 31.

call the Basic Law Hong Kong's "little Constitution," but as has been seen, this appellation is quite inappropriate.

## II. THE NECESSARY UNDERLYING PRINCIPLES OF THE BASIC LAW

In formulating the Basic Law, there are four basic principles to which we should adhere: 1) "one country, two systems," 2) preservation of Hong Kong's prosperity and stability, 3) administration of Hong Kong by Hong Kong people and 4) conformity to the terms of the Joint Declaration. Each of these will be examined below.

### A. "One Country, Two Systems"

As stated above, we adopted the guiding policy of "one country, two systems" to comport with Hong Kong's historical background and current conditions. This policy must be implemented and faithfully upheld. The so-called "one country, two systems" policy means simply that within a single unified country, two different systems are to be administered. It is neither "one country with one system," nor is it "two countries with two systems." Most importantly, although Hong Kong will enjoy a high degree of autonomy, it will remain under the direct jurisdiction of the Central People's Government. It will not be an independent entity, nor will it be an "independent kingdom." The Joint Declaration explicitly makes this point.<sup>11</sup>

Whether or not "one country, two systems" can truly be realized depends on how it is embodied in the Basic Law. The fact that two different socio-economic systems will coexist in one country — with Hong Kong as the exception to the rule — underlines the need for the Basic Law to provide guarantees. The most important guarantees are, first, that the capitalist system in Hong Kong will remain unchanged, and, second, that socialism will not be implemented for fifty years. The PRC Elaboration in Annex I stipulates further that in order to carry out this plan, consistent provisions concerning political, economic and social life, and other areas must be adopted as part of the Basic Law.<sup>12</sup>

Of course, "remain unchanged" means "remain fundamentally unchanged," and not that every detail will remain unchanged. It means, on the one hand, that the central government will not make any changes, not that the Hong Kong people themselves may not change anything. On the other hand, the concept of "one country"

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11. The Joint Declaration, *supra* note 1, para. 3(2), states: "The Hong Kong SAR will be directly under the authority of the Central People's Government of the PRC."

12. Joint Declaration, *supra* note 1, art. 3; Annex I, *supra* note 5.

necessarily also encompasses the consolidation of national unity and the safeguarding of national sovereignty. China is and will remain a socialist country. The only exceptions to this system are Hong Kong and the future special (administrative) regions of Macao and Taiwan, where socialism will not be implemented immediately. Comrade Deng Xiaoping aptly stated:

'One country, two systems' must be discussed on two levels. On one level is the fact that within a socialist country we will be permitting a specially privileged area to be capitalist not just for a short period of time, but for decades or a full century. On another level, we must affirm that the principal system throughout the country is socialist. . . .<sup>13</sup>

That we uphold the socialist system and the 'four cardinal principles'<sup>14</sup> was determined long ago, and is inscribed in our Constitution. The policies we formulate, including our policies toward Hong Kong, Macao and Taiwan, are also determined on the basis of upholding the four cardinal principles. Without the Chinese Communist Party, and without China's socialism, who could formulate this type of policy?<sup>15</sup>

It is thus clear that the PRC must be able to protect itself. Hong Kong will be a local administrative region of China. The high level of autonomy it will enjoy is conferred on it by the central organs of state power, and this high level of autonomy is not without limits. When exercising its high level of autonomy, Hong Kong will not proceed entirely without guidance, and even necessary intervention, from the central government. However, China's national sovereignty may not be damaged by Hong Kong's enjoyment of its high level of autonomy. Thus, in the areas of foreign and defense affairs, national sovereignty requires that the Central People's Government take full responsibility.<sup>16</sup>

The PRC's protection of its interests also impinges on other aspects of governance covered by the Joint Declaration; these provisions must be more extensively detailed in the Basic Law. For instance, the Joint Declaration states:

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13. See report on this speech in *No Change in Hong Kong Policy*, BEIJING REV., Apr. 27, 1987, at 5.

14. The "four cardinal principles" stipulate that all PRC citizens must uphold the pursuit of the socialist road, the proletarian dictatorship, Communist Party leadership, and adherence to Marxist-Leninism-Mao Zedong Thought.

15. See *No Change in Hong Kong Policy*, *supra* note 13.

16. The Joint Declaration, *supra* note 1, para. 3(2), states: "The Hong Kong SAR will enjoy a high degree of autonomy, except in foreign and defense affairs which are the responsibilities of the Central People's Government."

The chief executive will be appointed by the Central People's Government on the basis of the results of elections or consultations to be held locally.

Principal officials will be nominated by the chief executive of the Hong Kong SAR for appointment by the Central People's Government. . . .<sup>17</sup>

The legislative power of the Hong Kong SAR shall be vested in the legislature of the Hong Kong SAR. The legislature may on its own authority enact laws in accordance with the provisions of the Basic Law and legal procedures, and report them to the Standing Committee of the NPC for the record.<sup>18</sup>

[T]he appointment or removal of principal judges (i.e., those of the highest rank) shall be made by the chief executive with the endorsement of the Hong Kong SAR legislature and reported to the Standing Committee of the NPC for the record.<sup>19</sup>

These provisions clearly articulate the notion of guidance of the Hong Kong SAR by the central government. The Basic Law must elaborate on these provisions and the policy of guidance embodied in them, but may not contradict them.

Comrade Deng Xiaoping addressed this question of intervention when meeting with members of the Basic Law Drafting Committee:

Don't think that all of Hong Kong's affairs will be managed by Hong Kong, with the central government sitting by idly, and everything will be just fine. This is not acceptable. This type of attitude is not practical. The central government indeed will not meddle in the SAR's specific affairs; it will not need to meddle. However, what if something occurring within the SAR threatens the nation's basic interests? Can you say that such a situation could not arise? At that time, shouldn't Beijing concern itself with the matter? Can you say that no events will arise in Hong Kong which may be harmful to Hong Kong's own basic interests? Can you imagine that there will be no obstructions or destructive forces in Hong Kong? I see no grounds for such self consolation. If the central government abdicates all power over Hong Kong, then chaos may ensue, damaging Hong Kong's

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17. Joint Declaration, *supra* note 1, para. 3(4).

18. Annex I, *supra* note 5, sec. II.

19. *Id.* sec. III.

interests. Therefore, preserving certain powers for the central government is beneficial, not harmful, to Hong Kong.

For instance, after 1997 if someone in Hong Kong condemns the Communist Party and condemns China, we will still allow him to speak; but if the words become actions and he wants to turn Hong Kong into a "democracy" and set up a base to oppose the mainland, what then? If we cannot intervene at that time, it would not be acceptable. Intervention would first be by Hong Kong administrative organs; it is not at all certain that mainland troops stationed in Hong Kong would take any actions. If there is a disturbance or great turmoil, only then will the forces stationed in Hong Kong act; but in such circumstances they must always be able to intervene!<sup>20</sup>

Comrade Deng asked that the Basic Law attend to these issues, and of course it should do so. If someone in Hong Kong goes beyond verbally advocating the destruction of China's national socialist system and takes some concrete steps toward this end, then the Basic Law should prohibit these actions. Furthermore, the Basic Law should in no way permit or foster disturbance of the public order of Hong Kong society or counterrevolutionary activities<sup>21</sup> which subvert national sovereignty.

In short, in formulating the Basic Law, we must uphold the principle of "one country, two systems." There are those who merely stress "two systems," without stressing "one country." There are even some who do not want "one country, two systems." They desire, instead, "two countries, one system" — that is, they want Hong Kong to be an independent capitalist country, while at the same time they demand that all of China institute a capitalist system. This is completely absurd.

### *B. Preservation of Hong Kong's Prosperity and Stability*

The second guiding policy is the principle of preserving Hong Kong's prosperity and stability. As noted above, the preservation of Hong Kong's prosperity and stability is not only a goal for Hong Kong itself, but will also benefit China's national socialist economic construction and the implementation of the "open policy." As Zhao

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20. See *No Change in Hong Kong Policy*, *supra* note 13.

21. Counterrevolutionary crimes are defined as follows: "All acts endangering the People's Republic of China committed with the goal of overthrowing the political power of the dictatorship of the proletariat and the socialist system are crimes of counterrevolution." Criminal Law of the People's Republic of China, art. 90 (1980).

Ziyang stated, "Hong Kong's long-term prosperity and stability will benefit China's unification and its Four Modernizations drive,<sup>22</sup> but a turbulent and economically depressed Hong Kong would be inconsistent with the Chinese People's long term interests."<sup>23</sup> It is precisely for these reasons that we adopted the guiding policy of "one country, two systems."

Basically, in order to preserve Hong Kong's prosperity and stability, we must preserve its capitalist system. We must utilize Hong Kong's superior position — resulting from its historical development and current conditions — to adopt measures beneficial to the development of the economy. For example, we should preserve Hong Kong's status as a free port and independent tariff region, continue to implement the free trade policy and preserve Hong Kong's status as an international banking center. Moreover, we must sustain, among other things, the independent management of financial industries, free capital flow into and out of Hong Kong, the existing system of transport management and administration and Hong Kong's status as an international and regional aviation center.<sup>24</sup>

In the area of labor-capital relations, the Basic Law should provide for the interests of both labor and capital, and provide that labor and capital work together towards a common end. Not only must we ensure workers' benefits, but we must also ensure that entrepreneurs stand to gain under the system. While workers must not demand too much, entrepreneurs must not be too exploitative.

### C. *Hong Kong People Administering Hong Kong*

The third guiding policy is the principle of "Hong Kong people administering Hong Kong (*gangren zhi gang*)."<sup>25</sup> Simply put, this means that Hong Kong will be an SAR and will enjoy a high degree of autonomy. This principle is reflected throughout the provisions of the Joint Declaration and Annex I; for instance,

The Hong Kong SAR will be vested with executive, legislative and independent judicial power, including that of final adjudication.<sup>25</sup> The Government of the Hong Kong SAR will be composed of local inhabitants. The chief executive will be appointed by the Central People's Government on

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22. The "Four Modernizations," devised in the late 1970s, describes a national development policy aimed at achieving advances in science and technology, industry, agriculture, and defense. The primary goal is to raise per capita income to US \$1000 and quadruple GNP by the year 2000.

23. Address by Zhao Ziyang to the Drafting Committee (materials not available).

24. Joint Declaration, *supra* note 1, para. 3; Annex I, *supra* note 5.

25. Joint Declaration, *supra* note 1, para. 3(3).



the basis of the results of elections or consultations to be held locally.<sup>26</sup> The legislature of the Hong Kong SAR shall be constituted by elections.<sup>27</sup> Judicial power in the Hong Kong SAR shall be vested in the courts of the Hong Kong SAR.<sup>28</sup> Judges of the Hong Kong SAR courts shall be appointed by the chief executive of the Hong Kong SAR acting in accordance with the recommendation of an independent commission composed of local judges, persons from the legal profession and other eminent persons.<sup>29</sup>

“Hong Kong people administering Hong Kong” thus means that, under the leadership of the Central Government, the Hong Kong people themselves will manage specific legislative, administrative, judicial and other matters. The Central Government will not station people in Hong Kong to directly administer these affairs.

Under the policy of “Hong Kong people administering Hong Kong” we cannot allow the continuation of the British colonial system, wherein foreigners or local scoundrels pandering to foreign interests ruled Hong Kong. Instead, the Joint Declaration states that “Chinese and foreign nationals previously working in the public and police services in the government departments of Hong Kong may remain in employment. British and other foreign nationals may also be employed to serve as advisors or hold certain posts in government departments of the Hong Kong SAR.”<sup>30</sup> There are, however, two conditions: 1) the foreign nationals must hold Hong Kong SAR permanent resident identity cards, and 2) they cannot serve as heads of major government departments (including the police) or as deputy-heads of certain departments.<sup>31</sup> These points merit reiteration: the affairs of Hong Kong should be administered by Hong Kong people; the Central Government will not delegate people to administer them, and will not permit foreigners to hold administrative powers. As stated by Comrade Deng Xiaoping:

There is the question of a demarcation line and criterion for the Hong Kong people to administer the region. The criteria for determining who is to rule Hong Kong under the principle of ‘Hong Kong people administering Hong Kong’ must be that patriotic people are the specific Hong Kong

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26. *Id.* para. 3(4).

27. Annex I, *supra* note 5, sec. I.

28. *Id.* sec. III.

29. *Id.*

30. Joint Declaration, *supra* note 1, para. 3(4).

31. Annex I, *supra* note 5, sec. IV.

people to rule Hong Kong. In the future, the Hong Kong government's key personnel will be patriots; of course, the government may also contain other types of people, and may even take on foreigners as advisors. Who are 'patriots'? The touchstone of a patriot is respect for his own nation, earnest and sincere support for the motherland's resumption of its sovereignty over Hong Kong and restraint from harming the stability and prosperity of Hong Kong. So long as they meet these requirements, they are patriots, no matter whether they believe in capitalism or feudalism or even the slave-owning system. We don't require them all to favor China's socialist system, but only ask them to love the motherland and Hong Kong.<sup>32</sup>

I believe the vast majority of Hong Kong people fit this description and that the principle of "Hong Kong people administering Hong Kong" can achieve success.

How will Hong Kong people administer Hong Kong and thus exercise Hong Kong's high degree of autonomy? First, all remnants of colonial control and all laws smacking of colonialism must be abolished. Key government organs devised by this legal system must be accordingly changed. However, some people advocate completely copying and maintaining the aspects of the existing legal system discussed above, merely changing the names of the existing governmental organs. Some do not even want to change the names. This attitude, of course, is unacceptable, and we must recognize this fact in the drafting of the Basic Law.

Second, we must implement democratic politics and perfect the legal system. The system cannot be as it was in the past, where the government had power but the people did not, and where the Hong Kong Governor made all the decisions and everyone else played minor roles. Of course, the realization of democratic politics must be gradually achieved. Advanced democracy and a perfect legal system cannot be achieved all at once. China's own experience illustrates this point. In the early days of the People's Republic, China wanted to develop socialist democracy, perfect socialism, and realize a high level of civilization and a high level of democracy all at once. However, when drawing up the 1953 Election Law it was only feasible to provide for direct elections of representatives to people's congresses below the county-level, while representatives to people's congresses above the county-level were indirectly elected. At present, because

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32. See the report on this speech in *Deng Xiaoping on the Hong Kong Issue*, BEIJING REV., July 23, 1984, at 16.

conditions have ripened, direct elections for representatives at county-level people's congresses have been instituted; however, the representatives to the NPC and provincial people's congresses, municipalities directly under the Central Government and national minority autonomous regions are still indirectly elected. In the future, these too will advance toward direct elections, but at present such elections cannot be held.

Are present conditions in Hong Kong ripe for implementing completely direct elections? Would it create disturbances detrimental to prosperity and stability? Views on this question range from favoring direct elections to opposing them, and include everything in between. The Basic Law Drafting Committee should integrate theory and practice; its members should carefully consider and prudently investigate solutions to this matter.

#### *D. Conformity to the Joint Declaration*

The fourth guiding policy is the principle of conforming to the requirements of the Joint Declaration. Although the Joint Declaration differs in form from most international agreements, it has international legal effect and is legally binding on the two signatories. The Joint Declaration is certainly sufficiently specific to be binding. First, the Chinese government has stated its fundamental guiding policies toward Hong Kong in the Joint Declaration itself. Second, the PRC government has incorporated an even more detailed and concrete explanation of its policies toward Hong Kong in Annex I, which has equally binding legal effect.<sup>33</sup> Taken together, these documents are a fairly thorough and specific explanation of China's policies toward Hong Kong.<sup>34</sup> China means what it says. It will respect these pronouncements.

Of special importance in this regard is paragraph 3, clause 12 of the Joint Declaration, which states that the basic policies of the PRC towards Hong Kong in both the Joint Declaration itself and in Annex I will be incorporated into the Hong Kong Basic Law by the NPC and will remain unchanged for 50 years.<sup>35</sup> Although the process of formulating the Basic Law is an internal matter, the above clause requires that the contents of the Basic Law must conform to the provisions of the Joint Declaration. Of course, conforming to the Joint

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33. Joint Declaration, *supra* note 1, paras. 7, 8.

34. *Id.* para. 3; Annex I, *supra* note 5, sec. I.

35. The Joint Declaration, *supra* note 1, para 3(12) states: "The above-stated basic policies of the PRC regarding Hong Kong and the elaboration of them in Annex I to this Joint Declaration will be stipulated, in a Basic Law of the Hong Kong SAR of the PRC, by the NPC of the PRC, and they will remain unchanged for 50 years."

Declaration means to conform to its substantive content; it does not mean the Basic Law must imitate the Joint Declaration word for word. The Joint Declaration is an international agreement *and* a political document; and therefore it cannot be converted directly into domestic law. Especially important in this regard is that the special terms used in the document are not all within the legal lexicon and therefore cannot all be utilized in the Basic Law.

### III. THE ESSENTIAL STRUCTURAL COMPONENTS AND CONTENTS OF THE BASIC LAW AND THEIR MODE OF EXPRESSION

#### A. *Essential Components*

In accordance with the above-mentioned reasons for, and principles involved in, formulating the Basic Law, the final product should comprise the following essential components:

(1) A section concerning national unification and the exercise of sovereignty, specifically discussing the question of relations between the Central Government and the Hong Kong SAR;

(2) A section concerning the implementation of democratic politics, preserving the rights to which people are entitled, and stipulating people's obligations;

(3) A section concerning the political system, including each aspect of the legislature, administration and judiciary, as well as relations between these branches. This section must also specifically address questions concerning the selection, status, and powers and responsibilities of principal administrative officials and legislative organs, as well as relations between these entities;

(4) A section concerning prosperity and stability, especially dealing with economic questions;

(5) A section concerning various topical areas such as education, science, culture, sanitation and others.

The embodiment of the above provisions in the Basic Law has already been crystallized in a preliminary structural draft of the Hong Kong SAR Basic Law. It contains the following sections: The Preamble and General Principles; The Relation Between the Central Government and the Hong Kong SAR; The Basic Rights and Obligations of Citizens of the Hong Kong SAR; The Political System of the Hong Kong SAR; The Economy of the Hong Kong SAR; Education, Science, Technology, Culture, Athletics and Religion in the Hong Kong SAR; The Foreign Affairs of the Hong Kong SAR; The Regional Flag and Regional Emblem of the Hong Kong SAR; Interpretation and Amendment of the Hong Kong SAR Basic Law; and Supplementary Articles.

Several special sub-committees have drafted the initial clauses of the Basic Law. On some issues, the members of the sub-committees are unanimous, while on others there is wide disagreement. For example, there are four different proposals outlining ways through which principal administrative officials are to emerge; there are three different proposals concerning the means through which legislators are to emerge; and there are also five different proposals concerning whether or not courts have jurisdiction over administrative acts of the Central Government performed in Hong Kong.

### *B. Certain Key Issues Confronting the Drafting Committee*

The issues noted above are still being discussed and are not within the scope of this article. Others will address these issues. I will confine my discussion to two important questions still being discussed: 1) the creation of the Hong Kong SAR's first government; and 2) the degree of specificity of the Basic Law.

#### **1. The Creation of the Hong Kong SAR's Initial Government**

The first issue regards how the first session of the Hong Kong SAR government will emerge and how the legislative organs will be created and what functions and powers these organs will perform and exercise. This issue is the single greatest concern of each and every stratum, group, faction and politician in Hong Kong. Frankly, they are concerned because its resolution affects their current personal interests. This issue is of even greater concern to them than the future political system and the means through which principal administrative officials and legislators will be selected. If this issue is resolved poorly, it will be impossible to set people's minds at ease, to accomplish the smooth transfer of Hong Kong, or to safeguard Hong Kong's prosperity and stability.

There have been disputes among the Hong Kong members of the drafting committee on this issue. Altogether, six different proposals have emerged. For example, on the issue of the political system, some have advocated "administrative guidance," while others have called for "legislative guidance." Some have urged that the senior administrative official be the head of the administrative organs, while others have called for a senior administrative position, like that of the current Governor, above the legislative and administrative organs. As noted in section II above, some members have advocated that the current Hong Kong government organs should be imitated in their entirety, only changing the names. Others have said that the existing Hong Kong government should oversee the organization of the new

government institutions and personnel through consultations or elections. On the issue of the selection of principal administrative officials and legislators, some have urged that this be accomplished through consultations, while others have called for elections. When considering the specific means of selecting such officials, four different modes have been suggested: 1) direct elections; 2) indirect elections; 3) local elections (only); and 4) election by functional constituencies. In the end, the notion of essentially relying on a combination of these electoral forms has garnered a relatively strong following. However, there remains the difficult problem of how to distribute the respective allotment of votes among these different modes.

There is also the difficult problem of how China is to conduct elections during the transition period, while Britain is still responsible for Hong Kong's administrative supervision. We cannot allow the present Hong Kong government to substitute for us in supervising the elections. Electing the SAR governmental personnel and legislature is an important Chinese internal affair. Allowing the Hong Kong government to fulfill China's role would permit foreign elements to interfere in China's internal affairs and would injure China's national sovereignty. If the Basic Law does not resolve this issue, then all of its provisions will be meaningless scraps of paper! The Basic Law must provide clear provisions resolving this question. Perhaps such provisions should be included in the General Principles section, or perhaps in each of the relevant articles; but the ideal method would be to include such provisions in a special article of their own. At the very least, they must be contained in the supplementary articles, as is tentatively planned.

## 2. Mode of Expression: General, Not Detailed

The second problem involves how these provisions and principles are expressed. I believe that, basically speaking, the Basic Law should be general and not detailed. Major principles, such as preserving Hong Kong's existing capitalist system and lifestyle, must be clearly stated. However, concrete issues need not be addressed by the Basic Law too frequently, too meticulously or too rigorously. These issues may be dealt with in the provisions of ordinary laws. For instance, normal election procedures may be regulated by a separately formulated election law.

Because the Basic Law will not come into force until 1997, and because its provisions will remain unchanged for fifty years or more thereafter, we not only must take account of current circumstances and social needs, but must also allow for future developments. Soci-

ety's objective, concrete circumstances ceaselessly develop and evolve. If the Basic Law's provisions are too excessive, meticulous or rigid, then at future stages of development they will be inappropriate to specific new situations. This would cause the Basic Law to become inapplicable, to exist in name only or to require such constant amendment so as to lack stability. Of course, ordinary laws must also possess a certain degree of stability; they cannot be issued in the morning and rescinded in the evening. However, ordinary laws are unlike a Basic Law. A Basic Law has a broad scope, will remain in force for a long period of time, and encompasses major fundamental issues; ordinary laws may be amended or supplemented whenever necessary.

#### CONCLUSION

The drafting of the Hong Kong SAR Basic Law is an urgently needed and crucial matter. The mission of the Basic Law Drafting Committee is formidable. It must carry out its work energetically and prudently so as to contribute both to Hong Kong's prosperity and stability, and to China's unification and socialist construction.

