

assured the Chinese authorities that the government would not allow Hong Kong to be used as a base for subversive activities and cited the police action in arresting demonstrators against China at the National Day celebrations. The office of the Political Adviser and the General Duties Branch in the Secretariat are in constant communication with the government of Guangdong Province and of the Shenzhen Special Economic Zone on such matters as economic cooperation, the repatriation of illegal immigrants, cross-border transport links, smuggling, postal services, telecommunications, pollution control and similar matters. A Sino-Hong Kong Border Liaison Committee meets regularly. In May 1990 it worked out arrangements for the return of five Hong Kong seamen detained in Shenzhen in connection with the smuggling of cars to China. It is very rarely necessary to refer any of these questions to London, though Britain retains its right to intervene on any matter where Britain's desire for good relations with China is in conflict with the particular local interests of Hong Kong.

Hong Kong's success in exporting goods all over the world has inevitably involved the territory in trade negotiations with countries which wish to impose limits on imports from Hong Kong. Agreements have been made under which Hong Kong manufacturers accept a quota on their sales abroad in exchange for continued access to a foreign market. Hong Kong has been a full member of the General Agreement on Trade and Tariffs (GATT) since 1986, and China has agreed that Hong Kong will retain this status after 1997. This enables Hong Kong to participate fully in international negotiations for the liberalization of world trade.

The Hong Kong government maintains offices abroad in Geneva, Brussels, London, Washington, New York, San Francisco and Tokyo. Geneva is the headquarters of the General Agreement on Trade and Tariffs and the Hong Kong office there is largely concerned with its deliberations. The Brussels office looks after Hong Kong's commercial interests in the European Economic Community. The Hong Kong Trade Development Council and the Hong Kong Tourist Association also maintain offices in these and in seventeen other countries.

The Basic Law: Messages for Hong Kong People

Joseph Y. S. Cheng

Introduction

The Sino-British Joint Declaration indicated that the People's Republic of China (PRC)'s basic policies regarding Hong Kong, as stated in the Joint Declaration and elaborated in its Annex I, "will be stipulated, in a Basic Law of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China, by the National People's Congress (NPC) of the People's Republic of China, and they will remain unchanged for 50 years." The Joint Declaration further pointed out that the PRC's decision to establish a HKSAR was "in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China."

Article 31 of the PRC Constitution states: "The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of specific conditions." In line with this, the Constitution grants the NPC the power "to decide on the establishment of special administrative regions and the systems to be instituted there."

The drafting of the Basic Law was therefore the PRC's domestic affair. It will be a "mini-constitution," defining the respective authorities of the Central Government in Beijing and the HKSAR government, the political system of the HKSAR and the rights and obligations of Chinese citizens in the HKSAR. Naturally, the people of Hong Kong were concerned as to

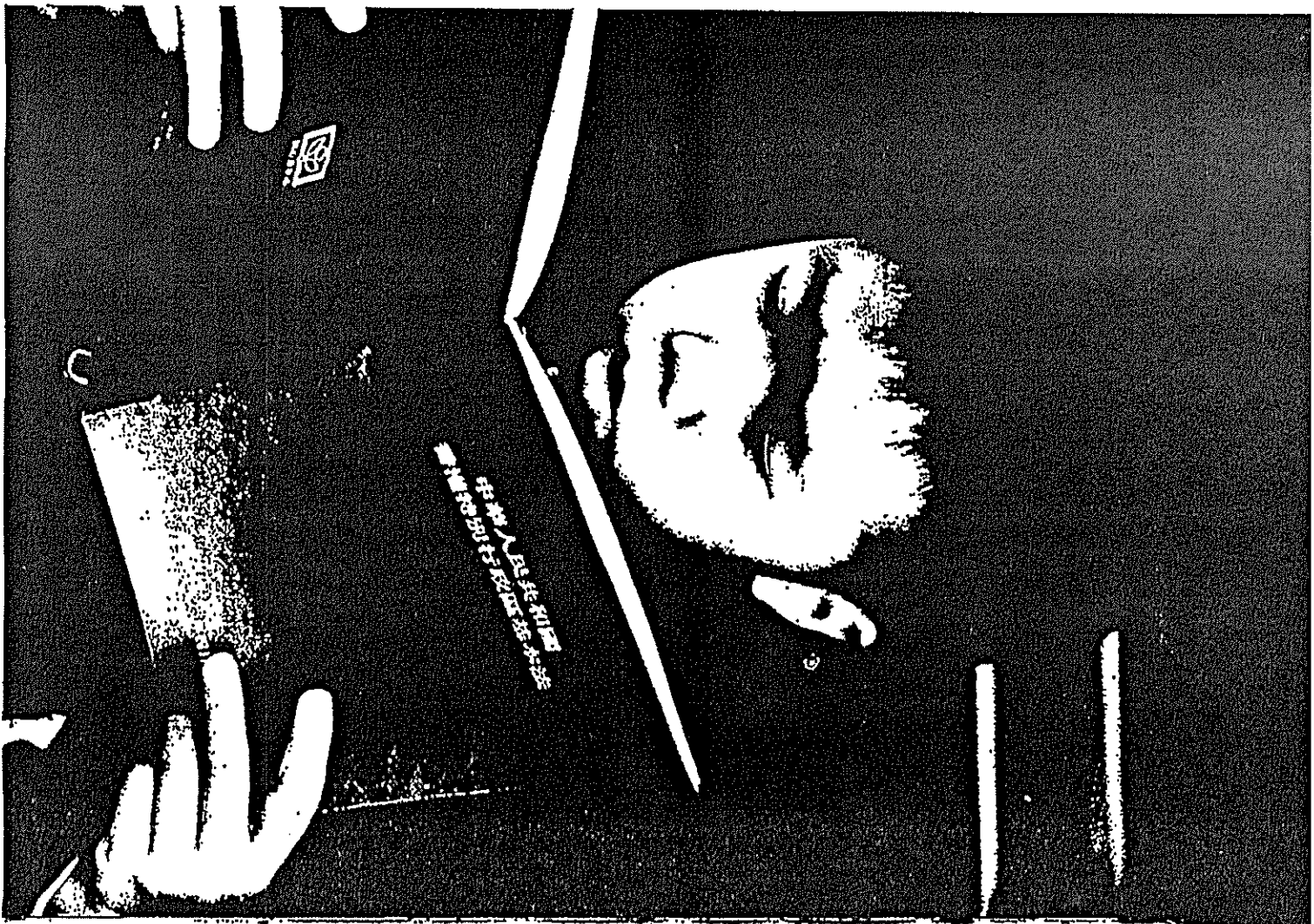
whether their representatives would be involved in the drafting process and in which ways they would be consulted to make sure that the Basic Law would be acceptable to them before its formal promulgation.

As the PRC government could not hold elections in Hong Kong, it had to appoint representatives of the Hong Kong people to the Basic Law Drafting Committee (BLDC). The difficulty was how to select a respectable sample that would be trusted by the Hong Kong community and acceptable to the PRC authorities. The choice had to enhance the PRC's united front work in Hong Kong as well. This select group, however, had to avoid being perceived as a new centre of authority challenging the British administration in Hong Kong.

When membership of the BLDC was announced in July 1985, it was clear that the PRC government placed top priority on the stability and prosperity of the territory and that radical political reforms would be unlikely. There were twenty-three members from Hong Kong in the 59-member committee, most of them prominent businessmen and leading professionals. The interests of the establishment in Hong Kong apparently were assured, as the PRC authorities were keen to retain Hong Kong's attractiveness to investors.

The most important function of the Hong Kong members in the BLDC was to provide legitimacy to the Basic Law. Their involvement in the drafting work and their endorsement of the final document were aimed at substantiating the claim that it was acceptable to the Hong Kong community. As the BLDC held only two or three plenary sessions a year (nine sessions altogether), the actual drafting work was largely performed by a secretariat composed of experts from the PRC State Council's Hong Kong and Macau Affairs Office and the relevant sections of the Ministry of Foreign Affairs. The role of the Hong Kong members was mainly advisory. After all, they were a minority in the BLDC, and the Basic Law had to go through the NPC.

Though the Hong Kong members of the BLDC had been contacted and consulted by local New China News Agency officials, they were quite ignorant until their departure for Beijing of what their respective appointments were based on, to whom they were accountable, their terms of office, their powers and responsibilities and even the agenda of their first meeting. Nor did they appear to be very concerned about these issues. According to the speech of the Chairman of the BLDC, Ji Pengfei (also Director of the PRC State Council's Hong Kong and Macau Affairs Office), at the opening ceremony of the BLDC's first meeting:



The Basic Law Drafting Committee is the working organ established by the National People's Congress for drafting the Basic Law of the Hong Kong Special Administrative Region; it is responsible to the National People's Congress, and when the National People's Congress is not in session, it is responsible to the Standing Committee of the National People's Congress.

In response to a small number of Hong Kong members of the BLDL, who articulated the local community's interests, the PRC authorities were forced to consider the moral responsibility that those members bore to the people of Hong Kong. Later, in a subgroup meeting, Ji Pengfei indicated that the Hong Kong members of the BLDL might consider issues from the point of view of "two systems"—yet they also should try to consider issues more from the point of view of "one country." In Ji's view, the Hong Kong members had to be accountable not only to their Hong Kong compatriots, but also to the entire Chinese people, because they had been appointed by the Standing Committee of the NPC. Ji's explanation reflected the moral and political identity crisis of the Hong Kong members of the BLDL.

The first task of the Hong Kong members was to form a Basic Law Consultative Committee (BLCC). According to the constitution of the BLCC, its objective was "to engage in consultative activities in Hong Kong for the purpose of drafting the Basic Law of the Hong Kong Special Administrative Region in accordance with the will of the entire Chinese people including the Hong Kong compatriots." If the BLCC had to act "in accordance with the will of the entire Chinese people," then what weight should be attached to the will of the Hong Kong people?

In short, the organization and membership of the BLCC, the drafting of its constitution and the associated controversy over the phrase "democratic consultations" in its draft constitution, and the authority of its executive committee and the procedures governing the revision of its constitution all demonstrated the PRC authorities' intention to control this supposedly unofficial, voluntary organization. The subsequent election of the Chairman, Vice-Chairmen and Secretary-General of the BLCC's executive committee (based on a slate presented by a BLDL Vice-Chairman) caused an uproar, and Hong Kong became deeply suspicious of the PRC authorities' intentions.

While the BLCC was being formed, some political groups and commentators indicated that the Hong Kong BLDL members should refrain from joining the BLCC, so as to ensure the independence of this unofficial and voluntary organization. Later, it also was suggested that, at the very

least, the Hong Kong BLDL members should not serve on the BLCC's executive committee. The result, however, was that seven Hong Kong members of the BLDL joined the BLCC, and that six of them served on the BLCC's executive committee. Further, a BLDL Vice-Chairman served as the Chairman of the BLCC's executive committee and the Deputy Secretary-General of the BLDL served as Secretary-General of the BLCC's executive committee (the latter was also concurrently Deputy Secretary-General of the Hong Kong branch of the New China News Agency). The control of the BLCC by the BLDL was considerable, despite the stipulation in its constitution that "the Consultative Committee and the Drafting Committee shall be independent of and not subordinate to each other."

The release of the *Draft Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (for solicitation of opinions)* (hereinafter the "draft Basic Law") on 28 April 1988 and the consultation process associated with it ideally should offer an important opportunity for inculcating a sense of belonging to the community. Further, they should consolidate support for the implementation of the ideal of "one country, two systems" through the establishment of the HKSAR. Unfortunately, traditional political apathy had already returned to Hong Kong by then. Survey results released in mid-May 1988 indicated that 56.7 per cent of the respondents who had picked up copies of the draft Basic Law had not read the document, while 35 per cent had read a small part of it. Among those who knew of the draft Basic Law, only 6.9 per cent said they would comment on various articles of the draft, while 34.7 per cent indicated that they had not yet decided and 58 per cent were not prepared to give their views. Of those who were prepared to give their views, they did not seem to be aware of the channels offered by the BLCC. Ironically, 30.8 per cent of them chose to rely on the District Boards and the District Offices of the Hong Kong government.

When the Basic Law was formally enacted and promulgated by the NPC on 4 April 1990, there was hardly any interest in the document, and the event was treated in a low-key manner by the pro-Beijing organs in the territory. An opinion poll published by the *South China Morning Post* on 31 October 1989 showed that 69 per cent of the respondents were not very confident nor even fairly confident that the Basic Law would ensure that the "one country, two systems" promise would be kept. Hong Kong people now tend to believe that the sense of insecurity on the part of the Chinese communist regime in the aftermath of China's mass protests, the three demonstrations in Hong Kong in May-June 1989 in which over one million

people participated, the defections in May 1989 of the Chinese organs in Hong Kong, and the impact of the local mass media inside China in the spring of that fateful year will most likely cause Beijing to strengthen its control of and interference in Hong Kong. This implies that the freedoms that Hong Kong people will continue to enjoy will be those restricted to dancing and horse-racing. Hence, while Hong Kong people may have a reasonable chance of maintaining their existing living standards, their freedoms, human rights and the rule of law will probably be considerably eroded. The options are whether to acquiesce or emigrate. But almost five million people will not even have the choice.

While intensely following the events in China, there has emerged a conviction in the territory that if freedom, human rights and democracy cannot be guaranteed in China, they cannot be well protected in Hong Kong after 1997. Most Hong Kong people also expect a period of major chaos in China after Deng Xiaoping's death, and whether or not Hong Kong can survive such a crisis is not known. A popular recent topic among concerned citizens has been: what is the most appropriate time-frame for Deng's death, from the point of view of the territory's future?

□ The Constitutional and Legal Status of the Basic Law and the HKSAR

In terms of the hierarchy of laws in PRC, the Constitution "is the fundamental law of the state and has supreme legal authority." The basic laws, ordinary statutes, administrative rules and regulations enacted by the State Council stand next in line. They are followed by the local regulations adopted by the people's congresses of provinces and municipalities directly under the central government and their standing committees. This hierarchy is strictly defined, and laws of a lower level cannot contravene those of a higher level. The Basic Law of the HKSAR belongs to the category of "basic law", a law similar to it in status is the Law on Regional Autonomy for Minority Nationalities of the PRC, which was adopted on 31 May 1984 by the NPC.

Ever since the ideas of "one country, two systems" and a Basic Law for the HKSAR were first raised by the PRC leaders, the relationship between the Basic Law and the PRC Constitution has been a serious concern of the Hong Kong community. The idea of "one country, two systems" is to allow Hong Kong's current social and economic systems to remain unchanged. This promise by the PRC leadership is embodied in Article 3(5) of the

Sino-British Joint Declaration and has been stipulated in the Basic Law. The PRC Constitution, however, clearly states that "the Chinese people of all nationalities will continue to ... follow the socialist road." A careful examination of the following articles of the Constitution obviously casts doubt on the ability of the Basic Law to provide for the continuance of the capitalist system in Hong Kong for fifty years after its return to PRC in 1997. These constitutional provisions are:

Article 1: "The People's Republic of China is a socialist state under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants."

Article 5: "The state upholds the uniformity and dignity of the socialist legal system. No law or administrative or local rules and regulations shall contravene the Constitution."

Article 6: "The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production, namely, ownership by the whole people and collective ownership by the working people."

Even before the initialling of the Sino-British Joint Declaration, various groups in Hong Kong indicated to the PRC officials responsible for Hong Kong affairs that the guarantee of a capitalist system in Hong Kong might be in violation of the PRC Constitution; and revision of Article 31 of the Constitution was suggested. The PRC authorities apparently were reluctant to discuss revision of the Constitution, but they were aware that some form of assurance was necessary.

The issue was raised repeatedly in the initial phase of the drafting of the Basic Law. Finally, Shao Tianren, co-convenor of the Subgroup on the Relationship between the Central Government and the SAR of the BLDG and a legal expert of the PRC Ministry of Foreign Affairs, indicated after a May-June 1986 meeting of the Subgroup that the proposal to rewrite Article 31 of the PRC Constitution would not be accepted. Shao felt that the Constitution should not be altered too easily, and that the problem with previous Constitutions was that there had been too many changes. He, therefore, would like to solve the problem without having to amend the Constitution. Nonetheless, it was acknowledged that a consensus existed in the Subgroup on the need to clarify the relationship between the Basic Law and the PRC Constitution in order to assure the Hong Kong community that socialism as prescribed by the Constitution would not be practised in the territory. It was suggested that the PRC authorities' reluctance to amend the Constitution was largely related to the concept of "saving face" and the consideration that any amendment of Article 31 of the Constitution might

imply that the very provisions of the Sino-British Joint Declaration were in violation of the Constitution as it stood in 1984.

The Hong Kong community's reaction was that these considerations should not be put above the rule of law. It also sensed a resentment against such a demand from PRC officials responsible for Hong Kong and Macau affairs, who felt that a small territory such as Hong Kong should not be involved with the highest level of state affairs like the revision of the Constitution. Incidentally, in April 1988, the Seventh NPC amended Article 10 of the Constitution, deleting the prohibition against leasing land and added the sentence: "Land-use rights according to legal regulation can be transferred."

In contrast to the PRC's national autonomous regions, the power of autonomy of the SARs is not guaranteed by the Constitution, but stipulated by basic laws promulgated by the NPC. (In the case of the HKSAR, the Sino-British Joint Declaration provides a further guarantee in its form as an international agreement.) However, as the HKSAR's power of autonomy is to be defined by the Basic Law promulgated by the NPC, this power of autonomy, from a constitutional point of view, is of a lower order than that of the national autonomous regions embodied in the Constitution. In terms of the actual powers enjoyed by the HKSAR, as outlined by Annex I of the Sino-British Joint Declaration and the Basic Law, the HKSAR will enjoy a much higher degree of actual autonomy than the present national autonomous regions of the PRC.

As a SAR under the sovereignty of the PRC, Hong Kong has been warned against the tendencies of becoming an "independent political entity." The Sino-British Joint Declaration states: "The HKSAR will enjoy a high degree of autonomy" However, a high degree of autonomy also means limited autonomy. The PRC government obviously will not change the existing unitary systems into a federal one just for the reunification of Taiwan, Hong Kong and Macau. The idea of granting Hong Kong "residual power" which allows the HKSAR full authority to handle its own affairs, except in foreign and defence affairs which are the responsibilities of the Central Government in Beijing, was raised by some groups in the Hong Kong community. The suggestion, had it been accepted, certainly would have affected the absolute authority of the Central Government.

In a unitary system, the authority of a local government comes entirely from the central government, and this authority, at least theoretically, may be changed or withdrawn at will by the central government. In contrast, the

central government and the local governments in a federal system have their respective authorities well defined in a constitution which cannot be amended without the consent of a majority of the constituent units of the federation. Thus, when the PRC government promises in the Sino-British Joint Declaration that it will enact a Basic Law "in accordance with the Constitution of the People's Republic of China, stipulating that after the establishment of the Hong Kong Special Administrative Region ... Hong Kong's previous capitalist system and life-style shall remain unchanged for 50 years," it implies that in these fifty years, a federal relationship will exist to a certain extent. Since the Sino-British Joint Declaration and the Basic Law were approved by the NPC, and the Basic Law also has a limited time span of fifty years, the arrangement should not be considered an infringement of the PRC's unitary system of government. The arrangement certainly has implications for Taiwan too. It was on this premise that Hong Kong people had raised the legitimate demand that the Basic Law should stipulate clearly that, except in foreign and defence affairs, the HKSAR had the sole authority to handle its domestic affairs.

This demand was not accepted by the PRC authorities. According to Wu Jianfan, member of the BLDG and Director of the China Law Society, the BLDG in its second plenary session adopted the view that there was no question of residual power as to the HKSAR, and the Basic Law should not include any provisions on this point. Wu justified the decision as follows:

If [the question of residual powers] implicates China's state system, especially the nature and status of special administrative regions, and the origins of power, as well as a whole series of other critical issues. Therefore, we must adopt a prudent attitude toward this issue. The question of residual powers usually exists in countries with a federal system China's situation is different. China does not have a federal system, but has a unitary system. A locality's powers are not inherent in themselves, but are conferred by the state. Neither before nor after the establishment of the Hong Kong Special Administrative Region does it possess independent sovereignty. The Hong Kong Special Administrative Region's high degree of autonomy is conferred by the state through the Basic Law, and it cannot enjoy powers that were never conferred. So how can there be any residual power? If one insists that there are residual powers, then these powers can only belong to the Central Government and not to the Hong Kong Special Administrative Region.

The "high degree of autonomy" to be enjoyed by the HKSAR as interpreted by Zhang Youyu, member of the BLDG, Deputy Chairman of the NPC Legal Committee and a leading legal expert of the PRC, was even more threatening. Zhang stated that:

The high level of autonomy if [the HKSAR] 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.

In line with the demand for "residual power" for the HKSAR, various groups in Hong Kong also demanded that the power to propose to amend the Basic Law be vested in the HKSAR government. A local political group, Meeting Point, suggested that the power to propose to amend the Basic Law should be vested in the HKSAR legislature; proposals of amendments should first be adopted by a two-thirds majority of the legislature, and then approved by the Standing Committee of the NPC. Since the Central Government could not formally initiate amendments, this proposal would be in accord with the promise that "Hong Kong's previous capitalist system and life-style shall remain unchanged for 50 years." The arrangement would provide for the necessary revision of the Basic Law. In addition, since all amendments would have to be approved by the Standing Committee of the NPC, the PRC's sovereignty would not be compromised and Hong Kong would be prevented from becoming an "independent political entity."

Article 159 of the Basic Law, however, states:

The power of amendment of this Law shall be in the National People's Congress.

The power to propose bills for amendments to this Law shall be vested in the Standing Committee of the National People's Congress, the State Council and the Hong Kong Special Administrative Region. ...

Before a bill for amendment to this Law is put on the agenda of the National People's Congress, the Committee for the Basic Law of the Hong Kong Special Administrative Region shall study it and submit its views.

No amendment to this Law shall contravene the established basic policies of the People's Republic of China regarding Hong Kong.

According to Article 159, the Central Government of the PRC would have full control of the amendment process. Similar to the issue of revising the Constitution, the controversies concerning "residual power" and the amendment of the Basic Law have receded into the background and apparently the Hong Kong community has conceded quietly to the position of the PRC authorities.

After the release of the draft Basic Law in April 1988, critics in Hong Kong, especially the legal profession, paid much attention to Articles 16, 17, 18 and 169 regarding the relationship between the Central Government and the HKSAR. Draft Article 16 states:

The Hong Kong Special Administrative Region is vested with legislative power.... If the Standing Committee of the National People's Congress, after consulting its Committee for the Basic Law of the Hong Kong Special Administrative Region, considers that any laws of the Region is [sic] not in conformity with this Law or legal procedures, it may return the law in question for reconsideration or revoke it, but it shall not amend it. Any law returned for reconsideration or revoked by the Standing Committee of the National People's Congress shall immediately cease to have force. The cessation shall not have retroactive effect.

As Section II of Annex I to the Sino-British Joint Declaration already stipulates that "the legislative power of the Hong Kong Special Administrative Region shall be vested in the legislature of the Hong Kong Special Administrative Region," it has been suggested that the first paragraph of Article 16 should be amended as follows: "The legislative power of the Hong Kong Special Administrative Region shall be vested in the legislature of the Hong Kong Special Administrative Region." This proposal, however, was not accepted.

More important still, the Hong Kong community was concerned that the power conferred on the Standing Committee of the NPC by draft Article 16 would compromise the autonomy of the HKSAR and the legislative power of the HKSAR legislature. Some groups therefore suggested that the third paragraph of draft Article 16 should be amended as follows: "If the Standing Committee of the National People's Congress...it may return the law in question for reconsideration by the legislature of the Hong Kong Special Administrative Region." The legal profession in Hong Kong, on the other hand, argued that, in a common law system, all the laws passed by the legislature are to be construed by the courts and not by the executive or the legislature, whereas in the PRC, the Standing Committee of the NPC has the power to interpret all the laws and the Constitution. It therefore proposed that the constitutionality of the laws passed by the HKSAR legislature should be left to the Court of Final Appeal of the HKSAR, following the example of the United States Supreme Court in construing the United States Constitution.

The BLDG was responsive to such arguments, and an amendment was adopted. When the second draft of the Basic Law was released in February 1989, the paragraph in question (third paragraph, Article 17) reads:

If the Standing Committee of the National People's Congress, after consulting its Committee for the Basic Law of the Hong Kong Special Administrative Region, considers that any law enacted by the legislature of the Region is not in conformity with the provisions of this Law regarding affairs within the responsibility of the

Central Authorities or the relationship between the Central Authorities and the Region, it may return the law in question but it shall not amend it. Any law returned by the Standing Committee of the National People's Congress shall immediately cease to have force. This cessation shall not have retroactive effect, unless otherwise provided for in the laws of the Hong Kong Special Administrative Region.

Draft Article 17 of the April 1988 version caused considerable concern. It states:

Laws, enacted by the National People's Congress or its Standing Committee, which relate to defence and foreign affairs as well as other laws which give expression to national unity and territorial integrity and which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy of the Hong Kong Special Administrative Region, shall be applied locally by the government of the Hong Kong Special Administrative Region by way of promulgation or legislation on the directives of the State Council, whenever there is the need to apply any of such laws in the Region.

Except in cases of emergency, the State Council shall consult the Committee for the Basic Law of the Hong Kong Special Administrative Region before issuing the above-mentioned directives.

If the government of the Hong Kong Special Administrative Region fails to act in compliance with the directives given by the State Council, the State Council may decree the application of the above-mentioned law in the Hong Kong Special Administrative Region.

The possibility that laws enacted by the NPC or its Standing Committee might be applied locally by way of promulgation on the directives of the State Council was quite threatening. The scope of "other laws which give expression to national unity and territorial integrity and which, in accordance with the provisions of this Law, are outside the limits of the high degree of autonomy of the Hong Kong Special Administrative Region" was equally disturbing. Most comments focusing on this article after the release of the draft Basic Law tended to support the view that the laws concerning defence and foreign affairs should be applied by way of legislation by the HKSAR Legislature at the request of the Standing Committee of the NPC. Further, apart from the laws concerning defence and foreign affairs, the nationwide laws which gave expression to national unity and territorial integrity and which would be applicable to the HKSAR should be listed in an annex to the Basic Law.

Again, the BLDG was willing to accept the above arguments, and amendments were adopted. In the second draft of the Basic Law published in February 1989, the paragraphs in question (second, third and last paragraphs of Article 18) read:

National laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III to this Law. The laws listed in Annex III to this Law shall be applied locally in the Region by way of promulgation or legislation.

The Standing Committee of the National People's Congress may make additions to or deletions from the list of laws in Annex III after consulting its Committee for the Basic Law of the Hong Kong Special Administrative Region and the government of the Region. Laws listed in Annex III to this Law shall be confined to those relating to defence and foreign affairs as well as other laws outside the limits of the autonomy of the Region as specified by this Law.

In case the Standing Committee of the National People's Congress decides to declare a state of war or, by reason of turmoil within the Hong Kong Special Administrative Region which is beyond the control of the Region, decides that the Region is in a state of emergency, the State Council may decree the application of the relevant national laws in the Region.

Paragraphs 3 and 4 of draft Article 18 of the April 1988 version, which caused considerable controversy, are as follows:

Courts of the Hong Kong Special Administrative Region shall have no jurisdiction over cases relating to defence and foreign affairs, which are the responsibility of the Central People's Government, and cases relating to the executive acts of the Central People's Government. Courts of the Hong Kong Special Administrative Region shall seek the advice of the Chief Executive whenever questions concerning defence, foreign affairs or the executive acts of the Central People's Government arise in any legal proceeding. A statement issued by the Chief Executive regarding such questions shall be binding on the courts.

Before issuing such a statement, the Chief Executive shall obtain a certificate from the Standing Committee of the National People's Congress or the State Council.

The community's concern was mainly with the broad definition of "the executive acts of the Central People's Government." Because a party who wanted to adopt delaying tactics might try to claim that the case in dispute involved questions concerning defence, foreign affairs or the executive acts of the Central People's Government, the efficiency and authority of the HKSAR courts would be considerably hampered in any legal proceedings. Hence, it was suggested that the above two paragraphs should be deleted and that the retention of paragraph 2 of Article 18 should be sufficient to safeguard the sovereignty of the PRC. Paragraph 2 states: "Courts of the Hong Kong Special Administrative Region shall have jurisdiction over all cases in the Region, except that the restrictions of their jurisdiction imposed by Hong Kong's previous legal system shall be maintained."

Although the BLDG was responsive to the territory's concern with the broad definition of "the executive acts of the Central People's

Government," the necessary amendment could not be secured before the release of the February 1989 draft, and one had to wait for the final version of the Basic Law for those amendments which are more satisfactory to the Hong Kong community. In place of the controversial paragraphs, the compromise version (third paragraph, Article 19) now reads:

The courts of the Hong Kong Special Administrative Region shall have no jurisdiction over acts of state such as defence and foreign affairs. The courts of the Region shall obtain a certificate from the Chief Executive on questions of fact concerning acts of state such as defence and foreign affairs whenever such questions arise in the adjudication of cases. This certificate shall be binding on the courts. Before issuing such a certificate, the Chief Executive shall obtain a certifying document from the Central People's Government.

Finally, draft Article 169 of the April 1988 version, which dealt with the interpretation of the Basic Law, was criticized by the local profession as paralyzing the whole judicial system of the HKSAR. It states:

The power of the interpretation of this Law is vested in the Standing Committee of the National People's Congress.

When the Standing Committee of the National People's Congress makes an interpretation of a provision of this Law, the courts of the Hong Kong Special Administrative Region, in applying that provision, shall follow the interpretation of the Standing Committee. However, judgments previously rendered shall not be affected.

The courts of the Hong Kong Special Administrative Region may interpret the provisions of this Law in adjudicating cases before them. If a case involves an interpretation of the provision of this Law concerning defence, foreign affairs and other affairs which are the responsibility of the Central People's Government, the courts of the Region, before making their final judgment on the case, shall seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress.

The Standing Committee of the National People's Congress shall consult its Committee for the Basic Law of the Hong Kong Special Administrative Region before giving an interpretation of this Law.

The concerned public in Hong Kong requested that the Standing Committee of the NPC would delegate irrevocably to the HKSAR courts its power to interpret those articles of the Basic Law which were within the scope of the HKSAR's autonomy in adjudicating cases. Regarding the other articles which fell outside the scope of the HKSAR's autonomy, the Standing Committee of the NPC might, if necessary, interpret such articles, provided that its interpretation should not affect cases that were being adjudicated, or that already had been decided by the HKSAR courts.

These controversies largely demonstrate the difficulties encountered in the actual implementation of "one country, two systems." They also reflect the PRC authorities' intention to retain the final say in almost every significant area. By 1988, the community had already largely acceded to the PRC authorities' position on the revision of the Constitution and the amendment of the Basic Law, while the concerned public and the legal profession were concentrating on the preservation of the independence of the HKSAR's judicial system.

The amendments adopted by the BLDG before the release of the second draft of the Basic Law in February 1989 went a considerable way in meeting the request of the territory's concerned public. The final version did not make any significant change, and the article on the interpretation of the Basic Law (Article 158) now states:

The power of interpretation of this Law shall be vested in the Standing Committee of the National People's Congress.

The Standing Committee of the National People's Congress shall authorize the courts of the Hong Kong Special Administrative Region to interpret on their own, in adjudicating cases, the provisions of this Law which are within the limits of the autonomy of the Region.

The courts of the Hong Kong Special Administrative Region may also interpret other provisions of this Law in adjudicating cases. However, if the courts of the Region, in adjudicating cases, need to interpret the provisions of this Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, and if such interpretation will affect the judgments on the cases, the courts of the Region shall, before making their final judgments which are not appealable, seek an interpretation of the relevant provisions from the Standing Committee of the National People's Congress through the Court of Final Appeal of the Region. When the Standing Committee makes an interpretation of the provisions concerned, the courts of the Region, in applying those provisions, shall follow the interpretation of the Standing Committee. However, judgments previously rendered shall not be affected.

The Standing Committee of the National People's Congress shall consult its Committee for the Basic Law of the Hong Kong Special Administrative Region before giving an interpretation of this Law.

In view of the amendment made to Articles 16, 17, 18 and 169 of the draft Basic Law released in April 1988, it appeared that the Chinese authorities were willing to make concessions for the sake of maintaining Hong Kong's stability and prosperity. In contrast to the demand for democracy, the requests for amendments regarding the above articles were supported by the business community as well which also considered it important to

uphold the rule of law and the existing legal system. The Chinese authorities were willing to respond only when they believed that the sovereignty issue had not been compromised.

While discussing the relationship between the Central Government and the HKSAR in an American law journal in early 1988, Wu Jianfan, a leading legal scholar from Beijing on the BLDG, refuted the claim originally held by many in the Hong Kong community that the affairs managed by the Central People's Government would be limited strictly to foreign affairs and national defence, and that all other affairs would be within the scope of the HKSAR's high degree of autonomy. He referred to such a claim as a "misinterpretation of the [Sino-British] Joint Declaration." The claim was based previously on Article 3(2) of the Joint Declaration. That provision stipulates: "The Hong Kong Special Administrative Region will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government." This claim was also based on numerous verbal assurances to that effect made by PRC officials responsible for Hong Kong and Macau affairs to various groups in Hong Kong during the Sino-British negotiations in 1982-1984. Wu Jianfan, however, pointed out that Article 3(2) of the Sino-British Joint Declaration only states that foreign and defence affairs will be the responsibilities of the Central People's Government. Article 3(2) does not say that the affairs managed by the Central People's Government will be limited to foreign and defence affairs. After all, Article 3(4) of the Joint Declaration clearly provided for the appointments of the Chief Executive and the principal officials of the HKSAR by the Central People's Government.

□ The Political System of the HKSAR

The political system of the HKSAR was probably the most controversial issue in the drafting of the Basic Law, partly because, while the Sino-British Joint Declaration promised that Hong Kong's "capitalist system and life-style shall remain unchanged for 50 years," the colonial political system obviously had to be replaced. Moreover, the Sino-British Joint Declaration and its annexes do not provide for a political system for the HKSAR.

Article 3(4) of the Sino-British Joint Declaration states:

The Government of the Hong Kong Special Administrative Region will be composed of local inhabitants. 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 Special Administrative Region for appointments by the Central People's Government.

The third paragraph of Section I of Annex I further elaborates: "The legislature of the Hong Kong Special Administrative Region shall be constituted by elections. The executive authorities shall abide by the law and shall be accountable to the legislature." As Beijing and London had never informed the Hong Kong community in a formal manner their interpretation of the above key paragraphs, controversies regarding the meaning of the executive authorities' accountability to the legislature and other issues often emerged in the process of drafting the Basic Law.

While the issue of direct elections, political parties, and the like remained controversial in Hong Kong, a consensus on certain basic principles nevertheless existed soon after the initialing of the Sino-British Joint Declaration. In the first place, almost everyone agreed that the political system of the HKSAR should be designed to achieve a high degree of stability. A presidential system, for example, gives the chief executive security of tenure and is therefore a relatively stable political system. An electoral system based on proportional representation, on the other hand, encourages a multiparty system; if this was combined with a parliamentary system, Hong Kong might well encounter the situation in Italy and some Western European countries where shifting coalitions of political parties result in frequent falls of government and general elections. Hong Kong can ill afford such a scenario, and it might well lead to an early termination of whatever autonomy the territory might have been enjoying.

Second, the future HKSAR government was intended to be an efficient one. Overemphasis on separation of powers as well as checks and balances might lead to deadlock and confrontation between different branches of the government, resulting in political crisis and paralyzing the government. Nevertheless, the HKSAR government must be subject to effective democratic supervision to prevent any abuse of power. "Power corrupts, absolute power corrupts absolutely." Effective democratic supervision guarantees liberty and the rule of law, and also provides opportunities for political participation.

On the basis of this consensus, a modified presidential system appears to suit Hong Kong's need best. To ensure the stability of the HKSAR government, security of tenure for the Chief Executive, whose term may be limited to four or five years, is an important condition. Hence, as long as the Chief Executive does not violate the law and abuse his power, his tenure should not be threatened.

The legislature's ability to check and balance the executive mainly lies in its authority to appropriate money, to legislate and to approve government appointments. To ensure the effective supervision of the executive by the legislature, the Basic Law should provide the legislature with the power to question, investigate and impeach the principal officials of the executive, including the Chief Executive. In the event of a violation of the law or serious neglect of duty, the Central Government might remove any principal official or the Chief Executive from office, acting on an impeachment resolution passed by the local legislature.

Article 45 of the Basic Law reaffirms what is stipulated in the Sino-British Joint Declaration: "The Chief Executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government." It had been anticipated that this appointment would be a mere formality to demonstrate China's sovereignty over Hong Kong. Chinese officials responsible for Hong Kong affairs, however, indicated that the power of appointment would be a "substantial" one, implying a veto power in the hands of the Central Government.

To be in line with the above method of selection, the Chief Executive "shall be accountable to the Central People's Government and the Hong Kong Special Administrative Region in accordance with the provisions of this Law" (Article 43). The entire section on the Chief Executive does not mention that the Chief Executive has to be accountable or responsible to the Legislative Council. Yet Article 64 of the following section on the executive authorities stipulates: "The Government of the Hong Kong Special Administrative Region must abide by the law and be accountable to the Legislative Council of the Region ..." It appears therefore that the Chief Executive does not have to be accountable to the Legislative Council, while only the executive authorities (treated in a separate section of Chapter IV Political Structure of the Basic Law) have to be accountable to the Legislative Council. This certainly is not in accord with the general understanding of the Hong Kong community concerning the promise in the Sino-British Joint Declaration that "the executive authorities shall abide by the law and shall be accountable to the legislature." On the other hand, Article 59 states that "the Government of the Hong Kong Special Administrative Region shall be the executive authorities of the Region," and Article 60 states that "the head of the Government of the Hong Kong Special Administrative Region shall be the Chief Executive of the Region." This may be interpreted to mean that the Chief Executive is part of the executive authorities and

therefore has to be accountable to the Legislative Council.

Obviously, ambiguity had to be removed. In fact, Li Hou, Deputy Director of the PRC State Council's Hong Kong and Macau Affairs Office, told a visiting delegation of the Hong Kong Christian Industrial Committee in Beijing on 6 July 1988 that it would be more appropriate for the Chief Executive to be accountable to the HKSAR than to the Legislative Council, as "his accountability is much broader than the scope of the legislature."

Article 43 also raises the following issue: although the Chief Executive's accountability to the Central People's Government can be well-defined, since the Central People's Government is a concrete entity and controls his appointment, the Chief Executive's accountability to the HKSAR is largely symbolic and has not been defined by the Basic Law. Article 48.8 further states that the Chief Executive has to "implement the directives issued by the Central People's Government in respect of the relevant matters provided for in this Law." The PRC Constitution promulgated in 1982 clearly stipulates that the State Council is "the highest organ of state administration" (Article 85) and it has the power

to exercise unified leadership over the work of local organs of state administration at different levels throughout the country, and to lay down the detailed division of functions and powers between the Central Government and the organs of state administration of provinces, autonomous regions and municipalities directly under the Central Government. (Article 89.4)

It is not sufficiently clear in what way and to what extent the HKSAR differs from the provinces, autonomous regions and municipalities in its accountability to the Central Government. Is the HKSAR government also one of the "local organs of state administration" as defined by the PRC Constitution? Moreover, the State Council is one of the three parties that have been empowered by the Basic Law to propose amendments to the Basic Law. With the consent of the National People's Congress, it can seek to expand its power *vis-à-vis* the HKSAR government (Article 159). Article 1 of Annex 1 of the Sino-British Joint Declaration is equally unclear. On one hand, it states that "the Hong Kong Special Administrative Region shall be directly under the authority of the Central People's Government"; on the other hand, it stipulates that "the executive authorities shall abide by the law and shall be accountable to the legislature."

It is significant to note that the Chief Executive's power of appointing and dismissing the principal officials of the HKSAR government is quite limited. He may nominate them and report such nominations to the Central People's Government for appointment and may propose to the Central

People's Government the removal of the principal officials (Article 48.5). The Basic Law does not specify the criteria according to which the Central People's Government will approve the Chief Executive's nominations and his proposals for dismissing the principal officials. If the Central People's Government refuses to approve the Chief Executive's proposal to remove some of the principal officials, it would cause substantial difficulties within the HKSAR government. The lack of well-defined power of dismissal of the principal officials will also affect the Chief Executive's status as head of government.

According to the Constitution of the PRC, local people's congresses, at their respective levels, "elect, and have the power to recall, governors and deputy governors, or mayors and deputy mayors, or heads and deputy heads of counties, districts, townships and towns." The Constitution further provides that "the standing committee of a local people's congress at and above the county level... decides on the appointment and removal of functionaries of state organs within the limits of its authority as prescribed by law." According to Article 9 of the Organic Law of the Local People's Congresses and the Local People's Government of the PRC, revised by the Fifth Session of the Fifth NPC in 1982, the local people's congresses have the power to remove members of the local people's governments at their respective levels. Article 28.8 further provides the standing committee of a local people's congress at or above the county level with the power to decide on the appointment and removal of the secretary-general, agency heads, bureau directors, and the like of its corresponding local people's government. Such appointments and dismissals have to be reported only to the local people's government at a higher level for recording purpose. Similar provisions exist for the organs of self-government of national autonomous areas.

In the PRC's history, the appointment of the chief executive and the principal officials of a local government by the Central Government only occurred under extraordinary circumstances. In 1950, the Political Council (*Zhengwuyuan*, the predecessor of the State Council) adopted the "General Principles on the Organization of Provincial People's Government." Article 2 of the document stipulated that appointees to provincial governments would be nominated by the Political Council and approved by the Central People's Government Committee; the article explained that the purpose of the arrangement was to establish rapidly the revolutionary order during the early stage of the liberation. The document was superseded by the formal promulgation of the first Constitution of PRC in 1954; it therefore remained

valid only before the Constitution came into existence. The second example is the "Brief Outline of the Organization of the Preparatory Committee for the Tibetan Autonomous Region." The preparatory committee was equivalent to a temporary local people's government. Article 5 of the outline stipulated that the appointment, removal and replacement of committee members were to be based on consultations among the parties concerned, which would then be approved by the State Council. The State Council would formally appoint the chairman, deputy chairman and members of the preparatory committee. The outline further stipulated that the appointment of heads and deputy heads of the various agencies and bureaux under the preparatory committee should similarly be based on nominations through consultations to be approved by the State Council. It is believed that the validity of the document lasted until the rebellion broke out in Tibet in 1959.

In these two examples, the Central Government had an even larger measure of control over the local governments' personnel than is stipulated by the Basic Law. But Hong Kong is certainly far more stable than either the various provinces immediately after liberation in 1949 or Tibet in 1956. The situation in Tibet in 1956, nonetheless, has some relevance for Hong Kong; and the appointment of local government personnel in Tibet by the Central Government has two important implications for Hong Kong. First, the Central Government might, if necessary, help to establish a consensus among the diverse local interests, while allowing a certain measure of autonomy for such interests. This occurred in Tibet. Second, the autonomy promised to Tibet was not yet constitutional, and the Central Government was eager to retain ultimate control. Appointment in this context also symbolized such control and PRC sovereignty over the territory.

Above all, in actual practice, the Communist Party of China (CPC) controls the appointment of local government personnel at all levels, without regard for the constitutional powers granted to the local people's congresses. When control of the local Party organs is not yet secure as in the three aforementioned cases, then the Central Government will have to assume that ultimate control.

The HKSAR political system as outlined in the Basic Law enables the Chief Executive to be a very strong leader within the local government. The Chief Executive has powers and functions similar to the United States President, though the former probably has even larger powers *vis-à-vis* the legislature. According to Articles 48 to 52, bills passes by the Legislative Council have to be signed by the Chief Executive before being promulgated

as laws (Article 48.3). If the Chief Executive considers that a bill passed by the Legislative Council is not compatible with the overall interests of the HKSAR, he may return it to the Legislative Council within three months for reconsideration. If the Legislative Council passes the original bill again by no less than a two-thirds majority, the Chief Executive must sign and promulgate it within one month (Article 49). The Chief Executive, however, has one further option that is not available to the U.S. President: he may still refuse to sign it and can dissolve the Legislative Council instead. He may also dissolve the Legislative Council when the latter refuses to pass the budget or other important bills and consensus cannot be reached after consultations (Article 50).

The strength of the Chief Executive and the weakness of the Legislative Council are further demonstrated by the Chief Executive's power "to approve the introduction of motions regarding revenues or expenditure to the Legislative Council" (Article 48.10) and "to decide, in the light of security and vital public interests, whether government officials or other personnel in charge of government affairs should testify or give evidence before the Legislative Council or its committees" (Article 48.11). If the Chief Executive can, without having to give reasons, reject any motion presented to the Legislative Council regarding revenues and expenditure, then basically the Legislative Council can only respond to the Chief Executive's proposals regarding revenues and expenditure. It is not sufficiently clear whether the Legislative Council can reject certain items of the budget, though it does not appear likely. If the Legislative Council can only accept or reject the budget as a whole and the refusal to pass the budget will lead to its dissolution, the Legislative Council's power over government revenues and expenditure will be very limited indeed. Under such circumstances, the Legislative Council may have to rely largely on the pressure of public opinion to persuade the Chief Executive and the executive authorities in the process of consultation between the two branches of government. This is the actual situation today.

The Chief Executive's power to exempt government officials or other personnel in charge of government affairs from testifying or giving evidence before the Legislative Council or its committees will severely hamper the latter's function as a watchdog of the Chief Executive and the executive authorities. Considerations of security and vital public interests are not sufficient reasons for preventing the Legislative Council from calling government officials or other personnel in charge of government affairs to testify or give evidence. The testimony or the giving of evidence can

obviously take place in closed sessions. In the United States, the Chairman of the Joint Chiefs of Staff and the Director of the Central Intelligence Agency also have to testify and give evidence before the Congress. The provision in the Basic Law assumes that the Chief Executive has a greater concern for security and vital public interests than members of the Legislative Council. Such an assumption is obviously subject to dispute.

Further, regarding bills relating to government policies, members of the Legislative Council may only introduce them with the prior written consent of the Chief Executive (Article 74). There obviously will be a danger that "government policies" may be defined so broadly as to render members of the Legislative Council almost powerless to introduce bills.

The section on the legislature in the Basic Law has not touched upon the power of the legislature to impeach members of the executive authorities and the Executive Council. Neither has it any power over the appointment of the principal officials and members of the Executive Council of the HKSAR.

In sum, the political system outlined in Chapter IV of the Basic Law presents an "executive dominant" system in which the Chief Executive will have powers similar to those of the present British Governor. The Legislative Council will only have limited powers. As the Chief Executive has to be accountable to the Central People's Government but not to the Legislative Council of the HKSAR, and the appointment as well as removal of the Chief Executive and principal officials have to be approved by the Central People's Government, the autonomy of the HKSAR will certainly be affected.

A careful study of Article 56 of the Basic Law provides a hint. It states:

Except for the appointment, removal and disciplining of officials and the adoption of measures in emergencies, the Chief Executive shall consult the Executive Council before making important policy decisions, introducing bills to the Legislative Council, making subordinate legislation, or dissolving the Legislative Council.

If the Chief Executive does not accept a majority opinion of the Executive Council, he or she shall put the specific reasons on record.

This is a superficial and largely meaningless replication of the existing colonial system. In the present British administration, appointments to the Executive Council are to be made by the British Crown, i.e., the Secretary of State for Foreign and Commonwealth Affairs; and the Commander of the British Forces, the Chief Secretary, the Financial Secretary and the Attorney General are *ex-officio* members of the Executive Council. The

appointments of these senior government officials also have to be approved by the Secretary of State according to the *Civil Service Regulations*. In this way, the need for the Governor to consult the Executive Council on all important matters of policy constitutes a means of checks and balances, which is especially significant in view of the almost dictatorial powers of the Governor. In the case of the Chief Executive of the HKSAR, he has full authority to appoint and dismiss members of the Executive Council, and it is difficult to see how the need to consult the Executive Council will similarly constitute a means of checks and balances. It should be noted, however, that an earlier draft of the Basic Law stipulated that members of the Executive Council should be nominated by the Chief Executive and appointed by the Central People's Government and that if the Chief Executive did not adopt a majority opinion of the Executive Council, he should register his specific reasons and report them to the Central People's Government for record purposes.

There is obviously an attempt to retain the political structure of the existing colonial government as both Beijing and the conservative business community accept it as part of the foundation of Hong Kong's economic success and political stability. A statement by the former Chairman of the Hong Kong Stock Exchange, Ronald Li, at an international investment conference in June 1987, perhaps reflects the conservative business community's attitude. Li declared: "Hong Kong is a colony. It is a dictatorship, although a benevolent one. It is and has been a British colony, and it's going to be a Chinese colony, and as such it will prosper. We do not need free elections here." The colonial government in Hong Kong is certainly a benevolent one; there is ample liberty in the territory and the rule of law is observed. This colonial government, however, has to be accountable ultimately to a democratic government willing to defend freedom and the rule of law. This is the guarantee of its benevolence.

□ Consultations in 1989-1990 and the Electoral System

When the second draft of the Basic Law was released in February 1989, people in Hong Kong were already exhausted with discussions on the Basic Law. With the exception of the electoral system and the formation of the first government of the HKSAR, the community did not expect major changes of the Basic Law before its promulgation. Those who were concerned with the development of representative government in Hong Kong were especially disappointed because what appeared in the second draft

regarding the electoral system was not exactly based on the alternatives listed in the first draft. This made a mockery of the heated debates on the issue in 1988 among the political groups in the territory.

The political turmoil in Beijing in the spring and summer 1989, however, did much to promote the appreciation of democracy among Hong Kong people. To minimize Britain's commitment to the territory, London and the local British administration showed strong support for an acceleration of the democratization process. In May 1989, the Executive and Legislative Councils reached a consensus on the direct election by universal suffrage of the Chief Executive and all seats of the legislature by 2003; and that one half of the seats of the legislature should be directly elected by universal suffrage in 1997. Senior Hong Kong government officials also reversed their position and indicated that the directly elected Legislative Council seats to be introduced in 1991 would be increased from ten to twenty. The report of the British House of Commons Foreign Affairs Select Committee released in late June 1989 even boldly suggested that by 1991, half of the Legislative Council seats should be directly elected; and by 1995, all seats should be directly elected. This proposal was endorsed by the Joint Committee for the Promotion of Democratic Government, an umbrella organization representing the various groups of the pro-democracy movement in Hong Kong. The Joint Committee also demanded a "through train" arrangement which meant that the Legislative Councilors elected in 1995 should automatically become members of the first legislature of the HKSAR. As to the Chief Executive, the Joint Committee's position was unchanged, and demanded that the post be directly elected by universal suffrage.

Beijing's position, nevertheless, was still the crucial factor, and the Thatcher government understood this well. When the former Foreign Secretary Sir Geoffrey Howe visited Hong Kong in early July 1989, he avoided making any concrete promise regarding the accelerated pace of the development of a system of representative government. He only mentioned the consensus of the local Legislative and Executive Councils, and expressed his willingness to listen.

When superficial calm was restored in Beijing's political scene after the Tiananmen incident, the regime turned its attention to Hong Kong and attempted to regain the initiative. On 11 July 1989, when the new General Secretary of the Party, Jiang Zemin, met the leading figures of the BLDC and the BLCQ, he warned that Hong Kong should not interfere with China. Jiang considered that "according to the principle of 'one country, two

systems,' China practises socialism, Hong Kong practises capitalism; the well water should not interfere with the river water." The statements of Jiang and those previously made by Chinese officials responsible for Hong Kong affairs were basically aimed at providing assurances for Hong Kong's stability and prosperity, and warned Hong Kong people to refrain from acts which would threaten the Chinese Communist regime.

In the same meeting, Jiang Zemin also indicated that the Basic Law would be promulgated as scheduled in spring 1990 at the third plenary session of the Seventh NPC. The Standing Committee of the NPC then decided to extend the period of consultation on the Basic Law by three months until the end of October 1989. This was quite disappointing to the Hong Kong people, because it implied that the Chinese authorities were reluctant to revise in any significant way the draft Basic Law released in February 1989.

After the Tiananmen incident, two of the twenty-three Hong Kong members of the BLDG, Louis Cha and Bishop Kwong, formally resigned, and Martin Lee and Szeto Wah indicated that they would terminate their participation until the existing Chinese leadership changed. The representativeness of the remaining Hong Kong members was thus much weakened and they certainly lacked the trust of the community. There were some withdrawals from the BLCC too. But since the BLCC had not been active in articulating the community's views, the withdrawals did not attract much attention.

To rekindle the Hong Kong community's interest in the Basic Law, the Chinese authorities had to reorganize the BLDG and enhance its representativeness, promise to revise the Basis Law draft to meet the community's concerns after the political turmoil in China, extend the consultative period, and delay the promulgation of the Basic Law. The proposal to conduct referendum on the document by liberal groups in the territory should also be considered. Admittedly, these were highly idealistic demands, and not in accord with the political realities in China. The Chinese leadership's position was that it did the right thing during the Tiananmen incident. It could not recognize that a confidence crisis existed in Hong Kong because of the crackdown, and therefore it was reluctant to make any further concessions regarding the Basic Law as they could be interpreted as an admission of mistakes made in the suppression of the pro-democracy movement. Beijing's adamant position was certainly not conducive to the reestablishment of confidence in the community. The latter responded to the consultation process and the actual promulgation of the Basic Law with apathy and indifference. The legitimacy of the Basic Law suffered as a result.

After the meeting between Party General Secretary Jiang Zemin and leaders of the BLDG and the BLCC, local pro-Beijing political figures began to articulate the view that accelerating the democratization process might lead to greater confrontation with Beijing after 1997. Meanwhile, the Legislative and Executive Councils on 26 July 1989 endorsed the British administration's position that twenty seats (one-third) of the Legislative Council should be directly elected by 1991. According to the Basic Law draft released in February 1989, only 27 per cent of the seats of the first HKSAR legislature would be directly elected. In response, pro-Beijing political figures hinted that demands for a more democratic political system than that in the Basic Law draft were "naive," and they stepped up publicity activities to counterattack the demands for more democracy.

To counter the political model endorsed by the Legislative and Executive Councils, whose legitimacy and representativeness were not recognized by Beijing, the New Hong Kong Alliance, a pro-Beijing group of businessmen and professionals, proposed a bicameral system for the HKSAR legislature, in which only one-quarter of the legislature would be elected by universal suffrage. The latter proposal attracted little support from the community, but it enabled Beijing to reject the claim of the Legislative and Executive Councils that their proposal represented the consensus of the territory, and the Chinese authorities could then use the pretext that the community was divided and dictate the terms. It is also significant that most political groups considered the political model of the Legislative and Executive Councils "tainted" because it had been suggested by colonial institutions, and they tried to agree on a third model on which the two Councils had little influence. Such divisions opened up fertile ground for Beijing's united front strategy.

Under such circumstances, few people in Hong Kong expected that the Chinese leaders would make concessions and allow the HKSAR to have a more democratic political system and that the British government would stand firm on its position for a more democratic political system for Hong Kong and risk confrontation with the Chinese authorities. The Chinese mass media were severely criticizing the 'pro-democracy movement in Hong Kong, and the emphasis of Beijing's united front strategy was clearly on the conservative business community. In view of the increasing political apathy of the community, the Chinese leaders had little reason to concede. On the other hand, London was obviously interested in doing something for Hong Kong in compensation for its rejection of the local population's demand for the right of abode in the United Kingdom. But the demand

could not be long sustained; and when the heat was over, there was always the excuse that the pace of democratization had to be slowed down in view of the oppositions from Beijing and the local conservative business community. After all, the Thatcher government wanted an honourable retreat from Hong Kong, and it was interested in continued cooperation with Beijing on Hong Kong as well as other bilateral issues. The sense of political impotence on the part of Hong Kong people is revealed in that they naturally thought that it would be futile to exert pressure on Beijing. At the same time, while they desired democracy, they did not attach much significance to it and were largely unwilling to fight for it.

In the end, just as the 1984 Sino-British Joint Declaration on Hong Kong's future was the product of secret negotiations between Beijing and London, the final decision on the territory's future political system was also settled directly between the two governments. The Sino-British decision emerged on 15 February 1990 and is presented in the table below:

Table 1. Hong Kong Legislature Towards 1997 and Beyond

	1995-1999	1999-2003	2003-2007
Functional constituencies	30	30	30
Direct election	20	24	30
Indirect election by an election committee	10	6	0
Total number of seats	60	60	60

The decision was approved without further ado the next day by the BLD. Even before this formality, the British Foreign Secretary Douglas Hurd had unveiled the decision to the British Parliament, indicating that the deal cleared the way for the introduction of eighteen directly elected seats to the territory's Legislative Council in 1991. While conceding that the pace of political reform, as reflected in the Basic Law, was not as fast as many Hong Kong people or the British government would like, Hurd argued that the agreement was "in the interest of continuity" and "makes good sense for Hong Kong." Both Hurd and the Hong Kong government maintained that they would continue to press Beijing for more rapid democratization of the territory in the transitional period up to 1997 and beyond. However, Chinese

officials insisted that the Basic Law would not be amended before 1997.

The Basic Law also stipulates that the Chief Executive shall be elected by an Election Committee of 800 members with 200 from the industrial, commercial and financial sectors; 200 from the professions; 200 from labour, social services, religious and other sectors; and 200 from members of the Legislative Council, representatives of district-based organizations, Hong Kong deputies to the NPC, and representatives of Hong Kong members of the National Committee of the Chinese People's Political Conference. This system will facilitate the domination of conservative political forces. It will also offer a better guarantee that the Chief Executive will be someone acceptable to Beijing as its lobbying work will not be too difficult.

Three more points may be made regarding the electoral system. In the first place, amendments to the method for the selection of the Chief Executive will be frozen for the terms prior to the year 2007. For the terms after that, "such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the NPC for approval" (Article 7 of Annex D, Amendments to the method for the formation of the Legislative Council are governed by the same rules, except that they shall only be required to be reported to the Standing Committee of the NPC for the record (Article III of Annex II). It is obvious how easily such amendment proposals can be blocked.

The Election Committee arrangement figures prominently in the electoral system. Indirect election tends to favour conservative political forces. In the context of the HKSAR, the Election Committee has additional advantages from Beijing's point of view: it facilitates lobbying, it enables highly unpopular candidates favoured by Beijing to be elected, and it offers rewards in support of Beijing's united front work. After all, membership of the Election Committee will be considered prestigious by many, as membership of the BLCC demonstrated.

Finally, many details of the electoral law have yet to be defined. Political scientists appreciate that electoral arrangements may have a significant impact on the political system. It is feared that the later the electoral law is discussed and promulgated, the less impact the community can make.

When the first draft of the Basic Law was published in April 1988, the method for the formation of the first government and the first Legislative Council of the HKSAR was dealt with by Annex III. It reflected the PRC's

position first revealed by Lu Ping, Deputy Secretary-General of the BLDC, in October 1987. It is significant that Annex III did not include the alternatives proposed by individual members of the BLDC from Hong Kong, but only registered them in "A Collection of Opinions and Suggestions of Some Members in Regard to the Articles Drafted by Their Respective Special Subject Subgroups" attached to the draft Basic Law.

The gist of Annex III basically became the decision of the Seventh NPC adopted at its third session on 4 April 1990. According to the decision, the NPC shall, in 1996, establish a Preparatory Committee for the HKSAR composed of mainland members and of Hong Kong members who shall constitute no less than 50 per cent of its membership. Its chairman and members shall be appointed by the Standing Committee of the NPC. This Preparatory Committee shall in turn be responsible for the establishment of the Selection Committee for the First Government of the HKSAR. The Selection Committee of 400 members shall be composed entirely of permanent residents of Hong Kong with 25 per cent from the industrial, commercial and financial sectors; 25 per cent from the professions; 25 per cent from labour, grassroots, religious and other sectors; and 25 per cent from among former political figures, Hong Kong deputies to the NPC and representatives of Hong Kong members of the National Committee of the Chinese People's Political Consultative Conference. The Selection Committee shall recommend the candidate for the first Chief Executive through local consultations or through nomination and election after consultations, and report the recommended candidate to the Central People's Government for appointment. The term of office of the first Chief Executive shall be the same as the regular term.

Regarding the first Legislative Council of the HKSAR, the Chinese authorities accepted the "through train" arrangement. The NPC decided that if the composition of the last Hong Kong Legislative Council before the establishment of the HKSAR is in conformity with the Basic Law, those of its members who uphold the Basic Law of the HKSAR of the PRC and pledge allegiance to the HKSAR of the PRC, and who meet the requirements set forth in the Basic Law of the Region may, upon confirmation by the Preparatory Committee, become members of the first Legislative Council of the Region. The term of office of members of the first Legislative Council shall be two years.

Obviously, the Chinese authorities want to have a certain measure of control over the formation of the first government and the first Legislative Council of the HKSAR. Articles of the Basic Law, like any constitution,

can only provide the bare skeleton of a political system that also involves numerous precedents, conventions, practices and regulations to be established through the actual implementation of the Basic Law. The first two or three years after 1997 therefore will be crucial.

□ Conclusion

To a political scientist, the study of the PRC Constitution is of limited value, because the role and function of the CPC are largely omitted from the document. Similarly, an attempt to analyze the Basic Law has serious limitations without a good understanding of the future role of the CPC in the HKSAR, which, unfortunately, is currently a matter of sheer speculation at best.

Local organs of state administration in the PRC are involved in two systems of accountability. For example, the Light Industry Bureau of a province has to be accountable to the provincial people's government. In turn, the provincial people's government has to be accountable to the provincial people's congress. The bureau, however, has to be accountable to the Ministry of Light Industry at the State Council level too. Parallel to the system of state administration is the hierarchy of CPC organs. The provincial Party committee normally has an office (and a deputy secretary) in charge of industry and transport, which has jurisdiction over the Light Industry Bureau. The provincial Party committee is accountable to the Central Committee and the Political Bureau of the CPC. In addition to this complicated nexus of ties, there are Party groups within organs of state administration. For example, Party members among the senior officials of the Light Industry Bureau form a Party group of the bureau which is accountable to the provincial Party committee.

This complicated system probably will not be borrowed by the HKSAR government. What needs to be highlighted here is that, within the PRC, problems that arise from the dual accountability on the part of a local organ of state administration are normally resolved by the Party committee at the corresponding or higher level. It is not clear what will happen if conflicts arise between the HKSAR Chief Executive's accountability to the Central People's Government and his accountability to the local legislature or to the HKSAR as a whole.

The Hong Kong and Macau Work Committee probably will have a role to play in resolving such conflicts. Its views will likely be sought by the State Council or the Secretariat of the Party Central Committee, which will

make the final decisions. The Hong Kong and Macau Work Committee is the CPC organ in Hong Kong and Macau, and its status is equivalent to that of a provincial Party committee. Ever since the 1950s, the Director of the Hong Kong branch of the New China News Agency has also served as the secretary of the committee. Xu Jiatur, the former Director of the Hong Kong branch of the New China News Agency, was first secretary of the Jiangsu Provincial Party Committee and a member of the CPC Central Committee before he took up his post in Hong Kong. It was considered that, given the presence of a considerable number of senior PRC cadres in Hong Kong working in places like the Bank of China's Hong Kong branch, a cadre with Central Committee membership would be required to coordinate the various lines of activities of the Party and the state administration in Hong Kong. What kind of influence such a high-ranking Party cadre would have on the HKSAR Chief Executive is difficult to assess today.

The Basic Law has not prescribed the role of the CPC or that of the Hong Kong branch of the New China News Agency in the HKSAR. Xu Jiatur, however, indicated to a group of Hong Kong journalists at an off-the-record briefing in June 1987 that the future role of the CPC in Hong Kong would be "to assist the Special Administrative Region government."

According to the Basic Law, a Committee for the Basic Law of the HKSAR will be set up under the Standing Committee of the NPC. At present, the process whereby Hong Kong deputies to the NPC are chosen is unknown to the Hong Kong community. An educated guess is that they are selected through consultations among the CPC and the PRC organs in Hong Kong, with the Hong Kong and Macau Work Committee and the Hong Kong branch of the New China News Agency both playing a key role. How the Hong Kong deputies to the NPC will be elected after 1997 when the PRC authorities can hold elections in the HKSAR is not covered by the Basic Law. This remains the prerogative of the Organic Law of NPC of the PRC. The extent to which this Committee for the Basic Law of HKSAR should be consulted by the HKSAR government, and the degree of influence it will have on the HKSAR government, are similarly left to speculation. It is not unnatural for the Hong Kong deputies to the NPC to demand a role in the HKSAR government. If they are elected by methods similar to those by which members of the HKSAR legislature are elected, then they certainly have a legitimate claim to represent the people of the HKSAR also.

Meanwhile, in the transitional period, the PRC authorities are stepping up their activities in the territory and seeking to establish themselves as an

important political force. They began publicly building their Hong Kong community network and influence in 1985 when the Hong Kong branch of the New China News Agency opened three district offices in the Hong Kong, Kowloon and New Territories. Pro-Beijing political forces mounted a campaign to block the introduction of direct elections to the Legislative Council in 1988. They also mobilized their supporters, identified candidates and isolated political opponents in district board elections in March 1988.

The above discussions have highlighted the political factors, as well as the limitations, relating to an analysis of the Basic Law. The PRC's increasing involvement in the Hong Kong economy will have a significant impact too, an important subject which is not dealt with in this chapter.

The PRC leaders' sincerity in maintaining Hong Kong's stability and prosperity now and after 1997 is beyond doubt — otherwise they would not have taken the trouble to hammer out the Sino-British Joint Declaration and the Basic Law for the HKSAR. The concern with maintaining the prosperity of the territory, however, clearly takes precedence over the promises of "a high degree of autonomy" and "self-administration" for the HKSAR.

The refusal to revise the PRC Constitution means that the problems concerning the constitutional and legal status of the Basic Law and the HKSAR raised in an early part of this chapter will remain unsolved. This may not pose too serious a problem if the present policy orientation of the PRC leadership is maintained; after all, the reformers in the PRC have also encountered difficulties in finding a convincing ideological foundation to support their reforms. The "primary stage of socialism" argument was obviously not satisfactory. In the event of political conflicts in Beijing leading to uncertainties concerning existing policies, programmes or even major redefinitions of them, the shock for Hong Kong would be considerable — the theoretical and constitutional bases of the "one country, two system" policy would be in doubt.

In the course of drafting the Basic Law, it has become clear that the Central People's Government of the PRC often wants to retain final control, especially in matters relating to the autonomy of the political system. The decisions on the concept of "residual power," the amendment and the interpretation of the Basic Law are significant examples. The result appears to be that the Basic Law will offer very limited guarantees for the political autonomy of the HKSAR. The instinct of the CPC regime in following the Leninist principles of democratic centralism for maintaining control may

well be at work here: when the control of the CPC is not secure in the HKSAR, the ultimate control of the Central People's Government has to be defined even more clearly in legal terms. Suspicions over Hong Kong becoming an "independent political entity" (and after the Tiananmen incident, "an anti-communist base") have been articulated openly by PRC officials in charge of Hong Kong affairs. They, as well as the PRC leadership, must constantly be aware of the example that the HKSAR sets for the rest of the PRC. The PRC leaders will be unwilling to dilute the unitary system of the state to accommodate Hong Kong or even Taiwan. Any concessions made are likely to be of a temporary, *ad hoc* and tactical nature.

Within the HKSAR political system, the appointments by the Central People's Government of the Chief Executive and the principal officials imply that their accountability is to the Central People's Government. This has been reaffirmed by Article 43 of the Basic Law, stipulating that the Chief Executive shall be "accountable to the Central People's Government and the Hong Kong Special Administration Region." The people in Hong Kong gradually realize that the Chief Executive will have to be someone acceptable to the PRC authorities. This in turn reinforces the general perception in the community that Beijing has the final say on all important issues and dampens the community's interest in political participation and erodes the legitimacy of the development of representative government.

The increasing presence and participation of the PRC authorities in the Hong Kong economy and society, together with the stepping up of the united front activities of the local Party and state organs, will probably create a dominant political force in the HKSAR which can be mobilized at will on the order of the Central People's Government. These developments certainly do not augur well for the political autonomy of the HKSAR, nor for the development of a democratic political system there.

In the final analysis, the Hong Kong community may have to count not so much on the Basic Law but on the following domestic and international factors to ensure that the PRC leadership lives up to its promises made to the Hong Kong people during the Sino-British negotiations for the Joint Declaration. In the first place, the PRC leadership has been assuring the international community in recent years that its open-door policy will remain unchanged. Its policy towards Hong Kong has also been looked upon as a litmus test of its open-door policy. Any violation of the spirit and the terms of its promises to Hong Kong would hurt the world's confidence in the PRC. Second, as a SAR under the PRC's sovereignty, Hong Kong will set a significant example for Taiwan. Third, a change in the PRC's

policy towards Hong Kong might have a signalling effect on its domestic reforms, too. Various liberal economic policies in the special economic zones and the coastal cities would most likely be affected. Finally, as long as the PRC leadership values Hong Kong's contributions to its modernization programme, this capitalist enclave may continue to be tolerated. All these factors, however, do not constitute an absolute guarantee that Hong Kong will remain unchanged up to the year 2047. Moreover, these factors may be more effective in ensuring "that Hong Kong's previous capitalist system and life-style shall remain unchanged for 50 years" than in guaranteeing the "high degree of autonomy" and "self-administration" promised.