

COMMENTS ON THE FUTURE STATUS OF HONG KONG
AND ITS IMPLICATIONS FOR TAIWAN

On September 26, 1984, negotiators for Great Britain and the People's Republic of China (PRC) signed "A Draft Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Future of Hong Kong," a document that provides for the reversion of Hong Kong from British to Chinese sovereignty and administration by the year 1997. Published in the form of a White Paper by the British and the Hong Kong governments, the text of the agreement consists of a joint declaration by the British and the PRC Chinese sides, three annexes (dealing with the administration of Hong Kong after July 1, 1997, the establishment of a Sino-British Joint Liaison Group to monitor implementation of the agreement, and land leases), an Exchange of Memoranda on the issue of citizenship and nationality of the Hong Kong people, and Explanatory Notes provided by the PRC side. ^{1/} The Joint Declaration, along with Annex I, are the key portions of the Draft Agreement that are to be incorporated into the new basic law of Hong Kong. Section 3 of the Joint Declaration sets forth the basic policies of the PRC vis-a-vis Hong Kong. Point 1 of 12 points listed in section 3 describes the future status of Hong Kong under PRC rule, and as such serves as the premise on which the other points are based. It states:

^{1/} See David Bonavia, Hong Kong 1997: The Final Settlement (Hong Kong, South China Morning Post Ltd., 1985), passim.

Upholding national unity and territorial integrity and taking account of the history of Hong Kong and its realities, the People's Republic of China has decided to establish, in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, a Hong Kong Special Administrative Region upon resuming the exercise of sovereignty over Hong Kong.

Annex I is an elaboration of section 3 of the Joint Declaration. In its Part I, it expands upon point 3(1) cited above, stating, among other things, that

The National People's Congress of the People's Republic of China shall enact and promulgate a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China...in accordance with the Constitution of the People's Republic of China, stipulating that after the establishment of the Hong Kong Special Administrative Region the socialist system and socialist policies shall not be practised in the Hong Kong Special Administrative Region and that Hong Kong's previous capitalist system and lifestyle shall remain unchanged for 50 years.

These portions of the Joint Declaration and Annex I point to two highly problematic areas that must be reckoned with in any attempt to reconcile the incorporation of Hong Kong into the PRC under the provisions of the PRC Constitution and to assess the implications of that incorporation for Taiwan.

One problem has to do with the nature of Article 31, which provides for the establishment of SARs, and its relationship to other provisions of the PRC Constitution. According to Article 31,

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 the specific conditions.

It does not state that laws enacted by the NPC for a special administrative region can be in conflict with other constitutional provisions. Yet the Joint Declaration, which is to be part of the basic law for Hong Kong enacted by the NPC, says that the residents of Hong Kong will enjoy certain rights and freedoms (e.g., of movement, of residence, of strike, of raising a family, of choice of occupation) that at present are not accorded Chinese citizens in general under the PRC Constitution. Moreover, other rights and freedoms (e.g., of press, of speech) that are prescribed by the Constitution are definitely not practiced in the same way in the PRC as they are in Hong Kong today. Thus, the same terms used in the basic law for these freedoms would be different in a PRC context, since the final authority of interpretation of the basic law rests with the Standing Committee of the NPC. In addition, the rights and freedoms set forth in a future basic law of Hong Kong could be nullified by the central government after China assumes authority, since, as a sovereign state, the PRC is free to do whatever it chooses to do. Although the Joint Declaration might be considered a type of formal agreement, it contains no mechanism for settling disputes that might arise, and since the PRC would never agree to have Hong Kong-related matters adjudicated by the World Court, there is in fact no sanction should that country decide to contravene the Declaration.

The relation between SAR legislation and that of the central government is also a delicate matter. Local laws formulated by an SAR can be invalidated by the Standing Committee of the NPC if they are found to conflict with the laws of the central government. According to paragraph 4, Article 67, of the Constitution, the Standing Committee has the power and

function "to interpret statutes," and paragraph 5 of the same article says that it has the power

to annul those local regulations or decisions of the organs of state power of provinces, autonomous regions and municipalities directly under the Central Government that contravene the Constitution, the statutes or the administrative rules and regulations....

Similarly, the State Council, according to Article 89 of the Constitution, has the power "to alter or annul inappropriate decisions and orders issued by local organs of state administration at different levels." Moreover, a chart of the administrative structure of the government recently published by the PRC placed SARs on the same level as provinces, autonomous regions, and special municipalities with the status of provinces. This shows that an SAR is considered to be a unit of local government. And since China is a centralized and unitary state rather than a federation, local government organs have very little power.

Another basic problem, of a more general and conceptual nature, is reconciling the presence of a capitalist market system within a socialist polity (the so-called "one-country, two systems" concept advanced by Deng Xiaoping) with the "four upholds" - the four cardinal principles of taking the socialist road, adhering to Communist Party leadership, maintaining a people's democratic dictatorship, and following Marxism, Leninism, and the thought of Mao Zedong - that are referred to in the Preamble of the Constitution as well as in the body of the law. One example of their presence in the latter occurs in Article 1, which states that "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...." From

time to time, moreover, Deng and other PRC leaders have reminded the Chinese people of the importance of these four principles and stressed that policies and laws must be in conformity with them. While Deng has been quoted as saying that the "four upholds" would not apply to Hong Kong, the fact remains that they are an integral part of the PRC's current ideological stance as well as of the Constitution. The principles underlying a capitalist market system, however, which would supposedly be tolerated under the "one country, two systems" plan, are in direct conflict with them.

The two major areas of difficulty outlined above gain importance in the light of the implications they hold for Taiwan, for no matter how smoothly Hong Kong's capitalist system and laws are incorporated into the PRC and reconciled with provisions of the PRC Constitution, the fate of Hong Kong in terms of its status is essentially sealed, whereas at least for the time being Taiwan is free to choose its status in relation to mainland China. The PRC has proposed that Taiwan be incorporated in a fashion similar to that of Hong Kong, as an SAR and in line with the "one country, two systems" concept. The fact that an SAR is viewed as a unit of local government, however, is precisely the reason why Taiwan would not want to accept the "one country, two systems" proposal. It would lose its de facto international personality and be treated as a local government of China. The current standard of living of the people in Taiwan is much higher than that of people on the mainland, and their per capita income is 10 times that of people in the PRC. For these and other reasons, therefore, Taiwan has very little to gain and much to lose by reunification with the PRC under the latter's terms. If the PRC is sincere in its commitment to the "one country, two systems" concept,

the question might be raised as to whether it would be willing to change its name from the PRC to simply "China" and do away with the "four upholds." While the PRC has promised Hong Kong (and Taiwan) that it will maintain the status quo (i.e., the capitalist system there) for 50 years, after that time has elapsed, the PRC will still presumably be under the same (communist) system, a situation Taiwan would most likely find unacceptable even after 50 years. Nevertheless, there is a very strong sense of nationalism among leaders of both the PRC and Taiwan, and both sides favor unification. In order to achieve a satisfactory solution to the problem, it is obvious that a different formula, other than Deng's "one country, two systems" proposal and the conferral of SAR status, will have to be found.

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