

Governing Hong Kong under the Conditions of 'One Country, two Systems'

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Under the conditions of 'one country, two systems', 'British governing Hong Kong' had changed to 'Hong Kong people governing Hong Kong' under Chinese rule. This fundamental change to the nature of political power in Hong Kong was brought about by the termination of 150 years of colonial rule over Hong Kong, and the resumption of the exercise of sovereignty of our country over Hong Kong. Because our country took back Hong Kong according to the 'one country, two systems' policy under which 'Hong Kong people governing Hong Kong' with a high degree of autonomy is implemented, the governing power also changed from a single governing team, namely, the British Hong Kong Government ('British Hong Kong authorities') before Reunification to two governing teams under the conditions of 'one country, two systems' after Reunification. One is the 'Hong Kong SAR establishment team', which includes the Chief Executive, Principal Officials, members of the Executive Council and the civil service, the Judiciary and other personnel of the administration of justice system. This team exercises high degree of autonomy according to the Basic Law, by delegated authority delegated by the Central Authorities. The other team is 'the team of cadres of Central and Mainland Authorities carrying out Hong Kong work' which includes departments of the Central Government and their external organs with responsibilities in Hong Kong affairs or specializing on Hong Kong work: departments of the Central Government responsible for other national affairs and relevant policies; and cadres in the Government and CCP Committees of provinces, cities and districts closely related to the Hong Kong SAR, who handle matters involving Hong Kong. This team exercises constitutional powers to govern the SAR (including dealing with the relationship between the Central and Mainland authorities, and the HKSAR) in accordance with our Constitution and the Basic Law of the HKSAR, and does not interfere with the affairs within the autonomy of the SAR. These two governing teams are the political power through which the policy of 'one country, two systems' over Hong Kong is implemented, and they are the subjects which implement the Basic Law. This paper explores and reflects on certain important changes to

the governing powers over Hong Kong after Reunification, especially regarding the team of cadres of the Central and Mainland Authorities carrying out Hong Kong work becoming one of the important governing powers.

1. The above important change in the governing powers in Hong Kong after Reunification arises from the fundamental change of the power of governing Hong Kong itself splitting into two after Reunification.

Before Reunification, there was no such thing as 'Hong Kong people governing Hong Kong'; under British rule, the British Hong Kong authorities were the only political power. After Reunification, 'Hong Kong people governing Hong Kong' is implemented, but upon one basic premise, and that is 'under Chinese rule'; in other words, under 'one country'. On 27 March 1997, when the Standing Committee of the National People's Congress ('NPCSC') dealt with the laws of Hong Kong previously in force under Article 160 of the Basic Law, it pointed out that in adopting the laws previously in force in Hong Kong as the laws of the HKSAR, any reference to 'Her Majesty the Queen', 'the Crown', 'the Government of the United Kingdom' and 'Secretary of State' and terms or clauses of the kind, if the term or the clause relates to the ownership of Hong Kong land or affairs which under the Basic Law belongs to the responsibility of the Central Authorities or relates to the relationship between the Central Authorities and the HKSAR, such terms should be interpreted to refer to the Central Authorities or other sovereign organs of China. In all other circumstances they should be interpreted as referring to the HKSAR Government. This clearly shows that after Britain returns the power to govern Hong Kong to China, on account of China's policy of 'one country, two systems', 'Hong Kong people governing Hong Kong' and high degree of autonomy, the power to govern Hong Kong inevitably forms two levels: matters which concern China's sovereignty or come within the responsibility of the Central Authorities or relationship between the Central Authorities and the SAR will be the responsibility of the Central Authorities and they will exercise the relevant powers; affairs which are within the autonomy of the SAR will be dealt with by the SAR on its own on delegated authority in accordance with the Basic Law. That is why the governing powers over Hong Kong must inevitably be of two teams, not just the Hong Kong SAR establishment team which exercises a high autonomy according to law, but also the political power which exercises

the constitutional powers of the Central Authorities to govern Hong Kong but which does not interfere with the affairs within the SAR's autonomy, and that is the team of cadres of Central and Mainland Authorities carrying out Hong Kong work.

- 2. Under the conditions of “one country two systems”, the team of cadres of Central and Mainland authorities carrying out Hong Kong work is also an important governing power of Hong Kong, and an important manifestation of the governing power over Hong Kong according to the ‘one country’ principle.**

This concerns the correct understanding and accurate grasp of the high degree of autonomy enjoyed by the SAR. The Taiwan authorities had at one stage suggested replacing ‘high degree of autonomy’ with ‘complete autonomy’. In the Sino-British negotiations on the future of Hong Kong, the British Government had also tried to change the ‘high degree of autonomy’ proposed by the Chinese side to ‘maximum degree of autonomy’, and opposed Hong Kong being directly under the Central Authorities. With respect to the former, Deng Xiaoping clearly indicated, “We do not agree with the term ‘complete autonomy’. Autonomy cannot be unrestricted. If it is restricted, then it cannot be ‘complete’. ‘Complete autonomy’ would be ‘two Chinas’ and not one China.” Regarding the latter, our delegation clearly indicated: “The substance of the view of the British side is to make Hong Kong an independent or semi-independent political entity. It directly contravenes the principle of Chinese sovereignty.” Of course this view was staunchly opposed and not accepted by the Chinese side. This clearly demonstrates that the high degree of autonomy enjoyed by the Hong Kong SAR, and its being an administrative region directly under the Central Authorities which has constitutional authority over it, are the two aspects of inseparable unity within ‘one country’ and at the same time non-interchangeable with each other. Therefore the governing powers must be of two teams. One of the governing teams embodies the ‘one country’ principle, exercise the constitutional power of the Central Authorities to govern Hong Kong but without interfering with the affairs within the SAR's autonomy, and that team is the team of cadres of the Central and Mainland Authorities carrying out Hong Kong work.

- 3. It is the practical need correctly to handle the relationship between the Central Authorities and the HKSAR within China' unitary system for the team of cadres of the Central and Mainland Authorities carrying out Hong Kong work to operate openly as a legitimate governing team under 'one country, two systems' conditions.**

The relationship between the Central Authorities and the Hong Kong SAR stipulated by the Basic Law is between the delegator and delegated within a unitary system, and not a division of power under a federal system. First, in contrast with the autonomy of the region which is inherent under the federal system, Hong Kong's high degree of autonomy comes from the delegation of the Central Authorities. Secondly, under the federal system, power which does not clearly belong to the central government or to the region is seen to be "residual power"; in contrast, under our unitary system, power which the Central Authorities has not delegated to the SAR remains with the Central Authorities, and there is no question of 'residual power'. Thirdly, under the federal system, the central government and the region reallocate 'residual power' by agreement: under our system, the Central Authorities can delegate to the HKSAR powers which have not been previously delegated to the Hong Kong SAR, as required by need and actual circumstance. This clearly reveals that at the same time as it delegates to the HKSAR a high degree of autonomy, the Central Authorities must exercise its constitutional power according to law to govern the Hong Kong SAR, but without interfering with the affairs within the SAR's autonomy. Thus apart from the establishment team of the SAR, there must be a team of cadres of Central and Mainland Authorities carrying out Hong Kong work.

At the drafting stage of the Basic Law, there was a certain point of view which advocates that "all Hong Kong affairs should be dealt with by Hong Kong people alone, and the Central Authorities should not touch them at all." Deng Xiaoping did not agree. When he met Hong Kong delegates of the Drafting Committee on 16 April 1987, he pointed out in particular: "One issue needs to be made clear: do not think that if Hong Kong affairs are dealt with only by Hong Kong people and the Central Authorities keep out altogether, everything will be fine. This would not do. This kind of thinking is not practical". Deng Xiaoping did not believe that "things which undermine the basic interests of the nation" and "things which harm

Hong Kong's basic interests" will not happen in the Hong Kong SAR, or that "there will not be any disruptive or destructive forces in Hong Kong". He said, "I do not see any basis for this complacency. If the Central Authorities give up all its powers, there may well be some confusion, and Hong Kong's interests may be harmed. Therefore, it is to Hong Kong's advantage to retain certain powers for the Central Authorities. Deng admonished to the drafters: "There are bound to be matters which you will have difficulty resolving without the Central Authorities stepping in." "So please think about this. The Basic Law must provide for this." For the reason that only the Central Authorities can exercise a function or have responsibility for matters concerning sovereignty or affairs within the Central Authorities' responsibility or the relationship between the Central Authorities and the SAR, there can be no question of interference. Thus Deng Xiaoping in fact raised and explained an extremely important idea, and that is, on "Hong Kong's affairs", the Central Authorities nevertheless have to retain certain powers, and exercise them where necessary. Deng Xiaoping placed a great deal of importance on this idea. On 18 January 1990, when he met friends from Hong Kong, he emphasized again "When considering the enactment of the Basic Law, I said that the Central Authorities cannot be stripped of all parts."

The Basic Law has made constitutional provisions for the Central Authorities to authorize the SAR to exercise a high degree of autonomy such as executive, legislative and judicial powers within the scope of its affairs, and also to retain powers for the Central Authorities in certain situations and to exercise these powers where necessary. For example, regarding executive power, the Chief Executive is to implement directives issued by the Central Authorities in various matters under the Basic Law, the SAR Government's budget and accounts are to be reported to the Central People's Government for record, and so on. Regarding legislative power, it is stipulated that laws passed by the SAR legislature must be reported to the Standing Committee of the National People's Congress (NPCSC) for record. If the NPCSC considers that any provision to be not in conformity with the Basic Law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and the Region, the NPCSC can return the law in question and it will immediately be invalidated. Regarding judicial powers, it is stipulated that the Chief Executive shall

report the appointments of the judges of the Court of Final Appeal and the Chief Judge of the High Court to the NPCSC for record. The NPCSC, while authorizing the courts of the HKSAR to interpret the Basic Law, has retained the power of interpretation of the whole Basic Law, including the power of final interpretation of the provisions on matters within the autonomy of the SAR (“NPC Interpretation”). It is also stipulated that the courts of the HKSAR must follow the interpretation of the NPC in citing the Basic Law in its determinations. And so on. All the above stipulations of the Basic Law are important instances of Deng Xiaoping’s important idea that even on “Hong Kong affairs” the Central Authorities must retain, and if necessary exercise certain powers, as constitutional arrangements secured by law.

Deng Xiaoping also emphasized: “The Central Authorities do not, indeed, interfere with the concrete affairs of the SAR, and do not need to interfere.” In this regard, he proposed an important principle on what “Hong Kong affairs” the Central Authorities should intervene in, and that is, they must be affairs which “Hong Kong has difficulty resolving without the Central Authorities stepping in”. For example, the decision of the Hong Kong Court of Final Appeal on 29 January 1999 on the issue of the “right of abode in Hong Kong” of mainland-born children of Hong Kong people. The Basic Law provisions regarding “right of abode in Hong Kong” were provisions within the autonomy of the SAR. Because the CFA’s decision would lead to 1.67 million mainland people flooding into Hong Kong within a short time and create an intolerable pressure on the HKSAR, and there was no effective mechanism within the SAR to correct the CFA’s error, the NPC Interpretation became the only choice to solve the problem. On 26 June 1999, the NPCSC issued an Interpretation on the Basic Law provisions. This Interpretation was a victory of the important idea of Deng Xiaoping discussed above tested in actual circumstance. This proves that, for “Hong Kong affairs” which are difficult to resolve without the Central Authorities stepping in, the retention of certain powers and their exercise where necessary by the Central Authorities can only be to Hong Kong’s advantage.

- 4. The transformation of the team of cadres of the Central and Mainland Authorities carrying out Hong Kong work into an important governing power also reflects a major change in the historical**

position in the Hong Kong work of our Party as the national ruling Party

For a long time, from the foundation of the new China to the Reunification of Hong Kong, because Hong Kong was under foreign occupation, the Chinese Government did not resume exercise of sovereignty over Hong Kong, and the Central Authorities could not exercise its constitutional power to govern Hong Kong. The organization our Government posted to Hong Kong was forced to use the name of a news agency(1). At that time, in dealing with Hong Kong matters as the ruling Party of China, our Party worked through the diplomatic channel between our Government and the British Government, and developed around the main contradiction of Sino-British relations. After Reunification, since China has resumed the exercise of sovereignty over Hong Kong, the Central Authorities exercise the constitutional power to govern Hong Kong according to the Constitution and the Basic Law. The organization the Central People's Government posts to Hong Kong, can now legitimately be described as Offices set up by the Central People's Government in the Hong Kong Special Administrative Region performing functions under the Basic Law as authorized by Central Authorities(2). The HKSAR Government provides the facilities and safeguards according to the law for the carrying out of its functions(3). The CPC Central Committee Decision on the Enhancement of the Party's Governance Capability at the Fourth Plenary Session of the Sixteenth Party Central Committee raised for the first time "maintaining the long term prosperity and stability of Hong Kong and Macau" to the high level of "new issue the Party faces in governance in the new situation", and this was listed as an important mission to increase the Party's capability to govern. This clearly shows that, under the conditions of 'one country, two systems', a major change has occurred in the historical position in the Hong Kong work of our Party as China's governing party: to handle well the Hong Kong issue under the 'one country, two systems' policy, has become an important field of governance for our Party in governing the nation, and also an important aspect in which we should build up the governing capability of our Party; this is now written into the Party's official documents, and made known to the world.

In the Report to the Seventeenth National Congress of the Communist Party of China, General Secretary of CPC Central Committee Hu Jintao

has pointed out that: “Maintaining the long term prosperity and stability of Hong Kong and Macau is a major issue the Party faces in governing the country under the new situation.” In order to thoroughly and accurately understand the important change of the governing powers of Hong Kong after Reunification, we have to thoroughly and properly train, build up and deploy the team of cadres of the Central and Mainland Authorities carrying out Hong Kong work. From the perspective of governing China, ensuring the effective leadership role of ‘one country’ in the ‘one country, two systems’ enterprise, and exercising the Central Authorities’ constitutional power to govern the Hong Kong SAR but not interfering with affairs within the autonomy of the SAR is an important act.

Notes

1. Frank Welsh, *A History of Hong Kong*, London, Harper Collins, 1997, p.446: “Since Beijing refused to agree that Hong Kong was anything other than an integral part of China, temporarily under foreign administration, it was impossible to have direct diplomatic links between the two; the dilemma was solved by entrusting Chinese interests to Xinhua (Hsin Hua), the New China News Agency, which operated from the Bank of China building, ostensibly as a news agency but in fact, and quite openly, as the representative of the People’s Republic.” Translated in 中央編譯出版社 2007 年 5 月版，第 446 頁，as: “北京堅持認為香港是中國不可分割的一部分，只是暫時處於外國管治之下，因此北京與香港不可能有直接的外交關係。當時採取了一個辦法擺脫窘境，由新華通訊社香港分社代表中國的利益”。“新華社香港分社”表面上是一家新聞機構，實際上完全公開地代表人民共和國。”
2. As published by G.N.300 in Gazette No.3/2000 of the Hong Kong SAR Government issued on 3 February 2000: the office title of the “Xinhua News Agency (Hong Kong Branch)” was changed to “Liaison Office of the Central People’s Government in the Hong Kong Special Administrative Region” with effect from 18 January 2000. The Notice went on to notify that, following the change of office title, the China Liaison Office should, together with “the Office of the Commissioner of the Ministry of Foreign Affairs of the People’s Republic of China in the Hong Kong Special Administrative Region” and “the Hong Kong Garrison of the Chinese People’s Liberation Army”, be listed as “offices set up in the Hong Kong Administrative Region by the Central People’s Government”.
3. See Issue No.5 of 2000 “Circular of the State Council on the Change of the Name of the Hong Kong Branch of Xinhua News Agency and the Macao Branch of Xinhua News Agency” issued on 15 January 2000: “Governments of the SAR are requested to give such immunity and to facilitate the above organs [Note: Offices of the Central People’s Government set up in Hong Kong such as the China Liaison Office] as necessary for the discharge of their functions and duties”, referred to in

Gazette of the State Council of the State Council of the People's Republic
of China Issue No.6 published February 29, 2000.

* 一國兩制條件下香港的管治力量

http://www.china.com.cn/xsbs/txt/2008-01/29/content_9610867.htm