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Johnson C. Ng

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NOTES

HONG KONG AFTER 1997: AN EXPERIMENTAL GOVERNMENT PRACTICING CAPITALISM WITHIN A SOCIALIST SOVEREIGN

I. INTRODUCTION

Hong Kong, despite its local land restraints,¹ plays a vital role as a partner in world trade. Located in the southern part of mainland China, it is strategically posted along an important trade route of Far East Asia. Hong Kong is a host to many multinational business conglomerates and is the thirteenth largest trading entity in the world.²

In the late 1970s, the termination of the New Territories Lease³ was drawing near and the British government was unable to grant new land leases beyond 1997. Many investors feared that the expiration of this lease would destroy the vitality of Hong Kong.⁴ As a result, the economy of the colony plummeted.⁵ In order to alleviate the uncer-

1. HONG KONG GOV'T INFO. SERVICES, HONG KONG 1987, at 1, 274 (1987) [hereinafter HONG KONG 87]. The size of the colony is not much more than 1000 kilometers (about 400 square miles). It is comprised of the Hong Kong (Victoria) Island itself, the Kowloon peninsula, the New Territories and some outlying islands. Topographically, the colony is rather hilly, with a limited amount of land suitable for use and development. A considerable part of such land had to be reclaimed from the sea. *Id.*

2. *Id.* at 1.

3. Convention with China respecting an Extension of Hong Kong outer, June 9, 1898, China-Great Britain, 90 British and Foreign State Papers 17 [hereinafter New Territories Lease]. The New Territories, which comprise about 92% of the total land area of the colony, was leased from China by Great Britain for 99 years beginning July 1, 1898. See also *infra* note 26 and accompanying text.

4. THE WHITE PAPER: A DRAFT AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND NORTHERN IRELAND AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ON THE FUTURE OF HONG KONG, Sept. 26, 1984, para. 5 (on file at the office of the N.Y.L. SCH. J. INT'L & COMP. L.) [hereinafter WHITE PAPER]. It consists of an introduction, the Joint Declaration, the three Annexes, the associated exchange of Memoranda and Explanatory Notes.

5. *Hong Kong Future*, ECONOMIST, Mar. 12, 1983, at 52. The Heng Seng Stock Exchange Index, an indicator of the strength of the colony's economy, fell nearly 50% in 1982.

tainty caused by the 1997 deadline, the British Government initiated diplomatic negotiations with the People's Republic of China ("China").⁶

On September 24, 1982, British Prime Minister Margaret Thatcher met with the Chairman of China, Deng Xiaoping, in Beijing ("Peking") to open discussions about the future of Hong Kong.⁷ Two years of intense negotiations between the two nations culminated in the signing of the Sino-British Joint Declaration ("Joint Declaration").⁸ The Joint Declaration, drafted with the mutual intention of maintaining the prosperity of Hong Kong, went into effect on May 27, 1985 when the signatories exchanged ratification instruments. It was simultaneously registered by both countries at the United Nations on June 12, 1985.⁹

By this Joint Declaration, Hong Kong, one of the few remaining British colonies, is to be returned to the sovereign of China on July 1, 1997.¹⁰ Hong Kong will then become a Special Administrative Region ("SAR") of China, having its own government and legislature, and operating with a relatively high degree of autonomy.¹¹ According to some commentators, the continued prosperity of Hong Kong in the coming years will depend largely, if not exclusively, upon the political and economic stability of China and its adherence to the letter and spirit of the Joint Declaration.¹²

This Note begins with a discussion of the future of Hong Kong by taking a brief retrospective look at the historical background of the colony and its transformation from a tiny fishing village into a major international trade mart. The next section presents an analysis of the events surrounding the signing of the Joint Declaration. Important provisions of the declaration will be discussed and emphasis will be

6. WHITE PAPER, *supra* note 4, para. 6.

7. *Id.* para. 8.

8. Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, Dec. 19, 1984, United Kingdom-China, 1984 Gr. Brit. T.S. No. 20 (Cmd. 9352) [hereinafter Joint Declaration].

9. HONG KONG 87, *supra* note 1, at 40. Ratification refers not only to an international procedure through which an agreement enters into effect, but also a process whereby a state formally recognizes a treaty. A. McNAIR, *THE LAW OF TREATIES* 129 (1961).

10. Joint Declaration, *supra* note 8, para. 2.

11. *Id.* para. 3(2); see *infra* note 61 and accompanying text for a discussion of SAR and its responsibilities.

12. See, e.g., Note, *An Economic Analysis of Capital Flight in Hong Kong*, 17 N.Y.U. INT'L L. & POL. 683, 714-15 (1985); Day, *The Recovery of Hong Kong by The People's Republic of China - A Fifty Year Experiment in Capitalism and Freedom*, 11 SYRACUSE J. INT'L L. & COM. 625, 648 (1984).

given to the future constitutional arrangement of the SAR government. Because the political climate of China exerts a detrimental effect upon Hong Kong, the current political and economic reforms that are taking place in the Chinese politburo will be given an extensive review. Because the future of the Taiwanese government is at least tangentially related to China's modernization policy, the last section of this Note will give a cursory overview of China's attempt to reunite Taiwan with the mainland.

II. HISTORICAL BACKGROUND

In the early nineteenth century, Hong Kong was described as "a barren island with hardly a house on it;"¹³ it had no natural resources other than its magnificent deep-water harbor.¹⁴ Hong Kong's development into a commercial seaport started in the 1840s when Britain hoisted its flag on the island and established the colony as its permanent outpost.¹⁵

The British acquisition of Hong Kong was the result of three treaties¹⁶ signed with the Manchu government.¹⁷ The first Anglo-Chinese military encounter began as a result of Great Britain's attempt to balance its trade deficit with Chinese merchants by exchanging opium for Chinese goods.¹⁸ After China seized some 20,000 crates of opium in an effort to stop the illegal trade practice, the British declared war.¹⁹ Consequently, British troops advanced up the Yangtze River, threatening to assault Nanjing ("Nanking").²⁰ The military conflict was ended by the Treaty of Nanjing, under which the Hong Kong Island was ceded

13. HONG KONG 87, *supra* note 1, at 296 (quoting former British Foreign Secretary Lord Palmerston). The population of approximately 3650 was scattered over 20 villages and hamlets and an additional 2000 fisherman lived aboard wooden boats called sampans. *Id.* at 295.

14. *Id.* at 295. Victoria Harbour, strategically located on the trade routes of the Far East, was Hong Kong's one natural asset. From the outset, Britain intended it as a mercantile station. *Id.*

15. *Id.*

16. WHITE PAPER, *supra* note 4, para. 3.

17. The Manchu (Ch'ing) government was a former ruling dynasty in China. The Manchus were tribesmen that arose to power along the northeastern frontiers of China during the late 16th and 17th centuries. Their formidable military forces succeeded in creating a strong rival empire which led to the eventful conquering of China. For a detailed historical summary of the Manchu government, see 6 COLLIER ENCYCLOPEDIA 321-36 (1985).

18. HONG KONG 87, *supra* note 1, at 295.

19. *Id.* The infamous Opium War began in 1839 and lasted until 1842. *Id.*

20. *Id.* at 296.

to Great Britain in perpetuity.²¹

The second Anglo-Chinese war erupted in 1859 when the British envoy headed by Sir Frederick Bruce was fired upon while en route to Beijing, where Sir Bruce was to present his credentials to the Chinese Emperor.²² The Convention of Peking, signed in 1860, ended the hostilities.²³ This treaty secured the southern part of the Kowloon Peninsula and Stonecutters Island in perpetuity to the British crown.²⁴

By the second Convention of Peking, which was concluded in 1898, the New Territories were leased to the British for a term of ninety-nine years.²⁵ Britain's primary objective, as stated in the convention papers, was to secure the defense and protection of the colony.²⁶ As a result of these three agreements signed by the Chinese and British governments, the present geographical boundaries of the colony were established in 1898.

The Chinese Revolution of 1911 overthrew the Manchu dynasty and caused many people to seek refuge in Hong Kong from the unrest in mainland China.²⁷ The Japanese invasion of the southern part of China during 1938 brought an estimated 1.6 million people fleeing into the tiny colony.²⁸ In December 1941, Japanese troops invaded Hong Kong and remained there for three years and eight months.²⁹ Many local residents fled as trade came to a virtual standstill.³⁰ After the Japanese surrendered in August 1945, the British Government regained governance of the colony.³¹

Due to the returning of the former Hong Kong residents, the post-war years engendered an unprecedented population boom. This was true especially in the late 1940s, after the Communist party defeated the Nationalist Government in the civil war.³² As huge numbers of Chi-

21. *Id.*; Treaty of Nanking, Aug. 29, 1842, China-Great Britain, 30 British and Foreign State Papers 389.

22. HONG KONG 87, *supra* note 1, at 296.

23. *Id.*; Convention of Peking, Oct. 24, 1860, China-Great Britain, 50 British and Foreign State Papers 10.

24. HONG KONG 87, *supra* note 1, at 296.

25. *Id.*; New Territories Lease, *supra* note 3. The New Territories comprise the area north of Kowloon extending to the Shenzhen River (the southernmost border of China), and 235 islands. The Lease expires at midnight June 30, 1997. *Id.*

26. HONG KONG 87, *supra* note 1, at 296.

27. *Id.* at 297.

28. *Id.* at 298 ("[A]t the height of the influx, about half a million people were sleeping in the streets.").

29. *Id.*

30. *Id.*

31. *Id.* Civil government was finally returned on May 1, 1946 when Sir Mark Young resumed his interrupted governorship. *Id.*

32. *Id.* When the Communist faction headed by Mao Zedong began to win control,

nese people left the mainland between 1945 and 1950 in fear of the Communist takeover, Hong Kong's population rose from 0.5 to 2.2 million.³³

Although the colony's economy was being aggressively rebuilt, two events impeded economic progress. First, the Korean War severely staggered the economy.³⁴ Second, the United Nations initiated a trade embargo against China which contained economic sanctions that crippled the main engine of Hong Kong's commerce; namely, its role as a conduit of trade between China and the outside world.³⁵

Despite the adverse situation, Hong Kong began a dramatic transformation of its economy in the ensuing years.³⁶ Foremost among other factors attributable to this success³⁷ was the government's implementation of a laissez-faire economic policy.³⁸ In the 1960s, Hong Kong's economic surge took definite form and substance.³⁹ By 1963, the economy was generating sufficient savings from its own resources to finance the capital investment necessary to support its growth.⁴⁰ Since then, domestic capital investment has never fallen below sixteen percent of the Gross Domestic Product ("GDP"). Its increase remained unabated until the early 1980s when it reached a high of well over 30%.⁴¹

Chiang Kai-shek's Nationalist party sought refuge in Taiwan. 6 *ENCYCLOPEDIA AMERICANA* 418 (1985).

33. HONG KONG 87, *supra* note 1, at 2, 298. Hong Kong's current population totals 5.58 million.

34. *Id.* at 2.

35. *Id.*

36. *Id.* at 3.

37. Other factors which contributed to Hong Kong's economic success were as follows: "(a) existence of the free port and free trade; (b) convertible currency; (c) low taxation and prudent fiscal policy; (d) favorable location and excellent telecommunication with other big cities; (e) long accumulation of commercial experience; (f) hard work and entrepreneurial instinct of the people; (g) flexible labor market." *Id.* at 8.

38. The government has enacted various statutes regulating the conduct of private business through its legislative body. These legislative activities are complementary to the promotion of the private sector in producing goods and services, and are essential to the functioning of a well-rounded society. *Id.* at 4, 15. "Together, they make Hong Kong a free economy, but not one dedicated to the extremes of laissez-faire." *Id.* at 15.

39. *Id.* at 4. "Although the 1960s were not free of turmoil, the economy was resilient enough to emerge beyond these encumbrances and resumed its upward swing." *Id.*

40. *Id.* "Approximately 40 percent of the colony's exports were textiles products, while other exports included electronic products, plastic goods, and products from other light industries." *Id.* at 299.

41. GDP can be measured in various ways. In the expenditure approach, it is the sum of private and government consumption expenditures, gross domestic capital formation and exports of goods and services, minus imports of goods and services. In the production approach, it is the sum of the output of productive units less the value of materials and service inputs. *Id.* at 5-6; see also CENSUS & STATISTICS DEPT. OF HONG KONG, ESTI-

Of particular importance during this period was Hong Kong's explosive growth in trade when China opened its markets to external trade.⁴² China has become Hong Kong's biggest trading partner, accounting for about twenty-six percent of the colony's total imports and exports, as compared to its next largest partner, the United States, which accounts for twenty percent.⁴³ Furthermore, the various enterprises of Hong Kong have invested extensively in China in recent years, especially in the developing Special Economic Zones ("SEZ") in Guangdong and the neighboring provinces of China.⁴⁴ In addition, Hong Kong has been acting as an international gateway for many Western businesses dealing with China, providing both expert and technical assistance.⁴⁵ Hopefully, this interdependence between Hong Kong and China will serve as an incentive for China's adherence to the provisions of the Joint Declaration.

III. HIGHLIGHTS OF THE JOINT DECLARATION AND EVENTS LEADING TO ITS SIGNING

Prior to the signing of the Declaration, China maintained that Hong Kong was Chinese territory, and that the enclave was taken by the British under unequal treaties at a time when China was weak and defenseless.⁴⁶ As early as 1972, the Chinese Government had communi-

MATES OF GROSS DOMESTIC PRODUCT 1966 - 1986, at 5 (1987).

42. HONG KONG 87, *supra* note 1, at 11.

43. *Id.* at 12.

44. *Id.* SEZs are geographically delineated districts in China where a different set of economic rules apply. "They differ from the rest of the country in two major ways: liberal governmental administrative rules, and special tax incentives." Chu, *China's Special Economic Zones: Expectations and Reality*, in *AN AMERICAN REVIEW* 77 (Summer 1987). China's main objective in establishing these SEZs is to attract foreign capital and technology necessary for the domestic production of quality exports. Secondly, the foreign capital and export earnings will be used to purchase from interior China the necessary material for production, thereby stimulating overall economic growth. *Id.* at 79.

45. HONG KONG 87, *supra* note 1, at 12.

46. The former Communist party secretary general, Hu Yaobang, stated at a news conference on August 15, 1983:

We consider the so-called Hong Kong treaties to be unequal. But it is a fact that the treaties exist. Moreover, it is clearly written that the expiration date is June 30, 1997. Therefore, we do not intend to bring forward or postpone this date. We will recover Hong Kong on July 1, 1997. As far as China is concerned, our attitude is one of respect for history.

Johnson, *The Mousetrapping of Hong Kong*, 24 *ASIAN SURV.* 887, 890 (1984).

For a more extensive analysis of the Chinese viewpoint, see Note, *The Reversion of Hong Kong to China: Legal and Practical Questions*, 21 *WILLAMETTE L. REV.* 327, 328-33 (1985); Note, *Hong Kong's Future: Can the People's Republic of China Invalidate the Treaty of Nanking as an Unequal Treaty*, 7 *FORDHAM INT'L L.J.* 534 (1984).

cated to the Chairman of the United Nations Special Committee on the Situation With Regard to the Granting of Independence to Colonial Countries and Peoples, that China would regain sovereignty over Hong Kong when the conditions were ripe for negotiations.⁴⁷

When Britain realized that its continued administration in Hong Kong after 1997 was unrealistic⁴⁸ and that the imminent expiration of the New Territories Lease would severely effect investors' confidence in the colony, it started negotiations with China in the late 1970s concerning the implementation of various arrangements to preserve the prosperity of Hong Kong.⁴⁹ By mid-1984, both sides came to an agreement whereby Hong Kong, after 1997, would retain a high degree of autonomy under Chinese sovereignty and would preserve the way of life as it existed in its present socio-economic system.⁵⁰ On September 26, 1984, delegates from both sides met for the momentous event⁵¹ in Beijing where both the Chinese and English versions of the agreement were initialed by the delegation leaders.⁵²

The Joint Declaration, together with the three Annexes and the two Memoranda of Exchange, constitute the entirety of the agreement.⁵³ Each part of this bilateral agreement is of equal status and collectively represents an international treaty which is binding on the signing nations.⁵⁴ Annex I contains an elaboration of Chinese policies regarding the SAR in 1997 and the extent of autonomy and continuity

47. Huang Hua, a Chinese representative to the United Nations stated that "[t]he settlement of the question of Hong Kong and Macau is entirely within China's sovereign right and does not fall under the ordinary category of colonial territories. . . . [T]he Chinese government has consistently held that they should be settled in an appropriate way when conditions are ripe." N. MINERS, *THE GOVERNMENT AND POLITICS OF HONG KONG* 15-17 (1981).

48. WHITE PAPER, *supra* note 4, at 3. "[T]he continuation of British administration after 1997 would not be acceptable to China in any form." *Id.* para. 10. Moreover, the New Territories will revert to China in 1997 pursuant to the terms of the 1898 Convention, and the remainder of Hong Kong (Hong Kong Island, Kowloon, and the Stonecutters Island) will not be viable alone. *Id.* at 7, 8.

49. *Id.* at 2. The governor of Hong Kong visited Beijing in 1979 at the invitation of the Chinese Minister of Foreign Trade to discuss the specific land leases' expiration in 1997. The discussions, however, were unfruitful. *Id.*

50. *Id.* at 4.

51. *Id.*

52. The Declaration was signed by British Prime Minister Margaret Thatcher and Chinese Premier Zhao Ziyang on Dec. 19, 1984. Harding, *The Future of Hong Kong*, *CHINA BUS. REV.*,

Sept.-Oct. 1985, at 32-33. For a more thorough narration of the negotiation and ratification process, see WHITE PAPER, *supra* note 4, at 2-5.

53. WHITE PAPER, *supra* note 4, para. 19.

54. *Id.*

which will then prevail.⁵⁵ Annex II describes the formation of a Sino-British Joint Liaison Group ("JLG") and its functional role.⁵⁶ Annex III deals with both current land leases and those that are to be issued between 1984 and 1997.⁵⁷ Provisions are made for the arrangement of a Joint Land Commission ("JLC") which will supervise all financial and property transactions.⁵⁸ Both of the exchanged memoranda outline the nationality issue of the people of Hong Kong.⁵⁹

At the outset of the agreement, China declares that it will resume sovereignty over Hong Kong effective July 1, 1997, and that Great Britain will return the territory on the same date.⁶⁰ Thereon, Hong Kong will become a Special Administrative Region of China in accordance with the provisions of Article 31 of the Chinese Constitution.⁶¹ The SAR will be directly under the supervision of the Central People's Government. The SAR, however, will be vested with its own executive, legislative and independent judicial authority, including that of final adjudication.⁶²

The Joint Declaration further provides that the laws currently in

55. *Id.* para. 22.

56. The JLG was established to assist in a smooth transfer of sovereign between the governments. It is an organ for liaison, not an organ of power. Its functions basically are: 1) to conduct consultation on the implementation of the Joint Declaration; 2) to discuss matters relating to the smooth transfer of government in 1997; and 3) to exchange information and conduct consultation on such subject as may be agreed by the two sides. *Id.* at 26 (Annex II).

57. *Id.* para. 24.

58. Noting the crucial role that land plays in economic development, this Annex is of particular importance to those foreign investors who currently hold land leases in Hong Kong. Pursuant to the provisions, current leases that will expire before June 30, 1997, can be renewed, and the rights of the leaseholder will be protected under the laws of the SAR. *Id.* at 44. The Land Commission was established in 1985 pursuant to Annex III. It is composed of three senior members on each side. It will continue to regulate land lease transactions until July 1, 1997. HONG KONG 87, *supra* note 1, at 40.

59. For a more detailed analysis of the legal status of Hong Kong residents under the agreement, see Note, *The Legal Aspect of the Sino-British Draft Agreement on the Future of Hong Kong*, 20 TEX. INT'L L.J. 167, 179-81 (1985).

60. Joint Declaration, *supra* note 8, paras. 1, 2.

61. PEOPLE'S REPUBLIC OF CHINA CONST. OF 1982, art. 31. Article 31 stipulates that, "the state may establish special administrative regions when necessary. The systems to be instituted in the special administrative regions shall be prescribed by laws enacted by the National People's Congress in the light of the specific conditions." *Id.* The Letter Patent and the Royal Instructions which are the current constitutional instruments for the colony will then be revoked and substituted by the Basic Law. WHITE PAPER, *supra* note 4, para. 2.

62. Joint Declaration, *supra* note 8, paras. 3(2), (3). Except for foreign and defense affairs which are under the auspices of the Chinese government, the new SAR will enjoy a high degree of autonomy. *Id.* Currently, the court of final appeal is the Judicial Committee of the Privy Council in London. HONG KONG 87, *supra* note 1, at 35.

force in Hong Kong will remain basically unchanged except for those that contravene the Basic Law, which is to be promulgated by the National People's Congress of China in accordance with its constitution.⁶³ More significantly, China has stipulated that the socialist system shall not be practiced in the SAR and that the previous capitalist system and lifestyle shall remain unchanged for the next fifty years.⁶⁴ Furthermore, China stated that the rights and freedom of the residents of Hong Kong shall be protected and that the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain inviolate.⁶⁵

IV. IMPACT OF THE JOINT DECLARATION ON HONG KONG'S RECENT SOCIO-POLITICAL DEVELOPMENT

Although the foregoing provisions of the Joint Declaration appear to be promising, many of Hong Kong's residents are still fearful as to whether China will abide by the agreement.⁶⁶ Tension over Hong Kong's future in 1997 has brought about an exodus of professionals from the colony.⁶⁷ Since Canada, Australia and the United States have liberalized their immigration policies, many of Hong Kong's professional and business people, especially those in the financial and computer industries, have sought emigration to these countries.⁶⁸ Many of the wealthy business emigrants must take their family assets with them in order to satisfy the capital investment requirement for busi-

63. WHITE PAPER, *supra* note 4, Annex I, § I, at 14. The Basic Law will be considered as a mini-constitution for the SAR. Lau, *Positioning for Power*, FAR E. ECON. REV., Aug. 6, 1987 at 26, col. 3. It is currently being drafted with its first version available prospectively in 1990. Oh, *All Right, Says Hong Kong*, 293 ECONOMIST, Dec. 1, 1984, at 43. Two entities are responsible for the promulgation of the Basic Law. The Basic Law Drafting Committee (the "BLDC") and the Basic Law Consultation Committee (the "BLCC"). The former is a Beijing-appointed committee of 59 members, within which Hong Kong holds 25 seats. Ignatius, *Hong Kong's Premier Capitalist Roaders Are Emerging as Peking Allies*, ASIAN W. ST. J., Jan. 27, 1986, at 16, col. 2. The latter, an entity comprised of 180 members, is responsible for the collection of public opinions in Hong Kong. Lau, *Haste Makes Waste*, FAR E. ECON. REV., Dec. 19, 1985, at 14.

64. Joint Declaration, *supra* note 8, at Annex I, § 1, para. 1.

65. *Id.* Annex I, § XIII, para. 4.

66. Lau, *On to Greener Pastures*, FAR E. ECON. REV., Jun. 18, 1987, at 22.

67. *Id.*

68. *Id.* at 22, cols. 1, 2. On October 1, 1987, the United States annual quota for Hong Kong-born Chinese was increased from 600 to 5000. 7585 immigration applications were received by the American Consulate in Hong Kong in 1986. Today, there are about 35,000 Hong Kong residents with approved applications awaiting their turn to emigrate. *Id.*

ness-migrant visas in the receiving nations.⁶⁹ It has been intimated that the migration of these professionals represents a massive "brain drain" from Hong Kong and threatens to dissipate the resources of the business, financial and legal professionals, thus causing a slowdown in the overall economic expansion.⁷⁰

The fear of living under a Communist regime further fueled the exodus when Deng Xiaoping was impelled to dismiss his long-time political colleague, the liberal-minded secretary general of the Communist party, Hu Yaobang, after he was accused by other party members for committing "mistakes on major issues of political principles."⁷¹ A subsequent anti-bourgeois liberalization campaign swept China.⁷² To some sensitive Hong Kong residents, it might mean that the liberal-minded reformists under Deng were not in full control and that the conservatives might stage a political power struggle and prevail in a possible comeback.⁷³ The general consensus among observers is that the phenomenon of emigration has yet to reach its crest and many feel that the mid-1990s will prove to be the crunch years.⁷⁴ Consolation can be found, however, in statistics from 1986 indicating that some 8000 former Hong Kong residents have returned to the colony on foreign passports, after procuring citizenship or permanent resident status in the Western countries.⁷⁵

Another event of major political importance is China's continued influence in the formation of Hong Kong's present and future constitutional government. Proposals for direct elections of the Legislative Council ("Legco") members have created a heated debate among political factions in Hong Kong.⁷⁶ Proponents believe that the introduction

69. An estimated U.S.\$897,000,000 had been siphoned out of Hong Kong by emigrants to Canada, Australia and the United States in 1986 alone. *Id.* at 23, col. 1. For example, Australia requires business migrants to invest capital of at least U.S.\$350,000 while entrepreneurs must invest a minimum of U.S.\$100,000. *Id.*

70. Many executive search corporations are feeling the shortage of professional personnel. *Id.* at 22, col. 1. Furthermore, there is a general fear that if nothing is done to halt this trend, the small number of these elite, well-qualified groups will continue to further dwindle. *Id.* at 24, col. 3.

71. Gargan, *Leader of Party in China is Ousted for His Mistakes*, N.Y. Times, Jan. 17, 1986, at A1, col. 6.

72. Lau, *supra* note 66, at 24.

73. *Id.*

74. *Id.* at 22, col. 1.

75. *Id.* David Ford, the chief secretary of Hong Kong pointed to this as an encouraging trend. *Id.*

76. Lau, *Positioning for Power - Communists Step up Local Political Activity*, FAR E. ECON. REV., Aug. 6, 1987, at 26. The function of the Legislative Council is to enact legislation and the appropriation of public funds. Presently, it has a maximum membership of 57, comprised of the Governor, who is the President, three ex-officio members,

of directly elected members will ensure a better representation of the views and interests of the people.⁷⁷ On the other hand, opponents argue that the elections might be manipulated by small, highly motivated groups to secure elections of candidates not representative of the community, thus undermining the internal stability as well as the overseas confidence in the future of the territory.⁷⁸

Beijing, as early as 1985, maintained its position that any significant alteration in the internal structure of Hong Kong's existing constitutional government initiated by Great Britain before 1997 could be construed as an undertaking to interfere with Chinese sovereignty.⁷⁹ It further asserted that any new formulation of the governmental superstructure would have to wait until the Basic Law for the SAR is completed.⁸⁰ Conversely, Britain claims that if a constitutional change in the government is effected through consultation and direct franchise-ment of the people, there is no reason to say that it will not converge with the Basic Law.⁸¹ Arguably, both interpretations of the Joint Declaration are of comparable validity.⁸² Since 1985, the tide favoring di-

the Chief Secretary, the Financial Secretary and the Attorney General, seven official members, 22 appointed members and 24 elected members. HONG KONG 87, *supra* note 1, at 18. The current debate over direct election primarily involves the percentage of Legco members that will be elected and the methods through which voting will be conducted.

77. THE GREEN PAPER: THE 1987 REVIEW OF DEVELOPMENTS IN REPRESENTATIVE GOVERNMENT 26 (May 1987)(on file at the office of the N.Y.L. SCH. J. INT'L & COMP. L.) [hereinafter GREEN PAPER]. "The purpose [of this Green Paper] is to consider whether the system of representative government in Hong Kong should be further developed in 1988 and, if so, by what means." *Id.* para. 3(12).

78. *Id.* para. 104.

79. Bowring, *Directing the Elections: Sino-British Row Over Words that Never Were*, FAR E. ECON. REV., July 2, 1987, at 30. Xu Jiatur, local head of Xinhua News Agency and Beijing's top man in Hong Kong, expressed Beijing's position that any political reform in Hong Kong should be postponed until the Basic Law comes into effect in 1990. Wong, *Hong Kong Jolted in China Attacks Political Reform*, ASIAN W. ST. J., Dec. 2, 1985, at 24, col. 3.

80. Bowring, *supra* note 79, at 30.

81. *Id.* at 31.

82. Undoubtedly, China must be referring to this clause: "[T]he legislature of the Hong Kong Special Administrative Region should be constituted by elections," Joint Declaration, *supra* note 8, Annex I, § 1, which in turn is governed by paragraph 3(12) that reads "[T]he above stated basic policies . . . regarding Hong Kong . . . will be stipulated in a Basic Law . . ." *Id.* para. 3(12).

On the other hand, Britain must point to paragraph 4 of the Joint Declaration which reads:

The Government of the United Kingdom and the Government of the People's Republic of China declare that, during the transitional period between the date of entry into force of this Joint Declaration and 30 June 1997, the Government of the United Kingdom will be responsible for the administration of Hong Kong with the object of maintaining and preserving its economic prosperity and social

rect elections has gradually gained momentum, and the opponents are beginning to recognize that their objections are being outweighed by the majority.⁸³ Hence, they concededly, yet tactfully, changed their strategy. Instead of opposing the basic principle of direct elections, the debate now is based upon the questions of timing and the percentage of Legco members that should be elected through public referenda.⁸⁴

Anticipating a direct election in 1988, the Chinese Communist Party (the "CCP") upgraded its activities in Hong Kong.⁸⁵ It sought to establish itself as a powerful political entity and attempted to exert its influence in the social and economic arenas.⁸⁶

The CCP and many pro-Beijing organizations began to recruit and mobilize supporters, identify competent candidates and isolate opposing political rivals for the 1988 election year.⁸⁷ The campaign slogan was for a united front and the changing of Hong Kong peoples' traditionally hostile attitudes towards the Communist party.⁸⁸ The techniques employed included the hosting of dinner parties, community conventions and the arranging of trips to mainland China.⁸⁹ Many local businessmen, professionals, aspiring politicians and neighborhood leaders were flattered by the warm embrace; many responded enthusiastically to the Chinese invitations.⁹⁰ A prominent sign of success of the united front campaign and the grassroots politicking was the enlistment of many dignitaries, judges and influential businessmen into the organizing committee for the celebration of the Chinese National Day,

stability; and that the Government of the People's Republic of China will give its cooperation in this connection.

Id. para. 4.

83. Lau, *Yes, We Want No Elections*, FAR E. ECON. REV., Sept. 17, 1987, at 21. The polls have consistently shown 50-60% support for direct elections, while 15-20% have opposed them. *Id.*

84. Lau, *All Talk and No Action*, FAR E. ECON. REV., July 30, 1987, at 32. For a more thorough analysis of the debatable issues such as timing, method of elections, options for 1988, a new electoral college and size & balance of memberships on the Council, see GREEN PAPER, *supra* note 77, paras. 105-115.

85. Lau, *supra*, note 76, at 26. CCP is an underground organization. Its existence in Hong Kong is not officially proscribed. The Hong Kong government's position is quite ambivalent toward political organizations; as long as they do not operate openly, their roles are tolerated. *Id.*

86. *Id.*

87. *Id.* CCP's overall activity is directly under Beijing's control. It is understood to be headquartered within the Xinhua News Agency, whose director has always been both Beijing's representative and head of the CCP organization in the colony. *Id.*

88. *Id.* at 27. "United Front" is a slogan used by China primarily in the context of reuniting Taiwan with the mainland. It can be interpreted expansively as relating to any activities which have the effect of dissolving hostilities against the Communist party. *Id.*

89. *Id.*

90. *Id.*

October 1, 1987, which was hosted by the Xinhua News Agency, Beijing's de facto diplomatic voice in Hong Kong.⁹¹

Britain's position has been criticized as obscure and unassertive.⁹² Furthermore, Britain is perceived as an unlikely proponent to insist on introducing direct elections against Beijing's wishes—notwithstanding a clear majority supporting such an undertaking—and that the only hope would be if China were to withdraw its objections.⁹³ According to one commentator, the only thing that is clear amidst these political uncertainties is that even if direct elections were introduced, they would just be a token representation; China will still be the ultimate controlling hand because the chief executive and the senior government officials of the SAR would have to be approved and appointed by the People's Central Government in Beijing.⁹⁴

Another controversy erupted when the Legislative Council enacted interim regulations on July 8, 1987, legalizing the government's power to censor those films which are considered seriously prejudicial to good relations with territories outside of Hong Kong.⁹⁵ Sir David Ford, the chief secretary, defended the legislature, stating that the purpose of the political film censorship was to prevent Hong Kong from being used as a "propaganda base against other territories"⁹⁶ and that the banning of a few films per year was a reasonable price to pay for securing harmony with other territories.⁹⁷

Earlier in 1987, Legco passed an amendment to the Public Order Ordinance making it a criminal offense, punishable by up to two years

91. Lau, *Grasping the Grassroots*, FAR E. ECON. REV., Aug. 6, 1987, at 26, 27.

92. Lau, *supra* note 83, at 21.

93. *Id.*

94. Lau, *supra* note 84, at 32. Reference is made to this particular provision in the Joint Declaration: "[T]he chief executive will be appointed by the Central People's Government on the basis of the result of elections or consultations to be held locally. Principal officials will be nominated by the chief executive of the HKSAR for appointment by the Central People's Government." Joint Declaration, *supra* note 8, para. 3(4).

A tripartite constitutional arrangement of the government structure for the SAR was proposed by some members of the Basic Law Consultation Committee in 1987. The proposal, however, did not entertain the possibility of setting up a bipartisan system similar to that of the United States, because of fears that such an arrangement might promote bickering among political factions. Sing Pao Daily, Oct. 25, 1987, at 1 (N.Y. circulation, in Chinese).

95. Lau, *Sense and Censorship: Films Must Not Offend Peking*, FAR E. ECON. REV., July 23, 1987, at 12-13. The Censorship Bill of 1987 was promulgated in response to a revelation made by an article published in the Asian Wall Street Journal, criticizing the government for illegally banning films for the past 34 years and intended to continue doing so despite having been advised to the contrary by the Legal Department. *Id.* at 12.

96. *Id.* at 13.

97. *Id.*

of imprisonment, if the press or members of the media publicized "false news" that might embarrass the government and cause alarm to the public.⁹⁸ An attempt to test the statute was made during a Legco session when Attorney General Mitchell Thomas was requested to impose criminal sanctions against a pro-Beijing Chinese magazine, *Outlook Weekly*, for publishing "false news."⁹⁹ The magazine, in one of its editions, quoted the deputy director of the Hong Kong and Macau Affairs Office, Mr. Li Hou, as saying that the introduction of direct elections in 1988 would be a breach of the spirit of the Joint Declaration.¹⁰⁰ When the remark was met with strong opposition, Li allegedly denied that he ever made it.¹⁰¹

The attorney general refused to press charges against the magazine.¹⁰² Many critics perceived this refusal as selective application of the law by the government, suggesting the possibility that the Chinese authorities were above the law.¹⁰³ Furthermore, they intimated that both the film censorship and press control laws represent a gradual erosion of Hong Kong's freedom of expression and that the laws might even be in breach of the International Covenant on Civil and Political Rights.¹⁰⁴

China's handling of independence protests in Tibet aroused some uneasiness in the colony. In late September 1987, Tibetan Buddhist monks demonstrated in central Lhasa, the Tibetan capital, protesting what they asserted as Chinese mistreatment of the religious and civilian population.¹⁰⁵ The most violent riot occurred on October 1, 1987, when an angry crowd of Tibetans burned down a police station. Fourteen people died as a result of the uprising.¹⁰⁶ The Chinese Govern-

98. *Id.* The amendment to the False News Bill of 1987 was passed in March 1987 by Legco. *Id.*

99. *Id.* at 12. Legco Session of July 8, 1987. *Id.*

100. *Outlook Weekly* (June 1987) (overseas edition, published in Hong Kong).

101. Lau, *supra* note 95, at 13.

102. *Id.* Mr. Thomas argued that the law should be used only as a last resort to punish the press when it irresponsibly published a blatant falsehood. He added that the dispute over whether Mr. Li had actually made such a statement to a particular reporter was not within the purview of the law. *Id.*

103. *Id.* at 14.

104. *Id.* Reference was made to the provisions of the International Covenant on Civil and Political Rights as outlined in the Joint Declaration. See Joint Declaration, *supra* note 8, Annex I, § XIII.

105. Gargan, *Chinese Leader Faults U.S. Lawmakers on Tibet*, N.Y. Times, Oct. 17, 1987, at 32, col. 2. Deng Xiaoping spoke out harshly against several American congressmen for their statements on disturbances in Tibet, calling them ignorant and arrogant. *Id.* at col. 1. For a comprehensive understanding of the Tibetan culture, see H. RICHARDSON, *TIBET AND ITS HISTORY* (1984).

106. Gargan, *supra* note 105, at 31, col. 3.

ment responded quickly by banning any further processions around the Jokhand Buddhist Temple, one of the holiest places for pilgrimages in Tibet.¹⁰⁷ It also prohibited Western reporters from covering the incident.¹⁰⁸ When the United States Congressional Human Rights Caucus requested China's permission to visit Tibet, the request was firmly denied by the Chinese authorities.¹⁰⁹

Many political observers theorized that the Tibetan riots might give the conservative faction within the Communist party of the central government a good reason to challenge the liberals' current politico-economic reforms in China.¹¹⁰ China's recent policies towards Tibet and similar autonomous regions have been largely influenced by the joint efforts of Hu Yaobang, the former secretary general, and Wan Li, the vice premier.¹¹¹ After their official visit to Tibet in 1980, they proposed to the central government that the custom and culture of the region's inhabitants should be accorded greater deference and that the Tibetans be given a more expansive role in the formation of their provincial government.¹¹² The conservatives might construe the pro-independence riot as an assault upon Deng Xiaoping's liberalization policy, and an undermining of his conviction of building a modern China upon the theory of "socialism with Chinese characteristics."¹¹³

The governor of Hong Kong, Sir David Wilson, had an opportunity to voice his opinion about this issue during his first official visit to the United States.¹¹⁴ Speaking at a news conference, he affirmatively

107. *Id.* at 32, col. 2.

108. This can be inferred from the banning of "any processions around Jokhang Cathedral, . . . the major site for pilgrimages in Tibet," by Chinese authorities. *Id.*

109. *Id.* at 32, col. 1. For China's viewpoint concerning Tibet's autonomy, see *Regional National Autonomy*, BEIJING REV., Nov. 23-29, 1987, at 25.

110. *Tibetan Riots will Affect the 13th Congress*, Centre Daily News, Oct. 23, 1987, at 9 (N.Y. circulation, in Chinese).

111. *Id.*

112. *Id.*

113. *Id.* In his opening speech at the 12th National Congress of the Chinese Communist Party held in September 1982, Deng Xiaoping "pointed out that we must integrate the universal truth of Marxism with the concrete realities of China, blaze a path of our own and build socialism with chinese characteristic." Book Review, BEIJING REVIEW, Sept. 21, 1987, at 33, col. 2. (reviewing DENG XIAOPING, *FUNDAMENTAL ISSUES IN PRESENT-DAY CHINA* (1987)).

114. *Governor Wilson Promotes Hong Kong's Proper Image*, Sing Tao Jih Pao, Oct. 24, 1987, at 26. The press conference was held in Washington, D.C. on Oct. 21, 1987. The main purpose of his scheduled visit was to promote the image of Hong Kong and its continued prosperity. *Id.* Interestingly enough, Wall Street suffered a major collapse on Oct. 19, 1987 (the infamous Black Monday), and the Hong Kong stock exchange was forced to close down for four consecutive days in an attempt to avoid financial disaster.

Mr. Wilson, described by most reporters as a good orator and lobbyist, responded well to the questions posed to him. Among his many tactful, yet "evasive" answers, was

dispelled any unnecessary fear with respect to the future of Hong Kong vis a vis China's handling of the Tibetan incident.¹¹⁵ He further asserted that a world of difference existed between the political situations of Hong Kong and Tibet—the former's autonomy being assured expressly by an internationally binding treaty, while the latter was a rebellious effort undertaken by a certain individual in an attempt to gain independence from China.¹¹⁶ He acknowledged that, to a certain extent, the fulfillment of the Joint Declaration would be contingent upon the political forces in China;¹¹⁷ however, he emphatically stated that "Beijing has always reassured Hong Kong of its intentions to adhere by the Agreement whenever changes occur in China."¹¹⁸

Undeniably, the fears ascribed by the critics and pessimists are not totally unfounded. There is, however, ample evidence to support the inference that Hong Kong has rebounded significantly from its early 1980 economic lull since the signing of the Joint Declaration.¹¹⁹

V. HONG KONG'S ECONOMY AFTER THE SINO-BRITISH AGREEMENT

Hong Kong's economic recovery has been substantial since the ratification of the Joint Declaration. The growth rate in real terms of its Gross Domestic Product (an economic indicator) rose from 0.6% in 1985¹²⁰ to 11% by 1986.¹²¹ The first half of 1987 evidenced further in-

his opinion that the solution for direct elections should be geared towards meeting the changing political climate so that a more representative government could be established to coincide with the long-term objective of the Joint Declaration. *Id.*

When he was questioned whether the Hong Kong Legislative Council would consider repealing its newly enacted Press Control Act, he flatly answered in the negative. He explained that the "new" law is actually one of the remaining "old" laws that Legco did not invalidate, and that the only legislative change was to rename it as a "false news" statute. *Id.* He further reasoned that the freedom of the press was never suppressed, nor would he foresee any violation of this protected right in the future. *Id.*

115. *Id.*

116. The "certain individual" that Mr. Wilson spoke of was Dalai Lama, the highest ranked living Buddhist monk in the Tibetan religion, who was exiled to India in 1959 after the Chinese government dissolved his rebellious efforts. *Id.*

117. *Id.*

118. *Id.* Wilson was specifically referring to the dismissal of the Communist party's secretary general in January 1987, after students demonstrated statewide for observance of human rights and a democratic government.

119. "Hong Kong's seemingly booming business," however, might be based upon short-term investments, according to one analyst. Chao, *One Country, Two Systems: A Theoretical Analysis*, in *ASIAN AFFAIRS: AN AMERICAN REVIEW* 107, 117 (1987).

120. HONG KONG 87, *supra* note 1, at 50.

121. HONG KONG ECONOMIC AFFAIRS OFFICE, HONG KONG MONTHLY ROUNDUP 2 (Oct. 1987)[hereinafter HONG KONG MONTHLY ROUNDUP] (available at the Hong Kong Economic Affairs Office in New York, New York). The 11% figure was mentioned in the

crease.¹²² According to the government's half-year economic reporter, statistical comparisons with the same period in 1986 showed that export and re-exports increased by about 27% and 49%, respectively.¹²³

Domestic exports, in turn, depend upon the vitality of the manufacturing sector.¹²⁴ Currently, the clothing and textile industries are Hong Kong's largest industries, accounting for some 40% of total domestic export and about 43% of the industrial employees engaged in manufacturing.¹²⁵

On April 23, 1986, Hong Kong became the ninety-first contracting party to the General Agreement on Tariff and Trade (the "GATT").¹²⁶ The GATT is a multi-lateral international agreement that requires foreign products to be accorded equal treatment with domestic products.¹²⁷ Hong Kong is also a member of the Multi-Fiber Arrangement (the "MFA"), a society formed by countries involved in international textile trading.¹²⁸

Although Hong Kong possesses a high degree of autonomy regarding the conduct of its external commercial trade, the growing sentiments of protectionism among Western industrial nations pose a threat to Hong Kong's export-based economy.¹²⁹ For instance, in December 1985, President Reagan vetoed the Textile and Apparel Trade Enforcement Bill (more popularly known as the "Jenkins Bill").¹³⁰ A subsequent vote in Congress failed to override the presidential veto by a very narrow margin.¹³¹ The closeness of the ballot evidenced the grow-

address by Hong Kong's financial secretary at the Hong Kong Economic Association, on Sept. 21, 1987.

122. *Id.*

123. HONG KONG MONTHLY ROUNDUP, *supra* note 121, at 2 (Sept. 1987).

124. See generally HONG KONG 87, *supra* note 1, at 63. It is estimated that 90% of Hong Kong's manufactured products are eventually exported, thus accounting for some 22% of the gross GDP and 36% of total employment. *Id.*

125. *Id.* at 64.

126. *Id.* at 29. Before this date, Hong Kong's participation in GATT was within the United Kingdom's delegation. *Id.* Hong Kong is now an active member of GATT in accordance with Article XXVI (5)(c) of the agreement. See WHITE PAPER, *supra* note 4, para. 24.

127. BLACK'S LAW DICTIONARY 613 (5th ed. 1979).

128. HONG KONG 87, *supra* note 1, at 29-30. Both the Chinese and British governments have declared and recognized Hong Kong as a separate contracting party to the GATT and MFA in the years leading to and beyond 1997. *Id.* at 30. Queries have been posed by some critics as to whether China may in the future restrict Hong Kong's independent representation in these entities under the pretext of the "foreign affairs clause" when Hong Kong's continued success and prosperity may encroach upon China's "market-share." Joint Declaration, *supra* note 8, Annex I, § XI.

129. See HONG KONG 87, *supra* note 1, at 13.

130. H.R. 1562, 99th Cong., 1st Sess., 131 CONG. REC. 5582 (1985).

131. 132 CONG. REC. H5506-02 (1986).

ing trend of protectionism.¹³²

Some analysts speculated that the New York Stock Exchange crash in October 1987 would trigger a series of congressional enactments trimming the federal deficit, which may include reducing United States trade imbalances with foreign nations.¹³³ When the United States Foreign Trade Commissioner urged Hong Kong to raise its exchange rate against the United States Dollar, many Hong Kong businessmen interpreted this as another protectionist move.¹³⁴ It was rumored that some investors in Hong Kong were prompted to sell their United States currency holding in fear of its imminent drop in value.¹³⁵

On the other hand, overseas investment in Hong Kong has been on the upswing. For example, during the first half of 1987, six new insurance companies, four of which were overseas, procured authorization from the government for opening business.¹³⁶ Fourteen more overseas corporations are reportedly awaiting approval of their applications.¹³⁷ In light of the rising number of overseas investment advisors, the Hong Kong government plans to establish a committee to monitor their increasing activities.¹³⁸

Japanese firms are among the many foreign investors showing a strong interest in establishing manufacturing plants in the territory.¹³⁹ Recently, Nukabe, an auto component manufacturer, purchased an industrial plant for making high precision parts for fuel injection and power steering systems.¹⁴⁰ Shinagawa, another Japanese firm, bought a factory for the production of die cast parts and carburetors for vehicles.¹⁴¹

International Business Machines ("IBM") has also announced its intentions to make Hong Kong a site for its headquarters in Asia and

132. HONG KONG 87, *supra* note 1, at 69. "The bill, if enacted, would have reduced Hong Kong's textile exports of cotton, wool and man-made fiber to the United States by about 13 percent and other fiber by possibly as much as seventy percent." *Id.*

133. Li, *Wilson, The Superb Lobbyist*, Centre Daily News, Oct. 23, 1987, at 9 (N.Y. circulation, in Chinese).

134. *Id.*

135. *Id.* Since Oct. 17, 1983, the Hong Kong Dollar has been linked to the United States Dollar through an arrangement in the note-issue mechanism at a fixed rate of exchange: H.K.\$7.80 = U.S.\$1.00. The objective of the Hong Kong government was to stabilize the fluctuation in its declining economy in 1983 through a linkage with the United States Dollar, and the method has been successful.

136. HONG KONG MONTHLY ROUNDUP, *supra* note 121, at 3 (Aug. 1987).

137. *Id.*

138. *Id.*

139. HONG KONG MONTHLY ROUNDUP, *supra* note 121, at 4 (Oct. 1987).

140. *Id.*

141. *Id.*

the Pacific Basin outside of Japan.¹⁴² The division based in Hong Kong will be responsible for managing accounts with China, Korea, Taiwan, all of southeast Asia, Australia and New Zealand.¹⁴³

Since 1985, China has been the most valuable trading partner of Hong Kong.¹⁴⁴ In 1986, the value of trade exchanged between the two amounted to some HK\$140,000,000,000.¹⁴⁵ China is the second largest market for Hong Kong's domestic export, and is the largest supplier of goods to the colony.¹⁴⁶ In 1986, more than three-fourths of Hong Kong's re-export trade was China-related, either as a market or as a source of supply.¹⁴⁷

Besides being an important trade partner, Hong Kong also provides China with easy access to the global financial market.¹⁴⁸ Recently, the Bank of China, through one of its subsidiaries, China Development Investment, purchased four percent of the shares of the Bank of Far East Asia, the third largest Hong Kong incorporated bank.¹⁴⁹ Although the proportionate share purchased was small, it symbolized the growing alliance of Hong Kong's banking industry with mainland China.¹⁵⁰ In fact, during the stock market crash in October 1987, the Bank of China volunteered to participate in a \$256,000,000 rescue package drawn up to save Hong Kong's Future Exchange Market.¹⁵¹ The investors' approval and appreciation of Beijing's good will by helping Hong Kong with its difficulties was reflected in a 6.9% gain in the index after a 33% precipitous drop earlier in the same week.¹⁵²

In recent years, China has diversified its investments in Hong Kong from trading and banking to other areas such as joint-property development.¹⁵³ In 1985, China Light and Power, a Hong Kong corporation, entered into a joint venture contract with China for the construction of China's first nuclear power plant in Guangdong, a province contiguous with Hong Kong territory.¹⁵⁴ In late 1987, China, together

142. HONG KONG MONTHLY ROUNDUP, *supra* note 121, at 4 (Aug. 1987).

143. *Id.*

144. HONG KONG 87, *supra* note 1, at 49.

145. *Id.* It is equivalent to U.S.\$18,000,000,000.

146. *Id.* In 1986, goods exported to Hong Kong from China accounted for 30 percent of the colony's total annual import value; while Hong Kong export to China represented 12 percent of its total domestic export value. *Id.*

147. *Id.*

148. Mulcahy, *Heavy-weight Support*, FAR E. ECON. REV., Aug. 27, 1982, at 48.

149. *Id.*

150. *Id.* at 48.

151. *Hong Kong Loses Brokers*, N.Y. Times, Oct. 28, 1987, at B10, col. 4.

152. *Id.*

153. *The Era of the Bull*, ASIAN FIN., Mar. 15, 1985, at 40.

154. *Id.*

with a few multinational firms, submitted bids to build Hong Kong's longest tunnel, a twin-tube of about 2.5 miles connecting the eastern part of Kowloon with the New Territories.¹⁵⁵ Construction cost is estimated to be around U.S.\$300,000,000, and completion is expected sometime in 1992.¹⁵⁶

Other examples of the government's preparation for the coming years include the construction of a major highway that links Hong Kong directly with Guangzhou, the capital city of the Guangdong Province.¹⁵⁷ The project is in the third phase of its five phase plan, and is budgeted at a cost of around U.S.\$167,000,000.¹⁵⁸ Likewise, an airport is currently under consideration by the Civil Aviation Department.¹⁵⁹ A special committee is being set up to investigate all the ramifications, in anticipation of increased air traffic in the future years.¹⁶⁰

The increasing economic interdependence between Hong Kong and China has been mutually advantageous, and hopefully will serve as an added assurance of the continued prosperity of Hong Kong after 1997, provided that China will continue to realize benefits from its current modernization program.

VI. CURRENT POLITICAL AND ECONOMIC REFORMS IN CHINA

The opening session of the 13th Congress of the Chinese Communist Party on October 25, 1987, seems to have laid down the blueprint for a massive reorganization of the Politburo in an effort to catch up with the prospering economic modernization program that China has already undertaken.¹⁶¹

Zhao Ziyang, the acting party leader¹⁶² and prime minister, in his two and a half hour long speech,¹⁶³ remarked openly on the major de-

155. HONG KONG MONTHLY ROUNDUP, *supra* note 121, at 4 (Oct. 1987).

156. *Id.*

157. HONG KONG MONTHLY ROUNDUP, *supra* note 121, at 4 (Aug. 1987).

158. *Id.*

159. HONG KONG MONTHLY ROUNDUP, *supra* note 121, at 4 (Sept. 1987).

160. *Id.*

161. Gargan, *More Change Due in China's Economy*, N.Y. Times, Oct. 26, 1988, at A1, col. 1. This was the first time since the founding of the Communist party in 1921 that China has opened its Congress to Western reporters. *Id.* at A11, col. 1. The 1936 member Congress consisted of leaders gathered from around the country. *Id.* The congressional agenda called for a week-long debate, discussion and approval of the plans proposed by the government in the field of political and economic reform. *Id.*

162. World J., Nov. 3, 1987 at 1 (N.Y. circulation, in Chinese). Zhao Ziyang was formally elected as the next party leader on Nov. 2, 1987. *Id.*

163. The 32,000 word report was translated into six languages. Sing Pao Daily News,

fects in the existing political bureau, criticizing the system as being overstuffed, confused, corrupt, feudalistic and burdened with bureaucratic excesses.¹⁶⁴ He called for the decentralization of the party power, insisting that the cadre system should remove itself from the administration of government, industry and the public sector.¹⁶⁵ He proposed the establishment of a civil service system whereby successful candidates would be selected on the basis of qualification and performance in statewide examinations.¹⁶⁶

While discussing the economic aspect, Zhao reaffirmed the country's commitment to building socialism with democracy¹⁶⁷ by stating that because the current socialist reform is only at its primordial stage, Western economic and capitalistic means should be let in to supplement the socialist end.¹⁶⁸ He acknowledged that China will continue to allow the small private sector to flourish free from undue state intervention, while reserving the major industries under government control.¹⁶⁹ He also supported the theory that market forces would regulate supply and demand—a notion challenged by the orthodox Marxists as capitalist—instead of having state planners traditionally making decision about market pricing.¹⁷⁰

Oct. 27, 1987, at 12 (N.Y. circulation, in Chinese). The report underwent six revisions, suggesting that extensive negotiations and concessions were made before reaching the final version. *Id.* An English translation is reprinted in Zhao, *Along the Road of Socialism With Chinese Characteristics*, BEIJING REV., Nov. 9-15, 1987, at 23.

164. Zhao, *supra* note 163, at 23-49.

165. *Id.*

166. *Id.* Present government positions are filled according to lists that are compiled by the party committee. Gargan, *supra* note 161, at A11, col. 3. Sometimes, the appointees are neither interested nor knowledgeable in their assigned positions. *Id.*

167. Zhao, *supra* note 163, at 24. Deng Xiaoping, the central figure and forerunner in China's political and economic movement, laid down two central tasks of economic reconstruction: 1) to uphold the four cardinal principles; and 2) to adhere to the policy of reform and opening to the outside world. The four cardinal principles are upholding: 1) the socialist road, 2) the people's democratic dictatorship, 3) the leadership of the Communist party of China; and 4) Marxism-Leninism and Mao Zedong thought. Zhou, Book Review, BEIJING REV., Sept. 21, 1987 at 33-34 (reviewing X. DENG, FUNDAMENTAL ISSUES IN PRESENT DAY CHINA (1987)).

168. Zhao, *supra* note 163, at 25; see also, Gargan, *supra* note 160, at A11, col. 1. "[E]xpanded markets for means of production, funds, technology, labor service, and the issuance of stocks & bonds are phenomena which are not peculiar to capitalism. Socialism can and should make use of them, trying in the meantime to minimize their negative effects in practice." *Id.*

169. Zhao, *supra* note 163, at 29.

170. *Id.* This means changing from direct to indirect management by the government. For an in-depth analysis of this theory, see Xu, *The Changing Function of the Government in the Transformation of China*, CHINA LAW AND GOVERNMENT, Spring, 1987, at 26.

Reference was also made to the rejuvenation of the Communist party's core leadership.¹⁷¹ The replacement of the elderly leaders, most of them now in their eighties, with the younger, college-educated generation is regarded as an important process for the perpetuation of the present popular policies on reform and modernization.¹⁷² It is believed that the replacement has to take place now while the principal policy-makers are still living and in good health, so that a smooth transition will be ensured in order for the country to maintain its steady political course.¹⁷³ Deng Xiaoping, the mastermind behind this massive scheme, has announced his resignation from the Politburo Standing Committee to set an example for the others to follow.¹⁷⁴

Results from the nationwide survey released on August 17, 1987, by the China Social Survey System (the "CSSS") was a determinative factor in buttressing the Communist party's conviction to press ahead with the country's reform.¹⁷⁵ The 13th Congress held in October 1987, certainly seems to have reaffirmed the aspiration of the public opinion; many Chinese citizens see the establishment of CSSS as a major step in China's democratization process.¹⁷⁶

While many congressional representatives and political observers praised Zhao Ziyang's speech as "bold, unabashed, comprehensive and flawless," some misgivings were shared as to whether the modernization blueprint would be carried out without opposition from the stern Marxist conservatives who still hold a substantial number of important positions in the political arena.¹⁷⁷ It is feared that the establishment of the civil service examination, compounded with the decentralization of party power, would lead to the proliferation of excessive personnel in the system if the existing party members, who are generally less educated than their younger counterparts, are allowed to stay.¹⁷⁸ The

171. Zhao, *supra* note 164; see also Sing Tao Jih Pao, Oct. 27, 1987 at 12 (N.Y. circulation, in Chinese).

172. *Chinese Leaders to Become Younger*, BEIJING REV., Sept. 21, 1987, at 28.

173. *Id.*

174. Sing Tao Jih Pao, Oct. 31, 1987 at 1. The headline reads: "All eighty year olds are to retire from the Politburo; Deng Xiaoping's resignation from the Central Committee is reassured at the 13th Congress: the Party Constitution will be rewritten so that Deng will serve as the chairman of the State Military Commission in accordance with public demand." *Id.*

175. *China to Monitor Public Opinion*, BEIJING REV., Sept. 7, 1987, at 6. The large scale surveys were the first ever made by China's professional poll organization. According to the results of the opinion poll, 64 percent of those surveyed were satisfied with the current economic reforms, while 93 percent thought a political restructuring would be necessary. *Id.*

176. *Id.*

177. Sing Pao Daily News, Oct. 27, 1987, at 12.

178. Sing Tao Jih Pao, Oct. 27, 1987, at 23. Mr. Lee Yee, a prominent political ob-

threat of losing their job security and the possibility of being relegated to positions of lesser importance continue to plague the minds of many "tenured" senior Marxist conservatives.¹⁷⁹ Their fight to deter or to postpone the imminent political restructuring by basing their argument upon the strict adherence to the socialist road¹⁸⁰ and pointing their fingers at the current nationwide inflation¹⁸¹ may be felt in the coming years.

VII. APPLICATION OF THE "ONE COUNTRY, TWO SYSTEMS" CONCEPT

China's current massive economic and political reform is based on two closely interwoven concepts: the building of socialism with Chinese characteristics¹⁸² and the establishing of a "one country, two systems" structure.¹⁸³ China hopes that through the interaction and amalgamation of these two principles it will advance technologically, financially and politically.¹⁸⁴

According to one commentator, the phrase "one country, two systems" started to gain international recognition after Deng Xiaoping's meeting with Margaret Thatcher in September 1982 in Beijing to discuss Hong Kong's future.¹⁸⁵ It was said that Beijing sought to solve the Taiwan issue¹⁸⁶—the reunification of Taiwan with mainland

server in Hong Kong, speculated that the process would generate in excess of one million cadres and therefore be considered as "featherbedded employees." *Id.*

179. *Id.*

180. *Id.* The political conservatives have always considered an economy based upon free market forces as anti-socialist and non-conforming to party principles. *Id.*

181. Rosario, *The Power of the Purse*, FAR E. ECON. REV., June 18, 1987, at 76. According to what is generally regarded as an underestimate of official statistics, many western observers said that the cost of living for Chinese workers rose by an annual average of 9.5% in 1985-86, as compared with a mere 2% increase in prior years. Despite inflation, however, China's average citizen has realized heightened real purchase power—increased wages have offset the rise in commodity prices. *Id.* From 1984 to 86, the per capita income of rural and urban workers increased by an average of 11% and 20% respectively, while the indexes for workers' cost of living rose by 7.2% and 6% respectively. *Id.*

182. See *supra* notes 113 & 164-71 and accompanying text.

183. See *infra* notes 186-88 and accompanying text.

184. Chu, *supra* note 44, at 77.

185. Chao, *supra* note 119, at 108.

186. Taiwan is a large island in the Pacific off the eastern coast of mainland China. In 1949, after the Nationalist Chinese party headed by Chiang Kai-shek was defeated by the Communist party, the former sought refuge in Taiwan. Since then, the island has been the seat of the Nationalist Government — the Republic of China. See *supra* notes 32 & 88 and accompanying texts.

Taiwan has always maintained that it is the legitimate government of China, and that it will recover the mainland in the future. In the 1970s, however, its international

China—through the application of this seemingly paradoxical concept.¹⁸⁷

In 1982, China amended its state constitution.¹⁸⁸ Article 31 of the constitution stipulates that where necessary, Beijing may establish special administrative regions whose systems will be determined by the National People's Congress in accordance with specific conditions.¹⁸⁹ Since then, China has signed separate treaties with two foreign countries: Britain and Portugal.¹⁹⁰ Both Hong Kong and Macao,¹⁹¹ presently colonies of Britain and Portugal respectively, will become future

status suffered a major setback. In 1971, the UN General Assembly voted to oust Taiwan and replace it with the People's Republic of China (the "PRC") in all UN organs, including the Security Council. When United States President Nixon visited the PRC in 1972, he explicitly acknowledged that Taiwan is a province of China. By 1979, the United States declared an end to all United States-Taiwan mutual security treaties. For an extensive coverage of Taiwan's history and government, see 22 COLLIER'S ENCYCLOPEDIA 39 (1988); 26 ENCYCLOPEDIA AMERICANA 233 (1987).

On Jan. 1, 1979, the Standing Committee of the PRC issued a letter to Taiwan which said, "[W]e honestly expect the people of Taiwan to be reunited with the motherland soon," and when the reunification is realized, "the status quo and local opinion will be treated with respect." Chao, *supra* note 119, at 107 (quoting collections of records from the Third Plenary Session of the Eleventh Chinese Communist Party Congress).

187. Chao, *supra* note 119, at 109. The concept of "one country, two systems" can be interpreted as allowing the practice of capitalism within a socialist regime. China has boasted that "this concept is a new invention that is scientific and a major design connected with orthodox Marxism-Leninism." *Id.*

188. *Id.* at 118.

189. PEOPLE'S REPUBLIC OF CHINA CONST. OF 1982 art. 31.

190. In addition to the Sino-British Joint Declaration, *supra* note 8, China also entered into an agreement with Portugal in 1987 with respect to the future of Macao. See *Declaração Conjunta Sino-Portuguesa Sobre A Questão De Macau* [Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the Question of Macao], Apr. 12, 1987, People's Republic of China-Portugal, 1987 *Zhongguo Renmin Gongheguo Tiaoyue Ji* (People's Republic of China) [hereinafter Sino-Portuguese Declaration].

China and Portugal reached an agreement on returning Macao, a Portuguese colony for 430 years, to China in 1999. N.Y. Times, Mar. 24, 1987, § 1, at 11, col. 6. The agreement was initialed by both governments on Mar. 26, 1987. The signing took place on Apr. 13, 1987 when Prime Minister Anibal Cavaco Silva of Portugal met with Zhao Ziyang in Beijing to complete the formal ceremony. N.Y. Times, Apr. 12, 1987, § 1, at 12, col. 3.

191. Macao, also known as Macau, is a Portuguese territory located on the southern shore of mainland China. The enclave is a narrow peninsula of about six square miles and is located some 40 miles west of Hong Kong. Although 97% of its 420,000 inhabitants are Chinese, Macao has been governed by an almost wholly Portuguese administration since 1557. The city is sprinkled with gambling casinos and massage parlors. Its economy depends on the 4.2 million tourists — mostly Hong Kong residents — who visit every year. For a more detailed historical narration of Macao, see 15 COLLIER'S ENCYCLOPEDIA 145 (1988).

SARs of China—Hong Kong in 1997 and of Macao in 1999.¹⁹² It has been persuasively argued that it is possible that Beijing may succeed in its Taiwan reunification bid¹⁹³ if China permits the SARs, which are direct outgrowths of the “one country, two systems” concept, to flourish independently.

Taiwan’s traditionally hostile attitude toward mainland China seemed to have softened in September 1987 when the Taiwanese government allowed its citizens to visit China.¹⁹⁴ This change in its diplomacy was regarded by many political analysts as a positive step towards the pacification and reconciliation of relations across the Formosa Strait.¹⁹⁵ The death of Chiang Ching-kuo, president of Taiwan, on January 13, 1988, however, has led many observers to speculate about whether the recently initiated “normalization” process between the two Chinas will be furthered in the coming years.¹⁹⁶ Chiang’s political successor, Lee Teng-hui, is native Taiwanese, and the first minority member of the Nationalist party of Taiwan to have attained a top governmental position.¹⁹⁷ Although known to be an advocate for the continuance of moderate changes, Lee has reportedly vowed to up-

192. Sino-Portuguese Declaration, *supra* note 190, §§ 1-2, at 59, 60.

1. The Government of the People’s Republic of China (China) and the Government of the Republic of Portugal declare that the Macao area . . . is Chinese territory, and that . . . China will resume the exercise of sovereignty over Macao with effect from 20 December 1999.
2. China declares that in line with the principle of “one country, two systems,” China will pursue the following basic policies regarding Macao:
 - (1) In accordance with the provisions of Article 31 of the Constitution of China, China will establish a Macao Special Administrative Region (SAR) of China upon resuming the exercise of sovereignty over Macao.
 - (2) The Macao SAR will . . . enjoy a high degree of autonomy, except in foreign and defense affairs . . . [and] be vested with executive, legislative and independent judicial power, including that of final adjudication.

Id.

Almost all the provisions of the Sino-British and the Sino-Portuguese Declarations are mirror images of each other. The guarantees of autonomy contained in the Declarations are similar to those China had promised Hong Kong. Facts on File, Weekly World News Digest Index, Mar. 26, 1987, at 220, col. A2 (published in New York by Facts on File, Inc.).

193. See, e.g., Note, *The Recovery of Hong Kong*, 11 SYR. J. INT’L L. & COM. 625, 648 (1984); Note, *An Economic Analysis of Capital Flight in Hong Kong*, 17 N.Y.U. INT’L L. & POL. 683, 714 (1985); Note, *Legal Aspect of the Sino-British Draft Agreement on the Future of Hong Kong*, 20 TEX. INT’L L.J. 167, 199 (1985).

194. *Taiwan Liberates its Citizens’ Visitation Rights to Mainland China*, Centre Daily News, Sept. 30, 1987, at 1 (N.Y. circulation, in Chinese).

195. *Id.*

196. Centre Daily News, Jan. 23, 1988, at 1 (N.Y. circulation, in Chinese).

197. *In Taiwan, Rumblyngs About Another Chiang*, N.Y. Times, Jan. 23, 1988, at L28, col. 2.

hold the Nationalist's policy of non-negotiations concerning reunification¹⁹⁸ with mainland China. Thus, the prospect of the Taiwan issue seems uncertain and strained.

VIII. CONCLUSION

The road to democratization in a government based upon a groundwork of centralized, authoritarian rule is tortuous and obstacle-filled. The process is complex and time-consuming. It requires that the political power, a source of psychic euphoria and superiority that men have always sought, be shared by those that are currently holding it. Although such a notion seems almost inconceivable and whimsical, such an undertaking is plausibly justified if democratic reforms can be thought of as a process of erecting a broader base of power that can strengthen the foundation of a political system and forestall future revolutionary changes. If the reformists and the conservatives in China can reach an agreement which places the betterment of the country's interests above individual gains, the prospects of building a modern China is within tangible grip.

The country has advanced financially in the past decade since China began its open door and economic liberalization policies. Moreover, its economic gain is especially striking in the Special Economic Zones when compared with the poorer, less industrialized northwestern provinces. Thus, China's realization of its national economic growth through the implementation of Western financial formulations may also insure Hong Kong of its continued prosperity after the reversion of the latter's sovereignty back to China. Additionally, the 13th Congress appeared to have laid down long-term provisions to achieve the goal of modernization. Many observers believe that Hong Kong will reap the benefits.¹⁹⁹

Concededly, it seems that China has attempted and succeeded in exerting her omnipresent and omnipotent influence upon Hong Kong's structuring of its future government for fear that the latter may become too unmanageable. It is unlikely that Great Britain will challenge her—at least not directly—even if she breaches the terms of the Joint Declaration, nor will the international community invoke any punitive measures against her except for the possible implementation of economic sanctions. Yet, it can be argued that China will not jeopardize

198. *Id.*

199. Sing Tao Jih Pao, Oct. 27, 1987, at 3 (N.Y. circulation, in Chinese). Qiu Nan, China's Assistant Secretary of Foreign Affairs said, "[T]he report is good news to Hong Kong." *Id.*

the prosperity of Hong Kong and injure the symbiotic relationship which has existed so beneficially between the two entities. China's adherence to the letter and spirit of the Joint Declaration will not only uphold her reputation in international business circles, something she cherishes if she is to remain committed to her open door economic policy, but may lead the way to another more far reaching goal—the inducement of Taiwan to reunite with the motherland through peaceful means.

Johnson C. Ng

