Power as non-zero-sum?
Central-local relations between the Hong Kong SAR and Beijing: opportunities and closures

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Hong Kong's reunion with China has posed unprecedented opportunities and challenges. What is at stake is not only the well being of the six millions of residents, but also the prospect of China developing a culture wherein open and institutionalized means are used to address conflicts and differences. Hong Kong has been a major source of capital and management know-how for China's modernization efforts; it is also intended, from the perspective of Beijing's leaders, to demonstrate how the 'historical problem' of Taiwan may possibly be resolved. Hong Kong's greatest challenge and most important contribution ahead lies, however, in the very fact that it has again become part of China and hence part of Chinese politics.[1] As a provincial-level special administrative region its interaction and relationship with Beijing will shed light on the eternally intriguing question: how China can possibly develop a sustainable and stable central-local relationship. This in turn will have tremendous implication for the conduct of politics in general in China.[2]

Against this background this chapter argues that despite the immense magnitude of differences between social and political practices in Hong Kong and the mainland, the Hong Kong-Beijing relationship is not one of a simple zero-sum tug of war between local autonomy and central control. The definitive framework of the relationship is the pledge of 'one country, two systems', which is the product of *both* central government initiative as well as local conditions and participation. Conflicts are, however, still the 'normal' occurrences. This is not only because of the huge differences in circumstances and practices, but also because of the varying judgements by different actors, within and between the central government and Hong Kong, regarding the meaning of such differences, and regarding what is or is not tolerable within the framework of 'one country, two systems'.

One country, two systems

The constitutional pledge of 'one country, two systems' was made by Beijing in the early 1980s to seize the initiative over the future of Hong Kong. The context of the pledge is historical - that Hong Kong had been officially 'handed over' to Britain, and that significant socio-economic-political gulfs have subsequently developed between

Hong Kong under British administration and the Chinese mainland. However, making the pledge was made possible only by changes within the mainland (notably the end of Maoist radicalism), which opened up opportunities for a different assessment of national priorities and perception of new possibilities.[3]

The definitive content of the pledge is, nevertheless, a product of interaction between Beijing, Hong Kong and the British - through formal negotiations and bargaining by officials, as well as articulation and manoeuvring by societal groupings. The protracted process of the drafting of the Basic Law, the 'mini-constitution' for Hong Kong aiming at delineating China's promise, exemplifies how 'fluid' the working meaning of 'one country, two systems' can be (Chan, 1991). Interaction does not imply equal participation and influence by all parties, however. The room for participation for the more liberal groupings and drafting members from Hong Kong, for instance, significantly diminished in the aftermath of the Tiananmen crackdown.[4] Asymmetry of influence notwithstanding, an interactive framework means that the manoeuvres of each party serve to constrain, and form the context of, the choices of the other parties. The definition of meaning is, moreover, a continuous process and the locus of asymmetry may change. As from 1 July 1997, Hong Kong is likely to take a more important though not exclusive part in defining the practical meaning of the promise of 'one country, two systems' - through the conduct of daily routine in private and public life.[5]

More importantly, the situation is not one of zero-sum tug of war between the Hong Kong SAR government dying for autonomy and the central government at Beijing eager to impose control. Both Beijing and Hong Kong, political leaders and the people at large, recognize the need for restraint. Beijing accepts that Hong Kong has to retain its high degree of autonomy, as it has been under the British administration, in order for Hong Kong to continue to prosper as a major international commercial centre. The people of Hong Kong, meanwhile, generally accepts Chinese sovereignty over the territory, and that independence has never been seriously considered by more than a few as an option.[6] With Beijing recognizing the need for Hong Kong to be relatively autonomous, and Hong Kong not contesting the claim of Chinese sovereignty and overall responsibility, there is, in fact, a good deal of

common ground, and conflicts arise largely around the issues of magnitude and circumstances: how far a high degree of local autonomy may go; and how Chinese sovereignty and overall responsibility get translated into day-to-day administration of public life.

Opportunity for co-operation

The fluidity and ambiguity in the concept of 'one country, two systems' provides ample room for conflicts, as well as co-operation, between Beijing and Hong Kong. In contrast to the more common expectation, among many observers, for conflicts, the short history of the Hong Kong Special Administrative Region does lend witness to important occasions of Beijing-Hong Kong co-operation. The announcement of the electoral system to be adopted for the 1998 Legislative Council election, for instance, illustrates how far pre-existing delineation of Beijing-Hong Kong jurisdictions may be amicably redefined.

The point of contention lies in the delineation of jurisdiction of the Beijing-appointed Preparatory Committee[7] and the Hong Kong SAR government: whether the electoral system of the 1998 Legislative Council election, one year after the HKSAR is formed, should be decided by a body half of its members being mainlanders, or by the local government itself. The Preparatory Committee was given the task to prescribe 'the specific method for forming the first Government and the first Legislative Council' by a decision of the Chinese National People's Congress (NPC) adopted on 4 April 1990. At the time the plan was to have the 'through-train' between the last Legislative Council under the British administration and the first Legislative Council of the SAR. Article 6 of the NPC decision states that, 'if the composition of the last Hong Kong Legislative Council before the establishment of the Hong Kong Special Administrative Region is in conformity with the relevant provisions of this Decision and the Basic Law of Hong Kong Special Administrative Region, those of its members...may, upon confirmation by the Preparatory Committee, become members of the first Legislative Council of the Region'. With the 'through-train' in place no new elections would be required, and thus the intended role of the

Preparatory Committee in the formation of the first Legislative Council was largely symbolic and the legal prescription a matter of formality.

The situation changed with the 1992 constitutional reform proposal under the Patten governorship, which resulted in the Chinese government criticizing the British for contravening the Basic Law and subsequently declaring the 'through-train' arrangement dead. The Provisional Legislature was subsequently elected in early 1997 by a 400-member electorate the formation of which was heavily influenced by Beijing in the first place. Without the 'through-train' and with the Provisional Legislature intended as a transitory body to last for not more than one year,[8] to be replaced by the first Legislative Council through a reconstituted election in 1998, the new situation sees the original 'symbolic' role of the Preparatory Committee in the formation of the first Legislative Council becoming a substantive power.[9]

The dilemma is that with the formation of the Hong Kong SAR Government comprising entirely of people of Hong Kong, the continuous active role of the Beijing-appointed Preparatory Committee after July 1997 becomes a strain on the smooth implementation of the central pledge of 'the Hong Kong people running Hong Kong'. Electoral matters obviously lies within the domain of 'internal affairs' of the territory, wherein according to both the Joint Declaration and the Basic Law Hong Kong is to enjoy a high degree of autonomy.[10] The new Hong Kong leadership is also keen on avoiding reinforcing the impression that Beijing is masterminding major decisions for Hong Kong, an impression gained previously due to the heavy involvement of Beijing in the election of the first SAR Chief Executive and the Provisional Legislature. The legitimacy of the new government lies in its ability to live up to the expectation of Hong Kong 'enjoying a high degree of autonomy'.

In the end the Preparatory Committee (the First Legislative Council Election Sub-group) was approached by the new Executive Council, the 'quasi-cabinet' advising the Chief Executive, to 'exchange views' regarding the electoral arrangements. The Committee was tacitly requested to decide only on the major principles, leaving a lot of room for the SAR government to exercise its choice. In particular it was mentioned that the areas of controversies should be left to the SAR

government for final decision, and this could be done by having the Preparatory Committee including a number of options in its 'decision'.[11] The Preparatory Committee has the unambiguous legal authority on the election arrangements. Politically, however, a Beijing-appointed body exercising a high-profile role in a politically sensitive and well reported 'internal' event of Hong Kong will almost certainly be counter-productive to the image of the SAR government in terms of its degree of autonomy. The mood among the new local leadership regarding the importance of conveying a 'proper' public image is indicative in the following quotes from a member of the SAR Executive Council:

> 'Yes, the election system for the first Legislative Council may be under attack by liberal groups for being less democratic than the 1995 election. But this is a political responsibility the SAR government has to shoulder squarely. We cannot and should not seek to avoid becoming the target of attack by asking the Preparatory Committee to make the decision, which may be unpopular, for us.... The crucial difference between the decision (on the election system) being taken by the Preparatory Committee or by the SAR government lies in that there are mainlanders within the Preparatory Committee, whilst the SAR government is constituted entirely by the people of Hong Kong. Having the SAR government to take the decision will live up to the spirit of the central policy of "Hong Kong people running Hong Kong, and Hong Kong enjoying a high degree of autonomy".'[12]

The request initially met a mixed response from the Preparatory Committee. There was displeasure among some members, including some Chinese officials, but the Hong Kong convenor of the Preparatory Committee sub-group, Lau Siu-kai, Director Lu Ping, and Vice-premier Qian Qichen were apparently receptive.[13] In the end, the Preparatory Committee passed a decision which leaves so much room for the Hong Kong SAR government that it may be better described as a 'suggestion', or at most a guideline. The Decision of the Preparatory Committee is 'indecisive' in the electoral system for the 20 directly elected seats, for which it offers two options for the choice of the SAR government. It lists 15 'candidates' of possible functional constituencies out of which the SAR government is to pick nine. Moreover, the

Decision basically leaves the allocation of the 20 per cent seat quota for which foreign-passport-holders will be eligible to the discretion of the SAR government. The only one definitive decision the Preparatory Committee made is regarding the electoral college: the 30 functional constituencies plus the six failing 'candidates' (which six fail depends on the decision of the SAR government) will elect a 800 member electoral college, in accordance with the divisions of categories as prescribed in the Basic Law (*Oriental Daily* (Hong Kong), 24 May 1997, A15).

Upon announcement Chinese officials hastened to add that the decision of the Preparatory Committee would be binding on the SAR government, and that the latter may only make decisions from within the boundaries as prescribed by the Preparatory Committee (*Oriental Daily*, 24 May 1997, A15). The purpose of such a statement is to reiterate the legal position, but given the width of the boundaries the discretion for 'implementation' is imaginatively huge. This is further testified by the fact that when the SAR government made its choice, after nearly one and a half month and not before a brief public consultation was conducted, the original preferences within the Preparatory Committee for the various options were not always followed.[14]

Moreover upon the delivery of its 'decision' on the first Legislative Council, the Preparatory Committee was instantly declared to have 'basically completed all its duties'.[15] It was officially wound up on 11 July, less than two weeks after the Hong Kong SAR was formed. This contrasts immensely with the earlier expectation among some members of the Committee that their work would stretch to the second half of 1998 when the first Legislative Council election would be held.[16]

Thus apparently the agenda of the Chinese leadership about Hong Kong had changed in anticipation of the formation of the SAR. With the departure of the British and with the SAR government in place the pledge of 'one country, two systems' has come to real test - and getting a pass here requires Beijing to do less, not more. Qian Qichen was thus found, on the eve of the passage of the Preparatory Committee Decision on the first Legislative Council election, to have argued for a 'facilitating' decision, laying down only the general principles and leaving a lot of discretion for the SAR government. The guiding principle behind the decision should be, Qian was

reported to have advised the committee members, what needed to be done in the interest of fulfilling the overriding policy of 'one country, two systems' (*Ming Pao*, 23 May 1997). The members who originally were less prepared to see their power watered-down were urged to toe the new central line.[17]

The change in context has, therefore, demanded corresponding changes in strategy and choice of action. There is common interest between Beijing and Hong Kong in seeing the pledge of 'one country, two systems' fulfilled, or at least perceived by observers as fulfilled, especially during the early period of the change in government, when the international limelight is closely on Hong Kong. Too much is at stake. For the central government there are China's international reputation of honouring an international agreement, the desired demonstration effect aimed at Taiwan, and the national pride not to be outdone by the British in its administration of Hong Kong. For the new local leaders the worst scenario is for them to be perceived as merely the agent of Beijing. Like the future of Hong Kong as an international city, their own political future depends on the realization of the imagination: one country, two systems. There is a confluence of interests in making the pledge work. As a result we witnessed this readiness of the Beijing leaders to silence the 'dissenters' within its own house,[18] and co-operate with the SAR government and accede to its demand for control over its 'internal affairs'.[19]

Conflicts as normality: varying tolerances of differences

Notwithstanding goodwill from both sides, the potentials for conflicts and difficulties abound. The concept of 'one country, two systems' implies a tolerance of differences between the two systems. Difficulties arise when the expectation of what is tolerable differs. Adding to the difficulty is that such differences in expectation of tolerance may arise in many ways: between significant segments of the population within Hong Kong; within the mainland; and between Hong Kong as a whole and the mainland as a whole. Moreover, social systems are under constant change, which exacerbates the possibilities of having different expectations, as different segments of the society may have divergent judgements regarding what constitutes the essence of the social systems in question.

The following discussion focuses on two cases of conflicts, each illustrating a different circumstance of the gap in expected tolerance in the area of freedom of expression and civil liberties. The first case focuses on the gap between the central leaders and the people of Hong Kong at large, a 'typical' scenario for the Beijing-Hong Kong relationship. The situation becomes more complicated, however, when the 'Hong Kong' party is put under closer scrutiny. The second case addresses the tension between the new local leadership and a considerable segment of the local community regarding proposed amendments to public order laws. It reveals the gap in expectations within Hong Kong regarding what constitutes an appropriate response to central government initiatives. The fact that Hong Kong is not a monolithic whole makes the Beijing-Hong Kong relationship a multi-faceted, complex set of interactions between multiple parties.

Beijing vs. Hong Kong: freedom or restraint?

Freedom of expression has long been one of the two major origins of tension, in the eyes of many observers as well as people of Hong Kong, in the imaginative scheme of 'one country, two systems'. In a sense it is the natural complement of the other major origin of tension: the differing economic systems and huge gaps in the affluence level of the average person in the two systems. Differences in the political sphere reflect, if only partly, differences in the socio-economy. The Basic Law prescribes a government structure for Hong Kong largely in line with its previous existence. The local population is also promised, in the Joint Declaration as well as in the Basic Law, a continuation of its usual 'way of life'. The difficulty is that what constitutes the 'Hong Kong way of life' is not a fixation amenable to any definitive description in a document. However authoritative the document may be, and however strictly it is adhered to, the fulfillment of the promise depends on the subjective realm - whether the 'Hong Kong way of life' in daily practice, as perceived by the central leadership of the day, falls within their range of tolerance of differences between the two systems.

Collision occurs when expectations about what is tolerable differ between the parties, and there are bound to be differences in expectations when the general pledge

of ‘one country, two systems’, made at a vague systemic level, enters the stage of meticulous day-to-day implementation. One major clash over expectations occurred when the Director of Hong Kong and Macau Office, Lu Ping, in an interview with the CNN of the USA in May 1996, assured the Hong Kong press that it would continue to enjoy freedom of expression after 1997, but added that such freedom would not cover reports which ‘promote or incite the division of the country’. Moreover, whilst government policies could be criticized, turning words into acts would not be allowed (*Hong Kong Economic Daily*, 1 June 1996: A7; *Apple Daily*, 1 June 1996: A1). In October 1996, Vice-premier and foreign minister Qian Qichen, in an interview with the Asian Wall Street Journal, added that whilst the Hong Kong press could continue to criticize the Chinese leaders, personal attacks would not be allowed. There should also be no more political activities in Hong Kong aiming at directly influencing developments within the mainland, such as the Tiananmen vigils and related mass rallies (*Apple Daily*, 17 October 1996: A1).

Ironically the original intention of the Chinese leaders was apparently to give assurance to the Hong Kong community that no major changes were envisaged regarding the freedom of expression it used to enjoy. The qualifications they added to the general principle of ‘no change’, when prompted during the interviews, however suggested there would be important tightening up of civil liberties. There was grave concern about the ambiguous distinction drawn between expression of words and ‘action’. Questions were asked, for instance, regarding the circumstances a certain expression of words criticizing the central government would be classified as forming part of a ‘programme of action’ aiming at inciting hatred towards the government, and thus becoming illegal. Critics drew attention to the practice within the mainland that oral or written criticisms against the government were often regarded by the government as sufficient evidence of ‘actions’ directed at overthrowing the government.[20] The attempt to categorize some forms of verbal or written expression as ‘action’, it was pointed out, would significantly constrain the freedom of expression, and effectively ban all harsher criticisms against the government.

In response to critics Lu Ping and other Chinese officials clarified that the Hong Kong press would be allowed to report news related to controversial themes in

an ‘objective’ manner, and it was only advocacy for such developments (the ‘two Chinas’, etc.) in the press that would not be tolerated. The demarcation between ‘objective’ reporting and ‘advocacy’, the critical point of contention, was to be defined by law to be enacted by the SAR government. This fell short of providing effective assurances, however, as the local press, and the community at large, was concerned that secessionist advocacy would be used as a pretext to tame criticisms against the government. The fear for the allegation of advocacy, it was felt, would significantly reduce the room of much ‘objective’ reporting.

The collision boils down to the very different assumptions, between the Chinese leaders and the Hong Kong community, of what range of political opinions is tolerable, and desirable, within an international city. From the perspective of the Chinese leaders, they are already very open-minded by acceding to the people of Hong Kong the ‘privilege’ to openly criticize, and even oppose, the central government and its policies. Still, the central leaders are hesitant to accept criticisms on a personal level, as Qian Qichen’s warning has showed. They are even more disinclined to tolerate open reporting on political opinions related to sensitive issues especially those on secession. The Chinese leadership is clearly trapped between their instinct against political criticisms, and the implication of its own pledges of ‘one country, two systems’, and ‘Hong Kong maintaining its own way of life unchanged for 50 years’. These promises require the Chinese government to agree to Hong Kong continuing to engage openly in criticisms against itself, as the people there have previously enjoyed under British administration. Its natural instinct, however, causes it to attempt to impose a cap on such freedom.

On the other hand, the Hong Kong press and the community at large has been used to enjoying a relatively high degree of freedom, especially since the 1980s, to criticize the authorities. There is no presumption that there have been no problems with press freedom under the British administration. There have been draconian laws on the books, and until the more recent years the British administration did use the laws to crush social movements and silence ‘trouble-makers’.[21] The important difference is, nevertheless, that whilst into the 1990s British governors and Hong Kong civil servants may lack the strong will to correct historical wrongs, and to

provide positive protection for the freedom of expression through progressive law reforms, the threat from China is more immediate and crude. Reports abound about the crude interference into the dissemination of news and intimidation on reporters and publishers, ranging from outright trial and imprisonment, deportation, bribery, to economic censure (Sciutto, 1996). Precarious of the possibility of further tightening of political control post-1997, the community is very sensitive to moves suggesting new areas of taboos, lest they turn out to be only the tip of an emerging iceberg. For many the difference between 'objective' and 'inciting' reporting is inherently subjective and murky, belongs to the realm of quality, and in any event is a question of taste rather than legality. These reactions, if they surprised the central leaders, address more than the immediate substantive issues *per se*. They reflect deep-seated worries among the local community about the prospect of civil liberties and the perceived gaps in understandings and expectations between Hong Kong and the mainland.

Internal contradiction? Anticipation and choice

The formation of the SAR government on 1 July 1997 symbolizes the beginning of the implementation of the constitutional pledge of local autonomy. Whilst 'one country, two systems' has long been a subject of debate, and debates would always affect popular expectation about the prospective fulfillment of the pledge, after July 1997 an action (and inaction) by the SAR government and Beijing constitutes part and parcel of the pledge itself. In other words, the policies of the SAR government and its responses to Beijing would by themselves define and redefine, in a continuous process, the practical meaning of 'one country, two systems'.

In this circumstance the choice and perception of the local leadership about the tolerable, and thus legitimate, gap in expected tolerances between Hong Kong and the mainland will be critical. Equally important is the context whereby a perception becomes dominant, and a choice of action made. Given the ambiguities inherent in the constitutional pledge, and the evident gap in expected tolerances between Beijing and Hong Kong, how does the local leadership arrive their judgement regarding the legitimate differences?

In this section we shall examine a case whereby the incoming SAR government acted in response to a central government initiative, but its choice of action attracted widespread criticism from a sizable segment of the local community. The purpose is not to go into the motives of the choice, but to locate the choice of action within the context of central government actions and local opinion, and to highlight the coexistence, and thus the relativity, of freedom of choice and contextual constraints in a central-local relationship.

The background is that the National People's Congress Standing Committee (NPCSC), acting on the advice of the Beijing-appointed Preparatory Committee for the formation of the Hong Kong Special Administrative Region, passed a resolution in February 1997 that, among other things, major amendments to public order legislations during the British administration would not be adopted as the laws of the SAR.[22] Under Article 160 of the Basic Law, the NPCSC is empowered to declare, upon the establishment of the SAR, any preexisting laws in Hong Kong which in its opinion contravene the Basic Law not to be adopted as laws of the Region. The incoming SAR government was then left with the task to fill the legal gaps by proposing new legislations.

The legislations in question are the amendments made in 1992 and 1995 respectively to the Societies Ordinance and the Public Order Ordinance. At that time the move was intended to bring the law in line with the Hong Kong Bill of Rights Ordinance. The Chinese government was highly displeased, and the amendments were pushed through by the British Governor with the support of the local liberals. The backdrop was a period of Sino-British strain and mistrust in the aftermath of the Tiananmen crackdown. The Chinese had been skeptical of the plans by the British to grant the right of abode to 50,000 Hong Kong families, the legal and political implications of the Bill of Rights Ordinance (enacted in 1991), and the possible financial strain of the plan to build a new and larger airport in Hong Kong.[23] The strain reached the peak when the new Governor Christopher Patten announced in 1992 his political reform package, designed to radically liberalize the election system without prior consultation with, and endorsement of, the Chinese government. The Chinese felt that the British had betrayed earlier cooperation, so that negotiations after

the unilateral announcement were doomed from the beginning. Eventually, having gained the support of the more liberal legislators Patten's political reform package was adopted for the last round of pre-1997 elections despite continued Chinese opposition, and China responded by declaring dead the 'through-train' arrangement for the first SAR Legislature.

The opposition of the Chinese government to the amendments to the public order legislations, which reduced restrictions to the formation of organizations and the launching of public processions, thus extends beyond their specific contents. Whilst they may not welcome the liberalization of the laws, skepticism was gravely aggravated by the unfriendly Sino-British relations during the period when the amendments took place. One question which the Preparatory Committee was often asked was that in what ways the amendments have contravened the Basic Law, since the latter also contains provisions on protecting the civil liberties and the human rights of Hong Kong residents. Tung Chee-hwa, then Chief Executive-designate and vice-director of the Committee, once replied that the amendments contravened Article 3 of the Joint Declaration and Article 8 of the Basic Law, both of which stipulate that the laws 'previously' in force in Hong Kong will remain basically unchanged (*Ming Pao*, 5 February 1997). The relevant time-frame is ambiguous, however. The Chinese understanding is always that, in accordance with the spirit of the Joint Declaration, there should be no major changes to the laws during the post-agreement transition period, and if changes needed to be done as required by circumstances, the Chinese had a right to be consulted (Ching, 1994: 176). The displeasure of not being consulted with thus extended from the political reform package to all associated initiatives by the Patten governorship. In fact, the Chinese officials emphasized time and again that whilst the amendments were *about* civil liberties and human rights, the opposition to the amendments had nothing to do with the debate on human rights.[24] In other words, the subject matter of human rights may explain why there were such amendments in the first place and why the amendments caught the attention of the Chinese government (rather than changes to economic legislations). The decision not to adopt the amendments as laws of Hong Kong after 1 July was, however, *not* directly based on the preference of the Chinese government regarding the freedom of association - the substantive matter in question. The amendments were opposed, the argument goes,

because they were enacted unilaterally without the participation of the Chinese, and thus in the eyes of the Chinese leaders exemplified the breach of the spirit of the Joint Declaration by the British. A reply to this argument is that if the Chinese government had participated in the amendment process of these laws, the amendments would have never taken place.

Distinguishing the subject matter from the critical element which directly draws the opposition nevertheless enables us to locate an action within its context, and identify possible areas of opportunities and closures. One possibility is that, since the opposition of the Chinese government to the amendments is primarily directed at the procedure of their being enacted, according to the official Chinese position, and not at the contents of the amendments, the incoming SAR government should enjoy full autonomy in its filling the gap regarding the contents of the new laws. The SAR government, and the Provisional Legislature, could theoretically decide on whatever public order laws as they saw appropriate, to the point that they could go further than the previous amendments in terms of human rights protection.[25]

This argument was firmly based on the constitutional principle of 'one country, two systems'. The spirit of this principle calls for minimal intervention in Hong Kong affairs by the central government, so that the local government, constituted wholly of and accountable to the people of Hong Kong, will take charge and make its choice of policies in accordance with local conditions. The formation of organizations and societies, and the organization of public processions, issues in question in the amendments, have nothing to do with the few areas which the central government is responsible for Hong Kong, in accordance with the Basic Law. Legislation in these areas, the logic goes, should therefore be entirely the responsibility of the SAR government, which should then make its decision after a thorough understanding of local opinion.

There is indication that the SAR government did regard the legislative exercise a matter of local autonomy, and that despite Chinese opposition to the original amendments, how the laws should be revamped was felt to be entirely within the discretion of the SAR government. The consultative document on the legislative

proposal, for instance, was reportedly issued by the Office of the Chief Executive-designate in April 1997 without prior consultation with the central government.[26] The Chinese leaders apparently had also adopted a 'hands off' attitude, stressing that how the legal gaps should be filled was entirely a matter of the Region, and refrained from being drawn in the local debates on the subject.

On the other hand, other indications signaled significant qualifications to the exercise of local autonomy. As early as in February, the newly appointed Secretary of Justice-designate, Elsie Leung Oi-sie, doubted the possibility of following the result of public consultation, if the dominant opinion was against tightening up of the relevant legislations. The Secretary was reported to say, 'If the results of the public consultation really call for not 'diluting' the laws...it would be left to the provisional legislature to decide whether to accept it or not. The chances of not diluting the laws will be very low because that would mean overruling the suggestions of the Preparatory Committee.' (*South China Morning Post* (Hong Kong), 23 February 1997) Thus the Secretary of Justice-designate presumably believed that although the original amendments were scrapped because of problematic procedure, somehow their contents, though not directly criticized by the Chinese government, were also unacceptable. The message seemed to be that, politically some dilution of the original laws was mandatory, though theoretically the SAR government should enjoy unrestrained autonomy in the exercise. Here it should be noted that Leung's remarks were made before the consultative document was drafted. Upon her appointment she became the principal person in charge of the drafting of the document, which was released in early April 1997.

The proposal which was put forward in April claimed to strike a 'middle ground' between reverting the laws to their pre-amendment version and the 1992 and 1995 amendments. In other words, there would be some increase in regulation and social control but not to the point that civil liberties would return to the pre-amendment days.[27] The proposal, released through a consultative document, immediately met a huge wave of criticisms. There was widespread discontent over the tightening up of the right to form societies without *a priori* registration, and the right to organize public processions without *a priori* application for approval. Critics were

also adamant about the irrelevance of the concept of 'national security' in public order legislations, which the proposed bills included for the first time. The concept of 'national security', critics pointed out, was intended to protect the integrity of sovereignty from external threat, not to restrain the exercise of basic rights of association etc., by local residents.[28] The proposal also included a provision (section 4.7) banning the establishment of ties between local political organizations or bodies and a whole category of foreign political organizations, foreign organizations, or simply aliens. Specifically, financial assistance could not be solicited from these sources, or the policies or management of the local bodies should not be influenced by foreign sources. The ban was considered too harsh and wide-catching, and would suffocate valuable international linkages of a whole range of local bodies. Hong Kong as an international city certainly need to foster a multifaceted network of international links in various arenas. Various concepts, such as foreign and international political organizations, were criticized as ill-defined and ambiguous.[29] The inclusion of individual foreigners in the banned list exemplified the wide net of control and was against the Basic Law which allows the right of political participation to foreigners residing in Hong Kong.[30]

The crux of criticism was that the proposal conflated the issue of national security and the concern for espionage with the exercise of the rights of association. Article 23 of the Basic Law requires the SAR government to 'enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets...'. Critics argued that national security was a separate matter to be dealt with on its own right, and should not be 'smuggled' in other legislations in a piece-meal manner.[31] The rightful concern of public order legislations was, it was maintained, only to ensure the basic rights of association of local residents be appropriately exercised. There was query that, given the good past record of public processions in terms of public order, whether it was legitimate to impose further control on the exercise of such rights.[32]

The spate of criticism presented a major challenge to the new government-in-waiting, which found it obliged to make concessions. Eventually the requirement for public processions to obtain a notice of 'no objection' was relaxed, and the reference

to ‘aliens’ (individual foreigners) in the prohibition of foreign links for local political bodies was deleted. The concept of ‘national security’, however, has remained as one of the reasons whereby the government may ban an organization or a public procession, though attempts were made to clarify the concept to be defined as ‘the protection of the territorial integrity and independence of the People’s Republic of China’ (*Hong Kong Economic Journal*, 16 May 1997). Despite the concessions the final version has thus kept in tact, by and large, the major tightening in the original proposal.

The interesting fact is: given the declaration of ‘no intervention’ by the central leaders, and empirical evidence does suggest that the central leadership did not play an active role in the exercise, the new local leadership still chose to ignore the local demand for more liberal laws. Apparently they reached a judgement that despite the *carte blanche* the SAR government appeared to enjoy in filling the gap, it was politically advisable to be prudent.[33] This has been suggested by the comments of Leung Oi-sie, the Secretary of Justice-designate, in February 1997 that the decision of the Preparatory Committee, and the NPCSC, to scrap the amendments made it politically difficult, if not impossible, to leave the legislations undiluted in the subsequent enactment exercise. Moreover, there were indications that the Chief Executive-designate, Tung Chee-hwa, was very concerned of the need to ward off ‘controversial’ political activities during the early days of the SAR. Tung and his officials went explicit for several times to warn that public processions in support of the independence of Tibet or Taiwan would not be allowed under the new administration.[34] There was suggestion that Tung had felt it necessary to have national security included in the legislations so that the SAR government would be legally empowered to act on these controversial political activities. The feelings within the central government on these activities were strong and the possibility of seeing these activities occurring in the SAR could not be precluded, and the new SAR government needed to be seen by the central government as capable of controlling controversy, especially during its early days of formation.[35]

Actors make their choice of action within the constraints, and facilitation, of their contexts in which they operate. The new SAR government has its operating

environment defined by the constitutional principle of 'one country, two systems', which allows it much bigger autonomy than any provincial-level-governments in China. At the same time, its choice of action is also 'constrained' by this principle. It needs to display a high degree of autonomy and responsibility in order to live up to the expectation of the local population as well as the international community, which has been keeping a close watch on Hong Kong and whose views will have an impact on Hong Kong's continuing reputation as a major international city. The central government shares the interest in seeing Hong Kong thriving, but it also has other concerns. One major dilemma for Beijing is that whilst Hong Kong needs to be highly autonomous, it cannot be too autonomous so that it falls out of hand and becomes a 'base of subversion' being used by Taiwan and other 'enemies' against the country. Thus Beijing seeks to balance both components in the 'one country, two systems' schema. 'Two systems' is the special design and focus of action, but the goal of having 'two systems' is to attain 'one country'. This is why Qian Qichen and Lu Ping kept on saying that advocacy for Taiwanese or Tibetan independence was not tolerable in Hong Kong, at the same time stressing the continual freedom of expression in Hong Kong.

This sense of insecurity among the central leadership over the 'one country' side of the schema has not, however, been shared by the entirety of the local community. Indicative of the dissenting opinion within Hong Kong is the one articulated by the law profession, which says that whilst treason is certainly a crime in any country, the rules of evidence should be much stricter than what has been adopted within the mainland. Specifically, the existence of the use of physical force should be a definitive element of what constitutes a genuine threat to national security. All other expressions of opinion belong to the realm of civil liberties and should be protected, not restrained, by law.[36]

In the end the 'middle ground' stricken by the new SAR leadership regarding the public order amendments suggests that in their judgement they found it necessary to accede more to the concerns for the 'one country'. They might have thought it politically prudent to lean more towards the concern of the central government, especially during the early days of the new government, when they had yet to

consolidate the trust of the new sovereign.[37] Alternatively they might genuinely think that the change in government offered Hong Kong a novel chance to review its previous policies, and that the proposed legislations reflected their judgement of what constituted a better balance between civil liberties and public order.[38] Whatever their underlying motives, which may be both or neither of the above, the difficulty of the new government was to convince *both* the central leadership and the local community (and to an extent the international community) that the constitutional schema of 'one country, two systems' was alive and real. The local community tends to be more concerned about the 'two systems' component, and take the 'one country' part as non-problematic. The concerns of the central leadership are more complicated. It definitely wants the 'two systems' to succeed; but it is not as relaxed as the local population about the 'one country' component.

A famous catch-phrase Tung Chee-hwa has been repeating since his election as Chief Executive is 'if Hong Kong fares well, China as a whole will benefit; and thus the non-zero-sum nature of the Beijing-Hong Kong relationship'. [39] By emphasizing the interdependence and common interests of Hong Kong and the mainland Tung seeks to enlarge the room in which his new government can fruitfully manoeuvre. Given the immense gaps in expected tolerance the task to bridge the gaps and strike the common ground of interest will not be easy. The SAR government needs to be able, for instance, to convince Beijing that the free expression of a whole range of political opinions will not necessarily harm the integrity of the Chinese country, whilst at the same time explain to the local population the concerns and worries of the central government. The legislative exercise regarding the public order legislations is a classical case in which the local government seeks to strike a balance. The question is whether they have succeeded to the satisfaction of both parties - the central government as well as the local community.

The ambiguity and inherent conflicts within the 'one country, two systems' schema therefore points to the importance of good political judgement on the part of the political leaders, both in Hong Kong and in Beijing. More falls on the former, however, as Beijing can possibly fulfill its part by mere inaction. The Hong Kong SAR government has to carry on the daily routine of administration of Hong Kong,

and bears the onus of initiative of requesting intervention or assistance by the central government. As local political leaders they need to understand fully, as well as to articulate and represent, the expectations of various segments of local population regarding the tolerance boundary. To get things done they need also to understand expectations from the mainland and the central government. The challenge for the fruitful implementation of the pledge, for the mutual benefit of Hong Kong and China as a whole, is to strike the right balance to meet these varying expectations, and since the views of Beijing are more often in the limelight, not to lose sight of the expectations within Hong Kong.

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[1] This is notwithstanding the famous saying of President Jiang Zimen, 'the well water does not interfere with the river water', prescribing that Hong Kong should stay away from politics in the mainland. This remark was made when Jiang received visitors from Hong Kong in Beijing in the aftermath of the Tiananmen crackdown and the massive rallies in Hong Kong protesting against the crackdown. See *People's Daily*, 12 July 1989, and quoted in (F. Ching, 1994: 179).

[2] The notion that changes in central-local politics, and in particular at the central-provincial interface, will have significant impact on the conduct of politics in general in China is made in Li (1998), in the context of the experience of two important provincial units, Guangdong and Shanghai.

[3] The linkage between the 'one country, two systems' initiative and changes in the wider context and the definition by the Chinese leadership of its environment and possible options is elaborated in Cheng (1992: 1-11).

[4] This was largely a result of the active participation of the Hong Kong community in the Tiananmen developments, especially after the martial law was declared on 19 May 1989 in Beijing. Hong Kong was branded as 'a base of subversive activities' in the aftermath of the crackdown by some Chinese officials. Two Hong Kong members resigned from the Basic Law Drafting Committee, and another two boycotted the meetings after the crackdown (Chan, 1991: 24).

[5] The more active role of Hong Kong in fulfilling the pledge of 'one country, two systems' post-1997 was also noted by the former director of New China News Analysis, Hong Kong, Xue Jiatun, who had fled to the USA in the aftermath of June 4th, 1989. The major role of Beijing lies in non-interference. See interview with Xue, reported in *Hong Kong Economic Journal*, 1 July 1997, p.14.

[6] A majority of the local population, at the time of 1982, favoured the continuation of British administration to a reversion to China, according to a widely reported and cited opinion poll commissioned by the Hong Kong Observers, a group of liberal-minded local elites. See Tang and Ching (1994: 157).

[7] The Preparatory Committee for the Hong Kong Special Administrative Region is established under the Decision of the National People's Congress on the method for the formation of the first government and the first legislative council of the HKSAR, adopted by the seventh NPC on 4 April 1990, when the Basic Law was also promulgated. No less than half of its members will be from Hong Kong, and all members will be appointed by the NPC standing committee.

[8] According to a decision by the Preparatory Committee in March 1997 on the jurisdiction of the Provisional Legislature, the latter will last for not more than a year, starting from 1 July 1997, and will only undertake tasks strictly necessary to the smooth functioning of the HKSAR government. See *Hong Kong Economic Journal,* 1 July 1997.

[9] The importance of this 'newly found' role was suggested by the sheer number of Preparatory Committee members volunteering to join the sub-group on the first Legislative Council election. Altogether 64 members volunteered to join, of which about 20% were Chinese officials. The Hong Kong member convenor, Professor Lau Siu-kai in an interview anticipated great importance being attached to this sub-group, especially after the selection of the Chief Executive. *Sing Tao Jih Pao*, 5 January 1996, A15.

[10] The relevant article in the Joint Declaration reads, 'The Hong Kong Special Administrative Region will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government'. (Article (3(2)) This semi language of 'residual power' is not adopted in the Basic Law, which states explicitly the delegated nature of the autonomy to be enjoyed by the HKSAR.

[11] The approach took place in the form of an invitation issued by the convenor of the SAR Executive Council, Chung Sze-yuen, to the Hong Kong convenor of the first Legislative Council election sub-group of the Preparatory Committee, Lau Siu-kai, for lunch on 7 April together with other ExCo members. The areas of controversies are largely areas where the 1992 Patten reform package made major changes, and the Chinese found unacceptable. The most important are: (1) the electoral system for the 20 directly elected seats, whether by way of first-past-the-post single seat constituency (the pre-existing system); proportional representation, or single-vote-multiple-seat constituency; (2) the reconstitution of the new 9 functional constituencies which Patten introduced as 'quasi-direct election' in the 1995 election; (3) the reconstitution of the electoral college returning 10 seats; (4) the allocation of the quota of seats (no more than 20%) which may go to holders of foreign passport, according to the Basic Law. *Ming Pao* (Hong Kong), 8 April 1997, A7.

[12] Henry Tang, Executive Councillor and provisional legislator, answered to queries from the press in response to earlier comments from Lau Siu-kai that a definitive decision (on the first Legislative Council election) by the Preparatory Committee would save the SAR government from political criticisms regarding the controversial changes. *Apple Daily* (Hong Kong), 10 May 1997, A9.

[13] According to one Hong Kong member of the sub-group, the participation of the SAR government in designing the election system had been discussed in a previous meeting, prior to the approach of the ExCo, and many were against the dilution of the authority of the Committee (*Apple Daily*, 9 April 1997: A9). The New China News Agency (Hong Kong) was reportedly behind such opposition, whilst the Hong Kong and Macau Office supported the position of the SAR government (*Sing Tao Jih Pao*, 15 April 1997).

[14] The 'mainstream' preference within the Preparatory Committee sub-group regarding the electoral system for direct election was for the single-vote-multiple-seat constituencies. The SAR government chose the other option, proportional representation. The functional constituency of 'mainland enterprises' ranked eight among the 15 functional constituency candidates in the Preparatory Committee Decision, but was replaced by the insurance constituency (ranking ten) in the SAR government announcement. See *Apple Daily*, 9 July 1997, A4. However, it should be emphasized that these preferences were always intended to have *no* binding effect on the SAR government. *Ming Pao*, 23 May 1997.

[15] Qian Qichen (Vice-premier, director of the Preparatory Committee) made this announcement in his closing remarks to the ninth session of the Preparatory Committee on 23 May 1997, right after the Committee passed its decision on the election. *Ming Pao*, 24 May 1997.

[16] Some committee members argued that the Preparatory Committee had to endorse the election results and could thus be disbanded only after the first Legislative Council election in 1998 (*Sing Tao Jih Pao*, 15 April 1997). This view was, however, apparently not shared widely. Lu Ping, director of the Hong Kong and Macau Bureau,

State Council, stated explicitly on 19 May 1997 that the Preparatory Committee needed only to arrive at the election methods, and leave the implementation of the election entirely to the SAR government. The Committee could thus be dissolved even before 1 July 1997. *Ming Pao*, 20 May 1997.

[17] The new central policy of 'no intervention' was precipitated by the public pledge of President Jiang Jimen, to Tung Chee-hwa after Tung's election, that the central government 'will definitely not intervene in affairs in the HKSAR which fall within the realm of local autonomy' (*Apple Daily*, 19 December 1997, A1).

[18] Like many other issues there have been different shades of opinions within the Preparatory Committee and among different groups of Chinese officials. For instance, it was reported that the New China News Agency had been behind some members of the Preparatory Committee insisting on a longer tenure of the Committee, so that it would oversee the first Legislative Council election. The Hong Kong and Macau Office, as noted previously, was against this idea, and Qian Qichen finally supported the latter side of opinion. See *Sing Tao Jih Pao*, 15 April 1997.

[19] There have been guesses regarding whether Tung Chee-hwa had requested for an early ending of the work of the Preparatory Committee during his meeting with Chinese leaders. Tung, also a vice-director of the Preparatory Committee, had refused to confirm or deny such guesses. *Ming Pao*, 24 May 1997.

[20] Notable examples are the cases of Wei Jingsheng and Wang Dan.

[21] The Hong Kong Journalists Association (HKJA) has been adamant in criticizing the reluctance of the British administration to reform the law. See its annual reports, starting in 1994. In the 1995 report (HKJA, 1995: 2), it was written that 'the Hong Kong government...has singularly failed to amend those laws which most threaten this fundamental freedom (of expression).' For recent recitals of some major cases in which the government employed public order laws to silence social opposition, see *Apple Daily*, 21 January 1997, A1; 22 January 1997: A2 .

[22] See *Gazette of the NPCSC*, No. 1, 1997; *Ta Kung Pao* (Hong Kong), 24 February 1997.

[23] These plans were announced in the policy address of the then governor David Wilson to the Legislative Council in October 1989, four months after the Tiananmen crackdown. For a personal account of the background of these moves, see Wilson (1996: 182)

[24] In response to widespread criticisms by Western media regarding the implications on human rights in Hong Kong, Vice-premier and Foreign Minister Qian Qichen stated that the move to scrap the laws had been part of a continuous process initiated by the establishment of the Preliminary Working Committee, a new organization set up in 1993 by China to prepare alternative plans for the 1997 take-over subsequent to the announcement of the Patten political reform package and the souring of Sino-British relations (*Ming Pao*, 1 February 1997). New China News Agency (Hong Kong) official, Zhang Zin-sheng stressed that the proposed scrapping of the laws had nothing to do with the human rights issue. The Chinese government has been very concerned about the human rights of the Hong Kong residents and has made adequate provisions in the Basic Law for that purpose (*Ta Kung Pao*, 5 February 1997).

[25] This possibility is pointed out in (Li, 1997).

[26] This is reported by *Apple Daily*, 9 April 1997, A9. Sources of the Office of the Chief Executive-designate reportedly told the press that neither did the Hong Kong and Macau Office of the State Council nor the New China News Agency (Hong Kong)

participate in the drafting of the consultative document on civil liberties and social order. The Chief Executive-designate reportedly saw the exercise as an entirely 'internal' affair of the SAR, in which the principle of 'Hong Kong people running Hong Kong' should apply.

[27] The 1992 amendment to the Societies Ordinance, amongst other changes, replaces the previous requirement of seeking *a priori* approval for registration (or exemption from registration) before a society may be legally formed with a notification system. The 1995 amendment to the Public Order Ordinance relaxes the issuance of licenses to public processions. The new proposal seeks to reinstate the registration requirement for the formation of societies, and tighten up control on public processions. See Annex B of the Consulative Document.

[28] Proposals in the Consultative Document allowed the government to refuse the registration of societies or ban the organization of public processions on grounds of public order, national security, public safety, the protection of public health or morals or the protection of the rights and freedoms of others. Various streams of the legal profession, including the barristers, solicitors and law professors, were almost unanimous on maintaining that the inclusion of the reference to 'national security' in public order legislations was highly inappropriate, and may be dangerously abused against people exercising their basic rights (*Apple* Daily, 26 April 1997; Ming *Pao*, 1 & 17 May 1997). A major local newspaper in its editorial called for the delinking of the concern for national security and freedom of association, the latter being the subject of the legislations concerned (*Hong Kong Economic Journal*, 19 April 1997).

[29] The ban on 'foreign links' attracted a major share of first-wave criticisms when the consultative document was first released on 9 April 1997 (*Apple Daily*, 10 April 1997). A prominent law professor criticized the concept of 'international political organization' as very ambiguous and 'non-existent' in international law (*Sing Tao Jih Pao*, 17 April 1997).

[30] Article 26 of the Basic Law stipulates that 'permanent residents of the Hong Kong Special Administrative Region shall have the right to vote and the right to stand for election...', and 'permanent residents' of the HKSAR include persons not of Chinese nationality, ie. foreigners, but who have ordinarily resided in Hong Kong continuously for not less than 7 years and have taken Hong Kong as their place of permanent residence (Article 24 (4)). Article 67 of the Basic Law makes it explicit that 'permanent residents of the Region who are not of Chinese nationality or who have the right of abode in foreign countries may also be elected members of the Legislative Council of the Region, provided that the proportion of such members does not exceed 20 percent of the total membership of the council.' Foreigners are thus allowed explicitly to participate in local politics and get elected in the legislature, provided that they are permanent residents.

[31] This is a major argument in the editorial of *Hong Kong Economic Journal*, 19 April 1997, and in the position paper of the Hong Kong Bar Association (*Apple Daily*, 26 April 1997).

[32] Such queries were found among the more liberal provisional legislators as well as members of the outgoing legislature (*Express News* (Hong Kong), 27 April 1997).

[33] Tung was once reported to have privately admitted to the press that the proposals contained in the consultative document reflected his personal opinions, and in his view had been very prudent in terms of their impact on existing practice (*Apple Daily*, 12 April 1997, A1).

[34] Tung confirmed during an interview with foreign press that his administration would not allow inciting writings or public processions in support of the independence of Taiwan or Tibet (*Sing Tao Jih Pao*, 7 May 1997). When asked for one single major difference in civil liberties as a result of the new legislation, a senior official in Tung's office responded that 'before 1 July public processions in support of the independence of Taiwan is legal. It will not be after 1 July.' (*Ming Pao*, 16 May 1997).

[35] This suggestion was reported in *Ming Pao*, 16 May 1997, quoting a source from within the Office of the Chief Executive-designate, but was immediately denied the next day by Michael Ming-yeung Suen, director of policy coordination of the Office (*Ming Pao*, 17 May 1997).

[36] This was fully articulated by the law profession in their submission to the consultative document on civil liberties and public order. *Ming Pao*, 1 May 1997.

[37] Senior Minister and former premier of Singapore, Li Kwang-yiu, had explicitly advised Tung Chee-hwa to do only those seen as appropriate by Beijing, instead of what was seen as appropriate by the local people, in order to obtain the trust of Beijing and gain the autonomy to manage Hong Kong affairs (*Ming Pao*, 3 July 1997, A8).

[38] Tung Chee-hwa emphasized the opportunity during the new era to chart new plans and improve past doings time and again during his campaign, and since his being elected, to the office of Chief Executive. For an example of an explicit reference to reprioritize potentially competing values, see his speech to an American audience in Hong Kong, in which he addressed the differences in values between the Western and the Asian societies, and remarked that 'now it is time to put more emphasis on the traditional values (of the Asian societies), including order and stability (vis-a-vis the Western values of freedom and rule of law). *Ming Pao*, 16 May 1997. Leung Oi-sie, the new Secretary of Justice, in defending the consultative document, once remarked that the proposal reflected an attempt to reappraise existing values and reorder priorities (*Express News*, 27 April 1997).

[39] For an example see Tung's speech on the scrapping of public order legislations, given on 23 January 1997, in which he said, '...the future success of Hong Kong is closely linked up with the success of China. If Hong Kong is successful, China will benefit. Alternatively, if China is successful, Hong Kong will benefit even more.' *Ming Pao*, 24 January 1997, B11.