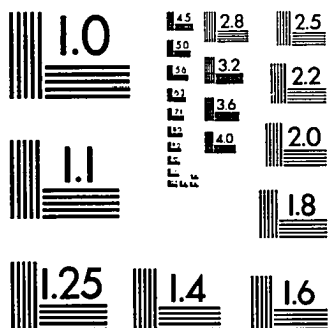


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THE SINO-BRITISH JOINT DECLARATION ON THE QUESTION OF HONG-
KONG: POLITICAL AND LEGAL PERSPECTIVES

The University of Oklahoma

PH.D. 1985

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The SINO-BRITISH JOINT DECLARATION
ON THE QUESTION OF HONG-KONG:
POLITICAL AND LEGAL
PERSPECTIVES

A DISSERTATION
SUBMITTED TO THE GRADUATE FACULTY
in partial fulfillment of the requirements for the
degree of
DOCTOR OF PHILOSOPHY

By
TUNG-MING LEE
Norman, Oklahoma

1985

THE SINO-BRITISH JOINT DECLARATION

ON THE QUESTION OF HONG KONG:

POLITICAL AND LEGAL

PERSPECTIVES

A DISSERTATION

APPROVED FOR THE DEPARTMENT OF POLITICAL SCIENCE

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THE SINO-BRITISH JOINT DECLARATION
ON THE QUESTION OF HONG KONG:
POLITICAL AND LEGAL PERSPECTIVES
BY TUNG-MING LEE
MAJOR PROFESSOR: PAUL A. THARP Jr. Ph.D.

Despite an international situation that had existed for more than 140 years with serious difficulties at times, the People's Republic of China (PRC) and the United Kingdom (UK) reached a solution to their dispute over Hong Kong within a two-year period through diplomatic negotiations. The PRC would not recognize all of the Hong Kong treaties while the UK asserted that it had treaty rights over Hong Kong. According to the 1984 agreement, the PRC will recover all of the territory of Hong Kong in July 1997 and will not impose its socialist system immediately. Hong Kong's capitalist system and life-style will be allowed to exist until 2047. The UK will continue its administration in Hong Kong up to June 30, 1997.

The author reviews the history of China's relationship with Britain as it relates to the Hong Kong issue. He then discusses the Sino-British negotiations, analyzing factors that conditioned the bargaining positions of both parties. He bases his study on a framework which includes symbolic

issues (sovereignty, national prestige, and human rights), economic and diplomatic considerations, and the role of the Hong Kong people. Overall, the PRC had a stronger stance mainly because of Hong Kong's heavy material dependence upon mainland China and the PRC's manipulation of nationalistic symbols. However, this stronger position was tempered by diplomatic considerations. The PRC wanted to appear to be "reasonable" in order to improve its relations with the ASEAN states and Taiwan.

After reviewing the accord, the author asserts that the Hong Kong agreement does solve the Sino-British disputes over the sovereignty of Hong Kong. It is not, however, an effective guarantee for the status quo of post-1997 Hong Kong. Three sets of problems come to mind: (1) the PRC must violate its own constitution in order to give effect to this agreement; (2) the agreement is quite vague on several key issues; and (3) over the next sixty years there will be numerous changes in the leadership and policies of the PRC, some of which could negatively impact upon Hong Kong.

CHAPTER I

INTRODUCTION

Statement of the Issue

Perhaps one of the biggest events in China in 1984 was the conclusion of the Sino-British agreement in regard to the future of Hong Kong.¹ On September 26, 1984, the People's Republic of China (PRC)² and the United Kingdom of Great Britain and Northern Ireland (UK) initialled a "Joint Declaration on the Question of Hong Kong" and it was formally signed on December 19, 1984. It has been ratified by both governments and entered into force on May 27, 1985 after the exchange of instruments of ratification. According to the agreement, the PRC will resume the exercise of sovereignty over Hong Kong effective July 1, 1997. Meanwhile, the PRC

¹ The term "Hong Kong" used in this study refers to the whole area of the British colony Hong Kong, which includes the Island of Hong Kong (which was ceded to Britain in perpetuity under a 1842 treaty), the Kowloon Peninsula and the Stonecutters Island (they were ceded to Britain in perpetuity under a 1860 treaty), and the New Territories (leased to Britain under a 1898 treaty with the lease to expire on June 30, 1997). The ever-approaching due date of the lease of the New Territories and the Sino-British disputes over the sovereignty of Hong Kong prompted the PRC and the UK to enter into negotiations.

² The use of the term "People's Republic of China" in this study simply denotes the official title of mainland China.

will make Hong Kong a "special administrative region"³ and will guarantee to it a wide range of freedoms, the preservation of capitalism and the present life-style for fifty years after the takeover. The agreement is important for the Chinese as a whole. It signifies the termination of the Western colonial presence in China. It also presents a unique problem for Chinese politics. Communist China has openly promised to accommodate a capitalist enclave under its domain for half a century. Will capitalism and communism successfully coexist under such a political arrangement?

The conclusion of the agreement was the result of almost two full years and twenty-two rounds of negotiations. On the question of Hong Kong, the PRC had frequently reiterated that the issue would be solved peacefully when conditions were ripe. The PRC and the UK entered into talks following the British prime minister's visit to Peking in September

³ The "special administrative region" is different from the "special economic zone." In an effort to promote modernization, the PRC decided in 1980 to set up four "special economic zones" in the cities of Shenzhen, Zhuhai, Shantou, all in Guangdong Province, and Xiamen in Fujian Province. In 1983, it opened another fourteen port cities to foreign investment and technology. These cities include Dalian, Qinhuangdao, Tianjin, Yantai, Qindao, Lianyungang, Nantong, Shanghai, Ningbo, Wenzhou, Zuzhou, Guangzhou, Zhanjiang, and Beihai. According to Xu Dixin, the then Vice President of the Chinese Academy of Social Sciences and concurrently director of its Institute of Economics, "The special economic zones do not represent the revival of former concessions because authority over them is entirely in China's hands." See Xu Dixin, "China's Special Economic Zones," Beijing Review, December 14, 1981, p.14. Xu added that the enterprise run by foreigners or overseas Chinese are "subject to control and regulation" of local governments, it is essentially based on "state capitalism." Ibid.

1982. They announced that the common aim of the negotiations was to maintain the stability and prosperity of Hong Kong. At the beginning the British claimed that their presence in Hong Kong was legal, because it was the result of historical bilateral international agreements. The Chinese, however, insisted that the cessions and the lease of the Hong Kong area were made under unequal treaties, therefore they were null and invalid. Britain then tried to retain the right of administration but wanted to restore sovereignty to China. The PRC declined to accept this idea and insisted on resuming sovereignty over the entirety of Hong Kong by 1997. Finally, under the concept of "one country, two systems" initiated by the PRC, the UK decided to concede, whereupon an agreement was reached.

The concept of "one country, two systems," according to an article in the January 1985 issue of China Reconstructs, was first put forward by Deng Xiaoping,⁴ Chairman of the Chinese Communist Party's Central Advisory Commission and the PRC's de facto leader. Deng said that "the policy has been adopted by the National People's Congress."⁵ In his meeting with Hong Kong business leaders in June 1984, Deng explained why the PRC adopted such a policy. According to a report of the Beijing Review:

⁴ "Hongkong and the 'One Country, Two Systems' Principle," China Reconstructs, 34 (January 1985): 24.

⁵ "Deng Xiaoping on Hongkong Issue," Beijing Review, July 23, 1984, p.16.

He elaborated the "one country, two systems" policy, saying the policy has been adopted in line with China's realities "China not only has the problem of Hongkong; it also has the problem of Taiwan," Deng said. "What's the solution to this problem? Is it for socialism to swallow up Taiwan, or for the 'three people's principles' preached by Taiwan to swallow up the mainland? The answer is that neither can swallow up the other the only solution to this problem is to practise two systems in one country."⁶

In his conversation with Prime Minister Margaret Thatcher on December 19, 1984, Deng expounded further the "one country, two systems" policy:

When we speak of two systems, it is because the main part of China, with a population of one billion, is practising socialism. It is under this prerequisite that we allow capitalism to remain in a small part of the country. This will help develop our socialist economy, and so will the policy of opening to the world."⁷

Thus the "one country, two systems" means preserving two different political, social and economic systems within one country.

On other occasions, we also find that the PRC leaders also emphasize that the application of the "one country, two systems" policy does not mean the gradual abdication of the PRC's current socialist system. When Deng met with Ali Hassan Mwinyi, Vice President of Nigeria, in April 1985, he said that "China was determined to stick to the socialist system until the realization of communism, a goal set and an ideal cherished by the Chinese communists in their revolu-

⁶ Ibid.

⁷ "Deng on 'One Country, Two Systems,'" Beijing Review, December 24, 1984, p.7.

tionary years."⁸ Thus the "one country, two systems" policy says basically that under the socialist system the PRC allows part of its territory to practice another kind of system different from that of the socialist one for a period of time because of some political considerations.⁹

According to the agreement, after 1997 Hong Kong will become a "special administrative region" and enjoy a high degree of freedom that is denied to Chinese living in other parts of the PRC. It also indicates that the PRC will regain sovereignty over Hong Kong but will not be able to bring the former colony under immediate communist rule. According to the terms specified, the socialist system will not be applied to Hong Kong for fifty years after the takeover. The British virtually surrendered all they had to give up (even sovereignty over the areas ceded to them in perpetuity by Imperial China), though some economic interests were assured by Chinese leaders.

In its comments on the agreement a Hong Kong-based English weekly called it "an unprecedented agreement," because for the first time in modern history Britain "instead of

⁸ "Deng Briefs Tanzanian Guest on Reforms," China Daily, April 16, 1985, p.1.

⁹ According to an article in China Reconstructs, "The decision not to change Hongkong's present system for at least 50 years comes in part out of the consideration that China needs that period of time to get fully modernized." See "Hongkong and the 'One Country, Two Systems' Principle," p.25. In other words, if the PRC becomes modernized fifty years later, it will eliminate system other than that of socialist.

granting independence . . . agreed to restore sovereignty to its original owner," and "a Marxist-Leninist state . . . has made legally binding public promises on how a part of its sovereign territory will be administered."¹⁰ British Prime Minister Margaret Thatcher called the accord "a landmark in the life of the territory, in the course of Anglo-Chinese relations and in the history of international diplomacy."¹¹ She also mentioned the difficulty of the negotiations:

. . . the negotiations were not always easy. At certain points there were difficult decisions to be made on both sides. There were moments of tension. To overcome these difficulties we needed to draw on a shared fund of good will, on friendship and on a common commitment to Hong Kong's future. This was what made success possible.¹²

Chinese Prime Minister Zhao Ziyang said the PRC and Great Britain

. . . have accomplished a task of historical significance . . . In the course of the talks over two years, both Governments have shown regard for larger interests, taken Hong Kong's history and realities into account, and displayed a spirit of mutual understanding and friendly cooperation.¹³

It is understandable that a long process of bargaining and a considerable degree of compromise must have taken place to make the agreement possible.

¹⁰ Derek Davies, "Initialled, Sealed, and Delivered," Far Eastern Economic Review, October 4, 1984, p. 12.

¹¹ "Excerpts from Speeches in Peking," New York Times, December 20, 1984, p. y3.

¹² Ibid.

¹³ Ibid.

Taking the unique arrangement for the future of Hong Kong and the lengthy and difficult negotiations into consideration, we can imagine that such an "unprecedented" outcome is certainly an example of the international game of power. Hence the Sino-British encounter on the question of Hong Kong is a good case for the study of international politics. The process of the negotiations, in particular how the PRC and the UK mobilized and utilized their power resources to achieve their goals, are important to our understanding of the Hong Kong issues. In addition, it is also possible to have a better picture of general contemporary PRC foreign policy by studying how the PRC has handled the Hong Kong matter.

The Concept of Power Relations

Some political scientists argue that the study of international relations deals mostly with the exercise of power among sovereign states. Holsti argues that the political process commences when any state seeks through various acts or signals to change or sustain the behavior of other states.¹⁴ Thus he considers power as an integral part of all political relationships. The main concern of international politics is "how one state influences the behavior of an-

¹⁴ K. J. Holsti, International Politics, a Framework for Analysis, (Englewood Cliffs, NJ: Prentice-Hall, 1983), p. 145.

other in its own interests."¹⁵ Organski sees power as "one of the most important characteristics of a nation," because "power is a major determinant of the part that the nation will play in international relations."¹⁶ He further asserts that "a nation must have power if it is to carry out its goals, whether they be good or evil."¹⁷ Morgenthau also looks at international politics as simply a "struggle for power."¹⁸

Now that power is a determinant of international behavior, then how is it to be defined? What are its sources? How is it measured? And how is it exercised? Since we have seen the conclusion of the Hong Kong accord to be a case of international power politics, all these issues are important if we want to understand the question of Hong Kong in terms of power relations between the PRC and the UK.

In their discussion of power Russett and Starr pointed out the various ways that power may be interpreted:

Power has many broad meanings and is conceived of in different ways. To some it is best seen as a set of attributes; to others it is an influence process. It is seen by some as the ability to

¹⁵ Ibid., p.159. John G. Stoessinger's argument is identical to that of Holsti's. See The Might of Nations: World Politics in Our Time, seventh edition (New York: Random House, 1982), p.35.

¹⁶ A. F. K. Organski, World Politics, second edition (New York: Knopf, 1968), p.101.

¹⁷ Ibid., p.102.

¹⁸ Hans J. Morgenthau, Politics Among Nations: the Struggle for Power and Peace, sixth edition, revised by Kenneth W. Thompson (New York: Knopf, 1985), p.31.

control--to control resources, other actors, events and outcomes. Some see power as the ability to control or reduce uncertainty in the environment. For some it is the means to an end, while for others power has come to mean "causality," because explaining who has power explains why things happen. Others say power is like money in the sense that it can be saved and spent, while some see it as merely affecting the probability of outcomes. One view is that it is primarily a psychological phenomenon, that power exists if others think you possess it. The list could go on and on.¹⁹

As discussed earlier, in order to carry out its goals, a state must have power to influence the behavior of another in its own interests. The act of influencing requires power, and power is based on several components. Organski argues that power "consists of the ability to influence the behavior of others, and this ability may be enhanced both by the possession of certain instruments of power and by the skillful use of whatever instruments exist."²⁰ In his discussion on power analysis and world politics, Baldwin reminds us that "all generalizations about power should be set in a context specifying (as a minimum) [of] who is trying to get whom to do what."²¹ Hence it is important to indicate what are the objectives of parties concerned when we try to explain a power relationship.

¹⁹ Bruce Russett and Harvey Starr, World Politics: the Menu for Choice (San Francisco: W. H. Freeman, 1981), p.126.

²⁰ Organski, op. cit., p.111.

²¹ David A. Baldwin, "Power Analysis and World Politics: New Trends Versus Old Tendencies," in Power, Strategy, and Security, ed: Klaus Knorr (Princeton, NJ: Princeton University Press, 1983), p.23.

In his analysis of national attributes and foreign policy, East asserts that the capacity to act and the choice of foreign policy goals and objectives can affect foreign policy behavior.²² Capacity to act refers to the amount of resources a nation has and its ability to utilize these resources.²³ On the resources of power or capacity, political scientists have listed several factors for analysis. Morgenthau's elements of national power include geography, natural resources, industrial capacity, military preparedness, population, national character, national morale, the quality of diplomacy, and the quality of government.²⁴ For Organski, there are natural and social determinants of power. Geography, resources, and population belong to the former;²⁵ economic development, political development, and national morale relate to the latter.²⁶ He also asserts that "each factor plays its part, and each one affects the other."²⁷

²² Maurice A. East, "National Attributes and Foreign Policy," in Why Nations Act: Theoretical Perspectives for Comparative Foreign Policy Studies, eds: Maurice A. East, Stephen A. Salmore, and Charles Hermann (Beverly Hills, CA: Sage, 1978), p.133.

²³ Ibid., p.123.

²⁴ Morgenthau, op. cit., pp.127-169.

²⁵ Organski, op. cit., pp.124-154.

²⁶ Ibid., pp.155-189.

²⁷ Ibid., p.125.

Russett and Starr classify elements of national capabilities into tangible and intangible ones. Geography, population, natural resources, GNP or wealth of a state, and military capabilities belong to the former,²⁸ and quality of political leadership, skill and efficiency of state bureaucratic organizations, form of government, reputation or credibility of government, and intelligence the latter.²⁹ Cline has a description of national power in which he has touched upon almost all the important elements of national power:

National power, realistically described, is a mix of strategic, military, economic, and political strengths and weaknesses. It is determined in part by the military forces and the military establishments of a country but even more by the size and location of territory, the nature of frontiers, the populations, the raw material resources, the economic structure, the technological development, the financial strength, the ethnic mix, the social cohesiveness, the stability of political process and decision-making, and finally, the intangible quality usually described as national spirit.³⁰

Since there are tangible and intangible elements of national power, its measurement has been a challenge to political scientists. Holsti asserts that the successful exercise of influence involves factors that are not easy to measure, such as personality, perceptions, friendships, and tradi-

²⁸ Russett and Starr, op. cit., pp.139-145.

²⁹ Ibid., pp.153-158.

³⁰ Ray S. Cline, World Power Assessment 1977, a Calculus of Strategic Drift (Boulder, CO: Westview, 1977), p.33; or World Power Trends and U. S. Foreign Policy for the 1980s (Boulder, CO: Westview, 1980), P.16.

tions, and that "these factors have a way of rendering power calculations and equations difficult."³¹ Despite the difficulty of measurement, research on power measurement has been a constant effort of interested scholars. Deutsch reveals that "the weight of the power or influence of an actor over some process is the extent to which he can change the possibility of its outcome."³² Thus for Deutsch, the issue of who has more or less power in a given situation can be observed by one's influence upon the outcome of an event. Russett and Starr illustrate their indices of power by comparing "any single attribute, once or across time" of any pair of states.³³ Since "power and influence are multifaceted and depend on a combination of capabilities," they also use different combinations of indicators such as GNP, area, population, GNP per capita, science journals, literacy, infant mortality, and diplomats received for comparison.³⁴

Organski suggests that the index of power be based on "the most important determinants of national power: population size, political development, and economic development;" however, he actually has based it solely on population size and economic development,³⁵ because the effectiveness of po-

³¹ Holsti, op. cit., p.150.

³² Karl W. Deutsch, The Analysis of International Relations (Englewood Cliffs, NJ: Prentice-Hall, 1968), p.24.

³³ Russett and Starr, op. cit., p.146.

³⁴ Ibid., pp.145-153.

³⁵ Organski, op. cit., p.208.

litical institution is difficult to measure or to quantify. Cline assesses the power of nations by using population and territory, economic capability, military capability (Strategic force/conventional force), and national strategy and national will as indicators or main elements of national power.³⁶ He has developed a power formula to "provide a short-hand notion or index system to replace words and judgments once these have been defined."³⁷ His formula is $Pp = (C + E + M) \times (S + W)$. Pp stands for perceived power; C for critical means = population + territory; E for economic capability; M for military capability; S for strategic purpose; and W for will to pursue national strategy.

Fisher asserts that total negotiating power depends upon many factors:³⁸ (1) the power of skills and knowledge: the skills of dealing with people, of analysis, logic, quantitative assessment, and the organization of ideas; knowledge about the people involved, about the interests involved, and about the facts; (2) the power of good relationships: a good working relationship, for example, with those with whom one will be negotiating; (3) the power of a good alternative to negotiation: being able to consider the alternatives for reaching agreement with this particular negotiating partner,

³⁶ Cline, World Power Assessment 1977 and World Power Trends.

³⁷ Cline, World Power Assessment 1977, p.34.

³⁸ Roger Fisher, "Negotiating Power: Getting and Using Influence," American Behavioral Scientist 27 (November/December 1983): 153-165.

for selecting the most promising approach, and improving it as the case requires; (4) the power of an elegant solution: for inventing a good solution to the problem or generating a range of options in advance to help affect the outcome favorably; (5) the power of legitimacy: searching for and developing various objective criteria and potential standards of legitimacy so as to shape proposed solutions legitimate in the eyes of the other side; (6) the power of commitment: being able to make affirmative and negative commitments during the negotiations. He adds that "exercising negotiating power effectively means orchestrating them in a way that maximizes their cumulative impact."³⁹

Morgenthau postulates that peace can be achieved through accommodation, that diplomacy is an element of national power and is essential for the preservation of international peace.⁴⁰ Diplomacy, he goes on to say, has a fourfold task:

(1) Diplomacy must determine its objectives in the light of power actually and potentially available for the pursuit of these objectives. (2) Diplomacy must assess the objectives of other nations and the power actually and potentially available for the pursuit of these objectives. (3) Diplomacy must determine to what extent these different objectives are compatible with each other. (4) Diplomacy must employ the means suited to the pursuit of its objectives. Failure in any one of these tasks may jeopardize the success of foreign policy and with it the peace of the world.⁴¹

³⁹ Ibid., p.152.

⁴⁰ Morgenthau, op. cit., p.563.

⁴¹ Ibid., pp.563-564.

It is clear that, for Morgenthau, successful pursuits of national objectives and world peace depend on the appropriate application of national power. This is the reason why he stresses the importance of the quality of diplomacy.

The quality of a nation's diplomacy combines those different factors into an integrated whole, gives them direction and weight, and awakens their slumbering potentialities by giving them the breath of actual power.⁴²

In other words, national power is chiefly to be exercised by means of diplomacy.

As indicated by Holsti, there is an absence of "one legitimate center of authority" in the international system; hence diplomacy is so crucial in maintaining world order.⁴³ In order to achieve or to defend their objectives, sovereign states interact with other states in a wide variety of ways. Russett and Starr's methods of influence include "persuasion," "bargaining," and "political investments."⁴⁴ For Holsti, the act of influencing takes the forms of persuasion, the offer of rewards, the granting of rewards, the threat of punishment, the infliction of non-violent punishment, and force.⁴⁵ He also indicates that "the general nature of relations between any two given governments, the degree of involvement between them, and the extent of their

⁴² Ibid., p.158.

⁴³ Holsti, op. cit., p.155.

⁴⁴ Russett and Starr, op. cit., pp.130-135.

⁴⁵ Ibid., pp.155-157.

mutual responsiveness" will determine the choice of means of influence.⁴⁶ For Organski, methods of exercising power include persuasion, rewards, punishments, and force.⁴⁷ The amount of agreement and the degree of friendliness between the nations concerned will affect the choice of methods.⁴⁸

The above presentation is an overview of the concept of power relations, a series of generalizations about the process by which a sovereign state deals with others by exercising applicable national power to adjust its relations with others for the purpose of achieving certain national goals. The review of the Sino-British relations in terms of the Hong Kong agreement will be based upon this general understanding of international relations.

Research Design

As stated earlier, this research explores the Sino-British negotiations regarding the question of Hong Kong. Based on the concept of power relations, we will review how the PRC and the UK acted in the course of settling the Hong Kong issue and to what extent they have solved the problem. With this purpose in mind, several questions which are most relevant to this study have been chosen for analysis. Answers

⁴⁶ Ibid., p.159.

⁴⁷ Organski, op. cit., pp.111-115.

⁴⁸ Ibid., p.112.

to these questions should provide considerable insight into the political and legal significance of the Hong Kong accord.

1. Symbolic Issues: To what extent were issues of sovereignty, national prestige, and human rights important to each party?
2. Economic Considerations: Which of the parties possessed a favorable economic position? What are the economic values of Hong Kong to each party?
3. Diplomatic Considerations: To what extent are mutually friendly relations valuable to both parties in the Asian regional and global contexts?
4. The Hong Kong Element: Although the PRC was strongly opposed to Hong Kong's representation in the negotiations, the leadership of Hong Kong also played a certain role in affecting the outcome. To what extent did Hong Kong leaders influence bargaining positions or exercise their informal influence in the negotiations?

As we examine the above issues, we will also analyze the compromises and concessions agreed to by each side. Finally, we will integrate all the above into an analysis of the agreement itself. Particularly, it is important to see how legal language has been used to resolve political difficulties. Ultimately, we would like to judge the viability of the agreement for the future of Hong Kong.

This research is a traditional case-study approach. It intends to apply a generally accepted concept of international relations, i.e. power relations among nations, to analyze and describe the issues of the Sino-British agreement on the question of Hong Kong. In the process of the negotiations both parties tried to maximize their desired effect. It was also likely that both parties mobilized all available resources in order to translate them into influence to get their way. The main concern of this study is to review what made the negotiating parties strong or weak and how these strengths and weaknesses resulted in gains and losses respectively. The concept of power relations covers the interpretation, the resources, the measurement, and the application of power. In other words, based on the concept of power relations we will examine who got what and why in the Sino-British negotiations on the issue of Hong Kong.

Since this is a case study of a single international event, no formal hypothesis will be tested. This study will attempt to answer two questions. First, does this agreement shed some light as to how two very different countries can resolve some extremely troublesome and complex issues. Secondly, are there any precedents here which might be useful in other similar situations such as the reunification of the PRC and Nationalist China.

This dissertation consists of five chapters. In this first chapter, the importance of the issue, the concept of

power relations for the conceptual framework, and the research design have been outlined. Chapter two will present a historical background of the question of Hong Kong. It will begin with the Treaty of Nanking, under which the Hong Kong Island was ceded to Britain in perpetuity in 1842. We will then discuss the Convention of Peking, under which the southern part of Kowloon Peninsula and Stonecutters Island were ceded to Britain in perpetuity in 1860. The Convention Respecting an Extension of the Hong Kong Territory, generally known as the Second Convention of Peking, was signed in 1898. Under the treaty, the New Territories (comprising 92 per cent of the total land area of Hong Kong) were leased to Britain for 99 years. Since the lease will expire in 1997, a settlement is required for the question of Hong Kong. The 1984 Sino-British Joint Declaration on the Question of Hong Kong is the solution for the future of the colony. This accord will be the focus of our study.

Chapter three will deal with the negotiations. Using symbolic issues, economic considerations, diplomatic considerations, and the Hong Kong element as frameworks for analysis, it seeks to examine the strengths and weaknesses of both sides and to study how each side has been able to bring its influence to bear on the controversy. By examining this process, we can better understand how a compromise was achieved. Chapter four will discuss the outcome of the negotiations. As revealed by the agreement, there are gains

and losses for both sides. Here we will assess these gains and losses. Next, we will look at the agreement's viability as a long term solution to the question of Hong Kong. Major problems of the agreement and its manner of resolution will be addressed. Finally, the viability of the agreement for the future of Hong Kong will also be judged. Questions such as whether the agreement provides an adequate or inadequate solution for the issue of Hong Kong will be discussed. Thus its strength and weakness can be revealed. The last chapter will address the implications and importance of this agreement to both parties and to the research of international relations, especially in conflict resolution.

CHAPTER II

HISTORICAL REVIEW

The Sino-British agreement indicates that the question of Hong Kong "is left over from the past."¹ In order to investigate the issues of Hong Kong, some background of Sino-British relations relevant to Hong Kong is in order. We will trace the circumstances whereby the Hong Kong treaties were concluded. Among those to be considered are the Treaty of Nanking, which led to the cession of the island of Hong Kong in 1842; the Convention of Peking, which stipulated the cession of the Kowloon Peninsula and Stonecutters Island in 1860; the Second Convention of Peking, which established the lease of the New Territories on a 99-year term in 1898; and the Sino-British Joint Declaration on the Question of Hong Kong, which created the latest arrangements for the future of Hong Kong.

¹ "A Draft Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Future of Hong Kong," (Hong Kong: The Government Printer, 26 September 1984), p.11.

Early Contacts

Sino-British relations can be traced to the seventeenth century. After the British East India Company was first incorporated in 1600, British trade activities in the East gradually became active. By the 1620s, British trade in the East Indies and Japan had become better established but was challenged by the hostile Dutch in Japan. Since British commercial operations were not supported "by a sufficiently strong foreign policy," the East India Company was deprived of "a most valuable market" and became "still more desirous of entering into commercial relations with China."²

The first English effort for direct trade with China was led by Captain John Weddell in 1637, but he was unable to gain a footing at the most prosperous port along the China coast--Canton. Since 1557 the Portuguese had maintained a permanent trading port on Macao.³ They began to enjoy good commercial relations with the Chinese by trading at Canton after 1578.⁴ Unwilling to see the new arrival get any foot-

² James Bromley Eames, The English in China, first published in 1909 (London: Curzon Press, 1974), p.12.

³ Mark Mancall, China at the Center: 300 Years of Foreign Policy (New York: The Free Press, 1984), p.73.

⁴ John King Fairbank, Trade and Diplomacy on the China Coast: the Opening of the Treaty Ports 1842-1854, Volume I (Cambridge, MA: Harvard University Press, 1953), p.48.

ing in China, they tried to prevent the British from trading with the Chinese. As a result, the Chinese took a hostile attitude toward the newcomers.⁵ The first formal Sino-British encounter, according to Lueras and others, saw the British "demolish a fort, burn several villages and establish the English in Chinese eyes as the 'most ferocious of all the Western Barbarians.'"⁶

In 1654 the East India Company's opportunities of trading at Macao and Canton were improved as a result of the treaty negotiated between Cromwell and John IV of Portugal. The treaty "provided that the subjects of both countries should have free access to any of the ports of the East Indies, and in 1657 its general position was strengthened by Cromwell's confirmation of the charter."⁷

According to Fairbank, the main features of China's maritime trade system were well established by the thirteenth century:

The supervision and taxation of trade by officials responsible directly to the capital, the confinement of trade to certain ports (chiefly Canton and Ch'uan-chou), the confinement of foreigners at these ports (chiefly the Arabs) to their own quarter, where they were under the authority of one of their own number. The rate of taxation varied in the statutes but was usually below 30 per cent ad

⁵ Captain Weddell's expedition to China was elaborated by Eames, see Eames, op. cit., pp.13-22.

⁶ Leonard Lueras, R. Ian Lloyd, and Saul Lockhart eds., Hong Kong (Hong Kong: Apa Publications, 1983), p.35.

⁷ Eames, op. cit., p.29. The "charter" refers Cromwell's confirmation to encourage the Company to extend the scope of its activity abroad.

valorem. In practice it was the object of the government to see that Sino-foreign trade was carried on under official surveillance so that the duties might be levied before trading began.⁸

There was not much change in the practices of Chinese trade with the Western countries. By the end of the Ming Dynasty (the regime prior to the Ching Dynasty), however, the way of taxing foreign trade had been modified. "Instead of the traditional control by officials from the court . . . foreign trade was for a time taxed by the local and provincial authorities for their own needs and advantage."⁹

By 1644, north China was under the rule of the Manchus. The Ching government suffered from internal disorders from factions loyal to the defeated Ming Dynasty, especially from the rebel Koxinga off the southeastern island of Formosa. The imperial court forbade foreign trade and ordered the coastal and inland populations to move inland.¹⁰ After Formosa was pacified in 1683, the Manchus lifted its ban on sea trade in 1684 and made Canton, Amoy, Foochow, and Ningpo available to foreign traders.¹¹ With the expansion of its business in China, the East India Company established a factory at Canton in 1669 and set up permanent staff in 1715 so as to trade with China regularly.¹² In order to strength-

⁸ Fairbank, op. cit., p.46.

⁹ Ibid., p.48.

¹⁰ Ibid.

¹¹ Ibid.

¹² Horsea Ballou Morse, The International Relations of the

en control over foreign traders, the Chinese authorities discouraged foreigners to trade with the northern ports by levying heavier customs taxes. As a result of the Flint Incident in 1759,¹³ in 1759 the Chinese Emperor Kien-lung published an edict that strictly confined the trade between Chinese and Europeans to Canton only.¹⁴ The new trade policy was very crucial because it gradually developed into a Chinese form of international relations. Since China had no official connections except trading activities with European countries between 1759 and 1842, the so-called "Canton System of Trade" was actually China's foreign relations with European powers.

The Canton System of Trade

Under the Canton System of Trade, the important government agents of the imperial court were the governor-general, the governor, the Hoppo, and the hong merchants. The governor-general or the viceroy was the highest authority of

Chinese Empire, the Period of Conflict: 1834-1860 (London: Longmans, 1910), p.53.

¹³ James Flint, a British subject who defied the practice of not trading at the north, visited a northern port of Ningpo. When refused he turned to another northern port Tientsin and filed a complaint against the corruption and irregular exactions at Canton. The event ended with the dismissal of the Hoppo of Canton and a three year imprisonment for Flint. For details see Eames, op. cit., pp.84-89.

¹⁴ Ibid., pp.84-86.

Liang-Kwang (Kwangtung and Kwangsi provinces). The governor was the chief executive of the Kwangtung Province. The Hoppo or the Superintendent of Maritime Customs, representing the Imperial Household Department, was in charge of collecting the duties independently on the foreign trade of Canton, and remitting them to the Board of Revenue at the capital.¹⁵ An essential part of the system was the hong. The hong was licensed by the court to be the official agency of foreign trade. Proprietors of the hong were known as the hong merchants. According to Fairbank, from 1760 through 1834 the hong merchants assumed more and more duties.

They not only settled prices, sold goods, guaranteed duties, restrained the foreigners, negotiated with them, controlled smuggling, and leased the factories to them; they also had to manage all the aspects of a banking business, act as interpreting agencies, support the militia and educational institutions, and make all manner of presents and contributions to the authorities far and near.¹⁶

The steady increase of their functions "eventually became almost as much political as commercial."¹⁷ The hong merchants organized into a merchant guild called the Cohong. The Cohong monopolized the Canton trade, "thus providing a broader and more continuous base for monopoly regulation."¹⁸

¹⁵ Fairbank, op. cit., p.49.

¹⁶ Ibid., p.51.

¹⁷ Ibid., p.50.

¹⁸ Ibid., p.51.

The Canton trade or the Sino-European relations, was based on the concept of the traditional Chinese tributary system:

This system rested on the assumption of a historical structure of foreign relations with China at both the top and center. Relationships were based on feudal principles of investiture and loyalty, with China serving as the lord and other states as vassals.¹⁹

Thus China did not recognize any other states as her equals. Before the Treaty of Nanking (1842), foreign traders in Canton areas could communicate with the "provincial or local authorities only through the hong merchants" and "only in the form of a petition (ping) symbolizing inequality."²⁰ In addition, the Chinese authority seemed never to acknowledge the fiscal importance of the growing foreign trade. Accordingly,

The formal policy of the government remained anti-commercial, in keeping with the traditional idea that foreign trade was, at best, a boon granted to barbarians and, at worst, a channel through which the latter would spy out the strength and weakness of Chinese power.²¹

Under such an unbalanced relationship together with "a comprehensive series of restrictions" imposed upon the western traders, the foreigners found it "vexing and humiliat-

¹⁹ Richard J. Smith, China's Cultural Heritage: the Ching Dynasty, 1664-1912 (Boulder, CO: Westview Press, 1983), p.106.

²⁰ Masataka Banno, China and the West 1858-1861: the Origin of the Tsungli Yamen, second printing (Cambridge, MA: Harvard University Press, 1973), p.2.

²¹ Fairbank, op. cit., p.52.

ing":

The Chinese restricted residence in the factories at Canton to males and for the duration of the trading season only. The Europeans normally rejoined their families at Macao in the off-trading season during the summer months . . . Entry into the walled city of Canton was forbidden and residence was restricted to the factory area except for occasional supervised visits to the fati or flower gardens across the river. The possession of firearms, the employment of Chinese servants, the use of sedan chairs, and the learning of the Chinese language were all banned. Communication with Chinese officials was allowed only through the medium of the Co-hong, and then only in the form of a petition, normally used in China in addressing a person of superior status. This Chinese assumption of superiority was a source of constant irritation. The port charges and ship measurement fees were not publicly promulgated and were arbitrarily varied so that the merchants were unable to calculate their costs. In the fixing of commodity prices the foreign merchants were largely in the hands of the Co-hong because of its monopoly.²²

However, it is interesting to note that despite these inconvenient and irksome conditions, "from 1760 to 1834, European trade with China fitted well into the Chinese system of control and organization. The traditional sinocentric order contained the outposts of Europe's developing capitalist world system."²³ Mancall asserts that it was "English behavior and interests {which} reinforced the Sino-Western institutional symbiosis at Canton, particularly in the early years of commerce." He explains further:

²² G. B. Endacott, Government and People in Hong Kong: 1841-1962, a Constitutional History (Hong Kong: Hong Kong University Press, 1964), pp.7, 8.

²³ Mancall, op. cit., p.92.

The British East India Company functioned as a merchant enterprise there and carried out its activities without raising the question of official contact between Peking and London on a basis of equality. That issue would have brought Western international diplomatic practice and the imperial tribute system into sharp conflict; by avoiding the issue, the English fitted into the tribute system and helped to perpetuate it. Commercially, too, the East India Company found the Canton system advantageous. As the trade increasingly concentrated on tea, the company established a monopoly over export to England. The high prices it charged, together with the taxes the British government collected (often approaching one hundred percent of value), encouraged the growth of smuggling from the continent, but the British company gradually eliminated competition from rival European East India companies and as it did so, found the monopolistic Canton system more and more to its liking.²⁴

The Macartney and the Amherst Missions

Since a formal expression of the general dissatisfaction with the unbalanced Canton system would jeopardize the existing trade relations with China, the East India Company preferred to maintain the status quo. The British Government also was content so long as the East India Company thought the system suitable. However, when Britain "had arrived at the highest degree of eminence in Europe and was conscious of the power to advance still further," the British Government began to feel unsatisfactory with its relations with China.²⁵ Thus London decided to send an official mission to

²⁴ Ibid.

²⁵ Farnes, op. cit., p. 117.

negotiate with Peking to normalize the Anglo-Chinese relations by sending a permanent representative to China to take care of Britain's trade there. The first attempt was made in 1787 when Colonel Charles Cathcart was dispatched as a special envoy to China. Cathcart's mission became abortive when he died on his journey. In 1793 another ambassador was sent for the same purpose. Lord Macartney was well received by the Chinese, but he refused to perform the ritual of kowtow--crawling in on all fours and then three kneelings and nine prostrations, to the Chinese Emperor. As a result, he failed to achieve the mission and "the only permanent effect" of his visit left upon the Chinese was that "England was promptly enrolled on the list of tribute-bearing nations."²⁶ In response to the British proposal, the Chinese asserted that "this is not in harmony with the state system of our dynasty and will definitely not be permitted."²⁷ Thus "the Canton system continued unchanged because both the Chinese system and the company's interests were best served by a stable relationship."²⁸

Macartney's mission also demonstrated China's ignorance of the West and her self-sufficient attitude as reflected in an "edict" of emperor Chien-lung to King George III in 1793

²⁶ Ibid., p.127.

²⁷ Quote from Emperor Chien-lung's edict to King George III in 1793. See Ssu-Yu Teng et al., China's Response to the West, a Documentary Survey 1839-1923 (New York: Atheneum, 1966), p.19.

²⁸ Mancall, op. cit., p.93.

as a result of Macartney's visit to China:

The Celestial Court has pacified and possessed the territory within the four seas . . . attaching no value to strange jewels and precious objects. The various articles presented by you, O King, this time are accepted by my special order . . . in consideration of the offerings having come from a long distance with sincere good wishes. As a matter of fact, the virtue and prestige of the Celestial Dynasty having spread far and wide, the kings of the myriad nations come by land and sea with all sorts of precious things. Consequently there is nothing we lack . . . We have never set much store on strange or ingenious objects, nor do we need any more of your country's manufactures²⁹

No wonder China was unwilling to improve its trade relations with the Western countries until it was forced to do so by foreign gunboats.

Since the Canton Trade System did cause so much inconvenience to foreign traders, the British merchants regularly filed their complaints to their home government. Thus Britain sent another delegation to China in an attempt to establish proper diplomatic relations between the two countries in 1816. The mission led by Amherst did receive permission to proceed to Peking. However, "a comedy of errors then ensued, involving both the question of the kowtow and schemes of face-saving officials."³⁰ Finally, instead of meeting with the emperor, the mission was expelled from Peking by the emperor's order. Now that "diplomacy had failed in breaking the barrier to trade . . . it remained for economic

²⁹ Teng et al., op, cit.

³⁰ Witold Podzinski, A History of China, Volume I (New York: Pergnan Press, 1979), p.249.

and military forces to succeed."³¹

The Napier Event

By the nineteenth century, commercial capitalism had gradually gained momentum in the West. It called for free trade and commercial reforms. Its defenders also applied their ideas to international trade. They demanded reforms in foreign commerce and the end of all restrictions on free trade abroad. "The new ideology grew in strength as it acquired the status of a science, economics, and as its advocates increased their political power inside England."³² One important result of the free trade movement was the termination of trade monopoly. The East India Company was deprived of its monopoly on trade with India in 1813 and its China trade in 1834. After the China trade had been opened to all British subjects, the government appointed an official Chief Superintendent of Trade to take care of its traders in China. Encouraged by the abolition of trade monopoly at home, the British merchants then expected a favorable change in China. "They wanted to open the whole of China to trade, primarily to make their fortunes in the shortest time, and were not unnaturally impatient when the Chinese showed lit-

³¹ Fairbank, op. cit., p.59.

³² Mancall, op. cit., p.98.

the appreciation of the blessings of unrestricted trade."³³

As the first chief superintendent, Lord William Napier "was instructed that every effort was to be made to conform to all Chinese regulations and to consider all Chinese prejudices, and at the same time was forbidden to call in the aid of the armed forces of the crown."³⁴ However, contrary to the instruction, Napier "was required to adopt a course which would convert him from a mere superintendent of trade . . . into a royal envoy, and would break every Chinese regulation and offend every Chinese prejudice."³⁵ He proceeded directly to Canton and notified the viceroy of his arrival by letter in 1834. Being offended by Napier's defiance against the existing regulations of communication, the Chinese refused to deal with him and asked him to leave Canton. Napier ordered two warships to Canton to demonstrate his determination to defend the British dignity. The Chinese then suspended trade and surrounded the factory. Napier was still firm and tried to intimidate China by requesting reinforcements from India. For fear of further change to trade relations, British private traders and the Chinese hong merchants requested that the trade be reopened. The viceroy announced that the trade ban would be lifted if Napier would leave Canton. Frustrated by the Chinese reaction, along with

³³ G. B. Endacott, A History of Hong Kong (London: Oxford University Press, 1953), p.7.

³⁴ Morse, op. cit., p.121.

³⁵ Ibid.

a shortage of provisions and a fever, Napier became so ill and weak that he finally retreated to Macao where he soon died of illness.³⁶ Trade was reopened shortly.

After the Napier debacle, the British traders in China made a petition to their home government. Their petition was summarized by Endacott:

. . . that the most dangerous course was that of quiet submission to insult, and that if Napier had been given the requisite powers backed by force 'the present degraded and insecure' position would have been avoided. The restrictions on the trade were condemned on the ground that they prevented 'almost entirely that interchange of thought and those kind offices of humanity which the Almighty has vouchsafed to his creatures as their birth-right.' . . . that a plenipotentiary should be sent out to China armed with adequate power and backed by the necessary force, to demand reparation for the insult to the British representative and compensation to the merchants for loss of trade, to negotiate the removal of trade restrictions and 'the arbitrary and irregular exactions to which it is exposed,' and to challenge 'the arrogant assumption of supremacy' claimed by the Chinese.³⁷

Despite such a petition, the British officials continued to take the "silent and quiescent policy," as explained by Morse:

In the face of the Chinese they were powerless to demand redress of indignities or reparation for injuries, to institute any negotiations or enforce

³⁶ For more details of Napier's encounter with the Chinese see Peter Ward Fay, The Opium War, 1840-1842 (Chapel Hill, NC: The University of North Carolina Press, 1975), pp.70-79.

³⁷ Endacott, A History of Hong Kong, p.8.

an opening for the exchange of communications, or to carry a complaint to the government at Peking.³⁸

But after Captain Charles Elliot took the office of chief superintendent in 1836, "he definitely abandoned the quiescent policy,"³⁹ and a more resolute British position was beginning to take shape. The key issue involved in this junction was the opium trade (actually opium smuggling).

The Issue of Opium

Opium was used in China for the purpose of medical treatment when it was first introduced into China early at the Tang Dynasty (618-908). The practice of smoking opium for pleasure began to spread in the seventeenth century. With the increase of smokers, so increased the demand and supply. As opium smoking was hazardous to health and harmful to the country, Emperor Yung-cheng forbade the "domestic sale and consumption" of opium in 1729 and Emperor Chia-ching prohibited its "importation and domestic cultivation" in 1796.⁴⁰ At that time, the use of opium had become so common a practice that both edicts were unable to deter its spread effectively.

³⁸ Morse, op. cit., pp.151,152.

³⁹ Ibid., p.155.

⁴⁰ Hsin-pao Chang, Commissioner Lin and the Opium War (Cambridge, MA: Harvard University Press, 1964), p.17.

Opium smuggling chiefly came from India and "the opium trade fell predominantly into British hands."⁴¹ In the late eighteenth century, "British exports of Indian opium to China amounted to approximately 133,000 pounds per annum, but by 1838 forty times this quantity was being imported yearly."⁴² As Fairbank observes, the increase of the importation of opium was due to the termination of the East India Company's monopoly of China trade in 1834.⁴³ The termination of the monopoly developed with a change of political sentiment in Great Britain at this time. As a result, many new trading companies appeared as competition for trade in China. As private merchants joined in the competition, opium price declined sharply. For example, "Patna and Benares fell from a high of \$2,000 a chest in 1822 to \$600 or \$700 ten years later."⁴⁴ In order to maintain revenue, trade volume had to be increased. Consequently, the Company found that it was "selling more chests at lower prices per chest to get the same return."⁴⁵

The inflow of opium was a terrible blow to China's economy.

⁴¹ Endacott, A History of Hong Kong, p. 10.

⁴² Mancall, op. cit., p. 96.

⁴³ Fairbank, op. cit., p. 65.

⁴⁴ Fay, op. cit., p. 59.

⁴⁵ Fairbank, op. cit., p. 65.

It was opium that furnished the Factory with the silver it needed to buy teas. By 1830 enough opium was entering China so that it could have covered, by itself and with a little to spare, the full \$9 million that teas cost the Factory. Because the Factory, however, still paid for half its teas out of the proceeds of the woollens, raw cotton, and whatnot that it reluctantly continued to sell, the silver actually remaining after the opium had been sold and the teas bought was far from a little. It was a lot. It came to several million dollars a year. No longer did the foreigners bring silver to China, they took it away.⁴⁶

The situation was better reflected by two trade statistics. Between 1801 and 1810, more than 26 million taels of silver flowed into China, however, there was an outflow of some 10 million taels of silver from China between 1831 and 1833.⁴⁷

Since opium was a contraband, "success at opium traffic encouraged the private merchants to practice evasions in the legitimate trade" hence "smuggling in legitimate articles grew up right alongside smuggling in the forbidden drug."⁴⁸ Consequently, as Chang observes, the influx of opium into China had "far-reaching repercussions."

It mobilized a large section of population into active participation in law defying pursuits . . . Economically . . . the drain of silver specie . . . commerce and finance in China were seriously handicapped. Furthermore, it not only contributed to the corruption of local governments and police forces, but also sapped the energy of the army and made a useful and active life impossible . . . in all occupations. More and more people were being drawn away from normal, socially

⁴⁶ Fay, op. cit., p.55.

⁴⁷ Chang, op. cit., p.41.

⁴⁸ Fay, op. cit., pp.55, 56.

productive careers.⁴⁹

Concerned over the grave situation, the Chinese authority began to take drastic measures to tackle the problem including death penalty for Chinese opium dealers and crackdowns on foreign opium traders. And it was the opium issue that brought about military conflicts between China and Britain and thus began a new era of the Sino-British relations.

The Opium War

By the end of 1837, officials in Canton area were able to check the flow of opium. Thus "very little opium could be landed anywhere in the vicinity of Canton."⁵⁰ Crackdowns continued by seizure of opium and execution of Chinese dealers in front of foreign factories, and sometimes the suspension of foreign trade. Smuggling continued, and by 1838 "not edicts or squeeze, not pirates or war junks (or conscience either, it might be added) could deter or more than temporarily interrupt the flow of foreign mud."⁵¹ China's determination to crackdown on the opium use and trade was strengthened by the appointment on December 31, 1838 of Lin Tse-hsu, a strong advocate of opium termination, as the imperial commissioner to Canton to cope with the problem.

⁴⁹ Chang, op. cit., p.32.

⁵⁰ Fay, op. cit., p.120.

⁵¹ Ibid., p.124.

Soon after he had settled down at Canton, Lin investigated and punished corrupt officials that had connection with opium smuggling. Meanwhile, he also "ordered all citizens to submit their opium and pipes within a two-month period."⁵² Severe punishment was imposed upon those citizens who violated his edicts of opium termination. To the foreign traders, he appealed on natural law and moral grounds that they not pursue profit by engaging in the opium business. He also requested that they abide by Chinese laws.⁵³ Then "he demanded that all opium held by them should be surrendered and as a condition of trading at Canton, all masters of incoming ships should sign a bond agreeing to the death penalty if they carried opium."⁵⁴ Only a token response came from the foreign traders. Lin reacted by suspending the trade, withdrawing all Chinese servants from the factories, confining all foreigners in the factories, and sending guards to watch the British factory. Later they presented a petition and "pledged themselves not to deal in the drug" but argued that they cannot control the whole trade and "requested that a final settlement might be arranged through the representatives of their respective nations."⁵⁵ Finally, Captain Elliot, the British chief superintendent of trade in Canton, or-

⁵² Chang, op. cit., p.129.

⁵³ Ibid., pp.134-139.

⁵⁴ Endacott, Government and People in Hong Kong, p.13.

⁵⁵ Eames, op. cit., p.352.

dered that all British merchants turn all of their opium in and promised that the British government would pay for it. As the opium delivery continued, the Chinese gradually relaxed the restraints on foreigners and finally reopened the trade. Lin confiscated more than twenty thousand chests of opium which were destroyed.

The confinement of the foreign traders involved "a dispute over legal institutions," as observed by an historian:

British ideas of the impersonality and supremacy of the established orders, their view of evidence and of legal responsibility, came into direct conflict with the Chinese view that the emperor's administration should operate on an ethical basis above the mere letter of the legal recognitions. When the Chinese authorities in 1839 blockaded the British community in the Canton factories, they were merely applying their idea of collective responsibility."⁵⁶

Elliot objected to the confinement of the foreign traders in their factories and withdrew all British merchants to Macao. Now he thought "it became highly necessary to vest and leave the right of exacting effectual security, and full indemnity for every loss, directly in the Queen."⁵⁷ He asked his home government to take "prompt and vigorous proceedings" toward China to redress British traders' grievances.⁵⁸

Meanwhile, leading traders such as Alexander Matheson and William A. Jardine had intensively lobbied the British government to take strong actions against China. As a result,

⁵⁶ Fairbank, op. cit., p.74.

⁵⁷ Chang, op. cit., p.188.

⁵⁸ Ibid., p.191.

the British cabinet decided to "set England's course for war . . . without consulting Parliament."⁵⁹ The British government decided to send an expeditionary fleet to China to back these demands. The Indian government, in response to Elliot's request, dispatched two warships to China later in 1839.

After a Chinese villager at Kowloon was killed by some British seamen, the British community in Macao retreated to the island of Hong Kong in late August 1839. Hong Kong, mostly uninhabited at that time, was "superbly located for trade to Canton and along the China coast."⁶⁰ Thus before it was formally occupied by the British, "Hong Kong quickly became the chief warehouse for British commerce and the primary base for the British population." It served as "both a refuge and a base for military operations."⁶¹ In an ensuing conflict the British attacked three Chinese junks on September 4, 1839. Thus "the first shots of the approaching war had been fired."⁶² Elliot was anxious that the British actions "should not be construed as a declaration of war," and

⁵⁹ Fay, op. cit., p.194. Henry Temple Palmerston was British Foreign Minister in 1840.

⁶⁰ Mancall, op. cit., p.112.

⁶¹ Ibid.

⁶² Peter Lowe, British in the Far East: a Survey from 1819 to the Present (New York: Longman, 1981), p.13.

Lin "showed no disposition to indulge in measures of retaliation."⁶³ In November 1839, the Royal Saxon, a British cargo ship whose captain had signed a bond required by the Chinese approached to the Canton River and was fired upon by a British warship. The Chinese water forces tried to protect the Royal Saxon. Elliot described the resulting conflict at Chuan-pi as "the most serious collision which has ever taken place between Her Majesty's forces and those of this Empire."⁶⁴ The battle between British warships and Chinese junks ended quickly in favor of the British. The war shattered China's policy of self-isolation.

The British were reinforced with the arrival of Admiral Elliot (Sir George Elliot, a cousin of Captain Elliot) together with other naval vessels and British and Indian troops in June 1840.⁶⁵ Admiral Elliot and Captain Elliot were appointed plenipotentiaries. They were instructed to "blockade the Canton River, occupy the Chusan Islands . . . blockade the mouth of the Yangtze . . . and to attempt to open negotiations."⁶⁶

As the war went on, the British easily demonstrated their military strength, and the Chinese attempts at resistance were useless. The British arrived at Pei-ho on August 15

⁶³ Eames, op. cit., pp.400-401.

⁶⁴ Chang, op. cit., p.205.

⁶⁵ James Pope-Hennessy, Half-Crown Colony, a Historical Profile of Hong Kong (Boston: Little, Brown, 1969), p.28.

⁶⁶ Endacott, A History of Hong Kong, p.16.

and were received by Chishan (Kishen), the governor-general of Chihli on August 30. Chishan promised further negotiations and persuaded them to return southward. Nothing came of the negotiations and hostilities resumed. On January 7, 1841, the British took Chuan-pi and Tai-kok "in a few hours."⁶⁷ When they threatened to take the Bogue, an armistice was agreed upon and negotiations resumed. On January 20, Elliot announced the term of a tentative "Chuan-pi Convention":

Hongkong to be ceded outright; an indemnity of \$6 million to be paid over a period of six years; official intercourse between England and the empire to be direct and on the basis of equality; and trade to reopen in the river immediately after the Chinese New Year.⁶⁸

This "Convention" was never signed. The Chinese Emperor repudiated it because he felt that "the concessions demanded were too great;" Lord Palmerston was "dissatisfied at Elliot's conduct of the negotiations and regarded Hong Kong as manifestly less satisfactory than Chusan."⁶⁹ As a result, Elliot was dismissed and later Chishan was deposed and recalled to stand trial.⁷⁰

⁶⁷ Eames, op. cit., p.471.

⁶⁸ Fay, op. cit., pp.275-276.

⁶⁹ Lowe, op. cit., p.15.

⁷⁰ Captain Elliot remained in charge until he formally received the notice of dismissal in late July of 1841. Sir Henry Pottinger was appointed to replace his position.

The Cession of the Island of Hong Kong

Being unsatisfied with the draft of the "Chuan-pi Convention," the Chinese strengthened their combat-preparedness. Elliot resumed hostilities on February 15, 1841. He moved up to the Bogue and captured the forts of Tai-kok and Sha-kok, and retook Chuan-pi.⁷¹ The British continued to triumph, and by May Canton was threatened. On May 27, Elliot made immediate agreement with the Chinese officials "for the withdrawal of all Imperial troops (some 45,000) to a distance of at least sixty miles. Six million of indemnity was to be paid within a week."⁷²

Sir Henry Pottinger, the new British plenipotentiary, arrived at Macao on August 10, 1841. He "had been sent out to secure the full British demands."⁷³ His expedition to the North got underway on August 21, and quickly he took Amoy on August 26, Tinghai on October 1, Chinhai on October 10, and Ningpo on October 13. The British then began the reorganization and preparations for further operations. Being in a defensive position, the Chinese tried to strengthen their defense. In March 1842 the British campaign was renewed; the

⁷¹ Eames, op. cit., p.480.

⁷² Gerald S. Graham, The China Station, War and Diplomacy: 1830-1860 (Oxford: Clarendon, 1978), p.163.

⁷³ Endacott, A History of Hong Kong, p.19.

Woosung forts were taken on June 16, Shanghai on June 19, and Chinkiang on July 21. Seizing these areas meant control of the Yangtze River region. As a Chinese official put it: "The Yangtze River is a region like a throat, at which the whole situation of the country is determined. Now they have already cut off our salt and grain transportation and stopped the communication of merchants and travelers."⁷⁴ And by early August the British had arrived at Nanking.

Pottinger took an adamant position and refused to compromise as he prepared to attack Nanking. Having being defeated in series of military campaigns, the Chinese realized that they must negotiate and concede. On August 29, 1842, the Treaty of Nanking was formally concluded. The terms were summarized by Fay as follows:

. . . it provided that the Chinese pay an indemnity of \$21 million, six of these earmarked as compensation for the famous confiscated chests. The five ports of Canton, Amoy, Foochow, Ningpo, and Shanghai were to be open to English residence and trade. Consuls were to be permitted at these five places, the Cohong was to be abolished, and a rational schedule of customs duties arranged. Future relations between England and China were to be on a basis of perfect equality. The island of Hong Kong was to pass to Her Majesty in perpetuity. Chusan and Kulangsu were to remain in English hands until the \$21 million had been paid⁷⁵

Thus an unprecedented treaty "was imposed on China at the mouth of the cannon of the British fleet, and under the threat of an assault on the city of Nanking by British

⁷⁴ Fay, op. cit., p.355.

⁷⁵ Ibid., p.362.

troops."⁷⁶ It represented "the opening of China to Western commercial exploitation."⁷⁷

On the cession of Hong Kong, Article III of the Treaty stipulates:

. . . that British Subjects should have some Port whereat they may careen and refit their Ships, when required, and keep Stores for that purpose . . . the Emperor of China cedes to . . . the Queen of Great Britain the Island of Hong Kong to be possessed in perpetuity by Her Britannic Majesty, Her Heirs, and Successors and to be governed by such Laws and Regulations as Her Majesty the Queen of Great Britain shall see fit to direct.⁷⁸

As indicated earlier, China and Britain had never signed the "Chuan-pi Convention" of January 20, 1841, which had stipulated the cession of the island of Hong Kong. However, before that time "the harbour of Hong Kong was being used as though it already belonged to Great Britain, and it was from there that the fleets sailed north to attack Chusan Island."⁷⁹ The British simply hoisted their flag and "formally occupied" the island on January 26, 1841 without waiting for the official approval of their home government.⁸⁰ In fact London four months later disapproved the occupation by Elliot. In his instruction of May 14, 1841 to Captain Elliot, Lord Palmerston indicated that the cession of Hong Kong was

⁷⁶ Morse, op. cit., p.298.

⁷⁷ Fairbank, op. cit., p.3.

⁷⁸ Lueras et al., p.32.

⁷⁹ Fope-Hennessy, op. cit., p.29.

⁸⁰ Hong Kong 1985, a Review of 1984 (Hong Kong: Government Printer, 1985), p.293.

invalid until ratified by the Emperor of China. He said that Elliot's proclamation to annex the Island of Hong Kong forever to the British Dominions was "entirely premature."⁸¹ Nevertheless, Elliot had begun to sell plots of land in June 1841 and settlement began.⁸² The ratifications of the Treaty of Nanking were exchanged on June 26, 1843 and the Island of Hong Kong was formally declared a British colony. Sir Henry Pottinger was appointed as the first governor.

The Beginning of Foreign Dominance

On October 18, 1843, a supplementary Treaty of the Bogue was signed, which fixed the rates of customs duties, granted extraterritoriality, permitted British warships to anchor at the five ports, and gave Britain the most-favored nation treatment. After the British had successfully obtained favorable terms conceded by the Chinese, Western powers were encouraged to follow her steps. They sent out plenipotentiaries to negotiate for Chinese concessions. Farnes asserts:

Profiting by China's fear, that a refusal might entail a war with some other Western power, and by the Chinese view that all Foreign nations were on the same footing, these plenipotentiaries succeeded in procuring in some cases even slightly better terms than had been granted to Sir Henry Pottinger. Now that the pioneer work had been done, they found far less difficulty than he had experienced

⁸¹ Morse, op. cit., Appendix H, pp.647-648.

⁸² Hong Kong 1984, p.245.

in negotiating satisfactory terms.⁸³

The United States on July 3, 1844; France on October 24, 1844; Belgium on July 25, 1845; Sweden and Norway on March 20, 1847; and Russia on July 25, 1851, all successfully received some similar concessions from China.

It is important to note the impact of such extensive concessions. The most favored-nation clause permitted all Western nations to enjoy whatever rights that China might grant to any one of them. "This rule of the 'highest common denominator' made it a foregone conclusion that by mid-nineteenth century the entire coastal area of China, including her most important cities, were virtually in the hands of the West."⁸⁴ The treaty tariff let foreign goods enjoy elaborate protection and hurt China's tariff income. The extra-territoriality made foreigners in China not subject to Chinese law but under the jurisdiction of their home governments. The regular presence of foreign warships at the treaty ports allowed foreign countries to claim the right to protect their nationals and their trade by force and thus posed an immediate threat of war.⁸⁵ Accordingly,

⁸³ Eames, op. cit., p.536.

⁸⁴ John G. Stoessinger, The Might of Nations: World Politics in Our Time (New York: Random House, 1982), p.150.

⁸⁵ For example, such as observed by Eames: From the time that Captain Smith arrived (in late 1839 from India) with British man-of-war, the Chinese dared not attack the smuggling ships, which thenceforth carried on their operations with impunity. The effect of the war was as though all restrictions on importation had in fact been removed. The Chinese feared that any attempt to suppress smuggling

"China's sovereignty was little more than a fiction" by the mid-1840s.⁸⁶

The Arrow War

After the Treaty of Nanking, the British had difficulties claiming their rights as provided by the provisions, such as the entry into the city of Canton, because of the resistance of the inhabitants and the provincial authorities. Thus "the British felt compelled to continue the use of force to achieve their objectives,"⁸⁷ but "the outbreak of the Crimean War in 1854 precluded the adoption of a more vigorous policy by Britain"⁸⁸ immediately. In 1856 the British resumed another major hostility against China as a result of the *Lorcha Arrow* incident.

The *Arrow* was a Chinese *lorcha*, registered in Hong Kong and was under the command of an English captain. At the time of the conflict the vessel's license had expired. On October 8, the Chinese searched the vessel for alleged pirates on board and arrested some Chinese crew members. As Lowe observes:

might provoke a fresh conflict with some Foreign Power. See Eames, op. cit., p.565.

⁸⁶ Stoessinger, op. cit., p.150.

⁸⁷ Mancall, op. cit., p.116.

⁸⁸ Lowe, op. cit., p.36.

The British flag was not flying and was not removed by the Chinese officials, as was alleged. The Arrow was evidently engaged in piracy. The British consul at Canton was Harry Parkes. Young, ambitious, and imbued with the determination to expand British interests in China and in the Far East generally, he decided to seize the opportunity presented by the affront to British prestige in the Arrow incident and to demand an apology from the Chinese authorities. Parkes insisted on the return of the arrested seamen and was supported in the stand he had taken by Bowring.⁸⁹

After the British demands were not met, "forces were assembled, and an assault on Canton was begun; an extremely trivial incident had led to war."⁹⁰ Meanwhile, the French allied with the British on the pretext of the murder of a missionary in Kwangsi in February 1856. Thus the British and the French forces acted in concert. They were led by Lord Elgin, the British plenipotentiary, and Baron Gros, the French Emperor's special representative, respectively.

The Anglo-French forces took Canton on December 28, 1857. They captured Viceroy Yeh Ming-chen and set up a provisional government there.⁹¹ The allied forces then proceeded toward Peking in search of direct negotiations with the Chinese government. They easily captured the Taku Forts and Tientsin in April 1858 and negotiations opened in June. The British threatened to march on Peking unless the right of diplomatic representation in Peking was granted. Finally, the Treaties

⁸⁹ Ibid. Sir John Bowring was the then British superintendent of trade and governor of Hong Kong.

⁹⁰ Endacott, A History of Hong Kong, p.91.

⁹¹ Mancall, op. cit., p.117.

of Tientsin were signed with the British and French on June 26 and 27 respectively. "The most important provision of the British Treaty was that which allowed diplomatic representation in Peking."⁹² Other provisions included: (1) opening of ten new ports to trade; (2) foreign travel to all parts of the interiors; (3) the protection of foreign missionaries; (4) indemnity of 4 million taels for the British and another 2 million taels for the French; (5) the extension of the principle of extraterritoriality (permission of British jurisdiction over British subjects in China); and (6) the taxation on inland transit dues for foreign imports be limited to 2.5 per cent.

In June 1859, when the British and the French representations returned for the exchange of ratifications, they were barred from entering Taku. The Chinese had fortified the Pei-ho to deter further foreign incursions. In addition, they also had blockaded the river leading to Tientsin. The British tried to clean out the blockade but suffered severe losses as a result of Chinese attacks. The allied forces returned the next year, took Tientsin on August 25, 1860 and forced the Chinese to enter into negotiations. As a result of the kidnapping of negotiator Harry Parkes and a group of British and French officers and soldiers, the allied forces charged into Peking and the emperor fled to Jehol in Manchuria. The French army reached the emperor's summer palace

⁹² Douglas Hurd, The Arrow War, an Anglo-Chinese Confusion 1856-1860 (London: Collins, 1967), pp. 170-171.

first and "fell upon its prey."⁹³ Then came the British to "take their share."⁹⁴ Parkes and his group had been maltreated, "they had been chained or tied" and some of them were "left day and night in the open."⁹⁵ Some of them died, "died in great agony, through the infection spreading from their bound and swollen hands."⁹⁶ After the hostages were released Lord Elgin and Baron Gros demanded monetary compensation for Chinese maltreatment of the foreigners but was refused. On October 18 and 19, 1860, Elgin burned down the emperor's summer palace. "Elgin's proposal to destroy the Summer Palace was popular among the British, but was opposed by Gros and most of the French."⁹⁷ The act was later regarded as "one of peculiar cultural vandalism."⁹⁸

The Cession of the Kowloon Peninsula

Again under foreign duress of threat of war the Chinese conceded. They ratified the treaties concluded in 1858 and signed the Convention of Peking on October 24, 1860. The new convention established the rights of the British to diplo-

⁹³ Hurd, op. cit., p.227.

⁹⁴ Ibid.

⁹⁵ Ibid., pp.229-230.

⁹⁶ Ibid., p.230.

⁹⁷ Ibid., p.235.

⁹⁸ Lowe, op. cit., pp.39-40.

matic representation in the Chinese capital; increased the indemnity to 8 million taels for Britain and France each; opened Tientsin to foreign trade and residence; granted the French Catholic missionaries the right to own properties in the interior of China; and ceded the Kowloon Peninsula and Stonecutters Island to Britain.⁹⁹

The Kowloon Peninsula lies directly north of the Island of Hong Kong. The British troops had tried to secure it as a military cantonment for the defense of Hong Kong. Major General van Straubenzee, the British commander of land force in China indicated in March 1858 "that the occupation of the peninsula was absolutely essential to the security of the Island."¹⁰⁰ Early in 1860, Parkes, the British consul at Canton, informed the Viceroy that "Kowloon would probably be held in part payment of the indemnity."¹⁰¹ On March 26, 1860, Parkes secured a perpetual lease of Kowloon "from Kowloon Fort to the point opposite Stonecutters Island" from the viceroy.¹⁰² Lord Elgin was then instructed by the Foreign Office "not to lose any opportunity of acquiring Kowloon."¹⁰³ So the acquisition of Kowloon was stipulated in

⁹⁹ Michael Dillon, Dictionary of Chinese History (London: Frank Cass, 1979), pp.158-159; Endacott, A History of Hong Kong, p.93.

¹⁰⁰ Graham, op. cit., p.386.

¹⁰¹ Endacott, A History of Hong Kong, p.110.

¹⁰² Ibid.

¹⁰³ Ibid.

the Convention of Peking in 1860 and made it an outright cession. In mid-January 1861 Lord Elgin formally proclaimed the annexation of the Kowloon Peninsula to Britain and made it part of the colony of Hong Kong.

Intensification of Foreign Dominance

After 1860 Western expansions in China continued to spread. With the opening of more treaty ports, foreign trade and settlement increased. Foreign powers intensified their influence on China as they obtained more concessions. Foreign activities increased in China, as Fay describes:

By the turn of the century there was hardly a self-respecting western nation that did not move freely along China's coasts and up her rivers, that did not fly its own flag, direct its own gunboats, practice its own law, and effectively protect its own citizens on Chinese soil. The foreigners did not carve China up as they carved up Africa. They did not take her over as the English took over India and the Russians central Asia. They riddled her through and through, and in the end could live, work, travel, and proselytize in her with an absolutely colonial confidence¹⁰⁴

Thus Western powers had already made China an arena of interest competition.

By the 1890s, Japan joined the Western powers to pursue her expansion in China. Japan invaded Korea, a tributary state of China, in 1894. As a result of the Japanese attack against the Chinese reinforcements to Korea at sea, both

¹⁰⁴ Fay, op. cit., p.364.

sides declared war on August 1, 1894. After several major encounters, China suffered a total defeat both on land and at sea. On April 17, 1895, China concluded the Treaty of Shimonoseki with Japan. In addition to indemnity and many other concessions, the treaty also called for the cessions of Taiwan, the Pescadores, and the Liaotung peninsula to Japan. The Sino-Japanese war demonstrated, as Mancall puts it, that "an Asian power would enter the fray with hope for a modicum of success, provided only that it accepted the West's rules of the game."¹⁰⁵ Since the cession of Liaotung peninsula was against the Russian wish of getting a winter port from that peninsula, Russia asked France and Germany, countries that "preferred to see Russia's attention diverted from Europe,"¹⁰⁶ to venture a so-called "triple intervention." Being a newcomer in China, Japan conceded by promising to return the peninsula to China but would ask for 50 million taels in return. The three powers persuaded Japan to reduce the sum to 30 million taels. They also offered loans to China to pay the Japanese indemnity. It was the intervention and the indemnity loans that gave the Western powers better excuses to seek and obtain more advantages from China.

¹⁰⁵ Mancall, op. cit., p.158.

¹⁰⁶ Ibid.

The Chinese fiasco over the Korean issue further revealed China's weakness and incompetence and encouraged foreign powers to expand their spheres of influence. The so-called foreign "scramble for concessions" in China "was a consequence of the realization that the Empire had become a mere observer of its own fate."¹⁰⁷ Important concessions given by China such as: the German lease of Kiaochow; Russian lease of Port Arthur and Dairen; French lease of Kwangchow Bay; and the British leases of Weihaiwei and the New Territories were examples of foreign dismemberment of China. Meanwhile, China also granted spheres of influence, i.e. once China had given concessions to a certain country in a specific area she would not alienate that area to another country. As examples, Britain was strong in the Yangtze Valley, and France was dominant in the southern provinces adjacent to its new empire in Indo-China.¹⁰⁸ Thus the British lease of the New Territories was acquired at a time when "foreign activities in China consisted primarily of 'concession hunting.'"¹⁰⁹

¹⁰⁷ Ibid., p.158.

¹⁰⁸ Gilbert Rozman ed., The Modernization of China (New York: Free Press, 1981), p.38.

¹⁰⁹ Peter Wesley-Smith, The Unequal Treaty 1898-1997: China, Great Britain and Hong Kong's New Territories (Hong Kong: Oxford University Press, 1983), p.28.

The Lease of the New Territories

As early as 1894, Sir William Robinson, Governor of Hong Kong, had suggested the acquisition of additional territory for the security of Hong Kong.¹¹⁰ Robinson's proposal drew the attention of several British officials over a period of time, but did not materialize until 1898 when France had established its sphere of influence in southern China. The French lease of Kwangchow Bay, for example, was only 210 miles south-west of Hong Kong. British policy at that time was "primarily a matter of preserving her predominance in the Chinese market and framing a suitable policy to prevent, if possible, dismemberment of the Chinese empire."¹¹¹ Being challenged by a possible threat from the French, the British claimed the extension of Hong Kong's boundary.¹¹²

It was the Convention Respecting an Extension of the Hong Kong Territory that provided the lease of the New Territories to Britain for ninety-nine years. Since it was signed in Peking on June 9, 1898, it was also called the Convention of Peking. Ratifications of the convention were exchanged on August 6, 1898. The British government formally annexed

¹¹⁰ Ibid., pp.12-13.

¹¹¹ Ibid., p.22.

¹¹² Endacott, A History of Hong Kong, pp.261-262.

the lease into the colony of Hong Kong by an order in council of October 20, 1898. It was formally taken over on April 16, 1899. The lease agreement will terminate on June 30, 1997 and thus Britain "inherited a late 20th Century headache--an uncertain Hong Kong future."¹¹³

The New Territories covers 92 per cent of the total land area of the colony of Hong Kong. With the growth and development of Hong Kong over the years, it has become an integral part of the island of Hong Kong and the Kowloon Peninsula. It accommodates Hong Kong's population growth, provides "sufficient land to meet the requirements of economic growth, particularly industrial growth."¹¹⁴ In addition, "a high proportion of Hong Kong's own water resources is provided by reservoirs in the New Territories." Thus the other two areas of the colony "could not exist as a viable unit" if the leased area "were to be returned to China."¹¹⁵

Political Change in China

Being on the verge of dismemberment, China launched a reform to prevent herself from downfall in 1898. Because of the opposition from the conservative leaders, the attempted

¹¹³ Lueras et al., p.22.

¹¹⁴ D. J. Dwyer, "The Future of Hong Kong," Geographical Journal 150 (March 1984): 6.

¹¹⁵ Ibid.

reform quickly ended in failure. Now that a progressive reform was ineffectual, people began to turn to the revolutionaries. Sun Yat-sen was a Western-trained medical doctor who destined himself to become the leader of the Nationalist Revolution. He had advocated the overthrow of the Ching regime and had engineered ten unsuccessful revolutionary attempts against the Manchus since 1895. In October 1911, he finally overthrew the imperial government and established the Republic of China. Since China had been so deeply preoccupied by the authoritarian tradition, Sun had much difficulty promoting democracy. In addition, the spread of warlordism again dragged China into a state of turmoil.

Following the death of Sun in 1925, Chiang Kai-shek, Sun's disciple, became the leader of the unfulfilled Nationalist Revolution. Under Chiang, "the new Nationalist government made a determined effort to rid itself of the unequal treaties with the West."¹¹⁶ By 1933, full tariff autonomy and control over maritime customs, the salt revenue administration, and the post office had been recovered by the Nationalist government.¹¹⁷ Meanwhile, the number of foreign concessions was also reduced from thirty-three to thirteen.¹¹⁸ In order to bolster Chinese opposition to Japanese aggression, Britain suggested that she and the United States

¹¹⁶ Stoessinger, *op. cit.*, p.155.

¹¹⁷ Mancall, *op. cit.*, p.213.

¹¹⁸ *Ibid.*

relinquish their extraterritorial rights in China.¹¹⁹ This proposal was agreed upon on January 11, 1943. By 1947, the "last foreign legal vestiges in China had disappeared with the conclusion of a series of treaties between China and those countries that previously had enjoyed the privileges accorded by" the unequal treaty system.¹²⁰ On the issue of Hong Kong, especially the lease of the New Territories, the Nationalist government had expressed its intention of redemption on several occasions between 1942 and 1945. Because it "was not strong enough to press its claims and had vowed, anyway, to achieve the object of rendition {sic} by diplomatic negotiation rather than unilateral abrogation."¹²¹

As a result of civil wars between the Nationalists and the Communists, the Nationalist government withdrew to Taiwan and Mao Tse-tung, leader of the Chinese Communist Party, proclaimed the establishment of the People's Republic of China on October 1, 1949. Britain announced her recognition of the Peking regime on January 6, 1950.

¹¹⁹ Ibid., 214-215.

¹²⁰ Ibid., p.215.

¹²¹ Wesley-Smith, op. cit., pp.161-162.

The Conclusion of the Hong Kong Agreement

On the lease of the New Territories, Wesley-Smith observes that "the communist government has apparently not made any forceful representations on the subject, though it has clearly enunciated its view that Hong Kong will be recovered in due course."¹²² It asserted that all treaties dealing with Hong Kong from the past were unequal treaties, and that the issues of Hong Kong "should be settled peacefully through negotiations . . . when conditions are ripe."¹²³ With the lease of the New Territories running shorter and shorter, concern about the future of Hong Kong began to spread in the late 1970s. Since "all land leases granted in the New Territories . . . [were] not set to expire three days before the expiry of the New Territories lease in 1997," it was necessary for the British government to seek to enter negotiations with China on the future of Hong Kong so to prevent the lease issue from damaging confidence and deterring investment in Hong Kong.¹²⁴ After the British prime minister's visit to Peking, a joint statement was released on September 24, 1982. The statement indicated

¹²² Ibid., p.162.

¹²³ Ibid.

¹²⁴ "A Draft Agreement," p.2.

that both countries "agreed to enter talks through diplomatic channels following the visit with the common aim of maintaining the stability and prosperity of Hong Kong."¹²⁵

In the early stages the negotiations were deadlocked over the issue of sovereignty. The Chinese asserted that all treaties leading to the current status of Hong Kong were "null and void" because they were unequal treaties signed under the duress of foreign threats. The British indicated that all of the three treaties were "valid as international law." Later the British proposed that they would recognize China's sovereignty over Hong Kong if China would accept continued British administration. China rejected the proposal and insisted on the recovery of both sovereignty and administrative rights over Hong Kong. On April 20, 1984, British Foreign Secretary Sir Geoffrey Howe announced that "it would not be realistic to think of an agreement that provides for continued British administration after 1997."¹²⁶ Finally, an agreement was concluded on September 26, 1984.

According to the agreement, the PRC will resume the exercise of sovereignty over Hong Kong on July 1, 1997. Hong Kong will become a special administrative region (SAR) of the PRC and will enjoy a high degree of autonomy except in foreign and defense affairs. Hong Kong will have its own ex-

¹²⁵ Ibid.

¹²⁶ The Peking Informers, May 1, 1984, p.7.

ecutive, legislative, and independent judiciary power. Current laws will remain basically unchanged. The government of the Hong Kong SAR will be composed of local inhabitants. The chief executive will be appointed by Peking on the basis of elections or consultations. Principal officials will be nominated by the chief executive and appointed by Peking. Hong Kong will maintain its social and economic systems and life-style for fifty years after July 1, 1997. Hong Kong will continue to decide its own economic, financial, and trade policies. Hong Kong will preserve its current legal system and continue to enjoy existing rights and freedoms. And a Sino-British Joint Liaison Group will be set up to ensure a smooth transfer of power.¹²⁷

The agreement was formally signed on December 19, 1984 and ratified by both governments and entered into force on May 27, 1985 after the exchange of instruments of ratification. Hong Kong has entered into the period of transition as the Joint Liaison Group becomes active and preparations for the takeover progress.

¹²⁷ This is a brief summary of the Joint Declaration, see "A Draft Agreement," pp.11-13.

The Power Connection

The history of British experience with Imperial China reveals that the relations between the two countries have been governed by power. When the British were "unsupported by military forces" but were "anxious to achieve trade benefits," they "yielded grudgingly to the Chinese practice,"¹²⁸ such as their tolerance of the Canton System of Trade. However, when Britain had "vastly increased surplus energies resulting from the Industrial Revolution," the British "resolved to alter this situation by force,"¹²⁹ such as their presence in China after 1839 and all through the remaining years of the Ching dynasty. They acquired almost whatever they wanted from China. The cessions of the island of Hong Kong and the Kowloon Peninsula and the lease of the New Territories were only part of this result.

The British encounter with Communist China has also been a demonstration of power relations. At a time when the British Empire had declined to a regional power and her attempt to continue a presence in the New Territories needed a new legal basis, Britain had to seek a feasible solution. In ad-

¹²⁸ Immanuel C. Y. Hsu, China's Entrance into the Family of Nations: the Diplomatic Phase 1858-1880 (Cambridge, MA: Harvard University Press, 1960), p.5.

¹²⁹ Ibid.

dition, based on the consideration of the overall situations the PRC was in a good position to claim its sovereignty over Hong Kong. Thus the Sino-British negotiations on the issue of Hong Kong involved no British threat to China whatsoever and were conducted on an equal footing. In this study we will discuss the power factors relevant to the Sino-British negotiations. This brief historical review of the Sino-British relations might help us better understand how the issue of Hong Kong occurred, developed, and was solved.

CHAPTER III

THE NEGOTIATIONS

This chapter is about the bargaining chips of the negotiating parties, i.e. what were the strengths and weaknesses of the PRC and the UK respectively. For the convenience of this study, this topic will be subdivided into several aspects: symbolic issues, economic considerations, diplomatic considerations, and the Hong Kong element. The section on symbolic issues will deal with the non-material resources that the negotiating parties used in pursuit of their policy goals. In this case study, we will discuss why sovereignty, national prestige, and human rights could be a strength or a weakness for the individual party. The section on economic considerations is concerned with the importance of Hong Kong to each party. The section on diplomatic considerations discusses how diplomatic factors affected the negotiating parties' bargaining stances. The section on the Hong Kong element reflects the role and the impact of the community of Hong Kong in the talks. Before we take up these issues, a brief introduction to the background is in order.

The Setting

There were two important problems that existed before the PRC and the UK started negotiating the issue of Hong Kong: the argument over the status of Hong Kong (the whole area) and the due date of the lease of the New Territories. The conflicting positions on the status of Hong Kong made it a political issue; some sort of Sino-British dispute could have occurred any time which would affect the stability and the prosperity of Hong Kong. The ever-approaching due date of the New Territories lease made the Hong Kong business community anxious about their investments. Because of the uncertainty about the future of Hong Kong, there was a need for negotiations to solve the two major problems.

The PRC's Position on the Status of Hong Kong

The PRC asserted that Hong Kong is Chinese territory; that it was occupied by the British under unequal treaties,¹

¹ The concept of unequal treaties, according to a Western scholar, is "the doctrine of international law in Communist states, invoked by their representatives in organs of the United Nations, holds treaties not concluded on the basis of the sovereign equality of the parties to be invalid." He adds that though "'Western' jurists oppose the doctrine on the ground that it is too vague, the principle is regarded as entirely just by newly independent states, and it is no longer confined to the thinking of jurists

which it would not recognize; hence no treaties concerning Hong Kong were legally binding.

During the 1967 Hong Kong riot, some Chinese from Kwangtung Province crossed the border into the New Territories to demonstrate their support for the Chinese in Hong Kong. The British mass media accused the Chinese of encroaching upon "British territory." In response, a Communist Chinese commentator retorted that the whole area of Hong Kong "is an inalienable part of Chinese territory" and "must return to the domain of the motherland."²

from Communist states." See Ian Brownlie, Principles of Public International Law (New York: Oxford University Press, 1979), pp.612-613. Another legal scholar defines an unequal treaty to be "a treaty of unequal and nonreciprocal nature contrary to the principles of equality of states and of reciprocity in the making, obligations, rights and performance of the treaty." See Lung-Fong Chen, State Succession Relating to Unequal Treaties (Hamden, CT: Archon, 1974), p.34. According to Hungdah Chiu, "Both the Nationalist and the Communist Chinese denounce those treaties imposed upon China in the nineteenth and the twentieth centuries as unequal treaties," however, the Nationalist usually argued that "China's unequal treaties should be revised or abrogated in accordance with the principle of rebus sic stantibus;" the Communist "consider this concept an important rule of the law of treaties," and "an unequal treaty is invalid in international law." See Hungdah Chiu, "Comparison of the Nationalist and Communist Chinese Views of Unequal Treaties," in China's Practice of International Law: Some Case Studies, ed: Jerome Alan Cohen (Cambridge, MA: Harvard University Press, 1972), p.267. For further discussions on unequal treaties refer Chen's book (pp.28-52) and Chiu's article (pp.239-267).

² Jerome Alan Cohen and Hungdah Chiu, People's China and International Law, A Documentary Study, volume I (Princeton, NJ: Princeton University Press, 1974), pp.382-383. Part of the commentary says: "Hong Kong has been Chinese territory since ancient times . . . British imperialism came to China by pirate ships, provoked the criminal 'opium war,' massacred numerous Chinese people, and occupied the Chi-

Since the PRC considers unequal treaties to be "invalid in international law," it has insisted that all three treaties concerning Hong Kong were not legally binding. As a PRC foreign ministry spokesman asserted on September 30, 1982:

Xianggang is part of Chinese territory. The treaties concerning the Xianggang area signed between the British Government and the government of the Qing Dynasty of China in the past are unequal treaties which have never been accepted by the Chinese people. The consistent position of the Government of the People's Republic of China has been that China is not bound by these unequal treaties"³

On the settlement of the issue of Hong Kong, the PRC reiterated that it will seek a peaceful solution when it feels free to do so.⁴ On March 8, 1963, an editorial in the People's Daily listed all three treaties relating to Hong Kong in the category of unequal treaties and said: "which are legacy from the past, we have always held that, when condi-

nese territory of Hong Kong . . . the peasants of Kwangtung Province living near the 'New Territories' have for generations tilled the land there . . . They have not taken a step out of their own country . . . We must tell the British imperialists that not only have the Chinese peasants the right to till the land in the 'New Territories,' but the whole of Hong Kong must return to the domain of the motherland . . . Hong Kong is an inalienable part of Chinese territory"

³ "Foreign Ministry Spokesman on Xianggang Issue," Beijing Review, October 11, 1982, p.11. "Xianggang" is the Chinese pronunciation of "Hong Kong."

⁴ For example, in his March 10, 1972 letter to the chairman of the United Nations General Assembly's Special Committee on Colonialism, Huang Hua, PRC's permanent representative to the UN also argued: "With regard to the question of Hong Kong and Macao, the Chinese government has consistently held that they should be settled in an appropriate way when conditions are ripe" Cohen and Chiu, op. cit., p.384.

tions are ripe, they should be settled peacefully through negotiations and that, pending a settlement, the status quo should be maintained."⁵

Hence though officially the PRC would not recognize all of the Hong Kong treaties and it would leave them pending until any settlement is reached, nevertheless, in practice it has given at least a tacit recognition to these treaties' validity. As Dicks observes:

. . . China has not up to now made any demand, formal or otherwise, for the reincorporation of any part of the territory of Hong Kong into the territory under the actual administration of the People's Republic: on the contrary, it is clear that she remains as she has been for the past 33 years, content to leave Hong Kong in the possession of the United Kingdom until "the time is ripe." There is thus no immediate dispute as to possession, far less than threat, veiled or otherwise, of the use of force.⁶

Accordingly, Dicks describes the PRC's attitude towards the exercise of British plenary power over Hong Kong as one of acquiescence.⁷

⁵ Ibid., p.380.

⁶ Anthony Dicks, "Treaty, Grant, Usage or Sufferance? Some Legal Aspects of the Status of Hong Kong," China Quarterly 95 (September 1983): 428.

⁷ Ibid., p.439.

The UK's Position on the Status of Hong Kong

The British government maintained that the existing treaties gave them a claim to sovereignty over the colony of Hong Kong.⁸ This position was reflected in Prime Minister Thatcher's argument at the September 27, 1982 news conference held in Hong Kong:

Britain has three treaties. Two of those refers to sovereignty in perpetuity, one of them refers to a lease which ends in in 1997 . . . I believe they are valid as international law, and if countries try to abrogate treaties like that, then it is very serious indeed.⁹

Since Britain tends to follow a legal approach to justify her presence in Hong Kong, it considers that treaties made with Imperial China during the nineteenth century regarding the cessions of the island of Hong Kong and the Kowloon Peninsula along with the lease of the New Territories were legally-binding international agreements.

Though the PRC bitterly condemned this position, it had, at least, tacitly recognized the British administration of Hong Kong since 1949. According to Dicks:

⁸ The British colony of Hong Kong includes three areas, all of them were ceded or leased from China. Under the 1842 Treaty of Nanking, the island of Hong Kong was ceded in perpetuity; under the 1860 Convention of Peking, the Kowloon Peninsula and the Stonecutters Islands were ceded in perpetuity; and under the 1898 Second Convention of Peking, the New Territories was leased for 99 years.

⁹ "The Countdown Begins," Asiaweek, October 8, 1982, p.27.

China can hardly deny that Britain actually exercises in Hong Kong a plenitude of powers which, if not properly called effective sovereignty, very closely resembles the concept. Certainly in almost all practical respects, it is Britain which exercises those powers that are the principal attributes of territorial sovereignty in Hong Kong, since from the viewpoint both of Britain herself and of many other states, it is on behalf of the United Kingdom that the government on the territory is carried on.¹⁰

He cites several examples to demonstrate the actual situation: that it has been the British government that receives foreign consular representatives in Hong Kong; that it has been the practice that the Chinese ships fly the British flag at the masthead while in Hong Kong; that all Chinese-run corporations in Hong Kong (including the PRC's official bank, the Bank of China) are registered in accordance with the Hong Kong Companies Ordinance; and that in recent years visiting governors from Hong Kong have been received by the Chinese government in their official capacity.¹¹ No wonder Thatcher would assert: "We stick by our treaties, unless we agree on something else. At the moment, we stick by our treaties."¹²

Thus we see there are conflicting official statements of the status of Hong Kong between the PRC and the UK. We also observe that there was a tacit agreement that left Hong Kong under British administration. The problem was, though, that

¹⁰ Dicks, op. cit., p.437.

¹¹ Ibid., pp.439-440.

¹² "Countdown to a Crisis: Britain Dickers with China over the Future of Hong Kong," Time, October 11, 1982, p.32.

such tacit agreement left Hong Kong alive temporarily, the issue of the future of Hong Kong remained pending. Any change could happen if one side failed to maintain the balance of the situation.

The Question of the New Territories Lease

The second of the two major problems that we have identified is the due date of the lease of the New Territories. The New Territories comprises the largest area within the British colony of Hong Kong. It was leased to Britain for 99 years in 1898. The lease will be due in 1997. The PRC's policy toward the leased area has caused much concern in the Hong Kong community, especially people in business. This is the second topic of this section and will be reviewed from three aspects.

Given the assumption that the PRC would give its tacit consent to the validity of the lease of the New Territories, the UK must work out a new arrangement for the leased area with the PRC before 1997 if the British expect to continue their presence over there. Hence legally speaking 1997 is crucial to Britain. As Wesley-Smith explains:

HM ceases to possess any rights over the leasehold from the moment 1 July of that year begins. The British crown cannot ignore the terminal date, for the convention is valid and its terms must be obeyed, and those terms are incorporated (by reference) into the New Territories order in council which confirms British jurisdiction over the

area.¹³

Economically and practically, the importance of the New Territories cannot be over emphasized. It covers some 92 per cent of the total area of Hong Kong. The Annual Departmental Report of the Commissioner of Labour indicated in 1970 that "the New Territories is an integral part of Hong Kong and must provide most of the industrial sites required by industry in the future."¹⁴ Thus Miners argues that if the New Territories reverts to the PRC, the island of Hong Kong and the Kowloon Peninsula will become unviable.

The remainder of the colony consisting of the island of Hong Kong and most of the Kowloon Peninsula will then be dependent on China for its only airport, for practically the whole of its water supply and for most of its electricity generating plant, and it will lose the greater part of the manufacturing capacity which enables its people to enjoy their present high standard of living . . . it is difficult to disagree with the reported statement of the Governor of Hong Kong, "Without the New Territories Kowloon and Hong Kong might

¹³ Peter Wesley-Smith, Unequal Treaty 1898-1997: China, Great Britain and Hong Kong's New Territories (Hong Kong: Oxford University Press, 1983), p.x. "HM" represents "Her Majesty."

¹⁴ See P. B. Harris, "The International Future of HongKong," International Affairs 48 (January 1972): 62. Harris cited Annual Departmental Report 1969-70, section 190, p.55. Wilkinson also has a good observation on the situation, he says: "Since 1945 the economic life of Hong Kong Island and Kowloon has become so thoroughly intertwined with the New Territories that it would be a practical impossibility for the older parts of the colony to survive in isolation from the New Territories . . . In order to house this huge influx, and to provide sufficient water and power supplies, food and space for factories to employ the population, the New Territories are absolutely vital to the colony's survival." See Paul Wilkinson, "Hong Kong: a One-way Ticket to an Unknown Destination," Government and Opposition 18 (Autumn 1983): 442-443.

just as well cease to exist because they will be unviable without the New Territories."¹⁵

Thus though the expiration date of the New Territories lease does not directly affect the island of Hong Kong and the Kowloon Peninsula, indirectly they will be profoundly affected because of economical and practical reasons.

Politically, since the PRC did not recognize all treaties relating to Hong Kong, then the "ripe" hour for territorial recovery of the colony could be any time before or after the year 1997. Thus the PRC can keep all its options open.¹⁶ As a scholar puts it: "In any event, the Chinese are not bound to act or commit themselves in any way, and, if they wished to make their point on the unequal treaties, they could re-

¹⁵ Norman Miners, "Can the Colony of Hong Kong Survive 1997?" Asia Pacific Community 6 (Fall 1979): 100.

¹⁶ Wesley-Smith has a good explanation on this issue, he says: "If the Convention of Peking 1898 is void ab initio, 1997 is irrelevant; it cannot be the terminal date of a non-existent agreement. On 1 July 1997 China could carry on business as usual, continuing to manage her New Territories investments within the capitalist framework of Hong Kong and continuing to respect the colony's laws and legal system as applying in the 'leasehold.'"

"If, on the other hand, the convention is voidable, it will lapse in 1997 and China must treat the previously-leased territory as having returned to full Chinese sovereignty. Any remaining British presence could then be considered either unacceptable or tolerable. If unacceptable, Britain would have to go: HMG could scarcely contemplate retaining territory against the will of the residual sovereign after the treaty has expired. If tolerable, the de facto status quo could be permitted by China to continue (the New Territories in fact being treated by Britain as part of Hong Kong) although its juridical basis would have changed from voidable treaty to mere practice with the sovereign's acquiescence." Wesley-Smith, op. cit., p.189.

take the New Territories in 1996 or at any date before or after."¹⁷ Hence because the PRC does not recognize the Hong Kong treaties, it could at any moment abrogate its working or tacit agreement with the UK and this would have an immediate disastrous effect on the whole area of Hong Kong.

The Need for a Solution

As a business-oriented world-wide free trading port, Hong Kong requires a secure and stable environment to maintain its prosperity. The problems of the status of Hong Kong and the ever-approaching due date of the New Territories lease presented to Hong Kong with an uncertain future if they are not solved well in advance. Uncertainty about the future hurt the confidence of business people and could ruin the prosperity of the territory. As Miners observes:

. . . unless China gives Hong Kong's capitalists some guarantee about the future of the colony before the end of the 1980's, banks will cease to advance money for commercial development in the New Territories, businessmen will curtail their investments and will even start to dismantle their plant and equipment and move elsewhere.¹⁸

In addition, since all land leases granted in the New Territories are set to expire three days before June 30, 1997,

¹⁷ Jeanette Greenfield, "The Hong Kong Solution: 1997(?)" Australian Outlook 37 (April 1983): 31.

¹⁸ Miners, op. cit., pp.101-102.

the pressure for "security of tenure"¹⁹ pushed the British government to seek a solution.

Hence Britain began to formulate her strategy for Hong Kong about 1981.²⁰ As a result, Prime Minister Thatcher visited Peking in late September 1982 and agreed with the PRC leaders to "enter talks through diplomatic channels . . . with the common aim of maintaining the stability and prosperity of Hong Kong." It was against this background that the issue of Hong Kong had developed, and it was also the reason why there was a need for negotiations.

Symbolic Issues

During the negotiations some non-material assets or resources also helped or retarded the negotiating parties' bargaining positions. We will examine to what extent these psychological elements, i.e. sovereignty, national prestige, and human rights affected the PRC and the UK's power to negotiate.

¹⁹ Robert Adley, All Change Hong Kong (Poole, UK: Blandford Press, 1984), p.52. His version reads: "The big financial institutions pressed for 'security of tenure.'"

²⁰ According to Wesley-Smith, "In 1981 or before it was thought in Whitehall that some arrangement was needed to secure the status quo, or something like it, in Hong Kong up to and after 1997. The strategy adopted was to seek, in a highly public manner, a new agreement with China. A series of contacts culminated" Wesley-Smith, op. cit., p.vii.

Sovereignty

The issue of sovereignty dominated the whole negotiations since meetings started in late 1982. Both parties insisted on their respective positions and no essential progress was made until April 1984, when British Foreign Secretary Sir Geoffrey Howe made formal concessions on the issue. Once the sovereignty problem was solved, the talks speeded up and a draft agreement for the future of Hong Kong was announced five months later. The major problem of the sovereignty issue lay in the different concepts of sovereignty of the negotiating parties. The PRC insisted on the principle of "inviolability and inalienability," whereas the UK in principle followed the doctrine of "divided sovereignty."

The PRC's concept of sovereignty. As Dicks observes, the communist view of international law insists on the "inviolability and inalienability of national sovereignty."²¹ According to Jin Fu, a Chinese legal scholar, "Sovereignty as a legal concept is indivisible in itself." He explains:

What is sovereignty? It is the inherent right of a state, which manifests itself internally as supreme authority, namely, the exclusive jurisdiction of a state over its territory and all the persons and materials on the territory and, externally, as the right of independence, namely, the complete independent exercise of right by a state in international relations free from any outside interference

²¹ Dicks, op. cit., p.433.

True, "divisibility of sovereignty" was advocated by some people. But that is a reactionary doctrine concocted by Western powers for encroaching on other countries' territory and sovereignty; it is incompatible with the principle of state sovereignty.²²

In addition, in the view of the PRC and other new states, Dicks says, "sovereignty, independence and equality, the classical attributes of the nation state, represent both the means of achieving independence and national dignity, and the measure of success in doing so."²³ They emphasize the political ideal of sovereignty, which "embraces full or at least the fullest possible, freedom of action on the part of the state in the political, economic and military spheres."²⁴ For example, on the recovery of sovereignty, Jin has asserted: "When the territory of a state is occupied by another state, the injured party has the right to recover its occupied territory and resume the exercise of its sovereignty by any means and at any time"²⁵ In a presentation to a symposium held in Tokyo, a Chinese scholar believed to be airing PRC's position also argued that "sovereignty" is "the major premise" of the negotiations, because "no nation can sacrifice sovereignty for prosperi-

²² Jin Fu, "China's Recovery of Xianggang (Hongkong) Area Fully Accords with International Law," Beijing Review, September 26, 1983, p.17.

²³ Dicks, op. cit., p.430.

²⁴ Ibid.

²⁵ Jin, op. cit., p.17.

ty."²⁶ He goes on saying, "The question of sovereignty is not negotiable; there is no room for bargaining."²⁷

On the issue of sovereignty over Hong Kong, A Xinhua (New China News Agency, NCNA) commentator argued that "it is a sacred mission of the Chinese Government and people to claim sovereignty over Xianggang. This has consistently been the just stand of the Chinese people."²⁸ Thus the PRC's presumption on the sovereignty of Hong Kong is that Hong Kong is Chinese territory and it will claim sovereignty over Hong Kong whenever it feels suitable.

The basis of these assertions is that all of the Hong Kong treaties are unequal treaties. They are "null and void" so they should not be recognized. Jin cited several legal arguments to assert that all the three treaties concerning Hong Kong were illegal. He argued that "wars of aggression are unjust and unlawful;" that "a treaty is null and void if it is imposed by a contracting party by the threat or use of force against another;" and that "any treaty that violates the peremptory norms of international law is null and void."²⁹ Jin went on:

²⁶ Pei Monong, "China's Future Position in Asia," Beijing Review, April 18, 1983, p.16.

²⁷ Ibid.

²⁸ "China's Solemn Stand on Xianggang (Hongkong)," Beijing Review, October 11, 1982, p.10.

²⁹ Jin, op. cit., p.15.

All the three treaties were the product of unlawful acts; they were all concluded by Britain's use or threat of force; their contents constitute serious encroachments upon China's sovereignty and territorial integrity and violation of the peremptory norms of international law.³⁰

Thus he concluded that all the three treaties relate to Hong Kong "should be considered null and void."³¹

Naturally, the PRC strongly opposed any proposal of a continued British administration. Jin criticized the idea of "sovereignty for China, administration for Britain" based on the concept of indivisibility of sovereignty.

What is administration? It means administrative power, the power of a state to rule in its territory. It is a concrete expression of sovereignty. The concept of sovereignty naturally embraces administration. Since the two are indivisible, there can be no question of exchanging one for the other.³²

He even asserted the doctrine of divided sovereignty "has gone bankrupt in the face of the people of China and other third world countries and have [sic] long been swept on to the garbage of history."³³ Thus for the PRC, the exchange of sovereignty for administration "is to say nominally recognizing China's sovereignty while maintaining British colonial rule in Xianggang after 1997 Acceptance of such a proposition would mean acceptance of a new unequal treaty

³⁰ Ibid., p.16.

³¹ Ibid.

³² Ibid., p.17.

³³ Ibid., p.18.

and return to humiliation."³⁴

As the PRC's position stands, it is clear that Communist China tends to follow a more political than legal approach to argue with the Britain on the sovereignty over Hong Kong. Its insistence on the indivisibility of sovereignty and its interpretation of sovereignty in such a restrictive context are ideologically in conflict with the more legally-oriented British position. Britain considered that her presence in Hong Kong was based on treaties made with the government of Imperial China and that the concept of divided sovereignty is an acceptable legal concept. No wonder the PRC would take about three quarters of the negotiating time to argue with the UK on the issue of sovereignty.

The UK's concept of sovereignty. The British, as Dicks observes, are "steeped in common law thinking and technique, fortified by a tradition of reliance on legal advice in the conduct of foreign affairs that goes back over 300 years, and largely dedicated to the pursuit of precision and certainty."³⁵ They tend to respect the analytical approach to sovereignty in international law. This approach

. . . accommodates and facilitates the increasingly multifarious adjustments in legal relations between states that are inevitable in the modern world. It is associated with a general trend of international law in the first two decades after

³⁴ Ibid.

³⁵ Dicks, op. cit., p.429.

the Second World War towards the restrictive interpretation of sovereignty.³⁶

The British also accept the concept of "divided sovereignty." According to Dicks:

Sovereignty is said to be divided where the sum total of the powers accorded by international law to a fully sovereign state are exercised in respect of a territory by two or more states. The manner in which the powers are distributed varies. One state may exercise most or all of the plenary powers, and may be said to have "effective" sovereignty, while the other may have merely "titular" or "residual" sovereignty, as has been the case with most leased territories. Again, one state by reason of its small size or lack of defensive capacity may entrust its external relations and defence to a more powerful state, while retaining full control of its own internal affairs.³⁷

A good example of the practice of the doctrine of divided sovereignty is the functioning of the European Economic Community (EEC) or the Common Market, a supranational organization belongs to the European Communities (EC) in which Britain has been a member since 1973.

The EEC "has a nearly general competence in all the economic sectors of the member-states, including agriculture, excepting coal and steel."³⁸ Through its institutions like the Commission, the Council, the European Parliament (Assembly), the Economic and Social Committee, and the European Court of Justice, the EEC has been able to carry out its

³⁶ Ibid., p.432.

³⁷ Ibid., p.437.

³⁸ Werner J. Feld and Robert S. Jordan with Leon Hurwitz, International Organizations, a Comparative Approach (New York: Praeger, 1983), p.12.

various economic programs well.³⁹ According to Werner J. Feld, the FEC has exercised some power originally belonging to its member-states:

Functionally, the Common Market may be viewed as an incipient political system through which the resources and energies of a regional society are mobilized for the pursuit of these goals and possesses the necessary mechanism to process the wants and demands of this society into appropriate decisions and policies. For the achievement of these purposes the organs of the Community, especially the Commission and the Council of Ministers, have been endowed by the EC Treaties with a number of powers usually exercised only by the governments of states. These powers are frequently referred to as "supranational" and suggest a voluntary limitation of the normal sovereignty possessed by the member states."⁴⁰

³⁹ The main functions of the Commission are "to prepare policy decisions for the Council, to implement these decisions in co-operation with the member-states, and to manage the Regional Fund, the Social Fund, the Customs Union, and various aspects of European agriculture." The Council is in charge of "processing the Commission's proposals before they are adopted as directives, regulations, decisions, or non-binding resolutions." The Assembly's main tasks include "to give an opinion on all proposals (draft directives, regulations and major policy decisions or statements) submitted by the Commission to the Council . . . has the power (never used so far) to dismiss the entire Commission . . . and to reject the budget . . . serves as a forum for general discussion and criticism;" and coordinates EEC's relationships with developing countries. The Economic and Social Committee "has functions similar to those of the Parliament, but without powers." The task of the Court is "to ensure compliance with the treaties and with the Community's own legislation (directives, regulations, and decisions). For more details refer Anthony J. C. Kerr, The Common Market and How It Works, second edition (New York: Pergamen, 1983), pp.50-58.

⁴⁰ Werner J. Feld, The European Community in World Affairs: Economic Power and Political Influence (Fort Washington, NY: Alfred, 1976), p.11.

Since the British believe sovereignty is divisible, they voluntarily delegate certain powers of their state to the EEC in order to achieve something which is beyond their own means. They consider the division of sovereignty merely as "pooling" of sovereign power instead of a "surrender" of sovereignty. This philosophy was widely reflected during the debate of entry and finally accepted in a referendum. As Pryce observes:

The protagonists of membership, for their part, sought to answer by insisting in the first place that there was no question of a 'surrender' of sovereignty. This word, they argued, had emotional connotations implying coercion on the part of the Community which was wholly untrue. What was involved was a voluntary process in which Britain, by her own free decision, would in the future be exercising sovereignty in association with her partners: pooling it, rather than giving it away or being forced to abandon it. There was nothing new in this: by her existing membership of a large number of international organizations Britain had already accepted a series of constraints upon her freedom of action, and had pooled her sovereignty to achieve certain objectives which on her own she could not hope to attain. The realities of the modern world made this absolutely necessary.⁴¹

Perhaps this is the reason why they would propose that Britain "maintain a post-1997 administrative role"⁴² in Hong Kong. However, since the lease of the New Territories was due to expire, Britain had to respect the term. As Lawrie puts it: "It is logically impossible to rely on the validity of the lease without accepting the terminal date it speci-

⁴¹ Roy Pryce, The Politics of the European Community (Totowa, NJ: Rowman and Littlefield, 1973), p.53.

⁴² "Two Years of Storm & Stress," Asiaweek, October 5, 1984, p.30.

fied."⁴³ Thus on the issue of sovereignty, PRC's strong opposition to the concept of "divided sovereignty" and its strong determination to recover Hong Kong made a continued British presence in Hong Kong impossible.

National Prestige

Generally speaking, the Chinese are anxious to recover Hong Kong because it has been a constant reminder of national humiliation. For the British, those glorious colonial days are gone and they only expect an honorable retreat. Because of national pride there were also arguments as to who made Hong Kong prosperous. The manifestation of such feelings also had some impact on both parties' negotiating stance.

The Chinese mentality. There is no doubt that the absolute majority of the Chinese consider the unequal treaties imposed upon China by the imperialist countries to be a national humiliation. And it was Britain that launched the first aggressive war that made China's sovereignty a fiction. As Robert Adley, a British Member of the Parliament, asserts, "for a nation with a long proud history, China has never forgotten Britain's role in all this."⁴⁴ In his study

⁴³ Gordon Lawrie, "Hong Kong and the People's Republic of China: Past and Future," International Affairs 56 (Spring 1980): 281.

⁴⁴ Adley, op. cit., p.20.

on the concept of unequal treaties in China, Chiu asserts that officials and scholars of the Ch'ing Dynasty "did express their dissatisfaction with the unequal arrangements in China's treaties with foreign states."⁴⁵ Kang Yu-wei, the famous Ch'ing reform leader called it "an extreme national shame;" Chang Chih-tung, Governor-General of Hunan and Hupei provinces, complained that

. . . the intercourse between China and Western states is {different from the relations among Western states}. For instance, the import tax [rate] is decided by the importing state, but China cannot so decide the tax rate⁴⁶

In his lectures on the Principle of Nationalism, Sun Yat-sen condemned the West for making China a "hypo-colony," "not the colony of one nation but of all," and making Chinese "not the slaves of one country but of all."⁴⁷ In his will Sun also urged his followers that "the abolition of unequal treaties should be carried into effect with the least possible delay."⁴⁸ Chiang Kai-shek considered the unequal treaties to be the main source of China's weakness.

The deterioration of China's national position and the low morale of the people during the last hundred years can be largely attributed to the unequal treaties. The implementation of the unequal

⁴⁵ Chiu, op. cit., p.243.

⁴⁶ Ibid.

⁴⁷ Sun Yat-sen, San Min Chu I: the Three Principles of the People. Translated into English by Frank W. Price. Abridged and edited by the Commission for the Compilation of the History of the Kuomintang (Taipei: China Publishing Co., n.d.), p.10.

⁴⁸ Ibid, p.i.

treaties constitutes a complete record of China's national humiliation."⁴⁹

Accordingly, Chiang exerted much effort to terminate the unequal treaties between the 1930s and the 1940s. Mao Tse-tung, as Chiu observes, also argued that it was the unequal treaties by which imperialist powers "have carved up" China into "imperialist spheres of influence."⁵⁰ Thus to the Chinese, the British presence in Hong Kong remains a constant humiliating reminder of the weak China and an affront to the Chinese national pride. So when the PRC started negotiating with Britain, it easily played up nationalism and mobilized Hong Kong Chinese to support its claim of sovereignty over Hong Kong. Because the recovery of Hong Kong is a common aspiration for the majority of Chinese, it also represents a renaissance of Chinese national prestige.

The British mentality. It was true, as Herthaway indicates, that "Hong Kong was a major commercial and industrial center for British economic interests and served as a symbol of British strength in the Far East."⁵¹ However, "Britain had declined throughout the twentieth century; for much of this period she had attempted to fulfil commitments that were excessive in terms of her resources and responsibili-

⁴⁹ Chiang Kai-shek, China's Destiny & Chinese Economic Theory, with notes and commentary by Philip Jaffe (New York: Roy, 1947), p.44.

⁵⁰ Chiu, op. cit., pp.260-261, fn 87.

⁵¹ Robert M. Herthaway, Ambiguous Partnership: Britain and America, 1944-1947 (New York: Columbia University Press, 1981), p.203.

ties in other spheres."⁵² According to Sked and Cook, "the harsh fact of economic life" was "the most important single factor in seeing the end of Britain's 'world role.'"⁵³ The economic crisis of 1967, for example, led to "the need to cut overseas expenditures of every kind, rather than sober reappraisal of defence imperatives . . . principally on expenditure East of Suez"⁵⁴ Thus "British defence commitments in the Far East were soon brought to an end in the late 1960s and early 1970s."⁵⁵ Accordingly, "By the middle of 1970s, Britain's political and strategic responsibilities had effectively ended in the Far East"⁵⁶

Against this background it is no wonder that the "issue" of Hong Kong was not any sort of sensitive political issue in Britain. Harris observes:

Hong Kong does not form part of the political consciousness of more than a tiny minority of the British electorate. British Conservative Members of Parliament see Hong Kong as a tribute to the

⁵² Peter Lowe, Britain in the Far East: a Survey from 1819 to the Present (New York: Longman, 1981), p.197.

⁵³ Alan Sked and Chris Cook, Post-War Britain: a Political History, second edition (New York: Penguin, 1984), p.233.

⁵⁴ Ibid., p.234.

⁵⁵ Lowe, op. cit., p.218.

⁵⁶ Ibid., p.197. Lowe elaborates: "In the nineteenth century Britain had pioneered the opening of the Far East to intensified foreign intercourse and activity. In the last quarter of the twentieth century Britain's role was largely extinguished . . . Britain belonged to the European Community and was concerned with pressing political, economic and social difficulties at home. In essence, Britain's role in the Far East belonged to history." Ibid., p.218.

'conservative' virtues of free enterprise, hard work and initiative. Certain Labour Members of Parliament were inclined to attach a sweat-shop image to the colony--to represent it as a typical product of colonial exploitation. The stereotypes of Hong Kong are legion and predictable.⁵⁷

Johnson also argues:

The Labour Party has long wanted to be rid of Hong Kong, which it regards as an economic competitor to British industry, and Mrs. Thatcher's government faces no domestic political or popular pressure from any quarter to achieve a particular outcome in the negotiations over Hong Kong.⁵⁸

Hence although Britain has continued to profit economically in Hong Kong, that profit has not been "significant enough to stimulate any hardening of the British position."⁵⁹ On the contrary, as Wilkinson asserts:

British politicians and the public find Hong Kong rather an irritating additional burden, a distracting task they would probably rather be rid of, an embarrassing anomaly after the great surge of mid-century decolonization. There can be no clearer demonstration of the British long-term intention to wind up their responsibilities in Hong Kong than the British Nationality Act which came into force in 1983, and the policy of removing from citizens of the colony the right to live in the United Kingdom.⁶⁰

Consequently, Wilkinson is right to argue: "All British officials can hope for is a dignified tactical withdrawal with maximum assurances to mollify an increasingly panic-stricken

⁵⁷ Peter Harris, Political China Observed, a Western Perspective (New York: St. Martin's, 1980), p.204.

⁵⁸ Chalmers Johnson, "The Mousetrapping of Hong Kong: a Game in Which Nobody Wins," Asian Survey 24 (September 1984): 889.

⁵⁹ Wilkinson, op. cit., p.451.

⁶⁰ Ibid.

Hong Kong community."⁶¹ When the British parliament's House of Commons debated the Sino-British draft agreement on December 5, 1984, it began "neither auspiciously nor on time . . . only 50 parliamentarians out of 650 were around to participate" and it was "unanimously endorsed."⁶² In addition, the debate deciding the "future of 5 million people did not make the front page of a single British newspaper."⁶³ The British have always worried "that negotiations might break down and millions of Hong Kong people might have wanted to emigrate to Britain."⁶⁴ Perhaps Johnson is right to argue that "what Britain most wants to avoid is a reverse colonization of the British Isles by Hong Kong Chinese."⁶⁵

As Britain's "state of mind" appeared, the British were ready to give Hong Kong away. Thus, during the Sino-British negotiations on the issue of Hong Kong, there was not much national prestige the British could take pride in as an asset in enhancing their bargaining position. Because British dominance in the Far East was something of the past, their presence in Hong Kong was due to expire.

⁶¹ Ibid.

⁶² "Westminster's Say," Asiaweek, December 21-28, 1984, p.18.

⁶³ James Bartholomew, "The Short Goodbye," Far Eastern Economic Review (FEER, hereafter), December 20, 1984, p.16.

⁶⁴ Ibid.

⁶⁵ Johnson, op. cit., p.893.

The "British Link" argument. Another aspect of national prestige is the "British link," which is the argument that Hong Kong's prosperity cannot be maintained without British administration. In other words, a Chinese administration would ruin Hong Kong's prosperity. When Britain failed to retain its sovereignty over Hong Kong, it proposed to maintain continued administration. The "British link" assertion was reflected in several official statements.

In a comment delivered in a BBC program, Prime Minister Thatcher argued that Hong Kong's "British link" was of vital importance.⁶⁶ She was reported as saying: "The nature of this link and the nature of the law are matters for the negotiating table."⁶⁷ Colin Moynihan, Secretary of the Foreign Affairs Committee of the British Conservative Party, was criticized by the Beijing Review for making a similar comment in an interview with the Hong Kong Standard on September 14, 1983. He was reported to have said:

. . . that "the British role in Hong Kong is the key to its economic stability," and that in order to "maintain Hongkong's stability," Britain "cannot give up its right of administration over Hongkong."⁶⁸

⁶⁶ "Watch the British Link," Asiaweek, November 11, 1983, p. 16.

⁶⁷ Ibid.

⁶⁸ "Britain's Argument is Untenable," Beijing Review, October 10, 1983, p. 10.

In the same criticism, the British Financial Times was cited as saying: "The best way of assuring Hongkong's continued prosperity and stability is through a continuing British-linked administration" in an article published on August 16, 1983.⁶⁹ John Calvert Griffiths, Attorney General in Hong Kong, was also criticized for describing the British political system in Hong Kong as "the cornerstone for maintaining confidence" and "a prerequisite to the promotion of prosperity."⁷⁰

In addition to official arguments, people from other sectors of Hong Kong also made similar assertions. Jimmy McGregor, director of the Hong Kong General Chamber of Commerce commented on Hong Kong's future administration:

At the heart of the administration debate, of course, is not whether Hongkong people can effectively run the territory, but rather whether investors and professionals have sufficient confidence in China's long-term willingness to let them do so."⁷¹

Robin Hutcheon, editor of the South China Morning Post, a Hong Kong based English daily, argued that Hong Kong

requires a guarantee of independence which I don't feel it's going to get if China regains both sovereignty and administration. We need that element of independence which the British connection has guaranteed over the years. Absolutely essential are the independence of our judiciary and of our currency. Business confidence rests very strongly

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ "Now, on with the Talk," Asiaweek, June 24, 1983, p.71.

on these conditions.⁷²

In response to the argument that Hong Kong's prosperity cannot continue without the British administration, a New China News Agency commentator argued:

This argument has been Britain's major excuse in opposing China's recovery of its sovereignty over Xianggang, and in trying to continue its colonial rule there.

However, this argument is not based on facts and is therefore untenable. The prosperity of Xianggang in the past 30-odd years is the result of the diligence, wisdom and meticulous management of the more than 5 million Xianggang residents, of whom over 98 per cent are Chinese compatriots. Another very important factor in Xianggang's prosperity has been the long years of vigorous support given by the Chinese mainland in various fields.⁷³

Deng Xiaoping, PRC's de facto leader, also criticized this matter. The Beijing Review reports:

"Not to believe in the ability of the Chinese people to administer Hong Kong well is a mentality left over by the old colonialists," Deng said . . . The Chinese are not inferior to foreigners in terms of wisdom and are by no means short of talents. One should not hold the belief that only foreigners can do well. Instead, one should be confident that the Chinese are capable of doing just as well.⁷⁴

Considering the prospect of a Hong Kong under Chinese sovereignty and administration, the British seemed to have good reasons to reserve their confidence. However, as Adley points out: "For the British Government to imply by its ne-

⁷² "Trading Volleys over 1997," Asiaweek, September 30, 1983, p.21.

⁷³ "Britain's Argument is Untenable," p.10.

⁷⁴ "Deng Xiaoping on Hongkong Issue," Beijing Review, July 23, 1984, pp.16-17.

gotiating stance that Hong Kong's stability is dependent on British administration is by implication to suggest Chinese incompetence."⁷⁵ This is the reason why the PRC would retort that the British argument was "untenable," and "major excuse in opposing China's recovery of its sovereignty" over Hong Kong. Thus for the sake of face-saving, the PRC would not concede and contrary to the British assertion, it ascribed Hong Kong's prosperity to Chinese factors.

Human Rights

What is the choice of the Hong Kong residents between communist rule or British administration if human rights are taken into consideration? The relatively poorer living condition and tight political control under the Peking regime have caused much uneasiness of a prospective communist rule over Hong Kong. Currently, Hong Kong people can enjoy a much better economic and political life under British administration. This section will discuss the difference of human rights practices in mainland China and that in Hong Kong. We will also review its impact on the negotiating parties' bargaining strength. For the convenience of discussion, we will deal with the civil and political rights, and the economic rights between Hong Kong and mainland China separately.

⁷⁵ Adley, op. cit., p.39.

The concept of human rights has been well spelled out in several documents of the United Nations. The Universal Declaration of Human Rights sets forth "the basic human rights and fundamental freedoms to which all men and women everywhere in the world are entitled, without discrimination."⁷⁶ Its articles deal with "civil and political rights (articles 3 to 21) as well as economic, social and cultural rights (articles 22 to 27)."⁷⁷ The Covenant of Civil and Political Rights "guarantees freedom of religious expression, peaceful assemblage, and movement. It prohibits inhuman treatment as well as arbitrary arrest or detention, asserts a right to life and to a fair trial, and provides for the protection of all varieties of minorities."⁷⁸ The Covenant on Economic, Social, and Cultural Rights "embraces the right to work, education, medical care, and related economic and social benefits."⁷⁹ Both covenants belong to the bill of rights type of documents that call for international protection of human rights, i.e. "requiring each state to treat all persons in its jurisdiction with respect for their human rights and fundamental freedoms, without distinction to race, sex, lan-

⁷⁶ United Nations Action in the Field of Human Rights (New York: United Nations, 1983), p.10.

⁷⁷ Ibid.

⁷⁸ Gerhard von Glahn, Law among Nations: an Introduction to Public International Law, fourth edition (New York: Macmillan, 1981), p.189.

⁷⁹ Ibid.

guage, or religion."⁸⁰ On the protection of human rights, there is much difference between the communist China and the capitalist Hong Kong.

Human Rights in Communist China. The PRC is a regime ruled by the Chinese Communist Party (CCP). "The Chinese Government has always been subordinate to the CCP, its role being to implement party policies."⁸¹ The CCP "reserves to itself all power to decide political and economic policy and sees itself as the final arbiter of social, cultural, and moral questions."⁸² It is also "the unchallenged source of political authority and decision-making in the country."⁸³ Thus individual political rights are very much limited. According to the Freedom House, a New York based human rights organization that reviews the level of civil and political liberties in every country of the world annually, there is inequality in the PRC; it "derives from political position rather than wealth."⁸⁴ According to a U.S. State Department

⁸⁰ Ibid., p.179.

⁸¹ Bureau of Public Affairs, United States Department of State, "China," Department of State publication 7751, Background Notes Series, October 1983, p.6.

⁸² United States Department of State, Country Reports on Human Rights Practices for 1984 (Washington: U.S. Government Printing Office, 1985), p.731.

⁸³ Ibid., p.743.

⁸⁴ Raymond D. Gastil, Freedom in the World: Political Rights and Civil Liberties 1981 (Westport, CT: Greenwood Press, 1981), p.336.

annual report on human rights,⁸⁵ "China's judiciary is nominally independent, but in practice follows party policy."⁸⁶ The report cites an Amnesty International September 1984 study entitled "China: Violations of Human Rights." The organization's main concern included:

Arrest and imprisonment of prisoners of conscience, and the existence of legislation providing for their detention; prolonged detention without trial; inadequate trial procedures; ill-treatment of prisoners and poor conditions of detention; and the extensive use of the death penalty.⁸⁷

The authorities prohibit open criticism of the CCP or Chinese socialism and circumscribe the rights of peaceful assembly and association.⁸⁸ In 1980, the Freedom House gave the PRC a "6" on the descending scale of 1 to 7 for both of its political rights and civil liberties, and described its status of freedom as "not free."⁸⁹ The World Human Rights Guide gave the PRC a 32 per cent human rights rating in 1983; its overall observations of the PRC are: "Little regards for human rights though the position has improved from

⁸⁵ For an extensive treatment of PRC's human rights practices in 1984, see Country Reports on Human Rights Practices for 1984, pp.731-748.

⁸⁶ Country Reports on Human Rights, p.736.

⁸⁷ Ibid., p.745.

⁸⁸ Ibid., pp.737, 738.

⁸⁹ Gastil, op. cit., p.14.

the even harsher conditions of the previous three decades."⁹⁰

The PRC belongs to "one of the poorer developing countries, with a 1982 per capita GNP of US\$302," but "has experienced rapid growth in recent years."⁹¹ For example, national income rose by 9 per cent in 1983,⁹² but is still far behind that of Hong Kong's.

Human Rights in Capitalist Hong Kong. Hong Kong is a British colony administered by a governor appointed by the Queen. He is the representative of the Queen and the ultimate source of authority in Hong Kong. He also presides over two councils. The Executive Council is the policy-making body comprised by ex-officio members "together with other members who are appointed by the Governor on the instructions of the Secretary of State."⁹³ This council "offers advice to the Governor on which he makes directions."⁹⁴ The Legislative Council is a law-making body comprised of official and unofficial members. "All members, except the Governor and other ex-officio members, are appointed by the

⁹⁰ Charles Humana, World Human Rights Guide (New York: Pica Press, 1984), p.120.

⁹¹ Country Reports on Human Rights, p. 748.

⁹² Ibid.

⁹³ Hong Kong 1985, a Review of 1984 (Hong Kong: Government Information Services, 1985), p.53.

⁹⁴ Ibid., p.52.

Governor with the approval of the Secretary of State."⁹⁵ All bills passed by the Legislative Council are subject to the approval of the governor to become ordinances.

Under such a political structure, the Hong Kong administration is not a representative government because the chief executive and the law makers are appointed and not answerable to any electorate. Hence people in Hong Kong have limited political rights per se. As described by Miners, the governor has almost unlimited legal powers in this territory but he exercises them with considerable restraint.

He can, in theory, issue binding orders to all civil servants, disregard the views of his Executive Council, and force through or repeal any ordinances he pleases by the use of the official majority in the Legislative Council. In practice, of course, these powers are severely limited by the Governor's need to take account of public opinion, to secure the co-operation of important groups within the community, to heed the advice of experienced officials, and to take account of the reactions of China and Hong Kong's other trading partners.⁹⁶

In Hong Kong, English common law with some modification derived from Chinese custom is in force. Abetting the civil liberties in Hong Kong, as Miners argues:

. . . there are certain democratic elements in the colony which are found in few other developing countries: the courts are independent of the executive and sometimes hand down decisions which the administration dislikes; the rule of law is observed; there is no censorship of the press; there are no political prisoners detained without trial;

⁹⁵ Ibid., p.53.

⁹⁶ N. J. Miners, "Government and Politics." In The Business Environment in Hong Kong, ed: David G. Lethbridge (Hong Kong: Oxford University Press, 1980), p.145.

groups and individuals are free to protest against government decisions and to organize agitation to have them changed.⁹⁷

Freedom House described Hong Kong in 1980 as "partially free" and rated it a "4" and a "2" for its political rights and civil liberties respectively.⁹⁸ The World Human Rights Guide gave Hong Kong a 86 per cent human rights rating in 1983; its overall observations of Hong Kong are: "The alternative to colonial rule being absorbed into China, has little popular support. Hong Kong, in practice, is governed by two advisory bodies and in general they respect human rights. No Universal suffrage."⁹⁹

Economically, in the decades after 1950, "Hong Kong was able to maintain a growth in per capita income of about 7% a year, giving her a tenfold increase in real income per head in 35 years."¹⁰⁰ The 1982 GNP per capita, for example, was US\$6,173.¹⁰¹ Comparing Hong Kong's performance with other East Asian countries, "Hong Kong had the highest average

⁹⁷ Norman Miners, The Government and Politics of Hong Kong, third edition (Hong Kong: Oxford University Press, 1981), p.251.

⁹⁸ Gastil, op. cit., p.19.

⁹⁹ Humana, op. cit.

¹⁰⁰ George L. Hicks, "Hong Kong on the Eve of Communist Rule," a paper presented at the panel discussion on "The Future of Hong Kong as a Market Economy" in the Annual Meeting of the Western Social Science Association, April 24-27, 1985, Fort Worth, Texas, p.35.

¹⁰¹ Ibid., p.36.

annual rate of growth of G.D.P., a 9.9% between 1970 and 1982."¹⁰² Adley also argues: "In the absence of an elected assembly with responsibility over fundamental matters, it is perhaps the most benign autocracy in the world. Complete personal freedom, with the second-highest standard of living in Asia, it is a city-state of superlatives."¹⁰³

Comparison and choice. Compared with Communist China, Hong Kong is a better place to live, as reflected in the inflow of immigrants from the PRC and Hong Kong residents' apprehension of a communist takeover. When Lewis discussed the reason why an official plebiscite to solve the issue of Hong Kong was ruled out, he explained:

For a large majority of the people in Hong Kong have, in a sense, voted already: about three million, who were born in China, by migrating to Hong Kong; and a further two and a half million more Chinese, born in the Colony, by showing little or no indication of any wish to return permanently, at least at present, to their places of family origin.

. . . But the conclusion that nearly all the Chinese now in Hong Kong have opted, for one reason or another, to live there rather than in the People's Republic, is beyond doubt.¹⁰⁴

The reason for the exodus from the mainland is, of course, the appeal of the much higher standard of living in Hong Kong. According to Hicks, "Hong Kong enjoys a standard of living in per capita terms and with access to consumer dura-

¹⁰² Ibid.

¹⁰³ Adley, op. cit., p.39.

¹⁰⁴ D. K. Lewis, "The Prospects for Hong Kong," Conflict Studies, #142, 1982, pp.16,17.

bles, approximately ten times higher than that of the other major cities of China."¹⁰⁵ Furthermore, "Many of them have direct experience of the harsh and drab authoritarianism of the Chinese People's Republic: thousands of them indeed entered the colony as illegal immigrants to escape that very fate."¹⁰⁶ According to Johnson, "between 1977 and 1980, well into the period of China's post-Mao reforms, more than 400,000 people from the mainland . . . entered Hong Kong to live and work."¹⁰⁷

Two public opinion polls conducted before the negotiations might well reflect the Hong Kong community's attitude towards the territory's future. According to a survey taken by the Reform Club of Hong Kong, a pressure group, 70 per cent of the respondents preferred to maintain the status quo, 95 per cent preferred a continued British administration under a "trust territory" arrangement to be agreed with China for a minimum of 30 years, and 4 per cent preferred Hong Kong be taken back by China and placed under Chinese administration.¹⁰⁸ Another poll was conducted by the Hong Kong Observers, an influential civic group. It revealed that 95 per cent of the respondents found "retention of the status quo" acceptable. Among other questions asked, only 26

¹⁰⁵ Hicks, op. cit., p.7.

¹⁰⁶ Wilkinson, op. cit., p.452.

¹⁰⁷ Johnson, op. cit., p.889.

¹⁰⁸ Lewis, op. cit., p.17.

per cent thought "returning Hong Kong to China" acceptable.¹⁰⁹ These two polls reflected that the majority of Hong Kong residents would like to lead the way of life as it is now and are less in favor of a return of Hong Kong to the PRC.

During the negotiations, the Hong Kong residents' sensitive reactions to the development of the talks caused at least two financial crises. Those crises also reflect their fear of a communist takeover. After Thatcher's visit to Peking in September 1982, slow progress of the negotiations together with the shadow of the PRC's threat to take unilateral action against Hong Kong if an agreement could not be reached by the end of September 1984, caused the Hong Kong stock market and the real estate market to collapse., the prices of shares, and land values in 1982 fell by 50-70 per cent from their peaks in 1981.¹¹⁰ In September 1983, when the negotiations were reported to be at a stalemate, there was an unprecedented fluctuation of Hong Kong dollar. The exchange rate against the U.S. dollar fell relentlessly from US\$1 = HK\$5.69 at the end of 1981 to US\$1 = HK\$9.60, a record low.¹¹¹ Jao, a Hong Kong economist asserts, "In retro-

¹⁰⁹ Ibid.

¹¹⁰ Y. C. Jao, "Hong Kong's Economic Prospects after the Sino-British Agreement: a Preliminary Assessment," a paper presented at the Annual Meeting of Western Social Science Association, Fort Worth, Texas, April 24-27, 1985, p.3.

¹¹¹ Ibid., pp.3-4.

spect, the financial crisis of September 1983, caused largely by the anxiety and apprehension over 1997, marked a turning point in Hong Kong's recent history."¹¹² It forced the Hong Kong government to take an unprecedented action of replacing the floating exchange rate system with a linked exchange rate system, "under which the issue of banknotes must be backed 100% by US dollars at a fixed rate of US\$1 = HK\$7.8."¹¹³ Another indicator of public confidence is the Hang Seng index of stock prices. On July 17, 1981, it reached an all-time high of 1,810.2 and fell to an all-time low of 676.3 on December 2, 1983, a 63 per cent decline from its 1981 peak.¹¹⁴

Thus on all counts, capitalist Hong Kong looks better than communist China to the people of Hong Kong, and most people in the territory prefer to maintain the status quo instead of reverting to the PRC. As Benton puts it: "That most Hongkongees prefer to live outside the communists' jurisdiction clearly gives the British an advantage in their bargaining with Beijing."¹¹⁵ The UK tried to manipulate this sentiment by advocating the importance of a "British link." It intended to maintain some form of British administration after 1997 if sovereignty was not available. However, as we

¹¹² Ibid., p.4.

¹¹³ Ibid.

¹¹⁴ Ibid., p.5.

¹¹⁵ Gregor Benton, The Hong Kong Crisis (London: Pluto, 1983), p.17.

have noted that before the British could mobilize enough support, their intention was overshadowed by the PRC's insistence on the indivisibility of sovereignty and manipulation of nationalism.

Economic Considerations

As a world-grade commercial and financial center, Hong Kong is important economically to both the PRC and the UK. For the PRC, Hong Kong can provide it with managerial skills, technology, and foreign exchange for its modernization needs. In addition, it also can serve as the PRC's port of entry for trade with southeast Asian countries. For the UK, Hong Kong provides it with good trade opportunities with the PRC and many vested economic interests. With Hong Kong, Britain has better access to mainland China's market; she earns money by controlling Hong Kong's aircraft landing rights and monetary reserves; and she also has an outlet for British employment. Another aspect of this section is Hong Kong's heavy material dependence on mainland China. Though Hong Kong can provide the PRC with all kinds of economic benefits, the territory has to rely on the PRC for convenient and cheaper provisions. We will discuss these matters to reflect the economic factors of the negotiations.

The Importance of Hong Kong to the PRC

The economic importance of Hong Kong to mainland China has been well articulated by the Peking authorities. In December 1978, Li Qiang, the PRC's Minister of Foreign Trade, was reported to "have made 'surprisingly open' remarks about the 'major role' for Hong Kong in Peking's modernization programme."¹¹⁶ When Sir Murray MacLehoe, former Governor of Hong Kong, officially visited Peking in 1979, similar expression was also repeated. According to industrialist Sir Yuet-Keung Kan, a member of that visiting group,

All the top officials whom we met stressed to us the value of Hongkong to China. This value lies in the contribution we could make to modernization programmes in China, the importance of maintaining involvement and confidence in Hongkong and Hongkong interest in China.¹¹⁷

In an "internal memorandum" (a form of confidential information designed for the ruling elites) published by the Academy of the Social Sciences Press in March 1979, Ma Hong, the then Vice President of the Academy of the Social Sciences and a leading economist of the PRC, also outlined the roles Hong Kong would play in Peking's modernization

¹¹⁶ John Shaw, "Another Step up the Ladder," FEER, March 16, 1979, p.36.

¹¹⁷ "Hongkong's Value is Understood," Asiaweek, May 11, 1979, p.29.

drive.¹¹⁸ In the article, entitled "How to Make Use of Hong Kong's Economy to Serve the Speed-Up of our Four Modernizations," Ma cited Mao Zedong's 1959 instruction on Hong Kong as saying: "We need not worry about recovering Hong Kong at once; we are not in a hurry; it is still useful to us at present."¹¹⁹ Ma listed six ways of using Hong Kong to boost the PRC's modernization projects. To make use of Hong Kong's market; to make use of Hong Kong's capital; to make use of Hong Kong's advanced technology; to make use of Hong Kong's managerial experiences; cooperate with Hong Kong's capitalists; and set up export processing zones near Hong Kong.¹²⁰

Indeed, the economic ties between mainland China and Hong Kong have been established for a long time and the existing relationship is clearly in the hinterland's favor--Hong Kong can do much for mainland China. Greenfield describes Hong Kong as "a reservoir of technical and managerial skills and a testing ground for its modernization programme."¹²¹ Mr. James D. McGregor, Director of the Hong Kong Chamber of Commerce even asserts that the PRC "does need technology" even if things go "the wrong way."¹²² He elaborates: "There is

¹¹⁸ "China's Leading Economist Ma Hong: Making Use of Hong Kong to Serve Four Modernizations," The Seventies 152 (September 1982): 46-52.

¹¹⁹ Ibid., p.48.

¹²⁰ Ibid., pp.49-52.

¹²¹ Greenfield, op. cit., p.32.

¹²² Morilyn Much, "Hong Kong under a Cloud," Industry Week, December 12, 1983, p.64.

nothing the Chinese wants that we cannot supply . . . This place is like a chicken laying golden eggs. If China wants that to continue, it better not grab the chicken by the throat."¹²³

Miners observes a unique way by which Hong Kong can help PRC's modernization programmes:

. . . Hong Kong may also be of economic benefit to China by providing a very convenient centre for trade contracts, financial negotiations and the gathering of commercial intelligence about Western technology . . . The colony's great advantage is that here Chinese officials, managers and engineers can meet with experts who speak Chinese, and such specialists can if necessary be recruited here for particular assignment inside China.¹²⁴

Concerning the sphere of trade, mainland China also is in a favorable position. According to a report:

Hong Kong is now China's second largest trading partner, after Japan and ahead of the United States. China enjoys a surplus on its trade with Hong Kong, enough to cover a substantial part of its deficit with other countries. In 1984, this surplus (according to Chinese official figures) amounted to US\$2.18 billion, covering about two-thirds of Peking's deficit with Japan and the U.S. Hong Kong statistics put the surplus at HK\$17.5 billion.¹²⁵

In addition to trade surplus, Peking also earned foreign exchange from other channels. According to an estimation, Peking owned or controlled 96 firms in trade and industrial promotion, 43 in banking and finance, 4 in insurance, 15 in

¹²³ Ibid, p.68.

¹²⁴ Miners, The Politics and Government of Hong Kong, p.23.

¹²⁵ Louise do Rosanio, "The Door Opens Wide," FEER, February 28, 1985, p.96.

manufacturing, 4 in publishing and printing, 34 in transportation and tourism, and 19 in real estate and construction."¹²⁶ Miners finds another source of PRC's foreign exchange: "the remittance from Chinese in Hong Kong to their families who are still living in the People's Republic, and similar gifts from overseas Chinese channelled through the colony's banking system."¹²⁷ Thus totally Hong Kong provides "regularly about one-third of China's hard currency earnings."¹²⁸

Another economic advantage Hong Kong can offer to Peking is "as a springboard for future Chinese commercial and financial operations in South-East Asia."¹²⁹ Miners explains:

Asian governments are unlikely to welcome activities within their frontiers of companies directly managed by the Chinese government, but they have long been accustomed to private companies operating out of Hong Kong on their territory. These are seeing as being no threat to their sovereignty.¹³⁰

Hence Hong Kong also plays a very important role in PRC's economic relations with the ASEAN countries.

So the economic connection between mainland China and Hong Kong is close and important. Donnithorne's statements summarized the situation:

¹²⁶ Jao, op. cit., p.14. Jao's data was estimated by the Industry Department of the Hong Kong Government dated at the end of May 1984.

¹²⁷ Miners, The Government and Politics of Hong Kong, p.21.

¹²⁸ Jao, op. cit., p.22.

¹²⁹ Miners, The Government and Politics of Hong Kong, p.24.

¹³⁰ Ibid.

Strong economic links with China have, of course, persisted throughout the post-war period From China's point of view, the necessity of foreign exchange earnings from Hong Kong was recognized throughout the years of estrangement, and also its convenience for making urgent purchases to supply unforeseen deficiencies and for indirect trade which political circumstances made otherwise impossible (such as with Taiwan or at one time with Malaysia, the Philippines and Indonesia) and as a forum for market research and the experimental trying out of new imports.¹³¹

The Importance of Hong Kong to the UK

Hong Kong also is economically important to Britain in several regards. Britain has better trade access to the PRC through Hong Kong, and she still has many vested economic interests in Hong Kong, such as control over aircraft landing rights and monetary reserves, and job opportunities for British nationals. As Hollingworth points out, Hong Kong "is the main gateway into China and the only efficient base for trade with China."¹³² Having settled in Hong Kong for about one and a half century, the British have all the advantages in economic terms. According to a weekly reported in September 1982:

¹³¹ Audrey Donnithorne, "Assimilation or Separate Identity? Observations on the Future of Hong Kong's Relations with China," in Hong Kong, Dilemmas and Growth, eds: Chi-Keung Leung, J. W. Kushman, and Gungwa Wang (Canberra: The Australian National University, 1980), p.620.

¹³² Clare Hollingworth, "Hongkong: a Second Macau?" FEER, February 5, 1982, p.36.

In May, Lord Belstead, Minister of State at the Foreign Office, especially mentioned Hong Kong as a base wherefrom British firms could bid to offer expertise for oil exploration off China's potential-rich east and southern coasts. Hongkong's Lord Kadoorie further envisages his hometown as the launching pad for a multiple range of joint ventures between China and Hongkong.¹³³

On the prospect of PRC's drive for modernization, Benton observes:

. . . and now that China under Deng Xiaoping wants large amounts of foreign goods, capital and expertise to boost its modernization drive, Whitehall hopes that Hongkong's banking, insurance, shipping and legal services will help Britain in the competition for contracts.¹³⁴

An immediate example was the conclusion of a joint-venture nuclear plant project between Guangdong Electric Company and China Light and Power of Hong Kong in January 1985.¹³⁵ Thus as Lewis has asserted: "A Hong Kong administration, based on the same laws, procedures and structure as exist today, would also meet Britain's historic and continuing need for a place out of which to do business with China and the region."¹³⁶

Hong Kong's Kai Tai airport has been used like a domestic British airport and gives "British Airways a very profitable monopoly over direct flights booked between Britain and Hong

¹³³ "The Spectre of '97," Asiaweek, September 24, 1982, p.24.

¹³⁴ Benton, op. cit., p.10.

¹³⁵ Renmin Ribao (People's Daily), January 19, 1985, p.1.

¹³⁶ Lewis, op. cit., p.22.

Kong. . . . "137 In addition, Hong Kong's aircraft landing rights have been represented and practised by Britain. "It serves Britain's interest to reserve them for its own airways or to exchange them for similar concessions in other countries."138 Still, since there was only one airline (Cathay Pacific, British controlled) registered in Hong Kong,139 Britain received free aircraft landing rights in other countries.

Another British interest has been the control of Hong Kong's monetary reserves. Lawrie asserts, ". . . until 1972 when London did exercise the right to order Hong Kong to keep its foreign exchange reserves in sterling, these formed as much as 35 per cent of the Bank of England's total assets."140 According to Jao, Hong Kong Financial Secretary Sir John Bremidge hinted in an interview with the Fortune in October 1983 that the size of its exchange fund "would not be less than US\$4.3 billion."141 A newspaper reported that Hong Kong has about HK\$15.6 billion foreign exchange re-

137 Miners, "Can the Colony of Hong Kong Survive 1997?", p.113.

138 H. C. Y. Ho, The Fiscal System of Hong Kong (London: Croon Helm, 1979), p.13.

139 Sir Y. K. Pao, s shipping magnate, established a new Hong Kong-based airline (Dragon Air) in July 1985. Dragon Air will provide chartered flights between Hong Kong and mainland China. See Renmin Ribao (Overseas Edition), October 28, 1985, p.5.

140 Lawrie, op. cit., p.292.

141 Jao, op. cit., p.23.

serves and that the Hong Kong government could have earned HK\$1 to 3 billion annually by depositing the reserves in the bank and purchasing U.S. dollars.¹⁴²

In addition, "by employing thousands of British professionals and administrators, Hongkong provides more-than-marginal relief for Britain's chronic unemployment malaise."¹⁴³ According to a report, "Of the territory's 171,900 government employees, only 3,067 were recruited abroad, overwhelmingly from Britain; of these, about 2,300 are on contracts. Yet four out of five top-level or decision-making posts currently are held by expatriates."¹⁴⁴

Since Britain had already realized that she must leave Hong Kong, an orderly and also profitable withdrawal would best serve her interest. Like Greenfield observes:

It could therefore be suggested that Hong Kong might still offer sufficient inducement for the British to maintain a strong economic and commercial foothold there whilst actually relinquishing economic and administrative control, because this is in effect what has been increasingly the case.¹⁴⁵

¹⁴² "Top Secret--Foreign Exchange Reserves," Chinese Daily News (California), June 29, 1985, p.9.

¹⁴³ "The Spectre of '97."

¹⁴⁴ "Home Rule," Asiaweek, November 23, 1984, p.25

¹⁴⁵ Greenfield, "The Hong Kong Solution: 1997 (?)", p.30.

Hong Kong's Material Dependence on the PRC

Hong Kong is small and has virtually no natural resources. Accordingly, it must rely on foreign support and intercourse for survival. According to an official source:

The principal economic problems have been the shortage of suitable land and of water supplies for the expanding industries and the search for markets for the growing range of export products. Because of limited natural resources Hong Kong depends on imports for virtually all its requirements and relies on exports to generate the foreign exchange earnings to pay for them.¹⁴⁶

The source added:

With only 9 per cent of the land area suitable for crop farming, local farmers produce 38 per cent of the fresh vegetables required by the territory, 55 per cent of the live poultry, 21 per cent of the live pigs and 15 per cent of the freshwater fish.¹⁴⁷

In other words, Hong Kong has to rely on others for much of what is needed for daily life. Since Hong Kong borders mainland China, it can get at least cheaper necessities to keep it running. Especially, as an export oriented place, a lower cost of production is essential to world market competition. Thus she "needs Chinese food, Chinese raw materials, even

¹⁴⁶ "Hong Kong," No 80/84 classification 7(b). London: Reference Services, Central Office of Information, October 1984, p.10.

¹⁴⁷ Ibid., p.11.

Chinese water in order to survive."¹⁴⁸

Hong Kong is thus economically dependent on the mainland China. Wilson has expressed the situation in these terms:

If Chinese hostility were expressed . . . sealing of the Hong Kong-China border would force the Colony into an airlift of food supplies and reliance on expensive alternative supplies . . . The Chinese, by strictly enforcing their claimed territorial waters, would prevent the Hong Kong fishing fleet from putting to sea and thus deprive the Colony of another important source of food.¹⁴⁹

Accordingly, Hong Kong is very exposed to threats from communist China. For example, during the course of the 1967 disturbances, "China ceased food shipments to Hong Kong for a four-day period between June 29 and July 2, causing a food shortage and a rapid rise in food price."¹⁵⁰ Meanwhile, "During periods of drought water is {sic} rationed to four hours once in four days" and "During such a drought in 1967, Peking refused to sell Hong Kong additional water thereby exacerbating an already tense situation."¹⁵¹ Thus "with its hinterland in China, the fortunes of the colony have traditionally been governed by mainland politico-economic events."¹⁵² This cruel reality significantly weakened Brit-

¹⁴⁸ Jon Woronoff, Hong Kong: Capitalist Paradise (Hong Kong: Heinemann Asia, 1980), p.233.

¹⁴⁹ Dick Wilson, "The Future of Hong Kong," World Today 20 (September 1964): 399.

¹⁵⁰ William Heaton, "Maoist Revolutionary Strategy and Modern Colonialism: the Cultural Revolution in Hong Kong," Asian Survey 10 (September 1970): 851.

¹⁵¹ Ibid., p.843.

¹⁵² Patrick Yeung, "Trade Ties between Hong Kong and Main-

ain's negotiating stance with the PRC.

Diplomatic Considerations

Since 1949, the PRC has taken a hands-off policy toward Hong Kong because the status quo of the territory served its own interests. As the negotiations began, it seriously sought to resolve differences with the UK. As Overhalt says: "a Sino-British confrontation could wreck Hong Kong's economic usefulness to China, frighten Taiwan, and cause uneasiness toward China elsewhere in the world."¹⁵³ Hence generally it negotiated with Britain on friendly terms. We will discuss why the PRC can benefit from maintaining good working relation in its diplomacy with the UK. For Britain, she had decided to give Hong Kong up long ago. She will have nothing to gain by offending the PRC. In addition, if she chooses to confront the PRC no ally will support her.

The PRC

Many scholars believe that it would not be difficult for the PRC to regain control of Hong Kong if it so wishes. For example, Miners says:

land China," Asian Survey 10 (September 1970): 820.

¹⁵³ William Overhalt, "Hong Kong and the Crisis of Sovereignty," Asian Survey 24 (April 1984): 476.

The People's Republic of China has the military power to overrun Hong Kong in a few days. Alternatively it could use its supporters in Hong Kong to instigate a sustained campaign of urban terrorism which would eventually undermine the British government's determination to maintain its authority in the colony. Possibly even such a resort to violence would be unnecessary. If China instituted a total blockade of the colony, it would probably not be too difficult to replace the food and raw materials imported from the People's Republic from other sources (though water rationing would be needed), but business confidence would suffer a fatal blow

Moreover China has strong motives for intervention. There is both the nationalist urge to wipe out the humiliations imposed upon China by the unequal treaties of the nineteenth century, and also the ideological drive of Communism which should direct the followers of Mao Zedong to extend the revolution to this citadel of capitalism that lies within their grasp.¹⁵⁴

Lawrie says that Hong Kong and Macao "could have been overrun in hours rather than days at any time and with no more risks than some hard words in the Western media. Moreover even this limited military action could have been avoided had Peking relied on diplomatic demarches instead."¹⁵⁵

As a matter of fact, nothing like an arbitrary takeover is likely to take place. According to Cohen and Chiu,

Yet from 1949 to 1967, although it occasionally reiterated that "Hong Kong is Chinese territory" and asserted special interest in the welfare of residents of the City of Kowloon, it did not offer any serious challenge to Britain's present possession of the territory. And while the furor over the strikes and violence that paralyzed Hong Kong in the spring of 1967, and over the border incidents that followed in the summer, led Peking to reemphasize China's previous claim to Hong Kong,

¹⁵⁴ Miners, The Government and Politics of Hong Kong. p.18.

¹⁵⁵ Lawrie, op. cit., p.285.

it produced no evidence of Peking's intention to vindicate that claim in the near future.¹⁵⁶

Lewis firmly asserts:

{a) Even at the worst times of the 1966-67 troubles in Hong Kong, China still sent in the food supplies and other provisions needed to keep the territory going; and {b) The Cultural Revolution did end--its excesses and excitements being curbed and steadily diminishing from 1968 onwards.¹⁵⁷

The PRC's decision to refrain from treating Hong Kong arbitrarily was that it would not be profitable to the PRC. As we have said a stable and prosperous Hong Kong is a source of its foreign exchange earnings and many other economic benefits. During the negotiations, the PRC's general attitude has been that of accommodation. This demonstrates that it has the desire to seek an agreement with the UK. Of course, the PRC's approach toward the UK also has some special purposes. We will look at its special relations with some of the other countries and areas of the Asian regions as well as the world at large.

Since 1978, the PRC has launched ambitious modernization campaigns to upgrade its overall strength. In order to win support from the USA, the PRC must take the American sentiment into consideration while making its Hong Kong policy:

To obtain advanced technology and capital goods from America . . . might be jeopardized or at the very least delayed if public opinion in the U.S.A. were to be affronted by a communist takeover of Hong Kong against the wishes of its inhabi-

¹⁵⁶ Cohen and Chiu, op. cit., p.375.

¹⁵⁷ Lewis, op. cit., p.9.

tants.¹⁵⁸

Similar considerations involve a good relations with the European Community, especially with Britain. According to Benton, the PRC's decision-makers "do not want to antagonize Britain and through it the EEC, which they see as a crucial source of high technology and as a political ally in their manoeuvring between the superpowers."¹⁵⁹

Miners says Hong Kong also affords further diplomatic benefits to the PRC:

It provides a neutral bridge for political contacts with the outside world, especially with the Chinese communities of South-East Asia. It serves as an excellent listening-post where China can gather political and commercial intelligence.¹⁶⁰

In addition, Hong Kong is an important "jumping-off point for future Chinese financial and commercial operations in Southeast Asian countries."¹⁶¹ Thus if the PRC insisted on a politically unreasonable or unacceptable position, it would largely limit Hong Kong's outside contacts and lose foreign connections important to the PRC.

Another important diplomatic aspect of the negotiations concerns the PRC's image among the ASEAN countries. "ASEAN had been China's very important source of trade surplus,

¹⁵⁸ Miners, The Government and Politics of Hong Kong, pp.29-30.

¹⁵⁹ Benton, op. cit., p.12.

¹⁶⁰ Miners, The Government and Politics of Hong Kong, p.30.

¹⁶¹ David Bonavia, "The Unanswered Questions," FEER, December 10, 1976, p.22.

next to Hong Kong and Macau."¹⁶² The PRC recognizes the importance of Southeast Asia. A PRC scholar has said that Peking seeks to "strengthen its relations of friendship with all the ASEAN countries and develop mutual economic ties."¹⁶³ However, there are doubts and suspicions about the PRC's sincerity. Before the ASEAN came to exist in 1967, there were bloody confrontations and serious border disputes among Southeast Asian countries. For eighteen years the organization has held intact despite these differences. "Fear of China," one scholar notes, is "the main bond which holds ASEAN together."¹⁶⁴

So far the PRC "has never ended its moral support for south-east Asia's communist guerrillas"; it "continues to provide a home for the region's exiled communist leaders and rest and recreation facilities for Burmese, Thai and Malaysian guerrillas."¹⁶⁵ This is the reason why the ASEAN countries are wary of Communist China. Rayner describes the situation in these terms:

As China's equal partner in trade, investment and in working for regional and world peace, ASEAN has a major role to play. But the Southeast Asians only want that partnership if it is a free

¹⁶² John Wong, The Political Economy of China's Changing Relations with Southeast Asia (London: Macmillan, 1984), p.13.

¹⁶³ Pei, op. cit., p.18.

¹⁶⁴ Leonard Rayner, "ASEAN and Hong Kong," The Round Table 292 (October 1984): 385.

¹⁶⁵ "Indonesia and China: We Must Meet Again, Some Time," The Economist, May 5, 1985, pp.43, 44.

association, on both sides. It is hard to see how that is possible until Beijing has allayed the suspicions arising from the past. Communism is the common enemy of the ASEAN countries, not only because it supports subversion but because they believe that their traditional way of life is infinitely better than that, for example, in China.¹⁶⁶

Thus the Sino-British negotiations will certainly affect the ASEAN countries' attitudes toward the PRC. Rayner elaborates:

There can be little doubt that an agreement over Hong Kong which enabled it to continue business as before would do a lot to demonstrate to ASEAN that China can be a good neighbour. On the other hand an uncompromising insistence on historical rights regardless of consequences might produce the sort of reaction overheard in Malaysia recently: 'Coming to think of it, Malacca was once a tributary state of China, maybe it's next on the list for reunification.' Such an eventuality is hardly likely but the PR China has yet to demonstrate the quality Robert Burns advocated of 'seeing ourselves as others see us.'¹⁶⁷

Hence "Beijing has the most to gain from demonstrating to the southeast Asians . . . the depths of its pragmatism and degree of stability."¹⁶⁸

Another important message the PRC intends to convey through the negotiations is its reconciliatory gesture to the Nationalist China on Taiwan. From 1949 on there has been confrontation between Peking and Taipei across the Taiwan Straits. Except for some small scale military clashes in the 1950s, the nature of the encounters have been more po-

¹⁶⁶ Rayner, op. cit., p.389.

¹⁶⁷ Ibid., p.388.

¹⁶⁸ Ibid., p.390.

litical than military. When Peking gradually improved its relations with Washington in the 1970s, it began to launch a series of peace offenses against Taipei in an attempt to unite the island with the mainland. Important reconciliatory moves from Peking include: a negotiation proposal made on February 28, 1973;¹⁶⁹ the release of the "Message to Compatriots in Taiwan" on January 1, 1979;¹⁷⁰ Yeh Jianying's nine-point proposal expounded on September 30, 1981;¹⁷¹ the release of "Liao Chengzhi's Letter to Chiang Ching-kuo" on

¹⁶⁹ The proposal was raised by Fu Tso-yi, a former Nationalist general who had defected to the Communists in 1949. It called for an open or secret talk between Peking and Taipei. See "China," Facts on File, 1973, p.195.

¹⁷⁰ The message announced a cease of bombardment of Quemoy and other off-shore islands as of January 1, 1979. It also called for holding discussions with the Taiwan authorities to end the military confrontation and establishing transport and postal services and carrying out trade and other interchange between Taiwan and mainland China. See "Message to Compatriots in Taiwan," Beijing Review, January 5, 1979, pp.16-17.

¹⁷¹ Yeh Jianying, Chairman of the Standing Committee of the National People's Congress, in an interview with the NCNA correspondent elaborated Peking's policies for Taipei. The proposals included: 1. Hold talks between the two parties; 2. Start exchange of mails, trade, air and shipping services, and academic, cultural, and sports exchanges; 3. Promise high degree of autonomy to Taiwan; 4. Guarantee Taiwan's current socio-economic system to be remained unchanged; 5. Offer government positions to Taiwan's leadership; 6. Subsidize Taiwan's finance if necessary; 7. Guarantee free entry and exit to those from Taiwan to the mainland; 8. Promise protection to industrialists and businessmen from Taiwan to run business in the mainland; and 9. Welcome proposals and suggestions from Taiwan. For details see "Chairman Yeh Jianying's Elaborations on Policy Concerning Return of Taiwan to Mainland and Peaceful Reunification," Beijing Review, October 5, 1981, pp.10-11.

July 24, 1982;¹⁷² and the publicity of Deng Yingchao's speech on June 4, 1983.¹⁷³ Despite Peking's constant peace overtures, Taipei has remained wary and has reacted with strong opposition. It has denounced such offers and called them "united front trickery."¹⁷⁴ Hence though Peking has been so eager to see the reunion of Taiwan with the "motherland of China," still no progress has been made.

Peking's adjustment of its negotiating attitude suggested that the change was designed to pacify the people of Hong Kong, and ultimately, the people of Taiwan. We can recall that at the early stage of the negotiations, Peking demonstrated a "determined demand" for sovereignty over Hong Kong. London also asserted its legal presence in the terri-

¹⁷² Liao, son of Liao Zhongkai, one of the major founders of the Nationalist Party. He was a member of the Central Committee of CCP, and Vice-Chairman of Standing Committee of the National People's Congress. Chiang, son of Chiang Kai-shek, and President of the Republic of China on Taiwan. In the letter Liao reviewed his long relationship with Chiang and proposed a peace talks between the Communist and the Nationalist. See "Liao Chengzhi's Letter to Chiang Ching-kuo," Beijing Review, August 2, 1982, p.5.

¹⁷³ Deng Yingchao, widow of Zhou Enlai, Executive Chairwoman of the Presidium of the First Session of the Sixth Chinese People's Political Consultative Conference (CPPCC). She asserted that the PCC respect history and reality and promised to allow Taiwan to practice a system different from that of the mainland. See "First Session of the 6th CPPCC Opens," Beijing Review, June 13, 1983, pp.6-7.

¹⁷⁴ Y. S. Sun, "Premier Sun Yun-suan's Declaration on Chinese Communists' United Front Activities," Free China Weekly, January 14, 1979, p.2. Taipei has followed the same pattern of reaction to Peking's proposals since then.

tory. As the talks remained deadlocked over the issue of sovereignty months after Thatcher's visit to Peking in September 1982, anxiety and uncertainty prevailed in Hong Kong. As a result, "capital drained away from the territory and emigration queues at local consulates lengthened."¹⁷⁵ Similarly, in September 1983, when the fourth round of the talks ended with no statement, "anxiety turned into panic."¹⁷⁶ The result was a crisis of "rampant inflation" and "economic collapse."¹⁷⁷ In order to ease the uneasiness of the people of Hong Kong, Peking promised to make Hong Kong a special administrative region with a high degree of autonomy for fifty years after 1997; it also made concession to Britain's push "for a legally binding agreement containing as much details about post-1997 Hong Kong as possible."¹⁷⁸ Peking's efforts to soothe the people of Hong Kong indicated that it has realized that an arbitrary attitude can not successfully fulfil the policy of reunification. Thus as T. L. Tsim, an administrator of the Chinese University of Hong Kong, has observed: "To allay the doubts of a Hong Kong public wary of Chinese pronouncements and guarantees, Peking's tactic is to point out that China will be using Hong Kong as an example

¹⁷⁵ "Two Years of Storm & Stress," p.30.

¹⁷⁶ Ibid.

¹⁷⁷ See "Riding the Roller Coaster," Asiaweek, October 7, 1983, pp. 25-35; and "No News is Bad News." FEER, October 6, 1983, pp. 18-20.

¹⁷⁸ "Two Years of Storm & Stress," p.30.

to Taiwan, demonstrating to the Taiwanese that they have nothing to fear from a Communist takeover."¹⁷⁹

Johnson has bluntly asserted that for the PRC, Taiwan "is the ultimate target of the Hong Kong campaign."¹⁸⁰ Since Peking has been unable to convince Taipei with its calls for a "peaceful reunification," it might want to do its best on the Hong Kong matter. The PRC's intention of applying the "Hong Kong model" to implement its policy toward Taiwan has been clearly stated by its leaders on several occasions.¹⁸¹ Peking further stressed its policy for Taipei in the Hong Kong talks. According to Ji Pengfei, the PRC's State Councillor, "Kuomintang personnel and organizations from Taiwan stationed in Hongkong will enjoy full rights when China resumes the exercise of sovereignty of the region in 1997." "Relations between Hongkong and Taiwan, including sea and air transportation, economic and cultural ties, and personnel exchanges, will not be affected,"¹⁸² he added. Thus it

¹⁷⁹ T. L. Tsim, "1997: Peking's Strategy for Hong Kong," World Today (January 1984): 44.

¹⁸⁰ Johnson, op. cit., p.891.

¹⁸¹ For example, Deng Xiaoping, PRC's most powerful figure, said that "experience gained in resolving the Hong Kong issue could be applied to Taiwan." See "HK Experience Suits Taiwan," Beijing Review, January 7, 1985, p.10. Li Xiannian, PRC's President also said: "Taiwan will be granted even more autonomy than Hongkong if the island follows Hongkong's example and returns to the motherland." See "Top Leaders Vow Taiwan Flexibility," Beijing Review, March 25, 1985, p.7.

¹⁸² "Rights of KMT in Hongkong Ensured," Beijing Review, April 30, 1984, p.7.

is clear that the PRC has attempted to do its best, to make meaningful concessions in the Sino-British talks in order to set an example for solving its unification problem with Taipei.¹⁸³

Now it is clear that the PRC did take a more flexible position while negotiating with Britain in order to win the confidence of the world community, especially Nationalist China, the ASEAN countries, the UK, and the USA. By so doing it may lure the Chinese people on Taiwan to the bargaining table, improve relations with the ASEAN countries, and win support of the UK and the USA to achieve its foreign policy goals.

The UK

As indicated earlier, Britain has little national prestige at stake in the negotiations with the PRC concerning the issue of Hong Kong. Two declassified British documents further support the assertion that Britain has prepared to give Hong Kong up. A top-secret study by Britain's Commonwealth Relations Office (CRO) revealed that in 1949 Britain

¹⁸³ On the solution of the Hong Kong issue, the Beijing Review also comments: "To our brothers and sisters across the Taiwan Straits, we say: If such a complex issue like Hongkong can be settled through peaceful negotiations with the British, why can't we Chinese sit down and talks and put an end to the separation before the year 2000? Do not hesitate, lest we lose a golden opportunity!" See "The Hongkong Solution," Beijing Review, October 8, 1984, p.4.

considered that an eventual Chinese "recovery not only of leased territories but also of ceded areas of the colony . . . must be accepted."¹⁸⁴ According to an Asiaweek report:

"The lease of the New Territories expires in 1997," says the recently declassified CRO paper. "It does not seem likely that any Chinese government will be prepared to renew the lease. Without these territories, Hongkong would be untenable and it is therefore probable that before 1997, United Kingdom government of the day will have to consider status of Hongkong."¹⁸⁵

Another document is the "Cabinet Paper of 1954:2." It reveals that on economic ground, Britain decided to abandon her defense to Hong Kong in 1954. According to The Times of London:

In April 1954, Sir Winston Churchill's Cabinet made the ultra-secret decision to abandon defence of the colony, a decision so sensitive that even the Governor of Hong Kong was not to be told. Hong Kong troops strength was to be run down to the level needed only for "internal security."¹⁸⁶

Thus as the British presence in the world shrunk, it was evident that Britain would leave Hong Kong sooner or later. She would return to where she belonged--Europe and commit herself to the defense there. The 1984 Defense White Paper confirmed this tendency:

¹⁸⁴ "Hongkong vs. the Future," Asiaweek, September 26, 1980, p.11.

¹⁸⁵ Ibid.

¹⁸⁶ "Hong Kong Defence Run Down," The Times, January 3, 1985.

It has been the policy of successive British governments that British security depends entirely on NATO, and the 1984 White Paper underlined this, saying that 'some 95% of our total defence budget is devoted directly or indirectly to Alliance tasks.'¹⁸⁷

It is generally understood that Britain's presence in China has been basically motivated by business interests. In order to trade with China, Britain fought against Imperial China. To protect her economic interests in China, she was the first Western country to recognize the PRC. As Barker asserts, "For the British, long-standing business interests in China were important and they had good reason to want to keep the door open for trade, whatever the regime."¹⁸⁸

Since Britain has been withdrawing its influence throughout the world, she could not be expected to become militarily involved against the PRC over a colony 11,000 miles away from home.¹⁸⁹ Some people might want to argue that America would support her if Britain were to become engaged in conflict with the PRC over the matter of Hong Kong. This argument is implausible. As Wilkinson observes:

¹⁸⁷ Peter Johnson, Neutrality: a Policy for Britain (New York: St. Martin's, 1985), p.51.

¹⁸⁸ Elisabeth Barker, The British between the Superpowers, 1945-50 (Toronto: University of Toronto Press, 1983), p.169.

¹⁸⁹ According to a report, Hong Kong is one mile from the mainland of China and 11,000 miles by sea from England, 6,000 miles by air. See "Red China Eyes Hong Kong: One Offshore Island British Will Not Give Up," U.S. News & World Report, March 11, 1955, p.42.

Nor could the British rely on United States support in any such confrontation. The American have been concentrating considerable effort on improving relations with China. It is true, but often forgotten, that the US gains considerably from Hong Kong's open window into China, and that, on occasions, it has found great value in the harbour facilities in Hong Kong, for example in the Korean and Vietnam wars. Even so, their current desire to encourage China to act as a counterweight against Soviet expansionism in Asia would undoubtedly override any residual sympathy for Britain's feelings over Hong Kong.¹⁹⁰

According to an American official report, as of November 1984:

The United States remains Hong Kong's largest trading partner and the largest foreign investor in manufacturing industries. Total U.S. investments in Hong Kong, ranging from financial services to manufacturing industries, are estimated to be US\$4 to 5 billion. There are more than 650 U.S. firms established in Hong Kong at present.¹⁹¹

Hong Kong's trade with the United States totalled HK\$85.7 billion in 1984. The bilateral trade balance for the same year amounted to HK\$37.1 billion in favor of Hong Kong.¹⁹² Burton Levin, U.S. Consul General at Hong Kong, said the U.S. is "the leading foreign economic actor on the Hong Kong stage."¹⁹³

¹⁹⁰ Wilkinson, op. cit., pp. 443-444.

¹⁹¹ "Economic Trends Report on Hong Kong," AIRGRAM No. A-50, American Consul Hong Kong, November 30, 1984, pp. 3-4.

¹⁹² Hicks, op. cit., p. 43.

¹⁹³ Burton Levin, "World Affairs Council Speech 10/30/84," Released by United States Department of State, p. 2.

In June 1984, at a Hong Kong Trade Development Council luncheon speech in New York, Levin "publicly pledged support on the vital question of the territory's participation in international trade bodies after China resumes sovereignty in 1997."¹⁹⁴ George Shultz, U.S. Secretary of State, argued during his visit to Hong Kong in July 1984: "We have a deep interest in preserving Hong Kong's stability and prosperity and strongly support efforts to reach a settlement which achieves that goal and which accords with the interests of all involved."¹⁹⁵ Thus the US may want to help the UK and the PRC to solve the issue of Hong Kong peacefully in order to maintain its interests in Hong Kong. However, given its past bitter experiences in Indochina and its current efforts to ally with the PRC, any American military involvement in support of Britain at the expenses of the PRC in any Hong Kong matter is very remote.

Now the best alternative for Britain seems to be to work cooperatively and even accommodatingly with the PRC in order to preserve her best interests in China. Again, the motivation is also an economic one. When Thatcher visited Peking in September 1982 she was reported as saying that "British industry had become much more competitive in the last year

¹⁹⁴ "Watching Game," Asiaweek, June 22. 1984, p.28.

¹⁹⁵ Levin, op. cit., p.4.

or two and that it now stands ready to help China's ambitious modernization programme."¹⁹⁶ When asked about the importance and the possible outcome of his talks with Mrs. Thatcher, PRC premier Zhao commented that "Thatcher's visit will be a catalyst for the improvement of Sino-British relations and the furtherance of bilateral economic and technological cooperation."¹⁹⁷ We also find that in his "Report on the Work of the Government" delivered on May 15, 1984, Zhao promised: "Due regards will be given to the economic interests of Britain and other countries in Hong Kong."¹⁹⁸ No wonder in December 1984, when Mrs. Thatcher returned to Peking to sign the formal Sino-British accord, she was able to arrange a British trade mission to visit Peking in March 1985. This mission concluded two-way trade contracts worth several billions of pounds sterling.¹⁹⁹

¹⁹⁶ "British Prime Minister Visits China," Beijing Review, October 4, 1982, p.10.

¹⁹⁷ "A Rare Dialogue," Asiaweek, October 8, 1982, p.29.

¹⁹⁸ Zhao Ziyang, "Report on the Work of the Government (Delivered at the Second Session of the Sixth National People's Congress on May 15, 1984)," Beijing Review, June 11, 1984, Supplement, p.xvi.

¹⁹⁹ James Bartholomew, "Hong Kong Trade-Off," FEER, April 4, 1985, p.53, 54.

The Hong Kong Element

Though the PRC would not recognize any Hong Kong representation in the negotiations, the Hong Kong community did play a very important role in shaping the course of the talks. Through the efforts of the Unofficial Members of the of the Executive Council and the Legislative Council (Umel-co), the case of Hong Kong was presented to London and Peking. They reflected the common concerns of the people of Hong Kong and exercised much influence on the governments of the PRC and the UK.

The Issue of Hong Kong Representation

During the whole process of the Sino-British talks, the PRC had insisted that negotiations concern only Peking and London. It strongly opposed any involvement of the people of Hong Kong in the negotiations. It asserted that the majority of the Hong Kong residents were Chinese citizens, and in line with its claim of sovereignty over Hong Kong the PRC considered that it "alone" had the responsibility to represent the people of Hong Kong. Its position was reflected in several official or semi-official statements.

In response of Mrs. Thatcher's assertion that the Britain had a moral responsibility and duty to the people of Hong Kong, a NCNA commentator wrote:

We maintain that Xianggang is an issue involving the state sovereignty and national interests of the 1,000 million Chinese people including the Chinese residents in Xianggang. The Government of the People's Republic of China alone is in a position to state that, as the government of a sovereign country, it has a responsibility and duty to the Chinese residents in Xianggang.²⁰⁰

A Chinese scholar also explained the PRC's position. He elaborated:

. . . the overwhelming majority of the inhabitants in the Xianggang area are Chinese, and only the Chinese Government can genuinely represent them, while the British Government has no right to represent them. In fact, the purpose of the Chinese Government in holding talks with the British Government on the recovery of Xianggang is exactly to free them from their long-term subjugation to foreign colonial rule. To help them realize this dearest wish of theirs is to represent their highest interest

The relation between the British Government and the Chinese residents in Xianggang is that between colonial ruler and the ruled. Therefore, in the present negotiations, the British Government is not qualified to represent the latter.²⁰¹

Accordingly, the PRC would neither recognize nor allow any Hong Kong representation in the negotiations. On July 7, 1983, when Governor Youde said he would represent the people of Hong Kong at the talks,²⁰² the PRC was quick to

²⁰⁰ "China's Solemn Stand on Xianggang (Hongkong)," p.10.

²⁰¹ Jin, op. cit., pp.18,19.

²⁰² "The Talks: a Promising Start," Asiaweek, July 22, 1983, p.8.

take exception. A spokesman of the foreign ministry declared:

The Sino-British talks on the Xianggang issue are bilateral, between the Government of China and the Government of Britain. Mr. Youde will take part in the talks as a member of the British Government Delegation. Therefore, he can only represent the British Government in the talks.²⁰³

In addition, the PRC "denied a visa to Hongkong government information chief Peter Tsao so that he could not attend the talks" ²⁰⁴ This action was to demonstrate PRC's denial of Hong Kong representation in the negotiations.

Thus the PRC's strong opposition to any Hong Kong participation in the talks was the result of its insistence on the claim of sovereignty over Hong Kong and its self-asserted representation of the people of Hong Kong regardless of the actual willingness of the Hong Kong residents.

Despite the PRC's opposition to Hong Kong's participation in the negotiations, the people of Hong Kong also expressed their concerns about their future through several channels. Groups such as the Hongkong Observers and the Reform Club demonstrated their concerns about the future of Hong Kong by sponsoring a series of activities to raise Hong Kong residents' political consciousness.²⁰⁵ For example, both organi-

²⁰³ "Sino-British Talks on Xianggang," Beijing Review, July 25, 1983, p.8.

²⁰⁴ "The Talks: a Promising Start," p.8.

²⁰⁵ According to Joseph Y. S. Cheng, groups such as the Hong Kong Belongers' Association, Meeting Point, the Hong Kong Observers, the Hong Kong Prospect Institute, the Reform Club of Hong Kong, the Catholic Church, the Hong

zations conducted several opinion surveys to evaluate the community's general attitudes toward the future of the territory. The Hongkong Observers also published a series of books about the politics of Hong Kong.²⁰⁶ In the wake of the British announcement of sovereignty concession to the PRC, the same group also released a document outlining what relationship Hong Kong should have with Peking after June 30, 1997 so as to pave the road to confidence.²⁰⁷ All of their actions helped make the voices of Hong Kong heard. However, the mainstream of the Hong Kong element in the Sino-British negotiations was generally believed to be the Unofficial Members of the Executive Council and the Legislative Council.

Kong Christian Council, Trade Unions: the Hong Kong Christian Industrial Committee, Student Unions, the Pro-Guomindang Anti-Communist Refugees, and the Revolutionary Marxists' League all made their voices about the future of Hong Kong heard during the negotiations. See Joseph Y. S. Cheng, ed., Hong Kong: in Search of a Future (New York: Oxford University Press, 1984), pp. 110-178.

²⁰⁶ For example, a Chinese book entitled Observing Hong Kong, a collection about politics and government of Hong Kong, including the future of Hong Kong, was published in December 1982 by the Pai Shing Fortnightly.

²⁰⁷ "The Road to Confidence," South China Morning Post (SCMP, hereafter), May 19, 1984.

Petition to London

Since all the Umelco are hand-picked by the governor, they do not have a popular mandate. However, they did play the most important role in presenting the case of Hong Kong to the British and the Chinese authorities. The Executive Council (Exco), for example, had an "apparently growing role . . . in the Sino-British parley."²⁰⁸ According to a report in the Hong Kong Economic Journal Monthly, since September 1983 "Exco's function has evolved from merely giving advices to helping shape Britain's negotiating tactics."²⁰⁹ Governor Youde briefed Exco's members regularly on the progress of the negotiations. Sir S. Y. Cheng, a senior unofficial member of the Exco admitted: "Exco is very actively involved in the negotiations."²¹⁰

Since the people of Hong Kong had no share in the talks, they had to chiefly rely on the Britain to represent their case to the PRC. On May 9, 1984, the Umelco sent a nine-member delegation to London to reflect the Hong Kong residents' position "as confidence in Hongkong's future continues to slide in the wake of the announcement by the Foreign

²⁰⁸ "See You in September," Asiaweek, August 12, 1983, p.25.

²⁰⁹ Ibid.

²¹⁰ Ibid.

Secretary, Sir Geoffrey Howe, that British administration over the territory will cease after the treaty expires."²¹¹ They "openly lobbied British parliamentarians to push for concrete, detailed guarantees of the capitalist enclave's long-term viability in the wake of recently announced plan to return it to China in 1997."²¹² According to a report:

The main thrust of the offensive, a bluntly worded statement titled "The Future of HongKong," {was} released on May 9 by senior Executive Councillor S. Y. Cheng moments before he and eight other Umelco colleagues departed for London to lobby MPs in advance of the debate. Seeing Cheng and his party off at the airport in an impressive show of solidarity were 22 other Unofficials. "We take with us a paper which reflects the unanimous position of Umelco," Cheng told reporters at the airport. "We believe it reflects views, fears and feelings widely held by Hongkong people."²¹³

Highlights of the Umelco paper can be summarized as follows:²¹⁴

1. It suggested that Britain should negotiate resettlement opportunities for Hong Kong people "who cannot accept the idea of living under Communist authority."

2. It asked London that "What will be {London's} reaction if Hong Kong people do not accept the agreement or parts of it?" It reminded London "The inescapable fact is that the Chinese government is committed to a political philosophy which is at least incompatible, and at worst hostile, to the philosophy on which the various systems and freedoms enjoyed by Hongkong today rest."

²¹¹ Halima Guterres, "Residual British Status Sought," SCMP, May 10, 1984.

²¹² "A Cry from the Heart," Asiaweek, May 25, 1984, p.25.

²¹³ Ibid., pp.25-26.

²¹⁴ Ibid., p.26

Parliament "cannot take lightly the responsibility of transferring authority over a community (as opposed to the territory) for which the constitutional link with Britain has meant so much for so long to a communist government"

3. It suggested that the acceptability of a Sino-British agreement on the territory's future would depend on it:

--"containing full details of the proposed administrative, legal, social and economic systems applicable after 1997;"

--"providing adequate and workable assurances that the terms of the agreement will be honoured;"

--"stating that the provisions of the Basic Law will incorporate the provisions of the agreement;"

--"guaranteeing that the rights of British nationals will be safeguarded."

As a newspaper commented, the statement "signals a clear vote of no confidence over the way in which the the negotiations over Hongkong's future have been going."²¹⁵

The Peactions

In response to Umelco's action, Zeng Tao, former NCNA chief and deputy secretary-general of the second session of the 6th National People's Congress, charged that Umelco's statement did not represent the view of the great majority of Hong Kong people. He said that it "is not conducive to the stability of Hong Kong," and that it "is an effort to interfere with the development of the Sino-British

²¹⁵ Guterres, op. cit.

talks."²¹⁶

In London, opponents such as former Hong Kong governor MacLehose "criticised Umelco's statement as badly timed and ill-conceived."²¹⁷ However, in support of the Umelco, the Sunday Times asserted that "no agreement is better than a bad agreement."²¹⁸ It reminded its readers:

Communist China's short history is so littered with broken promises, even since the excesses of the Cultural Revolution ended, that half a million mainlanders have voted with their feet and settled in Hongkong . . . Britain's determination not to sign a deal that it cannot commend to Hongkong in all good faith is both Britain's and Hongkong's strongest card.²¹⁹

After receiving the delegation, Thatcher's official statement said that she "made it clear she fully understood the anxieties and wishes expressed to her."²²⁰

The Umelco's London trip won strong support from the people of Hong Kong, as Cheng said in an interview:

. . . the Hongkong people came out and said that the views we had expressed in our position paper did represent their views. {In Hongkong} there were many views expressed in our support in the newspapers, and there were some 2,000 organizations taking out advertisements on the front pages to support the views we have expressed. The delegation has received in the past week between 300 to 500 telexes from people in all walks of life, all saying that the views expressed in our position paper do reflect very accurately their views

²¹⁶ "A Cry from the Heart," p.26.

²¹⁷ Ibid., p.31.

²¹⁸ Ibid., p.32.

²¹⁹ Ibid.

²²⁰ Ibid., p.26.

about Hongkong's future. I don't think we can have a better mandate than this kind of public support.²²¹

The Umelco's action, according to reports, did have a certain degree of impact. According to a newspaper:

The Chinese side took the development rather quietly, believing, it was said, that the course of the talks was now so firmly set that there could not be changes.

But when Umelco made known its statement, with the added gesture of practically all members turning up at the airport to bid bon voyage to the delegation, the weight and implications of their action began to sink in.

Suddenly China realised it could and should not ignore the Umelco action, in spite of its conviction that Umelco represented only a small section of the community and therefore did not represent public opinion.²²²

Thus as Asiaweek reported, Premier Zhao would devote "a substantial portion of his government work report to a detailed outline of Peking's plans for maintaining Hongkong's prosperity and stability."²²³ Deng Yingchao, chairman of the Chinese People's Political Consultative Conference (CPPCC) also assured the CPPCC delegates from Hong Kong and Macau that the PRC's plan to resolve the Hong Kong question "would not bring harm to anyone in the territory."²²⁴

²²¹ "We Hope to Go to Peking," Asiaweek, June 1, 1984, p.32.

²²² David Chen, "Umelco Sparks Fears of New Confidence Crisis," SCMP, May 16, 1984.

²²³ "A Cry from the Heart," p.26.

²²⁴ Ibid.

Petition to Peking

Generally speaking, Chinese in Hong Kong support the reversion of Hong Kong's sovereignty to China. Frank Ching observes:

Even the most rabid anti-Communist Chinese in Hong Kong would find it difficult to agree that sovereignty over the territory should not belong to China. There may be arguments over the legitimacy or the merits of the governments in power in China, but not over whether Hong Kong sovereignty belong to China.²²⁵

Since most residents of Hong Kong are either refugees or descendants of refugees from Communist China, the prospect of a Communist rule always makes them feel uneasy. This is the reason why they would like a "continued British presence" in Hong Kong after 1997. As explained by an author:

To them, the crucial issue is not Chinese sovereignty--which is not in dispute--but governance: who will run Hong Kong? In their representations to the Hong Kong and British governments through the Executive and Legislative Councils, they have emphasized the need for a continued living, working and investing in Hong Kong.²²⁶

Thus we see that there is an emotional dilemma in the minds of the majority of Chinese in Hong Kong: opposing the PRC's recovery of Hong Kong means a weakening of their sense of national feeling; accepting Communist takeover uncondition-

²²⁵ Frank Ching, Hong Kong and China, for Better or for Worse (New York: The Chinese Council of the Asia Society; the Foreign Policy Association, 1985), p.49.

²²⁶ Tsim, "1997: Peking's Strategy for Hong Kong," World Today p.41.

ally would risk their currently comfortable way of life for an uncertain future.

Between June 21 and 25, Sir Cheng together with two other members of the Umelco were in Peking "with the object of reflecting the views, wishes and anxieties of the people of Hongkong."²²⁷ Cheng and his colleagues told the Peking authority that being Chinese, they "support the recovery of the sovereignty of Hong Kong and China's reunification plan."²²⁸ However, they also informed Peking leaders that "people remain anxious and worried and are filled with uncertainties."²²⁹ They recommended that "in order to be successful in maintaining the prosperity of Hong Kong," the prospective Sino-British agreement "must be acceptable to Hongkong's people;" the Basic Law "should be drafted in Hongkong by representatives of Hongkong and representatives of Peking . . . {and} stipulate that any future amendments to the Basic Law can only be initiated by Hongkong." Furthermore, "in order to provide 'an insulating mechanism' between Hongkong and China, Peking should appoint a committee consisting of ethnic-Chinese of "international standing and reputation to monitor or advise on the drafting, implementation, and subsequent amendment of the Basic Law."²³⁰

²²⁷ "Deng Denies Confidence Crisis over 1997," SCMP, June 26, 1984.

²²⁸ "Talking Tough," Asiaweek, July 7, 1984, p.26.

²²⁹ Ibid.

²³⁰ Ibid.

Deng Xiaoping, the PRC's de facto leader, would not recognize Cheng and his party as Umelco members, would insist that the guideline, position and policy of the PRC were irrevocable, would deny a confidence crisis in Hong Kong, and would not read the memorandum they presented. However, the trio did have a chance to meet Deng and other leaders of the PRC to present the case of Hong Kong.²³¹ According to Cheng, the communist leaders in Peking had pledged to make the agreement as detailed as possible and to make it binding. They also promised to consider other recommendations.²³² Thus at least the voices of Hong Kong were heard by the Chinese authorities because of the Umelco's efforts.

The Lobo Motion

Another important symbol of the Hong Kong element was reflected in the introduction of the "Lobo Motion." On February 24, 1984, Roger Lobo, senior unofficial member of the Legislative Council (Legco) introduced a motion which read: "The council deems it essential that any proposal for the future of Hongkong should be debated in this council before any final agreement is reached."²³³ According to Lobo, "We

²³¹ For a detailed record of conversation between Deng and the trio see "Feel Free to Say Whatever You Want to--But . . ." SCMP, June 30, 1984.

²³² "Deng Denies Confidence Crisis over 1997."

²³³ "We Love Hongkong," Asiaweek, March 23, 1984, p.7.

would be doing an injustice to the people of Hongkong if we don't speak up," since "Legco has been under a great deal of pressure to discuss the question of Hongkong's future, we like to think we are responsible to the people."²³⁴

The debate which was set on March 14, did reflect common concerns about the future of the territory. According to a report:

. . . Most indicated their acceptance of, or at least acquiescence to, China's claims. Not one disputed Peking's assertion of sovereignty over Hong Kong. Nonetheless, many speakers voiced grave doubts about the feasibility of any solution reached without the open participation of Hong Kong people. In fact, they said, such active support was the only way to ensure the public confidence vital to the territory's continued stability and prosperity.²³⁵

Legally Britain did not need to comply with the motion, because all bills are subject to the governor's assent before becoming ordinances.

The Beijing Review criticizing the motion said it "would violate the Sino-British agreement to keep the content of the talks secret, and would harm the good atmosphere of the discussion."²³⁶ Though no particular tangible result came from the motion, the Legco's unanimous vote did demonstrate the general will of the people of Hong Kong and posed a threat to the PRC. No wonder it charged that the British

²³⁴ "Fighting for a Voice," Asiaweek, March 9, 1984, p.27.

²³⁵ "We Love Hongkong," p.8.

²³⁶ "Xianggang Motion Causes Concern," Beijing Review, March 12, 1984, p.7.

"will again play the public opinion card and harp on the old tune of the 'three-legged stool.'"²³⁷

The Balance Sheet

Though the negotiations were initiated by Britain in order to solve the problems of Hong Kong, the PRC and the UK motivated by a common aim which was to maintain the stability and prosperity of Hong Kong. However, each party also had its own specific goals to achieve from the talks. For the PRC, Hong Kong provided it with valuable economic advantages. If it "is to modernize and industrialize, as its leaders plan, it needs a thriving, capitalist Hong Kong as a conduit for technology, know-how and money from abroad."²³⁸ Its task "is to devise, without sacrificing its national dignity, a settlement that will restore confidence in Hong Kong, especially in view of the fact that the historical pattern in China has not been particularly reassuring."²³⁹ For the British, as Wilson observed in 1977, "they stand ready to surrender Hongkong at any time that China asks for it, provided only that London will seek to get the best possible deal in the transition period and afterwards for the present

²³⁷ Ibid.

²³⁸ Steve Lohr, "The Cloud over Hong Kong," New York Times Magazine, August 14, 1983, p.30.

²³⁹ Ibid.

population of Hongkong including its commercial interests."²⁴⁰

As revealed by the above discussions, there were favorable and unfavorable conditions for each negotiating party. On the symbolic issues, the UK had much more to say about human rights and the administration of Hong Kong than did the PRC. However, the PRC was supported by a strong national sentiment of abrogating unequal treaties and recovering Hong Kong together with its strong opposition to the concept of divided sovereignty. The declining British Empire found itself in a weaker position than in earlier years. On economic considerations, both parties had much to gain from Hong Kong. Nevertheless, Hong Kong's material dependence on mainland China seemed to lift the PRC to a stronger position. On diplomatic considerations, a more accommodating gesture would improve the PRC's image in the world community and could also help its campaign against Taiwan. For the UK, maintaining a good relationship with the PRC would also serve its interests. In addition, a cooperative working relationship between the two parties would help them achieve the common aim of the talks. Hence there appears to have been a meeting point for both in this regard. On the Hong Kong element, we find that concerns expressed by the Umelco were expressions of distrust to the PRC. The UK might have manipulated this to strengthen its position. However,

²⁴⁰ Dick Wilson, "New Thoughts on the Future of Hongkong," Pacific Community 8 (July 1977): 593.

because of Britain's unwillingness to offend the PRC and her earlier concession on the issue of sovereignty, this chip finally turned out to be not very helpful. Thus the application of bargaining chips in the talks were based on the considerations of the common aim and individual goals and the negotiating parties' will and ability to achieve them.

CHAPTER IV

THE OUTCOME

As discussed in the last chapter, the Sino-British dispute over the legal status of Hong Kong and the ever-approaching due date of the lease of the New Territories had made Hong Kong an international problem. At this point the PRC and the UK agreed to solve the problem through diplomatic channels. As Premier Zhao said in his speech of December 19, 1984, "both Governments have shown regard for larger interests, taken Hong Kong's history and realities into account, and displayed a spirit of mutual understanding and friendly cooperation."¹ They were able after two years' negotiations to reach a mutually acceptable agreement. Both parties settled the issue of sovereignty and made an arrangement for the post-1997 status of Hong Kong. The accord stipulates that the UK will return sovereignty over Hong Kong to the PRC on July 1, 1997 and in turn the PRC will allow Hong Kong's existing social and economic systems and life-style to remain unchanged for a period of fifty years after 1997. Thus the problem of Hong Kong as an international dispute has been settled through peaceful negotia-

¹ Premier Zhao's speech on the signing of the agreement on the future of Hong Kong. See "Excerpts from Speeches in Peking," The New York Times (NYT hereafter), December 20, 1984, p. Y3.

tions.

However, "for Hong Kong Chinese," as Frank Ching, a journalist, observes, the problem "is far from over."² He continues: "At most it can be said that they have successfully negotiated the first hurdle of an obstacle course."³ As a statement issued by the Unofficial Members of the Hong Kong Executive and Legislative Councils on November 29, 1984 indicated, the people of Hong Kong are still worried about their future:

Whilst the Draft Agreement is acceptable as a whole to the majority of the community, some concern and points of detail have been raised. In particular, there is anxiety about interference from the Chinese Government; worry about conscription in Hong Kong Special Administrative Region; uncertainty about the acceptability to third countries of the new form of British passport; doubt about the preservation of existing human rights and personal freedoms; fear about the stationing of PLA troops in Hong Kong; resentment about the termination of transmissibility of British nationality for Hong Kong BDTs in 1997; reservations about possible incompatibility between the constitution of the People's Republic of China and the future Basic Law of Hong Kong; and concern about the faithful implementation of the Agreement and the policies of future Chinese leaders.⁴

Thus in these respects, there is still a Hong Kong "problem," especially for post-1997 Hong Kong.

² Frank Ching, "Hong Kong Clears a First Hurdle," The Wall Street Journal (WSJ hereafter), October 1, 1984, p.26.

³ Ibid.

⁴ Hong Kong 1985, a Review of 1984 (Hong Kong: Government Information Services, 1985), p.40. PLA stands for the People's Liberation Army, and BDTs for the British Dependent Territories citizens.

This chapter will begin with a summary of highlights of the agreement, then review the gains and losses of both parties. In assessing the agreement, we will first discuss its major problems and then indicate its strengths and weaknesses. We will consider some of the major issues from the legal point of view, i.e. review the situation of Hong Kong under the Sino-British Joint Declaration.

Highlights of the Agreement

The agreement consists of a joint declaration, in which (1) the United Kingdom declares that it will return Hong Kong to the PRC on July 1, 1997; (2) the Chinese government sets out its policies toward Hong Kong; and (3) the two governments agree to implement this declaration and the annexes to the agreement. In Annex I, the Chinese government elaborates its policies toward Hong Kong in fourteen sections; Annex II sets out the terms of reference and outlines the working arrangements of a Joint Liaison Group through which the two sides will continue to cooperate up to the year 2000. Annex III provides for the protection of existing land rights and for future land grants. Associated with the agreement is a separate exchange of Memoranda on the status of persons after June 30, 1997 who at present are British Dependent Territories citizens, and related issues.⁵

⁵ "Agreement on the Future of Hong Kong," Policy Background

In addition to the reversion of the sovereignty of Hong Kong to the PRC, the agreement contains the following provisions:⁶

(1) Hong Kong will become a Special Administrative Region (SAR) of the PRC and enjoy a high degree of autonomy except in foreign and defense affairs. Socialist policies applied in the mainland will not be applied to the SAR until after the year 2047. The Basic Law of the Hong Kong Special Administrative Region (HKSAR) will be made by the National People's Congress of the PRC to govern the HKSAR.

(2) The people of Hong Kong will continue to enjoy their existing rights and freedoms under Hong Kong law and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights will continue to apply.

(3) The chief executive of the HKSAR will be appointed by the Central People's Government. HKSAR legislature will make laws for the HKSAR. The legislature will be elected and the executive will be accountable to the legislature and to the courts.

13/84. (New York: British Information Services, September 26, 1984), pp.1-2.

⁶ The following summary of the agreement is reorganized based on "Agreement on the Future of Hong Kong" and "A Draft Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Future of Hong Kong," Hong Kong: The Government Printer, September 26, 1984.

(4) Hong Kong's legal and judicial systems, including the common law, will be maintained. The HKSAR will be responsible for the maintenance of public order. A court of final appeal will be established in the HKSAR.

(5) The HKSAR will be able to negotiate agreements and participate in international organizations in appropriate fields.

(6) The HKSAR will have autonomy in economic, financial and monetary fields. There will be no exchange control and the Hong Kong dollar will continue to be freely convertible. Investors will be able to deposit or withdraw their capital freely.

(7) The HKSAR will determine its own shipping policies, and will be given authority to negotiate its own air service agreements for international flights which do not touch the mainland of China.

(8) There will be recognition of existing land rights. The agreement makes provision for the Hong Kong government to grant new leases extending until 2047.

(9) There will be continuation of employment for members of Hong Kong's public service, including (up to certain levels) expatriate members. All responsibilities for the payment of pensions will be taken over by the SAR government.

(10) There will be a continuing right of free entry to and exit from Hong Kong. The agreement sets out the criteria for the right of abode in Hong Kong and the issuance and the

use of passports and other travel documents. Residents of the SAR will be able to travel on documents issued by other governments, including British passports. Hong Kong British Dependent Territories Citizens holding British passports prior to June 30, 1997 will retain a form of British nationality after July 1, 1997. This status is not transmissible by descent and bears no right of abode in Britain.

(11) Both signatories declare that Britain will be responsible for the administration of Hong Kong up to June 30, 1997. The object is to maintain and preserve the economic prosperity and social stability of Hong Kong. The PRC will cooperate on this matter.

(12) A Sino-British Joint Liaison Group will be set up to ensure a smooth transfer of power. The Joint Liaison Group, it is agreed, will be a forum for liaison, not an organ of power. It will continue to function until January 1, 2000.

Gains and Losses

As revealed by the agreement, there are gains and losses for both parties. The PRC will resume its exercise of sovereignty over Hong Kong as of July 1, 1997. However, it will not be able to bring Hong Kong immediately under its direct rule. The UK, on the other hand, will achieve an honorable withdrawal from a colony but at the same time will continue to enjoy some of its privileges there. Of course, it also

will lose some territories to which it has claimed legal rights. We will focus on these matters to discuss the situation of both parties.

The PRC

The gains. The PRC's gains from the agreement can be seen in three different ways. Territorially, it recovers sovereignty over the Hong Kong area. In addition to the leased New Territories, the PRC will also recover the ceded areas of the island of Hong Kong, the Kowloon Peninsula and Stonecutters Island. All these places had been leased or ceded to Britain under unequal treaties by the Ching Government of Imperial China. The recovery of the Hong Kong area will add something to its territorial integrity.

Politically, the conclusion of the Sino-British agreement on the question of Hong Kong means bringing an end to British colonialism in China. Thus it also helps boost Chinese national pride. An editorial in the People's Daily comments:

The unfortunate history of Hongkong under the rule of a foreign country will be put to an end. The humiliation suffered in the past by the Chinese people will be wiped out. This is a great event of historic importance which merits great rejoicing among the people of all nationalities in China, the compatriots of Hongkong included.⁷

⁷ "A Great Event of Historic Significance," editorial of Renmin Ribao, September 27, 1984, as translated into English and printed in the Beijing Review, October 1, 1984, p.14.

An article of the Beijing Review expresses a similar sentiment:

On the mainland, the accord was hailed as a historic landmark, as the return of Hongkong will mean a dream come true for the Chinese people and signify the end of more than a century of national humiliation.⁸

Another important aspect of the political meaning of the agreement is its implication with regard to the PRC's intention of unifying Taiwan. A Beijing Review article that summarizes Deng Xiaoping's expressions on the issue of Hong Kong quotes the PRC's paramount leader as having said "China's plan for Taiwan is the same,"⁹ meaning that the "Hong Kong model" will be applied in the case of Taiwan. In his October 22, 1984 speech at the Third Plenary Session of the Central Advisory Committee, Deng said:

The resolution of the Hong Kong question has a direct impact on the Taiwan question . . . In Taiwan's case, we would adopt an even more flexible policy. By more flexible we meant that, in addition to the policies used to solve the Hongkong question, we would allow Taiwan to maintain its own armed forces.¹⁰

Deng has continuously repeated this argument on several occasions.¹¹

⁸ "The Hongkong Solution," Beijing Review, October 8, 1984, p.4.

⁹ "A Significant Concept," Beijing Review, October 29, 1984, p.16.

¹⁰ "'One Country, Two Systems' Born of Reality," Beijing Review, February 4, 1985, p.15.

¹¹ For examples, at his meetings with Suzuki, former premier of Japan; with Y. K. Pao, Hong Kong's shipping magnate; and with Heath, former British prime minister. See Penmin

The final political meaning of the accord is that it represents a personal victory of the PRC's de facto leader Deng Xiaoping. Deng set September 1984 a deadline for reaching an accord; otherwise the PRC would unilaterally have announced its own Hong Kong policy. Britain met the ultimatum-like requirement. Allowing Hong Kong to retain its capitalist system was "Deng's brainchild," as John F. Burns has said. The agreement, he continues, "is also a showcase for Mr. Deng's domestic policy of encouraging market forces and foreign investment."¹² The link was reflected in a report of Deng having told Mrs. Thatcher "that China would need Hong Kong's vigorous economy until the middle of the next century to help its own modernization."¹³ In addition, as Newsweek reported, "a Hong Kong deal would also give Deng ammunition to silence his critics on the left, especially in the military."¹⁴

Ribao, October 24, 1984, December 21, 1984, and April 19, 1985 respectively.

¹² John F. Burns, "Hong Kong Accord Is Signed in Peking," NYT, December 20, 1984, p.Y3.

¹³ Ibid.

¹⁴ "Cutting a Deal on Hong Kong," Newsweek, August 13, 1984, p.48. As a result of the PRC's reformist policies that were designed by Deng and his followers, old and inefficient cadres have been gradually replaced by the younger and the better educated; defense budget has been cut and the number of the PLA is to be reduced by one million within a few years. In order to pacify the critics, Deng has earnestly explained the necessity of the new policies, including the Hong Kong agreement. Deng's speech to the Third Plenary Session of the Central Advisory Committee is an example of such effort. See Renmin Ribao, January 1, 1985 (Deng's speech was delivered on October 22,

Economically, the PRC's political arrangement for Hong Kong--no change in the status quo for fifty years--is designed to maintain Hong Kong's stability and prosperity. If the plan works well, then the PRC will be able to continue to enjoy all the economic benefits it has acquired from this world trading and financial center. As we have noted earlier, Hong Kong provides the PRC with foreign exchange, Western capital, technology, and managerial skills for its modernization campaign and economic reforms, and as a PRC's port of entry to promote foreign trade, especially, with non-communist countries. For example, a US\$4 billion nuclear power plant project has been launched as a joint venture of Guangdong and Hong Kong companies.¹⁵ As a result of Premier Zhao Ziyang's visit to London in June 1985, Britain has promised to transfer some of its "most modern technology" to the PRC.¹⁶ In addition, as of the first half of 1985, for-

1984, and made public on this day). An example of literature dealing with Deng's relationship with the PLA is Walter A. Taylor's "China's Army: Linchpin of Power in Peking," U. S. News & World Report, October 1, 1984, p.34.

¹⁵ The project is said to be "the largest joint venture China has ever undertaken." It will generate 10 billion kwh of electricity annually, about 70 percent of Guangdong Province's power production. See "Contract Ok'd for First Nuke Plant," Beijing Review, January 28, 1985, pp.8-9.

¹⁶ Zhao asserted that "the settlement of the Hongkong issue has opened a new page in the countries' relationship." The PRC and Britain agreed to strengthen economic ties and promote co-operation in the peaceful uses of nuclear energy between the two countries. They have signed two relevant agreements. See "China and Britain to Boost Trade Relations," China Daily, June 5, 1985, p.1.

eign investments in the PRC has reached US\$10.88 billion; among which "Hong Kong and Macao head the list and are followed by Britain."¹⁷

The losses. What the PRC loses in the agreement is its compromise with Britain on something it had asserted to be unnegotiable--sovereignty. Paragraph 4 of the Joint Declaration states that both the PRC and the UK declare that "during the transitional period between the date of the 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 stability" The British interpretation of this paragraph is that "the two Governments jointly declare that Her Majesty's Government will remain responsible for the administration of Hong Kong up to 30 June 1997."¹⁸ As Frank Ching puts it: "This statement is historic in that for the first time since the birth of the PRC, Beijing is openly legitimizing foreign rule over a part of what it claims to be Chinese territory, though for only a period of 13 years."¹⁹

¹⁷ "Foreign Investments Top US\$10 Billion," Beijing Review, September 16, 1985, p.31.

¹⁸ "A Draft Agreement," p.6.

¹⁹ Frank Ching, Hong Kong and China: for Better or for Worse (New York: The China Council of the Asia Society; the Foreign Policy Association, 1985), p.33.

In order to soothe the fears of the people of Hong Kong about their future so as to maintain the stability and prosperity of Hong Kong, the PRC made substantial concessions by elaborating its assurances in the form of a detailed agreement with Britain. Section I of Annex I of the Joint Declaration stipulates that "after the establishment of the Hong Kong Special Administrative Region the socialist system and socialist policies shall not be practised in the Hong Kong Special Administrative Region and that Hong Kong's previous capitalist system and life-style shall remain unchanged for 50 years." Thus it makes Hong Kong different from other areas of the PRC's territories that are under its sovereign power. In other words, the PRC will be unable to bring Hong Kong under immediate communist rule even if it has regained sovereignty over that territory. Perhaps the irony of the PRC's concession, as a journalist says, "a Marxist-Leninist state, prone in the past to excesses of chauvinism and xenophobia, has made legally binding public promises on how a part of its sovereign territory will be administered."²⁰

²⁰ Derek Davies, "Initialled, Sealed and Delivered," Far Eastern Economic Review (FEER hereafter), October 4, 1984, p. 12.

The UK

The gains. Britain's gain in the agreement lies in its ability to arrange an honorable retreat and preserve some of its interests from Hong Kong. Generally, people in Hong Kong are afraid of a communist takeover. This sentiment made it possible for Britain to demand "that the colony be allowed to preserve the hyperkinetic free enterprise that is its trademark and lifeline, and that it continued to enjoy some autonomy."²¹ The PRC realized the importance of this point and ultimately conceded. As a report says, "Britain's main achievement is to have persuaded the Chinese to accept a form of agreement which will be as legally binding as any contract between nations can be and will be incorporated into the basic law for post-1997 Hongkong."²² The PRC's acceptance of a detailed agreement means a demonstration of British efforts to work out a reasonable agreement for the people of Hong Kong. In addition, since the PRC also legitimized Britain's administration in Hong Kong for the coming thirteen years, Britain can declare to the world that the issue of Hong Kong was settled in a legal manner, i.e. Brit-

²¹ Pico Iyer, "Making a Deal for 1997," Time, August 13, 1984, p.25.

²² "Not So Sour, Even a Little Sweeter," The Economist, August 4, 1984, p.27.

ish withdrawal from Hong Kong has a legal basis and is not a capitulation. These arrangement can help Britain justify her departure from Hong Kong to be peaceful and honorable.

Though Britain has to leave Hong Kong in 1997, the agreement reveals that her interests in Hong Kong or through Hong Kong are still well preserved. Section IV of Annex I makes it clear that British citizens can remain in the public service in Hong Kong or be employed as advisers to the government. Section IX says that airlines incorporated and having their principal place of business in Hong Kong may continue to operate. This means that the British-controlled Cathay Pacific can continue its lucrative business in Hong Kong.²³ Section XI stipulates that Britain may establish a Consulate-General in the Hong Kong Special Administrative Region, an institution of much convenience to British doing business there. The United Kingdom Memorandum makes it clear that British Dependent Territories citizens will have no right of abode in Britain; this can help British citizens ease their worries about a possible flood of Hong Kong refugees to compete with them for job opportunities at home. All of these provisions of the agreement are beneficial to Britain.

²³ Cathay is controlled by Swire Pacific, a public Hong Kong company, which owns 70% of the airline's stock. The Hong Kong & Shanghai Banking Corp. owns the rest. Swire Pacific, in turn, is controlled by privately owned John Swire & Sons in London. See Louis Kraar, "A New Lease for Hong Kong's Airline," Fortune, October 29, 1984, p.58.

In addition, other British economic interests are ensured by the Hong Kong settlement. In his government report of May 1984, Premier Zhao already promised to give Britain special economic interests in Hong Kong. He said: "Due regards will be given to the economic interests of Britain and other countries in Hongkong."²⁴ In December 1984, when Prime Minister Thatcher came to Peking for the signing of the agreement, she arranged a senior trade mission to visit the PRC in March 1985 and this ended with valuable two-way trade contracts amounting to billions in pounds sterling.²⁵ In 1984, the PRC imported US\$790 million worth of goods from Britain and exported US\$450 million.²⁶ According to Bartholomew, "The signing of the Sino-British joint declaration paved the way for a big increase in British exports to China, which have jumped 78% in the first quarter of 1985 compared to the same period last year."²⁷ Thus Britain's tangible economic interests from the Hong Kong agreement are substantial.

²⁴ Zhao Ziyang, "Report on the Work of the Government," Beijing Review, supplement of June 11, 1984 issue, p.xvi.

²⁵ James Bartholomew, "Hongkong Trade-Off," FEER, April 4, 1985, pp.53-54. Bartholomew says: "The British Government denies this is a reward for compliance in reaching agreement. But it certainly appears that the Chinese held up trade prior to the signing whereas now they appear keen to 'buy British' as never before."

²⁶ "Visit Renews Friendship, Co-operation," Beijing Review, June 17, 1985, p.6.

²⁷ James Bartholomew, "Hail Fellow Zhao," FEER, June 20, 1985, p.52.

The losses. Britain's losses in the agreement are the return of the ceded territories of the island of Hong Kong, the Kowloon Peninsula, and Stonecutters Island to the PRC. Britain claimed that she had sovereignty over these ceded areas because they had been ceded to Britain in perpetuity under legally binding international treaties. As a result of the PRC's insistence on the sovereignty issue, Britain formally gave up her claim in April 1984 and speeded up the negotiations. In so doing she gave up her status as a colonial power. However, this decision goes back as far as 1954, when she had decided, on economic and military grounds, not to defend Hong Kong. What is new in the situation is that Britain, "instead of granting independence to a colonial possession, agreed to restore sovereignty to its original owner."²⁸ This, according to Derek Davies, represents an "unprecedented" event "in modern history."²⁹

Legal Review

In order to discuss major problems of the agreement, we need first to set up a framework for analysis. We will examine the following aspects of the agreement: (1) hierarchy of the law (authoritative ranking of legal documents relevant to the implementation of the agreement); (2) rule making

²⁸ Davies, op. cit., p.12.

²⁹ Ibid.

(the levels of rule-making authority involved in the implementation of the agreement); (3) rule application (the actual implementation of the agreement); and (4) dispute settlement (how disputes over the implementation of the agreement might be settled). After we have discussed major problems of the accord, its strengths and weaknesses will follow.

Hierarchy of the Law

According to an advisory opinion of the Permanent Court of International Justice of 1930: "It is a generally accepted principle of international law that in the relations between Powers who are contracting Parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty."³⁰ Thus in order to implement honestly treaty obligations, there is a general duty for states "to bring internal law into conformity with obligations under international law."³¹ Being an Anglo-Saxon country, Britain "has accepted for a long time the idea that international law is part of 'the law of the land' and is enforced, accordingly, by domestic authorities."³² Since Britain has no written consti-

³⁰ This is the statement of the Greco-Bulgarian Communities case as cited by Ian Brownlie, in Principles of Public International Law, third edition (New York: Oxford University Press, 1979), p.37.

³¹ Ibid, p.38.

³² Gerhard von Glahn, Law among Nations: an Introduction to

tution, statutes enacted by the parliament and assented to by the Monarchy are considered to be supreme in the judgment of English courts. According to von Glahn, "English courts have held repeatedly that international law is part of the common law, and the latter must always yield to statutory law. Thus the courts are generally bound by an Act of Parliament even though that act may conflict with a rule of international law."³³ If the treaty made by the executive branch with a foreign government is not inconsistent with an Act of Parliament, then it is considered valid and part of "the law of the land." The 1984 Hong Kong agreement has been ratified in accordance with Britain's constitutional procedures and has become part of British law.

The PRC, according to von Glahn, in order to "deal with bourgeois societies in the present," it "has to conduct its increasing international relations in accordance with existing rules, that is, the accepted principles of customary international law."³⁴ For example, "the PRC does regard treaties as one of the important sources of international law."³⁵ Since the PRC jurists seldom discuss the relation between international law and the municipal law, it is difficult to

Public International Law, fourth edition (New York: McMillan, 1981), p.29.

³³ Ibid, p.32.

³⁴ Ibid, p.54.

³⁵ Gary L. Scott, Chinese Treaties: the Post-Revolutionary Restoration of International Law and Order (Dobbs Ferry, NY: Oceana, 1975), p.59.

understand how they look at the position of treaties in international and domestic law. According to Chiu, "some rules of international law have been given legal effect in Communist China's municipal law" and laws or decrees are also enacted as municipal law by the PRC in order to implement treaties.³⁶ Chiu also finds some PRC treaties are included in an official collection of laws and regulations, so he argues that "presumably these treaties have the same legal status as legislation included in the Collection."³⁷

Since the UK is noted for its legalistic tradition and has a very good reputation in the implementation of international agreements, it also has much to gain in honoring the Hong Kong agreement, therefore we will presume that there will be few legal difficulties from the British side.

There are three major legal documents involved within the context of this study: (1) the Constitution of the PRC; (2) the Joint Declaration, an international agreement between the PRC and the UK on the future of Hong Kong; and (3) the Basic Law of the HKSAR to be enacted and promulgated by the National People's Congress (NPC) of the PRC, which will serve as the HKSAR's constitutional instrument after July 1, 1997.³⁸

³⁶ Hungdah Chiu, The People's Republic of China and the Law of Treaties (Cambridge, MA: Harvard University Press, 1972), pp.6-7.

³⁷ Ibid, p.6.

³⁸ Of course, the HKSAR will also enact its own laws and statutes to administer the territory based on the Basic

According to the Preamble of the Constitution of the PRC,³⁹ the Constitution "is the fundamental law of the state and has supreme legal authority." It is "the basic norm of conduct" of the people and governmental agencies as a whole. Being part of the PRC's territory, the future HKSAR also shall be regulated by the Constitution. The Joint Declaration is a legally binding international agreement. However, it was worked out by the PRC and the UK based on the foreign policy of each government. The PRC considers international law as "a political instrument." In his study of the PRC treaties, Gary L. Scott cited an article written by Chou Fulin, a Communist legal scholar, as asserting:

International law, in addition to being a body of principles and norms which must be observed by every country, is also, just as any law, a political instrument; whether a country is socialist or capitalist, it will to a certain degree utilize international law in implementing its foreign policy.⁴⁰

Hence for the PRC the Joint Declaration is presumably subordinate to its Constitution. This is, after all, standard practice in most countries. The Basic Law of the HKSAR is a

Law. Since after 1997 the HKSAR will be "directly under the authority of the Central People's Government of the People's Republic of China" (Paragraph 3(2) of the Joint Declaration), the Constitution of the PRC will be applied to the area.

³⁹ Versions of the Constitution of the PRC cited in this study are all based on "The Constitution of the People's Republic of China," in Fifth Session of the Fifth National People's Congress (Main Documents), pp.5-63. Beijing: Foreign Languages Press, 1983.

⁴⁰ Scott, op, cit., p.45.

municipal law of the PRC designed to implement the agreement. It is to be derived from the Constitution and the Joint Declaration. Thus for the PRC, the listing order of the major laws relevant to the implementation of the agreement is the Constitution of the PRC, the Sino-British Joint Declaration, and the Basic Law of the HKSAR.

Rule Making

Levels of rule making authority in the case of the Hong Kong agreement involve three parties: the PRC, the UK, and the Hong Kong authority, i.e. the HKSAR. In its capacity as a sovereign state, the PRC has concluded an agreement with the UK for the post-1997 Hong Kong. In addition, the PRC will be responsible for enacting a Basic Law of the HKSAR determined by its basic policies as stated in the agreement.⁴¹ The rule making body of the PRC, according to the Joint Declaration and the Constitution of the PRC, is the National People's Congress of the PRC.⁴²

The UK is the co-author of the Joint Declaration. Being the central government of the current Hong Kong administration, it can instruct the Governor in Hong Kong to pass laws and statutes for the administration of the territory before

⁴¹ Paragraph 3(12) of the Joint Declaration.

⁴² Paragraph 3(12) of the Joint Declaration and Articles 31, 62(3), and 62(13) of the Constitution.

it withdraws in 1997. The agreement stipulates that "between the date of the 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."⁴³ Thus the UK is authorized to enact British laws in Hong Kong before 1997.

The HKSAR will be a local government of the PRC when it comes to exist in 1997. Its legislature "may on its own authority enact laws in accordance with the provisions of the Basic Law and legal procedures, and report them to the Standing Committee of the National People's Congress for the record."⁴⁴ Thus the HKSAR will also have legislative power when it is established. However, it has to follow all the laws and statutes set by its superior, the Central People's Government of the PRC, which in turn will be bound to the pledges undertaken in the Joint Declaration.

Rule Application

Our considerations of the hierarchy of the legal documents and the levels of the rule-making authority has helped us to clarify the relationships and the procedures whereby the agreement is to be implemented. Now we address the questions of the agreement's implementation and examine pos-

⁴³ Paragraph 4 of the Joint Declaration.

⁴⁴ Section II of Annex I.

sible problems arising out of the accord. We will consider both these issues from the point of view of the four authorities involved: the PRC, the UK, the HKSAR, and the Joint Liaison Office.

The People's Republic of China. Once the PRC recovers Hong Kong in 1997, the former British colony will be administered under the Basic Law which is to be drafted in accordance with the Joint Declaration. One major problem in this regard is that the agreement contravenes the Constitution of the PRC in many respects. According to Peng Zhen, the then Vice Chairman of the Committee for the Revision of the Constitution, the drafting of the PRC's 1982 Constitution was based on "four cardinal principles" of adherences: (1) "to the socialist road," (2) "to the people's democratic dictatorship," (3) "to leadership by the Communist Party of China," and (4) "to Marxism-Leninism and Mao Zedong Thought."⁴⁵

However, it is clear to see that what the PRC has promised in the Joint Declaration are apparently in violation of the essential principles of the Constitution. Article 1 of the Constitution stipulates, "The socialist system is the basic system of the People's Republic of China." Despite the Constitution's insistence, the agreement stipulates that "the socialist system and socialist policies shall not be practised in the Hong Kong Special Administrative Region and

⁴⁵ Peng Zhen, "Report on the Draft of the Revised Constitution of the People's Republic of China," in Fifth Session of the Fifth National People's Congress (Beijing: Foreign Languages Press, 1983), p. 72.

that Hong Kong's previous capitalist system and life-style shall remain unchanged for 50 years."⁴⁶ As a journalist observes, "The Joint Declaration is clearly in violation of both the spirit and the letter of much of the constitution."⁴⁷ According to the agreement, the PRC's future policies for the HKSAR, like those examples we have cited, will be stipulated in the Basic Law which will be enacted by the NPC according to the Constitution. Thus how contradictions between the agreement and the Constitution would be resolved will pose a touchy question.⁴⁸

⁴⁶ Section I of Annex I. Some more examples: Article 15 of the Constitution says, "The state practises economic planning on the basis of socialist public ownership"; Article 24 also stipulates, "The State . . . combats capitalist, feudal and other decadent ideas." Nevertheless we see that Section VI of Annex I of the agreement says that the HKSAR "shall maintain the capitalist economic and trade systems previously practised in Hong Kong . . . shall retain the status of a free port and continue a free trade policy, including the free movement of goods and capital" Section VII of Annex I says the HKSAR "shall safeguard the free operation of financial business and the free flow of capital within, into and out of the Hong Kong Special Administrative Region. No exchange control policy shall be applied . . . Markets for foreign exchange, gold, securities and futures shall continue." Article 36 of the Constitution says, "No one may make use of religion to . . . interfere with the educational system of the state. Religious bodies and religious affairs are not subject to any foreign domination." On the contrary, Section X of Annex I of the Joint Declaration says, "Institutions of all kinds, including those run by religious and community organizations, may retain their autonomy. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region."

⁴⁷ Ching, Hong Kong and China, p.76.

⁴⁸ Despite our literal approach of interpretation judging that there are contradictions between the Agreement and the Constitution, the Standing Committee of the NPC, the

According to the agreement, the PRC has to keep its promise to leave Hong Kong's capitalist system and life-style unchanged up to 2047. However, when the British leave Hong Kong in 1997, Britain's influence on the Hong Kong matter will be significantly reduced. They will probably have nothing to say after January 1, 2000, the date that the Joint Liaison Office will cease to function. As Bernstein observes, "Once the British depart, how China deals with Hong Kong will essentially be an internal affair."⁴⁹ Sir Geoffrey Howe, British Foreign Secretary, once said that "Britain can do no such thing" as to guarantee that the PRC will stand by its promise.⁵⁰ Thus "Whether Peking disregards the 1984 agreement will be simply a matter of its future rulers' judgment of the political and other benefits or dis-

PRC's agency responsible for the interpretation of the Constitution and statutes, has asserted that the Sino-British Joint Declaration on the Problem of Hong Kong "is completely in accordance with the Constitution." See "Sino-British Joint Declaration Completely in Accordance with Our Constitution," Renmin Ribao, November 10, 1984.

⁴⁹ Thomas P. Bernstein, "China in 1984, the Year of Hong Kong," Asian Survey 25 (January 1985): 35.

⁵⁰ David Bonavia, "The New Minority," FEER, October 11, 1984, p.14. Legally speaking, if the PRC breaks its promise, the UK, of course, has rights to sue the PRC for violation of treaty agreement before the International Court of Justice (ICJ). However, since Britain has so much to gain by maintaining good relations with the PRC, it is difficult to say if the UK will take such action. Furthermore, the PRC does not accept the compulsory jurisdiction of the ICJ under the Optional Clause. It means the PRC does not regard the jurisdiction of the ICJ as obligatory in legal disputes.

advantages of such a breach."⁵¹

The United Kingdom. The Joint Declaration makes clear that during the transitional period, i.e. between now and June 30, 1997, the UK "will be responsible for the administration of Hong Kong with the object of maintaining and preserving its economic prosperity and social stability."⁵² This provision can be an asset as well as a liability to the UK. It is an asset because the PRC has formally recognized Britain's right to administer Hong Kong. It is a liability because if something unexpected happens in Hong Kong, for example, a mass riot or an economic crisis, then it might be an excuse for the PRC to break its promise.⁵³ The problem lies in how stability and prosperity are to be defined. Someone may argue that the PRC is also required to "give its cooperation in this connection;"⁵⁴ but it remains uncertain how much responsibility the PRC shares for the maintenance

⁵¹ Ibid., p.15.

⁵² Paragraph 4 of the Joint Declaration.

⁵³ The agreement does not specify if the PRC can invoke emergency decrees to crackdown on civil disturbances in the post-1997 Hong Kong. However, the Constitution of the PRC does stipulate: "The state maintains public order and suppresses treasonable and other counter-revolutionary activities; it penalizes actions that endanger public security and disrupt the socialist economy and other criminal activities, and punishes and reforms criminals" (Article 28). It also allows the government to enforce martial law "throughout the country or in particular provinces, autonomous regions or municipalities directly under the Central Government" (Articles 67(20) and 89(16)). Clearly, these articles are applicable to the future Hong Kong Special Administrative Region.

⁵⁴ Paragraph 4 of the Joint Declaration.

of stability and prosperity.

Another legal problem for Britain is the acceptability of the new British passport designed for Hong Kong citizens to be used after 1997.⁵⁵ The British memorandum says that after 1997 the UK will issue new passports to British Dependent Territories citizens (BDTC) who have no right of abode in Britain but are entitled to request British consular services and protections in third countries other than in the territory of the PRC. Currently the BDTC passport holders can travel around the world with convenience because they are citizens of a British colony. After 1997, according to the Chinese Memorandum, "all Hong Kong Chinese compatriots," whether holders of the BDTC passport or not, "are Chinese nationals," because Peking denies dual nationality. Thus more than two million BDTC of the HKSAR, though they may travel abroad with a new passport issued by the UK, will have potential problems of status. Thus Britain has to make further efforts to make the new passports acceptable to third countries.

⁵⁵ In January 1985, Britain chose to give the BDTC in Hong Kong a new status called British National (Overseas) or BNO after 1997. According to a report: "This status does not give the holder the right of abode in Britain, nor will it state the holder has the right of abode in the Hong Kong Special Administrative Region (SAR). It will probably contain a cross-reference to the BNO passport-holder's SAR permanent identity card which will specify right of abode in the SAR." See Emily Lau, "Piddle with a Catch," FEED, January 7, 1985, p.24.

The Hong Kong Special Administrative Region. The HKSAR will be administered under the Basic Law which will be enacted by the NPC of the PRC according to the terms of the agreement. Since the feasibility of a capitalist Hong Kong under a communist China is unknown, the future HKSAR under the Sino-British Joint Declaration has drawn deep public concern, especially among the 5.4 million residents of Hong Kong. We will review some major legal problems that may arise for the HKSAR within the executive, legislative, military, and external sectors.

The Executive. According to the agreement, the chief executive of the HKSAR "shall be selected by election or through consultations held locally and be appointed by the Central People's Government. Principal officials (equivalent to Secretaries) shall be nominated by the chief executive" of the HKSAR and appointed by Peking.⁵⁶ This stipulation is based on the spirit of "Hong Kong people ruling Hong Kong" (Gangren Zhigang). However, Deng Xiaoping has also set a "demarcation line and criterion for the Hongkong people to administer the region."⁵⁷ According to Deng, the PRC's paramount leader, "patriots must form the major body" of the administration. He elaborates:

"Who are patriots?" . . . "The touchstone of a patriot is respect for his own nation, earnest and sincere support for the motherland's resumption of

⁵⁶ Section I of Annex I.

⁵⁷ "Deng Xiaoping on Hongkong Issue," Beijing Review, July 23, 1984, p.17.

its sovereignty over Hongkong and refraining from harming the stability and prosperity of Hongkong.

"So long as they meet these requirements, they are patriots, no matter whether they believe in capitalism or feudalism or even the slave-owing system"58

These criterion are hard to define and make the political position of the future HKSAR administrator a sensitive issue. This is the reason why people fear "that Peking may appoint its own man to be chief executive, who will in turn appoint pro-Peking officials."59

The Legislature. The laws that are currently in force in Hong Kong (i.e. the common law, rules of equity, ordinances, subordinate legislation and customary law), according to the agreement, "shall be maintained, save for any that contravene the Basic Law and subject to any amendment by the Hong Kong Special Administrative Region legislature" after 1997.60 What are the laws of Hong Kong to be saved or amended after 1997? According to Wang Shuwen, a commentator of the People's Daily, "The laws implemented in the Hongkong

58 Ibid.

59 Emily Lau, "Question Time," FEER, October 11, 1984, p.14. It is also easy to note that members of the CCP residing in Hong Kong are also Hong Kong people. In addition, those who have resided in Hong Kong before or after the establishment of the HKSAR for a continuous period of seven years or more will "be qualified to obtain permanent identity card" issued by the HKSAR (Section XIV of Annex I). Thus before 1997, the PRC, if it wishes, still will have plenty of time to send its cadres or supporters there to become a "qualified Hong Kong people." Consequently, it is likely that in the HKSAR power will finally reside in the hands of Peking's surrogates.

60 Section II of Annex I.

special region will not contradict the principle of upholding the uniformity and dignity of the socialist legal system, as stipulated by the Constitution."⁶¹ What do the Communists mean by "dignity of the socialist legal system"? This is something very strange and vague to the people of Hong Kong and requires clarification. Since the Basic Law is to be enacted by the NPC, according to Christopher S. Wren, a New York Times correspondent in Peking, "Peking could insert a qualifier overriding any law it did not like" and thus "the agreement leaves a potential loophole."⁶²

Civil-Military Relations. Currently in Hong Kong the function of the military is "primarily to assist the government in maintaining security and stability and to sustain confidence in the United Kingdom's stated commitment to Hong Kong."⁶³ Its role is to assist the police in internal security but it has never been deployed to crush civil disturbance, even during the riots of 1967. According to the agreement, the People's Liberation Army (PLA) will be stationed in the HKSAR "for the purpose of defense" and "shall not interfere in the internal affairs" of the HKSAR; the military expenditure will be borne by Peking.⁶⁴ The question

⁶¹ Wang Shuwen, "Special Regions Leave Socialism Unchanged," Renmin Ribao, September 28, 1984. Translated and reprinted in Beijing Review, October 15, 1984, p.42.

⁶² Christopher S. Wren, "Little Change Due in Hong Kong Life," NYT, September 27, 1984, p.7.

⁶³ Hong Kong 1985, p.234.

⁶⁴ Section XII of Annex I.

is: Will there be a drastic change of the PLA's disposition and a revision of its traditional tasks?

It is asserted that Hong Kong has no hostile bordering neighbor country and therefore has no need for defense forces. A critic expresses his worry about the prospective presence of the PLA in Hong Kong.

First, the Chinese Communists are used to relying heavily upon the gun barrel, they not only consider it as the pillar of the government, but also see it as the vanguard of promoting all kinds of political movements; furthermore, it also played an important role in various power struggles in the past

Secondly . . . Since the PLA is directly under the control of the central authority, since the future government of Hong Kong will bear no military expenses, the PLA that is stationed in Hong Kong will of course obey orders from the central authority instead of the Hong Kong government. This is something very clear. Hence the "high degree of autonomy" of the Hong Kong government will then be controlled by the gun that is under the command of the central authority.

Thirdly . . . In the future if Hong Kong has any trouble, the Chinese Communists are fully capable of overestimating the crisis and letting the PLA get involved. Then, like the PLA's involvements in Tibet and the Cultural Revolution in the past, human rights and rule of laws will be challenged immediately.⁶⁵

In addition, given that traditionally "the PLA is 'a fighting team, a working team, and a propaganda team,' now that it is to be stationed in Hong Kong, is it possible for the PLA to remain uninvolved in the affairs of Hong Kong?"⁶⁶

⁶⁵ Chyi Shin, "The Question of Stationing Armed Forces and the Policies toward Hong Kong," The Nineties, 174 (July 1984): 51.

⁶⁶ Li Yuh, "International Guarantees and the Future of Hong

Thus this provision would leave a possible military interference in Hong Kong wide open.

Another issue is the concern over conscription. According to the Constitution of the PRC, "It is the honourable duty of citizens of the People's Republic of China to perform military service and join the militia in accordance with the law."⁶⁷ An article on the Conscription Law appeared on Beijing Review said: "The new law stresses the duty of every citizen to serve in the army, all young people between the ages of 18 and 22 must be tested at an army recruitment center, and are eligible to be called to service any time."⁶⁸ Thus whether there will be conscription in Hong Kong or not may again pose another question since the agreement does not address the issue.

Foreign Relations. The agreement allows the HKSAR to be "a separate customs territory" and "participate in relevant international organizations and international trade agreements."⁶⁹ As a distinctive trading center of the whole world, Hong Kong does need reassurance of its position within the international trading community. Some important issues are: Hong Kong's right to membership as a separate customs unit of the General Agreement on Tariff and Trade

Kong," The Nineties, 173 (June 1984): 54.

⁶⁷ Article 55.

⁶⁸ Shi Renyu, "New Conscription Law Strengthen Defence," Beijing Review, June 11, 1984.

⁶⁹ Section VI of Annex I.

and its separate rights under agreements regarding international trade in textiles (such as the multifibre Arrangement). However, these issues can not be settled by the PRC and the UK alone. To enjoy such rights of access there is a need to get consent from relevant third countries and international organizations.⁷⁰

In Hong Kong, there are several countries that have representative offices but no formal diplomatic relations with the PRC or remain unrecognized by the PRC. According to the agreement, such countries' offices may be maintained or changed to semi-official missions, or can only be established as non-governmental institutions.⁷¹ Most of these countries are non-communist countries, such as the Republic of China (Taiwan), Singapore, South Africa, Saudi Arabia, South Korea, Indonesia. According to Ching, the downgrading of the representative offices of these countries "inevitably will result in a decline in Hong Kong's international standing and may make it more difficult for travel between Hong

⁷⁰ In addition, in order to let Hong Kong maintain and develop its economic and trade relations with other states and regions, the agreement also allowed Hong Kong to have separate export quotas and tariff preferences, issue certificates of origin for products, establish official and semi-official economic and trade missions abroad (Section VI of Annex I), continue to maintain a shipping register and issue related certificates under its own legislation in the name of "Hong Kong, China" (Section VIII of Annex I), and to negotiate international air transport agreement (Section IX of Annex I). All of these require international acknowledgment.

⁷¹ Section XI of Annex I.

Kong and those places."⁷² Thus diplomatic efforts must be undertaken by the PRC and the UK in order to maintain Hong Kong's foreign relation ties.

The Joint Liaison Group. "In order to ensure a smooth transfer of government in 1997" and "the effective implementation" of the Joint Declaration, both parties have declared their intention to set up a Sino-British Joint Liaison Group (JLG) when the agreement enters into force and "continue its work until 1 January 2000."⁷³ The agreement also makes clear that the JLG "shall be an organ for liaison and not an organ of power . . . shall play no part in the administration" of Hong Kong or the HKSAR, "nor shall it have any supervisory role over that administration."⁷⁴ However, it is generally believed that since this is a task force designed to make preparation for the transition of power, it is bound to look into matters of the current Hong Kong administration and the future HKSAR.

According to a report, there has been apprehension that the JLG may develop into "an alternative source of authority, further weakening the Hongkong administration whose worst fear is that over the transition period it will progressively become more of a 'lame duck.'"⁷⁵ Ching, a jour-

⁷² Ching, Hong Kong and China, p.58.

⁷³ Paragraph 5 of the Joint Declaration and Paragraph 8 of Annex II.

⁷⁴ Paragraph 6 of Annex II.

⁷⁵ Derek Davies and Emily Lau, "Fast by Luce" FEER,

nalist familiar with Hong Kong affairs, sees the JLG as an organ of influence that can serve the PRC and the UK reciprocally. He says, "The liaison group certainly offers a channel for China to influence events and policies in Hong Kong before 1997, just as it offers Britain a similar avenue for two and a half years after 1997."⁷⁶ However, it is also important to note that after 1997 the UK might not have much influence to exercise because it will have left Hong Kong and have no more obligation to worry about.

Dispute Settlement

The agreement has settled the Sino-British disputes over the sovereignty of Hong Kong; nevertheless it does not provide any provision for solving problems that might occur from the agreement itself. For example, it does not indicate a method or agency of interpretation. Usually, the question of treaty interpretation often goes to an international tribunal for solution. Parties in conflict or dispute over legal issues may appeal to diplomatic negotiations and other means for peaceful solution.⁷⁷ For the UK, a typical

July 19, 1984, p.14.

⁷⁶ Ching, Hong Kong and China, p.39.

⁷⁷ Generally speaking, international disputes may appeal to diplomatic negotiations, good office, mediation, commission of inquiry, commission of conciliations, arbitration, international organizations, or regional organizations for peaceful solution. See von Glahn, op, cit.,

Western legalistic country, should any conflict arise with the PRC over the agreement it may want the conflict to be resolved by a body of world law. The PRC, however, prefers that the dispute be settled through negotiations. Gary L. Scott, a legal scholar, explains:

The PRC practice relating to the settlement of disputes arising over treaties differs considerably from that of most States. Many of the world's treaties (6%) now contain clauses which refer disputes arising over treaties to the International Court of Justice for settlement. None of the PRC treaties contain such a provision.

The PRC stand on the question of dispute settlement by third parties is clear. They are against it, and regard the settlement of disputes over treaties to be the sole province of the contracting parties Thus the intervention in a dispute by a third party, such as the ICJ, is regarded as an infringement upon State sovereignty The PRC view that negotiations serve as the best means of dispute settlement is similar to that of the Soviet Union.⁷⁸

The PRC became a party to the Statute of the International Court of Justice when it replaced the Republic of China's seat at the United Nations.⁷⁹ However, it "repudiated on September 5, 1972, the previous acceptance by the Republic of China (1946) of the compulsory jurisdiction of the Court under the Optional Clause."⁸⁰

pp. 514-549.

⁷⁸ Scott, *op. cit.*, pp. 131-132.

⁷⁹ von Glahn, *op. cit.*, p. 54.

⁸⁰ *Ibid.*

Thus in the case of future Sino-British disputes over the Hong Kong agreement, both nations perhaps may conduct negotiations through the JLG before 2000⁸¹ or reopen new negotiations whenever the disputants agree. Would the UK be willing to argue with the PRC over the agreement once the UK no longer has any direct authority over the territory?⁸² It is really difficult to tell and would depend upon the peculiar circumstances which might exist at that time.

Strengths and Weaknesses

Like many other legal documents, the Sino-British Joint Declaration as a solution for the question of Hong Kong also has strengths and weaknesses. The agreement solves the Sino-British dispute over the sovereignty of Hong Kong, and it also provides a framework for the preservation of Hong Kong's unique economic system and life-style up to 2047. On the other hand, the agreement contravenes the Constitution of the PRC, it is rigid and ambiguous in many regards, it gives no provision for the interpretation of the agreement,

⁸¹ According to paragraph 8) of Annex II, the Joint Liaison Group will continue its work until January 1, 2000. Paragraph 3(a) of Annex II indicates that one of the JLG's function is "to conduct consultation on the implementation of the Joint Declaration." Thus it can serve the function of conflict resolution at least before January 1, 2000.

⁸² According to Paragraph 4 of the joint Declaration, Britain's responsibility for the administration of Hong Kong ceases after June 30, 1997.

and it leaves Hong Kong a "problem." We will discuss these issues from a legal point of view.

Strengths. As we have noted, before the negotiations there was a Sino-British dispute over the sovereignty of Hong Kong. The PRC asserted that all areas of Hong Kong were Chinese territories, that all the Hong Kong treaties were unequal and invalid, and that it would recover Hong Kong when time permits. The UK argued that it had treaty rights to claim sovereignty over Hong Kong. Since both parties "have reviewed with satisfaction the friendly relations existing between the two Governments and people in recent years,"⁸³ they negotiated and reached a mutually acceptable agreement on the question of Hong Kong. The agreement stipulates that the PRC will recover Hong Kong on July 1, 1997 and the UK is authorized to administer Hong Kong up to June 30, 1997. The British realized that: "Hong Kong, including the New Territories, has since 1898 become an integral whole and Her Majesty's Government are satisfied that there is no possibility of dividing the New Territories which revert to China on 1 July 1997 from the remainder."⁸⁴ Hence the UK decided to return to the PRC the entire colony of Hong Kong, whether ceded or leased areas. Thus the Sino-British conflict over the sovereignty of Hong Kong is settled once for all.

⁸³ Preamble of the Joint Declaration.

⁸⁴ "A Draft Agreement," p.8.

Another important merit of the agreement is its special arrangement for the post-1997 Hong Kong to remain a capitalist society. Hong Kong has been a free port of the world and a center of world trade and finance for a long time. It is a business-oriented capitalist enclave. Instead of absorbing Hong Kong into the communist system, the agreement provides a framework for Hong Kong to preserve its unique economic system and way of life after it reverts to Communist China. The PRC agreed to endorse a legal agreement to guarantee that Hong Kong basically remains unchanged in political, social, and economic aspects after the takeover. The main thrust of the guarantee is that "the socialist system and socialist policies shall not be practised" in the HKSAR, and "Hong Kong's previous capitalist system and life style shall remain unchanged."

As stipulated in the agreement, the PRC elaborates its detailed policies of how the post-1997 Hong Kong will be administered for fifty years. As reported by Time magazine, "It proved to be a virtual bill of rights outlining almost every feature of post-1997 Hong Kong from its life-style to its bank notes."⁸⁵ The South China Morning Post also lauds the minuteness of the agreement:

. . . {for} the amount of detail they have managed to include in the document. If it does not answer every question, at least it anticipates most of the major ones and succeeds in presenting a picture of the way in which Hongkong people will live

⁸⁵ Fico Iyer, "A Colony's Uncertain Future," Time, October 8, 1984, p.38.

and work after 1997.⁸⁶

On the PRC's pledge to Hong Kong, the Asiaweek makes the following comments:

It embodies a Bill of Rights as good as any yet conceived and better than most: freedoms of the person, of speech, of the press, of travel, of assembly, of belief, of academic research, and even the "right to raise family freely." The list goes on and on, enshrining also Hongkong's economic independence.⁸⁷

Truly, those rights and freedoms that the people of Hong Kong may enjoy after 1997 are well-detailed in several sections of Annex I of the Joint Declaration. Section X stipulates: "Students shall enjoy freedom of choice of education and freedom to pursue their education outside the Hong Kong Special Administrative Region." Section XIII even indicates: "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 in force." This section says, "the rights and freedoms of inhabitants and other persons" in the HKSAR will be protected "according to law." Such rights and freedoms include:

freedom of the person, of speech, of the press, of assembly, of association, to form and join trade unions, of correspondence, of travel, of movement, of strike, of demonstration, of choice of occupation, of academic research, of belief, inviolability of the home, the freedom to marry and the

⁸⁶ "The Sound of One Hand Clapping," South China Morning Post, September 27, 1984, p.2.

⁸⁷ "'Hongkong, China,'" Asiaweek, October 12, 1984, p.5.

freedom to raise a family freely.⁸⁸

Other rights and freedoms such as the right to confidential legal advice, access to the courts, free choice of lawyers to represent in the courts, obtain judicial remedies, challenge the actions of the executive in the courts, religious freedom, and freedom to leave Hong Kong without special authorization are all stipulated in the agreement (Sections XIII and XIV). In addition, all of the freedoms and rights promised by the PRC will be enshrined in the Basic Law, the future constitution of Hong Kong.

Weaknesses. One major problem of the agreement is that it contravenes the Constitution of the PRC. As we have noted earlier, it is clear that the agreement violates the Constitution both in spirit and in letter. Ching cites examples to explain the situation:

If the Chinese government permits Hong Kong a separate legal system, it would appear to be in violation of Article 33, which says that "all citizens of the PRC are equal before the law." If Chinese citizens in Hong Kong are governed under different laws, then treatment clearly is not equal. Hong Kong, for instance, has effectively eliminated capital punishments. While the death penalty is relatively common in China.

If the Chinese government permits capitalism to be practiced in Hong Kong, the government itself may be judged to be in violation of the constitution. This is because Article 24 says "the state . . . combats capitalist, feudal and other decadent ideas." If the state abdicate its responsibility to combat capitalism in one part of China, namely Hong Kong, it would appear to be guilty of

⁸⁸ Section XIII of Annex I.

dereliction of duty.⁸⁹

Generally, diplomats of a sovereign state neither negotiate an international agreement contravening its supreme law nor ask for ratification if they consider it to be unconstitutional. The PRC leaders considered the agreement to be "completely in accordance with the Constitution" and ratified it. A dispute may arise some day if the Constitution is not revised to accommodate the situation of Hong Kong or in the case that some future leaders of the PRC consider the agreement to be unconstitutional.

The weakness of the agreement is also reflected in its rigidity and ambiguity. The agreement cannot be amended, it must be taken as a whole or without it. According to a British interpretation:

. . . there is no possibility of an amended agreement. The alternative to acceptance of the present agreement is to have no agreement. In this case the Chinese Government has made it plain that negotiations would not be reopened and that it would publish its own plan for Hong Kong. There is no guarantee that such a unilateral plan would include all the elements included in the draft agreement, nor would it have the same status as legally binding agreement between the two countries.⁹⁰

Thus it is impossible to have the agreement revised. As Davies puts it: "After all, the text has been published on a take-it-or-leave-it basis and only if it were greeted by an

⁸⁹ Ching, Hong Kong and China, p.76.

⁹⁰ "A Draft Agreement," p.7.

overwhelming condemnation would it not go forward for ratification by Britain and China."⁹¹ If the people of Hong Kong do not accept it then there is the risk that the PRC will unilaterally announce its own policy for Hong Kong. An individual expressed his resentment: "The whole thing has not been a very fair play to us because we have not had any say and there is no other alternative other than not to have an agreement at all."⁹²

The unamendability of the agreement was further criticized when the Government of Hong Kong set up an office to assess the acceptability of the accord. According to a report:

. . . the office was widely branded by many critics as a "charade" and a "farce" since the joint declaration could not be changed, and Hongkong's citizens could only "take it or leave it." Many bitterly resented the Assessment Office because they saw it as an attempt by the British Government to whitewash the test of acceptability and extract an approval from the Hongkong people.⁹³

⁹¹ Derek Davies, "Traveller's Tales," FEER, November 1, 1984, p.23.

⁹² Hong Kong 1985, p.38. The preceding part of the text reads: "I belong to the middle income group who do not have the means to emigrate to other countries and because I was born and educated in Hong Kong I would wish to stay in Hong Kong. For the purpose of your statistics you can classify me as one of those who would accept the draft agreement but I hope you will also take into account that I only accept it with much reluctance and with many reservations about the feasibility of its implementation. My heart is not truly at ease and I have no full confidence in our future." See pp.37-38.

⁹³ Emily Lau, "Assessment Assessed," FEER, December 13, 1984, p.26.

Thus the rigidity of the agreement makes it an offer that cannot be refused. "In many cases, the joint declaration was accepted with deep reservations because there was no choice."⁹⁴ This is a serious weakness, because no matter how perfect or how complete a legal document may be, it cannot cover everything. As a journalist puts it: "There is no way that a 34-page document can adequately set out the framework for the SAR after 1997."⁹⁵ In addition, any unexpected event could happen at any time in the future. If there is a provision for treaty revision then the agreement can serve its intended purpose more effectively. Otherwise it will hamper the function for which it was originally designed.

Though the agreement is well-detailed, it also looks ambiguous in certain regards. It contains no provision concerning the problems of interpretation. According to von Glahn, an international law scholar, "A highly desirable procedural provision that ought to be included in every modern treaty is an article outlining whatever methods or agency has {sic} been agreed upon by the parties for the interpretation of the agreement."⁹⁶ Hungdah Chiu, a legal scholar specialized in the PRC's legal system, argues that the PRC has the practice of providing provisions for treaty inter-

⁹⁴ Ibid., p.27.

⁹⁵ Emily Lau, "Time to Face the Challenge of 1997," FEER, November 27, 1984, p.32.

⁹⁶ von Glahn, op, cit., p.504.

pretation in international treaties.⁹⁷ Nevertheless, in the Sino-British Joint Declaration on Hong Kong, no provision as such is provided. In case any issues such as a treaty dispute arise the interpretation might cause problems.

Another aspect of the ambiguity of the agreement has been reflected in some important issues of general concern. For example, Section I of Annex I says, "The chief executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government." It is important to note that there is a big difference between election and consultation. The result of election represents the choice of the public or the mandate of the people; whereas the result of consultation means appointment from Peking. As part of the political culture of the PRC, consultation has always been conducted under the direction of the Chinese Communist Party. The Chinese People's Political Consultative Conference (CPPCC) for example, is "a patriotic united front organization led by the Communist Party with participation by the democratic parties"⁹⁸ Thus the ambiguity of

⁹⁷ Chiu, op, cit., p.72.

⁹⁸ "Fewer Communists in CPPCC," Beijing Review, May 9, 1983, p.6. According to a Beijing Review report, Yang Jingren, head of the Chinese Communist Party's United Front Work Department, told a three-member delegation sent by the Dalai Lama on November 27, 1984, that Party General Secretary Hu Yaobang said that after the Dalai Lama returns, "the Central Committee of the Chinese Communist Party will recommended that he be elected as a NPC vice-chairman, and, in consultation with other parties that he be elected as a vice-chairman of the National Committee of

this provision may lead to a dispute in the selection of a future Hong Kong chief executive. As we have noted earlier, important questions such as who will control the People's Liberation Army (PLA) in Hong Kong and will the citizens of Hong Kong be required to serve in the PLA are not stipulated in the agreement. Questions like these all reflect the ambiguity of the accord and need to be clarified.

Since there are so many important legal problems remaining to be clarified, we are led to realize that there is still a Hong Kong "problem." Given the unpredictable nature of the political situation in the PRC, whether future regimes of the PRC will honor the agreement is very uncertain especially when we consider that there are still more than sixty years to come to test the result. No wonder the Unofficial Members of the Hong Kong Executive and Legislative Councils released a formal statement after the completion of the agreement to express the worries of the people of Hong Kong about their future. It is important that the PRC should demonstrate its sincerity to keep its promises to the people of Hong Kong by taking solid legal efforts to eliminate all of the existing legal problems.

the Chinese People's Political Consultative Conference." This is the Chinese Communist way of "consultation." See "Beijing Receives Dalai Lama's Envoys," Beijing Review, December 3, 1984, pp.9-10.

CHAPTER V

CONCLUSION

As indicated by Prime Minister Margaret Thatcher, "The Agreement fully meets the political requirements of Britain and China."¹ According to Ikle, "Negotiation requires a willingness to compromise . . . and both sides must make concessions . . . Neither side can expect to win all it wants . . . If both sides negotiate in good faith . . . they can always find a fair solution . . ."² He goes on to say that "two elements must normally be present for negotiation to take place: there must be both common interests and issues of conflict. Without common interest there is nothing to negotiate for, without conflict nothing to negotiate about."³ The PRC and the UK have a common interest in a stable and prosperous Hong Kong; however, in the past they have had conflicting views regarding the legal status of Hong Kong. In order to settle the problem they came to the bargaining table with the view of reaching an agreement acceptable to both parties. At the beginning of the negotiations

¹ "Hong Kong: Signing of the Sino-British Agreement," Policy Statements 68/84. New York: British Information Services, December 19, 1984, p.2.

² Fred Charles Ikle, How Nations Negotiate (New York: Harper & Row, 1964), p.1.

³ Ibid., p.2.

they insisted on their respective positions in regard to the validity of the Hong Kong treaties and sovereignty over the territory. After Hong Kong's two major financial crises resulted from the parties' confrontation over their negotiating positions, they realized that some concessions had to be made in order to achieve their common aim. Thus mutual accommodation was reached and the way to conclude a mutually acceptable solution was opened. We saw the UK giving up its claim of sovereignty over Hong Kong and the PRC legitimizing Britain's administration over Hong Kong up to 1997 and the PRC promised to leave Hong Kong autonomous for fifty years.

Legally speaking, the Hong Kong agreement has a symbolic meaning: it is a legal remedy for the issue of Hong Kong. In addition to solving the Sino-British dispute over the status of Hong Kong, it also provides for a framework for the post-1997 status of Hong Kong. Since the agreement is a bilateral, legally binding treaty, it will have a restraining function on the PRC's exercise of sovereignty over Hong Kong up to 2047. If the PRC violates the agreement, it will have to pay at least some diplomatic price. Though the international community may not be able to enforce international law effectively and most of the treaty-violating states will justify their behavior by all kinds of excuses, violation of the treaty can hurt that country's international image. Thus this is why a scholar would assert that "Hong Kong's most important protection will be China's con-

cern for its international reputation."⁴

Given the considerations that the PRC had all the superiority in terms of raw power,⁵ why would it make so many concessions and come to terms with the UK? As indicated by Baldwin, "all generalizations about power should be set in a context (as a minimum) {of} who is trying to get whom to do what."⁶ In the case of Sino-British negotiations over the issue of Hong Kong, as we have noted, the PRC intends to recover Hong Kong, to make use of Hong Kong to boost its modernization, to use the "Hong Kong model" as a way of promoting the unification of Taiwan with mainland China, and to maintain good relationships with the ASEAN countries, the UK, and the USA. If Peking acted arbitrarily, it could take possession of Hong Kong in hours. However, by so doing it would wreck Hong Kong's prosperity--which would greatly diminish Hong Kong's value to the economic goals of the PRC. In addition, it would hurt the PRC's image as a reasonable member of the world community and ultimately frustrate its

⁴ Thomas P. Bernstein, "China in 1984, the Year of Hong Kong," Asian Survey, 25 (January 1985): 36.

⁵ To refresh the reader's memory: The PRC is much larger than Hong Kong in terms of area and population, Hong Kong has heavy material dependence upon the PRC, the UK is 11,000 miles away from Hong Kong by sea and 6,000 miles by air, and the UK has no military base in the East of Suez. In addition, the UK had decided to give up Hong Kong as early as the 1950s.

⁶ David A. Baldwin, "Power Analysis in World Politics: New Trends Versus Old Tendencies," in Power, Strategy, and Security, ed: Klaus Knorr (Princeton, NJ: Princeton University Press, 1983), p.23.

own intention to gain Taiwan and spoil its relations with countries whose help it needs to improve its economy.

A power-oriented scholar such as Hans J. Morgenthau, considers diplomacy--achieving peace through accommodation--as "an element of national power" and is "essential for the preservation of international peace."⁷ He asserts that "diplomacy must employ the means suited to the pursuit of its {national} objectives."⁸ The PRC chose to solve the issue of Hong Kong through peaceful negotiations instead of violent war. It also made large concessions such as to permit Hong Kong to practice capitalism up to 2047 and to legitimize Britain's right of administration up to 1997. The choice was based on its overall considerations of national objectives which were to recover Hong Kong and to make use of the Hong Kong arrangement to serve its many other diplomatic goals.

As Ikle suggests, under normal conditions, when countries have conflicts and where a common interest exists, they will come to the bargaining table for a solution. The Sino-British situation has been the case in point. As Prime Minister Thatcher recalled: ". . . that the negotiations were not always easy. At certain points there were difficult decisions

⁷ Hans J. Morgenthau, Politics among Nations: the Struggle for Power and Peace, sixth edition, revised by Kenneth W. Thompson (New York: Knopf, 1985), p.563.

⁸ Ibid., p.564.

to be made on both sides. There were moments of tension."⁹ However, both parties overcame these difficulties because as Premier Zhao asserted, they "have shown regard for larger interests . . . and displayed a spirit of mutual understanding and friendly cooperation."¹⁰

Thus we tend to believe that international conflict can be solved peacefully so long as there is a common interest for all parties concerned. However, not all governments are willing to solve their international disputes with others through peaceful negotiations. Perhaps there is no commonly sought interest, or there are other reasons. This is the reason why the world community is still bothered by the issues of Korea, of Germany and of many other international conflicts. The conclusion of the Hong Kong agreement does provide the world community with a good example for the peaceful settlement of international disputes. Meanwhile, we also should understand that treaty relations are helpful to world peace only if they are faithfully maintained. The implementation of the Hong Kong agreement is also an issue of general concern and deserves our further consideration.

Since the ratification of the agreement on May 27, 1985, everything seems to have been going smoothly. The Joint Liaison Group and the Land Commission have become operative,

⁹ "Hong Kong: Signing of of the Sino-British Agreement," p.2.

¹⁰ "Excerpts from Speeches in Peking," The New York Times (NYT hereafter), December 20, 1984, p.y3.

the Drafting Committee of the Basic Law with twenty-three representatives from Hong Kong has begun work,¹¹ and the Joint Declaration also has been filed with the UN Secretariat for registration. The whole international community has wished Hong Kong a successful future. However, views of Hong Kong's prospects differ: some observers are optimistic, some pessimistic.

The optimistic scenario, to summarize the findings of George L. Hicks, is based on five propositions.¹² (1) **The golden goose theory:** Hong Kong is an egg-laying goose, its prosperity will continue to provide the PRC with handsome economic interests, and the PRC will treasure it. (2) **The Taiwan issue:** if the PRC sets a good example in Hong Kong, it will have the chance of getting Taiwan back. (3) **The China always keeps its word school:** though the PRC has a poor record in terms of keeping its word domestically, it does not break its international agreements. The Hong Kong agreement is an international one and the PRC should keep it.

¹¹ In addition to 15 high-ranking government officials, 10 public figures, and 11 jurists from the mainland, the Committee also has 23 representatives from Hong Kong. See "NPC Names HK Law Group," Beijing Review, July 1, 1985, p.6-7. The Committee had its first meeting from July 1 through July 5, 1985. It will work out a draft Basic Law for Hong Kong by 1988 and expects to complete its work by 1990. See "Committee Begins Work on HK Law," Beijing Review, July 15, 1985, p.7.

¹² George L. Hicks, "Hong Kong on the Eve of Communist Rule," a paper presented at the panel discussion on "The Future of Hong Kong as a Market Economy" in the Annual Meeting of the Western Social Science Association, April 24-27 1985, Fort Worth, Texas, p.1.

Contrary to Hicks' observation, Gary L. Scott, a scholar who specializes in the PRC's treaty relations, asserts that the PRC does have some alleged treaty violations as accused by the USA, India, and the Soviet Union:

In 1963 the United States Department of State published a document in which it charged the PRC with numerous violations of treaties and international law. The charges include alleged PRC violation of the Korean Armistice Agreement of 1953, violation of the trade agreements between India and the PRC signed on April 23, 1953 and October 14, 1954, and violation of the 1955 Agreed Measures Announcement between the United States and the PRC regarding the repatriation of civilians. In most of the above cited cases the United States charged the PRC with numerous violations of each agreement.

. . . India and the Soviet Union, among others, have repeatedly charged that China has violated various treaties and other rules of international laws.¹³

(4) China's good record in Hong Kong: the PRC could have easily taken over or disrupted Hong Kong at any point since 1949, its treatment of Hong Kong has been peaceful, thus there is no reason to think that it will not continue this way in the future. (5) The China is becoming capitalist thesis: even if not becoming capitalistic, the PRC is liberalizing in many ways as the revolution winds down. Its intention to modernize will help rather than harm Hong Kong. Thus the PRC, in this view, has every incentive to make the Hong Kong agreement work.

¹³ Gary L. Scott, China Treaties: the Post-Revolutionary Restoration of International and Order (Dobbs Ferry, NY: Oceana, 1975), pp.36-37.

The pessimist, however, looks at the future of Hong Kong with serious reservations, expressing distrust in Communist China, or at least a lack of confidence based on inconsistencies of policy, weak legal tradition, and the problem of succession. Even Lydia Dunn, the Chairwoman of the Hong Kong Trade Development Council in London, otherwise an optimist about the future of Hong Kong, recognizes a residual question:

So far, so good--but the question remains, voiced by a number of people, what confidence can there be that the terms of the Agreement will be implemented by China in the letter and in the spirit? It can be said without making any value judgement on the relative merits of either philosophy that the political philosophies underlying capitalism and socialism are essentially incompatible. Again, imaginative as the 'one country, two systems' concept may be, it is a unique and untried concept developed by the present leadership of China. Given the many discontinuities which have characterized the policies pursued by successive leaderships since the establishment of the People's Republic, what guarantee is there that a future leadership will honour the term of the Agreement?¹⁴

William H. Overholt, Vice President of Bankers Trust Company and Editor of Global Political Assessment, has also expressed reservations: "There is residual concern that, while honoring the overall agreement, Chinese leaders or factions may be tempted to state opinions or intervene in details that could gradually alter life in Hong Kong."¹⁵ Mark Elvin,

¹⁴ Lydia Dunn, "Hong Kong after the Sino-British Declaration," International Affairs 61 (Spring 1985): 203.

¹⁵ William H. Overholt, "Hong Kong and China: a New Relationship," Current History, 84 (September 1985): 258.

director of the Asian Studies Center at St. Anthony's College, Oxford, has also expressed his reservations in an interview with The New York Times. Elvin argues:

There is not much long term future for the colony, despite Chinese promises The leaders in Peking will find it impossible to run Hong Kong as a capitalist exception in a Communist nation. If that had been possible . . . they would have done so in Shanghai.¹⁶

Pessimists are especially concerned with the PRC's record of breaking past agreements. Perhaps the most impressive examples have to do with Shanghai and Tibet. The PRC's experience in Shanghai, as a Newsweek article recalls:

. . . when the Communists took power on the mainland in 1949, they promised private industrialists in Shanghai that they could stay in business. Soon afterward, the government compelled the so-called national bourgeoisie to sell their assets to the state at a low fixed rate and then persecuted them as "capitalist tails that had to be cut off" the socialist economy.¹⁷

It was the Common Program of 1949, the PRC's provisional constitution, that allowed private industries and businesses to continue operating in Shanghai and other commercial cities after mainland China was communized. For example, Article 26 of the Common Program stipulated:

The basic principle for the economic construction of the People's Republic of China is to develop production and bring about a prosperous economy through the policies of taking into account both public and private interests, of benefiting both

¹⁶ R. W. Apple Jr. "London Expects Hong Kong Accord to Win Easy Approval in Parliament," NYT, September 26, 1984, p.8.

¹⁷ "Hong Kong Buys Some Time," Newsweek, October 1, 1984, p.40.

labor and capital . . . The state shall coordinate and regulate state-owned economy, cooperative economy, the individual economy of peasants and handicraftsman, private capitalist economy¹⁸

Article 31 also stipulated: "The economy jointly operated by state and private capital is of a state-capital nature. Whenever [possible] necessary . . . private capital shall be encouraged to develop in the direction of state-capitalism"¹⁹ Thus it was clear that at the very beginning of the Chinese Communist regime, private industries and businesses were permissible. However, under the Three-Anti (San-fan) and the Five-Anti (Wu-fan) campaigns that were "aimed at the activities and residual attitudes of the small but important urban business class" launched in 1952,²⁰ private businesses and industries were totally eliminated. The Peking regime tolerated capitalists at the early stage of the "liberation" in order to facilitate the takeover. Once the regime was firmly established, it began to wipe out the capitalistic enterprises.

¹⁸ "The Common Program of the Chinese People's Political Consultative Conference," in Constitutions of the Communist Party-States, ed: Jan F. Triska (Stanford, CA: The Hoover Institution, 1968), p.96.

¹⁹ Ibid, p.97.

²⁰ Frederic M. Kaplan, Julian M. Sobin, and Stephen Andors, Encyclopedia of China Today, updated edition (New York: Harper & Row, 1979), p.48. The Three-Anti Campaign sought to combat corruption, waste, and bureaucracy in the urban sector, while the Five-Anti Campaign was aimed at bribery, theft of state property, tax evasion, theft of state economic secrets, and embezzlement in carrying out government contracts.

Peking's encounters with Tibet also concluded with a sad ending. On May 23, 1951, the PRC and Tibet signed an "Agreement on Measures for the Peaceful Liberation of Tibet" (The Seventeen-Point Agreement). The agreement stipulated that the Central people's Government of the PRC would not change the political and social systems of Tibet and that it would accord Tibet a high degree of autonomy, however, such an agreement did not last very long.²¹ In 1959, after an eight-year effort to work with Peking, relations between the Tibetan people and the Chinese Communists deteriorated. "The Dalai Lama led an ill-advised insurrection of poorly armed peasants and monks against the Communists. The uprising was mercilessly crushed, and the Dalai Lama and some 90,000 fol-

²¹ For example, Article 4 of the Agreement stipulates: "The Central authorities will not alter the existing political system in Tibet. The central authorities also will not alter the established status, functions and powers of the Dalai Lama. Officials of various ranks shall hold office as usual." However, the Dalai Lama accused that the Chinese Communists "did not lose any opportunity to undermine my authority and to sow dissensions among my people." On the undertaking that officials of various ranks shall continue to hold office as usual, the Legal Inquiry Committee on Tibet reported that it was "violated on a large scale at the lower level of administration. Several Tibetan witnesses have given evidence that district and village leaders have been executed, or degraded and humiliated Village and district leaders were frequently replaced by persons from the lowest classes who were prepared to work with the Chinese." See Tibet and the Chinese People's Republic: a Report to the International Commission of Jurists by Its Legal Inquiry Committee on Tibet (Geneva: International Commission of Jurists, 1960), pp. 172-3. For a detailed discussion on the alleged violation of the agreement see Chapter Four (pp. 167-214). For the full text of the agreement see pp. 215-218.

lowers fled to India."²² As to the current situation of Tibet, Taylor observes:

Today, there are up to 250,000 Chinese troops in Tibet. A regional bureaucracy heavily laden with non-Tibetans is in place despite Peking's claimed reforms and a pledge made by Communist Party chief Hu Yaobang three years ago to "Tibetanize" local government.

The Chinese and Tibetan communities are sharply divided, segregated not by law but by suspicion and ill feelings.²³

This is the reason why the Tibetan refugees would remind the people of Hong Kong about their "bitter lesson." In a letter to the editor of the Far Eastern Economic Review, Lhasang Tsering, an official of the Tibet Information Office, based in Dharamsala, India, asserted that "Peking cannot and must not be taken on trust."²⁴

²² Walter A. Taylor, "Cold Comfort for China in a Sullen Tibet," U. S. News & World Report, August 29, 1983, p.43.

²³ Ibid. According to an Asiaweek report, the first secretary of the Chinese Communist Party Committee in Tibet, the most powerful person in the territory, Yin Fatang, was replaced by Wu Jinhua in mid-1985. Both Yin and Wu are ethnic Hans instead of local Tibetans. See "Passage," Asiaweek, June 21, 1985, p.85.

²⁴ Lhasang Tsering, "Bitter Lesson," Far Eastern Economic Review (FEER hereafter), July 19, 1984, p.7. Part of the letter reads:

. . . "What price the word of Chinese ministers now?" and "What price the assurance in 1983's 10-point plan?" are questions that not only the British Government and negotiators should bear in mind but which every resident of Hong Kong should ponder.

. . . Our bitter lesson has been that Peking cannot and must not be taken on trust. No treaty can be binding on Peking as it goes back on its pledges with impunity as soon as the temporary purpose for which they initially signed the treaty has been served.

It is generally agreed that in the PRC the concept of the rule of law is far from being well-established. A scholar even asserts: "The radical tendency in China has been hostile to the idea of rule through law (not even to speak of a rule of law)."²⁵ During its thirty-five-year brief history, the PRC has promulgated four constitutions in 1954, 1975, 1978, and 1982. One author on the PRC observes:

In Communist China, the constitution is not the basic law of the land, rather is a creation of the Communist Party and an instrument of the Communist dictatorship. It is a manifesto of the aims of the Communist state as defined by the ruling elite. The real basic law of China is the dictate of the Communist Party.²⁶

For example, the 1975 constitution made "organs of state leadership . . . to be no more than executive instruments of the Party."²⁷ Even the new constitution still "accepts im-

And Peking will renege on any and all commitments--even those that are unequal in its favour. Such has been their consistent behaviour with us, and there is no reason to suppose that they will behave differently with others. The so-called "17-Point Agreement on the Peaceful Liberation of Tibet" which Peking forced on the Tibetan delegation and then ignored as well as the "Panchsheel Agreement" with India which Peking blatantly violated in 1962 and subsequent years can be cited as cases in point.

I do not know what the people of Hongkong can do about the present situation--but I do know that Peking cannot be taken at its word. It is my sincere hope that some means can be found whereby Hongkong's prosperity and its separate identity can be maintained.

²⁵ Peter B. Moody Jr., Chinese Politics after Mao: Development and Liberalization 1976 to 1983 (New York: Praeger, 1983), p.75.

²⁶ George P. Jan ed., Government of Communist China (San Francisco: Chandler, 1966), p.189.

²⁷ Jurgen Domes, The Government and Politics of the PRC, a

plicitly the Four Basic Principles [of Adherence] of the CCP."²⁸

In the PRC, a common practice is that what the powerful says counts. According to Zou Yu, the PRC's minister of justice, "the sense of law" is weak among the PRC's citizens and government officials. In an interview with the Beijing Review, Zou asserted:

. . . there is still a general {sic} weak sense of the law among Chinese citizens. Some government officials are so ignorant of the law that they merely act on government policies without seeing the importance of understanding the law Some government functionaries have, through the long years of revolutionary wars, fostered the habit of acting upon Party policies alone Indeed, long after the founding of the People's Republic there is still a tendency to overlook the law.²⁹

Since the concept of "the rule of law" is weak, the practice of "the rule of man" tends to prevail. In terms of the Hong Kong arrangement, we have already seen this principle in operation. One vivid example was Deng Xiaoping's harsh statement about the stationing of the PLA troops in Hong Kong after 1997. On May 25, 1984, the PRC's paramount leader denounced two senior Chinese officials--Geng Biao, former defense minister, and Huang Hua, former foreign minister--for speaking "absolute rubbish" on the subject of Hong

Time of Transition (Boulder, CO: Westview, 1985), p.90.

²⁸ Ibid., p.91.

²⁹ Jin Wei, "Making Law a Household Word in China," Beijing Review, August 5, 1985, p.26.

Kong.³⁰ Geng and Huang "had said earlier in the presence of Hongkong visitors that China would not send PLA units to Hongkong to replace British troops."³¹ Deng's reaction was harsh and almost emotional, according to a report:

Speaking to Hongkong reporters in a televised meeting immediately following an NPC session, Deng snapped that "of course" China would station troops on Hongkong's soil, since it was "Chinese territory" in any case.³²

Deng also stated that apart from himself, "the only Chinese officials authorized to make statements on Hong Kong's future were Premier Zhao Ziyang, the head of Hong Kong-Macau Affairs Office, Ji Pengfei, Foreign Minister Wu Xueqian and the ministry's spokesman."³³

Since the system of the rule of law in the PRC is yet to be established, the role of the communist leadership is crucial in all matters. Deng Xiaoping, the most powerful person in the PRC and a pragmatist in the view of Western observ-

³⁰ Amanda Bennett, "Deng Shows He Isn't Soft on Hong Kong," The Wall Street Journal (WSJ hereafter), May 29, 1984, p.28.

³¹ David Bonavia, "Get Back in Step!" FEER, June 7, 1984, p.13.

³² Ibid.

³³ Teresa Ma, "Fluttering Beats," FEER, June 7, 1984, p.14. Some people argued that Deng's strong statement on the issue of Hong Kong "appeared to be aimed at placating military leaders and other conservatives who think the government has been too soft on the Hong Kong issue" (Bennett, op. cit.). However, it also indicated "that earlier statements by senior officials could so quickly become 'inoperative'" (Ma, op. cit.). In addition, such "personal control" could mean that assurances on Hongkong's future could be set aside if or when these personalities disappear." (Ibid)

ers, has launched ambitious reform programs to modernize the PRC. His approach includes opening doors to the West by importing foreign capital, technology, and managerial skills and conducting large-scale reorganizations at all administrative levels by promoting younger and better educated technocrats to run the government. However, we must ask: will Deng's successors be strong enough to maintain the current course? According to Earl W. Foell of the Christian Science Monitor:

Most of the bright college graduates who do join support Mr. Deng's modernization program vigorously. But younger leaders vary widely in their aims from province to province. Some remain loyal to the old, inefficient, but job-secure collectivist patterns, while others favor the riskier but ultimately more wealth-producing free-market shift that has been under way for the last six years.³⁴

Thus in order to perpetuate current policies initiated by Deng, it is essential that Deng's successors are powerful enough to steer the same course. As Newsweek observed: "To make his open-door revolution last, Deng will have to uproot that deep-seated xenophobia. Even more important, he must ensure that his chosen successors are strong enough to take on any challengers who may be waiting in the wings."³⁵ The past political realities of the PRC indicate that such problems do await Deng and his followers. According to Western

³⁴ Earl W. Foell, "Out with the Old, in with the New in China," Christian Science Monitor (CSM hereafter), September 17, 1985, p.40.

³⁵ "China's Year of Rejuvenation," Newsweek, January 14, 1985, p.49.

observers, there were conflicting statements between Deng Xiaoping and Chen Yun at the closing session of a special Chinese Communist Party Conference held in September 1985. A news report indicated:

While Mr. Deng urged that the current reforms be kept on course, Mr. Chen aimed criticism directly at specific points in reforms Deng has initiated over the past seven years. Chen leads a faction of veteran leaders, many of whom served under Mao Tse-tung, who have been critical of Deng Xiaoping's policies.³⁶

Since both Deng and Chen are members of the Standing Committee of the Politburo, the PRC's most powerful decision-making body, such conflict could lead a drastic change of existing policies.

In his study of the succession problem of Communist China, John Gardner asserts that "the succession question has regularly involved bitter factional disputes and conspiratorial dealings within the political elite" in socialist states.³⁷ Gardner elaborates on the situation of the PRC as follows:

The pattern of uncertainty, instability, conflict and major policy changes, which characterises succession in virtually all the socialist states, has been most vividly illustrated in the People's Republic of China. To be sure, China was a relative late-comer in terms of facing its first succession, but when it came it was particularly explosive and dramatic.³⁸

³⁶ Julian Baum, "Deng's Spars with Leading Critic over Chinese Reform Program," CSM, September 24, 1984, p.7.

³⁷ John Gardner, Chinese Politics and Succession to Mao (New York: Holmes & Meier, 1982), p.4.

³⁸ Ibid, p.5.

No wonder there have been worries like whether "the course Deng has set China upon will be sustained when he is no longer on the scene. Are his successors firmly in place? Can they survive and pursue present policies?"³⁹

A final uncertainty has to do with the legal problems of the Hong Kong agreement. As we have noted in chapter IV, there are several potential legal problems in the agreement, such as its rigidity and ambiguity. As editorialized by Ta Kung Pao, a left-wing Chinese newspaper in Hong Kong, "What happens as regards Hongkong's administration after China recovers sovereignty is entirely an internal matter of China and brooks no interference from other countries."⁴⁰ Thus after 1997, the PRC almost can do whatever it wishes toward Hong Kong and there is nothing much the international community can do about it. According to Professor D. W. Bowett of the Queen's College, Oxford, "I don't think the Basic Law is an effective guarantee, because China is a state with independent sovereign power, it has the right to revise its law any time. If in ten or eight years it wants to revise its law, I don't think any one can stop it."⁴¹

³⁹ John Hughes, "Hong Kong's Future in Deng's Hands," The Norman Transcript, June 6, 1985, p.6.

⁴⁰ Quoted and translated into English by Asiaweek, see "'Progress,' But How Much," Asiaweek, December 23-30, 1983, p.15.

⁴¹ Margaret Ng (Wu Ai-i), "The Sino-British Agreement as Reviewed from the Point of International Law: Two International Law Experts on Hong Kong," Ming Pao Monthly, 224 (August 1984): 4.

Given the above considerations, post-1997 Hong Kong remains a problem. It certainly will "live or die by Peking's political whim."⁴² As Paul Wilkinson, professor of International relations at the University of Aberdeen, puts it: "Hong Kong has a one-way ticket to an unknown destination."⁴³

As we have reviewed the Sino-British encounter over Hong Kong, we have noted that time was on the side of the PRC, which asserted that the issue would be settled when the situation was ripe. In terms of power we also observed the PRC was dominant over the UK. Hong Kong has a heavy dependency on mainland China for water, fresh food, raw materials, and many other provisions to keep it running smoothly. Since Hong Kong borders on the PRC, the PRC could seize Hong Kong in a matter of hours if the PRC wished to act arbitrarily. In addition, the PRC's manipulation of nationalism also won a majority support from the Chinese in Hong Kong for the recovery of the territory. However, before the negotiations, the PRC followed a hands-off policy. Prompted by the UK's initiation, the PRC entered into talks and made extensive concessions in recognizing the UK's right of administration over Hong Kong. It also subsequently pledged to the world that it will fairly administer the territory when

⁴² "Promises, Promises," editorial of the Wall Street Journal, October 10, 1984, p.26.

⁴³ Paul Wilkinson, "Hong Kong: a One-way Ticket to an Unknown Destination," Government and Opposition, 18 (Autumn 1983): 457.

it resumes sovereignty. What, one might ask, has the PRC to gain from such a moderate, restrained, and diplomatic solution of the Hong Kong problem?

In our analysis of the negotiations, we have clearly indicated that the PRC's arrangement for the post-1997 status of Hong Kong serves well Peking's goals both domestic and foreign. To aid in carrying out its ambitious modernization program, Hong Kong provides capital, technology, managerial skills, and important Western connections. This explains the PRC's policies toward Hong Kong which politically, socially, and economically is different from the Mainland. In order to promote its relations with the Western world and the ASEAN countries, the PRC intends to demonstrate through its Hong Kong policy that it is reasonable and peace-loving. Furthermore, the Hong Kong arrangement can serve as a model for its strategy in gaining Taiwan. Leaving Hong Kong free, at least for a period of fifty years, can demonstrate to the international community that the PRC is practical in its pursuit of national unification. This can be both a lure to and a pressure on Taipei.

Finally, we might ask: Will post-1997 Hong Kong continue to provide a safe harbor for non-communist interests? As we have noted earlier, the inconsistencies of policy, the weakness of the legal tradition, and the problem of succession in Communist China, together with the legal problems of the Hong Kong agreement leave the future of Hong Kong uncertain.

Now, to be deductive instead of speculative, we may say: As long as the PRC maintains its current open door policy, as long as its leaders remain committed to the ideal of modernization, as long as no extreme ideological dogmatism--such as experienced during the Cultural Revolution--arises, and as long as the Hong Kong solution is not a political expediency, then the prospects for a free Hong Kong seem reasonably good.

Epilogue

As we have noted earlier, one objective of the PRC's Hong Kong policy is the unification of Taiwan with the Mainland. Deng Xiaoping has clearly stated that "the resolution of the Hongkong question has a direct impact on the Taiwan question."⁴⁴ In the speech of October 22, 1984, Deng told his colleagues of the Central Advisory Commission that a more flexible policy would be followed in dealing with Taiwan. Thus for the PRC, the "Hong Kong model" is applicable to the case of Taiwan. Since part of this research is about the broader international significance of the Hong Kong agreement, it is proper to consider here something of its implications for Taiwan.

⁴⁴ "'One Country, Two Systems' Born of Reality," Beijing Review, February 4, 1985, p. 15.

After the Sino-Japanese War, Taiwan was ceded to Japan by the Ching Government under the Treaty of Shimonoseki (1895). After some fifty years of Japanese occupation, the island reverted to China in 1945 after World War II. Since 1949, China has become a divided country as a result of civil war, with the Communists occupying the Mainland and the Nationalists, the island of Taiwan. The latter also hold the Pescadores, Kinmen, and Matsu. Since both claim to be the sole and legitimate government of all China, a situation of confrontation has lasted for more than thirty-five years.

In order to review whether the Hong Kong arrangement might serve as a model for Taiwan, it is helpful to compare the similarities and differences between the two places. To begin with, Hong Kong and Taiwan are both Chinese territories predominantly occupied by ethnic Chinese with Chinese cultural traditions. Thus, though the majority of residents of Hong Kong speak Cantonese rather than Mandarin, the written language of both cultures is the same. Of course, after some 150 years of British rule, Hong Kong has been somewhat influenced by British tradition. Its legal system, to name only one example, is heavily Westernized (it is, however, far from being Anglicized in terms of culture). Moreover, both Hong Kong and Taiwan have practiced free enterprise and achieved rapid economic growth.⁴⁵ Both rely heavily on for-

⁴⁵ As we have indicated that Hong Kong's 1982 per capita income was US\$6,173 (See the "Human Rights" section of Chapter II). Taiwan's per capita, according to a March 1985 description, "is more than US\$3,000." Carl Gold-

eign trade to develop their economy. Finally, communism is unpopular among both peoples. Carl Goldstein, correspondent of the Far Eastern Economic Review in Taipei, has observed that in Taiwan "almost everyone rejects the claim by the People's Republic of China to represent them."⁴⁶

As for the differences between Hong Kong and Taiwan, several deserve mention here. Economically, as we have pointed out, Hong Kong has a heavy dependency upon mainland China. Without regular material supplies from the PRC, Hong Kong will inevitably have difficulty in terms of daily life and economic growth. On the contrary, Taiwan produces more than enough food for self-sufficiency and export. Though there has been some reported indirect trade between Taiwan and the Mainland through Hong Kong, the volume is not significant.⁴⁷

Militarily, Hong Kong borders the PRC and has only a small garrison in the territory primarily to assist the government in maintaining stability.⁴⁸ Thus for Hong Kong,

stein, "Prosperity as Well as Politics Is at Issue in Taiwan," FEER, March 21, 1985, p.104.

⁴⁶ Ibid.

⁴⁷ According to a Far Eastern Economic Review report, between 1978 and November 1984, the PRC's trade with Taiwan via Hong Kong rose 17-fold to HK\$3.74 billion. See Louise do Rosario, "The Door Opens Wide," FEER, February 28, 1985, p.97. Renmin Ribao also reported that indirect trade between the Mainland and Taiwan for the first five months of 1985 amounted HK\$499 million, and is expected to reach one billion by the end of 1985. Renmin Ribao (Overseas Edition), October 25, 1985, p.1.

⁴⁸ Hong Kong 1985, a Review of 1984 (Hong Kong: Government Information Services, 1985), p.234. In 1984, "the permanent garrison comprised five Royal Navy patrol craft, a

there is almost no defense to speak of. As for Taiwan's defense capability and the possibility of a PRC invasion, Goldstein has this to say:

Taiwan, on the contrary, has a well-equipped, 484,000-strong military to back up its rejection of Peking's entreaties . . . a successful invasion is theoretically possible and the communist leadership has adamantly refused to rule out the use of force in settling what it regards as a purely internal affair. But the logistical problems involved in leaping the 160-KM-wide Taiwan Strait would give pause to even the most ardent warrior. More importantly, Peking would have to pay a fearsome price--both in human and economic terms--for an invasion of the island.⁴⁹

Thus militarily Taiwan would be a much more formidable opponent than Hong Kong in resisting communist military intervention.

Politically, the differences between Hong Kong and Taiwan are even more significant. Hong Kong is a territory ceded by China and leased to a foreign power under international agreements. The due date of the New Territories lease makes the return of Hong Kong to China time-fixed and inevitable. As we have mentioned, the New Territories are essential to the survival of the island of Hong Kong and the Kowloon Peninsula. Once the New Territories are gone, the other two areas become unviable. This is the major reason why the UK

naval tug, a Royal Marine raiding squadron, one United Kingdom and four Gurkha infantry battalions, a Gurkha engineer regiment, a Gurkha signals regiment, a Gurkha transport regiment, one Army Air Corps helicopter squadron with 10 Scout helicopters, and one Royal Air Force squadron with 10 Wessex helicopters." Ibid.

⁴⁹ Goldstein, op, cit., p.105.

agreed to the return of the whole colony of Hong Kong to the PRC. The reversion of Hong Kong to China is a matter of territorial recovery and leaves the UK and the people of Hong Kong both no choice. For the PRC, the recovery of Hong Kong is a claim of treaty right. It is the time frame involved that made possible orderly negotiations and the smooth transition from a British to a mainland Chinese Hong Kong. The motive behind all this for both parties was the continued stability and prosperity of the colony.

The separation of Taiwan from the Mainland is the result of a civil war. The political reality for current China is that there is "one country, two governments." Each administration has effectively exercised its sovereignty over territories under its own domain since 1949. In terms of area and population, mainland China is much stronger than the island of Taiwan. The Republic of China, however, like the PRC, is an active political entity in the international community despite the PRC's efforts to exclude it from worldwide bodies and to force world opinion to recognize Peking alone as the central government of China. By contrast with the PRC's relatively unstable political situation (as for example during the Cultural Revolution), "Taiwan has enjoyed stable development and gradually increasing political freedoms"⁵⁰ throughout its brief history. It has remained firm to its principles of "no contact, no negotiations, no com-

⁵⁰ Ibid.

promise" with the PRC. As the situation stands, who will unify whom is still a matter of uncertainty. Moreover, the relationship of Taiwan to the PRC is a matter of power rather than a matter of right.

Since Taipei has adopted a strong anti-communist position, it comes as no surprise that it should denounce the Hong Kong agreement. President Chiang Ching-kuo has called the "one country, two systems" policy and the Hong Kong agreement "nothing but a fraud, a scheme, an exercise in united front tactics."⁵¹ According to an article that appeared in an official monthly, Taipei does not recognize the Hong Kong agreement and has vowed to support the people of Hong Kong and Kowloon in any struggle for freedom:

. . . the ROC premier Yu Kuo-hwa . . . declared that the agreement on Hongkong between Communist China and the British is not and can not be recognized by his country We urged the Chinese residents in Hongkong and Kowloon to more vigorously pursue their struggle against Communism, for freedom. We will assist and support this struggle using various methods and via different channels.⁵²

Taipei's reaction against the "Hong Kong model" has been expounded by Dr. King-yuh Chang, director general of the Government Information Office:

In fact, it is all mere camouflage. As everyone knows, free democracy and dictatorial Communism involve two extremely different lifestyles--as a

⁵¹ Ni Su-Fei, "Politics in Peking: Prospects for Hong Kong," Free China Review, 34 (November 1984): 17.

⁵² Lew Wei-Liang, "The London-Peking 'Agreement': Hongkong's Problems Have Not Been Solved, But Intensified," Free China Review, 34 (November 1984): 20.

matter of fact, diametrically opposed systems. How could they co-exist in one national institution controlled by just one? And we may also ask, will Communist China then allow the Chinese people on the mainland to choose a system other than Communism?

Communist China is utilizing the so-called "one country, two systems" and "Hongkong model" slogan in major propaganda campaigns aimed at bagging the Republic of China via deception of our friends and compatriots abroad. We, ourselves, must stay alert and foil their plot, assuring that its true nature in public knowledge.⁵³

Expressions of unofficial opinions in Taiwan are similar to those of the government in Carl Goldstein's report:

Political observers of all colours tend to play down the significance of the Hongkong agreement as a possible model for unification between Taiwan and China, contrary to Peking's hopes. "We have nothing to gain and everything to lose by reuniting with the mainland," said Antonio Chiang, a prominent opposition activist and magazine editor.

The generous terms of the joint declaration . . . have not changed most people's minds owing to almost universal mistrust for the Chinese leadership's intention and durability. Only a few voices can be heard saying that the Hongkong agreement may represent a starting point for the negotiations some time after 1997, if the Chinese Government proves its sincerity.⁵⁴

Thus in Taiwan, despite the conclusion of the Hong Kong agreement, the government and the people remain unchanged in their basic attitude in opposing a communist takeover.

⁵³ King-yuh Chang, "A Communist Nationalism? a Closer Look at Recent Chinese Communist Appeals to the National Sentiments of Chinese Everywhere--and at Motivating Factors, Strategies, and Goals Involved," Taipei: Government Information Office, January 1985, pp.10-11, 12.

⁵⁴ Carl Goldstein, "Keeping a Door Open," FEER, November 11, 1984, p.46.

Since the situation of Taiwan is quite different from that of Hong Kong, the PRC cannot expect to unify it by mere political appeal. The final unification between the Mainland and the Island will depend on which side has the capability to persuade the other to unify peacefully or which side has the power to conquer militarily. So long as Taipei is capable of maintaining the status quo and so long as Peking can not win trust from the leaders and the people of the other side of the Taiwan Straits,⁵⁵ the prospect of a unified China seems to be still very slim. Now that a strong and unified China is the common aspiration of all Chinese people, the best that they can hope for seems to be: for Taiwan, a continuous economic and political development; for the Mainland, in the words of Tsai Chenj-wen, professor of political science of the National Taiwan University, a Peking's refor-

⁵⁵ As far as Peking's peaceful overtures toward Taipei are concerned, the PRC authorities seem not to be sincere. According to a confidential document released by the General Office of the Central Committee, the Chinese Communist Party, Peking urged all of its subdivisional Party Committees' offices concerned with plans for Taiwan to "hold every link, . . . make use of every possible opportunity and route" to "broaden the confrontation between the Kuomintang {in Taiwan} and the masses, to instigate another Kaohsiung Incident, in order to create favorable revolutionary conditions." See "Document of the General Office of the Central Committee, the Chinese Communist Party: Memorandum of a Meeting on the Problems of Grasping the New Situation and Strengthening the Work and Propaganda toward Taiwan, April 3, 1985," China Spring, 28 (October 1985): 11-12. On December 10, 1979 in the southern port city of Kaohsiung, there was a violent demonstration. "In the December demonstration, the police blocked a human rights rally. Fighting broke out, with the demonstrators attacking the police with clubs and the police using tear gas. It was reported that 180 policemen were injured." See Facts on File, 1980, p. 102.

mation of its "social and political systems in a bid to narrow the gap between the Taiwan Straits so that both sides can come to the negotiation table."⁵⁶ As a result of peaceful competition across the Taiwan Straits, the Chinese people on both sides are sure to enjoy better human rights and fundamental freedoms. Someday when the gap of whatsoever between the Island and the Mainland is narrowed or even bridged, then, the unification will certainly be fulfilled.

⁵⁶ "ROC Scholars Scrutinize Agreement on the Hongkong Issue," The Free China Journal, October 7, 1984, p.1.

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Appendix A

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

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China have reviewed with satisfaction the friendly relations existing between the two Governments and peoples in recent years and agreed that a proper negotiated settlement of the question of Hong Kong, which is left over from the past, is conducive to the maintenance of the prosperity and stability of Hong Kong and to the further strengthening and development of the relations between the two countries on a new basis. To this end, they have, after talks between the delegations of the two Governments, agreed to declare as follows:

1. The Government of the People's Republic of China declares that to recover the Hong Kong area (including Hong Kong Island, Kowloon and the New Territories, hereinafter referred to as Hong Kong) is the common aspiration of the entire Chinese people, and that it has decided to resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997.
2. The Government of the United Kingdom declares that it will restore Hong Kong to the People's Republic of China with effect from 1 July 1997.
3. The Government of the People's Republic of China declares that the basic policies of the People's Republic of China regarding Hong Kong are as follows:

- (1) Upholding national unity and territorial integrity and taking account of the history of Hong Kong and its realities, the People's Republic of China has decided to establish, in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, a Hong Kong Special Administrative Region upon resuming the exercise of sovereignty over Hong Kong.
- (2) The Hong Kong Special Administrative Region will be directly under the authority of the Central People's Government of the People's Republic of China. 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.
- (3) The Hong Kong Special Administrative Region will be vested with executive, legislative and independent judicial power, including that of final adjudication. The laws currently in force in Hong Kong will remain basically unchanged.
- (4) The Government of the Hong Kong Special Administrative Region will be composed of local inhabitants. The chief executive will be appointed by the Central People's Government on the basis of the results of elections or consultations to be held locally. Principal officials will be nominated by the chief executive of the Hong Kong Special Administrative Region for appointment by the Central People's Government. Chinese and foreign nationals previously working in the public and police services in the government departments of Hong Kong may remain in employment. British and other foreign nationals may also be employed to serve as advisers or hold certain public posts in government departments of the Hong Kong Special Administrative Region.
- (5) The current social and economic systems in Hong Kong will remain unchanged, and so will the life-style. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the Hong Kong Special Administrative Region. Private property, ownership of enterprises, legitimate right of inheritance and foreign investment will be protected by law.
- (6) The Hong Kong Special Administrative Region will retain the status of a free port and a separate customs territory.

- (7) The Hong Kong Special Administrative Region will retain the status of an international financial centre, and its markets for foreign exchange, gold, securities and futures will continue. There will be free flow of capital. The Hong Kong dollar will continue to circulate and remain freely convertible.
- (8) The Hong Kong Special Administrative Region will have independent finances. The Central People's Government will not levy taxes on the Hong Kong Special Administrative Region.
- (9) The Hong Kong Special Administrative Region may establish mutually beneficial economic relations with the United Kingdom and other countries, whose economic interests in Hong Kong will be given due regard.
- (10) Using the name of "Hong Kong, China", the Hong Kong Special Administrative Region may on its own maintain and develop economic and cultural relations and conclude relevant agreements with states, regions and relevant international organisations.

The Government of the Hong Kong Special Administrative Region may on its own issue travel documents for entry into and exit from Hong Kong.

- (11) The maintenance of public order in the Hong Kong Special Administrative Region will be the responsibility of the Government of the Hong Kong Special Administrative Region.
- (12) The above-stated basic policies of the People's Republic of China regarding Hong Kong and the elaboration of them in Annex I to this Joint Declaration will be stipulated, in a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, by the National People's Congress of the People's Republic of China, and they will remain unchanged for 50 years.

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

5. The Government of the United Kingdom and the Government of the People's Republic of China declare that, in order to ensure a smooth transfer of government in 1997, and with a view to the effective implementation of this Joint Declaration, a Sino-British Joint Liaison Group will be set up when this Joint Declaration enters into force; and that it will be established and will function in accordance with the provisions of Annex II to this Joint Declaration.

6. The Government of the United Kingdom and the Government of the People's Republic of China declare that land leases in Hong Kong and other related matters will be dealt with in accordance with the provisions of Annex III to this Joint Declaration.

7. The Government of the United Kingdom and the Government of the People's Republic of China agree to implement the preceding declarations and the Annexes to this Joint Declaration.

8. This Joint Declaration is subject to ratification and shall enter into force on the date of the exchange of instruments of ratification, which shall take place in Beijing before 30 June 1985. This Joint Declaration and its Annexes shall be equally binding.

Done in duplicate at Beijing on 19 December 1984 in the English and Chinese languages, both texts being equally authentic.

For the
Government of the United
Kingdom of Great Britain
and Northern Ireland

For the
Government of the
People's Republic of China

Margaret Thatcher

Zhao Ziyang

ANNEX I

ELABORATION BY THE GOVERNMENT OF
THE PEOPLE'S REPUBLIC OF CHINA
OF ITS BASIC POLICIES REGARDING HONG KONG

The Government of the People's Republic of China elaborates the basic policies of the People's Republic of China regarding Hong Kong as set out in paragraph 3 of the 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 as follows:

I

The Constitution of the People's Republic of China stipulates in Article 31 that "the state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by laws enacted by the National People's Congress in the light of the specific conditions." In accordance with this Article, the People's Republic of China shall, upon the resumption of the exercise of sovereignty over Hong Kong on 1 July 1997, establish the Hong Kong Special Administrative Region of the People's Republic of China. The National People's Congress of the People's Republic of China shall enact and promulgate a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as the Basic Law) in accordance with the Constitution of the People's Republic of China, stipulating that after the establishment of the Hong Kong Special Administrative Region the socialist system and socialist policies shall not be practised in the Hong Kong Special Administrative Region and that Hong Kong's previous capitalist system and life-style shall remain unchanged for 50 years.

The Hong Kong Special Administrative Region shall be directly under the authority of the Central People's Government of the People's Republic of China and shall enjoy a high degree of autonomy. Except for foreign and defence affairs which are the responsibilities of the Central People's Government, the Hong Kong Special Administrative Region shall be vested with executive, legislative and independent judicial power, including that of final adjudication. The Central People's Government shall authorise the Hong Kong Special Administrative Region to conduct on its own those external affairs specified in section XI of this Annex.

The government and legislature of the Hong Kong Special Administrative Region shall be composed of local inhabitants. The chief executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government. Principal officials (equivalent to Secretaries) shall be nominated by the chief executive of the Hong Kong Special Administrative Region and appointed by the Central People's Government. The legislature of the Hong Kong Special Administrative Region shall be constituted by elections. The executive authorities shall abide by the law and shall be accountable to the legislature.

In addition to Chinese, English may also be used in organs of government and in the courts in the Hong Kong Special Administrative Region.

Apart from displaying the national flag and national emblem of the People's Republic of China, the Hong Kong Special Administrative Region may use a regional flag and emblem of its own.

II

After the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong (i.e. the common law, rules of equity, ordinances, subordinate legislation and customary law) shall be maintained, save for any that contravene the Basic Law and subject to any amendment by the Hong Kong Special Administrative Region legislature.

The legislative power of the Hong Kong Special Administrative Region shall be vested in the legislature of the Hong Kong Special Administrative Region. The legislature may on its own authority enact laws in accordance with the provisions of the Basic Law and legal procedures, and report them to the Standing Committee of the National People's Congress for the record. Laws enacted by the legislature which are in accordance with the Basic Law and legal procedures shall be regarded as valid.

The laws of the Hong Kong Special Administrative Region shall be the Basic Law, and the laws previously in force in Hong Kong and laws enacted by the Hong Kong Special Administrative Region legislature as above.

III

After the establishment of the Hong Kong Special Administrative Region, the judicial system previously practised in Hong Kong shall be maintained except for those changes consequent upon the vesting in the courts of the Hong Kong Special Administrative Region of the power of final adjudication.

Judicial power in the Hong Kong Special Administrative Region shall be vested in the courts of the Hong Kong Special Administrative Region. The courts shall exercise judicial power independently and free from any interference. Members of the judiciary shall be immune from legal action in respect of their judicial functions. The courts shall decide cases in accordance with the laws of the Hong Kong Special Administrative Region and may refer to precedents in other common law jurisdictions.

Judges of the Hong Kong Special Administrative Region courts shall be appointed by the chief executive of the Hong Kong Special Administrative Region acting in accordance with the recommendation of an independent commission composed of local judges, persons from the legal profession and other eminent persons. Judges shall be chosen by reference to their judicial qualities and may be recruited from other common law jurisdictions. A judge may only be removed for inability to discharge the functions of his office, or for misbehaviour, by the chief executive of the Hong Kong Special Administrative Region acting in accordance with the recommendation of a tribunal appointed by the chief judge of the court of final appeal, consisting of not fewer than three local judges. Additionally, the appointment or removal of principal judges (i.e. those of the highest rank) shall be made by the chief executive with the endorsement of the Hong Kong Special Administrative Region legislature and reported to the Standing Committee of the National People's Congress for the record. The system of appointment and removal of judicial officers other than judges shall be maintained.

The power of final judgment of the Hong Kong Special Administrative Region shall be vested in the court of final appeal in the Hong Kong Special Administrative Region, which may as required invite judges from other common law jurisdictions to sit on the court of final appeal.

A prosecuting authority of the Hong Kong Special Administrative Region shall control criminal prosecutions free from any interference.

On the basis of the system previously operating in Hong Kong, the Hong Kong Special Administrative Region Government shall on its own make provision for local lawyers and lawyers from outside the Hong Kong Special Administrative Re-

gion to work and practise in the Hong Kong Special Administrative Region.

The Central People's Government shall assist or authorise the Hong Kong Special Administrative Region Government to make appropriate arrangements for reciprocal juridical assistance with foreign states.

IV

After the establishment of the Hong Kong Special Administrative Region, public servants previously serving in Hong Kong in all government departments, including the police department, and members of the judiciary may all remain in employment and continue their service with pay, allowances, benefits and conditions of service no less favourable than before. The Hong Kong Special Administrative Region Government shall pay to such persons who retire or complete their contracts, as well as to those who have retired before 1 July 1997, or to their dependants, all pensions, gratuities, allowances and benefits due to them on terms no less favourable than before, and irrespective of their nationality or place of residence.

The Hong Kong Special Administrative Region Government may employ British and other foreign nationals previously serving in the public service in Hong Kong, and may recruit British and other foreign nationals holding permanent identity cards of the Hong Kong Special Administrative Region to serve as public servants at all levels, except as heads of major government departments (corresponding to branches or departments at Secretary level) including the police department, and as deputy heads of some of those departments. The Hong Kong Special Administrative Region Government may also employ British and other foreign nationals as advisers to government departments and, when there is a need, may recruit qualified candidates from outside the Hong Kong Special Administrative Region to professional and technical posts in government departments. The above shall be employed only in their individual capacities and, like other public servants, shall be responsible to the Hong Kong Special Administrative Region Government.

The appointment and promotion of public servants shall be on the basis of qualifications, experience and ability. Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service (including special bodies for appointment, pay and conditions of service) shall, save for any provisions providing privileged treatment for foreign nationals, be maintained.

V

The Hong Kong Special Administrative Region shall deal on its own with financial matters, including disposing of its financial resources and drawing up its budgets and its final accounts. The Hong Kong Special Administrative Region shall report its budgets and final accounts to the Central People's Government for the record.

The Central People's Government shall not levy taxes on the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region shall use its financial revenues exclusively for its own purposes and they shall not be handed over to the Central People's Government. The systems by which taxation and public expenditure must be approved by the legislature, and by which there is accountability to the legislature for all public expenditure, and the system for auditing public accounts shall be maintained.

VI

The Hong Kong Special Administrative Region shall maintain the capitalist economic and trade systems previously practised in Hong Kong. The Hong Kong Special Administrative Region Government shall decide its economic and trade policies on its own. Rights concerning the ownership of property, including those relating to acquisition, use, disposal, inheritance and compensation for lawful deprivation (corresponding to the real value of the property concerned, freely convertible and paid without undue delay) shall continue to be protected by law.

The Hong Kong Special Administrative Region shall retain the status of a free port and continue a free trade policy, including the free movement of goods and capital. The Hong Kong Special Administrative Region may on its own maintain and develop economic and trade relations with all states and regions.

The Hong Kong Special Administrative Region shall be a separate customs territory. It may participate in relevant international organisations and international trade agreements (including preferential trade arrangements), such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles. Export quotas, tariff preferences and other similar arrangements obtained by the Hong Kong Special Administrative Region shall be enjoyed exclusively by the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region shall

have authority to issue its own certificates of origin for products manufactured locally, in accordance with prevailing rules of origin.

The Hong Kong Special Administrative Region may, as necessary, establish official and semi-official economic and trade missions in foreign countries, reporting the establishment of such missions to the Central People's Government for the record.

VII

The Hong Kong special Administrative Region shall retain the status of an international financial centre. The monetary and financial systems previously practised in Hong Kong, including the systems of regulation and supervision of deposit taking institutions and financial markets, shall be maintained.

The Hong Kong Special Administrative Region Government may decide its monetary and financial policies on its own. It shall safeguard the free operation of financial business and the free flow of capital within, into and out of the Hong Kong Special Administrative Region. No exchange control policy shall be applied in the Hong Kong Special Administrative Region. Markets for foreign exchange, gold, securities and futures shall continue.

The Hong Kong dollar, as the local legal tender, shall continue to circulate and remain freely convertible. The authority to issue Hong Kong currency shall be vested in the Hong Kong Special Administrative Region Government. The Hong Kong Special Administrative Region Government may authorise designated banks to issue or continue to issue Hong Kong currency under statutory authority, after satisfying itself that any issue of currency will be soundly based and that the arrangements for such issue are consistent with the object of maintaining the stability of the currency. Hong Kong currency bearing references inappropriate to the status of Hong Kong as a Special Administrative Region of the People's Republic of China shall be progressively replaced and withdrawn from circulation.

The Exchange Fund shall be managed and controlled by the Hong Kong Special Administrative Region Government, primarily for regulating the exchange value of the Hong Kong dollar.

VIII

The Hong Kong Special Administrative Region shall maintain Hong Kong's previous systems of shipping management and shipping regulation, including the system for regulating conditions of seamen. The specific functions and responsibilities of the Hong Kong Special Administrative Region Government in the field of shipping shall be defined by the Hong Kong Special Administrative Region Government on its own. Private shipping businesses and shipping-related businesses and private container terminals in Hong Kong may continue to operate freely.

The Hong Kong Special Administrative Region shall be authorised by the Central People's Government to continue to maintain a shipping register and issue related certificates under its own legislation in the name of "Hong Kong, China".

With the exception of foreign warships, access for which requires the permission of the Central People's Government, ships shall enjoy access to the ports of the Hong Kong Special Administrative Region in accordance with the laws of the Hong Kong Special Administrative Region.

IX

The Hong Kong Special Administrative Region shall maintain the status of Hong Kong as a centre of international and regional aviation. Airlines incorporated and having their principal place of business in Hong Kong and civil aviation related businesses may continue to operate. The Hong Kong Special Administrative Region shall continue the previous system of civil aviation management in Hong Kong, and keep its own aircraft register in accordance with provisions laid down by the Central People's Government concerning nationality marks and registration marks of aircraft. The Hong Kong Special Administrative Region shall be responsible on its own for matters of routine business and technical management of civil aviation, including the management of airports, the provision of air traffic services within the flight information region of the Hong Kong Special Administrative Region, and the discharge of other responsibilities allocated under the regional air navigation procedures of the International Civil Aviation Organisation.

The Central People's Government shall, in consultation with the Hong Kong Special Administrative Region Government, make arrangements providing for air services between the Hong Kong Special Administrative Region and other parts of the People's Republic of China for airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region and other airlines of the People's Republic of China. All Air Service Agreements provid-

ing for air services between other parts of the People's Republic of China and other states and regions with stops at the Hong Kong Special Administrative Region and air services between the Hong Kong Special Administrative Region and other states and regions with stops at other parts of the People's Republic of China shall be concluded by the Central People's Government. For this purpose, the Central People's Government shall take account of the special conditions and economic interests of the Hong Kong Special Administrative Region and consult the Hong Kong Special Administrative Region Government. Representatives of the Hong Kong Special Administrative Region Government may participate as members of delegations of the Government of the People's Republic of China in air service consultations with foreign governments concerning arrangements for such services.

Acting under specific authorisations from the Central People's Government, the Hong Kong Special Administrative Region Government may:

- renew or amend Air Service Agreements and arrangements previously in force; in principle, all such Agreements and arrangements may be renewed or amended with the rights contained in such previous Agreements and arrangements being as far as possible maintained;
- negotiate and conclude new Air Service Agreements providing routes for airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region and rights for overflights and technical stops; and
- negotiate and conclude provisional arrangements where no Air Service Agreement with a foreign state or other region is in force.

All scheduled air services to, from or through the Hong Kong Special Administrative Region which do not operate to, from or through the mainland of China shall be regulated by Air Service Agreements or provisional arrangements referred to in this paragraph.

The Central People's Government shall give the Hong Kong Special Administrative Region Government the authority to:

- negotiate and conclude with other authorities all arrangements concerning the implementation of the above Air Service Agreements and provisional arrangements;

- issue licences to airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region;
- designate such airlines under the above Air Service Agreements and provisional arrangements; and
- issue permits to foreign airlines for services other than those to, from or through the mainland of China.

X

The Hong Kong Special Administrative Region shall maintain the educational system previously practised in Hong Kong. The Hong Kong Special Administrative Region Government shall on its own decide policies in the fields of culture, education, science and technology, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational and technological qualifications. Institutions of all kinds, including those run by religious and community organisations, may retain their autonomy. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region. Students shall enjoy freedom of choice of education and freedom to pursue their education outside the Hong Kong Special Administrative Region.

XI

Subject to the principle that foreign affairs are the responsibility of the Central People's Government, representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegations of the Government of the People's Republic of China, in negotiations at the diplomatic level directly affecting the Hong Kong Special Administrative Region conducted by the Central People's Government. The Hong Kong Special Administrative Region may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with states, regions and relevant international organisations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, touristic, cultural and sporting fields. Representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegations of the Government of the People's Republic of China, in interna-

tional organisations or conferences in appropriate fields limited to states and affecting the Hong Kong Special Administrative Region, or may attend in such other capacity as may be permitted by the Central People's Government and the organisation or conference concerned, and may express their views in the name of "Hong Kong, China". The Hong Kong Special Administrative Region may, using the name "Hong Kong, China", participate in international organisations and conferences not limited to states.

The application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Hong Kong Special Administrative Region, and after seeking the views of the Hong Kong Special Administrative Region Government. International agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may remain implemented in the Hong Kong Special Administrative Region. The Central People's Government shall, as necessary, authorise or assist the Hong Kong Special Administrative Region Government to make appropriate arrangements for the application to the Hong Kong Special Administrative Region of other relevant international agreements. The Central People's Government shall take the necessary steps to ensure that the Hong Kong Special Administrative Region shall continue to retain its status in an appropriate capacity in those international organisations of which the People's Republic of China is a member and in which Hong Kong participates in one capacity or another. The Central People's Government shall, where necessary, facilitate the continued participation of the Hong Kong Special Administrative Region in an appropriate capacity in those international organisations in which Hong Kong is a participant in one capacity or another, but of which the People's Republic of China is not a member.

Foreign consular and other official or semi-official missions may be established in the Hong Kong Special Administrative Region with the approval of the Central People's Government. Consular and other official missions established in Hong Kong by states which have established formal diplomatic relations with the People's Republic of China may be maintained. According to the circumstances of each case, consular and other official missions of states having no formal diplomatic relations with the People's Republic of China may either be maintained or changed to semi-official missions. States not recognised by the People's Republic of China can only establish non-governmental institutions.

The United Kingdom may establish a Consulate-General in the Hong Kong Special Administrative Region.

XII

The maintenance of public order in the Hong Kong Special Administrative Region shall be the responsibility of the Hong Kong Special Administrative Region Government. Military forces sent by the Central People's Government to be stationed in the Hong Kong Special Administrative Region for the purpose of defence shall not interfere in the internal affairs of the Hong Kong Special Administrative Region. Expenditure for these military forces shall be borne by the Central People's Government.

XIII

The Hong Kong Special Administrative Region Government shall protect the rights and freedoms of inhabitants and other persons in the Hong Kong Special Administrative Region according to law. The Hong Kong Special Administrative Region Government shall maintain the rights and freedoms as provided for by the laws previously in force in Hong Kong, including freedom of the person, of speech, of the press, of assembly, of association, to form and join trade unions, of correspondence, of travel, of movement, of strike, of demonstration, of choice of occupation, of academic research, of belief, inviolability of the home, the freedom to marry and the right to raise a family freely.

Every person shall have the right to confidential legal advice, access to the courts, representation in the courts by lawyers of his choice, and to obtain judicial remedies. Every person shall have the right to challenge the actions of the executive in the courts.

Religious organisations and believers may maintain their relations with religious organisations and believers elsewhere, and schools, hospitals and welfare institutions run by religious organisations may be continued. The relationship between religious organisations in the Hong Kong Special Administrative Region and those in other parts of the People's Republic of China shall be based on the principles of non-subordination, non-interference and mutual respect.

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 in force.

XIV

The following categories of persons shall have the right of abode in the Hong Kong Special Administrative Region, and, in accordance with the law of the Hong Kong Special Administrative Region, be qualified to obtain permanent identity cards issued by the Hong Kong Special Administrative Region Government, which state their right of abode:

- all Chinese nationals who were born or who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region for a continuous period of 7 years or more, and persons of Chinese nationality born outside Hong Kong of such Chinese nationals;
- all other persons who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region for a continuous period of 7 years or more and who have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region, and persons under 21 years of age who were born of such persons in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
- any other persons who had the right of abode only in Hong Kong before the establishment of the Hong Kong Special Administrative Region.

The Central People's Government shall authorise the Hong Kong Special Administrative Region Government to issue, in accordance with the law, passports of the Hong Kong Special Administrative Region of the People's Republic of China to all Chinese nationals who hold permanent identity cards of the Hong Kong Special Administrative Region, and travel documents of the Hong Kong Special Administrative Region of the People's Republic of China to all other persons lawfully residing in the Hong Kong Special Administrative Region. The above passports and documents shall be valid for all states and regions and shall record the holder's right to return to the Hong Kong Special Administrative Region.

For the purpose of travelling to and from the Hong Kong Special Administrative Region, residents of the Hong Kong Special Administrative Region may use travel documents issued by the Hong Kong Special Administrative Region Government, or by other competent authorities of the People's Republic of China, or of other states. Holders of permanent identity cards of the Hong Kong Special Administrative Region may have this fact stated in their travel documents as evidence that the holders have the right of abode in the Hong Kong Special Administrative Region.

Entry into the Hong Kong Special Administrative Region of persons from other parts of China shall continue to be regulated in accordance with the present practice.

The Hong Kong Special Administrative Region Government may apply immigration controls on entry, stay in and departure from the Hong Kong Special Administrative Region by persons from foreign states and regions.

Unless restrained by law, holders of valid travel documents shall be free to leave the Hong Kong Special Administrative Region without special authorisation.

The Central People's Government shall assist or authorise the Hong Kong Special Administrative Region Government to conclude visa abolition agreements with states or regions.

ANNEX II

SINO-BRITISH JOINT LIAISON GROUP

1. In furtherance of their common aim and in order to ensure a smooth transfer of government in 1997, the Government of the United Kingdom and the Government of the People's Republic of China have agreed to continue their discussions in a friendly spirit and to develop the cooperative relationship which already exists between the two Governments over Hong Kong with a view to the effective implementation of the Joint Declaration.

2. In order to meet the requirements for liaison, consultation and the exchange of information, the two Governments have agreed to set up a Joint Liaison Group.

3. The functions of the Joint Liaison Group shall be:

- (a) to conduct consultations on the implementation of the Joint Declaration;
- (b) to discuss matters relating to the smooth transfer of government in 1997;
- (c) to exchange information and conduct consultations on such subjects as may be agreed by the two sides.

Matters on which there is disagreement in the Joint Liaison Group shall be referred to the two Governments for solution through consultations.

4. Matters for consideration during the first half of the period between the establishment of the Joint Liaison Group and 1 July 1997 shall include:

- (a) action to be taken by the two Governments to enable the Hong Kong Special Administrative Region to maintain its economic relations as a separate customs territory, and in particular to ensure the maintenance of Hong Kong's participation in the General Agreement on Tariffs and Trade, the Multifibre Arrangement and other international arrangements; and
- (b) action to be taken by the two Governments to ensure the continued application of international rights and obligations affecting Hong Kong.

5. The two Governments have agreed that in the second half of the period between the establishment of the Joint Liaison Group and 1 July 1997 there will be need for closer cooperation, which will therefore be intensified during that period. Matters for consideration during this second period shall include:

- (a) procedures to be adopted for the smooth transition in 1997;
- (b) action to assist the Hong Kong Special Administrative Region to maintain and develop economic and cultural relations and conclude agreements on these matters with states, regions and relevant international organisations.

6. The Joint Liaison Group shall be an organ for liaison and not an organ of power. It shall play no part in the administration of Hong Kong or the Hong Kong Special Administrative Region. Nor shall it have any supervisory role over that administration. The members and supporting staff of the Joint Liaison Group shall only conduct activities within the scope of the functions of the Joint Liaison Group.

7. Each side shall designate a senior representative, who shall be of Ambassadorial rank, and four other members of the group. Each side may send up to 20 supporting staff.

8. The Joint Liaison group shall be established on the entry into force of the Joint Declaration. From 1 July 1988 the Joint Liaison Group shall have its principal base in Hong Kong. The Joint Liaison Group shall continue its work until 1 January 2000.

9. The Joint Liaison Group shall meet in Beijing, London and Hong Kong. It shall meet at least once in each of the three locations in each year. The venue for each meeting shall be agreed between the two sides.

10. Members of the Joint Liaison Group shall enjoy diplomatic privileges and immunities as appropriate when in the three locations. Proceedings of the Joint Liaison Group shall remain confidential unless otherwise agreed between the two sides.

11. The Joint Liaison Group may by agreement between the two sides decide to set up specialist sub-groups to deal with particular subjects requiring expert assistance.

12. Meetings of the Joint Liaison Group and sub-groups may be attended by experts other than the members of the Joint Liaison Group. Each side shall determine the composition of its delegation to particular meetings of the Joint Liaison Group or sub-group in accordance with the subjects to be discussed and the venue chosen.

13. The working procedures of the Joint Liaison Group shall be discussed and decided upon by the two sides within the guidelines laid down in this Annex.

ANNEX III

LAND LEASES

The Government of the United Kingdom and the Government of the People's Republic of China have agreed that, with effect from the entry into force of the Joint Declaration, land leases in Hong Kong and other related matters shall be dealt with in accordance with the following provisions:

1. All leases of land granted or decided upon before the entry into force of the Joint Declaration and those granted thereafter in accordance with paragraph 2 or 3 of this Annex, and which extend beyond 30 June 1997, and all rights in relation to such leases shall continue to be recognised and protected under the law of the Hong Kong Special Administrative Region.

2. All leases of land granted by the British Hong Kong Government not containing a right of renewal that expire before 30 June 1997, except short term tenancies and leases for special purposes, may be extended if the lessee so wishes for a period expiring not later than 30 June 2047 without payment of an additional premium. An annual rent shall be charged from the date of extension equivalent to 3 per cent of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter. In the case of old schedule lots, village lots, small houses and similar rural holdings, where the property was on 30 June 1984 held by, or, in the case of small houses granted after that date, the property is granted to, a person descended through the male line from a person who was in 1898 a resident of an established village in Hong Kong, the rent shall remain unchanged so long as the property is held by that person or by one of his lawful successors in the male line. Where leases of land not having a right of renewal expire after 30 June 1997, they shall be dealt with in accordance with the relevant land laws and policies of the Hong Kong Special Administrative Region.

3. From the entry into force of the Joint Declaration until 30 June 1997, new leases of land may be granted by the British Hong Kong Government for terms expiring not later than 30 June 2047. Such leases shall be granted at a premium and nominal rental until 30 June 1997, after which date they shall not require payment of an additional premium but an annual rent equivalent to 3 per cent of the rateable value of the property at that date, adjusted in step with changes in the rateable value thereafter, shall be charged.

4. The total amount of new land to be granted under paragraph 3 of this Annex shall be limited to 50 hectares a year (excluding land to be granted to the Hong Kong Housing Authority for public rental housing) from the entry into force of the Joint Declaration until 30 June 1997.

5. Modifications of the conditions specified in leases granted by the British Hong Kong Government may continue to be granted before 1 July 1997 at a premium equivalent to the difference between the value of the land under the previous conditions and its value under the modified conditions.

6. From the entry into force of the Joint Declaration until 30 June 1997, premium income obtained by the British Hong Kong Government from land transactions shall, after deduction of the average cost of land production, be shared equally between the British Hong Kong Government and the future Hong Kong Special Administrative Region Government. All the income obtained by the British Hong Kong Government, including the amount of the above mentioned deduction, shall be put into the Capital Works Reserve Fund for the financing of land development and public works in Hong Kong. The Hong Kong Special Administrative Region Government's share of the premium income shall be deposited in banks incorporated in Hong Kong and shall not be drawn on except for the financing of land development and public works in Hong Kong in accordance with the provisions of paragraph 7(d) of this Annex.

7. A Land Commission shall be established in Hong Kong immediately upon the entry into force of the Joint Declaration. The Land Commission shall be composed of an equal number of officials designated respectively by the Government of the United Kingdom and the Government of the People's Republic of China together with necessary supporting staff. The officials of the two sides shall be responsible to their respective governments. The Land Commission shall be dissolved on 30 June 1997.

The terms of reference of the Land Commission shall be:

- (a) to conduct consultations on the implementation of this Annex;
- (b) to monitor observance of the limit specified in paragraph 4 of this Annex, the amount of land granted to the Hong Kong Housing authority for public rental housing, and division and use of premium income referred to in paragraph 6 of this Annex;
- (c) to consider and decide on proposals from the British Hong Kong Government for increasing the limit referred to in paragraph 4 of this Annex;
- (d) to examine proposals for drawing on the Hong Kong Special Administrative Region Government's share of premium income referred to in paragraph 6 of this Annex

and to make recommendations to the Chinese side for decision.

Matters on which there is disagreement in the Land Commission shall be referred to the Government of the United Kingdom and the Government of the People's Republic of China for decision.

8. Special details regarding the establishment of the Land Commission shall be finalised separately by the two sides through consultations.

EXCHANGE OF MEMORANDA

{A) UNITED KINGDOM MEMORANDUM

MEMORANDUM

In connection with the 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 to be signed this day, the Government of the United Kingdom declares that, subject to the completion of the necessary amendments to the relevant United Kingdom legislation:

- (a) All persons who on 30 June 1997 are, by virtue of a connection with Hong Kong, British Dependent Territories citizens (BDTCs) under the law in force in the United Kingdom will cease to be BDTCs with effect from 1 July 1997, but will be eligible to retain an appropriate status which, without conferring the right of abode in the United Kingdom, will entitle them to continue to use passports issued by the Government of the United Kingdom. This status will be acquired by such persons only if they hold or are included in such a British passport issued before 1 July 1997, except that eligible persons born on or after 1 January 1997 but before 1 July 1997 may obtain or be included in such a passport up to 31 December 1997.
- (b) No person will acquire BDTC status on or after 1 July 1997 by virtue of a connection with Hong Kong. No person born on or after 1 July 1997 will acquire the status referred to as being appropriate in sub-paragraph (a).
- (c) United Kingdom consular officials in the Hong Kong Special Administrative Region and elsewhere may renew and replace passports of persons mentioned in sub-paragraph (a) and may also issue them to persons, born before 1 July 1997 of such persons, who had previously been included in the passport of their parent.
- (d) Those who have obtained or been included in passports issued by the Government of the United Kingdom under sub-paragraphs (a) and (c) will be entitled to receive, upon request, British consular services and protection when in third countries.

Beijing, 19 December 1984.

(P) CHINESE MEMORANDUM

Translation

MEMORANDUM

The Government of the People's Republic of China has received the memorandum from the Government of the United Kingdom of Great Britain and Northern Ireland dated 19 December 1984.

Under the Nationality Law of the People's Republic of China, all Hong Kong Chinese compatriots, whether they are holders of the "British Dependent Territories citizens' Passport" or not, are Chinese nationals.

Taking account of the historical background of Hong Kong and its realities, the competent authorities of the Government of the People's Republic of China will, with effect from 1 July 1997, permit Chinese nationals in Hong Kong who were previously called "British Dependent Territories citizens" to use travel documents issued by the Government of the United Kingdom for the purpose of travelling to other states and regions.

The above Chinese nationals will not be entitled to British consular protection in the Hong Kong Special Administrative Region and other parts of the People's Republic of China on account of their holding the above-mentioned British travel documents.

Beijing, 19 December 1984.

Note: The entire text of the Joint Declaration and its annexes are reproduced from Hong Kong 1985, a Review of 1984 (Hong Kong: Government Information Services, 1985), pp. 1-16.