

THE REUNIFICATION OF CHINA WITH HONG KONG AND ITS IMPLICATIONS FOR TAIWAN: AN ANALYSIS OF THE "ONE COUNTRY, TWO SYSTEMS" MODEL

*Agnes J. Bundy**

INTRODUCTION

The Joint Declaration ratified by the governments of the United Kingdom and the People's Republic of China¹ on May 27, 1985 signals the eventual transfer from British to Chinese sovereignty of Hong Kong Island, Kowloon, and the New Territories.² Under this Declaration, British sovereignty and jurisdiction over Hong Kong will end in 1997, terminating the British occupation that began in 1842. When Premier Deng Xiaoping and Prime Minister Thatcher met in September 1982, they agreed to enter negotiations on the future of Hong Kong, with the goal of "maintaining the stability and prosperity of Hong Kong."³ Both China and Britain made important concessions in order to further that goal.

* Counsel, U.S. Senate Budget Committee, Washington, D.C. B.A., Smith College, 1979; J.D., Georgetown University Law Center, 1989. The author wishes to express her appreciation to Professor James V. Feinerman and Kenneth Wong, Senior Contracts Specialist, U.S. Department of Consumer and Regulatory Affairs, for their guidance.

1. 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 Future of Hong Kong, Sept. 26, 1984, 1984 Gr. Brit. T.S. No. 2352 (Cmd. 20), *reprinted in* 23 I.L.M. 1366 [hereinafter Joint Declaration]. The agreement is comprised of an introduction, the Joint Declaration, three annexes, and two memoranda. These documents will be referred to as the Joint Declaration. The terms "China" or "Chinese" will be used in this Article to refer to the People's Republic of China.

2. After the Opium War, the island of Hong Kong was ceded in perpetuity by China to Great Britain in the 1842 Treaty of Nanking. The southern Kowloon peninsula and Stonecutters Island were later acquired in 1860. The area of the Kwangtung province known as the New Territories, located on the mainland opposite Hong Kong, was leased to Great Britain for ninety-nine years under the 1898 Convention of Peking. P. WESLEY-SMITH, *UNEQUAL TREATY 1898-1997* at xiii (1983); *Recent Developments*, 26 HARV. INT'L L.J. 249, 251 (1985) [hereinafter 26 HARV. INT'L L.J. 249]; *see* Convention Between Great Britain and China Respecting an Extension of Hong Kong Territory, June 9, 1898, *reprinted in* P. WESLEY-SMITH, *supra*, at 191 [hereinafter 1898 Convention of Peking]. The term "Hong Kong" in this Article refers to Hong Kong Island, Kowloon and the New Territories.

3. Comment, *Legal Aspects of the Sino-British Draft Agreement on the Future of Hong Kong*, 20 TEX. INT'L L.J. 167, 169 (1985) [hereinafter Comment, *Legal Aspects*]; Joint Declaration, *supra* note 1, at 4, 23 I.L.M. at 1368. The Declaration was initialed on September 26, 1984, and signed on December 19, 1984. Ratifications were exchanged on May 27, 1985. Wesley-Smith, *Settlement of the Question of Hong Kong*, 17 CAL. W. INT'L L.J. 116 (1987).

As a prominent player in world trade and investment, Hong Kong's future is important.⁴ Many United States and European multinational corporations are located in Hong Kong.⁵ It is the world's third largest financial and gold trading center and is the source of one-third of the foreign currency earned by China through trade.⁶ The growth of international business and multinational corporations has affected the focus and development of political and commercial attitudes in Hong Kong.⁷ It has also specifically affected China's position on the future of democracy in Hong Kong.

This Article will briefly analyze both the Joint Declaration and the Basic Law,⁸ which is to be the "mini-constitution" that will guide Hong Kong into the twenty-first century. Following a discussion of the issues surrounding the "one country, two systems" concept, the Article will conclude with an analysis of the impact that China's relationship with Hong Kong could have on its position towards Taiwan.

I. BACKGROUND OF THE HONG KONG GOVERNMENT

Hong Kong, a British Crown Colony, is presently ruled by a Governor who is appointed by the British Crown.⁹ The governor in turn appoints an Executive Council and a Legislative Council.¹⁰

Despite this situation, the Chinese government has claimed for years that Hong Kong is part of Chinese territory, that the three treaties under which the British claim sovereignty over Hong Kong are not binding on China because they are unequal, and that the treaties have never been accepted by the Chinese people.¹¹ As a

4. Comment, *The Reversion of Hong Kong to China: Legal and Practical Questions*, 21 WILLAMETTE L.R. 327 (1985) [hereinafter Comment, *Reversion of Hong Kong*].

5. *Id.*

6. 26 HARV. INT'L L.J. 249, *supra* note 2, at 252.

7. Comment, *Reversion of Hong Kong*, *supra* note 4, at 327.

8. The Basic Law will be promulgated by the National People's Congress of China, and will stipulate and elaborate the policies provided in the Joint Declaration. Joint Declaration, *supra* note 1, at 13, 23 I.L.M. at 1372.

9. 26 HARV. INT'L L.J. 249, *supra* note 2, at 252. The Governor consults with the Executive Council, which enacts laws with the advice and consent of the Legislative Council. *Id.*

10. *Id.*

11. *Id.* Wesley-Smith, *supra* note 3, at 117 n.6; *see also* Joint Declaration, *supra* note 1, at 2, 23 I.L.M. at 1367. The three treaties referred to are the 1842 Treaty of Nanking, ceding Hong Kong Island; the 1860 Convention of Peking, ceding Kowloon; and the 1898 Convention of Peking, leasing the New Territories to Great Britain. 26 HARV INT'L L.J. 249, *supra* note 2, at 252; Joint Declaration, *supra* note 1, at 2, 23 I.L.M. at 1367; *see also supra* note 2. Unequal treaties lack reciprocity and impose permanent or temporary burdens on one

result, China vowed to recover the entire region of Hong Kong when the appropriate situation materialized.¹²

The British government has, until the 1980s, continuously contended that the treaties were valid under international law.¹³ Nevertheless, the British government conceded that once the New Territories were returned to China under the terms of the Convention of 1898, the remaining portion of Hong Kong would "not be viable alone."¹⁴

II. THE JOINT DECLARATION

The Joint Declaration outlines the establishment of the Hong Kong Special Administrative Region (HKSAR), under Chinese sovereignty. The HKSAR will be self-governing, except in foreign and defense affairs, and will preserve Hong Kong's current social and economic systems for fifty years.¹⁵

What emerges from the Joint Declaration is a paper free of Communist slogans and propaganda.¹⁶ From the Western perspective, it is a formal international agreement which transfers sovereignty over Hong Kong from Britain to China, yet also strictly limits the extent to which China may exercise that sovereignty over Hong Kong.¹⁷

China views international agreements as important sources of international law,¹⁸ however, whether a particular agreement is considered binding by China depends upon its substantive terms.¹⁹ This emphasis on substance derives from a number of international agreements in which China was forced to accept unfavorable terms due to military disadvantage.²⁰ Accordingly, China does not recog-

of the parties. 2 H. GROTIUS, *DE JURE BELLI AC PACIS LIBRIS TRES* 394-97 (F. Kelsey trans. 1925). The Hong Kong treaties are considered unequal because there was no *quid pro quo* received by China as compensation for the loss of territory, and the parties had unequal bargaining power at the time the treaties were created. P. WELSEY-SMITH, *supra* note 2, at 3.

12. 26 HARV. INT'L L.J. 249, *supra* note 2, at 253; Joint Declaration, *supra* note 1, at 2, 23 I.L.M. at 1367.

13. 26 HARV. INT'L L.J. 249, *supra* note 2, at 253. The British interpreted the 1898 Convention of Peking as expanding British sovereignty to include the New Territories, ceded for a term of years. P. WELSEY-SMITH, *supra* note 2, at 165-66.

14. *Id.* at xiii; Joint Declaration, *supra* note 1, at 9, 23 I.L.M. at 1370.

15. 26 HARV. INT'L L.J. 249, *supra* note 2, at 249-50; Joint Declaration, *supra* note 1, at 11-12, 23 I.L.M. at 1371-72.

16. Comment, *Legal Aspects*, *supra* note 3, at 170.

17. *Id.*

18. Corwin, *China's Choices: The 1984 Sino-British Joint Declaration and Its Aftermath*, 19 LAW & POL'Y INT'L BUS. 505, 510 (1987).

19. *Id.* at 511.

20. *Id.*

nize agreements that it believes are “unequal,” or that infringe upon the sovereign rights of one of the parties.²¹

Yet, China has been inconsistent in applying the principle that unequal treaties violate international law. This leads one to believe that China’s interpretation of treaties depends more on political expediency than on strict notions of international law.²² The Chinese government has not explicitly stated that the Joint Declaration has binding force,²³ but it has indicated on several occasions that it intends to abide by its terms.²⁴

A. *The Concessions*

One basic principle underlies the terms of the Joint Declaration: “[T]he socialist system and socialist policies shall not be practiced in the Hong Kong Special Administrative Region and . . . Hong Kong’s previous capitalist system and life-style shall remain unchanged for fifty years.”²⁵ Maintaining the prosperity and stability of Hong Kong is the stated purpose of the Joint Declaration.²⁶ China and Britain each made significant compromises to achieve that goal.²⁷

For example, Britain recognized China’s right to Kowloon and Hong Kong Island although the nineteenth-century treaties ceded these territories to Britain in perpetuity.²⁸ This concession was necessary to avoid dividing the New Territories from Kowloon and Hong Kong Island, which would have resulted in the economic demise of Hong Kong when the New Territories reverted to China

21. *Id.* An unequal treaty results when the sovereignty and equality of the parties is not recognized during negotiations. It is argued that such treaties are void *ab initio*. A second view is that unequal treaties are voidable due to inherent defects. The Chinese have inconsistently applied both principles. However, when boundary agreements are at issue, China has consistently recognized the validity of these unequal treaties until new negotiations settle the problem in a fair manner. P. WELSEY-SMITH, *supra* note 2, at 184-85.

22. Corwin, *supra* note 18, at 514-15. Although China believes unequal treaties violate international law, it also believes in peaceful co-existence. Therefore, as a matter of policy China prefers to use negotiation to adjust the situation created by unequal treaties. P. WELSEY-SMITH, *supra* note 2, at 186.

23. Corwin, *supra* note 18, at 524.

24. *Id.* at 524-25. Corwin argues that the economic and international repercussions that would result from a breach make it unlikely that China will renounce the Declaration. However, China will be able to restrict the political independence of Hong Kong and still remain in compliance with the Declaration. This means that Hong Kong may not enjoy the degree of autonomy intended in the Declaration. *See* Corwin, *supra* note 18.

25. Joint Declaration, *supra* note 1, at 14, 23 I.L.M. at 1373.

26. *Id.* at 2, 23 I.L.M. at 1367.

27. Comment, *Legal Aspects*, *supra* note 3, at 169.

28. *Id.*; *see supra* note 2.

upon the expiration of Britain's lease in 1997.²⁹

Britain also consented to transfer full sovereignty over Hong Kong to China.³⁰ Britain did not seek an assurance of a British presence in Hong Kong after 1997 beyond the initial stages of the negotiations.³¹

China was able to regain sovereignty only by agreeing to "preserve the way of life in Hong Kong, together with the essentials of the present systems."³² By so agreeing, China acknowledged that the value of its sovereignty over Hong Kong would decrease if the present system was removed.³³ Britain also required China to develop policies regarding Hong Kong in a clear, detailed manner.³⁴ It is believed that an agreement that merely pronounced principles instead of laying out a specific course of action would have been condemned by Hong Kong residents and by the international community.³⁵

Although Hong Kong will be able to enact its own social, economic, and legal policies, there is a sentiment of frustration among the Hong Kong populace because they were not consulted during the negotiations resulting in the Joint Declaration which decided their fate.³⁶ Even the Hong Kong government, in which citizens had no electoral participation, played no role in the treaty-making process.³⁷ The Governor participated in the process, but solely as a

29. *Id.* at 170; Joint Declaration, *supra* note 1, at 9, 23 I.L.M. at 1370; P. WESLEY-SMITH, *supra* note 2, at xiii. Without this concession, Kowloon and Hong Kong would have remained under British rule pursuant to the Treaty of Nanking and the Convention of Peking. Comment, *Legal Aspects, supra* note 3, at 170. However since Hong Kong is dependent on the 350 square miles comprising the New Territories, the economy of the region could not survive once the lease expired. P. WESLEY-SMITH, *supra* note 2, at xiii.

30. Comment, *Legal Aspects, supra* note 3, at 170; Joint Declaration, *supra* note 1, at 11, 23 I.L.M. at 1371.

31. Comment, *Legal Aspects, supra* note 3, at 170. China made it clear that the continuation of British administration after 1997 would be unacceptable. Joint Declaration, *supra* note 3, at 4, 23 I.L.M. at 1368.

32. *Id.* at 5, 23 I.L.M. at 1368. The main concern was to maintain the "flourishing and dynamic society" of Hong Kong. *Id.*

33. Comment, *Legal Aspects, supra* note 3, at 170; *see also* Corwin *supra* note 18, at 519-24.

34. Comment, *Legal Aspects, supra* note 3, at 170; *see also* Joint Declaration, *supra* note 1, at 13, 23 I.L.M. at 1372.

35. Comment, *Legal Aspects, supra* note 3, at 170.

36. Wesley-Smith, *supra* note 3, at 117; *see also* Weng, The Hong Kong Model of "One Country, Two Systems"; Promises & Problems 3 (Oct. 23, 1987) (prepared for the 29th Annual Meeting of the American Association of Chinese Studies, Washington, D.C.). The Declaration itself states that the agreement must be acceptable to the people of Hong Kong, as well as the British and Chinese governments. Joint Declaration, *supra* note 1, at 5, 23 I.L.M. at 1368. However, no formal referendum was held.

37. Wesley-Smith, *supra* note 3, at 117.

member of the British negotiating team.³⁸

The terms of the Joint Declaration were debated in the territory's Legislative Council, of which the members were all appointed.³⁹ An "Assessment Office" set up under the Hong Kong government reported on the opinions of the Hong Kong public.⁴⁰ There was no referendum, no poll and no direct vote. The future of Hong Kong was settled by the governments of China and Great Britain alone.⁴¹ Hong Kong's six million inhabitants were presented with the Declaration on a *fait accompli* basis.⁴²

B. Structure of the New Government

Britain will be responsible for the administration of Hong Kong until June 30, 1997. After that time, the Joint Declaration provides for a Sino-British Joint Liaison Group to assist in the smooth transfer of sovereignty.⁴³ This group will exchange information and conduct consultations on subjects agreed to by the parties.⁴⁴ It will serve only in an advisory capacity and will not be involved in the administration of Hong Kong.⁴⁵ The group will consist of two senior representatives of ambassadorial rank from both Britain and China, and four other members from each country.⁴⁶

After the British withdraw, the Joint Declaration assures that China will maintain a capitalist system in an area of what will become its own sovereign territory.⁴⁷ This is the phenomenon known as "one country, two systems." It will be accomplished by prescribing the new governmental structure while preserving the current socio-economic system in Hong Kong, at least until June 30,

38. *Id.*; Joint Declaration, *supra* note 1, at 6, 23 I.L.M. at 1369.

39. Wesley-Smith, *supra* note 3, at 117.

40. *Id.* The Assessment Office was set up to receive comments by the Hong Kong populace regarding the agreement. The results were reported to the British Government and Parliament, which then debated whether to accept the Declaration. See Joint Declaration, *supra* note 1, at 9-10, 23 I.L.M. at 1370-71.

41. Wesley-Smith, *supra* note 3, at 117.

42. *Id.*

43. Joint Declaration, *supra* note 1, at 26, 23 I.L.M. at 1379. The group will meet in Beijing, Hong Kong, and London. *Id.* at 27, 23 I.L.M. at 1379. It will continue its work until January 1, 2000. *Id.*

44. *Id.* at 26, 23 I.L.M. at 1379. Matters to be considered by the group include: enabling the HKSAR to maintain its economic status as a separate customs territory; ensuring Hong Kong's continued participation in the General Agreement on Tariffs and Trade, the Multi-Fiber Agreement, and other international agreements; and assisting the HKSAR in developing economic and cultural relations with other states. *Id.*

45. *Id.*

46. *Id.* at 27, 23 I.L.M. at 1379. Each side is permitted to have twenty supporting staff. *Id.*

47. 26 HARV. INT'L L.J. 249, *supra* note 2, at 253.

2047.⁴⁸

The new leaders of Hong Kong will continue to maintain and develop economic and cultural relations and to conclude certain agreements with states, regions, and international organizations.⁴⁹ Under the Joint Declaration, Hong Kong shall retain the rights and freedoms guaranteed under previous law, including freedom of the person, speech, press, assembly, association, travel, movement, correspondence, strike, choice of occupation, academic research, and religious belief.⁵⁰ Private property, ownership of enterprises, the legitimate right of inheritance and foreign investments will also be protected by law.⁵¹ The Hong Kong dollar will remain the basic unit of currency.⁵² And the territory will continue to be a separate unit for customs, immigration and passport purposes.⁵³

C. The Powers of the HKSAR

1. Internal Affairs

The HKSAR is designed to possess a high degree of autonomy in internal matters. The HKSAR will have full control of its own government finances.⁵⁴ Its revenues will be used exclusively for its own purposes.⁵⁵ The Central People's Government may not levy taxes on HKSAR residents.⁵⁶

2. Foreign Affairs

The HKSAR will have very limited powers in foreign relations. Under the name "Hong Kong, China," it may maintain and develop relations and implement agreements with foreign states and relevant international organizations in "appropriate" fields, such as economic, trade, financial and monetary areas.⁵⁷ Hong Kong, China will be able to participate directly in international organiza-

48. *Id.* at 253.

49. Joint Declaration, *supra* note 1, at 12, 23 I.L.M. at 1372.

50. *Id.* at 23, 23 I.L.M. at 1375.

51. *Id.* at 18, 23 I.L.M. at 1375.

52. *Id.* at 19, 23 I.L.M. at 1375.

53. *Id.* at 18, 23-24, 23 I.L.M. at 1375, 1377-78. A complete statement of the policies that will remain in effect in Hong Kong is contained in Annex I to the Joint Declaration. *See id.* at 14-25, 23 I.L.M. at 1373-78.

54. *Id.* at 17, 23 I.L.M. at 1374.

55. *Id.* The systems for approval of taxation and public expenditure by the legislature shall be maintained. *Id.*

56. *Id.*

57. *Id.* at 21-22, 23 I.L.M. at 1376-77.

tions and conferences that are not limited to States.⁵⁸

In the past, Hong Kong has had an independent voice in the General Agreements on Tariffs and Trade (GATT), an important means of access to world markets.⁵⁹ China specifically indicated in the Declaration that Hong Kong will be able to maintain membership in organizations such as GATT, the Multi-Fiber Agreement (MFA), and the Asian Development Bank.⁶⁰

However, what happens if China also becomes a member of these organizations?⁶¹ China's new role could diminish the autonomy of Hong Kong.⁶² The relative status of China and Hong Kong may be crucial in the case of a trade dispute.⁶³ Whatever the situation, renegotiations of GATT and MFA agreements after 1997 will be complicated.⁶⁴

3. Defense Capabilities

The HKSAR will have very limited defense capabilities. The Declaration permits the Central People's Government to permanently install military forces in the HKSAR for the purpose of defense.⁶⁵ The Declaration makes it clear, however, that the military forces may not interfere in the legislative, executive and independent judicial power of the HKSAR.⁶⁶ The costs for such forces will be borne by the Central People's Government.⁶⁷

58. *Id.* at 22, 23 I.L.M. at 1377.

59. Comment, *Reversion of Hong Kong*, *supra* note 4, at 339.

60. Joint Declaration, *supra* note 1, at 22, 23 I.L.M. at 1377; *see also id.* at 26, 23 I.L.M. at 1379. The MFA was established under GATT to regulate textile trading. Comment, *Reversion of Hong Kong*, *supra* note 4, at 339; *see also* Corwin, *supra* note 18, at 521.

61. Comment, *Reversion of Hong Kong*, *supra* note 4, at 339.

62. *Id.*

63. *Id.* For instance, China already is a member of the MFA. Quotas are established in bilateral agreements between MFA members. Hong Kong's present advantage may be challenged by importing nations anxious to protect their own industry who may insist on handling Hong Kong and China as one source. As a result, China may seek an increase in its own export quotas at the expense of Hong Kong. *Id.*

64. *Id.*

65. Joint Declaration, *supra* note 1, at 23, 23 I.L.M. at 1377.

66. *Id.*

The maintenance of public order in the Hong Kong [SAR] shall be the responsibility of the Hong Kong [SAR] Government. Military forces sent by the Central People's Government to be stationed in the Hong Kong [SAR] for the purpose of defense shall not interfere in the internal affairs of the Hon Kong [SAR]. Expenditure for these military forces shall be borne by the Central People's Government.

Id.

67. *Id.*

III. THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

The laws of the HKSAR will be comprised of the Basic Law promulgated by China according to the terms of the Declaration, and the laws enacted by the Hong Kong legislature in accordance with the Basic Law and legal procedures.⁶⁸ Except when in conflict with the Basic Law, the laws currently in force in Hong Kong will be effective, although subject to legislative amendment.⁶⁹

The most immediate question prompted by the Joint Declaration arises in relation to the constitutional structure of the HKSAR.⁷⁰ The actual separation of powers as discussed in the Joint Declaration does have some ambiguities.⁷¹ It establishes an executive branch that will function under the influence of the National People's Congress of China, a legislative branch that will respond to the demands of the local Hong Kong population, and a judicial system that will function with "special ties" to the United Kingdom.⁷² The Declaration does not seem to provide the legislature with the necessary power to exercise checks and balances.⁷³

The Declaration states that the first chief executive will be appointed by the Central People's Government, on the basis of results of local consultations or elections.⁷⁴ The chief executive will be selected by a Nominating Committee, whose members will be selected by a Preparatory Committee, whose members in turn will be appointed by the Central People's Government.⁷⁵ At least half of the members of each committee will be chosen from Hong Kong; but a high-ranking official from the Central People's Government

68. *Id.* at 15; 23 I.L.M. at 1373. The Basic Law will be promulgated by the National People's Congress of China in accordance with the Chinese Constitution. *Id.* at 14, 23 I.L.M. at 1373. The Basic Law will be comprised of the policies stipulated in the Joint Declaration. *Id.* at 13, 23 I.L.M. at 1372.

69. *Id.* at 15, 23 I.L.M. at 1373.

70. 26 HARV. INT'L L.J. 249, *supra* note 2, at 261.

71. *Id.* at 262.

72. *Id.* at 261. *See* Joint Declaration, *supra* note 1, at 14-16, 23 I.L.M. at 1373-74. Of course, officially all ties with the United Kingdom will be broken in 1997. However the judiciary will retain "special ties" because it is permitted to decide cases by referring to precedents in other common law jurisdiction. *See id.* at 16, 23 I.L.M. at 1374.

73. In 1987, Chairman Deng Xiaoping declared that a separation of powers between the executive, legislative and judiciary, as well as elections for a representative assembly, was unsuitable for Hong Kong because it was not a country. *Now, Down to Basics*, Far Eastern Economic Review, Apr. 30, 1987, at 12, col. 1.

74. Joint Declaration, *supra* note 1, at 14-15, 23 I.L.M. at 1373; *see also id.* at 12, 23 I.L.M. at 1372.

75. Lee, The Basic Law for Hong Kong—Will It Bring About "One County, Two Systems?" 10 (Apr. 12, 1987) (unpublished material).

will act as Chairman.⁷⁶

The Joint Declaration states that the HKSAR will have the power to set its own policies in many areas, yet at the same time also details just what those policies will be.⁷⁷ The rules provided in the Joint Declaration will all be stipulated in the Basic Law, and the HKSAR policies must conform to this constitutional instrument.⁷⁸ It is unclear whether the Hong Kong judiciary will have the power to review legislation that conflicts with the Basic Law.⁷⁹ This uncertainty could affect the preservation of the capitalist system and the protection of civil rights and liberties.⁸⁰

The legislature of the HKSAR can enact laws on its own authority and without the assent of the chief executive.⁸¹ The new legislature will be elected, enfranchising the citizens of Hong Kong for the first time.⁸² However, the Joint Declaration fails to indicate the manner in which elections will be conducted.⁸³

One proposed electoral method is referred to as the Grand Electoral College (GEC). The members of GEC would come from various sectors of the community in stated proportions.⁸⁴ The majority of the GEC members would be under the influence, if not the control, of the Central People's Government, or its agents in Hong Kong.⁸⁵ The GEC's effect would be to undermine the present appointment system, under which the Governor of Hong Kong appoints the legislative members.⁸⁶ In the GEC system there would be a large body of "appointers."⁸⁷ The majority of the appointers would act as directed by the Central People's Government.⁸⁸ The GEC concept appears to be in conflict with the Joint Declaration, which requires that the legislature of the HKSAR be selected by elections.⁸⁹

While the Joint Declaration leaves open the method of the legislature's election, it carefully safeguards the independence of the ju-

76. *Id.*

77. 26 HARV. INT'L L.J. 249, *supra* note 2, at 262.

78. *Id.*

79. *Id.*; *see infra* text accompanying note 92.

80. *Id.*

81. *Id.*; Joint Declaration, *supra* note 1, at 15, 23 I.L.M. at 1373.

82. 26 HARV. INT'L L.J. 249, *supra* note 2, at 262.

83. *Id.*

84. *Lee, supra* note 75, at 9.

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*; *see* Joint Declaration, *supra* note 1, at 15, 23 I.L.M. at 1373.

diary.⁹⁰ China promised that the judiciary will be independent, and the court of final appeal will be in Hong Kong, not Beijing.⁹¹ The laws of Hong Kong will basically remain unchanged in spite of wide differences with Chinese law.⁹² Neither present law nor future enactments may contravene the Basic Law, which will act as a mini-constitution for Hong Kong.⁹³ A veto power is not specifically provided for in the Declaration, however, the National People's Congress will probably act as interpreter of the constitutional validity of the Hong Kong statutes, rather than the Hong Kong judiciary.⁹⁴

It is unclear how long China will maintain a hands-off policy towards Hong Kong.⁹⁵ In 1985, Ji Pengfei, China's State Councilor of the Government Office of Hong Kong and Macao Affairs, said that laws of a "colonial nature or detrimental to China" would be changed.⁹⁶ And China has asserted it will ensure that legislation is responsive to all interests—pro-China, pro-Britain and neutral.⁹⁷ Chinese leader Deng Xiaoping has commented that the Hong Kong patriots who will run the HKSAR need not all favor China's socialist system as long as they love the motherland and Hong Kong.⁹⁸

The question remains as to whether China can enact adequate guarantees to reassure the people of Hong Kong that their way of

90. 26 HARV. INT'L L.J. 249, *supra* note 2, at 262; *see* Joint Declaration, *supra* note 1, at 37, 23 I.L.M. at 1383.

The independent exercise of judicial power and obligation of the courts to decide cases in accordance with the law are both provided for. . . . [The Declaration] also provides that the appointment of judges in the [HKSAR] will be subject to the recommendation of an independent commission similar to the existing Judicial Service Commission. The independence of the judiciary is protected by the provisions that judges of the SAR may only be removed from office on the grounds of inability or misbehavior, and then only on the recommendation of a tribunal of judges of the SAR.

The Annex provides that the essentials of the system of appointment and removal of judges will remain unchanged, but the appointment and removal of judges of the highest rank will require the endorsement of the legislature of the [HKSAR] and have to be reported for the record to the Standing Committee of the National People's Congress.

Id.

91. *Id.* at 11, 15, 23 I.L.M. at 1371, 1373. At present the court of final appeal is now the Privy Council in London. The Declaration establishes a new court of final appeal in Hong Kong. Comment, *Reversion of Hong Kong*, *supra* note 4, at 340.

92. *Id.*; *see* Joint Declaration, *supra* note 1, at 11, 23 I.L.M. at 1371.

93. Comment, *Reversion of Hong Kong*, *supra* note 4, at 340; *see* Joint Declaration, *supra* note 1, at 15, 23 I.L.M. at 1373.

94. Comment, *Reversion of Hong Kong*, *supra* note 4, at 340.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* at 347. "The HKSAR would be administered by the Hong Kong people, but they must love Hong Kong and China." *Now, Down to Basics*, *supra* note 73, at 12.

life will not be altered, and whether China will maintain those guarantees if its interests change.⁹⁹ The confidence of the people of Hong Kong is imperative for successful implementation of the Joint Declaration.¹⁰⁰

IV. REUNIFICATION WITH TAIWAN

The Chinese government's three principal objectives are: economic reform; independence from both the Soviet Union and the United States; and reunification with Taiwan.¹⁰¹ Over the past several years China has pressed Taiwan to enter into reunification discussions. As soon as the Sino-British Joint Declaration was signed in September 1984, Deng Xiaoping expressed his willingness to adopt the Hong Kong model of "one country, two systems" to resolve the Taiwan issue.¹⁰² He indicated that complete unification might take longer than even one hundred years, but that the "one country, two systems" policy was an enlightened alternative to allowing the issue to be resolved by non-peaceful means.¹⁰³

China's renewed interest in Taiwan stems from several factors. Before the completion of the Joint Declaration, Chinese leaders were concerned about the successor to Taiwan's President Chiang Ching-kuo.¹⁰⁴ When Chiang Ching-kuo's successor, Lee Teng-hui, came into power in early 1988, China expressed concern about the next generation of Kuomintang (KMT) leaders.¹⁰⁵ China understands, but does not appreciate, the conflicts between the KMT leaders and the native Taiwanese.¹⁰⁶ It fears that Lee might lead Taiwan in the direction of independence.

China was much more comfortable with Chiang Ching-kuo, because he worked towards the reunification of Taiwan with the

99. Comment, *Reversion of Hong Kong*, *supra* note 4, at 347.

100. *Id.*

101. Huan, *Taiwan: A View from Beijing*, 63 FOREIGN AFF. 1064, 1066 (1985). The term "Taiwan" will be used in this Article to refer to the Republic of China.

102. *Id.* "Deng said in 1987 that without reunification, Taiwan's status would not be secured because the island might at some time be taken away by other countries, such as the United States or Japan." Now, *Down to Basics*, *supra* note 73, at 12.

103. Jiaquan, *Formula for China's Reunification*, BEIJING REV., Feb. 3, 1986, at 25. Deng stated: "The reunification of China is a national desire, and it if is not realized in one hundred years it will be in one thousand years. This goal, in my opinion, can only be reached by using the 'one country, two systems' concept." *Id.*

104. Huan, *supra* note 101, at 1067. Chiang Ching-Kuo is the son of the late Chinese leader Chiang Kai-shek. *Id.* at 1069. Chiang Ching-Kuo is also known as Jiang Jingguo. *Id.*

105. *Beijing, a Message of Condolence to Taiwan, Praises Chiang Ching-kuo*, Wash. Post., Jan. 15, 1988, at A27, col. 1. The KMT is the Chinese Nationalist Party; the government party of Taiwan.

106. *Id.* at col. 4.

mainland.¹⁰⁷ Chiang strongly believed in the unification of China and Taiwan, even though he rejected the Communists' plans to achieve this goal.¹⁰⁸ The commitment of Taiwan's new president to reunification with the mainland is much less certain.¹⁰⁹ The KMT's position is that there should be no contact, no compromise, and no negotiations with China.¹¹⁰ The Chinese would rather deal with their old enemy, Chiang, than with the new leaders who, unlike Chiang, were not born on the Chinese mainland and have less of an attachment to it.¹¹¹ China's assessment is that Lee Teng-hui has little real power and will have to act with great caution on sensitive issues such as reunification.¹¹²

China has shown a willingness to provide even more favorable conditions to Taiwan than it has to Hong Kong.¹¹³ This is because Taiwan and Hong Kong are different in several important areas. First, Taiwan is much larger in size and population than Hong Kong. Therefore it carries considerable weight in the eyes of China, Washington, and Hong Kong.¹¹⁴ Second, Taiwan is an island geographically separated from the mainland.¹¹⁵ Consequently, it is easier to defend against military invasions. Third, Taiwan, unlike Hong Kong, has been self-governing for over three decades.¹¹⁶ Fourth, Taiwan has maintained its own armed forces and independent international ties during this period of self-government.¹¹⁷ Taiwan is an international personality still recognized by twenty-four countries as the Republic of China, and it maintains substantive relations with some 140 countries around the world.¹¹⁸ Fifth, unlike

107. *Id.* at col. 5. Taiwan strongly believes in a one-China policy. Since ancient times, China has been unified, with an unbroken line of cultural identity. Struggles among political groups in Chinese history often involve competing claims to represent all of China. Shaw, *Taiwan: A View from Taipei*, 63 FOREIGN AFF. 1050, 1053 (1985). "Under the burden of Chinese history neither [China] nor [Taiwan] could dare to deviate from the one-China concept and still claim legitimacy as a Chinese entity." *Id.* at 1053-54.

108. *Beijing, a Message of Condolence to Taiwan*, *supra* note 105, at col. 5.

109. *Id.*

110. *Id.* This is known as the policy of the "Three Nos." There is a trend towards liberalizing this policy, due to the ongoing political and economic reforms in China, and the positive influence of scholarly exchanges. Huan, *supra* note 101, at 1065-66.

111. *Beijing, A Message of Condolence to Taiwan*, *supra* note 105, at col. 5; *see also Taiwan in Transition*, Wall St. J., Jan. 15, 1988, at 18, col. 1. In October of 1987, President Chiang stated that he was not looking to reunification by military force, but to the hope that a free and democratic Taiwan might someday show all of China a way out of its agony.

112. *Beijing: A Message of Condolence to Taiwan*, *supra* note 105, at col. 5.

113. Huan, *supra* note 101, at 1066.

114. Weng, *supra* note 36, at 8.

115. Huan, *supra* note 101, at 1066.

116. *Id.*

117. *Id.*

118. Weng, *supra* note 36, at 8.

Hong Kong, the island does not depend on the mainland for food, water, and other basic supplies.¹¹⁹ Finally, not only are the Taiwanese taught to despise the communists, but an overwhelming majority of them have never set foot on the mainland and do not have personal memories or any real emotional attachment to the mainland.¹²⁰

Many issues remain unanswered regarding China's continued interest in Taiwan. China has promised that Taiwan would be allowed to maintain its armed services after reunification—yet it is unclear whether Taiwan would be allowed to import weapons.¹²¹ Taiwan's future position in the international community is also uncertain.¹²² Thus, China's pressure for reunification has so far provoked no receptive response from Taiwan.¹²³

China's experiences with Hong Kong will be valuable in dealing with the even more complex issues facing reunification with Taiwan.¹²⁴ Taiwan looks to Hong Kong as a test of China's policy intentions.¹²⁵ It will be closely scrutinizing China's behavior in the years before the end of British control of Hong Kong.¹²⁶ China's progress could encourage Taiwan to accept a similar moderate approach.¹²⁷

V. THE CONCEPT OF “ONE COUNTRY, TWO SYSTEMS”

The general principle behind the “one country, two systems” concept is to ensure the stability and prosperity of all regions, while simultaneously giving due consideration to the interests of all sections of society and protecting the interests of both foreign and overseas Chinese investors.¹²⁸ Legally, the concept is approved in

119. *Id.*

120. *Id.*

121. Huan, *supra* note 101, at 1068. For example, the Taiwan Air Force has a fleet of Northrop's F-5E/F aircraft. When Northrop built the F-20 to replace the F-5E/F, questions were raised as to whether the United States would sell the new planes to Taiwan. One reason for this uncertainty stems from the fact that Washington broke official ties with Taiwan in order to recognize China. *See also* Shaw, *supra* note 107, at 1061.

122. Huan, *supra* note 101, at 1068.

123. *Id.* Initially Taiwan indicated it would not recognize the Joint Declaration. Taiwan considers itself to be the legitimate government of China, and so it believes the Declaration was not negotiated between the proper parties. Shaw, *supra* note 107, at 1055.

124. Huan, *supra* note 101, at 1068. Taiwan also believes Hong Kong can act as a springboard to bring capitalist, free-enterprise, and democratic influence to China. Shaw, *supra* note 107, at 1055.

125. Huan, *supra* note 101, at 1068.

126. *Id.*

127. *Id.*

128. Jiaquan, *supra* note 103, at 19. This would mean that after peaceful reunifica-

the Chinese Constitution, which stipulates that special administrative regions may be established when necessary, indicating that China has incorporated its policies on Taiwan and Hong Kong into its fundamental law.¹²⁹

China developed the concept of "one country, two systems" with history, as well as contemporary conditions, in mind.¹³⁰ The concept is also connected to the theory of building socialism with Chinese characteristics.¹³¹ The present focus of China's economic policy is on a modernization drive centered around economic construction.¹³² China is taking steps to develop its productive forces.¹³³ Implementing the "one country, two systems" method will help accomplish the Party's economic goals, and therefore will not be changed at random.¹³⁴ Practicing socialism in the mainland and simultaneously allowing capitalism to exist in Hong Kong and Taiwan is beneficial to the entire country's economic development.¹³⁵ Hong Kong, Taiwan and China have each achieved different levels of economic progress and success. Proponents of the "one country, two systems" concept believe that this approach will permit each area to work together to compensate for the other's deficiencies.¹³⁶

The concept of "one country, two systems," as advocated by the Communist Party of China and the Chinese government, was an important means of resolving the Hong Kong issue in 1984.¹³⁷ China's reunification with Taiwan could follow the same approach. Many commenters believe this approach is feasible because, among other things, Taiwan would be allowed to keep its armed forces.¹³⁸

The future of Hong Kong and Taiwan is uncertain once reunification takes place. The Joint Declaration calls for capitalism to continue in Hong Kong for fifty years and no doubt any agreement between Taiwan and China must do the same. But can these regions remain capitalist after reunification? Each proposal calls for

tion, Taiwan and Hong Kong would maintain capitalism, while China practices socialism. The two systems would coexist peacefully. *Id.* at 18-19.

129. *Id.* at 19. The Constitution states: "[T]he 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 light of the specific conditions." CHINA CONST. art. 31.

130. Jiaquan, *supra* note 103, at 19.

131. *Id.*

132. *Id.*

133. *Id.* at 22.

134. *Id.*

135. *Id.* at 18.

136. *Id.* at 22.

137. *Id.* at 18.

138. *Id.*

local capitalist systems. In the case of Hong Kong, such a system would operate under a communist central system. Hence this communist central system would regulate any progress in, or digression from, capitalism. China has said that once reunification is achieved, Taiwan would still practice capitalism, while the mainland maintains socialism.¹³⁹ But it is argued that the duration of a capitalist system is limited and Taiwan will be predestined to adapt to socialism if reunification is realized.

CONCLUSION

The unification of Hong Kong and China in 1997 will provide a testing ground for the “one country, two systems” government. There are three serious concerns about the Joint Declaration, however, that may hinder its viability if they are not addressed. First, the lack of participation by the Hong Kong populace in drafting the Declaration has caused hard feelings between the inhabitants of Hong Kong and China. This could lead to possible mistrust of China’s policies. Second, it may be difficult for the HKSAR to exercise the high degree of autonomy promised to it under the Declaration. Third, the intention to maintain Hong Kong’s previous capitalist system and life-style for fifty years is noble, but not likely unless specific steps are outlined to achieve this goal.

The policy of “one country, two systems” may not work to reunify Hong Kong and China, and its applicability to Taiwan’s reunification with China is also questionable. China’s present socialist system will not change in the future. However, if the capitalist systems in Hong Kong and Taiwan are not guaranteed, stability and prosperity cannot be maintained and peaceful settlement will become impossible.¹⁴⁰ In Hong Kong, China must guarantee that the present capitalist system and life-style will remain unchanged until 2047. Then Taiwan must be persuaded that Hong Kong’s experience accurately represents China’s intention for Taiwan. Once this goodwill is developed, contacts, trade, interchange, and mutual understanding must be developed before the two countries can engage in serious discussions about reunification.

139. *Id.* at 25. Deng Xiaoping insists China will abide by the “one country, two systems” concept. He notes that the concept is “a principle and a law adopted by the National People’s Congress. Therefore it will not change. The key is whether this policy is correct or incorrect. If it is correct, nobody can change it. Otherwise, it should be changed.” *Id.*

140. *Id.* (statement by Deng Xiaoping).