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## Will Hong Kong Be Successfully Integrated into China? A Human Rights Perspective

Yu Ping

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# Will Hong Kong Be Successfully Integrated into China? A Human Rights Perspective

Yu Ping\*

## ABSTRACT

*This Article explores the human rights forecast following Hong Kong's reintegration into China. The Article first reviews the British human rights record in Hong Kong, and explains why China was angered by last-ditch British political reform. It then explores the legal framework of Hong Kong, including the Sino-British Joint Declaration and the Basic Law of Hong Kong, and concludes that neither offers significant protection for human rights in Hong Kong. In particular, Chinese state security and state secrets laws are likely to be used to suppress political dissidents, journalists, international organizations, and other "foreign elements" in Hong Kong. The Article next examines international human rights law and concludes that such law is an equally weak mechanism for protecting human rights in Hong Kong. Hong Kong's reintegration into China is likely to bring short-term erosion of human rights in Hong Kong. That reintegration may influence China itself in positive ways, however, as Hong Kong serves as a human rights focal point and as a link toward China's further modernization.*

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## I. INTRODUCTION

With the return of Hong Kong to China, there is much speculation about Hong Kong's future. China, through its negotiations with the United Kingdom (hereinafter U.K.), promised that Hong Kong would enjoy a high degree of autonomy after its reversion to China. All social systems and political structure would basically remain unchanged, and lifestyle and economic prosperity would be preserved as well, according to the Joint Declaration of the People's Republic of China (hereinafter P.R.C.) and the United Kingdom of Great Britain.<sup>1</sup>

Many fear, however, that when Hong Kong changes hands, the basic rights of the Hong Kong people will be adversely affected. The P.R.C. declared several years ago that it would encroach upon the legislature put in place by the first-ever political reform initiated by Christopher Patten, the last English governor.<sup>2</sup> The National People's Congress (hereinafter NPC)

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1. See 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, Sept. 26, 1984, P.R.C.-U.K., 23 I.L.M. 1366, 1371 [hereinafter Joint Declaration].

2. Christopher Patten launched the political reform in 1992 shortly after he came to office. His plan to expand the electoral base for the Legislative Council was severely attacked by China.

announced in March 1997 that the legislature would cease to operate after June 30, 1997.<sup>3</sup> Its replacement, the Provisional Legislature, essentially hand-picked by the government of the P.R.C., would take the place of the Legislative Council (hereinafter LegCo) thereafter.<sup>4</sup> Meanwhile, Tung Chee-hwa, the first executive of the Hong Kong Special Administrative Region (hereinafter Hong Kong SAR), publicized his plan to roll back social ordinances,<sup>5</sup> which had been amended by the British government and which themselves had obviously been in conflict with the International Covenant on Civil and Political Rights (hereinafter ICCPR),<sup>6</sup> to which Hong Kong is a party by way of the U.K.

All these incidents indicate that the promise of "one country, two systems" by the P.R.C. is on the verge of being scrapped and that the basic rights of Hong Kong people are in real danger. Some may argue that the P.R.C. has many reasons to maintain the status quo in Hong Kong. Among such reasons, the most obvious is that China needs Hong Kong in its economic construction. For years Hong Kong, as an international finance center and free port, has channeled tremendous investment into China's market, which eventually energized the P.R.C.'s national economy. During most of the cold war period, Hong Kong provided the only conduit for China to communicate with the rest of the world. Even today, Hong Kong remains one of China's largest trade partners. Indeed, China needs Hong Kong more than Hong Kong needs China, given that China continues opening to the world.

On the other hand, China's expectations about Hong Kong encompass more than economic need. In the words of Chinese leaders, recovering Hong Kong would primarily mean two things to China: sovereignty and economic prosperity.<sup>7</sup> Resumption of sovereignty over Hong Kong could well serve the needs of China according to the leadership of the country. After the completion of the handover, nationalism will certainly increase and boost the confidence of the communist party in ruling China. During the

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3. See PEOPLE'S DAILY, Mar. 20, 1997, at 1.

4. The Legislative Council was ousted after the handover, while the Provisional Legislature was sworn in at midnight on June 30, 1997, after the handover ceremony.

5. The Provisional Legislative Council passed the resolution to roll back several ordinances including the Societies Ordinance on June 14, 1997. See *Hong Kong Sing Tao Jih Pao*, (visited June 15, 1997) <<http://www.singtao.com/spec2/law68.html>>.

6. International Covenant on Civil and Political Rights, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

7. See Qian Qichen, Speech Delivered at the Closing Ceremony of the Second Plenary Session of the Preliminary Working Committee (Dec. 11, 1993) in 29 CHINESE L. AND GOV'T 940 (1993).

past two decades, the Chinese Communist Party (hereinafter CCP) has constantly lost its faith and legitimacy as the only ruling party in China amid introduction of economic reforms initiated by Deng Xiaoping. In this sense, Hong Kong's return to the motherland will mean more to the Communist party than to China itself, especially as Deng Xiaoping and his revolutionary generation lose power and a new generation of leaders emerges. Surely, Hong Kong's continuing prosperity can provide China with a long-lasting chance to readjust itself to superpower status in the next century.

This Article reviews the history of British rule in Hong Kong with respect to human rights, and explains why China is angered by last-ditch British political reform in Hong Kong. Then, it assesses the legal framework of future Hong Kong, including the Joint Declaration of China and Britain and the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter Basic Law), to determine to what extent this legal regime can protect people's basic rights in Hong Kong. Space is allocated to examining the mechanism of the international human rights system and its relevance in light of human rights protection in Hong Kong. Finally, the Article concludes that the devices intended to protect basic rights in Hong Kong are inherently deficient if the designers expect to achieve their goals. The consistent and close attention of the world will be critical to human rights protection in Hong Kong as well as to hold China to her promise. Whenever Hong Kong is not the focus of the world's attention, human rights could be eroded. On the other hand, helping China smoothly reintegrate into the world would be a promising way to minimize the danger to Hong Kong's human rights and prosperity. Therefore, it would be worthwhile to try in every possible way to reintegrate China into the international community before Hong Kong is fully integrated into China.

## II. A HISTORICAL REVIEW OF THE PROTECTION OF HUMAN RIGHTS IN HONG KONG AND CHINA

To understand Hong Kong's current situation, one must recall the early days of Hong Kong in relation to democracy and human rights. Hong Kong has been best known as a paradise for doing business.<sup>8</sup> The British government held overwhelming

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8. As Professor Peter Wesley-Smith put it: "Hong Kong as a British colony was established and maintained as a trading post, and thus what was good for commerce, including if necessary the diminution or suppression of civil liberties, was regarded as good for Hong Kong." Peter Wesley-Smith, *The Method of*

control of local politics. Political participation of local Chinese was immaterial until the late 1980s.<sup>9</sup> In Hong Kong's three most important branches of government, almost all top positions historically were occupied by non-Chinese, primarily English. Even after the Second World War, when decolonization became a trend under the United Nations sponsorship, the U.K. generally showed no such inclination in considering the status of Hong Kong.<sup>10</sup> Worried about its rule in Hong Kong, Britain was among a handful of the Western countries to recognize the P.R.C. during early 1950s. For the last several decades, Britain administered Hong Kong heavy-handedly in the areas of human rights protection and political participation. As some observers noted, social stability had been the top priority of British colonial government.<sup>11</sup> It was not until the late 1980s, especially after the Tiananmen Massacre, that Britain began thinking seriously of real political reform and human right safeguards.

Under the authority of the British government, Hong Kong for many years did not share the human rights protections bestowed upon the people of the U.K. It can even be said that the British government had a bad reputation insofar as human rights for the Hong Kong people were concerned.<sup>12</sup> In this respect, Hong Kong was treated even more badly than other British colonies.<sup>13</sup> Although Hong Kong incidentally benefited from the U.K.'s ratification of the International Covenants on Civil and Political Rights and on Economic, Cultural, and Social Rights in 1976, the people of Hong Kong have long been barred from many rights embodied both in the British laws and in these two covenants.<sup>14</sup> It was the self-restraint of the Hong Kong government in exercising authority that preserved liberties in Hong Kong, because the legal provisions were weak in terms of protecting basic rights there.<sup>15</sup> Only recently did the British government begin introducing a number of provisions guaranteeing the basic

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*Protecting Civil Liberties in Hong Kong*, in *CIVIL LIBERTIES IN HONG KONG* 11, 11 (Raymond Wacks ed., 1988).

9. See LI CHANGDAO & GONG XIAOHANG, *JIBENFA TOUSHI (PERSPECTIVE OF THE BASIC LAW)* 6-15, 29 (1990).

10. Britain has gradually decolonized its overseas dependent territories since 1950, but Hong Kong was an exception in this sense for a long time. Hong Kong was the sixty-eighth colony handed over by Britain.

11. See Nihal Jayawickrama, *Hong Kong and the International Protection of Human Rights*, in *CIVIL LIBERTIES IN HONG KONG*, *supra* note 8, at 31.

12. See Nihal Jayawickrama, *The Hong Kong Bill of Rights: A Critique*, in *THE HONG KONG BILL OF RIGHTS: A COMPARATIVE APPROACH* 55-57 (C. Johannes Chan & Yash Ghai eds., 1993).

13. *Id.*

14. *Id.*

15. See Perry Keller, *Freedom of the Press in Hong Kong: Liberal Values and Sovereign Interests*, 27 *TEX. INT'L L. J.* 371, 377-82 (1992).

rights of the Hong Kong people, apparently out of pressure by the international community and the people of Hong Kong.<sup>16</sup> As the U.K. launched its last-ditch democratic reform in Hong Kong, it is not surprising that the P.R.C. cast deep doubts on the real intention of Britain. As one of China's top policy-makers put it: "After entering the second half of the transition period, particularly in recent years, disturbances agitated in Hong Kong illustrate that Britain still intends to seek for a right to govern over Hong Kong after 1997."<sup>17</sup> He continued to suspect all political reforms introduced by the British side during the early 1990s.<sup>18</sup> Not coincidentally, pro-China scholars also expressed their disbelief about the motivation of such political reform.<sup>19</sup> Some scholars categorized the ongoing political reform in Hong Kong as a smoking gun to cover the real intention of the British government in trying to keep a strong influence on Hong Kong in the post-1997 era.

Moreover, Britain has consistently prevented its immigration laws, which had been applied to most of its other colonies, from applying in Hong Kong.<sup>20</sup> Britain also specifically excluded Hong Kong from the obligations that it had assumed toward the people of its colonies under the European human rights convention.<sup>21</sup> Therefore, unlike citizens of most other British colonies, the people of Hong Kong never enjoyed the right to live in the U.K.<sup>22</sup> Even after the Tiananmen massacre, only a small portion of people in Hong Kong had conditional rights to immigrate to the U.K., and they came under a specially designed plan.<sup>23</sup>

British complacency toward human rights in Hong Kong also includes failures in implementing the two U.N.-sponsored human rights covenants. As discussed below, although Britain assumed its responsibilities under the two covenants for Hong Kong, she has made little effort to bring the system of Hong Kong into line with the terms set out in the covenants. The Human Rights

16. See CHRISTOPHER PATTEN, *OUR NEXT FIVE YEARS: THE AGENDA FOR HONG KONG* 30-43 (1993).

17. Qichen, *supra* note 7.

18. *Id.*

19. See CHANGDAO & XIAOHANG, *supra* note 9, at 26.

20. *Id.* See also Mark F. McElreath, "Degrading Treatment"—from East Africa to Hong Kong: British Violations of Human Rights, 22 *COLUM. HUM. RTS. L. REV.* 331, 336-41 (1991).

21. *Id.*

22. *Id.*

23. To calm the panic caused by the 1989 Tiananmen massacre and comfort the civil servants of Hong Kong, in 1990 Britain carved out a complicated plan that allowed certain people who had contributed to Hong Kong in the past, or who held important positions in the government, to immigrate to the U.K. The beneficiaries roughly amount to 225,000, which is only 3.7% of the six million Hong Kong people.

Committee (hereinafter HRC) and the committee set up under the International Covenant on Economic, Social, and Culture Rights expressed their dissatisfactions with the performance of the British government in implementing the covenants in Hong Kong, especially with regard to Hong Kong's political structure, which is basically premised on privileges rather than on rights. On one occasion, the Committee pointed out:

[The] electoral system in Hong Kong does not meet the requirement of article 25, as well as articles 2, 3, and 26 of the Covenant. It underscores in particular that only 20 of 60 seats in the Legislative Council are subject to direct popular election and that the concept of functional constituencies, which gives undue weight to the views of the business community, discriminates among voters on the basis of property and functions.<sup>24</sup>

Due to the long-time reluctance of Britain to reform Hong Kong's system, the human rights situation in Hong Kong has been rather dissatisfactory. As the handover drew near, the British government had left crucial issues unsettled. The Hong Kong people still did not enjoy the right of universal suffrage.<sup>25</sup> Even under Patten's reform plan, only half of the legislators were elected.<sup>26</sup> Legally speaking, the Hong Kong people did not fully enjoy freedoms of speech, assembly, and association.<sup>27</sup> Although the vast majority of the Hong Kong population are ethnically Chinese, Chinese was never considered an official language in the history of Hong Kong.<sup>28</sup> Although the Bill of Rights promulgated in 1991 made crucial amendments to such suppressive ordinances as the Societies Ordinance and Defamation Ordinance, the amendments were barely sufficient to bring the ordinances in line with the ICCPR and other international human

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24. U.N. GAOR Human Rights Comm., 55th Sess., U.N. Doc. CCPR/C/79/Add.57 (1995).

25. Under the current electoral system, only half of the legislative positions are elected, and most of administrative positions, including the governor (the future chief executive of Hong Kong SAR) are appointed. See PATTEN, *supra* note 16, at 30-43.

26. *Id.*

27. There are some regulations that were amended in the last minutes before Britain left this prosperous colony. In the past decades, the law restrained or even prohibited people from simply expressing their opinions in certain areas. It was common understanding that the law was implemented in a very cautious way, which largely depended on the self-restraints of the colonial government. However, this did not relieve the responsibilities of the British government in terms of the poor human rights record in Hong Kong.

28. The Human Rights Committee, in its 1451st and 1453rd meetings, held on October 19 and 20, 1995, expressed its concern with the language problem, and specifically requested that Hong Kong government "introduce, as soon as possible, Chinese version of official charge forms and charge sheets as well as court documents." See UN Doc. CCPR/C/79/Add.57, *supra* note 24.



rights instruments. Ironically, as a China observer predicted some years ago, the first Hong Kong bill of rights was contained in the Basic Law of Hong Kong (1990), enacted by the P.R.C. The British could have freely made such a human rights law many years ago.<sup>29</sup>

Some reformative steps initiated by the last governor Christopher Patten did bring hope for human rights protection in Hong Kong. Unfortunately, such a limited reform will be cause for pointless political conflicts between China and the U.K. Considering its long historical stand and poor performance in Hong Kong, the U.K. can never shun its responsibilities for the shabby safeguard of human rights in Hong Kong.

The suspicion of the P.R.C. that the last-ditch reform by Christopher Patten was a British strategy for a glorious retreat is somewhat understandable considering Britain's historical performance in the colonies.<sup>30</sup> Although China obviously lacks sincerity and interest in protecting the human rights of the Hong Kong people, the conflicts between the governments of Britain and China over the political reform can be attributed, at least partially, to the historical position of Britain. By the account of the P.R.C., the British government initially tried to retain administrative authority in the early stages of negotiations on the return of Hong Kong. Only after the vehement opposition of China did Britain relent.<sup>31</sup>

### III. POTENTIAL IMPACT OF THE CHINESE LEGAL SYSTEM ON HONG KONG AFTER HANDOVER

The promise of "one country, two systems" and of Hong Kong leadership in Hong Kong is premised on certain foundations, which are inherently deficient in terms of maintaining the status quo and safeguarding human rights in Hong Kong. Several key unsettled issues cast an ominous shadow on the future of Hong Kong, particularly with regard to human rights protections and democracy.

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29. See Jayawickrama, *supra* note 12, at 64.

30. See CHANGDAO & XIAOHANG, *supra* note 9.

31. In the television serials, Hong Kong's Suffering Experience (Xiang Gang Cang Sang) run throughout China on the eve of Hong Kong's return, it was revealed that British prime minister Thatcher, in negotiating with China, instructed her delegation to request the continuation of British administration of Hong Kong after 1997. In exchange, China would recover a symbolic sovereignty of Hong Kong. It had been reported that Deng Xiaoping resolutely denied any such solution. See Qichen, *supra* note 7, at 93.

### A. Constitutional Challenges Hong Kong Will Face Post-1997

As many scholars have noted, Hong Kong will be governed primarily by a three-tier system of laws: (1) the constitutional level of law, which includes the Joint Declaration and the Constitution of the People's Republic of China; (2) the Basic Law of Hong Kong, a mini-constitution for Hong Kong; and (3) remaining legislation and common law rules.

Because the "one country, two systems" policy, carved out by Deng Xiaoping, is guaranteed by the Basic Law and other legislation passed by the NPC, it becomes pivotal that adequate legal recourse in implementing these policies and laws is provided. If Hong Kong's future government comes into conflict with the Chinese central government, a reasonable solution must be available to resolve the conflict.

The Joint Declaration signed by Britain and China is regarded as a treaty-type legal document. Its legal status has been strongly asserted by the British side. Britain has warned China that it will seek an international recourse should China break any terms of the Joint Declaration. China, however, seemed to ignore such warnings during altercations with Britain throughout the final stage of the transition, and claimed that anything happening in Hong Kong after the handover would be strictly regarded as an internal affair of the P.R.C. and have nothing to do with Britain.<sup>32</sup> No matter how strongly the legal effects of the Joint Declaration might be interpreted under international law, the international legal process will not likely be the means of solving potential disputes in relation to Hong Kong in the future.<sup>33</sup> It is also not the best way for London to hold Beijing to its promises in the Joint Declaration, especially since the terms enshrined in the Joint Declaration are somewhat ambivalent and not executable in terms of safeguarding Hong Kong from interference from the central government.<sup>34</sup>

On the other hand, the only article in the 1982 Constitution of the P.R.C. remotely relating to Hong Kong is Article 31, which authorizes the central government to establish a special

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32. Chinese Vice-Foreign Minister Liu Huaqiu declared that China would not allow any outside interference with Hong Kong's affairs after the 1997 handover. *China Protests Signing of U.S.-Hong Kong Policy Bill*, INT'L TRADE DAILY (BNA), Oct. 15, 1992, available in LEXIS, News Library, BNAITD File.

33. See Paul Vitrano, Note, *Hong Kong 1997: Can the People's Republic of China Be Compelled to Abide by the Joint Declaration?*, 28 GEO. WASH. J. INT'L L. & ECON. 445, 457-61 (1995).

34. For example, the Joint Declaration does not mention a mechanism to enforce the terms contained in the Joint Declaration. See Joint Declaration, *supra* note 1; Vitrano, *supra* note 33, at 455-56.

administrative region whenever there is such a need. The Constitution contains no details regarding structure or legal framework of the special administrative region. It has been claimed by Chinese scholars that Article 31 is the constitutional source for the legitimacy of the Hong Kong SAR, although this article was initially aimed at reunification with Taiwan.<sup>35</sup> Obviously, such a flexible constitutional clause will give Hong Kong little help in defending its system and lifestyle. Given future constitutional disputes about the relationship between the Hong Kong SAR and the central government, neither the Joint Declaration nor the Constitution of the P.R.C. will benefit Hong Kong in a significant way.

Even if a constitutional challenge would favor Hong Kong, there is no practical device in China to initiate a procedure of constitutional review. In China, the NPC and its Standing Committee are defined as the highest national legislature.<sup>36</sup> The duties of the NPC Standing Committee include interpreting and supervising the implementation of the Constitution.<sup>37</sup> All disputes relating to the Constitution should theoretically be presented to the NPC Standing Committee; however, neither the Constitution itself nor the laws provide a transparent procedure for constitutional review. In most cases, the constitutional disputes are solved by the Standing Committee on its own initiative. No institutes or individuals are qualified under the Constitution and other related laws to initiate a constitutional review within the NPC and its Standing Committee, or within the Hong Kong SAR government.<sup>38</sup> Chinese law does not provide for American-style judicial review. Therefore, taking a constitutional dispute to court will be out of the question for the future Hong Kong SAR government or people.

Similarly, the Basic Law will not strongly protect Hong Kong's autonomy, although certain provisions in the law are specifically aimed at limiting the authority of the central government over

35. See Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, Apr. 4, 1990, 29 I.L.M. 1511, art. 11 [hereinafter Basic Law]; see also XIAO WEIYUN, YIGUO LIANGZHI YU XIANGGANG TEBIE XINGZHENGQU JIBENFA ("ONE COUNTRY, TWO SYSTEMS" AND THE BASIC LAW OF HONG KONG SPECIAL ADMINISTRATIVE REGION) 62 (1990); CHANGDAO & XIAOHANG, *supra* note 9, at 63-66; WANG SHUWEN ET AL., XIANGGANG TEBIE XINGZHENGQU JIBENFA DAOLUN (INTRODUCTION TO THE BASIC LAW OF HONG KONG SPECIAL ADMINISTRATIVE REGION) 63-70 (1990).

36. XIANFA [Constitution] ch. 3, § 1, art. 57 (1982) (P.R.C.).

37. XIANFA [Constitution] ch. 1, arts. 57, 62(1), & 67(1) (1982) (P.R.C.).

38. The Basic Law does not permit Hong Kong to engage in Constitutional disputes. Articles 158 and 159 empower the NPC Standing Committee to interpret and amend the Basic Law. Consequently, disputes arising from the Constitution and the Basic Law will be subject to the discretion of the NPC Standing Committee. Basic Law, arts. 158, 159.

Hong Kong SAR affairs.<sup>39</sup> The authority to interpret the Basic Law rests with the NPC Standing Committee, which in the exercise of such power is required to consult with a special committee consisting of people from the mainland and Hong Kong. It would be only futile to rely on such a law to protect the Hong Kong SAR from abusive interference by the central government.

B. *Political Crimes in the P.R.C.—Endangering State Security and Leaking State Secrets*

Since the Hong Kong SAR will hardly remain free from the influence of the central government, it is imperative to look at the areas in which Hong Kong will be affected. There are at least three major Chinese laws which will apply to Hong Kong and could affect human rights protection there: the State Security Law, the Law of Preservation of State Secrets, and the respective provisions of the Criminal Law.<sup>40</sup> Of these, the Criminal Law was revised recently by the NPC.<sup>41</sup> These legal provisions—including ones in the new criminal law—make crimes of many acts regarded as lawful under internationally recognized human rights norms and protected by laws in many other countries. Notable are the crimes of “endangering state security,” “subverting the government,” and “leaking state secrets.”<sup>42</sup> In the previous criminal law, these were roughly referred to as “counterrevolutionary crimes.”<sup>43</sup> In the latest move of the Chinese legislature, the term “counterrevolutionary crimes” has

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39. Article 158 of the Basic Law addresses the power of interpretation, while Article 159 specifies the power of amendment. Both Articles are aimed at limiting the arbitrariness of interpretations and changes in the law, by requiring the central government to consult with the Hong Kong SAR government and with Hong Kong's representatives to the National People's Congress before an interpretation is handed out or an amendment is proposed. However, these articles are limited in their application since the final authority of interpretation and amendment rests with the central government. *Id.*

40. The State Security Law was promulgated by the NPC Standing Committee on February 22, 1993. The Implementation Regulations of the State Security Law were signed into law by Premier Li Peng on June 4, 1994. The Law of the P.R.C. on the guarding of State Secrets was passed by the NPC Standing Committee, together with the Supplemental Provisions of the Standing Committee of the National People's Congress Concerning Punishing the Crime of Leaking State Secrets, on September 5, 1988. On May 25, 1990, the Implementation Rules on the Law of Preservation of State Secrets were issued by the State Council.

41. The NPC passed the amendments to the Criminal Law of the P.R.C. on March 14, 1997, which will take effect on October 1, 1997.

42. See Criminal Law, arts. 102-13 (P.R.C.).

43. See Criminal Law, Part II, ch. 1, arts. 90-104 (1979) (P.R.C.).

been replaced by the phrase "endangering state security" without any other essential changes.<sup>44</sup>

Under the above laws, Chinese political dissidents have frequently been jailed under formal criminal charges or sent to labor camps through the administrative system.<sup>45</sup> Wang Dan and Wei Jingsheng are notable cases.<sup>46</sup>

More remarkably, the State Security Law and its Implementing rules have targeted foreign elements and political dissidents.<sup>47</sup> According to the provisions of these two laws, people who engage in activities aimed at "endangering state security" will be severely punished.<sup>48</sup> "Endangering state security" refers to acts committed by extraterritorial organizations or individuals in order to subvert the government, split the country, or overthrow the socialist system.<sup>49</sup> The same acts committed by domestic individuals or organizations in collusion with overseas organizations or individuals are also considered "endangering state security."<sup>50</sup> The primary targets of the State Security Law are obviously people outside China. The laws formally use the term "hostile" to distinguish extraterritorial individuals and organizations that the government dislikes.<sup>51</sup>

44. See Human Rights in China and Human Rights Watch/Asia, *Whose Security? "State Security" in China's New Criminal Code* (1997) [hereinafter *Whose Security?*].

45. Re-education through labor (RTL) is an administrative measure by which police authorities can deliver a maximum sentence of three-year imprisonment with a possible one-year extension. One of the primary features of RTL is that the sentence is handed out solely by the police without independent judicial review. There is virtually no effective way to challenge the decision, though the Administrative Litigation Law does allow a lawsuit to be brought against the authority over this RTL decision.

46. See *Whose Security?*, *supra* note 44. Wang Dan was convicted of the charge of subversion and sentenced to 11 years imprisonment in 1996, while Wei Jingsheng was sentenced to 14 years imprisonment in 1995 for the crime of subversion and secession. See Human Rights Watch/Asia, *Slamming the Door on Dissidents: Wang Dan's Trial* (Nov. 1996); Human Rights in China, *A Travesty of Justice: the Show Trial of Wei Jingsheng* (1996).

47. See State Security Law, arts. 23-26 (1993) (P.R.C.); Implementation Regulations of the State Security Law, arts. 6 & 7 (1994) (P.R.C.).

48. According to the new Criminal Law, the death penalty can be imposed for the crime of "endangering state security". See Criminal Law, art. 113 (P.R.C.).

49. State Security Law, art. 23 (1993) (P.R.C.).

50. *Id.*

51. Article 5 of the Implementation Regulations of the State Security Law reads as follows:

"[H]ostile" organizations, mentioned in the State Security Law, refer to the organizations being hostile against the People's Democratic Dictatorship and Socialism system of the People's Republic of China, and endangering state security. Which organization is deemed to be a "hostile" organization is decided by either the Ministry of State Security or the Ministry of Public Security.

Who or which organizations should be deemed "hostile" to China will be subject to the absolute discretion of the Ministries of Public Security and State Security.<sup>52</sup> Human rights groups are likely to be identified as "groups with hostility against China." On at least one occasion, Human Rights in China (hereinafter HRIC) was labeled as "a group with hostility against China," simply because it had publicized a report about human rights abuses in China. Other dissident organizations always appear on the top of the list of "hostile organizations" under the State Security Law and its Implementing Rules. In several instances, China has tried to use this law to detain and punish people who have connections with overseas organizations and individuals, especially with overseas dissidents. Some overseas dissidents have been denied entry into China for this reason.<sup>53</sup> For instance, under these laws, Bei Dao, an exiled poet, was denied entry into China in 1994.<sup>54</sup> Another international human rights expert was sent back when he tried to enter China to attend an international anti-corruption conference in Beijing.<sup>55</sup> Moreover, it was widely reported that the border authorities had been required to stop people on a blacklist produced by the Ministry of State Security.<sup>56</sup> After Deng Xiaoping's death, an internal circular demanded that people whose names were on a list newly released by the Ministry of Public Security should be stopped and repatriated at the borders.<sup>57</sup> Hang Xiaorong, wife of the Chairman of the HRIC, was prevented from entering China at the border of Hong Kong and China.<sup>58</sup>

Another Chinese law affecting similar rights is the Law of Preservation of State Secrets,<sup>59</sup> promulgated in 1988. This law prohibits many acts recognized by internationally accepted

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Implementation Regulations of the State Security Law, art. 5 (1994) (P.R.C.) (translated by the author).

52. *Id.*

53. See Human Rights in China and Human Rights Watch/Asia, *Enforced Exile of Dissidents, Government "Re-entry Blacklist" Revealed* (Jan. 1995).

54. Bei Dao is a prominent poet exiled after the 1989 student movement. He was denied entry to China at Beijing Airport for refusing to produce a list of members of Human Rights in China, of which he is a board member. See HONG KONG LIEN HO PAO, Nov. 27, 1994, at 8.

55. Mr. Nick Howen, the director of the London-based Amnesty International legal office, was denied entry and put on a BA flight back to London, when he tried to attend a conference in Beijing. See *Hong Kong AFP* (visited October 5, 1997) <<http://wnc.fedworld.gov>>.

56. See *Enforced Exile of Dissidents, Government "Re-entry Blacklist" Revealed*, *supra* note 53.

57. See *China: To Safeguard Stability, Pro-Democracy Activists Banned from Entry*, *Hong Kong Sing Tao Jih Pao*, Feb. 25, 1997 at A4.

58. Interview with Liu Qing, Chairman of Human Rights in China.

59. Law of Preservation of State Secrets (1988) (P.R.C.).

human rights standards as exercise of free speech.<sup>60</sup> The law uses sweeping language like "other items the authorities consider state secrets" to define "state secrets," so that people are unable to decide to what the term "state secrets" exactly refers.<sup>61</sup> In addition, the authorities are given broad discretion to define "state secrets" without any judicial review or other legal method for contesting their decision. Among the state secrets enumerated in the law and related legal documents, some items categorized as state secrets are regarded as common knowledge in many other countries, such as data and crime and education.<sup>62</sup> Because of ambiguous definitions and arbitrary determinations of what constitutes state secrets, some journalists have been charged and punished under these laws for normal coverage activities.<sup>63</sup> Among them, Xi Yang, a Hong Kong-based journalist, received a twelve-year prison term in 1992 for stealing state secrets. He was released on parole in 1997 before the Chinese new year, obviously to ease anxiety of the Hong Kong people about the upcoming transfer of power.

China's recent revision of its eighteen-year-old criminal law does little to improve the whole system. The only visible change was that the term "counterrevolutionary" was been dropped and replaced with that of "endangering state security."<sup>64</sup> Arguably, the revision harms rather than helps, since the scope of "endangering state security" crimes has been greatly expanded to apply to any domestic individual whether or not the person has foreign ties.<sup>65</sup>

After Hong Kong is returned to China, the legal provisions discussed above could adversely affect Hong Kong in the following ways. First, because the legal regime is aimed to target "foreign elements" and Hong Kong is legally defined as a non-China area,<sup>66</sup> people and organizations in Hong Kong can be incriminated under these laws if they engage in or aid domestic people in any activities of "subverting the government of PRC." One significant change after the handover is that the people of Hong Kong are now citizens of the P.R.C. The foreign shelter

60. See Human Rights in China and Human Rights Watch/Asia, *Leaking State Security: The Case of Gao Yu* (July 1995).

61. See Law of Preservation of State Security, art. 8 (1988) (P.R.C.).

62. See *Whose Security?*, *supra* note 44.

63. Other cases like Gao Yu's show that a journalist's normal news coverage would risk leaking state secrets. See *Leaking State Security: The Case of Gao Yu*, *supra* note 60.

64. See *Whose Security?*, *supra* note 44.

65. *Id.* See also Criminal Law, arts. 100-13 (1997) (P.R.C.).

66. Hong Kong and Taiwan are considered "extraterritories," which means the area not directly under the rule of the P.R.C. According to China, people of these areas will be regarded as the people outside China.

provided by the British colonial government is gone. The likelihood of Hong Kong residents being prosecuted under the State Security Law is substantially increased. Moreover, it is possible that there will be an agreement between the Hong Kong SAR government and the Chinese central government with regard to judicial assistance. Under such an arrangement, it will be eminently likely that the government of China will exercise its jurisdiction over Hong Kong residents commenting on Chinese affairs, as Hong Kong residents did in 1989.<sup>67</sup> The state security law regime will no longer be an intimidation device; instead, it will become a real threat for the people in Hong Kong. Chinese leaders have declared in many settings that China will not allow Hong Kong to be a base against China.<sup>68</sup> Applying the state security law will be the strongest means for preventing such incursion.

Second, the state security laws can be used as a guide in enacting sedition laws in Hong Kong itself. According to the Basic Law of Hong Kong, the Hong Kong SAR government should, at a proper time, enact on its own, a law regarding sedition or treason.<sup>69</sup> There was a set of rules in the British legal system concerning sedition and treason. Although the sedition and treason laws have been idle for four decades,<sup>70</sup> theoretically any act which tends to incitement could be treated as sedition or treason in Hong Kong. To narrow the scope of such serious charges, the LegCo considered an amendment in 1996;<sup>71</sup>

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67. In 1989, millions of Hong Kong people marched in the street to show their support for the student's movement throughout the country. Huge amounts of money were amassed for aiding the student leader escaping from the crackdown.

68. See Lu Jing, *Nine Nos to Hong Kong after 1997*, CHENG MING, Nov. 1996, at 20-21. In this report, it was said that Qian Qicheng, the Minister of Foreign Affairs, had confirmed, in an internal conference concerning Hong Kong's handover, that the central government had issued a "nine no's" policy regarding post-handover Hong Kong. Among those nine no's, there was a ban on international hostile organizations in Hong Kong, a ban on some local political groups from engaging in anti-communist activities, and a prohibition on the media from attacking or distorting the central leaders, the central government, the socialist system or communist policies.

69. Article 23 states: "The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies." Basic Law, art. 23.

70. In Hong Kong, the last prosecution for sedition was in 1953 and for treason in 1946. See *Territory Survived Well Without Need for Rules*, S. CHINA MORNING POST, Nov. 27, 1996, at 4.

71. See HONG KONG STANDARD, Apr. 2, 1997, at 5.



however, any part of the existing laws associated with colonialism will be eliminated after the handover. The concept of sedition in the British system is obviously one of the laws to be abolished. Therefore, the future legislature of Hong Kong SAR will need to work out a new concept of sedition or treason. The concept enshrined in the state security law could be a guide for future legislation on this issue. China would surely like to see a similar definition accepted by Hong Kong, which could serve as a convenient weapon to keep Hong Kong under China's sway. Although many suggest that the new law regarding sedition should be in accord with international human rights norms, notably ICCPR, some indications show that expecting full compliance with the ICCPR without any Chinese flavor will be naïve.<sup>72</sup>

### C. *Hong Kong and International Human Rights Law*

As discussed earlier, it is unrealistic to hope for international recourse based upon the Joint Declaration in the event of China's violating its promises on Hong Kong; however, there are some optimistic scenarios regarding Hong Kong's pursuit of its responsibilities under international human rights covenants.

Hong Kong is a party to the two major international human rights covenants by virtue of the U.K.'s ratification of these two covenants.<sup>73</sup> Since the U.K. certified the covenants, the British government has submitted periodic reports on their implementation in Hong Kong on Hong Kong's behalf.<sup>74</sup> During the negotiation between the U.K. and China, the status of Hong Kong under these international treaties became a major issue for both sides. The Joint Declaration generated an ambiguous solution: "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

72. Tung Chee-hwa, the first chief executive of Hong Kong SAR, vowed to roll back the social ordinances which were amended by the current Hong Kong government. He also issued an instruction to the police authority with regard to the concept of "state security" after he took office, which caused outcries from the legal community and the general public. See *Hong Kong Sing Tao Jih Pao*, *supra* note 5.

73. Britain ratified the International Covenant on Civil And Political Rights (hereinafter ICCPR) and the International Covenant on Economic, Social And Economic Rights (hereinafter ICESER) in 1976 and assumed the responsibilities under these two covenants for her colonies. Hong Kong was among these colonies.

74. On behalf of Hong Kong, the U.K. has submitted a total of four periodic reports on the implementation of ICCPR to the Human Rights Committee (hereinafter HRC), along with several supplementary reports at the request of the members of the HRC since 1976.

in force."<sup>75</sup> Few specifics were given about how to comply with, or who should be responsible for, the reporting obligations described by the covenants. According to the Joint Declaration and the Basic Law of Hong Kong, China will be responsible for all foreign affairs and defense, while the Hong Kong SAR will handle the others.<sup>76</sup> If reporting to the human rights committee and the committee on economic, social and cultural rights is categorized as "foreign affairs," then the obligation will fall to the central government; however, given that the reporting duty is considered a local matter, the Hong Kong SAR government will be responsible for dealing with the covenant's bodies.

The status of Hong Kong under the ICCPR was simplified by the HRC. In its 1453th meeting on October 20, 1995, the HRC explained the situation of Hong Kong after the handover under the covenants. Its conclusion was:

Once the people living in a territory find themselves under the protection of the International Covenant on Civil and Political Rights, such protection cannot be denied to them by virtue of the mere dismemberment of that territory or its coming within the jurisdiction of another State or of more than one State.<sup>77</sup>

After considering the Sino-Britain Joint Declaration concerning Hong Kong, the HRC continued: "[a]s the reporting requirements under article 40 of the International Covenant on Civil and Political Rights will continue to apply, the Human Rights Committee considers that it is competent to receive and review reports that must be submitted in relation to Hong Kong."<sup>78</sup> Although the conclusion of the HRC did not state who should be responsible for reporting obligations, the most possible obligor will be either the government of China or the government of Hong Kong SAR. It has been speculated that the government of China would be embarrassed to report only the human rights situation of Hong Kong but not the overall situation of China, because China is not a party to the ICCPR and the ICESCR. Recently, however, China surprisingly declared that she would report to the HRC on behalf of Hong Kong in post-1997, though China obviously did so with great reluctance.<sup>79</sup>

To accommodate the requirements of the two covenants, the Hong Kong government enacted the Hong Kong Bill of Rights in

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75. See Joint Declaration, *supra* note 1, Annex I, para. XIII, at 1375.

76. *Id.* See also Basic Law, arts. 13-14.

77. See UN Doc. CCPR/C/79/Add.57, *supra* note 24.

78. *Id.*

79. It was reported that China took an inflexible stance on this issue in the past. According to Dr. Jayawickrama, the Chairman of Justice, "it was a pleasant surprise." See HONG KONG STANDARD, July 5, 1997, at 3.

1991,<sup>80</sup> which was fiercely attacked by China.<sup>81</sup> The legal supremacy over other ordinances claimed by China contradicts the legal foundation of, and therefore violates, the Joint Declaration. The real intention of the central government might not be to put Hong Kong under its tight control, but rather to hold Hong Kong in an early check in order to keep things in control. Likewise, China has exerted pressure on other matters in Hong Kong, and the media has been forced to conduct self-censorship.<sup>82</sup> A report revealed that self-censorship had been in practice for a long time while the handover was approaching, partially because of fears about surviving the handover and partially due to the intimidation of the Chinese government.<sup>83</sup> The spokesmen of China in many public settings have tried to categorize media freedom in a narrow way, which has certainly caused a great panic among major media, especially those with political or economic connections to China. On one occasion, Lu Ping, one of the chief policy-making officers of the P.R.C. on Hong Kong affairs, made a distinction between news reports and editorials with respect to certain sensitive topics like Tibet or Taiwan's independence. The former will be allowed while the latter will be prohibited, according to Lu.<sup>84</sup> No details were given on what standards will be applied in making such a differentiation.

Actually, the ICCPR provides a set of standards on human rights, including that of freedom of speech.<sup>85</sup> Will the Hong Kong SAR follow the standards set out in the ICCPR and other internationally-recognized human rights instruments in dealing with freedom of speech? This will remain a tough question for the future government of the Hong Kong SAR. Apparently, China expects the first chief executive of the Hong Kong SAR to keep Hong Kong's media off the subject of mainland affairs, and is

80. According to China's explanation, the Bill of Rights Ordinance violated the Basic Law because it can override other legislation. See *PEOPLE'S DAILY*, Mar. 20, 1997 at 2; *Commentary Views 'Purpose' of Bill of Rights*, *HONG KONG WEN WEI PO*, Jan. 2, 1995, at A11.

81. See *Safeguarding Sino-British Joint Declaration*, *BEIJING REVIEW* (visited March, 1997) <<http://www.chinanews.org/bjreview/97Mar/97-9-3.html>>.

82. Self-censorship has long been conducted even before the handover. See Keller, *supra* note 15, at 377-82. It has been widely reported that the self-censorship deteriorated when some Hong Kong media, especially those listed in the market, tilted their stance pro-China or stayed away from conflicts with China, either for economic or political reasons. See also *HONG KONG HSIN PAO* (Hong Kong Economic Journal), available at U.S. government service FBIS-CHI-97-081, Apr. 23, 1997, at 22.

83. See Fong So, *Free Press: Contributing to Hong Kong's Success or A Disruptive Factor?*, *CHINA RIGHTS FORUM*, Winter 1996 at 8-11.

84. See *WEN WEI PO*, June 6, 1996 at B5.

85. See ICCPR, *supra* note 6, art. 19.

particularly concerned that media in Hong Kong not use freedom of speech to "undermine" the integrity of the motherland.<sup>86</sup> The government of the Hong Kong SAR will find it challenging to strike a balance between protecting human rights of the Hong Kong people and satisfying the demands of Beijing.

If the above situation gets out of hand and the central government interferes either directly or indirectly with the liberties of Hong Kong people, will the international community be able to compel China to abide by the provisions of the ICCPR or other human rights instruments to which Hong Kong is a party? The answer is no, in many senses. First of all, the UN human rights mechanism is fairly weak in its enforcement. According to the ICCPR, the implementation of the Covenant mostly relies on the self-compliance of the state parties concerned. The HRC is only a supervising and coordinating organ responsible for communicating information and receiving and reviewing the country reports, as well as hosting the annual meetings. The members of the Covenant have created no mechanism to effectively enforce the provisions of the Covenant. Moreover, China is not a party to the ICCPR, although it will likely ratify the Covenant in the near future. Whether to comply with the Covenant is more or less optional for China, while reporting the human rights situation in Hong Kong will almost certainly be a procedural gesture rather than a substantive obligation. In addition, China is a permanent member of the Security Council of the United Nations. To compel China to adhere to the Covenant through the U.N. system will absolutely be one of the toughest missions of this international organization.<sup>87</sup>

#### IV. HONG KONG'S REINTEGRATION INTO CHINA

As discussed above, the possibilities for keeping China to its word through either domestic constitutional challenge or through such international channels as the U.N. system seem relatively remote. For this reason, the future of Hong Kong is unlikely to be permeated with permissiveness. It would be perceptive to look at both sides of the integration of Hong Kong into China.

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86. In most cases, the government's warning that Hong Kong should not be allowed to be a base against China refers to media coverage. See Basic Law, art. 23. See also *supra* text accompanying note 69.

87. See Vitrano, *supra* note 33, at 459-60.

A. *Possible Impact of the Chinese Legal System on the Traditional Role of Hong Kong*

The role of China in Hong Kong after the handover has been a focus of the human rights community. To appropriately understand this circumstance, it would be helpful to look at a bigger picture of the traditional role of Hong Kong in China's affairs.

Hong Kong has been a free forum for China observers and a free information transfer center for a long time. Since the 1989 Tiananmen Massacre, Hong Kong itself has become a serious critic of China in many aspects, which has greatly affected people inside China. Meanwhile, Hong Kong is a friendly host for many Chinese dissidents and a hot bed for free speech, which enables Chinese people to enjoy free information about China. Many call this situation "exported information being imported back." Some Hong Kong publications have been heavily circulated among mainland Chinese intellectuals, officials, and the general public. The popularity of these Hong Kong magazines in China could be seen in the fact that China put them on the top of prohibited lists of overseas publications. Importing them is made a crime and punishable. To some extent, Chinese people exercise their freedom of speech through Hong Kong publications. Most information publicized in Hong Kong is furnished or written by people inside China, and many of the readers are Chinese.

Moreover, Hong Kong serves as a model for Chinese people who live under a totalitarian system. It has played a significant role in the transformation of the lives of ordinary Chinese. Popular music, fashion, and most modern art are introduced into China via Hong Kong. More significant is that some modern social thought has been adopted by China as a result of the Hong Kong experience. The system of civil servants is prominent. The recent political reform in Hong Kong also provides China with an experiment in democracy, which has significantly stunned the leadership.

With the aforesaid picture in mind, it will be much easier to understand that Hong Kong could be materially affected by China for the short-term after the handover.

First, there is a likelihood that China will require Hong Kong to curb freedom of speech<sup>88</sup> and perhaps freedom of association

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88. Qian Qichen, Vice-Prime Minister and the Minister of Foreign Affairs, was interviewed by the Asian Wall Street Journal in October 1996, and he asserted that in the future, "Hong Kong should not hold those political activities which directly interfere in the affairs of the mainland." See Fong, *supra* note 83.

as they relate to Chinese affairs.<sup>89</sup> According to Article 23 of the Basic Law of Hong Kong, Hong Kong shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central Government, or theft of state secrets.<sup>90</sup> The law also requires the Hong Kong government to prohibit foreign political organizations or bodies from conducting political activities in the region, and to prohibit political organizations or bodies in the region from establishing ties with foreign political organizations or bodies.<sup>91</sup> This article expressly indicates that China is not going to tolerate any individuals or organizations that seriously challenge the authority of the central government. China will not, as Chinese leaders have said on several occasions, allow Hong Kong to become a base used by an "international hostile force" against China.<sup>92</sup> Although the Basic Law requests that Hong Kong legislate on this matter on its own, China can still influence the content of such legislation. In addition, the NPC Standing Committee formally retains the power to interpret the Basic Law.<sup>93</sup> Through exercising its power of interpretation, the Standing Committee will be able to add whatever it wants. In addition, the power of amendment of the Basic Law is vested in the Standing Committee.<sup>94</sup> Whenever it needs, the NPC Standing Committee can modify the Basic Law.

There are many indications that Hong Kong has already exercised self-restraint in exercising freedom of speech. Some newspapers are beginning to cut back articles on sensitive topics about China. It was reported that a prominent local newspaper had fired its cartoon author, who had caricatured many Chinese leaders.<sup>95</sup> Some professors have complained about academic freedom. One professor said that he could not get enough funding from the administration of his university for a conference on the international status of Tibet, because his supervisor worried about the reaction of the Chinese government.<sup>96</sup>

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89. See Basic Law, art. 23. See also HONG KONG HSIN PAO, *supra* note 82, at 22.

90. Basic Law, art. 23.

91. *Id.*

92. *Id.* See also *supra* text accompanying note 69.

93. Basic Law, art. 158.

94. *Id.* art. 159.

95. It was reported that Mr. Larry Feign, a cartoonist for the S. China Morning Post, was fired after he had spent eight years with the newspaper. See *Sacking of Cartoonist Feeds Censorship Fears*, Hong Kong AFP in English, May 22, 1995.

96. Interview with Professor at University of Hong Kong, in Hong Kong (Aug. 1996). The professor granted this interview on the condition of anonymity.

Another obvious fear before reunification was for the fate of dissidents in Hong Kong after June 30, 1997.<sup>97</sup> There were about eighty dissidents in Hong Kong. China's policy towards the Hong Kong SAR has caused serious concerns for them. An international rescue plan was being developed to find a third country to receive the dissidents before the changeover.<sup>98</sup>

One potential circumstance will affect foreign organizations in Hong Kong. According to Article 23 of the Basic Law, China may request the government of Hong Kong to expel some politically sensitive organizations.<sup>99</sup> As some might know, a number of non-governmental-organizations (hereinafter NGOs) have branches in Hong Kong. These NGOs include prominent human rights groups, like Amnesty International and Human Rights Watch. HRIC also has a branch office. What happens to these human rights groups will be a good test of the patience and tolerance of the Chinese government.

### B. Hong Kong's Influence on China

Integration is always a two-way endeavor. While Hong Kong will surely be integrated into China with the passage of time, just as its economy has been substantially integrated with that of the mainland, China will be equally influenced by Hong Kong in many ways. Aside from its strong economic influence on China, Hong Kong could play a major role in the course of China's modernization.

First, Hong Kong will serve as a model for China in many respects. Hong Kong enjoys a high degree of social stability and economic prosperity. For many Hong Kong watchers, its successes are primarily attributed to its system: a highly effective civil servant system and the rule of law, plus the recent development of democracy.<sup>100</sup> Many Chinese agree with this view, although Chinese leaders have repeatedly claimed that the key to Hong Kong's prosperity is the consistent support of mainland China and the diligence of the Hong Kong people.<sup>101</sup> Chinese scholars often praise Hong Kong for its corruption-free government and urge the government to learn lessons from Hong

97. See *Hong Kong: UK Reported Seeking Homes in West for PRC Dissidents*, S. CHINA MORNING POST, July 23, 1996 at 6.

98. *Id.*

99. See Basic Law, art. 23.

100. See Keller, *supra* note 15.

101. Jiang Zemin, the general secretary of the CCP and president of the People's Republic of China said, in an interview with the French Newspaper *Le Figaro*, that Hong Kong's prosperity was mainly attributed to the creativity of Hong Kong people, as well as to the support of the mainland and its open policy. See Fong, *supra* note 83.

Kong. Meanwhile, the effectiveness of the civil servant system of Hong Kong provides an example to China on how to reform its bureaucratic system. Furthermore, the recent democratic reform proves that democracy can be realized in a traditional Chinese area (although Hong Kong may not be considered a purely traditional Chinese society). There have been some indications that Chinese leaders might take this very seriously. Not coincidentally, current basic level elections have been held throughout China, although the overall electoral system has not significantly changed.<sup>102</sup>

Second, with regard to the protection of human rights, there are several possible influences that Hong Kong might exert on China. Based upon the provisions of the Basic Law, Hong Kong will enjoy a considerably high degree of autonomy, and most of its residents' human rights will be enshrined in international human rights instruments, primarily the ICCPR and ICESCR. These rights are guaranteed by the black letter law incorporated in the Basic Law and other legislation. Thus, after Hong Kong returns to China, one serious question will remain: why should mainland Chinese not enjoy the same rights as Hong Kong residents do? There must be a plausible answer and the Chinese government will have to wrestle with itself in trying to answer it.

A third and important influence of Hong Kong over China is that China will face a challenge from the international community in terms of two international human rights covenants, the ICCPR and ICESCR, regardless of whether China takes them seriously. As discussed earlier, despite the fact that China is not a party to the two covenants, after the handover, Hong Kong will remain a party. As requested by the covenants, Hong Kong will submit to the HRC periodic reports about its implementation of the covenants. China will be under tremendous pressure to ratify these two covenants.<sup>103</sup> Even if it does not ratify them, China will still need to report to the HRC about Hong Kong's implementation of the covenants,<sup>104</sup> which will definitely embarrass China a great deal. Recently, it has been reported that China may ratify the two

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102. See *China: CNN Interviews Jiang Zemin in Beijing*, XINHUA DOMESTIC SERV., May 9, 1997. For details on the local election, see *China: Direct Election, Rural Democracy Viewed*, XINHUA DOMESTIC SERV., May 9, 1997.

103. Jiang Zeming, president of the P.R.C., announced to the visiting defense minister of France that China would ratify the International Covenant on Economic, Cultural, and Social Rights by the end of 1997. See *PEOPLE'S DAILY*, Apr. 2, 1997, at 1.

104. See *supra* notes 73-74.



covenants.<sup>105</sup> This could partially be attributed to the status of Hong Kong as a party to the covenants.

Fourth, Hong Kong will influence China's legal system. China's economic legislation largely mirrors that of Hong Kong and other countries, and China will continue to learn from Hong Kong in the development of its market system.<sup>106</sup> As its economic reform progresses, China will inevitably encounter political problems. As many expect, political reform in China will occur sooner or later. This is necessary to pave the way for China's economic growth. Accordingly, Hong Kong will play an active role in China's political reform.<sup>107</sup>

## V. CONCLUSION

It is unfortunate that, with the change of power, human rights and civil liberties in Hong Kong will be in peril. Despite the fact that China needs Hong Kong for its economic development, and that maintaining Hong Kong's status quo is in the best interest of China, China will be unlikely to tolerate any challenge from Hong Kong in terms of their interrelationship. Therefore, human rights may be sacrificed. The Hong Kong SAR government will need to strike a balance between the demands of China and the interests of the Hong Kong people. If China does not abide by its promises to Hong Kong, Hong Kong will have few international or domestic remedies. To keep China to its word, the issue of Hong Kong must remain an international concern. Even if the international community does keep appropriate pressure on China, however, there are no guarantees about the future of Hong Kong.

There will be two significant processes after the handover: Hong Kong's reintegration into China and China's reintegration into the world. These two processes are equally important and will affect each other. In the short term, Hong Kong is very likely to be adversely affected by China in terms of its legal system and human rights. There may be some setbacks in the protection of human rights. Nevertheless, Hong Kong could, together with other democratic countries, turn China into a more humane and democratic country by making full use of its unique position.

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105. See *Hong Kong: UK Reported Seeking Homes in West for PRC Dissidents*, *supra* note 97.

106. See Daniel R. Fung, *Foundation for the Survival of the Rule of Law in Hong Kong—the Resumption of Chinese Sovereignty*, 1 *UCLA J. INT'L L. & FOREIGN AFF.* 283 (1996-97). See also Li Changdao, *Strengthening Legal Links Between the Mainland And Hong Kong*, *PEOPLE'S DAILY* (overseas ed.), Apr. 18, 1996, at 5.

107. *Id.*

With the passing of Deng Xiaoping, China is at a historical crossroads. How to integrate China into the world becomes a challenging task for the rest of the world. Clearly, Hong Kong will play a significant role in this transition. The longer the model of "one country, two systems" in Hong Kong survives, the safer Hong Kong and the world will be.

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