

One Country, Two Systems

**An Account of the Drafting
of the Hong Kong Basic Law**

**by
Xiao Weiyun**



Peking University Press

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Introduction

The resumption of Chinese sovereignty over Hong Kong on July 1, 1997 was achieved through diplomatic negotiations and China's implementation of the "one country, two systems" policy toward Hong Kong.

Before Hong Kong's peaceful return to her Motherland, China enacted the Basic Law of the Hong Kong Administrative Region on April 4, 1990 so that the whole world could see the substance of the "one country, two systems" policy. In this book we hope to give our readers an insight into the background, the objectives, drafting process, the debates, the discussions and the legislative intentions of the Basic Law. We know that given time readers will appreciate China's determination to modernize and the role Hong Kong can play in this development. The enactment of the Basic Law of the HKSAR is "a great experiment".

This book was originally written in the Chinese language by Professor Xiao Weiyun of Beijing University and a prominent Basic Law Drafter, and published in 1993. Now the English edition of this book will be published by Peking University Press.

This English text was translated by Song Xiaozhuang (Chapters 1 and 5), Zheng Guojie, Chen Jie and Fu Siming (Chapters 6, 7, 8 and 10), Xu Chang (Chapters 2 and 3), Fu Siming (Chapter 9) and Xu Chaoyou (Preamble and Chapter 4). The publisher's fees of this book were borne by the Hong Kong Young Legal Professionals Association and the Hong Kong United

Youth Association.

We wish to thank our friends in Beijing and Hong Kong for their support and encouragement. We also welcome readers' criticisms and comments.

Tam Wai-Chu

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2000. 10

Foreword

As a member of the Drafting Committee of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, I participated in the drafting work which carries enormous historical significance. At the earnest invitation of the Hai-tian Publishing House I agreed with pleasure to complete this book for the anniversary of the 1997 handover.

This book has four characteristics. First, it fully and systematically elaborates on the fundamentals, spirit and entire process of formulation of the Basic Law, specifically setting out the structure, preamble, chapter and sections as well as the three annexures to the Basic Law, the proposal and decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the HKSAR. Second, it provides a detailed description of the various issues and contents that came under heated discussion in regards to the structure, preamble, chapter, section and article of this document. Emphasis is given to the elaboration of the main and controversial articles and annexures, and much relevant information and materials which were discussed, have been cited to explain the legislative intentions of the drafters. Third, emphasis has been given to the relationship between the principle of "one country, two systems" and the Basic Law, and on how it has been incorporated into the Basic Law. This is to enhance understanding of the "one country, two systems" principle and its unprecedented practice. Fourth, it analyses and comments on some new issues, such as the Hong Kong Bill of Rights Ordinance which was enacted

after the Basic Law was adopted by the National People's Congress in 1990, as these are relevant to the Basic Law.

Two years ago I compiled a book called "One Country, Two Systems and the Basic Legal System of Hong Kong". Compared with this new book it is rather different in these aspects: First, it is about a different legal system. As one of the major research topics of the Seventh Five-Year Plan its outline was drawn up before the drafting work of the Basic Law in 1985. It elaborates emphatically rather than comprehensively and systematically in accordance with the structure of the Basic Law. Second, it is different in content, emphasising the theory and history with the new book giving a systematic elaboration of the spirit of the law and the disputes over them. Chapters 1, 2, 3, 4, 5, 9 and 10 are new. Third, some contents of the book were omitted or simplified in the new one to avoid unnecessary repetitions. Some excerpts from "One Country, Two Systems and the Basic Legal System of Hong Kong" have been cited of necessity. The two books may be treated as twins.

Some friends from Hong Kong offered useful help and materials in writing this book. I would like to express my heartfelt thanks to them. It is inevitable that there are deficiencies in this book. Comments and criticisms would be invaluable and are most welcome.

Xiao Weiyun

Beijing

1993. 10

Abbreviations

AG	Attorney-General
BLCC	Basic Law Consultative Committee
BLDC	Basic Law Drafting Committee
CE	Chief Executive
Exco	Executive Council
HKSAR	Hong Kong Special Administrative Region
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
JD	Joint Declaration
JLG	Joint Liaison Group
Legco	Legislative Council
NPC	National People's Congress
NPCSC	National People's Congress Standing Committee
PLA	People's Liberation Army
PRC	People's Republic of China
PWC	Preliminary Working Commission
UK	United Kingdom
US	United States

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Chapter 1

“One Country, Two Systems” and Basic Law of the HKSAR

Section 1: The implications of “one country, two systems”

The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China was adopted at the Third Session of the Seventh National People's Congress on 4 April 1990. To understand this Basic Law the principle of “one country, two systems”, cornerstone for the formulation of the Basic Law, must be studied first. The Basic Law has set out in detail and legalized the principle of “one country, two systems”. Only with sound understanding of this “one country, two systems” principle can the Basic Law be implemented correctly. But, the principle aside, it may be difficult to understand why some of the articles of the Basic Law are required to be consistent with many articles of Mainland laws, and even with the Constitution while others are not. It may also be somewhat perplexing that the HKSAR has a high degree of autonomy, greater than even the powers enjoyed by a state in a federal system or a member of the Commonwealth in many respects. It may also be difficult to give a theoretical underpinning to some articles of the Basic Law. In enacting the Basic Law consideration not only had to be given to the legal system of the Mainland, but also all the legal systems of the whole country; the

differences between these systems on the Mainland and Hong Kong had also to be considered. It is not feasible to discuss legal questions in reference to the Mainland without giving due consideration to the system in Hong Kong. However, it is also incorrect to emphasize the differences between the two legal systems without due regard to the legal systems of the whole country. Therefore drafting the Basic Law and explaining it requires a study of the principle of "one country, two systems" first.

What does "one country, two systems" mean? It means that in the mainland territory of the People's Republic of China (PRC) socialism is practised while capitalism will prevail over Hong Kong, Macao and Taiwan. In concrete terms, the country establishes special administrative regions that come directly under the Central People's Government. Such regions shall have a high degree of autonomy as well as executive, legislative and independent judicial powers, including that of final adjudication, whilst the Central People's Government handles defence and foreign relations.

It must be pointed out that "one country" and "two systems" comprise two inalienable aspects, one cannot be considered without the other. It is incorrect to only emphasize "two systems" and the high degree of autonomy without mentioning "one country", national sovereignty, unity and territorial integrity; then it becomes "two countries, two systems". It is also incorrect to only emphasize "one country", national sovereignty, unity and territorial integrity without mentioning "two systems", and the high degree of autonomy; else it becomes "one country, one system". The correct relationship between "one country" and "two systems" is to allow implementation of different systems in some special regions based on the prerequisite of the "one country" principle. The prerequisite of "one country, two systems" is to insist on Socialism, national unity and territorial integrity. "One

country, two systems" cannot be implemented outside of the context of our socialistic country. Although the SAR has a high degree of autonomy and different social system, the relationship between the Central Government and the SAR cannot be on equal footing or be on an equal "China and Hong Kong relationship", rather the relationship between the Central Government and the SAR must be as between the central government and local government within one country. Given that the prerequisite is "one country" then it means the "two systems" must rely on "one country", i. e. the two systems must co-exist within the context of one country. Conversely, it is incorrect to consider "one country, two systems" by denying the existence and necessity of "two systems".

So it is very important to understand and study the Basic Law correctly under the true meaning of "one country, two systems", especially the relationship between "one country" and "two systems".

The concept and practice of "one country, two systems" have no precedent anywhere. The Hong Kong and Macao problem is a leftover from history as a result of the unequal treaties. Although the Taiwan problem is China's domestic affair, foreign countries have nevertheless influenced it. These situations have complicated the solution of the Hong Kong, Macao and Taiwan problems because these places have either been occupied by foreign countries or governed by the Guomindang (国民党) and have developed political, economic, cultural, educational systems and life styles that are different from those of the Mainland. The people living in those parts have questions and apprehensions about Socialism on the Mainland, giving rise to difficulties in the unification of the country. Nonetheless, a proper solution to the Hong Kong, Macao and Taiwan problems will be beneficial to the modernization of our Socialist country and to the people of the whole country including

those of Hong Kong, Macao and Taiwan as well as to the peace and stability of the Far East and the world. History and the course of development in current affairs demand that this solution to Hong Kong, Macao and Taiwan problems proceed in step-by-step fashion.

In these circumstances, the Central Committee of the Communist Party put forward the “one country, two systems” principle. China signed the *Joint Declaration on the Question of Hong Kong* (JD) with Britain, and the *Joint Declaration on the Question of Macao* with Portugal respectively, using a peaceful way to resolve problems left over from history. It was welcomed and supported by the whole population, including the peoples of Hong Kong and Macao, and acclaimed by people all over the world. The National People’s Congress (NPC) has now approved the HKSAR Basic Law, the Macao SAR Basic Law is being smoothly drafted, and reflecting the people’s collective desire and the Taiwan problem will also be resolved in the future.

The principle and theory of “one country, two systems” which is used to unify our country also developed from the theory of Marxism. Until now, no other country has come up with such a principle as “one country, two systems”. Given the specific circumstances of our country, using “one country, two systems” to solve the problems of national unification and territorial integrity needs not only a practical and realistic approach but also courage in the theoretical formulation. It is a new development in Marxist theory.

Section 2: The formalization, development, legalization of the principle of “one country, two systems”

The principle of “one country, two systems” developed and formalized gradually, from proposal to drafting, and to its adoption