

HONG KONG UNDER CHINA AFTER 1997: ONE COUNTRY, TWO SYSTEMS

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On First July 1997, Hong Kong will become China's first Special Administrative Region (SAR), in accordance with Sino-British joint declaration of 1984. After midnight of 30th June, it will cease to a Crown Colony, as sovereignty possess from Britain to China. Under the terms of joint declaration signed after two years of bilateral negotiations for the next 50 years Hong Kong is to be administered according to the "one country, two systems", socialist and capitalist, within the same country. The SAR will enjoy the maximum autonomy, except foreign policy and defence, and the present capitalistic economic system is promised to be retained.

Tracing from the history the return of Hong Kong lies in the fact that it marks the end of China's early modern period. Hong Kong has been a symbolic entity throughout China's early modern history, a period that can be dated from the opium war of 1840-42 and whose major characteristic has been the humiliating experience of invasion by European and other foreign powers.

The nineteenth century saw so many reversal in "advanced" and "backward" regions. Europe being a backward region by itself seized the world hegemony. Relation's between China and Europe also changed as China heretofore an advanced region, found itself in subordinative position to Europe, that is because of the European military superiority which reversed the balance of power and its industrial strength sealed the new balance. So, the opium war was China's first defeat at the hands of western forces.

Hong Kong first appeared in the world of political arena at the time of opium war. Hong Kong, Britain's beachhead to China was a product of the so-called unequal treaties between China and Western Powers that followed the opium war. For this reason restoration of sovereignty over the territory became a major policy priority for successive Chinese regimes.

Hong Kong was invaded by Japanese forces during World War II, ending almost the century of British rule. The Britain and the United States Governments in 1942 tried to strengthen the Allied front against Japan. They commenced the negotiations with Chiang Kai-Shek, to abrogate the unequal treaties. But Britain did not want to give up Hong Kong, and in the course of power plays to induce the Soviet Union to join the war against Japan 'the issue of the Hong Kong's reversion was put on the back burner. After disarming and surrender of Japanese army in August 1945, British troops rushed in ahead of the Chinese army in Chongqing and retook Hong Kong.

After communist rule of 1949, China had never pressed for return of the Island neither forced for it, although she had many opportunities to ask for the return of the Hong Kong; such as seizure of Guangzhou, Capital of Guangdong province by peoples Liberation Army. Neither at the time of China's entry into Korean war in 1950 which extended the cold war to Hong Kong to serve and fix the status quo, nor during the Hong Kong's worst postwar crisis and the riots of 1967. But that was Hong Kong's business community who agitated in 1970 for clarification of territories post-1997 status.

The Sino-British relations soured after Mr. Chris Patten's appointment as Hong Kong's Governor in 1992, proposed an electoral reform package. The Governor adopted a confrontational approach towards Beijing in contrast to the more conciliatory strategy of his diplomatic predecessors. Discussion on Transitional issues in Sino-British joint Liaison group stalled, as did talks on the financing of territory's new airport. When Patten's reforms were passed by the local legislative council (Legco) in June 1994, the dispute intensified. China said the changes went against the Basic Law i.e., Hong Kong's post 1977 mini-constitution.

Hong Kong businessmen had a big stake in territory than any one else, but presently he is watching with growing dismay. The remaining months of British rule could be bumpy. The polarized situation makes things very sensitive, and business people have to look after their interests. Hong Kong is not a Western country. It is fine to support "One Country, Two

Systems", but if the "One Country" is destabilised, than "Two Systems" don't stand to any chance.

The members of the Preliminary Working Committee (PWC) are very important and powerful members to Beijing on Hong Kong affairs. The role of PWC is like pre-cursor to setup the important preparatory committee to prepare Hong Kong for its return to China. Beijing has warned to abolish the 1995 Legco after 1997 and replace it with parallel body, therefore the PWC has to play key role.

The quarrel between its future master China, and its present one Britain, is accelerating on many issues before the historic transition. The far-reaching changes are unfolding as the countdown continue towards 1997. Few questions immediately arise that which one will be the key challenge Hong Kong will face, and how she will be able to cope with them? Will it decline or soar to new heights of success and prosperity? What will be Hong Kong like after it reverts to China?

BRITISH LEGAL SYSTEM

The Hong Kong's Legal System is based on "British Common Law", a tested system of clear rules, precedents and legal rights for all. The executive, legislature and judiciary are designed to balance each other, preventing "abuse of state power". That system contrast sharply with China, where the judiciary oft operates like an arm of government, almost never contradiction the ruling communist party.

Some Hong Kong's legal observers fear that the a of Law a pillar of prosperity is being eroded after the Briti Colony's hand over to China. They worry that after 1997, it can be swept away altogether in a tide of Chinese - style cronyism influence peddling and disorder.

The trend is worrisome, not only to those concerned with individual liberties but also to many who have stake in Hong Kong's economic future. "If that crucial ingredient, the rule of law were to be eroded in the future, it would certainly and serious

undermine Hong Kong's competitiveness and attractiveness international business", Warns Thomas Gorman, Chairman of II American Chamber of Commerce in Hong Kong.²

"By the year 2010, Hong Kong may be no differ from any other Chinese city", adds Marc Faber, a leading Hong Kong Business consultant. "It could be rather chaotic".³ Though Hong Kong's legal system isn't perfect, but its courts inspite that are settling commercial disputes since decades. That means business foes are not haunted for kidnapping, or other dubious detentions of the type that have grown common in China.

According to the reports many of the small businessmen from Hong Kong have been arrested and detained for months 1 China, on suspicion of involvement in business fraud. Where as in Hong Kong the suspect is never detained for more than twenty-four hours without any charge. They have prompt access to the lawyers and relatives, and chance to get bail.

It clearly indicates that Beijing's one country two systems formula will apply only on economics. The legal system with the rest will be in danger of moving in two directive of becoming "One Country".

Britain and China over the shape of Hong Kong's legal system are finding no permanent solution. Though, four years back London and Beijing agreed to create five Judge Supreme court, which will be court of final appeal in Hong Kong, the Chief Justice would be Chinese and one foreign Judge from the panel. But China has with held its approval of the actual legislation.

The character of the Hong Kong's Legal System is sure to change after 1997. The American and other foreign law firms have rushed to capitalize on the China trade. Approximately the ratio of Chinese lawyers is three out of four since half a decade and the experts have began translating their laws into Chinese and also use of Chinese in all their courses. Hong Kong has begin to translate its laws into Chinese and to prepare for the use of Chinese in all courses. At the same time, Hong Kong must preserve the western essence of its legal system, if it will have

to remain as an international city.

The Director of China's Hong Kong and Macau Affairs Office, Lu Ping, warns that all judges will have to be reappointed after 1977, such a change could pose a real threat to judicial independence.⁴

In barrister Martin Lee's view, as a head of the democratic party that, "China works to pick the right people to hold judicial posts" - that is, to install those who make politically correct decisions, that is the last thing we want to see, the judges then will have no security of tenure.⁵

What is behind this paradoxical trend? One factor is uneasiness over China's principle that individual authority takes precedence over the law. Hong Kong has a constitutional government based on British law. Freedom of expression is a prerequisite for the maintenance of Hong Kong's present prosperity. but in a society ruled by the principle "I am the Law" the law is at the mercy of individual interpretation.

LEGISLATURE

Barrister Martin Lee omens that Beijing might want to turn Hong Kong's legislature into a rubber stamp which can repeal existing laws, including the Bill of Rights. Then, he says the Chief Executive, who will not be directly elected, might want a Singapore style Internal Security Act (ISA) which allows indefinite detention without trial. At least in Singapore the government is elected by the people and its (ISA) is endorsed by an elected parliament. But our (Legco) will be popularly elected only in part. The Chief Executive will be chosen by an un-elected election committee who will be answerable to Beijing, not to the legislature or the people's rule.⁷

Mr. Lee worries that judicial standards will be undermine after 1997. As there are so many loopholes in the legal system that China can use to unravel the rule of Law in Hong Kong. He disapprove the alacrity with which businessmen tango with communists. In his view corruption and erosion of legal integrity

will eventually hurt them. But disintegrating they will keep quite because they see more business opportunities and profits. A time will come when they realize somebody must do same thing or this disease will destroy the society.⁸

The legislature's influence will definitely decline. Hong Kong will run by the Chief executive. There will be no more parliamentary system. The British did it for their own reasons and give a high profile to the (Legco). The basic law is quite clear.

The legislature will have a say on finances but it won't have veto powers and other power same as British House of Commons, or US Congress possesses.

Answering a question in an interview regarding the China's threat to scrap Hong Kong's Government bodies, governor Chris Patten said:

"I don't deny that they as sovereign, can change it if they want, but they will have to explain that to the hundreds of thousands of people in Hong Kong who have taken part in elections in a calm, sensible and competent way".⁹

According to the Sino-British agreement, the Hong Kong System is to remain untouched for next 50 years after China takes over, but at the face of the territory's politics. It will change on any rate on any moment dramatically. China and Britain had agreed that 20 of the 60 legislators would be elected directly in September 1995. But China reacted furiously when Patten injected a measure of democracy into the selection of other 40. Beijing says it will create its own "Provisional Legislature" i.e. from 1997 until the next scheduled election in 1999. Hong Kong's "Democratic Party" which swept the 1991 election is of the firm belief that Beijing will use other methods to push the party to the sideline and will introduce the repressive laws it wishes. Therefore, Beijing will introduce new form of colonialism in Hong Kong.

CORRUPTION: A MATTER OF GRAVE CONCERN

The corruption in Chinese politics, economic and administrative system is main area of grave concern for Hong Kong's politician's, businessmen, and administration. The red-tapism and inefficiency is an additional problem to do business in China as there is wide spread corruption, red-tape and inefficiency.

But, even then the small businessmen is rushing to China, as profit margins are very high. The Chinese top leaders have realized this problem and that evolves mid-level officials.

The Chinese corruption has migrated to Hong Kong as the transition period is approaching fast. In Barrister Martin Lee's view "the illegal migration after Tiananmen incident, business with Guangdong province of Mainland China and Children of Chinese leaders operating freely in Hong Kong had given a boost to corruption. He further explained that presently we have a law, but after 1997 I am afraid we won't have any tools to rein these."¹⁰

In 1993, reported cases of all types jumped by 44% over the year before, but reports of business corruption rose by 52%. According to the report of Independent Commission against Corruption (ICAC), the 1 997 is nourishing and fast buck is expected. The China factor will articulate and grow more. Some 62% of respondents to an ICAC poll said corruption would worsen after the handover, up from 37% a year earlier." After 1997, there is no guarantee that the media will enjoy the same degree of freedom as they do now. The biggest concerned towards the possible loss of freedom, erosion of rule of law and a rise in corruption.

The Hong Kong businessmen pick up bad habits from Southern China and bring them back to Hong Kong. Hong Kong have a unique society, which took many years to develop, they hate corruption and feel uneasy in this regard. Corruption in both ways is obvious, every businessman in Hong Kong is not honest, some of them must be instigators. The ICAC is working with mainland counterparts, especially in Guangdong province to cut

down unnecessary cross border dealings. The ICAC Guangdong authorities decided to publish a guide out-lining corruption laws and provide expert opinion to the businessmen from both the places.

According to an August 1995 survey conducted by Michael De Golyer, a Political Science Professor at Hong Kong Baptist University, about three quarters of Hong Kong population expects that corruption become endemic. The colony's anticorruption bureau handled 3,600 reports of graft in 1994, 40% involving the Hong Kong Government and growing proportion attributed to cross border trade.¹² According to Sir, Sze-Yuen Chung, an advisor to Beijing, said China would create a "Shadow Government" Six months ahead of the handover".¹³ Hong Kong has confirmed from Beijing that the team of Peoples Liberation Army will be stationed in the colony before the change-over to' prepare the entry of the future 8,000 troops garrison. Probably China's leadership does not trust any thing about Hong Kong. A Beijing appointed body (PWC) is set up to navigate the transition to Chinese rule.

The Hong Kong's mini-constitution will be active after 1979, transition, and work as a shield to keep the Hong Kong's Legal System un-changed for next fifty years seems to be proved ineffective. New faces will run the territory amid new political realities. It is definite that the change will challenge Hong Kong's track record of stability, electronic dynamism and political freedom.

RISKY BUSINESS

If you are a shrewd you can make money in China and in Hong Kong. So the businessmen never miss the opportunities and always build personal connections and finding their way around the mainland's complicated bureaucracy.

But they feel insecure and mostly get themselves in serious troubles in China, as it is confirmed from the Hong Kong Government report. Since 1991, 18 people have been disappeared and many more were detained for months without any charge. So much so, many more cases of detention probably haven't been

reported to Hong Kong authorities.

The best-known case is of James-Peng a Chinese - Australian businessmen who is under detention from October 1993, his wife Lina, tried every thing hard for release of her husband. She went to public, politicians, official authorities for release of her husband but nothing turned in positive.¹⁴

There is another case of a Hong Kong businessman who was detained in 1991 on false charges and was freed after an intervention by British Foreign Ministry with part payment of total U.S. dollar (118,000). While such diplomatic interventions have helped and obtained the release of some Hong Kong residents. So occasionally there is not much the Hong Kong government can do. As there is no formal place to raise counsellor level request to China. The parents of detainees mostly seek the help from Xinnua News Agency, which is China's defecto embassy in Hong Kong. John Kamm a human lobbyist helped and secured many detainees in China with his personal efforts. Every businessmen from Hong Kong is not innocent victim, as where there is a smoke, there is a fire. These business people sometimes take an advantage of the Chinese officials simplicity.

In Kamm's opinion that nothing justifies indefinite detention without charge. "Whether or not an individual is a shady character is an entirely subjective decision and nothing to do with the fact that the person should enjoy some due process under internationally accepted law".¹⁵

The equal treatment under the Chinese legal system is not guaranteed, neither are china's courts reliable purveyors of justice. A weak central government can no longer effectively protect investors of any nationality. If some one represents a big company like Boeing or General Motors Company, it's okay to go and do business, but if you are small firm or a lone individual don't go. Doing business with China is like dancing with wolves.

UNITED STATES POLICY

The United States of America is the third largest investor in Hong Kong after Japan and China. Americans have nearly dollar 11 billion of assets and business. Hong Kong is the base of 31,000 Americans and 1,000 American firms. Having such an extensive local interests, the US has kept a close diplomatic eye on Hong Kong as handover to China approaches.

Looking to the Chinese sensitivity over Hong Kong's sovereignty issues, the U.S. was careful in commenting on its transition in 1997. Washington was very much interested in Hong Kong's future, but has usually kept herself away due to stormy Sino-British negotiations.

But U.S. attitude is now changing slowly, as 1997 is looming nearer, the U.S. seems willing to speak out on China's obligation to keep its promises on Hong Kong. The change is pressure from the Republican congress members. The congressmen detailed their worries in recent speeches focusing concern on Hong Kong's judicial independence, press freedom and political continuity.

The Clinton administration has set up a special interagency task force on Hong Kong. The State Department is to issue its biannual report in March 1996, a year earlier than scheduled. The U.S. policy has recently changed and became more provocative one. The U.S. government is considering what policies it should take before 1997. Some U.S. politicians are of the opinion that Hong Kong should have a high profile in U.S. foreign policy.

In May 1995, Richard Muller, the U.S. Consul General in Hong Kong, delivered an unusually strong speech on countries political autonomy, the rule of Law and democratic institutions. These fundamentals "are not to be impaired", said Muller. He meant on further, to say that, The U.S Government is carefully watching Developments on all these fronts.¹⁶

Muller promised U.S. support for Hong Kong's participation in international institutions and to maintain bilateral

agreements such as extradition. "But in order to do so, Hong Kong after 1997 must be allowed to retain a genuine degree of autonomy. Hong Kong's leaders and institutions must make their own decisions",⁷ he warned.

In June 1995, the American Senate held hearing on Hong Kong, the first in recent memory, Senator Craig Thomas, who chaired the meeting, echoed Muller's concerns. In his view that "the China's verbal assurance that everything is fine shows a lack of substantive assurance, How well China implement those [Hong Kong] agreements will demonstrate their dependability as they seek to accede to the World Trade Organization and other similar organizations, he told the senators sub-committee on East Asia and Pacific Affairs. It is better to say something now otherwise it will be too late."¹⁸

China has taken a serious note of the latest U.S. moves as interference in its domestic affairs, but has not threatened with retaliation any (retaliatory) steps. Hong Kong issue can irritate both and might create new troubles in their relations, as bilateral relationship is already complicated enough on Taiwan's issue particularly President Lee Teng - Hui's visit to U.S.A. dragging Hong Kong into this relationship will not benefit the territories transaction in any way.

CONCLUSION

At midnight of 30th June 1997, one of the world's economic power house will be absorbed by the world's biggest developing country. Probably everything will be at stake: the worlds seventh biggest stock market; third international financial centre after New York and London; and six and half million people. So it is very difficult to speculate now what will happen when China takes over in 1997. But islands future depends to a large extent on its economic performance and its less interference in China's system, otherwise whatever autonomy they have presently will vanish. The world has not yet forgotten the Peoples Liberation Army's crackdown of Tiananmen Square of 1989.

If China opens up and establishes its own links with the rest of the world, Hong Kong will be very useful in many ways to China in time to come. During last fifty years of British period, the Hong Kong people have become very entrepreneurial, adaptable and flexible. The mainland China had been closed for a long time to outside world, it may take a decade or two to attain the level of capitalist world and current Hong Kong's level of expertise. By then, the Hong Kong will have to advance more and China will still need it.

If the things go smoothly the territory will impose its culture on Southern China and later on the whole country. The ethos is efficiency, punctuality and incorruptibility. Hong Kong might be the key commercial city of China, service capital and window of the world. They have infrastructure and people of software. China needs their expertise to become an economic giant. The Soviet-Russian socialist system and the block torn in pieces because their common men had no link with outside world, where as the Chinese socialist system is still surviving due to its overseas Chinese outside China. The present liberal economic policy that China has adopted is because of expert advise that China have got from his own people living in capitalist system. The Hong Kong Chinese will play big role to make transition very smooth and peaceful. Therefore Hong Kong's role will expand rather than diminish if China maintains a little gap of free will as other Asian Centre such as Singapore has.

After transition the China must take care of two things, first law and order situation, second rent and property prices which are almost twice as high as New York, which can harm the Hong Kong business and that will probably be a major dumper on territory's ambitions.

Though American's prefer Hong Kong but they are not satisfied with China's policies and Japanese and Europeans are also quite excited by Chinese. If Americans, Europeans and Japanese won't get any favour from China they will watch flew frontiers like Thailand Vietnam and Indonesia etc.

If Beijing likes, it can make Hong Kong even more prosperous than it is under British rule. There is an element of competition and Taiwan factor as well, if China can prove that, "One country two systems" can work it might convince Taiwanese that "One country three systems" is viable too.

REFERENCES

1. Mariko Tanigaki, "Toward 1997: The Future of Hong Kong," Japan Review of International Affairs, The Japan Institute of International Affairs, Vol:8, No.3 Summer 1994, p.235.
2. Lonise Do Rosario, "Hong Kong: Justice Under Siege," Far Eastern Economic Review, Vol: 158, No.4, January 16, 1995, p.18.
3. Ibid; p.18.
4. Ibid; p.19.
5. Assef Shameen, "Hong Kong in 1988," Asia week, Vol:20, No.25, June 22, 1995, p.36.
6. Steven Strassar, "Stay in Itself," News week Vol. LXXM No.9, May 8, 1995, p.9.
7. Assef Shameen, op.cit; p.41.
8. Assef Shameen, op.cit; p.42.
9. Bruce Gilley, "Back on Track," Far Eastern Economic Review, Vol:158, No.42, October 19, 1995; p.7.
10. Assef Shameen, op.cit, p.42.

11. Bruce Gilley, "Red Flag Over Hong Kong," Far Eastern Economic Review, Vol. 158, No.49, December 1995, p.74.
12. Ibid, p.76.
13. Ibid; p.76.
14. Louise Do Rosario, op.cit; p.18.
15. Hong Kong, "Money & Politics" Asia week, Vol:20 No.49, December 8, 1994; p.22.
16. Louise Do Rosario, "Promises to Keep," Far Eastern Economic Review, Vol: 158, No.27, July 6, 1995, p.26.
17. Louise Do Rosario, Promises to Keep, op.cit, p.26.
18. Tony Clifton, "Shadow of the Dragon", News week, Vol:CXXVI, No.26, December 25, 1995; p.62.