

THE CHINESE UNIVERSITY OF HONG KONG

BUILDING MACAU'S AUTONOMY UNDER CHINA'S RULE

A THESIS SUBMITTED TO THE  
GRADUATE SCHOOL  
FACULTY OF SOCIAL SCIENCES  
DIVISION OF GOVERNMENT AND PUBLIC ADMINISTRATION  
IN PARTIAL FULFILMENT OF THE REQUIREMENTS  
FOR THE DEGREE OF MASTER OF PHILOSOPHY

BY

SUSAN J. HENDERS

HONG KONG  
JUNE 1991

325550

thesis  
DS  
796  
M2H4



## ABSTRACT

### BUILDING MACAU'S AUTONOMY UNDER CHINA'S RULE

This thesis proposes a comparative analytical framework for understanding territorial autonomy arrangements in general. It then uses the framework to dissect the People's Republic of China's (PRC) "one country, two systems" territorial autonomy policy as it will be applied to Portuguese-administered Macau when the enclave returns to China's rule on 20 December 1999. British-controlled Hong Kong, Macau's neighbour, will return to Chinese sovereignty in 1997 under a similar "one country, two systems" formula.

The analytical framework proposed draws from international law and political science studies of several past and current autonomy systems including the Aland Islands (Finland), Greenland (Denmark), South Tyrol (Italy), southern Sudan (Sudan) and Eritrea (Ethiopia). It argues that autonomy systems are dynamic processes of ongoing political bargaining among central and local actors in which four key variables in the autonomous territory encourage success: (1) dual political identity; (2) avoidance of an executive accountable to both central authorities and the local electorate; (3) an independent, impartial judiciary and other central-local dispute settlement mechanisms acceptable to key parties; and (4) effective external support. Durable autonomy processes do not freeze the balance of power and jurisdiction at some perceived optimal level, but instead channel ongoing central-local disputes into institutions and processes that encourage habits of mutual accommodation and tolerance.

The thesis examines these variables in Macau, in particular as they are affected by the transition-period policies of the Portuguese, Macau and PRC

authorities. It concludes that the enclave is ill prepared to survive as a distinct liberal and autonomous territory within the PRC after 1999. The enclave's history of feeble Portuguese authority and correspondingly strong mainland Chinese influence, its dearth of local people in the senior government administration and the legal system, its colonial government's traditional insularity and noninterventionist policies and its economic dependence on Hong Kong have all contributed to this weakness.

Nevertheless, lasting autonomy arrangements are not always born intact. They can be built over time. The reforms undertaken by the Portuguese authorities in Macau before 1999 have the potential to help make Macau a more internally and externally effective community. If the post-1999 Macau government and the Beijing regime are flexible enough to nurture and continue these reforms, a viable autonomy arrangement could emerge in which Macau's liberal institutions and values will have a better chance of survival. Such a process requires that the enclave's Basic Law, the mini constitution now being drafted for post-1999 Macau, sufficiently takes into account Macau's special problems.



## TABLE OF CONTENTS

Acknowledgements

Introduction 1

### PART I: THEORETICAL AND ANALYTICAL CONTEXT

Chapter 1: Evolving Concepts of Territorial Autonomy 12

Chapter 2: Towards a Dynamic Analytical Framework for Autonomy 30

### PART II: BUILDING AUTONOMY FOR MACAU

Chapter 3: Macau and its Autonomy Process 61

Chapter 4: Community Identity 87

Chapter 5: Political Institutions and Political Participation 115

Chapter 6: The Legal System 138

Chapter 7: External Support 173

Chapter 8: Conclusion 209

Bibliography 215

Appendix: List of Interviewees 227

## Acknowledgements

I owe a great debt to those people and organisations around the world and in Macau and Hong Kong whose efforts made the research for this thesis possible. They include the Hong Kong and Canadian governments, which provided generous financial support through the Commonwealth Scholarship and Fellowship Plan; my spouse, Donald Pittis, whose sense of adventure and unending support and inspiration encouraged me to pursue postgraduate studies in Hong Kong and ensured I enjoyed the experience; my thesis supervisor Dr. Michael C. Davis, who gave generously of his time, enthusiasm and ideas; Prof. Byron S.J. Weng, who first introduced me to international law; and the members of my thesis examination committee Dr. Kuang-sheng Liao and Dr. Wen-ching Ieng, whose comments and suggestions were both perceptive and helpful.

Many people took the trouble to provide me with information and send me materials unavailable in Hong Kong. They include Lars Ingmar Johansson and Lilian Norring-Ohman in Aland, Dr. Steve Hoadley in New Zealand, Fr. Teotonio R. de Souza in India and Prof. Frederik Harhoff in Denmark, as well as Ana Soares, Prof. J.A. Oliveira Rocha, Christina Almeida, Eduardo Cabrita, Prof. Paula Escarameia, Harald Bruning, Prof. Jorge Silveira, Francisco Teodosio Jacinto and Rui Rocha in Macau. Thank you also to the many people in Macau who consented to be interviewed and to the University of East Asia for its support.

Finally, I am grateful to the faculty, students and staff of the Department of Government and Public Administration and the broader Chinese University of Hong Kong community, who went out of their way to welcome and help me during my two years in Hong Kong.

## INTRODUCTION

When the fire crackers explode at midnight on 20 December 1999, Portuguese administered Macau will formally take its place in what is often billed as one of the unique experiments of the dawning century. Known as "one country, two systems," this ambitious policy of the People's Republic of China ostensibly aims to incorporate capitalist Macau--a nearly 450-year-old Portuguese territory and the oldest permanent European settlement in East Asia--into communist China without damaging the fundamental values of either system.<sup>1</sup> On 1 July 1997, a little less than two and one half years earlier, China will apply the same policy to Hong Kong, the better known British territory located 60 kilometres northeast of Macau across the Pearl River estuary.

Macau, the subject of this study, is the last of what was once an extensive network of Portuguese-administered overseas territories. Under the Sino-Portuguese Joint Declaration of 1987, it will be the last of the Chinese coastal trading ports under foreign influence to return to Chinese administration. The "one country, two systems" formula embodied in the declaration is supposed to resolve China's long standing desire to rid itself of the last vestiges of European imperialism while providing for the continuation of Macau's current social and economic system and way of life. Modelled on the Sino-British Joint Declaration, which engineers the return of Hong Kong to China, the Sino-Portuguese agreement promises Macau's predominantly Cantonese population "a high degree of autonomy" for fifty years including the right to retain its capitalist economy, existing

---

1. The terms 'China' and 'Chinese' in this thesis refer to the People's Republic of China (PRC) unless otherwise stated. There are two ways to spell Macau: 'Macao' and 'Macau'. The latter form is used throughout this thesis.

liberal political freedoms and continental European-style civil law system. The culture and language of the territory's small Portuguese-Asian minority, the Macanese, are protected for the same time period. During the half century after 1999, Macau people are to have a government made up of local people, among whom Beijing will appoint a chief executive and maintain a considerable degree of formal political control in other ways. Macau is to remain a separate customs territory and have significant latitude for international participation in economic and cultural matters, although foreign affairs and defence authority will remain in Beijing's hands.<sup>2</sup> Chinese officials hope the success of these autonomy arrangements in Macau and Hong Kong will entice Taiwan into reuniting with the mainland under a similar formula.

Hong Kong's fate under the "one country, two systems" plan has already attracted a great deal of media and scholarly attention. Comparatively few analysts have studied Macau, despite the peculiar political, cultural and economic characteristics which give the enclave a distinctive place in China's autonomy experiment. With fewer than seventeen square kilometres of land (including a peninsula and two islands), only about 500,000 people and virtually no natural resources, Macau is a tiny territory and economy. Its particular pattern of European and Asian cultural interaction has produced a distinctive Eurasian minority. The traditionally insular nature of its Portuguese administration, the remarkable growth in recent years of its gambling and light-industry based economy after decades of stagnation and its unique history of Portuguese and Chinese political accommodation give

---

2. Declaração Conjunta do Governo da República Portuguesa e do Governo da República Popular da China sobre a Questão de Macau, 2 (Joint Declaration of the Government of the Republic of Portugal and the Government of the People's Republic of China on the Question of Macau, hereafter Macau JD); An English version was released but has no official status.



Macau's future under "one country, two systems" a significance exceeding the enclave's tiny physical and economic size.

Although events in the enclave are largely determined by what happens in Hong Kong, political upheavals in Macau have sometimes destabilised Hong Kong as well. Thus, the future application of "one country, two systems" to Macau could have an important effect on its successful application to Hong Kong. Furthermore, Macau's economic dependence on Hong Kong and China and political dependence on Portugal and China makes it a useful case study of the problems accompanying attempts to make highly dependent territories politically autonomous. Finally, despite its geographic proximity to Hong Kong, Macau's political dynamics remain obscure. With the exception of a handful of recent studies, analysis has tended to focus on stereotyped views of power relationships in the enclave that have seldom been subject to more serious academic treatment. With this thesis, I hope to make a small contribution to our deeper knowledge of the community.

Much of the academic attention surrounding "one country, two systems" has focused on the dangerous clash of ideologies built into the experiment, particularly on the nature of the Chinese Communist regime and its true intentions towards Macau, Hong Kong and, ultimately, Taiwan. There are very sound reasons to worry. Many of the principles of Chinese communism contradict values at the centre of the Macau and Hong Kong ways of life in fundamental ways, whether we juxtapose the contradictory principles behind liberal and communist visions of society and government, capitalist and command economies or legal cultures based on the rule of law and those

based on the rule of policy.<sup>3</sup> The ultimate outcome of such a pairing could well be the weaker, Macau, succumbing to the more powerful, China. The risk is especially great if Chinese leaders intend the Joint Declaration's promises merely as expedients to forestall the collapse of Macau and Hong Kong in order to glean economic benefits pending the eventual absorption of the two territories into China.<sup>4</sup> However, focusing on these issues alone can polarise arguments into a battle between pro-China and anti-China factions, people who argue China is trustworthy and those who do not, those who say China will succeed in keeping its hands off the two communities and those who say its highly-centralised, Communist party-dominated political system will force Beijing to intervene, even against its own better judgement.

In this thesis, I instead look at "one country, two systems" from a perspective which stresses what it has in common with other territorial autonomy arrangements around the world. A glance at virtually any day's newspaper reveals that territorial autonomy systems of various sorts are common methods for addressing conflicts involving culturally, economically or otherwise distinct communities, whether the Tamils in Sri Lanka or the Palestinians in the Israeli-occupied territories. It is in this context that the uniqueness of Macau's predicament diminishes and we can apply the lessons of other experiments with autonomy to the future Macau SAR.

---

3. See, for example, Edward J. Epstein, "China and Hong Kong: Law, Ideology, and the Future Interaction of the Legal Systems," in Raymond Wacks, ed., The Future of the Law in Hong Kong (Hong Kong: Oxford University Press), 1989, pp. 37-75.

4. Such arguments have been made by, *inter alia*, Byron S.J. Weng, "The Hong Kong Model of 'One Country, Two Systems': Promises and Problems," in Peter Wesley-Smith and Albert H.Y. Chen, eds., The Basic Law and Hong Kong's Future (Hong Kong, Singapore, Malaysia: Butterworths, 1988), p. 89; David Clark, "Taking the Basic Law Seriously?" Asian Journal of Public Administration 12 (Dec. 1990): 257.



### Defining Autonomy

The term 'autonomy,' when used to describe such territorial communities, generally implies that:

for important political or economic reasons a particular area will remain within the territorial jurisdiction of another political entity but will possess political freedom to regulate certain of its own affairs without any interference by that entity. Granting autonomy to an area allows the people inhabiting it to exercise direct control over important affairs of special concern to them, while allowing the larger entity, which retains certain powers over that area, to exercise those powers which are in the common interest of both entities.<sup>5</sup>

In terms of ideal constitutional types, the forms of autonomy used have varied. On one end of the spectrum is associated state status, where "a smaller state establishes a durable link with a much larger state surrendering some degree of its independence in order to accrue certain political or economic benefits"<sup>6</sup> while retaining the legal authority to opt out of the arrangement. Federalism usually involves two or more states giving up some governmental authority to a common general government while retaining final authority in other policy areas under a constitutional agreement which cannot be unilaterally amended by any party and which requires participation by the subunits in general government affairs.<sup>7</sup> Other autonomy arrangements involve the central governments of unitary political systems devolving administrative, legislative, executive or

---

5. Louis B. Sohn, "Models of Autonomy Within the United Nations Framework," in Yoram Dinstein, ed., Models of Autonomy (New Brunswick, U.S.A. and London: Transaction Books, 1980), p. 5.

6. Michael C. Davis, Constitutional Confrontation in Hong Kong. Issues and Implications of the Basic Law (Basingstoke and London: Macmillan Press, 1989), p. 132.

7. See, for example, David Miller, ed., The Blackwell Encyclopaedia of Political Thought (Oxford: Basil Blackwell, 1987), p. 151; Rudolf Bernhardt, "Federalism and Autonomy," in Dinstein, Models of Autonomy, pp. 24-26; Davis, Constitutional Confrontation, p. 133.

judicial authority to a regional or local government. In theory, the central government generally retains the constitutional authority to unilaterally withdraw this power of self-government from the autonomous region. Although association, federalism and regional devolution have different historical origins and divergent constitutional philosophies, arrangements bearing their names have been used when neither full incorporation into a single entity nor complete independence are desirable or possible solutions to disputes involving territorial communities which regard themselves as culturally or otherwise distinct.<sup>8</sup>

Do such arrangements work? Under what circumstances is territorial autonomy a way to achieve such often expressed goals as maintaining peace and order, protecting and cultivating the distinct identity of culturally or socio-economically discrete communities, enhancing human rights and expanding the capacity of territorial communities to define themselves and participate in defining the global order? The emphasis on maintaining stability and prosperity in the Sino-Portuguese agreement suggest that at least some of these goals are applicable to Macau under "one country, two systems," a status that has been characterised as somewhere between an associated state and an autonomous region.<sup>9</sup> Under what circumstances can territorial autonomy help us reach them and what are the constructive elements of such autonomy? Furthermore, what is the role of the larger international community in determining failure or success?

In this thesis, I attempt to help answer these difficult questions by

---

8. Bernhardt says there are fundamental differences between autonomy and federalism but concedes that "autonomy describes the limits of State interference, on the one hand, and the autonomous determination and regulation of certain affairs by specific institutions on the other. In this context, there are some similarities between autonomy and federalism" (Bernhardt, "Federalism and Autonomy," pp. 24-26).

9. Davis, Constitutional Confrontation in Hong Kong, p. 131.

proposing an analytical framework for dissecting autonomy arrangements drawn from a small comparative study of current and past experiments with autonomy. Autonomy systems are not static arrangements but highly dynamic processes driven by the continuous jockeying for power between central and local political actors. Therefore, our goal cannot realistically be to freeze the powers of the central Chinese and local Macau SAR authorities at some perceived optimum level. Nor can we build a wall between the two communities. Rather, we must find ways to channel their ongoing conflict into peaceful institutions and processes with the potential to build up patterns of mutual accommodation, cooperation and trust.

#### Scope and Limitations

The experience of other autonomous territories suggests that building a successful autonomy arrangement for Macau requires addressing several specific issues which are characteristic problems for such arrangements. The four key issues I concentrate on are: community political and cultural identity, the subjective dimension of autonomy; representative political institutions, in particular the controversial roles of the chief executive and of direct elections; the legal system, potentially a place to settle central-local disputes and secure human rights in the autonomous entity; and external support, the role of outside resources in building viable internal autonomy. After looking at the role of these variables in other autonomy arrangements, I spend the bulk of this thesis considering how each could help or hinder Macau's autonomy under "one country, two systems."

Many of the problems likely to confront the Macau SAR are inherent in all autonomy arrangements, whether or not they involve clashes of ideology.

The contradictions between Chinese Communism and Macau-style liberal capitalism are by no means superfluous considerations. However, to understand their importance we must also understand the role of other political problems characteristic of autonomy systems. Furthermore, by focusing on the problems Macau will share with other autonomous territories, we can go beyond measuring the adequacy of the steps already taken by the Portuguese, Macau and Chinese governments as they prepare for 1999 to also enrich our understanding of evolving notions of territorial autonomy in international law. Thus, my research focuses on both the value of Macau's experience as a distinct community within China and on the broader role of autonomy in world order.

The four variables I have chosen to study are by no means the only ones shaping the development of Macau's autonomy arrangements. Nor do they constitute a magic formula for the success of the "one country, two systems" scheme. My claim is merely that these factors have been influential in other autonomy arrangements and are likely to have considerable affect on Macau after its return to PRC administration in 1999. Moreover, because of the similarity between the autonomy systems planned for Macau and Hong Kong, they are also of importance to Macau's British-administered neighbour.

My selection of outside autonomy experiments of relevance to this study have been limited by both substantive and practical factors. There is an increasingly strong case to be made that all autonomy arrangements involving distinct communities are of legitimate interest to international law. However, to simplify comparisons with Macau, I have limited my study to autonomy processes that have been of some clearly definable international legal concern, whether the communities created are labelled



federations, associated states or commonwealths, autonomous regions or special administrative regions. I have also limited my main examples to those autonomy arrangements about which at least two reliable, analytical studies were available. Unfortunately, information on autonomy arrangements is rather spotty and much of what exists is limited to descriptions of the historical origins of the arrangements and textual analysis of their constitutional features. Few studies focus in any depth on how the arrangements actually work or worked in practice, why they survived or fell apart and to what extent they achieved the goals of the parties involved. Almost no analytical, comparative studies of autonomy arrangements exist at all. Therefore, the sample group of cases that resulted is necessarily small and far from representative of all extant and past autonomy arrangements: My observations must be considered suggestive rather than conclusive. Nevertheless, I hope they will encourage others to attempt more comparative studies of autonomy arrangements.

My choice of research priorities and approach reflects my own language and time limitations as well as the paucity of both quantitative and qualitative secondary research materials on Macau. To take full advantage of Portuguese-language materials and Portuguese-speaking informants largely unexplored in English-language scholarship on Macau, my analysis focuses primarily on Portuguese and Macau government policies during the transition period that began with the signing of the Sino-Portuguese Joint Declaration

and ended in early March 1991.<sup>10</sup> It deals in only a small way with PRC policies towards the enclave. Its treatment of the views of local Macau and expatriate political elites is also limited to a few in depth interviews. These restrictions should in no way be construed as a rejection of the important influence broader local elite and general public views could have on Macau's future autonomy. Nor do I wish to suggest China's historically deep influence in the territory can in any way be ignored.

### Organisation

I have organised my presentation in the following way. The two chapters in part I lay a foundation by dealing with the general theoretical and analytical dimensions of territorial autonomy arrangements. In chapter 1, I look at the major approaches international legal and other scholars have used to understand autonomy arrangements. In chapter 2, I draw from the work of several of these scholars to suggest a framework for analysing the dynamics of autonomy arrangements and the main variables influencing their evolution. The framework focuses on the common experiences of several autonomy systems, in particular the Åland Islands (Finland), Greenland (Denmark), South Tyrol (Italy), southern Sudan (Sudan) and Eritrea (Ethiopia). Part II applies this framework to Macau to try to anticipate some of the problems the future SAR is likely to encounter. Chapter 3 introduces key aspects of Macau's history, society and political

---

10. A list of interviewees is provided in the appendix. The principal officials I interviewed were members of the cabinet of former Governor Carlos Melancia. Melancia resigned in September 1990 after being implicated in a bribery scandal, but his cabinet remained in place and its Adjunct Secretary for Economic Affairs, Francisco Nabo, headed the Macau government as its acting governor until the appointment of Vasco Rocha Vieira as the enclave's 127th governor in April 1991. Vieira arrived in Macau on 10 May 1991 and subsequently named a new cabinet ("New cabinet for Macau," *Hongkong Standard*, 17 May 1991 [hereafter HKS]).



characteristics and the emerging autonomy process in the enclave. Subsequent chapters look in detail at four variables that will influence that process: Macau's community identity (chapter 4); political institutions and political participation (chapter 5); legal system (chapter 6); and external support (chapter 7).

PART I: THEORETICAL AND ANALYTICAL CONTEXT

## CHAPTER 1

## EVOLVING CONCEPTS OF TERRITORIAL AUTONOMY

A claim for autonomy is an expression of a desire "by some segment of a larger society which is currently organized into a state.... to be different and to be left alone; to preserve, protect, and promote values which are beyond the legitimate reach of the rest of society."<sup>1</sup>

International law specialists and other scholars have not tackled the study of such autonomy claims in a uniform way. Two major views are discernable, which I loosely group into traditional and nontraditional approaches according to how the scholars understand the evolving world order, in particular such concepts as statehood and sovereignty. The discussion below focuses on representative scholars from both traditional and nontraditional approaches, then looks at how PRC scholars and officials have viewed autonomy, especially in relation to the "one country, two systems" policy articulated for Macau. It argues that "one country, two systems" has roots in the assumptions of both the traditional and nontraditional approaches.

There is an increasing tendency for scholars using nontraditional approaches to see a wide variety of autonomy arrangements as contentious but important tools, recognised in international law, for securing peace and stability and the human rights of discrete communities without destroying the sovereignty of existing states. Several authors have turned their attention to identifying the specific internal and external ingredients that make some autonomy ventures successful and the problems

---

1. Hurst Hannum, *Autonomy, Sovereignty and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1990), p. 4.

which cause others to break down. However, positivistic doctrines linger in the more traditional analyses of autonomy.

### Traditional Approaches

Traditional international legal approaches are rooted in a world view where only narrowly-defined territorial polities labelled 'states' have well recognised international personalities. Nonstate territorial communities such as territorially-based communities within states are seldom viewed as subjects of traditional international law. Unless part of colonial situations, they are seen as matters of exclusive concern to state authorities, whose jurisdiction is protected by well-established doctrines of sovereignty and the inviolability of territorial state boundaries. Thus, scholars using these approaches accept the traditional strict distinction between a state's exclusively domestic affairs and those few internal issues of legitimate concern to the international community. Distinctive territorial communities within states rarely fall into the latter category.

Consequently, many traditional international law textbooks do not mention autonomy at all. Those that do often begin and end with a search for a definition of the phenomenon, reflecting the positivistic view that law is a preexisting body of rules that can be found in the legal instruments. Concluding there is no term of art nor a generally accepted definition of autonomy in international law, the traditional studies relegate autonomy questions to the realm of domestic politics. In his study of the autonomy dispute that culminated in the American War of Independence, Friedlander's comments reveal the influence of this approach:

There is even reason to believe that autonomy as a legal norm really does not exist.... Those who seek to obtain a juridical definition of autonomy from international law treatise books will quest in vain....

Viewed from the perspective of international law, autonomy is therefore an artificial concept of dubious legal consequences.... it still is invoked by politicians, historians, and political analysts, though its twentieth-century historical role has only been that of a political instrumentality.<sup>2</sup>

If traditional studies make way for autonomous territories at all, it is only in exceptional cases where their status is supported by internationally binding legal instruments such as treaties. Even so, some of the studies acknowledge some international recognition and support for a few specific types of autonomy arrangements. To Bernhardt, for example, unless autonomy is secured by international treaty its granting or withdrawal remains a domestic sovereign decision falling outside international law "with the possible exception of internationally guaranteed human rights."<sup>3</sup> James Crawford emphasises the exceptional nature of those autonomous entities with international legal status:

Autonomous areas are regions of a State, usually possessing some ethnic or cultural distinctiveness, which have been granted separate powers of internal administration, to whatever degree, without being detached from the State of which they are part. For such status to be of present interest, it must be in some way internationally binding upon the central authorities. Given such guarantees, the local entity may have a certain status, although since that does not normally involve any foreign relations capacity, it is necessarily limited. Until a very advanced stage is reached in the progress towards self-government, such areas are not States.<sup>4</sup>

Grants of autonomy to non-self-governing territories, mandates and trusteeships under United Nations instruments concerning decolonisation and trusteeship are among those exceptional autonomy arrangements considered binding on central state authorities by traditional international legal

---

2. Robert Friedlander, "Autonomy and the Thirteen Colonies: Was the American Revolution Really Necessary?" in Dinstein, Models of Autonomy, pp. 136-7.

3. Emphasis added; Bernhardt, "Federalism and Autonomy," p. 26.

4. Emphasis added; James Crawford, The Creation of States in International Law (Oxford: Clarendon Press, 1979), pp. 211-212.



scholarship. Under UN General Assembly Resolution 1541, a non-self-governing territory can achieve "a full measure of self-government" by emerging as a sovereign independent state, free association with an independent state or integration into an independent state, providing it has the free and informed consent of the people involved.<sup>5</sup> Within these three categories there is broad, if not well defined scope for autonomy arrangements with some recognition in international law. Such arrangements often involve continuing UN oversight to protect the autonomy of the non-self-governing entity being linked to the independent state.<sup>6</sup>

The members of UN committees and the General Assembly have battled over the definition of internal self-government to be applied to non-self-governing territories undergoing decolonisation. Louis Sohn argues these fights stabilised the concept of internal self-government in UN practice in the early 1950s.<sup>7</sup> However, the international community has applied these self-government concepts to only a very limited number of territorial communities falling within the UN definition of non-self-governing territories. Macau and Hong Kong fall outside the definition according to UN practice. The organisation removed both territories from its list of non-self-governing territories in the early 1970s after pressure from the PRC, which claimed they were Chinese sovereign territory.<sup>8</sup> Except for rare

---

5. Michla Pomerance, Self-Determination in Law and Practice. The New Doctrine in the United Nations (The Hague: Martinus Nijhoff, 1982), pp. 10-11; Hannum, Autonomy, Sovereignty and Self-Determination, pp. 39-40.

6. S. Chowdhury, "The Status and Norms of Self-Determination in Contemporary International Law," in Frederick E. Snyder and Surikiart Sathirathai, eds., Third World Attitudes Toward International Law (Dordrecht: Martinus Nijhoff, 1967), p. 95; Sohn, "Models of Autonomy within the United Nations Framework," pp. 5-7.

7. Sohn, "Models of Autonomy Within the United Nations Framework," p. 34.

8. Jerome Alan Cohen and Hungdah Chiu, People's China and International Law. A Documentary Study, 2 vols. (Princeton, N.J.: Princeton University Press, 1974), 1: 912 at note 42.



cases like this, the types of territorial communities entitled to self-determination generally have been limited in practice to those involved in colonial relationships with Western governments.<sup>9</sup> Thus, these UN sanctioned routes to international recognition and support for autonomy arrangements have been of limited use in resolving other disputes involving distinct territorial communities.

### Nontraditional Approaches

Non-traditional approaches to autonomy in international law are shaped by the view that several interconnected global trends make traditional concepts like sovereignty and statehood and the dichotomy between external and domestic policies increasingly inadequate. Scholars falling into this group note the convergence between notions of autonomy and statehood. Growing ties of global interdependence are challenging the traditional principle that states are externally and internally autonomous. Meanwhile, distinctive substate territorial communities demand more autonomy and the right to international recognition and participation, but often settle for less than full independence.<sup>10</sup> These scholars regard the constitutive processes shaping international legal norms as increasingly inclusive; growing numbers of nonstate territorial and nonterritorial entities participate in defining world order and contemporary notions of human rights increasingly view the individual as a subject of international law. Externally, many states have surrendered some traditionally sovereign prerogatives to regional and other international groupings such as the

---

9. For a general discussion of self-determination in practice see Pomerance, Self-Determination in Law and Practice; Hannum, Autonomy, Sovereignty and Self-Determination, pp. 27-49.

10. Davis, Constitutional Confrontation, pp. 131-135.

European Community and the Canada-United States free trade agreement.<sup>11</sup>

Internally, central governments must "rely on territorial units for local initiative, responsibility and self rule."<sup>12</sup> These restrictions on the domestic and external policies of states make it more difficult for state authorities to convincingly claim their sovereignty is absolute.

Furthermore, the post-Second World War emergence of small, new states not fitting the traditional definition of sovereign statehood has helped dispel the traditional notion that all states are equal.<sup>13</sup>

Few, if any, of these nontraditional legal studies argue that states and the principles of sovereignty, independence and territorial integrity are uninfluential forces in the current world legal order. Rather, they claim that the patterns of participation and status in the international system are becoming more diverse and complex as traditional state actors are forced to recognise real changes in power distribution and confront actual problems. Within this more flexible order, they see broader opportunities for resolving the demands for autonomy made by nonstate communities. Although scholars who use nontraditional approaches diverge on some points, I have grouped them together because of their shared tendency to see a wide variety of autonomy arrangements as matters of both international and domestic legal concern. The traditional dichotomy between international and

---

11. *Ibid.*, p. 132.

12. Ivo D. Duchacek, *The Territorial Dimension of Politics Within, Among, and Across Nations* (Boulder and London: Westview Press, 1986), p. 66.

13. See Davis, *Constitutional Confrontation*, pp. 131-135; *idem*, "The Concept of Statehood and the Status of Taiwan," *Journal of Chinese Law* 4 (1990): 135; Lung-chu Chen and W.M. Reisman, "Who Owns Taiwan?: A Search for International Title," *Yale Law Journal* 8, no. 4 (March 1972): 601-603; W. Michael Reisman, *Puerto Rico and the International Process: New Roles in Association* (Washington, D.C.: American Society of International Law, 1975); Hurst Hannum and Richard B. Lillich, "The Concept of Autonomy in International Law," in Dinstein, *Models of Autonomy*, pp. 215-254; Ivo D. Duchacek, *Comparative Federalism: The Territorial Dimension of Politics* (New York: Holt, Rinehart and Winston, 1970), p. 356.

domestic affairs has diminished meaning in a world where porous territorial boundaries have made "intermestic" issues the norm.<sup>14</sup> As a result, these scholars are less hampered by the search for a precise legal definition that characterises traditional approaches and more oriented toward solving extant problems caused by competing demands for autonomy, self-determination and sovereignty. Several have begun identifying specific institutions, processes and subjective elements which contribute to the success or failure of autonomy arrangements.

Hurst Hannum and Richard B. Lillich's comparative study of twenty-two autonomy arrangements is typical of these nontraditional approaches. They note that traditional notions of independence and statehood seem unworkable as solutions to the problems of minority and non-self-governing communities. Meanwhile, as the twentieth century comes to a close, a wide diversity of autonomous entities and mushrooming number of claims to autonomy testify to the mounting importance of the principles of self-government and the right to participate in decisions directly affecting the local community.<sup>15</sup> To Hannum and Lillich, autonomy is "a relative term which describes the extent or degree of independence of a particular entity" and "a useful, if imprecise, concept within which flexible and unique political structures may be developed to respond to the increasingly complex interdependence of contemporary world politics."<sup>16</sup> Unencumbered by

---

14. Speech by Chief Emeka Anyaoku, Commonwealth Secretary-General, to the Commonwealth Press Union Conference, Hong Kong, 16 Oct. 1990; For similar arguments see Reisman, Puerto Rico and the International Process, pp. 39-42; Duchacek, Territorial Dimension of Politics, pp. 205-225.

15. Hannum and Lillich, "The Concept of Autonomy in International Law," pp. 253-254.

16. *Ibid.*, p. 218; The authors state that autonomy refers to "independence of action on the internal or domestic level ... but occasionally power to conclude international agreements concerning cultural or economic matters also may reside with the autonomous entity" (*ibid.*, pp. 216-218).



traditional definitions, they include a wide range of autonomy arrangements of some interest to international law in their study, including the constituent parts of federal governmental systems, associated states, internationalised territories and autonomous regions of unitary governmental systems. Hannum and Lillich's treatment concentrates on legal-constitutional frameworks for autonomy and compares their allocation of executive, legislative and judicial authority between the autonomous entity and the central government and the degree of international personality, police, security, land and natural resources, social service, financial and economic authority vested in the former.<sup>17</sup>

In his subsequent comparative study of twenty-seven autonomy arrangements, Hannum goes on to suggest a right to autonomy or "less-than-sovereign self-determination" is emerging:

A new principle of international law can be discerned in the interstices of contemporary definitions of sovereignty, self-determination, and the human rights of individuals and groups, which will support creative attempts to deal with conflicts over minority and majority rights before they escalate into civil wars and demands for secession. This right to autonomy recognises the right of minority and indigenous communities to exercise meaningful internal self-determination and control over their own affairs in a manner that is not inconsistent with the ultimate sovereignty--as that term is properly understood--of the state.<sup>18</sup>

Hannum also goes beyond traditional textual analyses of legal-constitutional autonomy frameworks to examine how these arrangements work in practice. His perceptive observations about the similarities among the operational problems confronted by different autonomy systems form an

---

17. *Ibid.*; The authors propose a formulation of the extensive minimum governmental powers a territory needs to be regarded as fully autonomous and self-governing (see *ibid.* pp. 250-251).

18. Hannum, *Autonomy*, pp. 473-474; For a similar argument see Davis, "The Concept of Statehood and the Status of Taiwan," pp. 152-157.

important part of my analysis in chapter 2. I supplement Hannum's comparative analysis with that of Yoram Dinstein, who concludes that autonomy arrangements are not static but transitional and dynamic, propelled by the push and pull of central-local political conflict and influenced by both outside geopolitical and internal psychological forces.<sup>19</sup>

Several scholars taking nontraditional approaches have focused on the role of international participation in securing the internal effectiveness of autonomous entities, confronting head on the state-centred traditional views of world order.<sup>20</sup> One of the broadest of these is Michael Reisman and Lung-chu Chen's study of the Chinese Communist-Nationalist dispute over Taiwan. Reisman and Chen conclude that Taiwan's status is not merely an internal Chinese affair, as both the Beijing and Taipei governments claim, but a matter of legitimate international concern for reasons that have implications for other disputes involving territorial communities and claims of autonomy, sovereignty and self-determination. They say the Taiwan case is inclusive, or of legitimate international concern, because it involves: the interpretation of a treaty; territorial conflict; threats to peace under the UN Charter; the principle of self-determination of peoples (even though its normative content remains controversial); the nationality of individuals and groups; the principle of decolonisation (although its close links with anti-colonialism ideology also makes the normative content controversial) and the principle of the rights of non-self-governing peoples, including the right to progress toward self-determination and

---

19. Yoram Dinstein, "Autonomy," in Dinstein, *Models of Autonomy*, p. 295

20. Chen and Reisman, "Who Owns Taiwan? A Search for International Title," pp. 601-603.



respect for fundamental human rights. They argue that ultimate sovereignty lies with the indigenous people of the territory in question and, thus, "genuine assessment of their consent is a peremptory component of title."<sup>21</sup>

Reisman and Chen's arguments do not resolve finally the lingering conflicts over fundamental international legal principles which often hamper the settlement of territorial disputes. As Reisman has said elsewhere, success often depends on working around the conflict to find practical solutions which recognise the symbolic and substantive needs of all sides while at the same time propelling the international system towards the goals of peace, stability and respect for human rights.<sup>22</sup> Reisman more directly tackles the practical side of securing effective autonomy arrangements in his study of Puerto Rico's associated state relationship with the United States. He identifies several variables which influence the success of autonomy arrangements including the political and cultural identity of the autonomous community, its economic, political, legal and constitutional arrangements and its international status and participation. Paying particular attention to the latter two questions, he says:

Many small territorial communities about the globe face the dilemma of Puerto Rico: to establish and maintain links with larger social and wealthier economic systems, to retain and develop an indigenous culture and to be effective in that comprehensive world political process which increasingly penetrates and shapes much of local community life.... Puerto Rico is as influenced by world affairs as any other territorial community, but has virtually no influence on the international decisions that may shape its destiny.<sup>23</sup>

---

21. Ibid., pp. 648-660.

22. See Reisman's comments in "Settlement in the Middle East: What Would It Look Like and Can We Get There from Here?" American Society of International Law, Proceedings of the 77th Annual Meeting (1983) p. 275; See generally Davis, "Concept of Statehood and the Status of Taiwan."

23. Reisman, Puerto Rico and the International Process, pp. 2, 4.



Reisman observes that mobilising international support for autonomy is hampered by the reality that not all autonomy arrangements are likely to generate the same degree of international concern.<sup>24</sup> However, debunking some of the myths surrounding the historic criteria for state status used to assess eligibility to participate in the UN and International Court of Justice, he says participation in international organisations offers considerable scope for territorial communities to actively expand their internal effectiveness. The definition of 'states' used to regulate which territorial entities are allowed to participate in the two bodies has been broad and flexible. It has reflected a policy of "increased participation if not universality." Membership has not been based on whether the applicant was a state, but whether it and other members would benefit from its participation and whether "the general principle of the universality of participation would be realised."<sup>25</sup>

Traditional conceptions of statehood and absolute sovereignty create an increasingly misleading picture of the actual operation of the world order and ignore more flexible conceptions which can aid in our search for effective autonomy arrangements. Scholars such as Ivo D. Duchacek have catalogued the myriad of ways in which the formal and informal international competence of substate territorial communities is

---

24. Ibid., p. 10; Autonomy arrangements will generate more international scrutiny if the autonomous territory was acquired in a colonial setting and/or if its people are racially, religiously, linguistically or culturally different from the larger community. Reisman contends that an arrangement exhibiting a pattern of continuing subordination demands international scrutiny. If the people of the territory support the arrangement, however, the world community will recognise the arrangement, regardless of the extent of the powers remaining in local hands (ibid., pp. 10, 18).

25. Many of those communities admitted in the 1960s were small and poor, with economic, customs, nationality, defence and monetary ties linking them closely to a larger state. While there were 'legal' objections made, they were all eventually admitted without substantive change in their political, social or economic circumstances. The international community has also opened new channels of participation through associate membership and observer status, both formal and informal (ibid., pp. 51, 69-70, 105).

increasing.<sup>26</sup> To ignore the potential external means of supporting autonomous substate entities is to ignore political and legal reality. According to Davis, who has studied the problem of international participation for both Taiwan and the future Hong Kong SAR, the internal and external means of securing autonomy cannot be separated in practice: "It is in the enforceability of the arrangement that the confidence of both parties and of concerned members of the international community will more likely be assured.... Characterising such arrangements as purely internal matters renders success unlikely and sincerity suspect."<sup>27</sup> Davis identifies international linkages as one of several key ingredients needed to secure the success of the "one country, two systems" project in Hong Kong, the others being appropriate dispute settlement mechanisms for central-local conflict resolution and protection for human rights such as free speech.

#### The View from the People's Republic of China

Preoccupation with sovereignty, unity and noninterference in the domestic affairs of independent states override Chinese official thinking about international law, putting their conceptions of territorial autonomy squarely in the realm of traditional approaches. Although, as mentioned briefly above, there is also a good case to be made for giving the Chinese government's views a place among problem-solving, nontraditional approaches.

China's conduct of foreign relations and its conception of international law centre on the "five principles of peaceful coexistence" among states: mutual respect for territorial integrity and sovereignty, nonaggression,

---

26. Duchacek, *Territorial Dimension of Politics*, p. 229.

27. Davis, "Concept of Statehood and the Status of Taiwan," pp. 156-157.

noninterference in each other's internal affairs, equality and mutual benefit and peaceful coexistence.<sup>28</sup> Although these echo the fundamental principles of sovereignty and noninterference found in the UN Charter and other widely supported international legal instruments, China's version of these concepts is grounded in a doctrine of absolute sovereignty which has been eclipsed by most Western scholarship and custom in international law as well as some of China's own practices.<sup>29</sup> Despite this, Shi Liang, a PRC legal expert, argues that "sovereignty means the supreme power inherent in a country in dealing with its internal affairs and international affairs without being interfered with or restrained by another country."<sup>30</sup> Although China accepts that sovereignty does not authorise a state to ignore generally accepted principles of international law, what norms fall into that category remain controversial. China's rhetoric and often its behaviour continue to reflect a rigid doctrine of sovereignty, a characteristic some scholars have attributed to the "humiliating infringements on sovereignty" China experienced in the nineteenth and early twentieth centuries, when Western powers claimed extraterritorial and other rights in China.<sup>31</sup> Legal positivism and China's experience as a developing

---

28. Cohen and Chiu, 1: 118-119.

29. Davis, Constitutional Confrontation in Hong Kong, pp. 130-131; Cohen and Chiu, 1: 96, 607-610.

30. New China News Agency, 21 Sept. 1983, in Foreign Broadcast Information Service, 22 Sept. 1983, E1, cited in Kevin P. Lane, Sovereignty and the Status Quo: The Historical Roots of China's Hong Kong Policy (Boulder, Colo.: Westview, 1990), p. 97.

31. Hungdah Chiu, "Comparison of the Nationalist and Communist Chinese Views of Unequal Treaties," in Jerome Alan Cohen, ed., China's Practice of International Law: Some Case Studies (Cambridge, Mass.: Harvard University Press, 1972) p. 243; Stuart R. Schram, "Decentralization in a Unitary State: Theory and Practice, 1940-1984," in Stuart R. Schram, ed., The Scope of State Power in China (London: School of Oriental and African Studies, 1985), p. 81.

socialist country in an international legal system largely dominated by Western capitalist powers have also been influential.<sup>32</sup>

Consistent with this traditional view of sovereignty in their international dealings, the Communist Chinese authorities have adopted a unitary political system internally and emphasise the need for a strong central government. However, the practical need to maintain the support of numerous ethnic minority groups and diverse regions in the 1930s and 1940s led Mao Zedong to speak of federalism and grant the minorities the right to secede in the 1931 constitution.<sup>33</sup> Nevertheless, after their victory over the nationalists in 1949, the Communist leaders rejected federalism, national self-determination and secession. "Although in many domains of political and economic work a high degree of decentralisation, or of devolution of power and responsibility, has prevailed in China during most of the period since 1949, the unitary nature of the Chinese state has been forcefully asserted, and any hint of the federalism which prevails (in theory) in the Soviet Union utterly repudiated."<sup>34</sup>

Still, the Communist government recognised the utility of combining national "unification and local expediency," to use Mao's words.<sup>35</sup> It set up regional authorities that were both local power organs and agents of the central government and granted some autonomy to the ethnic minority

---

32. Andrew J. Nathan, "Sources of Chinese Rights Thinking," in Edwards, R. Randle, Louis Henkin and Andrew J. Nathan, *Human Rights in Contemporary China* (New York: Columbia University Press, 1986), pp. 126-133.

33. Andrew J. Nathan, "Political Rights in Chinese Constitutions," in *ibid.*, pp. 99-00; Schram, "Decentralisation in a Unitary State," pp. 82-83; Hannum, *Autonomy*, p. 420.

34. Schram, "Decentralisation in a Unitary State," p. 81; See also Hannum, *Autonomy*, p. 420.

35. *Renmin ribao*, 4 Dec. 1949, cited in Schram, "Decentralisation in a Unitary State," p. 93



territories.<sup>36</sup> However, China's recognition of the minority groups' "right to autonomy" and "to freely develop their dialects and languages and ... preserve or reform their customs, habits and religious beliefs" is always tempered by its parallel assertion of the state's right "to take effective measures to assist economic and cultural development in regions inhabited by minority nationalities...and resolutely oppose all words and deeds undermining national unity and equality."<sup>37</sup> The 1982 PRC Constitution stresses the unitary, centralised nature of the Chinese state, saying "all the national autonomous areas are inalienable parts of the People's Republic of China" and all local governments are "administrative organs of state under the unified leadership of and subordinate to, the State Council."<sup>38</sup> Thus, China's limited recognition of a 'right' to autonomy is subject to sweeping limitations by the state which render it largely meaningless in terms of real self-government.<sup>39</sup>

The 1982 Constitution also provides for establishment of "special administrative regions ... prescribed by law enacted by the National People's Congress in light of the specific conditions."<sup>40</sup> Chinese leaders first spoke of setting up an SAR to address the Taiwan reunification question and later applied the idea to Hong Kong and Macau in the "one

---

36. Ibid., p. 94.

37. "On Questions of Party History. Resolution on Certain Questions in the History of Our Party Since the Founding of the People's Republic of China," (Adopted by the Sixth Plenary Session of the 11th Central Committee of the Communist Party of China on 27 June 1981), printed in *Beijing Review*, 6 July 1981, p. 38; See also Hannum, *Autonomy*, p. 422.

38. PRC, *Constitution of the People's Republic of China* (1982), Preamble, Art. 4, 104, 108, 110 (hereafter PRC, *Constitution*); For an English version of the constitution see *Beijing Review*, 27 Dec. 1982, pp. 10-29; See also Hannum, *Autonomy*, pp. 421-122.

39. Hannum, *Autonomy*, pp. 426-427; See also Nathan, "Political Rights in Chinese Constitutions," pp. 99-100, 104, 118-119.

40. PRC, *Constitution*, Art. 31.

country, two systems" schemes elaborated in the Sino-British and Sino-Portuguese Joint Declarations.<sup>41</sup> The "one country, two systems" policy is in some respects a continuation of China's contradictory approach to autonomy adopted for ethnic minority regions. In theory, however, China is offering Macau and Hong Kong considerably more self-government than its autonomous regions, provinces, municipalities or special economic zones enjoy. For China, the return of Hong Kong and Macau to Chinese sovereignty has always been a question of resolving "the inherent tension between a claim to sovereignty over territory that is legitimately considered to be Chinese, and the strong incentives that exist against pressing the claim."<sup>42</sup> Although often vociferously declaring the Portuguese and British presence in Macau and Hong Kong illegal, China for years did not make their recovery an immediate goal. Anxious to be regarded a responsible actor in international affairs, in constant need of foreign economic and political assistance and unwilling to give up the economic, technological and other benefits channeled to it through Hong Kong, China has historically refused to press its claim of absolute sovereignty in either territory to its logical conclusions.<sup>43</sup> Therefore, the "one country, two systems" scheme embodies both China's desire for unity, central government control and absolute sovereignty and its recognition of the practical need for local

---

41. "The Nine-Point Proposal: One Year After," Beijing Review, 11 Oct. 1982, pp. 19-20; Davis, "Concept of Statehood and the Status of Taiwan," pp. 136-137; Weng, "The Hong Kong Model of 'One Country, Two Systems'," pp. 73-74; Lane, Sovereignty and the Status Quo, pp. 86-87.

42. Lane, Sovereignty and the Status Quo, p. 7.

43. *Ibid.* pp. 7-8, 36, 101-102, 104, 123; Cohen and Chiu, People's China, 1: 373-376, 380, 384-385.

autonomy and limited sovereignty.<sup>44</sup> The Joint Declarations, themselves international agreements limiting China's sovereignty, give Macau and Hong Kong considerable powers of self-government in all matters but defence and foreign affairs and recognise their need to participate autonomously in the international arena. In Taiwan's case, Beijing has also promised the island the right to maintain its own armed forces.<sup>45</sup>

Because of these characteristics, some scholars have found striking affinity between this autonomy scheme and nontraditional approaches to autonomy. Davis characterises Hong Kong's resulting status as intermediate between associated statehood and various internal autonomy models which, "at least on paper, may offer a very creative framework for participation by territories not to be afforded the full status of statehood but requiring a higher degree of autonomy."<sup>46</sup> Rhoda Mushkat challenges the validity of the traditional notion of "indivisible sovereignty" to argue that Hong Kong and Macau's future autonomy is not merely a domestic Chinese issue:<sup>47</sup>

The key attribute of sovereignty is not necessarily active participation in international life but rather the state's 'constitutional independence' (in the sense that its constitution is not part of a larger constitutional arrangement). Indeed, states may choose to opt out of international life ... or they may find it difficult to play an international role because of refusal of other states to have dealings with them ... yet their sovereignty or constitutional independence is not thereby affected. By the same token, it is evident that international participation, including membership in international organisations, is not limited to

---

44. Davis, *Constitutional Confrontation*, pp. 130-131; See generally, J.Y.S. Cheng, "Hong Kong: The Challenge of the Future," *Asia Pacific Community* (Winter 1986), no. 31, pp. 19-44.

45. Davis, "The Concept of Statehood and the Status of Taiwan," p. 136.

46. *Ibid.*, p. 131.

47. Rhoda Mushkat, "Foreign, External and Defence Affairs," in Wesley-Smith and Chen, *The Basic Law and Hong Kong's Future*, p. 267.

sovereign states.... constitutional independence does not mean a completely free internal or external hand.<sup>48</sup>

Nevertheless, Beijing authorities repeatedly stress the delegated nature of the local autonomy granted the SARs and the supremacy of China's unity, sovereignty and territorial integrity:

First of all, China must maintain the basic principle of safeguarding its sovereignty, unity and territorial integrity while establishing special administrative regions. The country must be united and there is only one China--the People's Republic. China is a single-system socialist country, not a federal state. It will exercise sovereignty over the special administrative regions.<sup>49</sup>

Autonomy takes second place to sovereignty in many provisions of the Joint Declarations and Hong Kong Basic Law. When the Chinese leadership perceives itself threatened by Hong Kong or Macau's autonomy, as it did after the Beijing Massacre of 4 June 1989, it has tended to adopt a defensive posture based on its traditionally rigid doctrine of sovereignty.<sup>50</sup> Therefore, although an unconventional solution with a great deal of potential if China proves flexible, the "one country, two systems" concept does not appear to go far enough to accommodate the political, economic and social diversity of various parts of the contemporary Chinese world.<sup>51</sup> The scheme itself demonstrates the difficulties of trying to resolve the inherent conflicts between traditional and nontraditional conceptions of sovereignty and autonomy.

---

48. Mushkat, "Foreign, External and Defence Affairs," p. 254.

49. Wang Shuwen, "Special Regions Leave Socialism Unchanged," *Beijing Review*, 15 Oct. 1985, pp. 17-18; See also Peng Zhen, "Report on the Draft of the Revised Constitution of the People's Republic of China," *Beijing Review*, 13 Dec. 1982, p. 20.

50. See generally Michael C. Davis, "Tiananmen in Hong Kong" (Paper presented at the 19th Sino-American Conference on Mainland China, Taipei, June 1990).

51. Davis, "Concept of Statehood and the Status of Taiwan," pp. 158-159.



## CHAPTER 2

## TOWARDS A DYNAMIC ANALYTICAL FRAMEWORK FOR AUTONOMY

The Chinese authorities are by no means the first government to make a compromise offer of autonomy to a distinctive community which would probably just as soon be left alone. In the last century, political regimes have used autonomy arrangements to placate demands or potential demands for secession and as alternatives to complete independence for colonial, mandate or trust dependencies, territorially based, unassimilated minorities and conquered enemies partially divided up in peace settlements.<sup>1</sup> Nor are all the dangerous contradictions between sovereignty and autonomy inherent in "one country, two systems" unique. Many autonomy arrangements are transitional. Many have broken down, either when the larger community attempts to absorb the autonomous entity or when the autonomous entity tries to separate to form an independent state of its own.<sup>2</sup> The chronic instability and loss of life in Eritrea, southern Sudan, Northern Ireland, Palestine and Sri Lanka are only a few examples of the war and violations of human rights that often accompany the collapse of

---

1. Friedlander, "Autonomy and the Thirteen Colonies," p. 136.

2. The Romanian, Greek and Bulgarian autonomous entities formed within the Ottoman Empire after the Crimean War subsequently broke with links with the empire completely (Zvi Yavetz, "Autonomous Arrangements in the Balkan States," in Dinstein, *Models of Autonomy*, p. 92); The Thirteen American colonies rejected their autonomous status within the British Empire and, after a bloody war, formed their own nation-state. The colonies had enjoyed a high degree of autonomy from the British motherland since their founding and the colonists increasingly saw themselves as different from other Englishmen. Eventually, British policy infringed upon the autonomous governance the colonists had come to regard as their own. They demanded more autonomy than Britain was willing to give and conflict became inevitable (Friedlander, "Autonomy and the Thirteen Colonies," p. 147).

autonomy agreements.<sup>3</sup> Even those autonomy agreements that appear to work well--the Aland Islands in Finland, Memel in Lithuania, Carpathian Ruthenia in Czechoslovakia, Greenland under Home Rule and South Tyrol in Italy, for example--have not been without conflicts.<sup>4</sup> Mindful of this poor record, some scholars have been deeply pessimistic about the long-term ability of autonomy arrangements to protect the interests of distinct territorial communities: "Throughout modern history in both theory and practice, autonomy has been, at best, inherently suspect. In those few historical instances when it was actually attempted, autonomy either worked very badly or not at all."<sup>5</sup> The ideological conflict inherent in "one country, two systems" increases the risk of conflicts and the price of failure.

Despite the potential for problems, minority communities continue to demand and central governments to employ autonomy arrangements to resolve conflicts, impelling us to find better diagnostic tools for engineering successful systems. Several studies falling into the category of nontraditional approaches to autonomy discussed above offer useful observations about what has made particular autonomy arrangements work and others fall apart. I have gathered their observations together to construct

---

3. "Nothing better illustrates the almost insurmountable difficulties faced by modern pluralistic societies in dealing with recalcitrant minorities on the transnational level than the futile attempts to grant autonomy to dissident populations.... It has been particularly frustrating for democratic regimes when minority rejectionists have turned to terror violence as their ultimate political weapon, with Ireland, Spain and Israel the preeminent contemporary examples. The Northern Irish parliament is indefinitely suspended, home rule has failed to end Basque extremism, and the Camp David accords face an uncertain future. In each case autonomy has been the chosen method of conflict-resolution, and despite offers of--or attempts at--self-government, conflict continues" (Friedlander, "Autonomy and the Thirteen Colonies," p. 135).

4. Yavetz, "Autonomous Arrangements in the Balkan States," p. 92; For background on Greenland, the Aland Islands and South Tyrol see respectively notes 19, 21 and 65 on pp. 19; 21 and 65 of the present study.

5. Friedlander, "Autonomy and the Thirteen Colonies," p. 136.

a comparative framework for analysing efforts to build autonomy for post-1999 Macau.

These studies suggest that, despite their many distinct qualities, autonomy arrangements confront some common problems flowing from the central-local conflicts inherent in the agreements. A few specific ingredients appear to be common to the more enduring arrangements and are the foundation of the analytical framework. Internally, they concern the cultural and political identity of the autonomous entity, mechanisms for securing human rights and settling central-local disputes and political institutions and political participation. External factors, including geopolitical forces and evolving international legal norms regarding international participation, are also important. Territorial communities increasingly look to the global society for backing for some sort of special internal status and sometimes succeed in getting it. Note the recent attempts by the Soviet Baltic states and the Iraqi Kurds to gain international support for their claims.

These four ingredients offer potential internal and external means to accommodate competing sovereignty and autonomy claims within Macau's autonomy arrangements. By pinpointing the common problems of autonomy processes and fleshing out some of the essential components of successful efforts, this study also tries to offer some fruitful starting points for examination of the Hong Kong SAR and other autonomy systems.

#### Autonomy as a Process

My framework begins with the premise that an autonomy agreement is not a static institutional and political arrangement nor a final solution to conflicts involving discrete communities. Rather, it is the beginning point

of a dynamic process, the first in a series of political bargains between central and local actors who, jockeying to protect their own interests as environmental factors change, shape and alter the original autonomy agreement. In doing so, they either renew it in some new form or cause it to break down.<sup>6</sup> This central-local bargaining, which includes related political conflict within the autonomous entity, provides the dynamic pulse of the arrangement. Dynamics which lean too much towards one party can be destabilising because they are likely to undermine the willingness of other parties to renew the autonomy bargain.<sup>7</sup> Thus, enduring autonomy agreements include institutions, processes and attitudes that can maintain a balance between the power of central and local political actors. To find that balance, the autonomy system should seek the support of all major groups by designing "a social institutional blend of symbols and practices" that meet the minimum interests of all key actors while advancing broader goals of peace and stability and respect for human rights.<sup>8</sup> Viewing autonomy arrangements as ongoing bargaining processes is particularly useful for studying an arrangement involving the PRC, whose leaders "do not treat the signing of a contract as signaling a completed agreement; rather they conceive of the relationship in longer and more continuous terms, and they

---

6. This notion of autonomy arrangements as processes of bargaining is borrowed from studies of federalism which analyse federal political systems as processes impelled by the social forces behind the political process rather than focusing exclusively on the constitutional documents (see Uma O. Eleazu, Federalism and Nation Building, The Nigerian Experience 1954-1964 [Elms Court, Devon: Arthur H. Stockwell, 1977] pp. 19-21).

7. For a similar perspective related to democratisation see Guillermo O'Donnell and Philippe C. Schmitter, "Tentative Conclusions about Uncertain Democracies," in Guillermo O'Donnell, Philippe C. Schmitter and Laurence Whitehead, eds., Transitions from Authoritarian Rule: Prospects for Democracy (Baltimore and London: Johns Hopkins University Press, 1986), part 4, p. 38; Dankwart A. Rustow, "Transitions to Democracy: Toward a Dynamic Model," Comparative Politics 2 (April 1970): 351.

8. Reisman's comments in "Settlement in the Middle East," p. 275.



will not hesitate to suggesting [sic] modifications on the heels of an agreement."<sup>9</sup>

### The Role of Autonomy Agreements

Much of the conflict inherent in autonomy processes is fuelled by the original autonomy agreement itself. Parties to disputes involving distinct communities often use mushy legal drafting to bring about an agreement despite their failure to resolve major points of contention. Therefore, the wording of the resulting autonomy accords is frequently vague and subject to different, even contradictory, interpretations. Central authorities use it to justify its encroachment into the affairs of the autonomous entity while actors in the autonomous entity use the same document to defend their claims for greater autonomy. Although this haziness facilitates completion of the initial accord, the resulting legal document is a troublesome vehicle with which to resolve the political conflicts likely to arise in implementing the accord.<sup>10</sup> For instance, the 1978 Camp David accord provided transitional arrangements for the West Bank and Gaza based on "full autonomy" for the areas' Palestinian inhabitants pending determination of the territories' final status. However, it used language so vague and symptomatic of such deep divisions that implementation proved

---

9. Lucien Pye, Chinese Commercial Negotiating Style (Cambridge, Mass.: Oelgeschlager, Gunn and Hain, 1962), pp. xi-xii, cited in Ian Scott, Political Change and Crisis of Legitimacy in Hong Kong (Hong Kong: Oxford University Press, 1969), p. 195.

10. Dinstein, "Autonomy," pp. 296-300; In the case of the Cook Islands, for example, the legal instruments setting up their associated state links with New Zealand have been criticised for not clearly specifying the level of aid New Zealand was required to give its former colony, nor the functions of the New Zealand authorities in the new arrangement (Steve Hoadley, "Cook Islands and Niue: Models of Free Association" (chapter 3 of his forthcoming book The South Pacific Foreign Affairs Handbook [Sydney: Allen and Unwin, 1992], pp. 44-45).

impossible.<sup>11</sup> The inevitable surfacing of problems unforeseen at the time of the original autonomy negotiations also adds to the inadequacy of the initial accords. Thus, the "legal instrument which ordains autonomy can be of momentous significance in adjusting the scales of the balance of power between the central and local authorities.... But the text of the constitutive document cannot, by itself, settle all outstanding legal issues."<sup>12</sup> Rather, it is a legal snapshot of the political power balance at a particular moment in history. It propels the autonomy process forward as the various parties struggle to shape the process in their favour. Different ensembles of institutional arrangements and political and economic power relationships will tend to favour some parties over others. The analytical task becomes one of dissecting the original agreement in order to anticipate the direction in which the transition is likely to move and the probable consequences.<sup>13</sup>

One of the more troublesome imprecisions in autonomy agreements lies in the vague definitions many give for foreign affairs and defence powers, which are characteristically reserved to the government of the larger polity. The problem does not bode well for Macau. The terms of the Sino-Portuguese Joint Declaration grants authority over these areas to the PRC central government but does not clearly articulate the limits of its authority.

In the associated state arrangements that linked several islands in the Eastern Caribbean with the United Kingdom under the West Indies Act of

---

11. Mayer Gabay, "Legal Aspects of the Camp David Framework for Peace in Relation to the Autonomy Proposal," in Dinstein, *Models of Autonomy*, pp. 255, 259.

12. *Ibid.*, p. 296.

13. Comments by Larry Fabian in "Settlement in the Middle East," p. 274.

1967, disputes over Britain's ambiguously phrased foreign affairs and defence prerogatives contributed to several islands opting out of the arrangements.<sup>14</sup> In addition, the act did not provide for judicial decision when conflicts of opinion or doubtful cases cropped up. Britain was in a position to unilaterally determine whether a matter fell into these two policy areas.<sup>15</sup> This proved to be more than a theoretical problem when, in 1969, British military and police forces intervened in Anguilla following popular unrest related to the island's demands for more autonomy within the three-island St. Kitts-Nevis-Anguilla associated state. The British justified their action, which had been at the request of associated state authorities, with a very wide interpretation of its reserved powers over external affairs.<sup>16</sup> British authorities also took advantage of these imprecisions in the legislation to pass the Anguilla Act of 1971, which made Anguilla's de facto position more like that of a Crown colony, and then refused to accept the island's secession from the associated state

---

14. Isaac Dookhan, *A Post Emancipation History of the West Indies* (Harlow, Essex: Longman, 1975), p. 129; William C. Gilmore, "Legal Perspectives on Associated Statehood in the Eastern Caribbean," *Virginia Journal of International Law* 19 (Spring 1979), pp. 496-497.

Under the accord that led to the West Indies Act, the British Caribbean territories of Antigua, St. Kitts-Nevis-Anguilla, St. Lucia, Grenada, Dominica and St. Vincent were to have "virtually complete autonomy in their internal affairs based on a Westminster-style constitutional model which could be amended locally" and "the power to terminate the status of association unilaterally and move on to full sovereign statehood should they so desire," while the U.K. would be responsible for "citizenship, external affairs and defence" (Gilmore, "Legal Perspectives on Associated Statehood in the Caribbean," pp. 492-493).

15. Additional uncertainty stemmed from the British parliament's freedom to make laws for the associated states providing it inserted a clause specifying "expressly" that a law was to apply to one or more of the associated states because of the government's responsibilities "relating to defence and external affairs." British authorities retained the power to use Orders in Council to change the laws of the associated states even to the extent of "derogating from the provisions of the constitution...relating to fundamental rights and freedoms" if it was required in the exercise of one of its responsibilities. The courts were specifically prevented from playing any meaningful role in determining when such an occasion had legitimately arisen (Gilmore, "Legal Perspectives on Associated Statehood in the Caribbean," pp. 514, 521-525).

16. *Ibid.*, pp. 521-525.



arrangement on the grounds it lacked the consent of the multiisland associated state government.<sup>17</sup> The unilateral exercise of authority by the British government helped weaken the fundamental assumptions on which the autonomy bargain had been made and contributed to the decision of several islands to opt out of the association arrangement.<sup>18</sup>

The extent of the defence and foreign affairs powers reserved for the government of the larger polity has also proven problematic in the Greenland Home Rule arrangement.<sup>19</sup> The agreement assigns the Danish government sole authority over security and defence matters in Greenland, issues of major concern because of NATO's defence interests in the Arctic. However, in practice, defence and security matters overlap considerably with policy areas assigned to the Greenland government such as environmental protection, fishing in the territory, hunting, agriculture and reindeer breeding. As a result, Danish authorities have developed

---

17. *Ibid.*, pp. 526-529.

18. By 1979, Grenada, Dominica and St. Lucia had ended their associated state links with Britain while St. Vincent was on the way to doing so and St. Kitts-Nevis-Anguilla seemed also headed in that direction. The islands also increasingly found that their economic and political interests collided with Britain's in other international spheres. Regional integration movements in the Caribbean and the EC and changes in Britain's citizenship and nationality laws restricting the ability of islanders to exercise citizenship rights in Britain contributed to the breakdown too (*ibid.*, pp. 552-554).

19. Approximately 41,000 of the island's 53,000 people are ethnic Inuit born in Greenland, which is located in the North American Arctic and is a former Danish colony. Denmark's Greenland Home Rule Act of 1978 was approved by a referendum in Greenland in 1979. It gradually transferred control over, *inter alia*, organisation of Home Rule and local government, taxation, internal transportation, fishing, hunting, agriculture, reindeer breeding, environmental protection and country planning, commerce, labour, economic development, social welfare, education, cultural affairs and housing to a directly elected quasi-parliamentary local Home Rule government. Danish and Greenland Home Rule authorities share control over natural resource matters. Foreign relations are reserved to the Danish government, but Greenland authorities are consulted and enjoy some delegated authority. In 1985, the island withdrew from the EEC following a local referendum while Denmark remained a member. Danish aid accounts for about 75 percent of Greenland's public revenues (see generally Frederik Harhoff, "Security and Policy Aspects of the Arctic: A Greenlandic Perspective," 2 parts, *Vite-Bulletin*, 1989; *idem*, "Greenland's Withdrawal from the European Communities," *Common Market Law Review* 20 (1983): 13-33; Foighel, "A Framework for Local Autonomy: The Greenland Case," in Dinstein, *Models of Autonomy*, pp. 31-52; Hannum, *Autonomy*, pp. 341-346).



formal and informal mechanisms for informing the Home Rule government and consulting with it on defence and security questions. Nonetheless, the vagueness remains in the accord and there is no constitutional obligation for Danish authorities to use some of these consultative mechanisms.<sup>20</sup>

Troublesome as these ambiguities can be, they are the word games that allow the disputing parties to reach an autonomy agreement in the first place. Under the right circumstance, they can provide useful legal flexibility. The Guarantee Act of 1922, which first set out the autonomous status of Finland's Aland Islands, is one such example.<sup>21</sup> The act was typical of autonomy agreements in that the language it used to divide legislative powers between the central and local authorities gave rise to differences of opinion and disputes over interpretation. Initially, the rulings of the Finnish President, backed by the Finnish Supreme Court, usually reflected the idea that Aland's autonomy was exceptional and, in

---

20. Harhoff, "Security and Policy Aspects of the Arctic," part 2, pp. 1, 16, 18.

21. The Aland Islands--generally called Aland--are a 6,500-island archipelago located in the northern Baltic Sea between Sweden and Finland, an area of historically strategic importance to both Sweden and Russia. Sweden ceded Aland, an ancient Swedish province inhabited by people of Swedish language and culture, to Russia as part of Finland in 1809. When Finland declared independence from Russia in 1917 it claimed sovereignty over the islands. However, their local inhabitants wanted to reunite with Sweden. The League of Nations Council was called to decide the dispute and awarded Aland to Finland provided preservation of the local people's Swedish language, culture and traditions were guaranteed and the islands were neutral and remained demilitarised. The decision was supplemented with a treaty between Sweden and Finland concerning implementation of the guarantees. Under the current Autonomy Act, which will soon be amended to transfer more authority to Aland, the national constitution, foreign affairs (with some restrictions) and defence, postal, customs and monetary services, the law courts, penal code and most aspects of civil law are outside the competence of the islands' authorities. The Aland parliament has exclusive authority over education, social affairs, police, health and local industry. It can levy provincial taxes, although Aland also receives monies through the central government. Land ownership is restricted to Aland regional citizens, who are also exempt from compulsory Finnish military service (see generally Gunnar Jansson, Henrik Gustafsson, Bjarne Henriksson, Anders Fagerlund, Lars Ingmar Johansson, "Aland: A Model of Territorial Autonomy" [Report commissioned by the Human Rights Project Group, a Soviet-American nongovernmental organisation promoting rule of law and democratic institutions in the USSR, 1990]; Henrik Gustafsson, "The Aland Islands," in Erik Allardt, Nils Andren, Erik J. Friis, Gylfi P. Gislason, Sten Sparre Nilson, Henry Valen, Frantz Wendt and Folmer Wisti, eds., *Nordic Democracy. Ideas, Issues and Institutions in Politics, Economy, Education, Social and Cultural Affairs of Denmark, Finland, Iceland, Norway and Sweden* (Copenhagen: Det Danske Selskab, 1981) pp. 201-207; Hannum, *Autonomy*, pp. 370-375).

cases of uncertainty, priority should be given to national legislation. The Alanders, by contrast, felt disputes over interpretation should be guided by the principle that the original purpose of the law was to give Aland the broadest autonomy possible. Despite these initial differences, the Finnish government has since agreed to several modifications to the original Guarantee Act. Each has made the division of authority less ambiguous, responded to new problems the legislation did not foresee and, overall, altered the arrangement in favour of the Alanders.<sup>22</sup>

The original framework has proven flexible enough to permit change and evolution as the times have demanded and this in turn has fostered a spirit of dialogue and compromise between the Finnish and Aland authorities.<sup>23</sup>

Under what conditions do the parties perceive vagueness as flexibility rather than a recipe for unending conflict? The next section attempts to answer this question.

### Community Identity

Part of the answer lies in subjective variables related to the autonomous community's sense of identity with both its own political community and the larger polity to which it is attached. If an autonomy process is to work, it requires the support of the community that must live under its dictates as well as of the political authorities in the larger territorial community. Dinstein writes:

The question of whether an arrangement of autonomy is to be crowned with success or doomed to failure depends, in the final analysis, on the state of mind of the parties. The legal or procedural intricacies of the arrangement cannot guarantee the outcome. Success is contingent on the goodwill of the parties and their desire to live

---

22. Jansson, Gustafsson, Henriksen, Fagerlund, Johansson, "Aland," pp. 16-17.

23. Ibid., p. 5.

jointly under one legal-political roof. The indispensable condition for a viable autonomy is the existence of a spirit of togetherness which unites two groups despite their differences.... Conversely, when there is an overwhelming yearning for a parting of the ways, when there is no sense of moving in tandem, autonomy cannot weld the parties together. It can be imposed by force, but it cannot work in the long run.<sup>24</sup>

"The inclination to share a common destiny," Dinstein says, is the reason that Greenland's Home Rule status is so apparently successful, why the autonomy arrangements for southern Sudan worked, at least for a time, and a major reason why autonomy did not work in the case of Eritrea.<sup>25</sup> The practical importance of community identity is implicit in international legal norms regarding self-determination and the need for informed consent of the affected population in associated state agreements. It is similarly reflected in Reisman's comment that such traditional indicators as common citizenship, trade or currency agreements, delegation of foreign affairs powers or inclusion under the jurisdiction of the high court of the larger polity are insufficient evidence of the associate state reaching "a point of no return after which it is no longer considered a 'state'." Rather, "the single most critical factor in contemporary international law ... would appear to be the demands of the people within the associate."<sup>26</sup>

In many cases, autonomy agreements grow out of demands by territorial communities which have a highly developed sense of local identity based on attachment to the characteristics that distinguish them from the larger

---

24. Dinstein, "Autonomy," p. 295 (emphasis added); Similar comments have been made about the role of community identity in the success of Swiss federalism: "The system works as well today as it always has, and the only possible 'constitutional' explanation for it is the will, the traditional will of Swiss society as a whole, to hold together freely, in spite of its linguistic, religious, cultural, social, economic and professional cleavages and segmentation" (see Ghita Ionescu, "The Relevance of Switzerland for Modern Politics," Government and Opposition 23 [Winter 1968]: 12).

25. Dinstein, "Autonomy," p. 295; For background on Eritrea and Southern Sudan see notes 44 and 51 respectively pp. 45 and 46 of the present study.

26. Reisman, Puerto Rico and the International Process, pp. 15-16.



entity. Without this sense of local identity, the territory's citizens and leaders will be less willing to defend their community's autonomy from encroachments by the larger territorial entity. However, if their sense of local community identity is not balanced by a sense of shared destiny with the larger community, they might not be willing to support the autonomy process at all. Uma O. Eleazu describes how a lack of shared national loyalty among both citizens and leaders contributed to the breakdown of federalism in Nigeria:

Nigerian leaders did not develop institutional structures that could bridge the social differences that made federalism necessary.... Taking cues from their leaders, most Nigerians did not develop a commitment to the ideal of national unity. The values and symbols that loomed large in their political imagery were those of sectionalism and sub-national centres of power. Any wonder then that any group that felt aggrieved immediately sought its own centre of power--a state--within which it could protect what it saw as unique to itself.<sup>27</sup>

Thus, successful autonomy requires that the people of an autonomous community have a finely balanced sense of "double loyalty" or dual community identity.<sup>28</sup>

Particularly where former colonies opt for continued ties to the metropolitan community, their willingness to tolerate continued links is often based on the economic and political benefits derived from the association rather than cultural links or sense of shared identity. Reisman's study of Puerto Rico suggests these material benefits alone fail to create a comfortable balance of identities:

---

27. Eleazu, Federalism and Nation Building, p. 244.

28. The notion of dual loyalty is borrowed from the study of federalism by Ursula K. Hicks, who argues that "a viable and durable federation cannot be built unless all citizens recognise themselves as having double loyalty: to their own State and to the nation" (Ursula K. Hicks, Federalism: Failure and Success [London and Basingstoke: Macmillan, 1978], p. 175).



In terms of general social and economic development measured in either GNP or per capita income, association has been a beneficial arrangement for most Puerto Ricans. In terms of self-respect, dignity and national identity, association has been less successful. And woe to him who fails to weigh these intangibles in the balance; they are among the most explosive factors of this century.<sup>29</sup>

Dual community identity is more likely to exist if the autonomy arrangement was not forced upon the territorial community. Autonomy agreements negotiated and implemented before minority conflicts escalate into separatist demands, terrorism or war are more likely to have the backing of local people who have a sense of dual identity. However, there is no guarantee this identity will last forever. "Even when autonomy appears to function satisfactorily for some time, a cleavage may occur when suddenly-- due to a change in the psychological climate--the impulse for independence becomes prevalent."<sup>30</sup> Such a change helped precipitate the American Revolutionary War in the Thirteen Colonies, resulting in the declaration of independence by the United States.<sup>31</sup> A shift in political circumstances recently led to a resurgence of Quebec nationalism, sparking new efforts among Quebecois to significantly alter their province's relationship with the Canadian federation and increased support for its secession.<sup>32</sup>

Even if strong dual identity does not exist at the beginning, the autonomy process is not necessarily lost. The experience of the Aland Islands suggests that, under the right conditions, dual community identity can develop where none existed before. In a 1917 unofficial plebiscite before Finland declared independence, 96 percent of Alanders supported

---

29. Reisman, *Puerto Rico and the International Process*, pp. 121.

30. Dinstein, "Autonomy," p. 295.

31. *Ibid.*; See generally Friedlander, "Autonomy and the Thirteen Colonies."

32. Barry Came, "The FLQ Crisis: Quebec and Canada 20 Years Later," *Maclean's*, 15 Oct. 1990, pp. 18-19.

reunification with Sweden. When in 1921 the League of Nations Council decision supported Finland's claim to the archipelago instead, the Alanders accepted the decision with some hesitation.<sup>33</sup> Even as late as the Second World War, the Aland Landsting, or parliament, asked for union with Sweden.<sup>34</sup> However, nowadays Alanders accept their status. The secretary of the Aland Parliament says, "The efforts made in the 1910s and 1920s for reunion with Sweden have long ago been replaced by a strong desire on the part of the Alanders to govern themselves."<sup>35</sup> "Most Alanders consider themselves to be just Alanders, not Finns nor Swedes."<sup>36</sup> At the same time, a 1990 public opinion poll showed that only about one in ten Alanders favoured full independence and only about 39 percent wanted more autonomy.<sup>37</sup>

The emergence of this balance of loyalties in Aland is due to several factors including the archipelago's sound economy, small, culturally homogenous population and well-defined territory.<sup>38</sup> Furthermore, the presence of an officially recognised Swedish-speaking minority in mainland Finland with special rights provides Aland with internal support for its

---

33. Gustafsson, "The Aland Islands," p. 302.

34. Finn Seyersted, "The Aland Autonomy and International Law," Nordisk Tidsskrift for International Ret 51 (1982) pp. 23-24.

35. Lars Ingmar Johansson, "The Autonomy of Aland--Basis of a Flourishing Society," in Peace Society of Aland, The Aland Islands Autonomous Demilitarized Region (Aland: Mariehamns Tryckeri Ab, 1988), p.39.

36. Letter to me from Lars Ingmar Johansson, Secretary, Alands Landsting (parliament), 28 Dec. 1990.

37. "Special poll on the autonomy issue: happy as we are," Aland Business Report, 1990.

38. Jansson, Gustafsson, Henriksson, Fagerlund and Johansson, "Aland," p. 5.

status and a significant cultural link to the rest of the country.<sup>39</sup> International support, in particular Sweden's support for the original autonomy arrangement, has also reinforced the autonomy process despite its less than auspicious start.<sup>40</sup> Without it, Alanders would not likely have been so willing to come to accept the arrangement themselves.<sup>41</sup> Many of these factors have at least partial parallels in Macau.

### Political Institutions and Participation

The tension between the desire of local people for local control and the reluctance of central authorities to relinquish their power is at the heart of the autonomy process.

An autonomous region should enjoy effective control over matters which are primarily of local concern, within the overall framework of the fundamental norms of the state. Autonomy is not equivalent to independence, and autonomous government should not expect to be immune from the influence of central governments. At the same time, however, the state must adopt a flexible attitude which will enable the autonomous region to exercise real power, precisely when that exercise of power runs counter to the state's inherent preference for centralization and uniformity.<sup>42</sup>

The composition and authority of the local legislature, executive and administration are often at the centre of this political tug of war.

---

39. Johansson writes, "We are part of the Swedish speaking population in Finland, with different contacts to that cultural framework. The legal status of the Swedish language is very important also for us. Due to the fact that Finland officially is bilingual, all official documents are printed in both languages, texts and descriptions on goods are usually to be found also in Swedish, there are schools and universities with education in Swedish and so on. We can take advantage of all that. If we were the only Swedish speakers in Finland our situation, naturally, should be much more complicated" (Letter to me from Johansson, 28 Dec. 1990).

40. Jansson, Gustafsson, Henriksson, Fagerlund and Johansson, "Aland," p. 5.

41. Ibid. pp. 38-39;

42. Hannum, *Autonomy*, p. 468.

The office of the chief executive of the government in the autonomous territory can be where these conflicting claims clash most strongly. In some nonfederal autonomy arrangements, the central government must approve the candidate for chief executive either directly or after local selection or election.<sup>43</sup> The latter case ideally results in a chief executive who embodies the principle of dual identity, demonstrating both a strong commitment to distinct local interests and a willingness to cooperate with central authorities. However, in some cases it puts the chief executive in the untenable position of answering to two masters. For instance, interference by the Sudanese president in the appointment of the regional council president in the south resulted in an executive whose loyalty to both the Sudanese president and the Regional Assembly hurt his effectiveness.<sup>44</sup>

So long as there were no major issues over which the regional council and the national President differed, the arrangements seemed to work. However, whenever the southern executive took independent stands, the President came down with a heavy hand and usually dissolved the Regional Assembly, disrupting the stability of the South.<sup>45</sup>

---

43. Hannum and Lillich, "The Concept of Autonomy in International Law," pp. 221-222.

44. Hannum, *Autonomy*, p. 324; Sudan abuts the Red Sea and eight sub-Saharan and north African countries. People of Arab extraction, mostly Moslems, cover about two-thirds of the country while the southern third is primarily the home of peoples who are culturally linked to black Africa and are either Christian or follow traditional African religions. The British colonial government administered the two areas separately, but they were united when Sudan became independent in 1956. The southern problem turned into a bloody war after the military regime installed in a 1958 coup declared that Islam and the Arabic language would be introduced in the south. It was not until 1972 that a new military government reached the Addis Ababa Agreement on autonomy with the southern rebels. It granted the region a High Executive Council and a Regional Assembly responsible for internal security, local administration and economic development. The accord recognised English as the principle regional language and the people's right to practice non-Islamic religions. However, divisions within the south and attacks on the region's autonomy by the central government, including the reintroduction of Islamic sectarianism, had triggered renewed civil war by 1983. The government and main southern rebel group reached a tentative agreement in 1989, which the National Islamic Front did not support (ibid. pp. 308-327; Haim Shaked, "Anatomy of an Autonomy: The Case of Southern Sudan," in Dinstein, *Models of Autonomy*, pp. 151-170).

45. Hannum, *Autonomy*, p. 324.



The northern European autonomy arrangements avoid much of this problem by separating the functions of the local government executive from those of the central government representative in the autonomous territory. This does not eliminate central-local conflicts, but it offers some assurance that the conflicts will be less disruptive to the day-to-day functions of the local government. In Aland, executive powers rest with the regional Executive Council chosen by the directly elected Aland parliament from among its members. The Finnish central government's representative in Aland, the county governor, is appointed by the Finnish president to look after central government administration in the region.<sup>46</sup> Under the 1921 agreement between Finland and Sweden, the county governor had to be someone acceptable to the Alanders and the role of Alanders in choosing the county governor increased over the years. The 1951 Autonomy Act requires the Finnish president get the approval of the speaker of the Aland parliament for his or her candidate. The current custom is for the speaker of the Aland parliament to negotiate with members of the local parliament to come up with a name, which he or she then submits to the Finnish president. If the president does not approve, the speaker submits a list of five candidates, from which the president selects one.

This procedure is intended to guarantee that the County Governor of Aland has the confidence of both State and Autonomy authorities, and it has been successful. The Aland County Governor today is not regarded by the Aland population as an emissary of the central power, but rather as a balancing element in the interaction between two authorities equal in principle, the State of Finland and the Autonomous Territory of Aland.<sup>47</sup>

---

46. Ibid., pp. 371-372.

47. Jansson, Gustafson, Henriksson, Fagellund and Johansson, "Aland," p. 28.

In recent years, all county governors have been native Alanders.<sup>48</sup>

Under the Home Rule arrangement, Greenlanders similarly directly elect a regional assembly which chooses an executive cabinet, the majority of whom must be assembly members. The Danish representative in Greenland, the high commissioner, primarily acts as a liaison between Greenland and central authorities. He has no veto over internal Greenland affairs but may be invited to participate in legislative or executive debates.<sup>49</sup>

In many of the examples of autonomy discussed here the question has not been whether to establish democratically elected local institutions, but how the authority of these institutions should be balanced with that of the government of the larger polity. If the larger polity is not democratic or if central and local actors have different conceptions of democracy, as is the case for Macau and Hong Kong, then whether to establish a directly elected legislature and executive in the autonomous territory is itself disputed. Conflicts over the source or nature of political legitimacy make central-local battles more complex. This is particularly the case when autonomous territorial communities within the jurisdiction of a larger authoritarian government demand or succeed in setting up directly elected local government institutions, such as happened in southern Sudan. The actions of Southern Sudan's directly elected Regional Assembly subsequently became a major point of central-local tension contributing to the breakdown of the 1972 Addis Ababa Agreement. The wide dictatorial powers of the Sudanese president would have been menacing even had Sudan itself been a

---

48. They have included the deputy speaker of the Aland parliament, the head of the Executive Council and a high official in the local parliamentary administration (ibid., p. 28).

49. Hannum, *Autonomy*, p. 343.

functioning democracy. "It was perhaps inevitable that a democratic, autonomous regional government would be seen as a threat which the non-democratic centre would seek to control."<sup>50</sup> The failed federation of Eritrea with authoritarian Ethiopia under the UN recommendations also granted Eritrea a directly elected local legislature.<sup>51</sup> These two cases suggest that, in autonomy disputes characterised by deep central-local ideological differences, whether or not to set up democratic institutions can be a dilemma. While directly elected political institutions can build local confidence in the autonomy arrangements, they can also create tension between central and local authorities precisely because their legitimacy challenges that of the central government. Despite this risk, democratic institutions are likely to have strong appeal for minority communities looking for ways to secure their autonomy in the face of authoritarian central governments. In these cases, other internal and external variables may determine whether or not the arrangement survives the resulting tensions.

---

50. Ibid., p. 323.

51. The region of northern Ethiopia known today as Eritrea was an Italian colony between 1890 and 1941. During that time its population was roughly half Eritrean Christian and half Moslem. In 1941, Britain took over temporary administration of the territory. After the Second World War was over, Ethiopian Emperor Haile Selassie's claim to Eritrea was opposed by many Eritrean Moslems and some members of the international community. As a compromise, the territory was federated with Ethiopia in 1952 according to the recommendations of a UN commission endorsed by the General Assembly. The federal arrangements called for a federal government to take responsibility for defence, foreign affairs, finance and international trade. A Eritrean government accountable to a directly elected assembly had authority over all other internal affairs. After repeated violations of the federal agreement by the central government, a serious independence movement emerged in the late 1950s. Ethiopia annexed Eritrea in 1962 and put the area under direct military rule in 1967. Guerrilla fighting has continued between the Ethiopian and Eritrean forces (see generally Tom J. Farer, War Clouds on the Horn of Africa: A Crisis for Detente [New York and Washington, D.C.: Carnegie Endowment for International Peace, 1976]; Haffai Erlich, "The Eritrean Autonomy 1952-1962: Its Failure and its Contribution to Further Escalation," in Dinstein, Models of Autonomy, pp. 171-182; Hannum, Autonomy, pp. 337-341).

### Conflict Resolution Mechanisms

The strength of and public support for the legal system and other dispute settlement mechanisms are of prime concern to the success of autonomy processes. The successful use of these institutions for resolving or diminishing jurisdictional and other central-local disputes can strengthen the institutions' capacity to handle future problems as belief in their legitimacy grows. Failure could fuel further political disagreement, suspicion and distrust.<sup>52</sup> The absence of conflict resolution mechanisms contributed to the Addis Ababa Agreement's failure to guarantee the autonomy of southern Sudan.<sup>53</sup> In the Eastern Caribbean, there were no mechanisms by which disagreements about Britain's reserved powers over defence and external affairs could be submitted to an independent, impartial adjudication body acceptable to key parties.<sup>54</sup> By contrast, the availability of the United States court system to settle a similar dispute between the Northern Mariana Islands and the American government has probably helped encourage the islanders not to abandon their Commonwealth status yet.<sup>55</sup>

An independent and impartial judiciary armed with strong legislation can also contribute to the stability of the autonomy process by helping to secure human rights in the autonomous territory. Violations of human rights frequently contribute to the erosion of local support for autonomy

---

52. Ibid., p. 324.

53. Ibid.

54. Gilmore, "Legal Perspectives on Associated Statehood in the Eastern Caribbean," p. 514.

55. The Mariana authorities have also submitted their complaint to the UN Security Council and the UN Trusteeship Council (Lizabeth A. McKibben, "The Political Relationship Between the United States and Pacific Island Entities: the Path to Self-Government in the Northern Mariana Islands, Palau, and Guam," *Harvard International Law Review* 31 [Winter 1990]: 272, 280-281, 285-287.



arrangements. "A common characteristic of those ethnic conflicts which have led to serious violence is the violation of fundamental human rights.... while they are more often responsible for exacerbating existing conflicts than for creating divisions where there were none before.... it is these violations which often escalate political or economic differences to the status of open and violent conflict."<sup>56</sup>

Hannum argues that a "fully autonomous" territory would have "an independent local judiciary with full responsibility for interpreting local laws. Disputes over the extent of local authority or the relationship between the autonomous and central governments may be within the original jurisdiction of the local courts, but final decisions are commonly within the competence of either the state judiciary or a joint dispute-settling body."<sup>57</sup> Many central-local disputes hinge on divergent interpretations of the constitution or other basic law enshrining the autonomy arrangement. Therefore, the allocation of final authority to interpret the constitutional documents of autonomy are of critical importance. In most cases, final authority remains in central government hands or in a joint central-autonomous body.<sup>58</sup> There have been exceptions: Eritrea, prior to its annexation by Ethiopia, had authority to interpret its own Basic Law; the League of Nations adjudicated disputes between Poland and Danzig; questions regarding interpretation of the Free Territory of Trieste Statute were to be determined by an ad-hoc commission.<sup>59</sup> The form is less important

---

56. Hannum, *AUTONOMY*, pp. 455-456.

57. *Ibid.*, p. 467.

58. *Ibid.*, p. 139.

59. *Ibid.*, p. 139 at note 478.

than finding a solution that builds confidence in the autonomy process on all sides. In the case of Macau and Hong Kong, their unique status makes local competence to interpret the Basic Law more appropriate.<sup>60</sup>

A two-pronged system involving a more politicised forum first and a judicial decision as a last resort is used in Greenland and Aland, where the use of constitutional courts is less well accepted than in the United States.<sup>61</sup> In Greenland, a mediation/arbitration board made up of two appointees of the Greenland authorities, two Danish government appointees and three Danish Supreme Court judges appointed by the chief justice, is competent to judge conflicts between the Danish government and the Home Rule authorities. If the board's political appointees cannot reach an accord then the judges make a ruling.<sup>62</sup> In the Aland system, the Finnish president must get opinions on proposed Aland legislation from the Supreme Court and the Aland Delegation, the latter composed of two members appointed by the Finnish government, two by the Aland parliament and a chairman nominated by the president of Finland, all of whom can be recalled by their nominating authorities. The chairperson is, as a rule, the Aland county governor, who is by custom an Alander with the confidence of both the Aland parliament and the Finnish government. In practice, the Finnish president only seeks the Supreme Court's opinion when the Aland delegation states the legislation competence of the Aland parliament is questionable or when the law is complicated or novel. The practice is to let central and

---

60. Ibid., 139.

61. Letter to me from Johansson, 28 Dec. 1990.

62. Questions of interpretation of authorising legislation must still be settled by ordinary courts under the Danish Constitution. The board cannot hear the complaints of private citizens. As of 1985 the special commission had not yet been used (Foighel, "A Framework for Local Autonomy," p. 51; Harhoff, "Le statut juridique du regime d'autonomie du groenland," *Inter-Nord*, no.17 [1985], p. 209).

local representatives attempt to reach a negotiated agreement first.<sup>63</sup> The secretary of the Aland parliament says the system has the confidence of Aland's political leaders: "The Aland Delegation and the President have always functioned neutrally and correctly and their solutions have been accepted also by the politicians of Aland."<sup>64</sup>

The case of South Tyrol, an ethnic-German province of Italy, illustrates that, even where dispute settlement methods fail to bolster the authority of the autonomous territory, the process can survive if it has other means of support.<sup>65</sup> In Italy, both the central and the South Tyrol provincial government can take allegedly illegal provincial or regional acts to the Italian Constitution Court, whose judgements are binding. In recent years, the court's rulings have tended to weaken South Tyrol autonomy "by holding that inherent national powers of 'direction and coordination'... take

---

63. Jansson, Gustafsson, Henriksson, Fagerlund and Johansson, "Alands," pp. 24, 28, 34; Gustafsson, "The Aland Islands," p. 206.

64. Letter to me from Johansson, 28 Dec. 1990; "Virtually all of the President's vetoes of Province laws have stemmed from technical errors which cannot be entirely avoided, given the complexities in the division of competence between State and Province authorities" (Jansson, Gustafsson, Henriksson, Fagerlund and Johansson, "Aland," p. 44).

65. The peace treaty that followed the first World War awarded South Tyrol, an overwhelmingly German-speaking part of Austria, to Italy as a reward for abandoning the Triple Alliance with Germany and the Austro-Hungarian Empire. The area was subjected to assimilation and denationalisation policies from the 1920s onward. Today, about 64 percent of its people are German-speakers while the rest are Italian or Ladin-speakers. After the Second World War, the Austrian and Italian reached an agreement guaranteeing autonomy for South Tyrol, but Italy violated at least the spirit of the accord by attaching South Tyrol to the overwhelmingly Italian province of Trentino, thereby rendering German-speakers a minority and their autonomy an illusion. Subsequent Austrian complaints to the UN and Council of Europe, as well as concern caused by terrorist attacks and a general constitutional trend in Italy toward regionalisation, led to the 1969 "package" of measures to improve South Tyrolean autonomy. The "Operational Calendar" signed by Austria and Italy commits the parties to submit future disputes to the International Court of Justice. The 1972 Autonomy Statute sets up a Regional Council for Trentino-Alto Adige/South Tyrol, whose presidency alters between a German-speaker and an Italian-speaker and has quite limited powers. A Provincial Council and Provincial Government in South Tyrol has broader competence over economic, social and cultural matters. German has equal standing with Italian as the region's official language and separate German-language education and proportional linguistic representation in the civil service are guaranteed (Christoph Schreuer, "Autonomy in South Tyrol," in Dinstein, *Models of Autonomy*, pp. 53-66; Hannum, *AUTONOMY*, pp. 432-440).

precedence over regional and provincial competence."<sup>66</sup> Despite this imbalance, the South Tyrolese generally accept the system in place under the 1972 Italian-Austrian agreement as an advance over previous arrangements and workable in practice. Much of the credit for this support rests with Italy and Austria, whose wish to avert a resurgence of conflict over the territory encourages the South Tyrolese to seek future changes through normal political processes rather than violence.<sup>67</sup>

### External Support

Many other autonomy arrangements have floundered because of the failure of outside actors to put pressure on the key parties to make an imperfect system work. In circumstances where the political and or economic position of the autonomous community is weak, external interest in the arrangement can deter the stronger central authorities from overrunning the smaller polity's autonomous status. Reisman says of international scrutiny: "Though an irritant to some, [it] is a healthy stimulus to reexamination and, where appropriate, to change or reinforcement.... From the perspective of the international protection of human rights, a status which purports to insulate the political elite from world scrutiny and from the need to comply with international standards is imperfect."<sup>68</sup> External support is often controversial and sometimes exceeds tolerable bounds, disturbing the autonomy arrangement.<sup>69</sup> At times, support from an outside actor can swing

---

66. Hannum, *Autonomy*, pp. 436-437.

67. *Ibid.*, pp. 439-440.

68. Reisman, *Puerto Rico and the International Process*, pp. 114-115.

69. A notable example of controversial external involvement is the Irish Republic's participation in attempts to resolve the Northern Ireland problem under the 1985 Anglo-Irish Agreement (Hannum, *Autonomy*, pp. 241-243).



the political mood in the smaller polity towards demands for full independence. In other cases, a decision by the outside actor to withhold support can encourage the community to accept autonomous status instead.

As noted above, Austria has been instrumental since the end of the Second World War in pushing the Italian government to provide some measure of real autonomy for South Tyrol, most recently under the 1969 package of reforms and the 1972 New Autonomy Statute.<sup>70</sup> Implementation delays and substantive shortcomings continue to limit the ability of these measures to address all Tyrolean grievances. However, the new autonomy arrangement might never have come about had Austria not actively pressured Italy.<sup>71</sup>

The role of Austria in guaranteeing the autonomy of the South Tyrol should not be underestimated, although Italy has consistently maintained its position that Tyrolean autonomy is a purely internal matter (with the exception of the broad obligations included in the 1946 De Gasperi-Grubber Accord). Austria has not yet declared (as it is required to do under the Operational Calendar) that the Package has been fulfilled, and this remains a significant factor in Austro-Italian relations. In this respect, the situation of the South Tyrol resembles one of the classic post-Versailles examples of minority protection, and Austrian support was perhaps decisive in obtaining the relatively broad autonomy granted in 1972.<sup>72</sup>

In contrast with the unilateral support offered by Austria, external backing can also be multilateral through such instruments as treaties or international intergovernmental and nongovernmental organisations. The resolutions and recommendations of UN bodies have supported efforts by such territories as the Northern Marianas, Puerto Rico and the former British islands in the Eastern Caribbean to bolster their autonomous status under

---

70. Schreuer, "Autonomy in South Tyrol," pp. 53-57.

71. Ibid., pp. 54-56, 62; Dinstein, "Autonomy," pp. 295-296.

72. Hannum, *AUTONOMY*, p. 440.

associated state relationships with much stronger partners like the United States and Britain.<sup>73</sup>

Hannum argues that multilateral or international involvement may be a better option than unilateral pressure from a single neighbouring state in some cases because it can be more subtle and less threatening.<sup>74</sup> However, it may also be less reliable than a single party with a personal stake in the outcome of the autonomy process. Although a UN commission's report formed the basis of Eritrea's autonomy arrangement with Ethiopia, the lack of ongoing multilateral support for the territory's distinct status undermined the accord and encouraged its complete collapse in 1962 into a war that continues today.<sup>75</sup> Several commentators have blamed the international community's refusal to protect what it had created on Ethiopia's Cold War-sensitive geographic location, the almost mystical leadership position Ethiopian Emperor Haile Selassie had among newly independent states and his reputation as an antifascist hero.<sup>76</sup>

Selassie, the PRC regime and the leaders of many new states--in many cases yesterday's independence guerrillas--have become some of the world's most fierce proponents of traditional international legal concepts of

---

73. Gilmore, "Legal Perspectives on Associate Statehood in the Eastern Caribbean," pp. 553-554; See generally McKibben, "The Political Relationship Between the United States and Pacific Islands Entities."

74. Hannum, *Autonomy*, p. 457.

75. A UN commission recommended that Eritrea "constitute an autonomous unit federated with Ethiopia under the sovereignty of the Ethiopian Crown," with the Eritrean government possessing of full "legislative, executive, and judicial powers in the field of domestic affairs" (Farer, *War Clouds on the Horn of Africa*, pp. 26, 28). However, UN participation effectively stopped after the two parties adopted the Federal Act and constitution. When it became clear that real control over the territory was in Ethiopian hands and Haile Selassie moved to destroy Eritrea's paper autonomy, there were no provisions for dispute settlement or reliable international supervision to support Eritrea (Hannum, *Autonomy*, p. 340).

76. Christopher Clapham, *Transformation and Continuity in Revolutionary Ethiopia* (Cambridge: Cambridge University Press, 1986), pp. 207, 221; Farer, *War Clouds on the Horn of Africa*, p. 29.

sovereignty and territorial integrity in the face of substate groups demanding independence and threatening to redesign the post-colonial map.<sup>77</sup> While in many ways critical to the stability of the international system, the rigid enforcement of these principles can, paradoxically, cause conflict, as the history of Eritrea attests. Emphasising stable frontiers, the international community generally prefers that the grievances of minorities be resolved in some way short of secession, often through territorial autonomy arrangements. Outside support "has more frequently repressed than encouraged minority or secessionist movements."<sup>78</sup> However, rigid conceptions of sovereignty often cut off the external support needed to make these autonomy arrangements work. Even claims for remedy of serious violations of minority rights seldom lead to a collective demand on the international level for a specific remedy, such as restructuring of the internal autonomy framework. Ironically, the minority group making the claim might be driven to demand secession in order to get any sort of international response at all, even when regional autonomy or internal restructuring--not independence--is their real goal.<sup>79</sup> The debacle of Eritrean autonomy reveals the falsity of claims that international involvement in autonomy arrangements is necessarily destabilising; it may, on the contrary, stabilise an otherwise shaky arrangement.

External support, or external effectiveness, can play a particularly critical role at the onset of an autonomy process when the citizens of the

---

77. Clapham, *Transformation and Continuity in Revolutionary Ethiopia*, p. 222; For this reason, Sudan's neighbours backed the north's position against the south's demands even though they were more ethnically and culturally akin to the southern Sudanese African minority (Shaked, "Anatomy of an Autonomy," p. 169).

78. Hannum, *Autonomy*, pp. 456-457.

79. Lee C. Buchheit, *Secession: The Legitimacy of Self-Determination* (New Haven: Yale University Press, 1978), pp. 214-215.



territorial community are less confident of the internal constitutional protections provided for their status. The experience of Aland suggests the role of external effectiveness changes over time if the citizens trust in internal constitutional guarantees grows. The original Aland autonomy agreement incorporated into Finnish law in 1922 sprung from an accord between Sweden and Finland and from League of Nations Council decision. Under the league's provisions, Finnish authorities were required to submit complaints by the Aland parliament about implementation to the league council, which was obliged to submit them to the Permanent Court of International Justice. However, this mechanism was never tested during the life of the league and, at the request of the USSR, Finland dropped the provision from the 1951 version of Aland's Autonomy Act.<sup>80</sup> Some scholars have since questioned whether the UN has assumed the league's supervisory obligations towards Aland and, therefore, whether the islands continue to have international legal status.<sup>81</sup> A proposed new version of the Aland autonomy act contains no clause mentioning an international guaranty. According to one analysis, this is because the obligation to observe the original international provisions is now an "unshakeable principle."<sup>82</sup>

For the Alanders ... the provision of an international guarantee for their autonomy was of fundamental significance, especially during the early decades. But this issue is of considerably less concern to the Alanders today. They have had seventy years of experience with the autonomy and of dealing with the Finnish state authority about the autonomy. It has basically been a positive experience. Their confidence in the firm legal foundation undergirding their autonomy

---

80. Seyersted, "The Aland Autonomy and International Law," pp. 25-26; Jansson, Gustafsson, Henriksson, Fagerlund and Johansson, "Autonomy," pp. 37-39.

81. Seyersted, "The Aland Autonomy and International Law," pp. 27-28; Jansson, Gustafsson, Henriksson, Fagerlund and Johansson, "Alands," pp. 37-39.

82. Jansson, Gustafsson, Henriksson, Fagerlund and Johansson, "Alands," p. 39.



in the process has shifted from a locus in international law into its place in Finland's constitutional order.<sup>83</sup>

The fact that the constitutional status of the islands cannot be amended or abolished without the Aland parliament's agreement is one of the territory's main internal guarantees.<sup>84</sup>

This sense of confidence in the Finnish constitutional order does not mean external support is irrelevant to Alanders. With Finland's consent, the territory became a member of the Nordic Council in 1970 and some Alanders view this involvement as a kind of modern replacement of the old League of Nations guarantees. The Nordic Council provides a regional international forum in which Aland could take up issues concerning its relationship with Finland. Nordic Council membership also bolsters the territory's participation in Nordic regional decision making on fishing, conservation, cultural, educational and other questions of direct local concern. Other potential forms of external effectiveness flow from Finland's adherence to the International Covenant on Civil and Political Rights, which has some limited provision for minority rights, and its participation in the Council of Europe since 1989.<sup>85</sup>

Participation in international organisations and other dimensions of the global constitutive process are an increasingly fruitful avenue for autonomous territories seeking ways to enhance their internal autonomy. Associated states perhaps have the least inhibited opportunities for involvement because they are recognised as states. Reisman argues:

Association involves a recognition of the political dependence of an entity, but at the same time an insistence on its continuing discrete

---

83. Ibid.

84. Modeen, "Constitutional Problems," p. 9; Gustafsson, "The Aland Islands," p. 204.

85. Jansson, Gustafsson, Henriksson, Fagerlund and Johansson, "Alands," pp. 38-39, 41.

identity under the international scrutiny accorded to all states. This becomes an increasingly important status for small states which find themselves in the comparatively uncontested sphere of one of the Great Powers.... the small associate state may seek membership in general international organizations, simultaneously conceding its dependence in one area, but asserting its independence in another; membership itself becomes some guarantee of continued independence.<sup>86</sup>

However, it is increasingly difficult to argue that other types of nonstate autonomous entities are matters of only inclusive concern or that autonomous territories have no right to an international legal personality. The denial of self-determination and human rights to an activist territorial community by a regime is likely to cause instability for the international community as a whole and damage peaceful and friendly relations among nations. Thus, the prevention and curtailment of such denials are of imperative concern to the international community.<sup>87</sup>

Nevertheless, the Eritrean settlement and the post-1919 treaties involving international oversight to guarantee minority rights were not completely successful, raising the question whether autonomy accords imposed by the international community can be viable over the long term. While a cause for pessimism about international solutions to conflicts involving distinct territorial communities, the collapse of the League of Nations minority system and the UN arrangement in Eritrea were linked with the international political context of the time and their shortcomings

---

86. Reisman, "Puerto Rico and the International Process," p. 19.

87. M.S. McDougal and W. Michael Reisman, "Rhodesia and the United Nations: The Lawfulness of International Concern," *American Journal of International Law* 62 (1968): 1, 12, 15 in Chowdhury, "The Status and Norms of Self-Determination in Contemporary International Law," pp. 98-99.

might not be applicable to future situations.<sup>88</sup> The recent involvement of the United States, Britain and other military forces, as well as the UN, in securing some sort of autonomy for the Kurds in northern Iraq will help test the viability of multilateral involvement in autonomy arrangements during the post-Cold War era.<sup>89</sup>

In the end, the type of external support most useful to each autonomy arrangement must be assessed separately. The powers of international persuasion in multilateral forums could sometimes be more effective than the formalised supervisory and adjudication mechanisms envisioned in the League of Nations minority treaties. At other times, international involvement is limited by the enduring reluctance of some international bodies to discuss 'internal' autonomy or minority political rights questions and to call member states to task.<sup>90</sup> International media and nongovernmental organisations offer other avenues of external effectiveness.<sup>91</sup>

---

88. Supervisory mechanisms for minority treaties established under the League of Nation's Council and "Committee of Three" were cumbersome. They were not backed by powers of enforcement and appeared biased against the minority community. The Free City of Danzig and Memel Territory, established to secure the rights of a German minority enclave of strategic importance, were absorbed or annexed by the larger political entity. Eritrea suffered the same fate (Hannum, *Autonomy*, pp. 53-54, 341, 457).

89. "Hope against hope for Iraq's Kurds," *Economist*, 4 May 1991, p. 43.

90. Hannum, *Autonomy*, p. 457.

91. *Ibid.*, pp. 457-458.

PART II: BUILDING AUTONOMY FOR MACAU



## CHAPTER 3

## MACAU AND ITS AUTONOMY PROCESS

Macau's autonomy process formally began with the negotiations that led to the 13 April 1987 initialing and subsequent ratification of the Sino-Portuguese Joint Declaration committing Portugal to transfer administration of Macau to the PRC on 20 December 1999. The extent of the autonomy the PRC promises in the accord is, on paper, greater than most of the autonomy arrangements discussed thus far, although it provides fewer constitutional guarantees than those given to either associate states or component territories of federations and even some autonomous regions. Under the Joint Declaration the future Macau SAR is to enjoy a "high degree of autonomy" except in foreign affairs and defence matters for fifty years. It will have "executive, legislative and independent judicial power, including that of final adjudication," a government and legislature "composed of local inhabitants," the executive being appointed by the Chinese government "on the basis of ... elections or consultations to be held locally."<sup>1</sup> The community's "current social and economic systems ... will remain unchanged" and its current laws "basically unchanged," while all rights and freedoms of the residents and others in Macau "will be ensured by law."<sup>2</sup> Under the name "Macau, China," the SAR can "on its own maintain and develop economic and cultural relations" with other countries and international organisations. It may issue its own travel documents and its own currency. The PRC cannot levy taxes in the SAR, which will remain a separate customs

---

1. Macau JD, 2(2)(3).

2. Ibid., 2(4).

territory and free port.<sup>3</sup> The SAR government is responsible for maintenance of public order in the region.<sup>4</sup> Portugal is to be responsible for administering Macau during the transition period, during which time the PRC is to enact a Basic Law, or mini-constitution, for the Macau SAR based on the terms of the Joint Declaration.<sup>5</sup>

These terms were the starting point of a dynamic process of political change, the outcome of which is still unknown. The Joint Declaration is the first in a series of political bargains between central, local and external actors that make up this process. Both formal and informal, these bargains will mark the dynamic of the autonomy process in Macau, altering and, if the needs of the key parties remain satisfied, renewing it at the same time.

This chapter describes some of the main contours of the autonomy process in Macau as it has unfolded thus far. In reality, the process is more complex than this simplified description suggests, with a huge cast of actors stretching from Lisbon to Beijing to Macau, Hong Kong and beyond. Much of it occurs behind closed doors. Only a brief introduction to the history of Portuguese tenure in Macau and the major political and economic actors in the enclave is given here. This prepares the ground for a more detailed look in subsequent chapters at some of the key attitudes, institutions and processes that will help determine the evolution of Macau's autonomy process.

---

3. Ibid., 2(7)(8)(9).

4. Ibid., 2(10).

5. Ibid. 3, Annex I(1).

## The History of Portugal's Tenure in Macau

The Portuguese government officially describes Macau as "Chinese territory under Portuguese administration."<sup>6</sup> The words hint at the historic uncertainty of Portuguese tenure and the system of dual jurisdiction that has reigned for much of the enclave's nearly 450 years, fluctuating with the relative strengths of the Portuguese and Chinese authorities.<sup>7</sup>

Portuguese traders first established a settlement in Macau in the middle of the sixteenth century, probably in 1557, although there is evidence of minor Chinese settlements on the peninsula at least two centuries before.<sup>8</sup> From 1560 to 1640, Macau was an important trade centre and mission headquarters for the Roman Catholic church. The territory's golden age was short lived, however. By the mid seventeenth century, the union of the Portuguese crown with Castile, the rise of Holland's influence in Asia and its capture of Malacca and the collapse of Portugal's Japanese trade brought Macau's heyday of prosperity to an end. Although Macau held on to a significant trading role as a base for foreign merchants until the British founded Hong Kong in 1841, the territory's fortunes never fully recovered.<sup>9</sup>

How the Portuguese originally managed to establish themselves in Macau and the nature of the rights they enjoyed is disputed, in part because there is no contemporary evidence that a deed or other sort of written

---

6. R.D. Cremer, "A Model for Macau," *Asian Affairs* 13, no. 4 (Winter 1986-1987): 45.

7. Norman MacQueen, "Macau: End of a Special Case?" *The World Today* 41, no. 8-9 (Aug.-Sept. 1985): 167.

8. Cohen and Chiu, *People's China*, 1: 374; Richard Louis Edmonds, *Macau* (Oxford, Santa Barbara and Denver: Clio Press, 1989), p. xx.

9. Edmonds, *Macau*, pp. xx-xxii.



agreement existed.<sup>10</sup> By 1573, however, their occupation had become an established fact, probably founded on a "leasehold" agreement based on payment of a "ground rent" to the Chinese Emperor.<sup>11</sup> According to some interpretations, the "ground rent," which the Portuguese submitted to until they refused payment in the mid-nineteenth century, constituted full Portuguese recognition of Chinese sovereignty in the enclave.<sup>12</sup>

Chinese intervention in the enclave's affairs limited Portuguese authority for most of these three centuries. China "continued to receive rent for Portugal's use of Macau, to collect land taxes and customs revenues, to station an official in Macau, and, at least occasionally, to exercise some of the other functions associated with the Western concept of 'sovereignty.' Nevertheless, Portugal, which enjoyed considerable autonomy within this system, [sic] continued to claim sovereignty over Macau."<sup>13</sup> Mediation, bribery of Chinese officials and frequent tension and conflict characterised the system of give and take that reigned in Macau.<sup>14</sup> Afonso and Pereira conclude:

---

10. Harald Bruning, "The Position of Macau in the Portuguese Constitutions Since 1822," *Journal of the Macau Society of Social Sciences*, no. 1 (Sept. 1986), pp. 12-13; Lourenco Maria da Conceicao, *Macau Entre Dois Tratados com a China, 1862-1887* (Macau: Instituto Cultural de Macau, 1988), pp. 7-10; Rui Afonso and Francisco Goncalves Pereira, "The Political Status and Government Institutions of Macau," *Hong Kong Law Journal* 16, pt. 1 (Jan. 1986), p. 29; Cohen and Chiu, *People's China*, 1: 374; For a mainland Chinese version see "On the Questions of Hongkong and Macau," *Beijing Review*, 23 Aug. 1982, p. 18.

11. Afonso and Pereira, "Political Status and Government Institutions," p. 29; Conceicao, *Macau Entre Dois Tratados*, pp. 8-9.

12. Afonso and Pereira, "Political Status and Government Institutions," p. 29 at note 7.

13. Cohen and Chiu, *People's China*, 1: 374; A Chinese imperial decree in 1613 prohibited construction of new buildings and ordered measurement of vessels for taxation purposes. In 1688 Chinese authorities set up a customs house. In 1726 they ordered the Portuguese-Macanese trading fleet reduced to twenty-five vessels and subjected them to strict controls. In 1736, the Chinese established a local mandarinat with power to examine and punish criminals (Afonso and Pereira, "Political Status and Government Institutions," pp. 30-31).

14. *Ibid.*, pp. 30-31; Edmonds, *Macau*, pp. xxvi-xxvii.



The consent of the Chinese authorities had always rested on a specific understanding of the nature and limits of the power vested in the Portuguese in Macau. Since Macau's origin as a Portuguese settlement, a dualism had been shown, sometimes strikingly, in all aspects of life: in the exercise of political power, the administration of justice, religious structures, trade affairs, even the urban administration.<sup>15</sup>

By the early nineteenth century, Portugal had begun more forcefully asserting its authority in Macau in an attempt to reduce China's influence and the symbols of Beijing's claim to sovereignty. After China's defeat in the Opium Wars and the rush by Western powers to conclude treaties granting them extraterritorial and other rights in the weakened kingdom, Portugal also sought a treaty to clearly establish its sovereignty in Macau.<sup>16</sup> Negotiations were prolonged, finally resulting in the parties signing the Lisbon Protocol in 1887, in which Portugal agreed to cooperate with China in taxing the opium trade in Macau and China agreed to Portugal's perpetual occupation and government of the enclave.<sup>17</sup> The two parties reconfirmed its terms the following year by ratifying the Treaty of Beijing. Nevertheless, Portugal's authority was not absolute. Portugal was obligated never to alienate Macau to another state without China's prior agreement. Moreover, the parties were to delineate the boundaries of the territory in a subsequent treaty, which was never negotiated.<sup>18</sup>

---

15. Afonso and Pereira, "Political Status and Government Institutions," pp. 29-30.

16. Edmonds, *Macau*, pp. xxii-xxiii; In addition to these factors, Conceicao attributes the move to the irregular pressures of Chinese intervention in Macau and the influence of positivist legal theory in the nineteenth century, which made Portuguese officials uncomfortable with their lack of a legal document proving Portugal's right to Macau (Conceicao, *Macau Entre Dois Tratados*, pp. 11-13).

17. Cohen and Chiu, *People's China* 1: 37-4; For a Portuguese text of the protocol see Conceicao, *Macau Entre Dois Tratados*, pp. 141-142.

18. For a Portuguese text of the Treaty of Beijing see Conceicao, *Macau Entre Dois Tratados*, pp. 153-171; Afonso and Pereira, "Political Status and Government Institutions," pp. 33-34.

In the early centuries, the Portuguese in the enclave enjoyed considerable powers of self-government from Lisbon, exercised through an elected local senate. Beginning in the nineteenth century, Portugal gradually drew Macau and its laws into its overseas empire. Like Lisbon's other overseas possessions, Macau became an overseas province of Portugal in 1951 and gained the status of an autonomous region in 1971.<sup>19</sup> Despite the Treaty of Beijing and Lisbon's centralising policies, however, Portugal's authority in the territory was far from secure. During the Cultural Revolution in late 1966 and early 1967, anti-Macau government demonstrations led to the death of eight local residents. Portuguese officials buckled to the demands of local pro-Communist groups and PRC authorities by signing a protocol agreeing to prohibit Nationalist activities in the enclave, stop admitting refugees from China and accept the entry of PRC gunboats into Macau's harbour.<sup>20</sup> "In the months immediately following the January 1967 settlement, the Macau authorities were afraid to enforce laws for fear of political implications, but gradually the government reasserted some of its former authority."<sup>21</sup>

The military coup which toppled Portugal's Caetano dictatorship on 25 April 1974 set in motion a chain of events that brought democratic government to Portugal and independence to all Portugal's African and Asian

---

19. Edmonds, *Macau*, p. xxvii; Bruning, "The Position of Macau in the Portuguese Constitutions," pp. 16-18; Franz Ansprenger, *The Dissolution of the Colonial Empires* (London: Routledge, 1989), p. 284.

20. The protests ostensibly began with the alleged unnecessarily brutal suppression by Portuguese authorities of Macau residents renovating a building for use as a school on Taipa Island (Cohen and Chiu, *People's China* 1: 375, 793-795, 816-818).

21. Edmonds, *Macau*, pp. xxiv-xxvi.

possessions save Macau.<sup>22</sup> The Portuguese government reportedly informed the PRC it wanted to return administration of Macau to China, but the Beijing government refused fearing such a move would spark instability in Hong Kong.<sup>23</sup> However, the Lisbon government was under pressure from lobbies in Portugal and Macau to treat the enclave in a manner consistent with its democratic and anticolonial policies. As a compromise, the Portuguese Constitution and the Organic Statute of Macau promulgated in Lisbon in 1976 granted Macau some political autonomy from Portugal and, in a sense, began Portugal's disengagement from the territory with China's tacit approval.<sup>24</sup> The Organic Statute, the enclave's mini constitution, said the territory's people shall "enjoy civil rights and, except as provided otherwise in the Constitution of the Republic of Portugal, the right of self-government in administration, economy, finance and legislation."<sup>25</sup> Setting out the basic principles and institutions for the enclave's administration, it provided for a Legislative Assembly made up of local residents, a minority of whom were directly elected. However, residency qualifications restricted the number of local Chinese qualified to vote.<sup>26</sup> The Portuguese Constitution

---

22. Gerald J. Bender, *Angola Under the Portuguese, The Myth and the Reality* (London: Heinemann, 1978), pp. 234-237; Ansprenger, *Dissolution of the Colonial Empires*, pp. 268-269.

23. Chris Kershaw, "If Portugal decided to pull out of Macau," *HKS*, 9 June 1974; "Leandro denies Macau offered back to China," *HKS*, 2 Apr. 1975; MacQueen, "Macau," p. 168.

24. MacQueen, "Macau," p. 168.

25. Portugal, *Organic Statute of Macau, 1990*, Art. 2 (hereafter QSM); All references in this thesis refer to the 1990 version unless otherwise stated; For a Portuguese version of the 1990 Organic Statute see Governo de Macau, *Boletim Oficial*, no. 20, supplement, 12 May 1990, pp. 1779-1794; For an English version of the 1976 version see Peter Wesley-Smith, "Macau," in Albert P. Blaustein and Phyllis M. Blaustein, eds., *Constitutions of Dependencies and Special Sovereignities*, vol. 2 (New York: Oceana, June, 1987).

26. The 1976 version of the statute provided for a Legislative Assembly of seventeen deputies of which five were appointed by the governor, six directly elected by universal suffrage and six indirectly elected by local civic organisations (QSM, Art. 21; MacQueen, "Macau," p. 168).

said Macau was under Portuguese administration but did not identify it as part of Portuguese territory.<sup>27</sup> This new constitutional framework presaged a secret accord reached between Portugal and the PRC in 1979 after the two governments established diplomatic relations.<sup>28</sup> Under the agreement, both governments recognised Macau as Chinese territory under Portuguese administration, a status that carries considerable implications for Macau's autonomy after returning to PRC administration in 1999.<sup>29</sup>

### Society, Economy and Political Participation

Macau's current status is characterised by one scholar as "Chinese-sovereignty-and-Portuguese-administration-manipulated-by-representatives-of-China."<sup>30</sup> Another calls it "a high degree of local autonomy" with "Chinese influence in, and control over, Macau's economy and political system ... solidly established with approval of the Portuguese Republic."<sup>31</sup> This unusual status and its meaning for post-1999 Macau must be understood in relation to the role of major political and economic actors in the enclave and their means of political participation.

About 97 percent of Macau's more than 500,000 residents are ethnic Chinese, most of them Cantonese originally from neighbouring Guangdong province in the PRC. As Portuguese traders declined in importance in past centuries, ethnic Chinese rose to dominate the local economy. Today, pro-Beijing local Chinese business, union and kai fong-association elites play

27. Portugal, Constitution of the Republic of Portugal, Art. 5(1)(4) (hereafter Portugal, Constitution).

28. Edmonds, Macau, p. xxvi.

29. Ibid.

30. Wesley-Smith, "Macau," p. 1.

31. Cremer, "A Model for Macau," pp. 53-54.



a predominant role in the political system, although a new group of independent local Chinese political leaders is trying to challenge these traditional elites. Locally born Eurasians, known as Macanese, and expatriate Portuguese continue to play major roles in local administration, politics and the professions in numbers out of proportion with their small 3 to 4 percent share of the population. "To a large extent, Macau's future depends on the outcome of political struggles and compromises between these four political forces."<sup>32</sup>

The Macanese--called 'macaense,' 'filhos da Macau' or 'filhos da terra,' in the local Portuguese dialect--are a difficult group to define, both racially and culturally.<sup>33</sup> I use the term to refer to someone of Eurasian ancestry who speaks Portuguese,<sup>34</sup> although most Macanese also speak Chinese. Because definition is problematic and government statistics tend to identify people as either Chinese or Portuguese nationals, which does

---

32. Herbert S. Yee and Sonny Shui-hing Lu, "Macau in Transition: The Politics of Decolonisation" (Paper presented to the China and Hong Kong at the Crossroads Symposium, Baptist College, Hong Kong, 3-5 Sept. 1990, forthcoming in *Asian Survey*), p. 2.

33. Scholars and Macau people alike use the term in various ways, some to refer to people of mixed Chinese and Portuguese ancestry, others to anyone born in Macau, at least any non-Chinese, and still others to those of mixed European and Asian ancestry who speak Portuguese, especially Portuguese with a Macau accent (see Edmonds, *Macau*, p. xxxix; F.A. Silva, *All Our Yesterdays: The Sons of Macau--Their History and Heritage* [California: UMA, 1979], p. 12; generally Ana Maria Amaro, *Filhos da Terra* [Macau: Instituto Cultural de Macau, 1988]).

34. This follows Ana Maria Amaro's argument that the Macanese are not descendents of the offspring of Portuguese-Chinese liaisons in early Macau. Rather, they are descendents of some of the first Portuguese residents of Macau and Asian or Eurasian women, who were mostly from Malacca, India, Timor and other points of Portuguese trade and settlement throughout Asia and Africa. The Eurasian Macanese community that developed from these liaisons was relatively insular and fairly well off socially and financially. Marriages tended to occur within the community itself or with Portuguese. Chinese-Portuguese and Chinese-Macanese intermarriage was relatively rare in Macau until the nineteenth century. Therefore, traditional Macanese culture is not predominantly a mixture of Portuguese and Chinese heritage, but a product of Portuguese and numerous Asian and even African cultures including Goan, Malay, Japanese, Filipino, Tai, Burmese, French, English and other strains. With the increase in marriages between Macanese and Chinese in recent decades, Chinese blood increasingly dominates the Macanese mix. According to Edmonds, the children of marriages between Portuguese men and Chinese women are now regarded as Macanese too. These marriages help reinforce the Portuguese identity in the population while maintaining Chinese cultural associations (see generally Amaro, *Filhos da Terra*; Edmonds, *Macau*, p. xxx).

not necessarily correspond with their ethnic or racial identity, it is difficult to know how many Macanese there are in Macau. Most estimates range from 10,000-15,000. In any case, it is a group with influence beyond its small numbers. Macau's only official language is Portuguese, a tongue understood by only about 4 percent of Macau residents. Expatriate Portuguese rarely learn to speak Chinese. Instead, many use English to communicate with non-Portuguese residents. Therefore, bilingual Macanese have traditionally acted as intermediaries between the Portuguese administration and legal system and the enclave's Chinese residents. They dominate the middle ranks of the civil service and some are professionals. Macanese leaders have taken an active role in Macau's Legislative Assembly and Consultative Council, the latter an advisory body to the governor.<sup>35</sup> Carlos Assumpcao, a Macanese, has been the assembly's president since 1976.

Most expatriate Portuguese in Macau are administrators, soldiers, teachers and other civil servants on contracts of a few years. In contrast with the early years of the city, very few Portuguese are involved in commerce,<sup>36</sup> although some work as professionals in the private sector. A few expatriate Portuguese residents have participated in the Legislative Assembly. In general, however, their main channel of political participation has been their traditional monopoly of the senior civil service, the judiciary and government executive. Ironically, given the Macau government's policy of recruiting more local Chinese and Macanese into the high ranks of the civil service, the absolute number of Portuguese

---

35. DSM, Art. 43-50.

36. Wong Siu-lun, "Chinese Entrepreneurship in Macau," R.D. Cremer, ed., *Industrial Economy of Macau in the 1990s* (Hong Kong: API Press and China Economic Research Centre, University of East Asia, 1990), p. 27.

expatriates in Macau has been climbing in recent years, "presumably to make a last attempt to lusify the territory and to take advantage of recently planned infrastructural investment."<sup>37</sup> Between 1989 and 1990 alone, the number of Portuguese expatriates in the Macau civil service increased from 1,461 to 1,907 or about 30.5 percent.<sup>38</sup>

Language and other restrictions have until recently excluded local Chinese from all but the lower echelons of the Macau civil service. Traditional suspicions of organised politics and of colonial institutions have also discouraged most local Chinese--the majority of whom were born in China and are recent immigrants to Macau--from participating in politics through elections. However, there are small signs this is beginning to change. By contrast, Chinese business, labour and kai fong association elites are politically active and play a pivotal role in balancing PRC and Macau interests in the territory. They are generally labelled "pro-China" or "traditional" groups by scholars and local political observers.

Among these, business elites hold a particularly strong political position, especially leaders of the local Chinese Chamber of Commerce. The political clout of this umbrella group for business associations has been based on PRC backing of its leadership and the continuity of its top personnel. From 1950 until his death in 1983, local banker Ho Yin chaired the chamber. Ho Yin acted as Beijing's unofficial representative in Macau. His successor, Ma Man Kei, was the chamber's vice-chairman after 1950 and currently sits in Macau's Assembly, where business representatives have a preeminent role. Ho Yin's son Edmund Ho is the assembly's vice-president.

---

37. Edmonds, *Macau*, p. xxvi.

38. Interview, Rui Rocha, deputy director, Service of Administration and Public Function, Macau Government, 6 Feb. 1991.



Chamber of Commerce representatives have held important posts in PRC political institutions such as the Standing Committee of the National People's Congress (NPC).<sup>39</sup>

Beginning in the early 1980s and particularly after Sino-Portuguese negotiations on Macau began in 1986, ordinary Macau Chinese have been more politically active, casting ballots in elections, signing petitions and participating in demonstrations and a growing variety of newly formed political organisations.<sup>40</sup> An independent reform-minded deputy, Alexandre Ho, became a directly elected Legislative Assembly member in 1984. He subsequently formed the *Associação de Amizade Alexandre Ho*, which contested the 1988 elections and won three of the six directly elected seats. The pro-Beijing and Macanese community's *União Eleitoral* kept the other three seats. While only 4,000 registered voters went to the polls in the 1980 Legislative Assembly election, 29,000 citizens voted in the 1984 elections after the franchise was expanded by eliminating separate residency restrictions for local Chinese. The number of Macau Chinese interest groups registered to participate in indirect elections to the assembly similarly rose to 144 in 1984 from only ninety-two in 1980.<sup>41</sup> Beginning in 1985, Chinese residents formed twenty-three new interest groups concerned with such matters as social welfare and Macau's political future.<sup>42</sup>

---

39. Cremer, "A Model for Macau?" p. 49.

40. Lo, "Aspects of Political Development in Macau," *China Quarterly*, no. 6 (Dec. 1969), pp. 846-849.

41. Wong Hon-Keung, *Economy of Macau* (Macau: Jornal Va Kio, 1966), p. 19; These increases are linked to the lifting of residency restriction on Chinese voters before the 1984 elections.

42. The Macau Social Science Association, the Social Workers Association and the Post-Secondary Graduates Association, for example, are political discussion groups which organise seminars to debate government policies and Macau's future (Lo, "Aspects of Political Development in Macau," pp. 846-849).



Demonstrations in support of the PRC pro-democracy student movement in May and June 1989 drew approximately one in five residents in the largest public protests the enclave has seen in two decades.<sup>43</sup>

The impact political participation patterns and elite and popular expectations have on Macau's autonomy process cannot be separated from the territory's economic dependence on Hong Kong and China. As a small open economy with no natural resources of its own, Macau survives on foreign trade.<sup>44</sup> Water, most food, sophisticated consumer goods, investment goods, raw materials for industry and some electricity are imported, the majority from these two neighbouring giants.<sup>45</sup> For China's part, PRC state-owned firms are important participants in Macau's import-export, banking, insurance and shipping sectors. A large group of private companies also acts as distributors and agents for PRC goods and services. Direct PRC investment has increased in recent years in the manufacturing and tourism areas and in major infrastructure developments like the new international airport. Macau depends on China for skilled construction and unskilled manufacturing labour.<sup>46</sup> For years the central government-owned Nam Kwong Trading Company was Beijing's economic and political representative in the

---

43. "Vinte por cento da populacao de Macau manifestou-se a favor dos estudantes de Beijing," Gazeta Macaense (hereafter GM), 24 May 1989.

44. With an export orientation (export value as a percentage of Gross Domestic Product) of 62 percent and an import orientation (import value as a percentage of GDP) of 50 percent, Macau has one of the highest trade-dependent territorial communities in the world (H.K. Tse, "Macau's International Trade Relations: the Changing External and Internal Environment," in Cremer, Industrial Economy of the Macau in the 1990s, p. 57).

45. H.K. Tse, "Macau's International Trade Relations," p. 60; Cremer, "A Model for Macau," p. 51; John Kamm, "The Macau Connection," Chinese Business Review 12, no. 5 (Sept.-Oct. 1985) pp. 46-49.

46. Kamm, "The Macau Connection," pp. 46-47; Cremer, "A Model for Macau," p. 52.

territory. In 1987, the political role was taken over by a new office of the New China News Agency set up in the enclave.

Hong Kong business has penetrated Macau's economy so deeply that one observer has called Macau "a colony of a colony."<sup>47</sup> Much of the capital that fuelled Macau's industrial boom after 1960 and especially after 1970 came from Hong Kong because of the British territory's loss or saturation of its own quotas and preferential tariffs for its major exports, particularly textiles and garments, toys and other light manufactures.<sup>48</sup> An estimated 60 percent of industrial investment and 90 percent of technical and managerial staff in Macau's manufacturing sector are from Hong Kong.<sup>49</sup> Hong Kong gamblers are the biggest patrons of Macau's casinos and, because taxes from gambling accounted for about 49 percent of government receipts in 1989, they indirectly contribute a huge chunk of Macau's public revenues.<sup>50</sup> Hong Kong dollars account for a major share of Macau's money supply both in terms of currency in circulation and bank deposits.<sup>51</sup> Because Macau has neither an airport nor, until recently, a deep-sea port, much of the enclave's external communication depends on Hong Kong.

Such close economic ties to China and Hong Kong bring close institutional and personal linkages and influence Macau and Portuguese government policies. Many Macau business leaders also have economic interests in Hong Kong and some live part or much of their time in the

---

47. Asia Yearbook 1986, p. 184.

48. Victor F.S. Sit, "Industrial Policies for Macau in the 1990s" in Cremer, Industrial Economy of Macau in the 1990s, pp. 68-70.

49. Wong Siu-lun, "Chinese Entrepreneurship in Macau," p. 27.

50. Harald Bruning, "Macau trims budget 3.5 pc," HKS, 4 Dec. 1990.

51. Asia Yearbook 1985, p. 189.

British territory. Among this group is Stanley Ho, whose Sociedade de Turismo e Diversoes (STDM) has held the gambling franchise in Macau since 1962. Ho also has stakes in Macau public utilities, transport companies, banks, hotels and major infrastructure projects as well as numerous Hong Kong and overseas ventures. Although he does not participate in the Legislative Assembly, good relations with the Macau government are essential for renewal of the franchise on favourable terms and his political influence is significant.<sup>52</sup> According to one government official, "It is not impossible but it is very difficult for a governor to say no to Stanley Ho, but he [Ho] doesn't run Macau. He just looks after his own interests."<sup>53</sup> Some analysts argue China has run Macau since the 1966 riots and there is no doubt China's influence in Macau remains strong. However, Macau's network of political and economic linkages is complex. "Although China has exercised influence over the colonial administration nonetheless it [the administration] has been able to formulate and implement policies free from Chinese pressures."<sup>54</sup>

#### Macau's Autonomy Process

It is within this intricate web of PRC, Hong Kong, Macau and Portuguese interests that the Sino-Portuguese negotiations on Macau began in June 1986, formally marking the start of Macau's autonomy process. Portuguese and PRC government representatives were the only official parties to the talks that led to the Joint Declaration and the sole official participants

52. Johnathan Friedland, "A winning streak," *Far Eastern Economic Review* (hereafter FEER), 6 Sept. 1990, pp. 56-59; Id., "A royal flush," FEER, 6 Sept. 1990, pp. 59-61.

53. Interview, Jorge Rangel, president, Macau Foundation, an autonomous public agency whose responsibilities include operation of the University of East Asia, 12 Feb. 1991.

54. Lo, "Aspects of Political Development in Macau," p. 850.

in the Joint Liaison Group (JLG) formed for consultations on transition period issues under the accord. Macau people and the Macau government, the latter of which is politically responsible to the Portuguese president and not the Portuguese government, were not formally represented.<sup>55</sup> However, unofficial participants come into play through Portugal's own activities in Macau, Macau government officials as technical experts to the JLG, the "united front" efforts undertaken by Beijing to win local support for "one country, two systems"<sup>56</sup> and the network of business and political connections linking Macau to Hong Kong and the PRC. Portuguese government and expatriate participation in the bargaining process is likely to become less significant as the transition period progresses, while PRC-Hong Kong-Macau interactions will increasingly propel the autonomy process and shape the pattern of central-local negotiations and compromises. This process is influenced by such internal attitudinal and institutional variables as Macau people's sense of identity in relation to China and Macau, political institutions and participation and the legal system. External linkages with Portugal, Hong Kong and other international state and nonstate actors also mould the process.

Hong Kong's mark on Macau's autonomy process was deep from the beginning. The Sino-Portuguese agreement on Macau is modelled on the Sino-British Joint Declaration respecting Hong Kong, which was initialled on 26

55. The Portuguese president, who is supposed to be above party politics and is directly elected for a five-year term, is supreme commander of the Portuguese armed forces and acts as head of state. He also appoints the Macau governor. The Portuguese government, which has no direct responsibility for the Macau government, is headed by a prime minister and cabinet accountable to the Portuguese Assembly of the Republic or parliament. The Assembly of the Republic must approve amendments to Macau's Organic Statute. This division of responsibility is supposed to keep Macau out of Portugal's volatile party politics (Bruning, "The Position of Macau in the Portuguese Constitutions," p. 19).

56. For a description of some of Beijing's activities in Macau see Jaw-ling Joanne Chang, "Settlement of the Macau Issue: Distinctive Features of Beijing's Negotiating Behavior," Occasional Papers/Reprints Series in Contemporary Asian Studies, no. 4, 1988 (87), pp. 20-22.



Sept. 1984 after two years of often tense negotiations. Beijing's influence in Macau has generally been much stronger than it has in Hong Kong and, particularly since 1979, its relationship with Portugal often more amicable than its ties with the United Kingdom. Nevertheless, the PRC has tended to group the two territories together as similar problems left over from history to be settled "peacefully through negotiations when conditions are ripe."<sup>57</sup> Consequently, even though Portugal had already conceded PRC sovereignty in Macau and the 1888 Treaty of Beijing had no terminal date, once China decided to force the British out of Hong Kong it seemed inevitable it would also take back the enclave.<sup>58</sup> Throughout the negotiations, Portugal and Macau have had difficulty taking full advantage of their generally good relationship with China in the face of Beijing's tendency to treat Macau like Hong Kong so as not to cause trouble in the British territory. On 3 October 1984, a month after the initialling of the Sino-British accord, Deng Xiao Ping told a delegation from Macau and Hong Kong that "the Macau question, like Hong Kong, will be settled at the same time and with the same formula."<sup>59</sup> Like its past, the future of Macau in Beijing's eyes is inextricably entangled in that of the more valuable and more troublesome Hong Kong.

Nevertheless, the Sino-Portuguese accord on Macau does have some distinct features and has triggered an autonomy process with some unique characteristics. Negotiations between Lisbon and Beijing representatives went on intermittently for nine months. While the most fundamental conflict

---

57. Cohen and Chiu, People's China, 1: 330.

58. Wesley-Smith, "Macau," p. 9.

59. Yu, "Macau's Past, Present, and Future," in Selected Information on Macau 1535-1985 (1985) p. 12, cited in Chang, "Settlement of the Macau Issue," p. 4 at note 14.

between the PRC and United Kingdom had been whether Britain could continue its sovereignty and government over Hong Kong after 1 July 1997, the issues that most divided Portugal and China were the timing of the return of Macau to the PRC and problems relating to the nationality of the enclave's inhabitants.<sup>60</sup> After they reached an agreement, some scholars and journalists concluded Portugal had squeezed more concessions from the PRC than Britain had managed.<sup>61</sup> For one thing, the PRC had wanted to take over Macau and Hong Kong at the same time in 1997, whereas Portugal wanted more time to prepare the territory for the transfer in order to avert some of the bloodshed, embarrassment and human dislocation that characterised its rushed decolonisation in India, Africa and East Timor. Lisbon's representatives saw no reason to hurry out of Macau. Portugal accepted China's claim to sovereignty over the enclave and was on good terms with Beijing. It wanted more time to train local people to take over senior posts in the government administration and legal system and translate local laws into Chinese and prepare to make Chinese an official language; it wanted to improve the enclave's transportation and other economic infrastructure, if possible with the participation of Portuguese companies, and to benefit from the transfer of some of the capital frightened investors might pull out of Hong Kong before and after 1997.<sup>62</sup> In the end, Portuguese negotiators managed to extract almost two and one-half years more time than had been granted the British in Hong Kong.

---

60. "Portuguese may quit Macau early," *HKS*, 18 Sept. 1986; Albert Chan, "Complex problem of Portuguese passports," *South China Morning Post* (hereafter *SCMP*), 30 June 1986; Chang, "Settlement of the Macau Issue," pp. 3, 8-16.

61. Chang, "Settlement of the Macau Issue," pp. 3-4 and note 13.

62. Colin McSevery and John Beasant, "Early handover for Macau confirmed," *SCMP*, 26 Jan. 1987; Chang, "Settlement of the Macau Issue," pp. 8-10.

The Joint Declaration on Hong Kong also reflects the inability of Britain and China to resolve their dispute over who had sovereignty over the territory. The first article of the accord states that the recovery of Hong Kong "is the common aspiration of the entire Chinese people, and that it [China] has decided to resume the exercise of sovereignty over Hong Kong."<sup>63</sup> By contrast, the Sino-Portuguese agreement says merely that Macau "is Chinese territory and that the Government of the People's Republic of China will resume the exercise of sovereignty" over the enclave, reflecting the fact that sovereignty was not an issue in the negotiations on Macau.<sup>64</sup> Whereas there is no mention of Hong Kong's mixed-race inhabitants and other ethnic minority groups such as the local Indian community, Portugal gained specific protections for Macau's Macanese minority: "The Macau Special Administrative Region shall protect, according to law, the interests of residents of Portuguese descent in Macau and shall respect their customs and cultural traditions."<sup>65</sup> Nor did the Sino-Portuguese agreement mention the stationing of the People's Liberation Army in Macau,<sup>66</sup> apparently because the Portuguese no longer have a military garrison in Macau while Britain still stations one in Hong Kong.<sup>67</sup>

---

63. The Joint Declaration of the Government of the People's Republic of China and the United Kingdom of Great Britain and Northern Ireland on the Question of Hong Kong, 26 Sept. 1984, Art. 1 (hereafter Hong Kong JD).

64. Macau JD, Art. 1.

65. Macau JD, Annex I (V); See Chang, "Settlement of the Macau Issue," p. 4 and note 13.

66. The Sino-British Joint Declaration says: "Military forces sent by the Central People's Government to be stationed in the Hong Kong Special Administrative Region for the purpose of defence shall not interfere in the internal affairs of the ... Region" (Hong Kong JD, Annex I [XIII]); Chang, "Settlement of the Macau Issue," p. 4 and note 13).

67. "Reunio da Lei Basica terminou de manha," Jornal de Macau, 9 June 1990 (hereafter JM).



The nationality dispute during the talks stemmed from differences in Portuguese and Chinese nationality laws. Portugal's law recognises only one type of nationality, which grants full Portuguese citizenship including right of abode and entry in Portugal as well as consular services and protection. There are an estimated 100,000 Macau people, mostly ethnic Chinese, with Portuguese passports which entitle them to enter into and live in Portugal and to consular services and protection.<sup>68</sup> However, the PRC nationality law does not recognise dual nationality for Chinese nationals.<sup>69</sup> Some analysts argue that China acquiesced to Portuguese demands for dual nationality in Macau.<sup>70</sup> If there is a compromise, it took the form of ambiguously worded phrases penned by both sides in the separate Portuguese and Chinese memoranda on nationality attached to the agreement.<sup>71</sup> This vagueness is typical of the word games used to paper over unresolved disputes in many autonomy agreements. The same ambiguities that were interpreted by analysts as signs of flexibility on the nationality issue in 1987 were to cause problems later. After signing the Joint

---

68. Chang, "Settlement of the Macau Issue," p. 12; Edmonds, *Macau*, p. liii.

69. See generally Hungdah Chiu, "Nationality and International Law in Chinese Perspective," *Occasional Papers/Reprints Series in Contemporary Asian Studies*, no. 3, 1990 (98); Chang, "Settlement of the Macau Issue," p. 12.

70. Chang, "Settlement of the Macau Issue," p. 4.

71. The PRC memorandum states: "The inhabitants in Macau who come under the provisions of the Nationality Law of the People's Republic of China, whether they are holders of the Portuguese travel or identity documents or not, have Chinese citizenship. Taking account of the historical background of Macau and its realities, the competent authorities of the Government of the People's Republic of China will permit Chinese nationals in Macau previously holding Portuguese travel documents to continue to use their documents for travelling to other states and regions after the establishment of the Macau Special Administrative Region. The above-mentioned Chinese nationals will not be entitled to Portuguese consular protection in the Macau Special Administrative Region and other parts of the People's Republic of China." The Portuguese memorandum reads: "In conformity with the Portuguese legislation, the inhabitants in Macau who, having Portuguese citizenship, are holders of a Portuguese passport on December 19, 1999 may continue to use it after this date. No person may acquire Portuguese citizenship as from December 20, 1999 by virtue of his or her connection with Macau" (*Macau JD, Memoranda on Nationality*).



Declaration Portuguese officials had stressed that Macau Chinese with Portuguese passports would be treated just like other Portuguese citizens. In the aftermath of the Tiananmen Square massacre, Lu Ping, then vice-president of the PRC State Council's Hong Kong and Macau Affairs Office, said Macau Chinese with Portuguese nationality would be considered Chinese nationals by the PRC government and would not be entitled to Portuguese consular protection after the transfer in 1999, although they could use their Portuguese passports as travel documents.<sup>72</sup> His words mirror the PRC policy on nationality in Hong Kong. They make it possible that children born in Macau after 1999 of parents with Portuguese passports will not be able to acquire Portuguese citizenship.<sup>73</sup>

Macau's experience demonstrates how the initial formal autonomy agreement is critical, but not because it resolves all outstanding legal disputes. Rather, the accord reflected the balance of power among central, local and external actors at the time and helped set the agenda for subsequent negotiations that will determine whether the autonomy process survives and in what form. In this sense, the signing of the Sino-Portuguese accord initiated a new phase in Macau's autonomy process which is still underway.

Three interconnected developments characterise the current phase. All are closely linked with issues growing out of the Joint Declaration, although other variables such as political conflicts surrounding the drafting of the Hong Kong Basic Law and the 1989 Tiananmen Square student protests have been important too. First, China appears to be making more

---

72. Adam Lee, "Curbs on Portugal passport holders," *South China Morning Post* (hereafter SCMP), 11 Sept. 1989.

73. "China seeks Taiwan rule before 2000," SCMP, 27 Mar. 1987.

attempts to influence Macau politics and government administration. This trend was particularly marked in the months following the crackdown on the PRC student movement on 4 June 1989.<sup>74</sup> Second, the Macau and Portuguese governments and Portuguese business people are more active in the enclave than before. Much of the government activity surrounds intensified efforts to: reform Macau's political system and its laws, as well as translate them into Chinese; train local Chinese to assume leadership of the civil service, legal system and other public institutions; develop new transportation and industrial infrastructure so that the territory is less dependent on Hong Kong; and integrate some Macau civil servants into the Portuguese civil service and take other steps to protect Portuguese citizens and culture in Macau.<sup>75</sup> Some Macau government policies have drawn criticism from Chinese officials and some local Chinese citizens, who regularly accuse the Portuguese of not moving quickly enough on localisation and officialisation of the Chinese language.<sup>76</sup> An increase in citizen political participation in Macau, an intensification of a trend which began earlier in the 1980s, is the third major characteristic of this phase of the autonomy process. Political participation over the past three years has been directed at actions critical of the PRC government--the May-June 1989 protests, for example--as well as of Macau authorities. Macau

---

74. Yee and Lo, "Macau in Transition," pp. 8-12.

75. For example, in the aftermath of the Tiananmen Square massacre, the Macau Legislative Assembly and the Portuguese Assembly of the Republic conflicted over the latter's desire to insert a more specific reference to human rights in Macau's Organic Statute. The statute made only general reference to "civil rights" and "the principles established in the constitutional laws of the Portuguese Republic." In the end, the amended clause referred more explicitly to "those principles and ... those rights, liberties and guarantees established in the Constitution of the Republic of Portugal and in the present statute" (OSM, Art. 2).

76. Yee and Lo, "Macau in Transition," p. 15.

residents are more overtly critical of the Macau government,<sup>77</sup> although recent public opinion polls found Macau people were generally satisfied with the government's performance.<sup>78</sup>

Central-local bargaining related to the drafting of a Basic Law for the future Macau SAR is central to this stage of the autonomy process. However, even more than its Hong Kong counterpart, the Macau Basic Law is also a product of dictate. The Basic Law Drafting Committee, a working group under the PRC's NPC, has a total of forty-eight members, nineteen of whom are from Macau and the others from the PRC. The Macau side includes numerous prominent pro-Beijing Macau Chinese business leaders (*inter alia* Ma Man Kei, Edmund Ho and Stanley Ho), two Macanese (Macau Foundation President Jorge Rangel and Legislative Assembly President Carlos Assumpcao), Macau Bishop D. Domingos Lam and labour and kai fong association representatives. While China initially appointed two liberals to the Hong Kong Basic Law Drafting Committee, there are no non-traditional Macau Chinese leaders among the Macau drafters.<sup>79</sup> Legislative Assembly Deputy Alexandre Ho participates in the Basic Law Consultative Committee, formed to solicit public opinion on the draft Basic Law. The first draft of the Macau Basic Law will be published in August 1991. After a period of public consultation in Macau, there will be a second round of talks leading to a second draft, which is to be made public in mid-1992, followed by more local public

---

77. *Ibid.*, p. 12; Lo, "Aspects of Political Development in Macau," pp. 846-849; Ian Scott has argued that the Hong Kong government's legitimacy has declined during the transition period (see generally Scott, Political Change and the Crisis of Legitimacy in Hong Kong).

78. Macau Instant Poll, conducted by Survey Research Hongkong for the Macau office of Lusa, a Portuguese news agency, 20-22 Sept. 1990.

79. Lo, "Aspects of Political Development in Macau," p. 839.



consultations. A final version of the law is scheduled to be tabled for promulgation in the PRC's NPC in April 1993.

The Basic Law chapters on the political system and fundamental rights and obligations, particularly whether or not to include a "right to life" provision and the method for selecting the future chief executive and other political and advisory organs have been among the most controversial topics in drafting committee meetings.<sup>80</sup> Following the pattern of the Sino-Portuguese talks, provisions on nationality have also divided the drafters. PRC members have adopted a strict interpretation of the nationality provisions to be applied to Macau. They want to replicate the terms of Hong Kong Basic Law, which limits senior officer holders in the SAR to Chinese citizens who are permanent SAR residents and have no right of abode in any foreign country.<sup>81</sup> Depending on whether the provisions are interpreted flexibly or strictly, this could exclude Portuguese and Macanese residents and the approximately 100,000 Macau Chinese with the right to Portuguese citizenship from holding high office in the SAR. Some Macau drafters argue such provisions contravene the Joint Declaration, which has none of these restrictions and includes specific protections for Macau residents of

---

80. The death penalty is not permitted under Macau or Portuguese law but is permitted in the PRC. Proposed amendments to the Macau Penal Code currently under discussion include an explicit provision that no one shall be sentenced to death or an indefinite or life term of imprisonment for any crime (Interview, Sebastiao Povoas, adjunct secretary for justice, Macau Government, 21 Feb. 1991).

81. "Contrato do jogo a rever apos 99," *JM*, 18 Mar. 1991; "Lugares importantes so para Chineses?" *JM*, 15 Mar. 1991; The Hong Kong Basic Law applies these restrictions to the chief executive, Executive Council, principal officials, 80 percent of the Legislative Council, the council president, the chief justice of the Court of Final Appeal and the chief judge of the High Court, secretaries and deputy secretaries of departments, directors of bureaux, the commissioner against corruption, director of audit, commissioner of police, director of immigration, commissioner of customs and excise and members of the Committee for the Basic Law (The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China [Hong Kong: Consultative Committee for the Basic Law, Apr. 1990], Art. 44, 55, 61, 67, 90, 101 (hereafter Hong Kong BL)).



Portuguese descent.<sup>82</sup> Articles on education, economics, culture, social affairs and external relations have been less problematic.<sup>83</sup> Drafters have reportedly agreed to clauses recognising Portuguese as an official language after 1999, although it is unclear whether the provision will follow the weak wording of the Hong Kong's Basic Law, which says, "In addition to the Chinese language, English may also be used as an official language."<sup>84</sup> Unlike Hong Kong's Basic Law, the Macau draft is said not to contain a specific reference to stationing the PLA in the enclave. It will have specific clauses protecting the customs and traditions of Portuguese descendants and the enclave's cultural heritage. Its economic provisions will be less elaborate than those in the Hong Kong Basic Law due to Macau's less advanced stage of economic development. An annex to the draft Basic Law listing PRC laws that will apply in the Macau SAR is expected to replicate Hong Kong's except it will also include the mainland law on territorial waters,<sup>85</sup> perhaps because China does not acknowledge separate Macau territorial waters.<sup>86</sup>

Despite these differences and the insistence by Portuguese officials and some Macau drafters that the territory's distinctness be more broadly recognised and protected, Macau's Basic Law is likely to be in many areas a

---

82. "Lei ganha forma mas subsistem divergencias," JM, 17 Dec. 1990; Interview, Rangel.

83. See, for example, "Lei ganha forma mas subsistem divergencias," JM, 17 Dec. 1990.

84. Ibid.; Hong Kong BL, Art. 9.

85. "Lei Basica de Macau ja tem aprovadas as suas grandes linhas," JM, 16 Mar. 1991.

86. Interview, Ana Soares, advisor to the adjunct secretary for transitional affairs, Macau Government, 7 Feb. 1991; Macau has no air space of its own and no airport so the Sino-Portuguese Joint Declaration contains none of the provisions found in the Sino-British accord authorising continued Hong Kong management of civil aviation, including participation in PRC delegations negotiating air service agreements with foreign governments (interview, Soares; see Hong Kong JD, Annex I [IX]).

near carbon copy of that drawn up for the British colony. PRC drafters are cautiously avoiding concessions to Macau that might spark pressures for revision of the Hong Kong Basic Law in future. In the opinion of one Macau drafter, they will agree to a distinct provision only when it is inapplicable to Hong Kong.<sup>87</sup> Joao de Deus Ramos, Macau's adjunct secretary for transitional affairs, says, in the end, Macau and Portugal are unable to fully benefit from their largely harmonious relations with China:

We have no unequal treaties with China and we are good guys compared to Hong Kong. This has been the political position of China since the beginning of the negotiations.... But when it comes down to everyday problems, the tendency is for China to solve them in the way that Hong Kong's problem was solved. They are three years ahead of us and most of the problems have been encountered before.<sup>88</sup>

Given the distinctive identity and institutional problems confronting Macau as it prepares for the transfer of administration in 1999, this near mirror of the Hong Kong Basic Law that China is offering Macau seems inappropriate and could hamper local support for "one country, two systems" and the ability of political, legal and international institutions to support the enclave's autonomy process. The problems facing these institutions, and the Portuguese and Macau governments' response to them, are the focus of the remaining chapters.

---

87. Interview, Rangel.

88. Interview, Joao de Deus Ramos, adjunct secretary for transitional affairs, Macau Government, 14 Mar. 1991.

## CHAPTER 4

### COMMUNITY IDENTITY

The need for China to treat Macau differently from Hong Kong is apparent when examining the enclave's capacity for dual loyalty, which the experience of other autonomous territories suggests is needed if Macau's autonomy arrangement with the PRC is to work. Dual loyalty or dual identity is the notion that Macau people must have enough attachment to Macau as a discrete community that they are willing to defend those values and institutions that distinguish it from China and, at the same time, enough attachment to China that they are willing to live within its jurisdiction. In Hong Kong, the balance appears to be tipped towards local identity; its willingness to live under the PRC is the more fragile of the two components needed. In Macau, the opposite appears true. The community's sense of distinct local identity looks the weaker party while its willingness to cooperate with China has traditionally been strong. China may perceive Macau's situation as the more desirable combination of the two, pushed by its fear that anti-PRC government feelings in Hong Kong make the territory a dangerous base for subversion and possible demands for self-determination and independence. These views ignore the dangers posed to the "one country, two systems" project by the feeble state of local identity in Macau. They wrongly assume that China's alliance with traditional Chinese elites in Macau will alone carry the scheme to success.

Numerous forces have undermined the development of a strong, distinctive Macau identity amongst the enclave's Chinese majority. Portugal's particular style of colonialism and the tenuousness of its authority in the enclave have contributed to its weakness, as have the lack of appeal of Portuguese language and culture to local Chinese, the durability of Chinese

culture and nationalism and the cultural influence of Hong Kong.

Furthermore, the Macanese community, where Portuguese culture has penetrated more successfully, is unlikely to be in a secure numerical, legal or political position to defend Macau's uniqueness after 1999. There are signs that the younger generation of Macau-born Chinese feel more attachment to Macau than do their elders. However, their identification with Portuguese culture remains weak and they are not likely to be attracted by recent Portuguese and Macau government efforts to fortify Portuguese culture in Macau. On the other hand, many show an appreciation for values and institutions associated with liberalism such as the rule of law, civil rights and freedoms, democracy, however hazily defined, and laissez faire capitalism, values whose future in Macau is uncertain.<sup>1</sup>

On the other side, Macau people's identification with China is not as strong as some might assume. It is plagued by the Chinese government's tendency to equate national and ethnic loyalties with loyalty to the central government. The jump makes some Macau Chinese uncomfortable because of their deep distrust of the Chinese authorities. Furthermore, although Chinese cultural national identity is extremely durable, it is also highly portable. Immigration patterns for Macau and Hong Kong residents suggest Chinese nationalism does not necessarily lead to commitment to stay in

---

1. It is difficult to define an ambiguous term like liberalism without identifying it with Western civilization and getting bogged down in its various competing strands in history and the partisan connotations it carries in current political debates in Macau and Hong Kong. I use the term here to refer to a belief in the "elevation of private life over and against the claims of the community or the state" and that "liberty is the natural human condition" (Miller, *Blackwell Encyclopaedia of Political Thought*, p. 265). Modern liberalism often includes a belief in limited state intervention in economic matters. It is also linked with constitutionalism and the rule of law, which seek to constrain state power and protect citizen rights through various institutional and legal devices in the political system (ibid., pp. 103, 456-459). It is this broad conception of liberalism that finds support in Macau. Nevertheless, its various subscribers appear to differ among themselves and with many Westerners in their understandings of individualism and citizens rights and freedoms as well as the role of such tools as democracy and separation of powers in securing them.



their territorial communities. Some additional link is required if Macau people's attachment to China is to result in a community committed to making Macau's autonomy process work.

### Defining and Measuring Dual Identity

Taking the pulse of Macau people is difficult because virtually no quantitative data on their attitudes exist. With the exception of three public opinion surveys done in 1989 and 1990, which do not directly address the question of identity, I have had to draw the bulk of my data from qualitative sources, including in-depth interviews with a small number of local political leaders, government officials and a few ordinary citizens.<sup>2</sup> To add to the difficulties, the scholars who have asserted the importance of dual loyalty in the autonomy process have provided few details of what they mean by the concept nor how to operationalise it. Consequently, I stress that my attempt here to define dual identity and assess its presence in Macau is only exploratory.

Since "one country, two systems" is a political arrangement and the autonomy process a political process, the political component of identity is most important for our purpose here, although related questions of ethnic and cultural identity are also relevant. Political identity refers to an individual's "willingness to be a member" of a political community.<sup>3</sup>

---

2. My interview sample is not representative of the Macau population as a whole or of elites. Therefore, the patterns I identify are only tentative. Future survey studies are needed to determine with certainty the intensity and distribution of attitudes in the community and how they alter over time as Macau experiences political, social and economic change. Although the attitudes and actions of ordinary people cannot be ignored, my emphasis on elite views reflects their importance in Macau, a dependent polity where democratic processes are not deeply entrenched. Kuan Hsin-Chi argues that elite beliefs and choices are critical for political change in a dependent polity (Kuan Hsin-chi, "Power Dependence and Democratic Transition: The Case of Hong Kong," [Paper delivered at the American Political Science Association conference, Los Angeles, Sept. 1990], p. 1).

3. I have borrowed this definition from Yung Wing Kwong, who also discusses several conceptualisations of political identity (See Yung Wing Kwong, "Political Identity of

Almond and Verba speak of political culture as those "specifically political orientations--attitudes towards the political system and its various parts, and the attitudes toward the role of the self in the system."<sup>4</sup> Therefore, I define dual identity to be a political culture characterised by a double political identity, that is, a political culture in which elites and the general population direct their loyalties and demands at both the local and the larger political communities.<sup>5</sup> In addition, dual identity will be stronger if the citizens' support for the two polities is both "diffuse" and "specific," to use David Easton's terms. The former can be connected to the citizen's perceived ethnic or national attachment to the polity and refers to "a feeling of goodwill" tying the individual to the polity, process or outcome through strong ties of loyalty and affection regardless of the specific rewards acquired from belonging to the polity. The latter refers to attachment based on the specific benefits and advantages the individual gets from the polity.<sup>6</sup>

This chapter tries to assess the degree to which such a political culture exists in Macau and will be able to support the community's autonomy process. It first looks at the historical factors that have influenced the evolution of residents' attachment to the local political

Overseas Chinese: A Study of the Indonesian Chinese in Hong Kong" [M.Phil. thesis, Chinese University of Hong Kong, 1984] pp. iii, 102).

4. Gabriel A. Almond and Sidney Verba, The Civic Culture. Political Attitudes and Democracy in Five Nations (Boston and Toronto: Little, Brown and Company, 1965), p. 12.

5. This formulation is a variation on Duchacek's notion of a "federal political culture," by which he means a political-territorial culture in which the national centre and local or regional authorities are targets for both citizen grievances and loyalties, and a "confederal political culture" where "elites and the public turn to regional-territorial authorities ... except in the case of major external threat to the associated or allied whole" (Duchacek, Territorial Dimension of Politics, pp. 81-82).

6. David Easton, A Framework for Political Analysis (Englewood Cliffs: Prentice-Hall, 1965), pp. 124-127.

community before characterising that identity and assessing the appropriateness of Portuguese, Macau and Chinese government policies. Next, it examines the historic context of Macau people's troubled sense of identification with China, some recent manifestations of the problem and some policy questions that need addressing if a healthier balance of loyalties is to be fostered in Macau.

### The Portuguese Legacy

A communication gap has traditionally separated the majority of Macau Chinese from the Portuguese government in the enclave.<sup>7</sup> It is partly a consequence of some characteristics of Portugal's style of administration, which have discouraged the inhabitants from developing strong ties to the local polity.<sup>8</sup> These characteristics are rooted in the particular circumstances of Portuguese colonialism in Macau, especially in the historic uncertainty of Portuguese authority and the resulting pattern of Portuguese and Chinese political accommodation, the noninterventionist style of colonial government and the failure of Portuguese culture and

7. Lo, "Political Culture and Participation in Macau," pp. 5-6, 13; Lau and Kuan note that, even though the British colonial government in Hong Kong has enjoyed a certain level of legitimacy among Hong Kong people, intermediary mechanisms have not effectively bridged the gulf between society and the polity. They attribute the gap to several factors, all of which also appear to be present in Macau: the ambivalence, suspicion, and cynicism the people feel towards the government encouraged by its weak ideological and 'moral' legitimacy compared to traditional or modern Chinese governments; the tradition of excluding Chinese from top administrative positions until recently; the character of the government as a "'pure,' secluded and faceless bureaucracy"; the linguistic, socio-cultural barriers between the state and the majority of the population; and the doctrine of laissez-faire and "social noninterventionism," reflecting the idea that the cultural and social arrangements of the colonised should be respected (Lau Siu Kai and Kuan Hsin-Chi, *The Ethos of the Hong Kong Chinese* [Hong Kong: Chinese University Press, 1968], pp. 19-21).

8. Although not the subject of the present study, the historic evolution of Portuguese colonial practices elsewhere have probably influenced Macau despite the enclave's traditionally peripheral position in the once vast empire. No study exists on this subject. However, for a controversial historical critique of Macau and Portuguese government policies in the enclave, a book which the Macau government seized and burned in public in 1926, see generally C.A. Monalito de Jesus, *Historic Macau, International Traits in China Old and New*, 2nd ed. rev. and enlarged (1926; reprint ed., Oxford: Oxford University Press, 1984). A Portuguese version of his book was finally published in 1990.



language to penetrate the local Chinese community. According to some authors, this contrasts with the marked influence of Portuguese culture in other former Portuguese colonies in Africa, Goa and even Malacca.<sup>9</sup>

The reasons for this failure lie in the nature of the Portuguese presence in the enclave and the strength of Chinese culture itself. In recent decades, most Portuguese in Macau have been administrators who spend only a few years in the enclave and, because they are not active in business, have little need to interact with local Chinese residents.<sup>10</sup> On the other side, the Portuguese language has little appeal to Macau Chinese as it is of less use in local or international business than English, which is more widely spoken in the enclave.<sup>11</sup> Furthermore, until recently, the weakness of Portuguese political authority and the attitudes of local Chinese elites have helped stop the government from using the instruments of the state to involve itself in society in ways that might have encouraged stronger ties between the polity and Chinese residents. "By the late 1960s the territory had become, practically speaking, self-governing. Although a Portuguese Governor held titular control, power lay in the hands of the economically dominant Chinese community.... these community leaders remained untouched by the heavy-handed attempts at political and cultural 'assimilation' undertaken by the Portuguese in the African colonies."<sup>12</sup> As

---

9. R.A. Zepp, "Interface of Chinese and Portuguese Cultures," in Cremer, *Macau*, p. 134; However, some scholars argue the influence of Portuguese culture in its African colonies has not been as deep as some traditional views would indicate (see generally Bender, *Angola Under the Portuguese*).

10. Zepp, "Interface of Chinese and Portuguese Cultures," pp. 134-135; Edmonds, *Macau*, p. xxxii; Note, for example, complaints in a Portuguese-language Macau newspaper that the majority of the broadcasters working with the enclave's Portuguese language station at publicly-owned Radio Macau had been in the territory for only a short period and spoke as if they were still in Portugal ("Radio Macau pos nova grelha ao lume," *JM*, 7 Jan. 1991).

11. Jeong Wan Chong, "Macau, Ponto de Intercambio Cultural Entre o Oriente e o Ocidente," *Revista de Administracao Publica de Macau* 2, no. 5 (1989): 398.



a result, although the Macanese are almost 100 percent Catholic, relatively few Chinese are Christians and expansion of the Catholic congregations has not kept pace with population growth.<sup>13</sup> Few Macau Chinese speak Portuguese, although numbers are growing slightly under the government's new push for bilingualism among civil servants.<sup>14</sup> When Macau Chinese plan to emigrate, their destination of choice is not Portugal, despite the fact many possess Portuguese passports, but Canada, the United States, Australia or Taiwan.<sup>15</sup> Efforts to establish a Portuguese studies programme at the University of East Asia have met subdued enthusiasm from Macau Chinese students.<sup>16</sup>

The Macau government's tradition of minimal intervention in society is evident in the education sector, where it has maintained a hands-off policy that leaves most schools under private control. The resulting school system is highly heterogeneous, decentralised and ill-equipped to help foster a distinctive local political identity.<sup>17</sup> Church organisations run about 56 percent of the schools and most of the others are in the hands of traditional associations. About 86 percent of the students study in Chinese-language schools and 6 percent in English-medium schools, which

12. MacQueen, "Macau," p. 167.

13. Jeong, "Macau," p. 390; Victoria Lau, Thomas Luk Man Hoi and Peter Chung, "Macau Roman Catholic Church and 1999," *Tripod*, 1989, no.2, p. 35; Edmonds, *Macau*, p. xxxv.

14. Jeong, "Macau," pp. 388-389.

15. Two surveys done in 1989 found the preferred destinations of Chinese respondents were: Canada (29%)(29%), the U.S.(22%)(22%), Australia (14%)(19%), Taiwan (10%)(6%) Portugal (5%)(6%), Thailand (---)(5%), France (4%)(---), Singapore (3%)(---) and Britain (2%)(---); The telephone surveys were done by Survey Research Hongkong from 3-19 July and 1-27 Dec. 1989 for the Macau office of the Portuguese news agency Lusa. The polls surveyed 300 Chinese and 200 non-Chinese (100 Portuguese and 100 Macanese) of at least fifteen years of age, randomly selected from the telephone directory (see generally "Macau Confidence Index Survey, Management Summary," Survey Research Hong Kong, Aug. 1989 and Jan. 1990).

16. "Estudos Portugueses so terao mais alunos com apoio oficial," *Tribuna de Macau* (hereafter *TM*) 14 Jan. 1989.

17. However, the decentralisation of the system could also help schools avert control by the local government should PRC influence become strong after 1999.

also teach obligatory Chinese language and culture classes. Besides the Macanese and expatriate Portuguese students who attend Portuguese-language schools, the only Macau Chinese students obliged to study Portuguese are those from poorer families forced to attend inexpensive government-run schools, which still use Chinese as the main language of instruction.<sup>18</sup> There are no territory-wide examinations. Students learn little about Macau's history, geography or political system because curricula are modelled on those of mainland China, Taiwan, Hong Kong or Portugal.<sup>19</sup> All textbooks are imported, many from Hong Kong.<sup>20</sup> "The students grow up with references that are strange to them."<sup>21</sup>

This dependency on the outside and paucity of government involvement has until recently extended into postsecondary studies, where the lack of a local university until 1981 forced Macau students to study abroad. Many never returned to the territory. High tuition costs meant the University of East Asia, which was established in Macau by private Hong Kong interests in 1981, accepted mostly Hong Kong and other foreign students.<sup>22</sup> This began changing in 1988 after the Macau government bought its undergraduate school and began transforming it into a more locally oriented institution.<sup>23</sup>

---

18. Wong Siu-lun, "Chinese Entrepreneurship in Macau," pp. 36-39; Philip Hui Kwok Fat, "Development of Higher Education in the Context of Political and Economic Changes: The Case of Macau (M.Phil. thesis, University of Hong Kong, 1990), pp. 47-48.

19. Hui, "Development of Higher Education," p. 47.

20. Ibid. pp. 2, 47, 51.

21. Comment by Alexandre Rosa, advisor to the Macau Adjunct Secretary for Education, in "Lei da educacao consagra ensino portugues," *Comercio de Macau* (hereafter CM) 22 Feb. 1991.

22. The Jesuit University College, set up in 1594, was the first European-style university in Asia and was an important centre for education until the expulsion of the Jesuits from Macau in 1762. Some students and professors who fled China in the early 1950s set up universities in Macau, but the institutions did not last long (see Hui, "Development of Higher Education," pp. 55-56; B.V. Pires, "Origins and Early History of Macau," in Cremer, *Macau*, p. 16).

Until the early 1980s, participation in local political institutions was restricted to expatriate Portuguese, Macanese and a few Macau Chinese elites as part of the political accommodation that evolved between Portuguese and Chinese authorities.<sup>24</sup> The tradition of limiting government intervention in society and the economy and the paucity of effective communications channels between the Portuguese-dominated administration and the majority of Macau people fed the gap that divided most Chinese residents from the colonial political institutions. Local people have also been discouraged from developing close identification with government because of the popular perception that the Legislative Assembly is powerless against Chinese and Portuguese authorities, exacerbated by the lack of democratic indoctrination by Chinese and local traditional leaders as well as the Portuguese, who were until recently unaccustomed to pluralism or democracy in their own country. Differences in cultural values, the scarcity of nontraditional elites to counter the influence of business, Kai fong and labour leaders and the population's high mobility further discouraged close attachments to local political institutions.<sup>25</sup>

Following the extension of the franchise in 1984, the growth of a middle class in the 1980s, the implementation of some unpopular government policies and tensions associated with the 1999 issue, larger numbers of

23. Tse, "Population and Economic Development in Macau," in D.Y. Yuan, Wong Hon Keong and Libanio Martins, eds., *Population and City Growth in Macau* (Proceedings of the Symposium on Population and City Growth in Macau, University of East Asia, 12 May 1990), p. 94.

24. After the military coup in Portugal in 1974, the Chinese authorities accepted the introduction of a partially directly elected legislature in Macau in exchange for Portuguese willingness to postpone returning the enclave to China and a restricted franchise that ensured most Macau Chinese remained politically inactive. The extension of the franchise in 1984 was an unintended result of power struggles between the Portuguese government and Macanese legislators (Lo, "Aspects of Political Development in Macau," pp. 843-844).

25. Vitalino Canas, "Padroes do fenomeno politico em Macau" (Unpublished paper prepared as teaching material for the Law and Public Administration Programme, University of East Asia, 1989), pp. 12-14; Lo, "Political Culture and Participation in Macau," pp. 5-6, 13.



Chinese elites became more active in politics. Some government policies could also help close the gap between citizens and the government.

Localisation efforts mean more Chinese and Macanese are training for the administration's senior ranks. The government is taking a more active role in society and the economy through participation in massive infrastructure projects, housing programs and education and legal reforms. However, in general, most ordinary Chinese are still politically inactive.<sup>26</sup>

Contrary to their weak identification with the local polity and Portuguese culture, Macau Chinese are heavily influenced by both English and Chinese Hong Kong culture. Wealthy Macau Chinese are often well integrated into Hong Kong society and both live and run businesses there as well as in Macau.<sup>27</sup> Hong Kong-produced television, films and popular music pervade Macau's electronic media and cinemas, although with some limited competition from one local Cantonese and one Portuguese television station and two Cantonese and one Portuguese radio channels. Hong Kong-printed newspapers, magazines and books circulate widely along with local publications.<sup>28</sup> As a result, "when traditional Chinese ways are abandoned, the [Macau] Chinese are opting for American, Japanese or Hong Kong-style Westernization rather than Portuguese or European customs.... [The]

---

26. Lo, "Political Culture and Political Participation in Macau," p. 15; Idem, "Aspects of Political Development in Macau," pp. 846-850; Using categories of ideal types of political culture proposed by Almond and Verba, Lo argues that Macanese and Portuguese elites in Macau have a "participant" orientation, meaning citizens are oriented to both the input and output components of the political system. Both Chinese elites and ordinary citizens have traditionally had a relatively "parochial" orientation, meaning citizens expect nothing from the political system. However, since 1984, Chinese elites have developed a more participative orientation. New Chinese emigrants without Macau identity cards tend towards a "subject" orientation, that is they "react to outputs rather than inputs and to the system rather than the self" (idem, "Political Culture and Participation in Macau" [Occasional Papers, Faculty of Social Sciences, University of East Asia, Macau]).

27. Canas, "Padroes do fenomeno politico em Macau," p. 13.

28. Jeong, "Macau," p. 398.



Cantonese culture of Macau ... has little to distinguish it from that of Hong Kong. The language is the same although the Cantonese of Macau have incorporated fewer English words into their speech. The Chinese of Hong Kong often say that Macau's Chinese seem slower paced, although this is no doubt changing as Macau's economy picks up speed."<sup>29</sup>

### Local Identity

Therefore, the community identity that has emerged from this legacy is deeply penetrated by values and customs from both China and Hong Kong, but shows some life of its own due to the significant political, social and economic changes influencing the enclave. The political elites interviewed all said most local Chinese do not identify strongly with their community as a distinct cultural entity nor with its political institutions, values and processes. The comments of a business leader regarded as pro-Beijing were typical in that they blamed Portuguese-style colonialism and Macau's years of economic stagnation for a lack of strong local identity:

The Hong Kong educational system has been very successful in that the people are more likely to identify themselves as a Hong Kong believer and not as a Chinese.... They are very proud of themselves in Hong Kong, of what they have done, but here in Macau the Portuguese have never been the same type of colonisers. They have an education system only for the Macanese, the mixed people, to learn Portuguese. For the rest, they don't bother to sponsor any education system. So the Chinese, they more often grow up identifying themselves as Chinese with China.... Macau is a small place, inferior in economic development and people identify themselves more as Chinese with China because of this. In Macau, we get our water from China, we get the vegetables at very favourable prices. So when you are not so impressed with the Portuguese administration you see the Chinese as looking after you.... the Portuguese government really never tried to create an identity here. They never tried to give us any sense of pride.<sup>30</sup>

---

29. Edmonds, *Macau*, p. xxxi.

At the same time, the uncertainty over 1999, large influxes of immigrants from China and economic growth jetting Macau into the ranks of the newly industrialised countries appear to have increased awareness among elites of what makes their life different from that of the Chinese across the border.<sup>31</sup> Several respondents responded nostalgically when asked what they value most about their community. Business leader Edmund Ho said:

We have a small community, a small population. We can solve problems together easily. The pace of life is slower, more relaxed. A lot of people like that. It's that they value.<sup>32</sup>

Leong Kam Chun, a nontraditional, reform-minded deputy in the Legislative Assembly, commented in a similar fashion despite his political differences with Edmund Ho:

Macau is a small place. We all have good connections with each other. We, especially twenty years ago, were one big family so I find it is a very good place for someone who doesn't want to earn much money. We call it "Macau street" because it is a community that is like a street, a very enjoyable island.<sup>33</sup>

This nostalgia seems a weak basis for a lasting local identity given the economic development destroying old Macau and, particularly since the late 1970s, the influx of new immigrants from China who are causing its population to mushroom. By 1990, more than half of Macau's population, and perhaps as many as 60 percent, were born in China. Fewer than 42 percent were born in Macau.<sup>34</sup> In Hong Kong, by contrast, only about 37 percent of

30. Interview, Macau Chinese business leader who preferred to remain anonymous, 22 Feb. 1991.

31. Referring to Hong Kong, Lau and Kuan suggest, "This sudden awareness might engender a reinforced feeling of attachment to the things as they presently are, a reluctance to accept changes in the status quo and a sharpened sense of a Hong Kong identity" (Lau and Kuan, *Ethos*, p. 40).

32. Interview, Edmund Ho, businessman, deputy in Legislative Assembly, Basic Law drafter, 21 Feb. 1991.

33. Interview, Leong Kam Chun, accountant, deputy in Legislative Assembly, 21 Feb. 1991.



the population was China born in 1981 and 1986, while those born in Hong Kong fluctuated between 56 and 59 percent between 1971 and 1986.<sup>35</sup>

Paradoxically, the arrival of these new immigrants in Macau appears to have strengthened the sense of local identity felt by the enclave's long-term and Macau-born Chinese residents. However, this heightened sense of attachment to Macau might only serve to increase pessimism that Macau's distinctness will not survive 1999 and, thereby, trigger distrust in China and emigration. Several of my informants expressed anxiety that the rapid arrival of so many new Chinese immigrants was eroding Macau's community identity and prospects for autonomy. They said the newcomers are more attached to China than Macau, less educated and poorer and have a different culture from local Chinese.<sup>36</sup> One informant said, "They don't want to work," while another called them "criminals."<sup>37</sup> Catherine Mok, a Macau Chinese journalist with a Portuguese passport, revealed her anxiety about 1999 and the future of political freedoms, particularly freedom of the press, as immigrant numbers increase:

I'm afraid now the situation in Macau has changed so much I maybe am losing my love for Macau. So many immigrants are coming from China. Their education and their culture is so different from ours. And so many of our friends have emigrated too. We, the original Macau people, are the minority now. We cannot develop Macau alone.<sup>38</sup>

34. As much as 81.1 percent of Macau's population growth in the 1971-1987 period was due to immigration, particularly from the neighbouring provinces of mainland China (Tse, "Population and Economic Development in Macau," p. 79).

35. Paul C.K. Kwong, "Population and Immigration," in T.L. Tsim and Bernard H.K. Luk, eds., The Other Hong Kong Report (Hong Kong: Chinese University Press, 1989), p. 371.

36. Interview, Alexandre Ho, 22 Feb. 1991; Interview, Rui Rocha.

37. Interview, restaurant owner who preferred to remain anonymous, 4 Feb. 1991; Interview, business woman who preferred to remain anonymous, 21 Feb. 1991.

38. Interview, Caterina Mok, chief, information radio department, Chinese channel, Teledifusao de Macau, 22 Feb. 1991.

Despite the government-citizen gap identified by some scholars, public opinion polls have found some support for the enclave's current political and legal systems, which could reflect the intensified attachment some people feel towards Macau because of anxiety over 1999. A September 1990 public opinion poll found twice as many respondents gave the performance of the government of the then Macau Governor Carlos Melancia and the Portuguese administration favourable ratings than those who gave them unfavourable ones. However, respondents were less favourable towards the legislative assembly.<sup>39</sup> In a survey done nine months earlier, Macau Chinese respondents showed equally strong preferences for use of Portuguese and English judicial systems rather than a Chinese judicial system after 1999 and preferred judges to be of both Portuguese and Chinese nationality after the transfer of administration.<sup>40</sup> These preferences could indicate rejection of the PRC political system as much as actual attachment to Macau's political institutions. However, the Macau government's recent localisation, infrastructure development and other policy efforts could be improving citizens' feelings about the colonial government and its institutions.<sup>41</sup>

---

39. Macau Instant Poll, 20-22 Sept. 1990; The survey found 41 percent of respondents gave the performance of the Melancia government very good or quite good ratings while only 18 percent said it was very poor or quite poor. Fifty-two percent rated the Portuguese administration's performance as very good or quite good while only 26 percent very poor or quite poor. On the other hand, 24 percent said the assembly's work was very good or quite good while the same number rated it very poor or quite poor. The telephone survey, which did not take account of the respondents' ethnicity, surveyed a random sample of 500 people in Macau.

40. Macau Confidence Index Survey, Dec. 1989; Thirty-five percent of Chinese chose a Portuguese judicial system and 32 percent chose an English system while only 8 percent wanted a Chinese one. By contrast, 76 percent of Portuguese and 78 percent of Macanese preferred a Portuguese system. In their preference of judges, 57 percent of Chinese wanted both Portuguese and Chinese judges, 16 percent wanted only Chinese and 5 percent wanted only Portuguese judges. Eighty-nine percent of Portuguese and 73 percent of Macanese wanted both Portuguese and Chinese judges.

41. Lau and Kuan argue Hong Kong's comparatively rapid localisation of the civil service and a perceived willingness of the colonial government to consult the public have mitigated



Either way, the attitudes of Macau Chinese will be decisive in providing the local identity needed if a political culture of dual loyalty is to exist in Macau after 1999. For their part, the Macanese are attached to both Macau and to Portuguese culture. One Macanese commented: "My family has been in Asia for five generations and I feel I belong here. If I can't stay in Macau, Portugal is my first choice of places to go."<sup>42</sup> However, emigration and assimilation are reducing the numbers and strength of the Macanese, rendering them less able to defend Macau's distinct institutions. Significant emigration has already whittled their numbers to 10,000-15,000 or perhaps less.<sup>43</sup> Emigration could reduce the population by at least half again in the run up to 1999 as the Macanese leave to escape economic and political uncertainties and restricted career opportunities.<sup>44</sup> The traditional Macanese role as intermediaries between the rulers and the ruled will fade away as Chinese speakers come to dominate the Macau administration. Although their distinct culture is protected in the Joint Declaration and the upcoming draft of the Basic Law, legal provisions alone are unlikely to keep the majority of Macanese in Macau unless their trust

---

the gap between the government and the people somewhat. A distinct ethos or political culture is taking shape in Hong Kong despite the colonial school system and style of administration, as well as the still low levels of political participation and other barriers, which also still exist in Macau (Lau and Kuan, *Ethos*, pp. 178, 189, 192).

42. Interview, Rangel; See also Lo, "Aspects of Political Development in Macau," p. 838; Interview, Jose Rodrigues, Macanese lawyer and deputy in the Legislative Assembly, 21 Feb. 1991; Patricio Guterres, "Macau e os macaenses," *GM* 4 Jan. 1991.

43. After Hong Kong's founding in 1841, the Macanese were among the colony's first residents, working as clerks, translators, warehousemen and bookkeepers in banks, trading companies and the colonial administration. They later moved to Shanghai and other China treaty ports and, following the Second World War and the 1949 Chinese Communist victory, many went overseas. The 1966-67 Cultural Revolution riots in Macau and the uncertainty that came with the 1974 Portuguese Revolution prompted others to emigrate. By the late 1970s there were overseas Macanese communities in California, Portugal, Canada, Australia and Brazil (Silva, *All Our Yesterdays*, pp. 15-17, 28-52; Edmonds, *Macau*, pp. xxiii-xxiv).

44. A Dec. 1989 survey found 65 percent of the Macanese will leave the territory, most to settle in Portugal. About 52 percent of the Macanese civil servants said they planned to emigrate (Macau Confidence Index Survey, Dec. 1989).

in PRC authorities and the future Macau SAR government improves.<sup>45</sup> Absorption by the dominant Portuguese and Chinese cultures is also reducing the numbers of Macanese and their distinctive hybrid culture. The trend toward assimilation is evident in the pattern of intermarriage between Macanese and Cantonese and the near disappearance of the distinct Portuguese dialect once spoken by the Macanese.<sup>46</sup> Increasing numbers regard Cantonese as their mother tongue.<sup>47</sup> As a result, the Macanese and their sense of identity with Macau are in a weakened position to act as the core of a broadly based local culture that might also include longer-term Chinese residents. Carlos Marreiros, president of the publicly owned Macau Cultural Institute said: "Unhappily, Macau's collective culture is in crisis, maybe since the beginning of the century.... The educated, those bilingual persons who should be the leaders today, most of them left. The molding of a community identity has been seriously harmed."<sup>48</sup>

#### Assessing Portuguese Policies

Given the uncertainty of the local identity component of Macau's dual loyalty, efforts should be directed at building support for local political institutions among local Chinese as well as enhancing the confidence of the Macanese so they will stay in Macau. To do both is difficult. Some Macanese and Portuguese tend to see preservation of Portuguese linguistic and

---

45. Macau JD, Art. 2(6) Annex I (V).

46. Called *lingu Maquista* or *Macaista*, the language is a Portuguese creole combining some archaic Portuguese with influences from Asian languages spoken along the routes of Portuguese merchants and seafarers (J.M.R. Lume, "Centre for Portuguese Language and Culture," in Cremer, *Macau: City of Commerce and Culture*, pp. 119-121; Edmonds, *Macau*, p. xxx; Zepp, "Interface of Portuguese and Chinese Cultures," pp. 127-128); On intermarriage see Jeong, "Macau," p. 388.

47. Jeong, "Macau," p. 389.

48. Interview, Carlos Marreiros, president, Macau Cultural Institute, 5 Feb. 1991.

cultural heritage in Macau as the key to protecting the enclave's distinct identity. On the other hand, Macau Chinese have little or no attachment to things Portuguese and, along with Chinese authorities, are sometimes critical of the spending of public money on Portuguese cultural programs.<sup>49</sup>

Both the Portuguese and Macau governments have made the promotion of Portuguese language and culture cornerstones of their transition policies.<sup>50</sup> The Macau government's initiatives include encouraging the teaching of Portuguese in Macau and promoting bilingualism, mostly among Macau Chinese civil servants and new recruits. Officials defend the policy as essential for a smooth preparation for 1999 because incoming Macau Chinese bureaucrats must be able to communicate with outgoing Portuguese administrators and read the mountains of Portuguese-language laws and other documents left behind.<sup>51</sup> This rationale does not negate the potential diplomatic, business and other personal benefits Portugal and individual Portuguese could well gain from maintaining Macau as a partially Portuguese-speaking territory after 1999. Recognising that Portuguese language and culture do not have the same appeal as an international commercial language like English, the Portuguese government and some private and public foundations have taken a leading role in promoting their spread abroad in a bid to expand the country's political and economic

---

49. For example, an editorialist in a Portuguese-language Macau newspaper expressed the sentiment: "Macau is Macau because of the Portuguese, their language, their culture and their humanism. If not, how would one distinguish between it from Zhuhai or Canton?" ("Lingua Portuguesa: prioridade zero," *Macau Hoje*, 22 Feb. 1991); The Chinese government has pressured Macau authorities to remove a statue of Joao Ferreira do Amaral, a Macau Governor who lost his life trying to reduce the authority of Chinese officials in Macau and establish free trade with China (Patricia Tse, "Diplomatic tug-of-war over Macau," *SCMP*, 9 July 1990).

50. See, for example, "Murtiera Nabo assume em plenitude as funcoes de Governador de Macau," *JM*, 29 Sept. 1990.

51. Interview, Rui Rocha; Interview, Rangel.



ties.<sup>52</sup> Asia, particularly the capital-rich countries of East Asia, have become increasingly important targets. Macau's geographically central location, cultural and educational institutions and status as a territory where Portuguese will remain an official language for nearly sixty more years make it a centrepiece in this regional strategy.<sup>53</sup> One analyst has linked Portugal's granting of Portuguese passports to Macau Chinese to Lisbon's need to cement political and economic links with East Asia.<sup>54</sup> Promoting Portuguese language and culture in Macau is also a question of pride for many Portuguese as they leave their last overseas territory.<sup>55</sup> For the Macanese, it is a matter of ethnic survival.

However, some officials admit that prospects for the long-term survival of Portuguese language and culture in Macau are bleak. Even if they were to survive, they would not likely encourage local identity among Macau Chinese. Government efforts would find greater support among local Chinese if they equated Portuguese culture heritage, not with the Portuguese language, but with those values and institutions that are already appreciated by some Macau Chinese, particularly the younger generation born locally. The responses of my informants and other evidence suggest appreciation for the rule of law, democracy (however ill defined), some

---

52. Jose Medeiros Ferreira, *Portugal, Os Proximos 20 Anos* (Lisboa: Fundacao Calouste Gulbenkian, 1988), pp. 26-32; See generally Fernando Cristovao, *Noticias e Problemas da Patria da Lingua* (Lisboa: Instituto de Cultura e Lingua Portuguesa, 1987), especially pp. 71-73; Efforts include promoting study of the Portuguese language, research and publishing on Portuguese history, culture, language and literature, exhibitions, festivals, contests, performing arts groups, preservation of historic buildings and sites and aid to communities of Portuguese descent.

53. Lume, "Centre for Portuguese Language and Culture," pp. 121-123; Edmonds, *Macau*, p. xxxii.

54. Edmonds, *Macau*, p. liii.

55. Interview, Rui Rocha; Interview, Christina Almeida, deputy director, Education Department, 7 Feb. 1991.



political and civil rights and freedoms and capitalism is strong in Macau among younger, better educated political leaders considered sympathetic to China as well as among democracy activists. Ng Kwok Cheong, founder of the Macau Democracy Development Union and an organiser of the 1989 rallies in support of PRC student movement, said he has no interest in preserving the Portuguese language in Macau. However, he wants to keep and build on the principles of liberal, democratic and reformist government that were enshrined in Macau's Organic Statute and the Portuguese Constitution after the fall of the dictatorship in Portugal in 1974.<sup>56</sup> Alexandre Ho, a reform-minded, nontraditional local Chinese member of Macau's Legislative Assembly, said if the Portuguese really wanted to win Macau's long-term loyalty they should do more to develop a more democratic government and strengthen protection for rights and freedoms.<sup>57</sup> Edmund Ho, who some suggest will be Beijing's choice for SAR chief executive after 1999, expressed support for traditional liberal values associated with minimal government interference in the economy and in society, including the right to freedom of speech, association and the press, the rule of law and a reliable, independent judiciary.<sup>58</sup>

Although its depth should not be exaggerated, the solidarity many Macau people demonstrated for the Tiananmen Square student protests in 1989 suggests these values might enjoy some support in the general population and could serve as the core of an emergent Macau identity. Some government officials and heads of public institutions appear to be on the same

---

56. Interview, Ng Kwok Cheong, president, Macau Democracy Development Union, 4 Mar. 1991.

57. Interview, Alexandre Ho.

58. Interview, Edmund Ho.

wavelength. Jorge Rangel, the Macanese president of the Macau Foundation, said:

The only way the Macanese can survive is to link themselves with (Chinese) Macau belongsers. I believe the most important things are those values and attitudes we share with them. This alone will save us, not some Portuguese songs we can sing.... Our priority must be to strengthen these Western values and this sense of freedom and the right to participate in such a way that they cannot be destroyed.<sup>59</sup>

To Sebastiao Povoas, adjunct secretary for justice, the fight to preserve an independent legal system in Macau is a fight for Portuguese culture: "We failed the fight of language, of architecture, of education. Law is all there is left."<sup>60</sup>

While much remains to be done, some current actions of the Macau government could strengthen this political identity by closing the gap between government institutions and the citizens. The translation of Macau's laws into Chinese and the training of local Chinese to assume senior positions in the civil service and legal system are proceeding, albeit not fast enough for some critics. The government has moved towards officialising the Chinese language, which it has told China it will accomplish before the transfer in 1999.<sup>61</sup> Based on its policy of reinforcing the "collective identity and community consciousness" of Macau people, the publicly financed Macau Cultural Institute supports both

---

59. Interview, Rangel.

60. Interview, Povoas.

61. In February, 1991, the Portuguese and PRC governments agreed that Chinese will be made official during the transition period and that Portuguese would be an official language after 1999. The acting governor said the officialisation of Chinese should happen by the end of 1991 ("Murtiera Nabo volta e diz-se satisfeito," JM, 26 Feb. 1991; "Qichen considera sucesso a visita a Portugal," JM, 26 Feb. 1991); In 1989, a new decree law made it obligatory to translate proposed laws and laws as well as decrees and other government documents and publications into Chinese, although the Portuguese version of the document still prevails in cases of disputes over interpretation. Chinese is also supposed to be used in relations between the public and all government services, including autonomous organisations and municipal organs ("Mais um passo para a oficializacao da lingua chinesa" [Lusa wire copy, 31 Jan. 1989]).

Portuguese and Chinese cultural development to provide Macau people with the symbols and references points needed for a stronger collective identity.<sup>62</sup> A proposed Macau education law tabled for public discussion in 1991 establishes some common curricula standards and attempts to make the education system more locally oriented while still respecting its diversity.<sup>63</sup> The Macau Foundation, a public institution with trusteeship of the University of East Asia, has made the training of Macau residents to assume higher and professional positions in the local administration and legal system a priority.<sup>64</sup> Government financial support schemes have increased the number of Macau students, who accounted for 83 percent of the university student body in 1990-1991.<sup>65</sup> The localisation policies, including increases in both Portuguese and Chinese-language teaching, are not without controversy though.<sup>66</sup> News reports suggest the March 1991 resignation of University of East Asia rector, Hsueh Shou Sheng, may have been connected with his objections to incursions upon the organisation's original English-language and international approach.<sup>67</sup>

---

62. Its programs include publishing literature, poetry, and books about Macau history, culture and society in Portuguese, Chinese and English, supporting performing arts, holding seminars and displays and preserving historic buildings ("Cultural Policy—the 1990: To integrate the cultural dimension in the development strategy," reprinted in *Review of Culture*, no. 1 [Apr., May, June 1987], pp. 100-101; Interview, Marreiros).

63. Interview, Almeida; "Lei da educacao consagra ensino portugues," *CM*, 22 Feb. 1991; "Ensino Luso-Chines vai sair do 'ghetto'," *JM*, 20 Feb. 1991.

64. "Curso de direito e administracao publico: governador de Macau" (*Lusa*, 2 Dec. 1988).

65. Jorge Rangel, "A formacao de quadros e o futuro da administracao publica de Macau" (Speech, n.d.), pp. 5-6; Id., "Human Resources Development in Macau," in Yuan, Wong and Martins, *Population and City Growth in Macau*, pp. 34, 37, 43.

66. The university has set up courses for teacher training (in Cantonese), public administration (in Cantonese and Portuguese), law (in Portuguese) and translation and interpreting and has stepped up efforts to promote Portuguese culture and language studies (Rangel, "Human Resources Development in Macau," pp. 34, 37; Hui, "Development of Higher Education," pp. 59-61, 73).

67. "Macau university rector resigns," *USIS*, 26 Mar. 1991.

Local cultural autonomy is protected in the Joint Declaration and the draft Basic Law,<sup>68</sup> as are such aspects of culture as Macau's legal and economic systems and way of life. However, the strength of these guarantees in practice will depend in part on whether local people feel enough of an attachment to their distinctive institutions and values that they are willing to defend them. Hong Kong's experience suggests the growth of a stronger Macau identity alone will not ensure these locally born Chinese, those who feel the most identification with the enclave, will remain in the enclave to support its autonomy. Lau and Kuan found that Hong Kong people "regard their society instrumentally as a place to make a living." "Claiming a Hong Kong identity was not tantamount to having a strong sense of belonging to Hong Kong, and so it was not a powerful factor dampening the desire for emigration."<sup>69</sup>

Therefore, a collective local identity based on the freedoms and values shared by the younger Macau-born Chinese, Macanese and Portuguese residents will only build local autonomy if these people feel confident enough in the future to stay. This depends in large part on the actions of PRC authorities and their local allies. All of these parties could gain from a more self-confident Macau SAR, armed with a strong local identity that will promote and protect its liberal, capitalist institutions and values. Many outside investors would be more attracted to such a place. Particularly if its fostering is overtly supported by the mainland government, a Macau identity does not have to mean rejection of Chinese authorities or the Chinese people.<sup>70</sup>

---

68. Macau JD, 2(5)(7), Annex I (VII)(VIIA).

69. Lau and Kuan, *Ethos*, p. 179.



## Attachment to China and its Central Government

Local identity is not enough. Dual identity also requires that Macau people feel attached to the Chinese polity. On this point, my informants generally agreed that Macau people are more willing than Hong Kong residents to cooperate with China. Surveys also suggest comparatively few Macau people plan to emigrate. This could be evidence of a less developed sense of local identity in the enclave and reflect the large numbers of Macau Chinese who have a Portuguese passport safety net, the relative smallness of the enclave's professional and higher income groups and the conservativeness and older age of its business people.<sup>71</sup> A survey has found Macau Chinese were generally quite confident in Macau's political future. At the same time, however, distrust in the PRC government runs high. It is particularly strong among younger, better-educated Chinese, precisely those Macau most needs to continue its economic development and localisation. They are proportionately more likely to distrust the PRC government and to

---

70. The Hong Kong identity "takes China or the Chinese people as the reference group and marks out the Hong Kong Chinese as a distinctive group of Chinese.... [It] does not entail much [sic] political overtones in terms of 'Hong Kong nationalism' or the desire for political independence, thus indicating the lingering dominance of the unitary political ideology (da yitong) which is probably the fundamental principle in the Chinese political heritage" (Lau and Kuan, *Ethos*, p. 2); On the other hand, 60 percent of their Hong Kong respondents agreed or strongly agreed with the statement: "Hongkongese have a lot of common characteristics, these make it difficult for them to get along with the Chinese on the Mainland" (ibid. p. 178).

71. Interview, Edmund Ho; Only 32 percent of Chinese respondents in the July 1989 survey said they planned to emigrate, a total which fell to 21 percent in the December 1989 survey (Macau Confidence Index Survey, July and Dec. 1989). By contrast, in Hong Kong surveys taken in 1985 and 1986, several years before the June 4 massacre jolted local confidence, as many as 44.6 percent of respondents said they would emigrate if they had the chance, while 48.5 percent said they would not. People who identified themselves as Hongkongese were more likely to want to emigrate than those who identified themselves as Chinese (Lau and Kuan, *Ethos*, pp. 176, 179). Differences in the wording of the questions make comparisons difficult. The Macau survey asked whether people planned to emigrate while the Hong Kong survey asked whether they would emigrate if they had a chance.

have plans to emigrate.<sup>72</sup> It is in this age group that problems stemming from the Chinese government's concept of patriotism are especially evident.

Diffuse support based on ethnic or cultural attachments to a polity do not convert automatically into specific support based on the citizens' satisfaction with the output of the political system. The two can actually conflict within a polity like the PRC, where authorities tend to equate patriotism or nationalism with loyalty to the state. This equation reflects China's traditional unitary political ideology.<sup>73</sup>

The fact that the Chinese state was founded on one of the world's great civilizations has given inordinate strength and durability to its political culture. The overpowering obligation felt by Chinese rulers to preserve the unity of their civilization has meant that there could be no compromises in Chinese cultural attitudes about power and authority.<sup>74</sup>

It is reinforced by the ideology of the modern state, which often equates "statism" with "nationalism," despite conflicts between the two due to differences of ideology, ethnicity and culture within state boundaries.<sup>75</sup>

---

72. Macau Confidence Index Surveys, July and Dec. 1989; The surveys found Macau Chinese were generally quite confident in the political future of Macau and satisfied with the Joint Declaration, which they thought was a better deal than Hong Kong's agreement. However, they said the PRC government will not comply with the agreement and distrusted the proposed Basic Law. They generally felt the PRC was likely to remain the same or become less open in future and strongly objected to garrisoning of the PLA in Macau after 1999. Those who said they planned to emigrate were generally younger, better educated, from better off households and were less confident in the political future of Macau than those who did not plan to leave; This parallels Lau and Kuan's findings suggest Macau people in this group could well have a greater sense of belonging to the enclave. Hong Kong Chinese who claimed a Hong Kong identity tended to be younger, more educated, higher in occupational status, more trustful of the Hong Kong government and less so of the Chinese government. They were also more likely to be politically involved and had greater political interests (Lau and Kuan, *Ethos*, pp. 184-186).

73. See generally, Schram, "Decentralisation in a Unitary State," especially p. 81; Lau and Kuan, *Ethos*, p. 2.

74. Lucian W. Pye, "China: Erratic State, Frustrated Society," *Foreign Affairs* 69, no. 4 (Fall 1990): 58.

75. Hannum, *Autonomy*, pp. 23, 71, 454; Hannum says nationalism implies "a demand for political power by an ethnically, linguistically, or otherwise homogeneous group" while "statism," implies "a similar demand for political power by a group which defines itself in terms of existing political and/or territorial boundaries rather than a more personally based sense of solidarity.... Under these definitions, statism would more accurately describe the struggle against colonialism, although the frequent references to 'nation-building' in newly independent states would still be relevant insofar as new states seek to build a politically

The potential for such conflicts is acute in the Chinese world, where colonialism and civil war have divided the country and created communities of differing ideology and culture. Such conflicts are built into "one country, two systems," where the Beijing government ostensibly aims to accommodate fundamentally contradictory political and economic systems within one country. The diversity within the Chinese world, coupled with the imperative of unity, has resulted in something PRC dissident Fang Lizhi has called "the problem of patriotism":

The Chinese tendency to blur the distinctions between party, government and country has made it dangerous to challenge fundamental policies or the basic character of the political system for fear of appearing to be unpatriotic and subversive.... What makes Fang Lizhi ... stand out among Chinese intellectuals is his outspoken recognition that China has been cursed with what he calls "the problem of patriotism," which stops all reasoning because once you "criticize someone for being unpatriotic it will shut him right up."<sup>76</sup>

The Beijing government has generally touted a more flexible view of patriotism when judging Macau and Hong Kong Chinese. Deng Xiao Ping stated, "We don't require them all to favour China's socialist system, but only ask them to love the motherland and Hong Kong."<sup>77</sup> However, the boundary between acceptable criticism of the PRC government and actions considered "subversive" and "unpatriotic" remains blurry. Like the people of Hong Kong and Taiwan, Macau residents demonstrated the strength of their feeling of oneness as Chinese during the Tiananmen Square student movement in 1989. Belying the enclave's reputation as a bastion of pro-PRC government sentiments, Macau elites of both traditional pro-China and nontraditional

---

homogeneous community to replace or complement existing ethnic and other communities" (ibid. p. 24).

76. Pye, "China," p. 67.

77. "Deng Xiao Ping on Hong Kong Issue," *Beijing Review*, 23 July 1984, pp. 16-17.



allegiances declared their support for the PRC students.<sup>78</sup> Public demonstrations between 22 May and 5 June 1989 drew crowds as large as 100,000-170,000 by various estimates, or about one in five Macau residents. The demonstrators' placards, songs and speeches revealed their feeling of identity with China as well as their rejection of the Chinese leadership and their distrust of China's intentions regarding 1999.<sup>79</sup> However, in the Chinese government's eyes, their actions were unpatriotic. Following the suppression of the student movement on 4 June 1989, the Beijing authorities condemned Macau and Hong Kong, along with the United States and Canada, as areas where "reactionaries" were supporting and helping conspire with the students.<sup>80</sup> Ji Peng Fei, then director of Beijing's Hong Kong and Macau Affairs Office, said the two territories would not be allowed to act as bases to interfere with or attempt to overthrow or change the socialist system on the mainland.<sup>81</sup>

The problem of patriotism will continue to plague efforts to build dual loyalty in Macau. It will exclude from the ranks of supporters of Macau's autonomy those young, university-educated, Macau-born Chinese like Caterina

78. Among them were the Macau Education Association, Chinese teachers, university and other students, employees of the pro-Beijing Macau Daily News newspaper, liberal and pro-Beijing Legislative Assembly members and Basic Law drafters, three of Macau's deputies to the PRC's National People's Congress, a leader of the pro-Beijing Macau General Workers Union, casino tycoon Stanley Ho, and some Macanese and Portuguese groups and individuals ("Associações de professores chineses de Macau apoiam estudantes de Beijing," GM, 17 May 1989; "Estudantes de Macau continuam determinados frente a Nova China," GM, 20 May 1989; "Trabalhadores do 'Ou Mun' exigem a demissão de Li Ping," GM, 23 May 1989; "A propósito da situação em Beijing," GM, 24 May 1989; "Liberais ausentes da sessão inaugural do Conselho Consultativo da Lei Básica," GM, 29 May 1989; "Macau voltou a protestar em massa," GM, 5 June 1989).

79. "Macau também apoia estudantes de Beijing," GM, 22 May 1989; "Em Macau: Dezenas de milhares de pessoas manifestam-se contra Lei Marcial," GM, 23 May 1989; After news of the PRC crackdown reached Macau, some customers of local branches of the PRC-owned Bank of China withdrew their money and closed their accounts ("Populares acorrem em massa ao Banco da China," GM, 6 June 1989; "Fracções militares rivais confrontam-se," GM, 7 June 1989).

80. "Macau incluído na lista," GM, 21 June 1989.

81. "Redactor da Lei Básica considera insuficientes garantias de Beijing," GM, 24 June 1989.



Mok, who loves China but does not accept all the policies of its central government:

My blood and my home country is China, but before I never thought of this. I didn't see it because in Macau, if you are Chinese they think you are from China. We are not the same as the people in China. We have different cultures.... But after June 4 especially I had this idea of closeness to China very sharply. I wanted China to get better and better. My feeling wasn't for the government, but a oneness with the land and the people. Minha terra ["my land," in Portuguese] like we say.<sup>82</sup>

### Policy Implications

No magic formula exists for determining the balance of diffuse and specific support required to create a dual political identity capable of supporting Macau's autonomy process. What is clear is that a healthy balance of loyalties requires action on the part of the Macau, Portuguese and Chinese governments. Hong Kong's experience suggests that Portuguese transition policies targeted at the younger generations, aided by continued economic development, increasing social and political pluralism and concern about 1999, could increase residents' sense of attachment to Macau and its political institutions over the long term. This will be particularly true if Macanese and younger, better educated Macau-born Chinese are confident enough in the territory's future to stay after 1999. The current policies seem helpful, but could well be too late in coming. They would more usefully focus on political values rather than Portuguese culture and language.

However, China's actions cannot be ignored. Without changes in PRC policies toward Macau and Hong Kong, strengthening local identity might only serve to convince more people to leave Macau, believing the community

---

<sup>82</sup>. Interview, Mok.

they cherish will never survive the transfer of administration to China. By taking concrete steps to endorse the values and institutions in Macau that are supported by younger local Chinese, China would aid in building local identity and win the loyalty of those Macau people who love China but do not trust its current government. Macau people's tradition of generally peaceful coexistence with China and their sense of Chinese nationalism are invaluable resources whose role in fortifying the enclave's autonomy process should not be ignored. Nonetheless, it would be a grave mistake for Chinese and Portuguese authorities to ignore the changes underway in Macau and assume that old alliances with traditional groups in the enclave will alone guarantee a smooth transition in 1999 and a prosperous community afterward. Some members of the old alliance, especially those Macanese and Portuguese, might not be available. By encouraging more specific attachments to China based on concrete and secure political and economic benefits for both Macanese and younger Chinese residents, PRC leaders would foster a healthier balance of identities that does not depend solely on ethnic attachments and traditional elites. The liberal values shared by many younger Macau-born residents are a potential foundation for such a dual identity. As the next chapter indicates, election results show that support for traditional elites is still strong. However, the growth in voter support for reform-minded independent political leaders in recent years and the high level of distrust many Macau people feel toward the PRC leadership make it imperative that new means be found to build residents' attachment to both the future Macau SAR and to China. The following chapters explore some internal political and legal as well as international institutions with the potential to help foster a more vibrant dual identity in Macau.

## CHAPTER 5

## POLITICAL INSTITUTIONS AND POLITICAL PARTICIPATION

The configuration of local political institutions and patterns of participation written into the original autonomy agreement, and which evolve in practice afterward, have the potential to help foster a political culture of dual identity. The design and authority of local government institutions and their relationship with the central government can also be where central-local conflicts are most apparent. In autonomy processes where both the larger and local polities share similar democratic values, concern has sometimes centred on the central government's authority to appoint the local chief executive or central government representative to the autonomous territory. Their powers to dissolve the local legislature, veto local legislation, determine its constitutionality or challenge it in courts in the larger polity can also be controversial. All of these tensions are likely to be present in the case of the Macau SAR. In addition, there will be others created by contradictions between the political values of China's "democratic centralism" and those liberal values accepted in Macau. As the previous chapter revealed, these liberal values may be some of the key elements that autonomy seeks to preserve. The task is to develop institutions and practices which balance the people of Macau's desire to protect their distinct values and control decisions affecting their interests with the central government's desire to protect its fundamental interests and sovereignty.

This chapter introduces Macau's current and post-1999 political system, then evaluates the latter by considering two problems which have surfaced in other autonomy arrangements. The first concerns the potential for

disruptive conflict created when the local chief executive are accountable to both the local electorate or legislature and the central authorities. The second concerns the role of local democratically constituted political institutions in central-local conflicts. While by no means the only issues that will confront Macau's political institutions, these two have proven troublesome in other autonomy arrangements. In Macau's case, they could be aggravated by factors specific to the enclave, particularly the likely shortage of local people qualified to hold government and judicial office and positions in the senior civil service after 1999.

#### Current Political Institutions

Under the Organic Statute of Macau, an act of the Portuguese Assembly of the Republic first passed in 1976 and amended in 1979 and 1990, Macau has an executive-centred political system led largely by political appointees from Portugal, although a locally-constituted Legislative Assembly ("Assembleia Legislativa") has taken a more important role in recent years.<sup>1</sup> The highest ranking executive and the representative of the Portuguese state is the governor ("governador"), a Portuguese expatriate who is appointed by the Portuguese president after mandatory local consultations with Macau's Legislative Assembly and representatives of local interest groups.<sup>2</sup> The governor nominates and the president appoints no more than seven adjunct secretaries ("secretarios adjuntos") to act as

---

1. Afonso and Pereira, "Political Status and Government Institutions," pp. 43-44.

2. DSM, Art. 3(1)(2)(3); The governor represents the Portuguese state in all matters except those concerning the legal system, which is part of that of Portugal. The Portuguese president is empowered to represent Macau in matters relating to foreign relations and international agreements although he may delegate his authority to the Macau governor if the matter is of exclusive concern to the enclave. However, international agreements cannot be applied to Macau without prior consultation (ibid.; Afonso and Pereira, "Political Status and Government Institutions," pp. 40-41).



his or her advisors.<sup>3</sup> Unlike Hong Kong, where the governor and principle secretaries are career civil servants, the governor is a political appointee whose mandate is subordinate to the Portuguese president's five-year term of office. The adjunct secretaries are with rare exceptions Portuguese expatriates who change with each new governor.<sup>4</sup> The adjunct secretaries advise the governor and direct central administrative departments and government agencies.<sup>5</sup> The governor also gets advise from a Consultative Council ("Conselho Consultivo") of ten members serving four-year terms. The governor appoints five of its members from among leading residents of Macau while Macau's municipal assemblies and key interest groups elect the other five.<sup>6</sup> The council's decisions are not binding.<sup>7</sup> Unlike Hong Kong's Executive Council, where five out of fifteen members are senior civil servants, Macau's governor is the only official member of the Consultative Council and can only vote in case of a tie.<sup>8</sup>

The governor has concurrent lawmaking powers with the Legislative Assembly unless competence is conferred exclusively on the latter.<sup>9</sup> The assembly has twenty-three deputies ("deputados") who serve four-year terms,

---

3. Ibid., Art. 17(1).

4. The cabinet of the new governor Vasco Rocha Vieira includes two Macau-born adjunct secretaries, both of them Macanese. All of the adjunct secretaries appointed by the former governor were dismissed ("New cabinet for Macau," HKS, 17 May 1991).

5. Afonso and Pereira, "Political Status and Government Institutions," pp. 45-46.

6. QSM, Art. 44(1)(2)(3).

7. Ibid., Art. 49(4).

8. Ibid., Art. 42(2), 50(1); Norman J. Miners, "Constitution and Administration," in Richard Y.C. Wong and Joseph Y.S. Cheng, eds., The Other Hong Kong Report 1990 (Hong Kong: Chinese University Press, 1990), p. 5; Under the Organic Statute's 1990 amendments, the adjunct secretaries and other government officials can attend its meetings but do not have the right to vote. Previously, three senior officials were permanent council members while the governor appointed two local residents as members (QSM, 1976, Art. 44[3][4]).

9. QSM, Art. 5, 21(1), 22(1), 31(2).

but is only partly directly elected. The governor appoints seven deputies from among local residents and eight seats are filled through indirect elections among members of local moral, cultural, welfare and economic organisations, with representatives from economic organisations holding the largest number of seats by law. Only a minority of eight deputies are elected directly by universal suffrage.<sup>10</sup> These seats are contested by candidates linked with permanent civic associations or candidate committees and are allocated according to a system of proportional representation.<sup>11</sup>

Unlike their counterparts in Hong Kong, Macau's governor and adjunct secretaries have no seat in the assembly, which instead elects its president and vice-president from among its own members.<sup>12</sup> However, the governor can influence the assembly through his power of appointment and by referring a bill back for review after it has been approved by the assembly. Nevertheless, if the assembly subsequently passes it with a two-thirds majority, the governor cannot refuse to publish it unless it is unconstitutional or conflicts with Portugal's overriding guidelines for the Macau government. In these cases, a bill subsequently passed by a two-thirds majority must be sent to the Constitutional Court in Portugal, which will determine its constitutionality and whose decision is binding.<sup>13</sup>

---

10. *Ibid.*, Art. 21(1).

11. Afonso and Pereira, "Political Status and Government Institutions," p. 49.

12. *Ibid.*, Art. 2; Miners, "Constitution and Administration," pp. 6-7; The governor may attend sessions of the assembly but has no right to vote (OSM, Art. 37[1]).

13. OSM, Art. 40(1)(2)(3).

### Post-1999 Political Institutions

The Sino-Portuguese Joint Declaration largely aims to preserve the current executive-dominated, externally appointed, semi-democratic political system in the future Macau SAR, while swapping Portuguese authority for that of the PRC.<sup>14</sup> The SAR government and legislature will be "composed of local inhabitants." The majority of the members of the legislature "shall be elected," although whether directly or indirectly is not specified.<sup>15</sup> The chief executive will be "appointed by the Central People's Government on the basis of the results of elections or consultations to be held in Macau."<sup>16</sup> Other principal officials--including the equivalent of the current adjunct secretaries, procurator-general and principal officer of the police service--"will be nominated by the chief executive of the Macau Special Administrative Region for appointment by the Central People's Government."<sup>17</sup> Thus, the chief executive and principle officials of the SAR government will be political figures, as they have been in Portuguese-administered Macau. In this respect, Macau will not have to undergo the same adjustment as Hong Kong. In the British territory, the governor and principle officials are having to adapt to politics and

---

14. The following comment about Hong Kong could as easily have been made about Macau: "Like every other colonial constitution, the political system in Hong Kong is dependent on an external force for its legitimacy, relatively immune from political pressures originated from the society, executive-centered rather than legislative-dominant, and operative in a top-down policy-making mode. Isn't it convenient for China to remain in ultimate control of Hong Kong if these essential features are preserved while those 'colonial' components such as appointment of the governor by the Queen are removed? In essence, it involves nothing more than the replacement of the master" (Lau Siu-Kai and Kuan Hsin-Chi, "Hong Kong in Search of a Consensus" [Occasional Paper, The Centre for Hong Kong Studies, Chinese University of Hong Kong, Nov. 1985], p. 23, cited in Ambrose Y.C. King, "The Hong Kong Talks and Hong Kong Politics," Issues and Studies 22, no.6 [June 1986]: 72-73).

15. Macau JD, Annex I(III).

16. Macau JD, 2(3), 7.

17. Ibid., 2(3), Annex I (II).

elected representatives increasingly invading the once exclusive policymaking role of the colonial bureaucrat.<sup>18</sup>

The Macau Basic Law now being drafted will elaborate on these general specifications. News reports suggest it will also secure a dominant role for Chinese nationals and expand the authority of the legislature over that of the current system.<sup>19</sup> They suggest the Macau Basic Law will closely follow the provisions of Hong Kong's Basic Law in that the chief executive will have to be a Chinese national of at least forty years of age who has lived in Macau for at least twenty years. He or she will likely be chosen by an electoral college of 300 people. The Consultative Council would also be completely made up of Chinese nationals according to this proposal.<sup>20</sup> Unlike the current system, the chief executive will not hold legislative powers after 1999.<sup>21</sup> However, other authority given the chief executive in the Hong Kong Basic Law--and likely in Macau's too--will likely ensure his or her influence over the legislature. The chief executive will not only lead the government, sign legislation and budget bills and promulgate laws, but have the power to return a bill to the legislature for reconsideration within three months on the vague grounds that it is incompatible with the interests of the SAR. If the legislature passes the same bill again by at least a two-thirds majority of all members the chief executive can dissolve the legislature, but only once during his or her term of office. This power

---

18. Kathleen Cheek-Milby, "The Changing Political Role of the Hong Kong Civil Servant," *Pacific Affairs* 62, no.2 (Summer 1989): 221-222.

19. "Redaccao da Lei Basica reunio no Zhuhai," *JM*, 12 Mar. 1991; "Nacionalidade dos 'chefes' nao obteve consenso," *JM*, 15 Dec. 1990.

20. "Redaccao da Lei Basica reunio no Zhuhai," *JM*, 12 Mar. 1991; "Nacionalidade dos 'chefes' nao obteve consenso," *JM*, 15 Dec. 1990.

21. Harald Bruning, "Powers defined for top position," *HKS*, 19 Mar. 1990.



of dissolution can also be used if the legislature refuses to pass a budget or important government bill.<sup>22</sup> Thus, the relationship envisioned is one of mutual regulation between the legislative and executive branches with much of the final say resting with the chief executive.

### The Chief Executive

Nonetheless, these provisions could put the chief executive in the difficult position of having both central and local masters. He or she will be politically accountable to the central government, which has ultimate power of appointment, but will also be answerable to the SAR legislature, whose support he or she will need to pass legislation, and to the SAR Election Committee, which will select the candidate for chief executive. Edmund Ho, a Basic Law drafter and assembly vice-president, says Beijing is unlikely to fully surrender its power to appoint the chief executive:

Even if he is appointed by Beijing he must have autonomy under the Basic Law. Having two masters is the nature of the system. It would totally be an abnormality in an autonomous region or a province or whatever at this level to have someone there without this criteria.... No central government would give up this power unless they have the intention to turn the place into an independent country. Even if they don't intend to use it, they need the formal power to appoint the chief executive.<sup>23</sup>

Ho also argues that the chief executive needs Beijing's support in order to balance competing local interests:

It is much better for Macau if he is controlled by the central government and accountable to the citizens of Macau. Otherwise, we

---

22. Hong Kong BL, Art. 49, 50.

23. Interview, Edmund Ho; In fact, the central governments of both Finland and Denmark have given up their powers to appoint the chief executives of the Aland and Greenland governments. See pp. 46-47 of the present study.

would have problems. In Macau there are so many interests. He needs some backing from Beijing.<sup>24</sup>

It is understandable that the Beijing authorities want both symbolic and actual influence in the SAR government. However, as discussed previously, making the chief executive responsible to both local and central political organs has hampered the operations of autonomy arrangements in southern Sudan by encouraging confrontational solutions rather than those that build patterns of compromise and cooperation.<sup>25</sup> When the inevitable conflicts over policy or jurisdiction break out between the local legislature and central government, Macau's chief executive will be under pressure to engineer a solution that pleases all sides. If he or she is unable or unwilling to do so, the central government will be tempted to force him or her to veto or dissolve the legislature. Such actions would paralyse local lawmaking. They would also encourage local distrust of the central government and the belief that the chief executive is nothing more than Beijing's puppet. On the other hand, if the chief executive were to side with the local assembly, Beijing will be tempted to dismiss him or her. This would disrupt the local government and exacerbate rather than diminish central-local conflicts.

The Aland and Greenland autonomy arrangements have avoided the problem by using parliamentary-style regional governments. This makes the local executive solely accountable to the local legislature. They then place responsibility for representing national sovereignty and liaising with the government of the autonomous territory in a separate central government appointed official. In the case of Aland, Helsinki authorities appoint the

---

24. Ibid.

25. Hannum, *Autonomy*, p. 324; See also p. 44 of the present study.

central representative after local consultations. He or she has always been an Aland resident in recent years.<sup>26</sup>

Although there is nothing to prevent the Macau chief executive from choosing members of the legislature as principal secretaries, a system fashioned on the Aland or Greenland model would be a departure from Macau's traditional quasi-presidential style government. More importantly, such a system seems unrealistic because it would require China to give up its power to appoint the chief executive. This seems unlikely, at least in the short term. However, the failures of the Sudan system might still be avoided if Beijing were to exercise its authority to appoint the chief executive in a formal manner only, in practice leaving the choice to Macau people expressed through direct elections. In this way, the chief executive would hold office at the pleasure of the local electorate. When central-local conflicts arose, they could be resolved through political and judicial channels and other constitutional review mechanisms, allowing the day-to-day functioning of Macau's political institutions to continue uninterrupted. If Macau's system of selecting the chief executive is modelled on the Election Committee system in the Hong Kong Basic Law, the chief executive could well be a PRC supporter anyway and Beijing's appointment power would be unnecessary.<sup>27</sup> By using it formally only, the chief executive would be less tinged by his or her association with the central government and thus be able to play a more conciliatory role between the two polities and related factions within the SAR. Central

---

26. Hannum, *Autonomy*, p. 343, 372.

27. *Hong Kong BL*, Art. 45, Annex I 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 Hong Kong Special Administrative Region.

government political representatives in Macau--who will be present behind the scenes in any case--could be clearly identified as such.

Under the model used in the Hong Kong Basic Law, the central government will have many other ways to control the SAR. The NPC is empowered to amend the Basic Law and its Standing Committee to interpret the Basic Law and declare laws previously in force in the territory in contravention of its provisions.<sup>28</sup> The PRC leaders' influence with traditional elites in Macau should reassure them they will have considerable power over the enclave anyway and encourage Macau's chief executive and legislature to cooperate. Thus, the changes proposed do not aim to thwart China. Instead, they aim to encourage both the Macau executive and legislature and the PRC government to develop habits of mutual tolerance and cooperation rather than confrontation when disputes arise, while ensuring stable government in Macau. Furthermore, the more Macau people believe the local chief executive and principle secretaries are responsive to local interests and not only those of the Chinese government, the more likely it is they will come to support local political institutions. If this were to happen with Beijing's blessing, it would also foster trust in China among Macau people and encourage their identification with the central government, helping to create the dual identity the autonomy process requires.<sup>29</sup>

### The Civil Service

This dual identity is more likely to develop if the executive is supported by an effective, strongly locally oriented civil service. This

---

28. Ibid., Art. 158, 159, 160.

29. The role of democracy, including direct election of the chief executive, is discussed in more detail on pp. 129-137 of the present study.



does not mean the administration should be anti-Beijing. Rather, it should be made up of local people, accountable to only the Macau government, politically neutral and possess "relative autonomy."<sup>30</sup> An effective, impartial bureaucracy with relative autonomy is the backbone of an effective government in any developed and complex capitalist society.<sup>31</sup> Therefore, its cultivation in Macau is both a political and an economic imperative. The enclave's government has in recent years taken a more active role in bringing about the educational, legal, infrastructural and other improvements needed to develop Macau's economy and society. The size of Macau's bureaucracy has already multiplied in response to its need to manage a more complex community. It grew from 5,063 to 13,125 employees between 1981 and 1989, a period of double-digit growth for Macau's Gross Domestic Product (GDP) and of rapid population increases due to immigration.<sup>32</sup>

The Sino-Portuguese Joint Declaration recognised the bureaucracy's critical role in assuring a smooth transition in 1999 and stability and prosperity afterwards. It guarantees all Macau public servants regardless of their nationality continued employment in the SAR administration under pay, allowances and benefits no less favourable than those prior to the

---

30. The term "relative autonomy" refers to "the degree to which the state elite can act independently in its relationships with other elites and with capitalist enterprise.... This relative autonomy is necessary in capitalist societies because the state elite must resolve conflicts which arise between different factions within the capitalist economy.... If the state elite could not fulfil a mediating or arbitrating function, conflicting interests would ultimately have a destructive effective on the economic system" (Scott, *Political Change*, p. 253 at note 80).

31. *Ibid.*, pp. 250-251, 331.

32. *Governo de Macau, Recursos Humanos da Administracao Publica de Macau 1989* (Macau: Servico de Administracao e Funcao Publica, 1990), p. 7; Macau's GDP growth rates averaged 16.2 percent between 1984 and 1988 (*Asia Yearbook 1990* [Hong Kong: Review Publishing Ltd., 1990], p. 7).

transfer.<sup>33</sup> Appointments and promotions are to be based on "qualifications, experience and ability" and "Macau's previous system of employment, discipline, promotion and normal rise in rank ... shall remain basically unchanged."<sup>34</sup>

Despite these guarantees, the Macau civil service's serious shortage of local people in its senior ranks brings into question its ability to serve Macau's autonomy process effectively during the transition and afterward. After years of unilingual Portuguese administration with expatriate Portuguese dominating the senior civil service, few Macau Chinese have the linguistic and technical skills to assume the highest positions in the government bureaucracy.<sup>35</sup> The government attempted to bring more local people into the senior administration in the early 1980s, but localisation did not begin in a systematic way until 1988 as part of efforts to prepare the enclave for 1999.<sup>36</sup> By early 1991, Macanese occupied the directorships of a few departments and agencies but local Chinese had not yet reached the

---

33. Macau JD 2(3), Annex I (VI).

34. Ibid., Annex I(IV); The Joint Declaration also provides that all pensions and allowances for public servants who retire after the establishment of the SAR are guaranteed on terms no less favourable than before regardless of the employee's nationality or place of residence. "The Macau SAR may appoint Portuguese and other foreign nationals previously serving in the public service in Macau or currently holding Permanent Identity Cards of the Macau SAR to public posts" except certain principal official posts. Portuguese and other foreigners may also be invited to hold advisory, professional and technical posts (ibid. Annex I[VI]); For a discussion of these provisions of the Sino-British Joint Declaration see Cheek-Milby, "The Changing Political Role of the Hong Kong Civil Servant," pp. 220-221.

35. Until September 1984, Chinese nationals were not permitted to work for the Macau government (Donald Cheung, "Macau lets Chinese join service," SCMP, 5 Aug. 1984); Among the 13,125 civil servants working for the Macau government on 31 Dec. 1989, almost 76 percent were born locally, either in Macau (55.6 percent) or the PRC (22 percent) (Governo de Macau, *Recursos Humanos da Administracao Publica de Macau 89*, pp. 12, 16-17, 53, 71); According to Aug. 1990 figures, however, Portuguese-born people accounted for 51.8 percent of top management and 61.6 percent of middle management positions (interview, Rui Rocha).

36. Interview, Rui Rocha.

directors ranks.<sup>37</sup> Aggravating the slow pace of localisation, the number of expatriate Portuguese civil servants has increased in recent years due to higher recruitment in Portugal to staff the expanded numbers of government initiatives. Whether these government activities are primarily an intensification of Portuguese colonialism or a response to Macau's economic and social development is a matter of dispute.<sup>38</sup>

Localisations efforts are also hampered by uncertainty over how many Chinese and Macanese civil servants will stay in Macau after 1999. Almost 71 percent of Macau civil servants are Portuguese nationals with the right to live in Portugal or, after 1992, anywhere in the European Community. Almost 77 percent of these are Macau-born Chinese and Macanese, precisely those targeted for promotion under the localisation policy.<sup>39</sup> Whether they will emigrate before 1999 is in large part a function of their confidence in the enclave's future economic and political stability and autonomy and whether they believe their Portuguese passports will protect them after the transfer of administration. The likelihood China will restrict senior positions in the SAR government to Chinese nationals and will continue to dig in its heels on refusing to accept dual nationality has not helped their confidence. These central government policies could prevent many

---

37. The directorships occupied by Macanese included the economic, Chinese affairs and education departments, the Macau Cultural Institute, Macau Foundation, citizens' advice bureau, culture bureau, municipal governments and a public hospital. Rui Rocha says one of these senior Macanese civil servants is more Chinese than Portuguese (ibid.); See also Yee and Lo, "Macau in Transition," p. 3; "Macau civil servants given deadline," SCMP, 19 Sept. 1989.

38. J.A. Oliveira Rocha, "Sistema Político de Macau" (Unpublished teaching material prepared for the Law and Public Administration Programme, University of East Asia, 1990), p. 5 at note 5.

39. Governo de Macau, Recursos Humanos da Administração Pública de Macau 1989, p. 62.

Macau Chinese from filling top administrative and judicial positions unless they choose to give up their Portuguese passport.<sup>40</sup>

A Portuguese government promise to integrate some permanent and longer serving Macau civil servants of Portuguese nationality into the Portuguese bureaucracy could prove another impediment to localisation.<sup>41</sup> The government believes about 4,000 civil servants are eligible and estimates 1,000 could take up the offer although no exact figures are known yet.<sup>42</sup> Details of the scheme have not been finalised, in part because of delays in discussing the matter in the Joint Liaison Group. However, those eligible would likely retain the right to a Portuguese civil service contract even if they remain in Macau after 1999, which could encourage more to stay on.<sup>43</sup>

If localisation is not successful, personnel shortages could disrupt the Macau government administration and legal system at critical times before and after the transfer in 1999. Already, the growing complexity of Macau's economy and society, the politicisation of its residents and their increasing demands on government are placing more pressure on the civil service's efficiency, autonomy and legitimacy.<sup>44</sup> Shortages of key local personnel would be particularly dangerous should they encourage the Macau or SAR governments to fill vacant policy-making positions with PRC recruits or cause PRC leaders to intervene with their own people to avert an

---

40. Interview, Rangel; See also pp. 83-84 of the present work.

41. Emily Lau, "Portuguese parachute," *ELLER*, 12 Oct. 1989, pp. 26, 28.

42. Interview, Rui Rocha; "Macau civil servants given deadline," *SCMP*, 19 Sept. 1989.

43. Interview, Rui Rocha.

44. Scott has suggested these pressures are undermining the relative autonomy of the Hong Kong civil service (Scott, *Political Change*, p. 253).



administrative breakdown. A senior bureaucracy even partially staffed by civil servants from China would undermine the administration's legitimacy as an autonomous, impartial and Macau-oriented institution. It could create an elite public service divided between those accountable to the Macau SAR government and those answerable to the PRC government. This would hurt Macau's economic and political stability and the development of local political identity, not to mention trust in the goodwill of the PRC.

Therefore, localisation is essential. While both the Macau and Portuguese governments and Chinese authorities recognise its importance, Beijing in particular could do more to encourage the process by taking steps to build confidence in Macau's future autonomy that would encourage Macanese and Chinese residents to stay after 1999. Lifting nationality restrictions on all or some senior administrative and judicial positions would be a positive step towards recognising Macau's unique problems and gaining local trust.

#### Direct Elections and SAR Political Institutions

Given the potential for direct central government control over the SAR government through the executive and, potentially, the civil service, defence of Macau's autonomy process could depend to a significant degree on the ability of the legislature to support local interests and act as a focal point for local political identity. A democratic legislature--one directly elected by universal suffrage--would be better equipped to play such a role. However, it would also face serious limitations both to its establishment and its subsequent operation.

To begin with, a democratic legislature alone is not enough. Kuan argues, "In case the full legislature is popularly and directly elected

while the head of government is not, further institutions are required to make government policies depend on the expression of preferences."<sup>45</sup> This is particularly the case in political systems like Macau, where the chief executive is appointed by an authoritarian central government. Both the chief executive and legislature must be directly elected if there is to be responsive government.

Nevertheless, using democratic executive and legislative bodies to secure local autonomy poses a dilemma. According to Robert Dahl, "a key characteristic of a democracy is the continuing responsiveness of the government to the preferences of its citizens, considered as political equals."<sup>46</sup> Given the high degree of distrust most Macau people feel towards China, an SAR government without some amount of "democratic respectability" will have difficulty gaining the kind of broad local public confidence needed to foster dual identity.<sup>47</sup> However, the experiences of southern Sudan and Eritrea indicate that creating local institutions with democratic legitimacy could undermine Macau's autonomy because the central government in Beijing would perceive them as a threat to its own legitimacy. In both of the African autonomy processes, the authoritarian Sudanese and Ethiopian central governments distrusted democratic institutions set up in the southern Sudanese and Eritrean autonomous territories. This contributed to their distrust in the autonomy arrangements as a whole and encouraged their

---

45. Kuan, "Power Dependence and Democratic Transition," p. 3.

46. Robert A. Dahl, Polyarchy, Participation and Opposition (New Haven and London: Yale University Press, 1971), p. 1.

47. The term "democratic respectability" is borrowed from Ambrose Y.C. King, who has made similar comments about Hong Kong (King, "Hong Kong Talks and Hong Kong Politics," pp. 74-75); The importance of "democratic respectability" is inherent in the concepts of self-government and self-determination (see p. 39 of the present work).

eventual violation of the agreements.<sup>48</sup> This dilemma underlies the tensions surrounding the question of democracy in Macau.

Although Macau has had a minority of directly elected members in its legislature since 1976, fifteen years longer than Hong Kong, there are entrenched barriers to the legislature's transformation into a fully directly elected institution. The primary one is the opposition of the Chinese leadership to establishing directly elected governments in the SARs.<sup>49</sup> Over the years, a coalition of interests formed by PRC authorities, traditional pro-PRC Chinese elites, the Portuguese administration and traditional Macanese elites has barred further democratisation.<sup>50</sup> The small group of independent, reform-minded local Chinese deputies now in the assembly has tried to crack their power monopoly. In 1984, Alexandre Ho, a Catholic liberal closely linked with Macau and opposed to China sympathisers, won a directly elected seat in the assembly. He and two other reformers won half the directly elected seats in the assembly in 1988.<sup>51</sup> However, traditional elites still control the chamber and, therefore, the process of amending the Organic Statute.<sup>52</sup> Revisions made to the statute in

---

48. See pp. 47-48 of the present study.

49. As a Chinese territory under Portuguese administration, Macau is a dependent polity. It will remain so after 1999, when it will have some as yet uncertain degree of autonomy, but will be a local government under the central government of China's unitary state. According to Kuan, in such dependent polities the choices of the rulers in the hegemonic country are critical for political change, including democratisation (Kuan, "Power Dependence and Democratic Transition," p. 1).

50. Lo, "Colonial Policy-Makers, Capitalist Class and China," p. 211; For discussion of events which led to establishing a partially democratic legislature in 1976 (see p. 66 at note 26 and p. 95 at note 24 of the present work).

51. Lo, "Aspects of Political Development in Macau," pp. 216.

52. Under the 1976 version of the Organic Statute, the assembly was exclusively empowered to initiate amendments (Afonso and Pereira, "Political Status and Government Institutions," p. 38). Under the 1990 revisions, all revisions must be proposed by either the assembly or the governor in consultation with the assembly. Any changes to the proposal made by the Portuguese Assembly of the Republic must be approved by either the Macau governor or the assembly (OSM, Art. 30[1][b]; Portugal, Constitution, Art. 292).



1990 included an increase in the number of deputies in the assembly from seventeen to twenty-three, which the Macau government maintained was necessary because of the dramatic population increase since 1976.<sup>53</sup> However, the new seats were allocated so that the proportion of appointed and directly and indirectly elected seats remained the same. The new law also redivided the indirectly elected seats in a way that assures the dominance of business interests, giving four seats to business, two to labour, one to the professions and one to social assistance, cultural, sporting and educational groups.<sup>54</sup> According to two Macau Portuguese lawyers, one of whom is now an assembly deputy, this triangular system of selection--a combination of directly elected, indirectly elected and appointed seats--ensures all major ethnic and interest groups are represented in the legislature. The governor uses his power of appointment to stabilise and balance its composition so that it can mediate interests and achieve political consensus.<sup>55</sup> An alternative view is that the system secures the power of traditional elites.

Prospects for democratisation under "one country, two systems" are just as uncertain. Hong Kong's Joint Declaration promises "the legislature of the Hong Kong Special Administrative Region shall be constituted by

---

53. "March date for voters in Macau," HKS, 7 Dec. 1990.

54. "Lei electoral aprovada na A.L.," IM, 2 Mar. 1991.

55. Afonso and Pereira, "Political Status and Government Institutions," pp. 48-49; The 1976 and 1980 elections were conducted under a restricted franchise in which all adult Macanese and Portuguese were permitted to vote, but only those Chinese who had lived in the territory for five years could cast ballots. Macanese and longer-term Portuguese residents dominated the directly elected seats and some of the appointed ones, while local Chinese dominated the indirectly elected seats and some appointed ones (Canas, "Vias de Participacao Politica das Diferentes Comunidades de Macau," in Yuan, Keong, Martins, Population and City Growth, pp. 301-302 at note 2); After the restrictions on Chinese voters were lifted in 1984, Chinese deputies dominated the indirect and direct seats, securing a majority in the assembly for the first time. The governor then used his power of appointment to ensure Macanese and Portuguese representation in the assembly (Canas, "Vias de Participacao Politica," pp. 302-303 at note 4).



elections."<sup>56</sup> Macau's indicates only that a majority of deputies will be elected without specifying whether directly or indirectly.<sup>57</sup> Although a majority of relevant political activists and groups in Hong Kong demanded democracy during the drafting of the Hong Kong Basic Law, China ignored the views and had the final say.<sup>58</sup> Hong Kong's Basic Law, Macau's blueprint, gives no date by which directly elected members will command the majority in the SAR legislature, vaguely promising that "the ultimate aim is the election of all the members of the Legislative Council by universal suffrage."<sup>59</sup> News reports about Macau's Basic Law drafting process suggest the enclave is unlikely to get anything more and could end up with less. According to one unnamed Macau Basic Law drafter: "I think that Macau and Beijing are in agreement not to diminish the percentage of directly elected [deputies], that there should occur a diminution of the appointed [deputies] and a consequent increase in the indirectly elected [deputies].... But it seems clear at this moment for both sides that the direct election of 100 percent would not defend the interests of Macau."<sup>60</sup>

Macau people's participation in demonstrations supporting the 1989 Beijing pro-democracy movement suggests they felt some sympathy with the PRC student's vaguely defined demands for democracy. However, there is no statistical data available on whether there is attitudinal support for democracy in Macau, nor how local people understand the concept. A July

---

56. Hong Kong JD, Annex I (I).

57. Macau JD, Annex I (III).

58. Kuan, "Power Dependence and Democratic Transition," p. 1.

59. Hong Kong RL, Art. 68, Annex II and the Decision of the National People's Congress on the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region.

60. "Organizacao politica divide redactores," JM, 11 Sept. 1990.

1989 telephone survey actually found little evidence of popular demands for democratic reform. When asked what the government should give priority to during the transition, only 6 percent of Chinese and 1 percent of Macanese respondents mentioned democratic policy.<sup>61</sup> Still, particularly during the demonstrations in 1989, some Macau leaders publicly declared that democratisation is the only way in which the enclave's autonomy can be secured against encroachments from China.<sup>62</sup> Furthermore, many political elites and Portuguese administrators believe the SAR's political system will not be democratic unless the PRC itself becomes more democratic.<sup>63</sup> This belief, which also exists in Hong Kong, is one of the reasons Macau and Hong Kong people cannot remain indifferent to political developments in the PRC despite Beijing's warnings that the SARs must not interfere with or try to alter the socialist system in the PRC.<sup>64</sup>

The strength of PRC influence in Macau has made its political leaders cautious about expanding direct elections in the enclave even when they claim to support democratisation in principle. Businessman Edmund Ho said directly elected seats have to be balanced by indirectly elected seats to

---

61. Macau Confidence Index Survey, July 1989; Chinese respondents thought education, social welfare, housing and road transportation should be top priorities, while education, social welfare, medical services and housing were top priorities for the Macanese. However, the survey might not be a reliable indication of popular sentiments. It did not ask the respondent specifically about democracy, but rather listed housing, education, transport, social welfare, industry, financial services, medical assistance, airport construction and a category called "other areas."

62. Lau and Kuan argue that demands for democracy and political participation in Hong Kong have not been demands for control of the polity by society so much as demands for means to ensure that the polity is distanced from society. The residents' concern is that, under "one country, two systems," the influence of the PRC's interventionist, totalistic ideology will mean the social and economic spheres of life will no longer be autonomous from the polity. The Basic Law enshrines the autonomy of the social, economic and legal realms from the PRC, but not that of the polity (Lau and Kuan, *Ethos*, pp. 191, 193-194).

63. See, for example, "Editorial," GM, 24 May 1989; "A proposito da situacao em Beijing," GM, 24 May 1989; Interview, Leong; Interview, Ramos.

64. "Redactor da Lei Basica considera insuficientes garantias de Beijing," GM, 24 June 1989.

ensure business people have strong representation. "I personally believe in democracy.... [but] if we had a democracy mainly dictated by people who have very little education and little business experience, they would simply socialise Macau."<sup>65</sup> Some Macanese and Portuguese admit they have little to gain from expansion of directly elected seats because their candidates would always lose because of the hugely superior number of Chinese voters. Jorge Rangel, a Macanese leader, said complete democracy would mean "Macau will be controlled by the business people and by China, those who have the means to attract the public." He argued that indirectly elected and appointed seats or seats chosen by directly elected deputies, are ways of giving representation to other groups.<sup>66</sup> Caterina Mok, a Macau Chinese journalist and democracy activist, said Macau cannot be truly autonomous if its government is not democratic, but a higher proportion of directly elected seats would not make Macau more democratic until civic education levels have improved. "If we open up now, we will only have the traditional business community, the labour unions and the kai fong association parties control everything."<sup>67</sup> Ng Kwok-Cheong, the local Chinese founder of the Macau Democracy Development Union who resigned his management post at the Bank of China because of his pro-democracy activities, agreed. Ng said his immediate goal was to encourage development of a more pluralistic society in Macau through better civic education for

---

65. Interview, Edmund Ho.

66. Interview, Rangel.

67. Interview, Mok.

young people so they will be less vulnerable to the influence of traditional political elites.<sup>68</sup>

The results of the 1991 interim assembly elections, in which only 18 percent of registered voters took part, suggest these fears are justified. Unipro, a pro-China civic association, took 50 percent of the popular vote and both of the seats up for grabs. While in part a consequence of the way seats are allocated under the Hondt method of proportional representation, Unipro's sweep also demonstrates the ability of pro-PRC organisations such as the Macau Kai Fong General Union to mobilise their supporters, particularly when the 37 percent vote for liberal nontraditional groups is split. Alexandre Ho's group allied with some democracy activists to win only 21 percent of the vote. Another reform-minded group led by deputy Wong Cheong-nam won only 16 percent of the ballots.<sup>69</sup> A new electoral law approved for the 1992 elections could improve the chances of these nontraditional elites. It adopts a new proportional method of allocating seats designed to help groups that win smaller percentages of the popular vote elect deputies to the chamber. The aim is to avoid monopolisation of the legislature by the largest political groups.<sup>70</sup>

In the end, Macau will be better off if whatever level of democracy it achieves enjoys Beijing's support, however grudging, so that elections can enhance both local political identity and trust in China. Whether this is possible remains to be seen. In the meantime, the enclave's partially democratic political system might provide a forum in which trust and

---

68. Interview, Ng; Adam Lee, "No regrets as activist bank chief quits post," SCMP, 1 Feb. 1991.

69. Lo, "Pro-China forces will benefit from split liberal vote," SCMP, 19 Mar. 1991.

70. "Lei electoral aprovada na A.L.," III, 2 Mar. 1991.



tolerance between the two communities and rival local groups can develop.<sup>71</sup> The danger, and it is a serious one, is that the dominant influence of Chinese authorities and traditional elites in Macau's political system will weaken the SAR legislature and government's willingness or ability to encourage expansion towards a fully directly elected political system.

---

71. Dankwart A. Rustow, "Transitions to Democracy: Toward a Dynamic Model," *Comparative Politics* 2 (Apr. 1970): 363; Kuan, "Power Dependence and Democratic Transition," p. 29.

CHAPTER 6  
THE LEGAL SYSTEM

The legal system in an autonomy arrangement has a critical role to play in enhancing local political identity and elite and citizen trust in the process as a whole. Since the potential for political disputes related to central-local battles and violations of basic human rights is significant, autonomy arrangements based on commitments to the rule of law, independent, impartial judiciaries and constitutional control mechanisms acceptable to both polities have a greater chance of surviving. Such a constitutional-legal order can remove some conflicts from the more contentious political arena and provide regularised peaceful processes for settling disputes. It can encourage elites to tolerate opposition and authorities on both sides to play by constitutionally entrenched rules, rewarding them with the legitimising approval of the court or other constitutional control body when they do and shielding citizens from arbitrary government. As a result, the rules of the autonomy process can evolve in an orderly, less-threatening fashion in response to the changing needs of all parties. The citizens' trust in the political system can grow. An independent, impartial court rooted in a strong legal system can help stabilise an otherwise tense political environment.<sup>1</sup>

On the face of it, the Sino-Portuguese Joint Declaration appears to protect Macau's Portuguese constitutional-legal order and its roots in judicial independence and impartiality and the rule of law. The Joint

1. See, for example, the introduction to Jon Elster and Rune Slagstad, eds., Constitutionalism and Democracy (Cambridge: Cambridge University Press, 1988); Richard Baum, "Modernisation and Legal Reform in Post-Mao China: The Rebirth of Socialist Legality," Studies in Comparative Communism 19, no.2 (Summer 1986): 69-71, 72-73, 100-101; Davis, Constitutional Confrontation, pp. 54-55.

Declaration promises the SAR "independent judicial power, including that of final adjudication and a continuation of Macau's current legal system basically unaltered for fifty years. The Portuguese language, in addition to Chinese, can be used in the courts of the future Macau SAR and the rights and liberties of Macau people, notably the right to access to law and to justice, will be preserved.<sup>2</sup> However, weaknesses in the enclave's current legal system make its ability to act as a stabilising influence after 1999 uncertain.

Macau's current judicial system is politically and administratively dependent on that of Portugal and dominated by the Portuguese language and legal traditions.<sup>3</sup> This dependence, coming after three centuries of mixed Portuguese-Chinese jurisdiction that lasted until the middle of the last century, has created a cultural and linguistic gap that separates the enclave's legal institutions and personnel from most of Macau's overwhelmingly Chinese population.<sup>4</sup> Spurred by the approach of 1999, Portuguese authorities have begun taking steps to bring the law closer to the people by reforming some laws, translating them into Chinese and training bilingual lawyers, judges and other legal professionals. However, shortages of specialised translators and other expertise make the task slow. Macau is forced to recruit some of its professionals from the PRC,

---

2. Macau ID, Art. 2(2)(4)(5), Annex I (V).

3. Alberto Costa, "Continuidade e Mudanca no Desenvolvimento Juridico de Macau a Luz da Declaracao Conjunta Luso-Chinesa," *Revista Juridica de Macau* 1 (Apr./June 1988): 57.

4. Several of the Portuguese officials I interviewed expressed concern that local residents show little attachment to the enclave's legal system. There is as yet no quantitative study on Macau people's attitudes towards the law and local legal institutions. With the exception of some scant survey data, the arguments made here are based on qualitative evidence from in-depth interviews and other sources and require further verification; The term "language gap" has been used to describe the Hong Kong situation at the time of the 1966-1967 riots (Tomasz Ujenski, "The Future of the English Language in Hong Kong Law," in Wacks, *The Future of the Law in Hong Kong*, p. 174).

bringing the risk of mainland legal values infiltrating and damaging Macau's fragile legal order. The Roman civil law roots common to the Portuguese and PRC legal systems could increase this risk further.<sup>5</sup>

This chapter begins by describing the history of Macau's legal system, its current dependence on Portugal and its distance from many Macau Chinese. It goes on to discuss the government's reform efforts and their accompanying problems and dangers. Finally, it considers the implications of these developments for the task of building mechanisms for central-local constitutional dispute settlement for the Macau SAR. Although Portuguese reform efforts have perhaps come too late and are fraught with difficulties, a window of opportunity exists for capitalising on the enclave's history of legal dualism to develop a hybrid system with the potential to serve Macau's autonomy and win more loyalty from Macau people.

### The History the Legal System

Like other aspects of Macau life, the enclave's legal system has been shaped by the tradition of dual Portuguese and Chinese authority that has characterised much of Macau's 450-year history, subject to sometimes extreme fluctuations in the relative strengths of the two polities. Until the mid-nineteenth century, Macau generally operated as a mixed legal

---

5. Systems rooted in the common law tradition of England are generally uncodified systems based in part on judge-made law through the doctrine of *stare decisis*, or the recognition of judicial precedents, and in many cases judicial review of the constitutionality of executive and legislative acts. By contrast, legal systems rooted in the traditions of Roman civil law typically use five basic legal codes (the civil, commercial and penal codes and the codes of criminal and civil procedure). They traditionally adopt a strict separation of the judicial and legislative and executive functions, thus rejecting both *stare decisis* and judicial review of executive and legislative acts. However, the traditional distinctions between these two legal traditions have blurred in recent decades with the increased use in the civil law world of fixed constitutions and constitutional judicial review, recognition of judge-made law and creation of specialised statutes outside the traditional codes, as well as with the decline of legislative supremacy (see generally, John Henry Merryman, *The Civil Law Tradition, An Introduction to the Legal Systems of Western Europe and Latin American*, 2d ed. [Stanford: Stanford University Press, 1965], especially pp. 151-156).



jurisdiction in which Chinese residents were subject to Chinese imperial laws administered by a Chinese procurator and the non-Chinese to Portuguese laws administered by local Portuguese officials. At various times, the Portuguese and the Chinese both claimed jurisdiction over cases involving both Chinese and non-Chinese residents.<sup>6</sup> The sharing of authority was not always harmonious.<sup>7</sup> However, it was not until the late 1840s that Portugal was able to take advantage of China's weakened position to bring formal legal jurisdiction under exclusive Portuguese control. Governor Ferreira do Amaral (1846-1849) managed to extend Portuguese legal authority over civil and criminal matters involving Chinese in Macau.<sup>8</sup>

Over the next decades, Macau's judicial system was increasingly integrated into that of Portugal, a situation which only began to change after the signing of the Joint Declaration a century later.<sup>9</sup> The consequences of this integration still affect the relationship between

---

6. Jose Antonio de Oliveira Rocha, "Formacao Historica do Sistema Politico de Macau" (Unpublished paper prepared as teaching material for the Law and Public Administration Programme, University of East Asia, 1990), pp. 4-14; Afonso and Pereira, "Political Status and Government Institutions," pp. 30-31.

7. In 1744, Portuguese authorities promulgated penal laws relating to crimes by Europeans against Chinese subjects and gave the Portuguese procurator powers to deal with petty offenses while the Chinese authorities tried to apply the Chinese penal code to foreigners charged with committing murder in Macau. By 1749, the viceroy of Guangzhou issued an edict prohibiting Chinese subjects to profess the gospel, further requiring all residents to seek permission from the mandarin before building a house and pronouncing other penal laws. The viceroy also reasserted exercise of Chinese penal jurisdiction in the territory in a letter to the Portuguese king. In 1787, attempts by the local Portuguese government, the Leal Senado, to strengthen its jurisdiction over the increasing number of Chinese living around the Macau city walls led to conflicts with Chinese residents and imperial authorities and resulted in dismissal of the Senate procurator (Oliveira Rocha, "Formacao Historica do Sistema Politico," p. 6, 14-15, 18; Afonso and Pereira, "Political Status and Government Institutions," pp. 30-32 and notes 9 and 10).

8. Afonso and Pereira, "Political Status and Government Institutions," p. 32; Oliveira Rocha, "Formacao Historica do Sistema Politico," pp. 14-15, 18.

9. Vitalino Canas, "Relacoes entre o Ordenamento Constitucional Portugues e o Ordenamento Juridico do Territorio de Macau," *Revista Juridica de Macau* 1 (Apr./June 1988): 52; Afonso and Pereira, "Political Status and Government Institutions," p. 34.

Macau's legal system and local Chinese residents.<sup>10</sup> In 1879, a decree applied the Portuguese Civil Code to Macau but allowed for the recognition of Chinese customs and usages in some cases under a separate procuracy for Chinese affairs ("Procuratura dos Negocios Sinicos"), which was created in 1868. In 1894, however, the Portuguese government dissolved this special procuracy while expanding the application of the Portuguese Commercial Code to Macau.<sup>11</sup> Problems caused by the dissolution of the procuracy led the government to set up a commission, on whose recommendation a special tribunal for Chinese residents was established in 1917 and used until the 1940s.<sup>12</sup> Meanwhile, the Colonial Act of 1933 provided that "the legal rules of the Metropolis and of the Portuguese Colonial Empire" were to be implemented in Macau. By the time Portugal's long-standing dictatorship was overthrown in 1974, Macau had the status of an autonomous region, but its legal system was fundamentally Portuguese with only minor allowances made for local circumstances.<sup>13</sup>

#### The Portuguese Revolution of 1974 and Macau's Current Legal System

Following the 1974 military coup, Macau neither broke all its ties with the old judicial organisation of the newly defunct overseas empire nor

---

10. Interview, Jose Antonio de Oliveira Rocha, advisor to the Cabinet for Legislative Modernisation, Macau Government, and law professor, University of East Asia, Macau, 15 Nov. 1990.

11. Oliveira Rocha, "Formacao Historica do Sistema Politico," pp. 18-19; For a detailed discussion of the procuracy for Chinese affairs see Jose Gabriel Mariano, "A Procuratura dos Negocios Sinicos," *O Direito*, no.2 (Jan. 1991), pp. 18-22.

12. Mariano, "A Procuratura dos Negocios Sinicos," p. 20.

13. Afonso and Pereira, "Political Status and Government Institutions," pp. 34-35.

acquired all the attributes of Portugal's reformed domestic legal system.<sup>14</sup> Although the 1976 Organic Statute gave Macau more legislative, administrative and economic autonomy from Lisbon, it subordinated the administration of Macau's legal system to that of Portugal, a situation that lingers today. Only the Portuguese assembly--not Macau's governor nor its Legislative Assembly--can pass legislation concerning the operation of Macau's courts.<sup>15</sup> Macau's three courts--the Court of Law ("Tribunal da Comarca de Macau"), Administrative Court ("Tribunal Administrativo de Macau") and Military Court ("Tribunal Militar de Macau")--are all trial or first instance courts within the Lisbon judicial district.<sup>16</sup> Decisions of Macau courts can be appealed to higher courts in Portugal with some exceptions.<sup>17</sup> Appeals from any court concerning the constitutionality of laws and decrees go directly to the Portuguese Constitutional Court ("Tribunal Constitucional"), while the Portuguese High Administrative Court hears appeals from Macau's Administrative Court as well as against acts of the governor, the adjunct secretaries and the Legislative Assembly, its president or board.<sup>18</sup> Disputes between the governor and Legislative

---

14. Jose Narciso da Cunha Rodrigues, "A Administracao da Justica e a Transicao Politico-Administrativa em Macau," *Revista Juridica de Macau* 1 (Apr./June 1988): 21; One of the those reforms was a Constitutional Court introduced following the revolution. It has thirteen judges, ten appointed by the Assembly of the Republic and three selected by the court's appointed judges. Six of the judges must be chosen from among the judges of other Portuguese courts and the remaining seven from among jurists (Portugal, *Constitution*, Art. 224).

15. QSM, Art. 3(1), 51(2).

16. Portugal is divided into judicial districts which are in turn divided into counties ("comarcas"). The Court of Law is an ordinary court with two divisions hearing both civil and criminal cases. It also has a Court of Criminal Instruction ("Tribunal de Instrucao Criminal"), which conducts pretrial inquiries in criminal cases (Afonso and Pereira, "Political Status and Government Institutions," pp. 53 at note 5, 54-56; Edmonds, *Macau*, p. xxiii).

17. Afonso and Pereira, "Political Status and Government Institutions," p. 56.

18. QSM, Art. 19(5); The board of the Legislative Assembly is made up of the president, vice-president and first and second secretaries (Afonso and Pereira, "Political Status and Government Institutions," p. 56); For a discussion of constitutional control in Macau by a



Assembly over the constitutionality or legality of acts emanating from either body can, and in some cases must, be referred to the Constitutional Court for a decision, which is binding on the assembly and governor.<sup>19</sup> The extent to which Portugal's Constitution applies in Macau is controversial. Antonio Vitorino, a judge on Portugal's Constitutional Court and former adjunct secretary for justice in Macau, argues that those parts dealing with norms specifically referring to Macau, fundamental principles, rights, liberties and guarantees, constitutional control, Portuguese institutions with competence in Macau, courts (limited by the Proposed Law of Fundamentals of Judicial Organisation of Macau) and perhaps some aspects of economic, social and cultural rights and economic organisation all apply in the enclave.<sup>20</sup>

Like courts in Portugal, Macau's courts enjoy independence, being subject only to the law, and its judges have security of tenure.<sup>21</sup> Portugal's Procuracy-General of the Republic ("Procuradoria-Geral da Republica") appoints a representative to Macau, who may be chosen from among penal judges and judges of first instance.<sup>22</sup> The local procurator of the republic supervises the Public Ministry ("Ministerio Publico"), which

---

member of Portugal's Constitutional Court see Antonio Vitorino, "Macau na Jurisprudencia do Tribunal Constitucional" (Paper delivered in Macau, Dec. 1990).

19. QSM, Art. 11(1)(e), 30(1)(a), 40(3); The Portuguese authorities can also refer legislation emanating from Macau's governor or assembly to the Constitutional Court if they believe it is unconstitutional (Antonio Almeida and Carlos Veiga, "Defendo a controlo da conformidade com a Lei Basica atraves dos tribunais locais," *O Direito*, no. 2 (Jan. 1991), p. 14).

20. Vitorino, "Macau na Jurisprudencia do Tribunal Constitucional," pp. 23-24; Almeida and Veiga, "Defendo a controlo da conformidade com a Lei Basica," p. 12.

21. QSM, Art. 3(1), 53; Afonso and Pereira, "Political Status and Government Institutions," p. 53.

22. QSM, 1976, Art. 52(3); This article was omitted from the 1990 version due to the changes expected under the proposed Judicial Organisation Law of Macau.



represents the state in judicial cases and exercises penal action, among other duties.<sup>23</sup>

The personnel and operation of Macau's legal system reflects its structural position within the Portuguese system. Macau's judges are named by ministers of the Portuguese government after nomination by Portugal's Higher Council of the Bench ("Conselho Superior da Magistratura") under the same constitutional provisions used for nominating, placing, transferring and promoting judges to all Portuguese courts except the Constitutional Court. There is little input from Macau.<sup>24</sup> All of the enclave's five judges and all but about a dozen of its seventy-two registered lawyers are Portuguese expatriates while the rest of the lawyers are Macanese. While some lawyers can speak Chinese, very few of them can read or write it.<sup>25</sup> Because Macau has been without a university degree programme in law until recently, lawyers and judges acquire their training in Portugal in programmes without course content reflecting

---

23. Portugal, Constitution, Art. 221, 222.

24. Costa, "Continuidade e Mudanca," p. 57; DSM, Art. 51(2); Portugal, Constitution, Art. 219.

25. Interview, Eduardo Cabrita, co-ordinator, Cabinet for Legal Translation, 13 Feb. 1991; Information obtained from the office of the Procurator of the Republic, 29 Nov. 1990; Compare Macau's situation to that of Hong Kong where, in 1987 one in nine Court of Appeal judges, three in twenty-two High Court judges, six in thirty-one District Court judges and three-quarters of the magistrates were Chinese speakers (Ujejski, "The Future of the English Language," p. 176 at note 45). Further, both the University of Hong Kong and the City Polytechnic of Hong Kong have law degree programmes. Hong Kong judges are appointed locally after recommendation by the local Judicial Services Commission, of which the Attorney General is a member (Albert H.Y. Chen, "The Legal System," in Wong and Cheng, The Other Hong Kong Report 1990 [Hong Kong: Chinese University Press, 1990], p. 72).

Macau's unique circumstances.<sup>26</sup> A law degree programme established at the University of East Asia in 1988 will produce the enclave's first group of locally trained lawyers in 1993, some of them local Chinese.<sup>27</sup> The government is planning to set up a postgraduate law programme in the coming months where it would begin training Macau-born people with law degrees from abroad, and eventually those locally trained, to be judges, public prosecutors and legal administrators.<sup>28</sup>

Macau's courts operate in Portuguese but use Chinese translators when Chinese defendants or witnesses appear for questioning.<sup>29</sup> The court administration and justice policymaking bureaucracy is staffed by civil servants from Portugal at its most senior levels. Prior to the start of the government's new legal translation programme, fewer than 200 pieces of legislation existed in Chinese and these were often of such an inconsequential nature and so poorly written that one commentator said it

---

26. Costa, "Continuidade e Mudanca," pp. 20, 57; Judges and lawyers traditionally have different training and roles in common and civil law jurisdictions. In the common law world, judges are appointed or elected later in their careers after first establishing themselves as lawyers in government or private practice. Especially at the more senior levels of the bench, they are well known public figures whose opinions are widely discussed in newspapers and in public. By contrast, the judges in civil law jurisdictions are civil servants trained specifically as judges after selection in competitive exams following graduation from university law school. The public regards them as high civil servants only. Law graduates follow distinct careers as judges, public prosecutors, government lawyers, advocates or notaries and lateral movement between these professions is rare. In most common law systems, by contrast, there is one legal profession and its members move from one branch of it to another (Merryman, *The Civil Law Tradition*, pp. 34-35, 101-3).

27. Interview, Povoas.

28. Ibid.

29. Ibid.; Povoas said the lack of full simultaneous translation probably violates the Portuguese Constitution, which guarantees access to justice as a basic human right (Portugal, *Constitution*, Art. 20).

left one wondering whether "the purpose was to translate or annihilate Portuguese law."<sup>30</sup>

### The Legal System and Macau Society

These cultural and language barriers, reinforced by traditional Chinese resistance to law as it is understood in Western societies, have hampered the penetration of Portuguese legal culture into Macau society and limited its ability to form part of a distinct local identity. In many colonies, law has been an instrument for reshaping society.

The institution of law in the colonial context cannot be regarded simply as the means of maintaining order within a territory; the legal system imposed by the colonising power has wider implications.... It is an instrument not only of economic but also of cultural imperialism.<sup>31</sup>

In this sense, Macau's legal system and other aspects of its education and governmental systems could be regarded as cases of at least partially failed imperialism. The great majority of Macau people are unable to interact with the law in the language in which they live their life. Portuguese officials believe as few as 10 percent of the legal disputes in Macau are settled in the formal legal system.<sup>32</sup>

At the same time, Macau Chinese seem to see some value in Macau's Portuguese judicial system, at least compared to that of China. In a December 1989 survey which asked them what kind of judicial system Macau should use after 1999, Portuguese, Chinese or English, only 8 percent chose

---

30. Sergio de Aleida Correia and Pedro Morta e Costa, "Por uma Política de Tradução Jurídica e Produção Legislativa Bilingue no Actual Contexto do Período de Transição," *Revista de Administração Pública de Macau* 3, no. 7 (1990): 138.

31. Ujejski, "The Future of the English Language," p. 182.

32. Interview, Francisco Teodosio Jacinto, procurator of the republic, 29 Nov. 1990; Interview, Oliveira Rocha.

a Chinese system while 35 percent chose Portuguese and 32 percent an English system. Furthermore, 57 percent wanted both Portuguese and Chinese judges rather than only Chinese judges on the Macau bench.<sup>33</sup> Some observers have concluded that, if there is conflict between the legal system and the people, it is often not because the community is resistant to the law, but because the law's message is difficult for the community to understand and its channels of justice difficult to access.<sup>34</sup>

Traditional Chinese attitudes toward law have contributed to the alienation of local Chinese from the legal system.<sup>35</sup> In traditional China, legal codes and institutions did not have the prestige and importance they gradually gained in many Western societies. The judiciary was not isolated from political authority and there was no independent legal profession. Instead, law was seen as "a regrettable necessity, principally an instrument to be used by the state to enforce its will upon subjects who had not submitted to other means of social control."<sup>36</sup> People regarded the courts with suspicion. The legal system played little role in people's private daily activities. Political ethics, rationality and precedent were the main restraints on imperial power. Although judicial tribunals existed, "the Confucian philosophy of harmony preferred unofficial conciliation to

---

33. Macau Confidence Index Survey, Dec. 1989; In their 1985 and 1986 surveys, Lau and Kuan found 47.6 per cent of Hong Kong respondents disagreed or strongly disagreed that the legal system of Hong Kong was foreign and unsuitable to Chinese society while 34.8 per cent agreed or strongly agreed that it was (Lau and Kuan, *Ethos*, p. 127).

34. Correia and Horta e Costa, "Por uma Politica de Traducao," pp. 132-139.

35. For similar arguments about the influence of traditional Chinese legal culture on contemporary Taiwan, mainland China and Hong Kong see Edward J. Epstein, "China and Hong Kong: Law, Ideology, and the Future Interaction of the Legal Systems," in Wacks, *The Future of the Law in Hong Kong*, pp. 40-41 and note 7; Lau and Kuan, *Ethos*, pp. 131-135; Lau, Kuan, and Wan Po-san, "Legal Attitudes," in Lau, Wan, Lee Ming-kwan and Wong Siu-lun, eds., *Indicators of Social Development, Hong Kong 1988* (Hong Kong: Hong Kong Institute of Asia-Pacific Studies, Chinese University of Hong Kong, 1991), pp. 214-222.

36. Cohen and Chiu, *People's China*, 1: 17.



official adjudication. Traditional social groups disposed of an enormous volume of potential litigation through a variety of techniques that ranged from persuasion to ostracism and coercion."<sup>37</sup>

Aspects of Macau's Portuguese civil law heritage could also hamper citizen identification with the legal system. Civil law education and judicial processes have traditionally been more abstract and less oriented to solving concrete problems than their common law counterparts.<sup>38</sup> Civil law judges, who traditionally have comparatively limited discretion and authority, do not have the image of "cultural heroes" or "father figures" often associated with common law judges. Rather, they have the image of civil servants performing "important but necessarily uncreative functions."<sup>39</sup>

In addition, many of Macau's laws are out of date and do not serve the needs of a community undergoing rapid economic development and social change. In such situations, it is common for people to either resort to informal means of regulating their social and economic relations<sup>40</sup> or import legal concepts from outside. For instance, Macau's commercial laws

---

37. *Ibid.*; See also Epstein, "China and Hong Kong," pp. 40-41 and note 7; R. Randle Edwards, "Civil and Social Rights: Theory and Practice in Chinese Law Today," in Edwards, Louis Henkin and Andrew J. Nathan, eds., *Human Rights in Contemporary China* (New York: Columbia University Press, 1986), pp. 44-47; Louis Henkin, "The Human Rights Idea in Contemporary China: A Comparative Perspective," in Edwards, Henkin and Nathan, *Human Rights in Contemporary China*, pp. 21-22.

38. Merryman, *Civil Law Tradition*, pp. 61-65, 68-69; Mauro Cappelletti, *Judicial Review in the Contemporary World* (New York: Bobbs-Merrill Co., 1971), pp. 79-80.

39. Merryman, *The Civil Law Tradition*, pp. 36-37; See also p. 140 at note 5 and p. 146 at note 26 of the present study.

40. Portuguese legal sociologist, Boaventura S. Santos, argues that a legal system in which there is a wide gap between the system and the citizens will develop informal mechanisms and intermediaries to lubricate the system and even subvert it, creating a whole informal dimension to the system that is manipulated by professionals and other judicial functionaries (Boaventura S. Santos, "Discurso e a Poder, Ensaio sobre a Sociologia da Retorica Juridica," [Coimbra, 1980] cited in Costa, "Continuidade e Mudanca," pp. 60, 68 at note 41). Santos is currently doing a study of the legal system and Macau society.

are in need of reform and written in Portuguese, a language few local Chinese business people can understand. This inadequacy has pushed some of them to have their contracts drawn up in Hong Kong in English for business transactions conducted in Macau.<sup>41</sup> Macau's current legal assistance programme was inherited from the pre-1974 Portuguese colonial regime with only a few minor reforms. It has been criticised as antiquated and unsuited to contemporary Macau society, doing little to aid citizens' access to the courts and build their trust in and identification with the legal system.<sup>42</sup>

Corruption is not a phenomenon unique to Macau, but the enclave's government has been slower in responding to the problem than neighbouring Hong Kong. It remains to be seen whether the Macau government's most recent attempt to create a High Commission Against Corruption and Administrative Illegality will lead to tangible improvements and increased public trust in government and the law. Ironically, the plan was approved by Macau's Legislative Assembly on 10 September 1990, only days before Governor Carlos Melancia resigned following corruption allegations related to construction of Macau's new airport.<sup>43</sup> Portugal's High Commissioner Against Corruption, Costa Bras, has opposed the Macau government's plan for the anti-corruption commission, arguing it does not give the new organisation enough power to act effectively. Like its Portuguese counterpart, the Macau commission is to wield administrative authority but will not have the additional powers available to the Independent Commission Against Corruption in Hong Kong.<sup>44</sup>

---

41. Interview, Fovoas; Such situations confront Macau courts with difficult questions of interpretation because these contracts are not accepted as equal to Portuguese contracts, but only as evidence of an agreement (ibid.; interview, Jacinto).

42. Costa, "Continuidade e Mudanca," pp. 60-61.

43. Adam Lee, "Melancia resigns as Governor," SCME, 20 Sept. 1990.

44. There has been at least one attempt to set up an anticorruption commission previously, in 1974, shortly after the military coup in Portugal. However, the governor withdrew the plan

### Preparing for 1999

Given the uncertain roots Macau's Portuguese law has in local Chinese society, the transfer of legal authority in 1999 presents a complex and difficult challenge to the Macau government. Scholars have raised serious questions about the post-1997 survival of Hong Kong's common law system even though it is more self-sufficient and locally oriented than Macau's system. The Hong Kong system has already begun bilingual legal drafting and has local Chinese judges and lawyers, a local court of appeal, two established local law schools and generally favourable attitudinal support from local Chinese citizens, among which an influential minority speak English.<sup>45</sup> The chances for survival for Macau's legal system, which has none of these strengths, appear bleak. The promises in the Sino-Portuguese Joint Declaration that Macau's current legal system will endure basically unaltered for fifty years, of legal bilingualism and protection for the rights and liberties of Macau people depend in large part on PRC policies after 1999. However, much also depends on the Macau government's success in the next eight years in weaning the enclave's legal system from its dependence on Portugal and entrenching it in Macau society so that the system has some chance of surviving beyond 1999 with the necessary

---

only ten days after it was announced ("A comissao especial," *GM*, 15 June 1974; Antonio Prata e Paulo Fontes da Veiga, "O estado da corrupcao," *Sabado*, 9 Nov. 1990, p. 24).

45. See, for example, Davis, *Constitutional Confrontation*, especially chapter 3; Epstein, "China and Hong Kong"; Ujejski, "The Future of the English Language"; For a discussion of Hong Kong residents' attitudes toward the legal system see generally Lau and Kuan, "Legal Attitudes," especially p. 223; The differences between Macau and Hong Kong should not be exaggerated. Although Hong Kong had drafted twenty-four equally authentic bilingual ordinances by May 1990, previous Chinese translations of Hong Kong laws are not recognised as authentic in law and progress on translation is slow. Most court proceedings are in English (Chen, "The Legal System," pp. 69-70).



community and professional support. The territory's former Adjunct Secretary for Justice Magalhaes e Silva expressed the goal in this way:

The modernisation and universalisation of Macau's existing law constitutes ... an imperative for the Portuguese government in the territory.... such a system will only endure if it makes itself realistic and bilingual, that is, if it corresponds to the necessities of the time and is accessible to the general population of this territory.<sup>46</sup>

Given the short time left this may be an impossible task. Several aspects of Macau's transitional legal policies are considered below.

The Joint Declaration says the future Macau SAR courts will have power of final adjudication and judges nominated by the chief executive in accordance with the recommendations of an independent commission made up of local judges, lawyers and noted public figures.<sup>47</sup> In preparation for these changes, Portugal has amended its own constitution and the Organic Statute of Macau and drawn up a separate judicial organisation law for the enclave. The bill, which was introduced in the Portuguese assembly in autumn 1990, aims to gradually give the enclave's judicial system more autonomy from Lisbon. It creates a local High Court of Justice, empowered to act as both a court of second instance and a court of revision, and separate judicial councils for Macau.<sup>48</sup> Officials expect the Portuguese authorities will also empower the new Macau High Court of Justice to rule on the constitutionality and legality of legislation sometime before 1999.<sup>49</sup> The

---

46. Speech by Manuel de Magalhaes e Silva at the installation of new leadership at the Cabinet for Legal Translation, 3 Nov. 1989 (my translation).

47. Macau JD, Art. 2(2), Annex I(IV).

48. See Portugal, Constitution, Art. 292(5); DSM, Art. 51(2); Portugal, Proposta Lei de Basis da Organizacao Judiciaria de Macau, Art. 1, 6, 27 (hereafter Proposed Law of the Fundamentals of Judicial Organisation of Macau); Adam Lee, "Macau given greater power to make laws," SCMP, 19 Apr. 1990.

49. Vitorino, "Macau na Jurisprudencia do Tribunal Constitucional," pp. 17-22; Interview, Povoas.



Macau Lawyers Association, Legislative Assembly and Public Ministry magistrates have condemned the bill for not providing the local judiciary with sufficient autonomy and for failing to create a system that can survive, at least in its essential spirit, beyond 1999.<sup>50</sup> According to its provisions, some decisions of Macau courts and acts of the governor and senior officials must still be appealed to higher courts in Portugal and only the Portuguese assembly can pass laws setting out the basic principles of the system's operation.<sup>51</sup> Because the membership of Macau's new judicial councils includes members of the executive and legislative branches of the Macau and Portuguese governments, local magistrates argue they neither safeguard the separation of political and judicial power nor guarantee the independence of judges and the impartiality of the judiciary.<sup>52</sup>

The lengthy process of training bilingual locally born legal professionals has also begun. The University of East Asia's new law programme, the success of which is critical if Macau is to break its

---

50. "A manter-se a proposta tal como esta cominha-se para uma fase de governamentalizaco dos Tribunais," IM, 4 Oct. 1990; Joao Figueira, "Levante-se o reu," CM, 13 Oct. 1990.

51. QSM, Art. 19(5), 30(1)(a), 51(2), 66.

52. "A manter-se a proposta tal como esta cominha-se para uma fase de governamentalizaco dos Tribunais," IM, 4 Oct. 1990; Joao Figueira, "Levante-se o reu," CM, 13 Oct. 1990; The Macau Judicial Council ("Conselho Judiciario de Macau") would propose candidates for appointment as judges, judges' advisors ("juizes assessores") and judicial auditors to all Macau courts save the High Court of Justice and look after inquiries and disciplinary questions related to judges, officials of the Macau courts and agents of the Public Ministry. It would be composed of the president of Macau's High Court of Justice, the adjunct procurator-general, a lawyer elected by the lawyers of Macau and four citizens, two designated by the governor and two elected by the Legislative Assembly (Proposed Law of the Fundamentals of Judicial Organisation of Macau, Art. 27, 28); The president and six members of the High Court of Justice would be appointed by the governor at the recommendation of a newly created High Council of Justice of Macau ("Conselho Superior de Justica de Macau"). The high council would be made up of the governor or his or her appointee, the president of the Portuguese High Court of Justice, the procurator-general of the republic, a representative of the Portuguese Justice Ministry and an appointee of the Portuguese president. Among its other competences, the high council would hear complaints against decisions of the High Court of Justice and the Macau Judicial Council (ibid., Art. 22, 29, 30)

dependence on Portuguese trained judges and lawyers, has encountered some problems. Planners initially intended to run a fully bilingual programme with simultaneous translation and bilingual lecture notes. However, this proved unworkable. Lecturers now teach the five-year programme exclusively in Portuguese, although students study the Portuguese and Chinese languages as well. Some Chinese members of the first freshman class of eighty students had to withdraw due to language difficulties. As a result, the majority of students in the upper-year class are Portuguese, many expatriates with little incentive to remain in Macau after 1999.<sup>53</sup>

Ironically, two students from mainland China who entered the first year of the programme in 1990 already speak fluent Portuguese and have a Chinese law degree, making it easier for them to follow the classes than it is for many of the Macau Chinese.<sup>54</sup> The lack of substantial theoretical studies of Macau's legal system in any language has forced many professors to write their own textbooks. The programme holds classes at night to accommodate numerous students who work full-time during the day, some in government offices specialising in legal work.

In order to broaden its base of potential professionals, the government plans to set up a Centre for Judicial Studies in the coming months with postgraduate programmes for Macau-born Chinese and others who have already graduated in law in the PRC, Taiwan, Hong Kong, North America, Europe or elsewhere overseas. It will try to entice them back to Macau by paying them regular salaries to study Macau's Portuguese law in preparation for working

---

53. Yee and Lo, "Macau in Transition," p. 19.

54. Chinese students make up approximately 40 per cent of the 1990-1991 first-year class, but only just over 20 percent of the second-year class and less than 20 percent of the third-year class (Data obtained from the Law and Public Administration Programme, University of East Asia, Nov. 1990).

locally. The centre, whose students will eventually include graduates of Macau's law programme, will also train judges, public prosecutors and law administrators.<sup>55</sup> This style of postgraduate programme could introduce foreign legal norms from both common and civil law jurisdictions into Macau's legal culture. However, at least they will be filtered through a Portuguese civil law training programme and, to the extent that they involve students from places outside mainland China, could provide valuable fertilisation and external support for Macau's post-1999 legal autonomy.

Nevertheless, the time required to train bilingual lawyers and provide them with additional training for the bench has led some commentators to suggest it is unrealistic to expect Macau will have a localised bilingual judiciary before the turn of the century.<sup>56</sup> Eduardo Cabrita, coordinator of the government's Cabinet for Legal Translation, expects Macau could have forty to fifty bilingual legal professionals by 1999.<sup>57</sup> These will be needed to meet the provisions of the proposed Law of the Fundamentals of Judicial Organisation of Macau, which requires that judges and agents of the Public Ministry be individuals of "recognised civic fitness," licensed in law, who have lived in Macau for at least three years and have knowledge of the Chinese language.<sup>58</sup> Only one-third of all the judges of courts of first instance and two out of seven of those on the High Court of Justice have to meet these prerequisites during the first three years after the law

---

55. Interview, Povoas.

56. See for example, Gary Nai, "Reforma Política e Jurídica em Macau e a Lei Básica," *Revista de Administração Pública de Macau* 1, no.2 (1988): 221.

57. Interview, Cabrita.

58. Proposed Law of the Fundamentals of Judicial Organisation of Macau, Art. 19(6).



comes into force.<sup>59</sup> Still, it is uncertain there will be enough legal professionals available to comply with these localisation provisions. There are fewer barriers to use of another provision of the bill which authorises appointment of judge's advisors ("juizes assessores"), who must have lived in Macau for more than seven years and have knowledge of the Chinese language.<sup>60</sup> The initiative seems a response to arguments by some Macau legal professionals that the government must resort to new means to improve local recruitment and root the legal system in the local community.<sup>61</sup>

The Macau government's ambitious legal translation programme faces daunting political and technical obstacles. Under current law, Chinese versions of Macau laws are valid for reference only and Chinese remains an unofficial language in the territory despite regular complaints by Beijing officials and local people.<sup>62</sup> Language has long been a highly politically contentious issue between Portugal and China, fuelled by Portugal's slowness in making Chinese an official language and China's willingness--especially after the Beijing massacre in 1989--to voice objections when the Macau government's translations have not met its political approval.<sup>63</sup> This tendency does not bode well for China's ability to restrain itself from

---

59. Ibid., Art. 19(7).

60. Ibid., Art. 20.

61. Rodrigues, "A Administracao da Justica," pp. 28-30; Interview, Jacinto.

62. Yee and Lo, "Macau in Transition," 15; Interview, Ng.

63. In June 1990, Lu Ping rejected the Portuguese translation of the name of the premises of the Taipei government's new unofficial trade and tourism representative in Macau. He said use of the word office ("oficina" in Portuguese) amounted to granting the establishment official or semiofficial status. Subsequently, the Beijing government rejected the Cabinet for Legal Translation's Chinese version of the Organic Statute of Macau, which called the document a constitution. Beijing representatives suggested it amounted to an attempt to use the statute to override the future Basic Law of the Macau SAR, which China insists will not have constitutional status (Yee and Lo, "Macau in Transition," pp. 9-10).



interfering during the language and translation disputes likely to arise after 1999.

Macau's translation efforts have been bottlenecked by a chronic dearth of translators, especially those with legal training and knowledge of both Mandarin and Cantonese.<sup>64</sup> The shortage has postponed the setting up of a bilingual legislative drafting system, which would require a team of highly trained bilingual legal drafters capable of producing equally authentic legislation in both Chinese and Portuguese at the time of legislative promulgation.<sup>65</sup> For now, the government is concentrating its efforts on translating Portuguese language laws into Chinese. The Cabinet for Legal Translation, which was set up in its current form in October 1989, has tried to overcome the shortage of bilingual legal specialists by establishing seven translation teams composed of one Portuguese-trained and one PRC or Taiwan-trained specialist--some of them PRC nationals--supported by a local translator-interpreter and a local Chinese "letrado," a specialist in Chinese writing.<sup>66</sup> The cabinet is compiling a glossary of Chinese equivalents for key Portuguese legal concepts to ensure consistency and accuracy as they translate Macau's constitutional documents, its five main law codes and other statutes and proposed legislation. German and Italian scholars specialising in Chinese law act as advisors to the cabinet

---

64. Yee and Lo, "Macau in Transition," pp. 18-19; Correia and Horta e Costa, "Por uma Politica de Traducaao Juridica," p. 136; Hong Kong's own efforts to translate its laws have been hampered by shortages of translators (Ujejski, "The Future of the English Language," p. 176).

65. Interview, Cabrita; Correia and Horta e Costa, "Por uma Politica de Traducaao Juridica," pp. 150-152.

66. Interview, Cabrita; In some cases the Portuguese and Chinese specialists use German and Italian as the common language of communication and of civil law concepts.

and review its translations for accuracy. The bulk of the work is scheduled for completion in time for the transfer of administration in 1999.<sup>67</sup>

To meet the deadline, the cabinet has begun contracting out some of its work to a private translation firm in Macau, which employs mainland-educated translators with no legal training. The company is translating older, less lengthy laws and the Civil Registry Code. Cabrita has said the practice does not pose risks because the Cabinet for Legal Translation retains responsibility for ensuring uniformity in the terminology and the quality of the final text produced by the private firm.<sup>68</sup>

Other efforts to attempt to increase community access to and knowledge of the law include plans for new legislation to improve legal aid services. The government is also preparing a Chinese language media campaign aimed at familiarising young people with the law and attracting them to legal careers.<sup>69</sup> In December 1989, the procurator of the republic started special weekly sessions in which Chinese-speaking staff are available to answer legal questions from members of the public.<sup>70</sup> Macau's future autonomy depends on the success of these and other reforms in increasing the community's attachment to the legal system before 1999.

---

67. Ibid.; During 1991, the cabinet's work will include translating portions of the Civil Code, the final version of the Company Law Code, the proposed revised Macau Penal Code and civil and penal process legislation being revised according to the Proposed Law of the Fundamentals of Judicial Organisation of Macau (Governo de Macau, Gabinete para a Tradução Juridica, "Memorando, Tradução Juridica em 1990," Macau: Gabinete para a Tradução Juridica, 1991).

68. Interview, Cabrita; The firm's major shareholder is Edmundo Ho, president of the Macau Bankers Association, vice-president of the Legislative Assembly and a Basic Law drafter ("Tradução de leis para Chines vai ser feita por empresa privada" [Lusa, 15 Mar. 1990]).

69. Interview, Povoas.

70. Interview, Jacinto.

### Maintaining a Distinct System

Macau's unique circumstances bring special dangers to its legal system after 1999. The belated efforts to make the law accessible to the people, the Roman civil law heritage Macau shares with the PRC and the enclave's reliance on the PRC for badly needed law and translation expertise make the legal system particularly vulnerable to erosion.<sup>71</sup> The Portuguese administration in Macau is trying to create a bilingual, localised legal system that will preserve in the Chinese language the contours and concepts of Macau's Portuguese legal culture. However, the translation process itself and the involvement of PRC-trained law specialists open the law to the risk of infiltration--intentional or unintentional--by the legal norms of the language into which they are being translated.<sup>72</sup> Changes in the interests and biases of legal education and scholarship after 1999 and the type of legal personnel they produce also have the potential to significantly erode the existing system, particularly if links with Portuguese and other Western legal cultures diminish.<sup>73</sup> These forms of "indirect intervention" are possibly "even more threatening than legal imperialism because such subtle forces are less perceptible and thus over time more insidious."<sup>74</sup>

---

71. "Gabinete de Traducao Juridica" (Lusa, 25 Feb. 1988).

72. Correia and Horta e Costa, "Por uma Politica de Traducao Juridica," pp. 132-133, 142, 152.

73. Epstein, "China and Hong Kong," pp. 60-61; Epstein argues that common law has infiltrated civil law systems, not because of the "triumph of the common law," its "vitality and tenacity" or its "treatment of concrete cases," but because of the stronger "political, economic, and sometimes cultural advantage of protagonists of the common law."

74. Ibid.

Epstein asserts that translation of the law is one of the biggest dangers for Hong Kong's post-1997 legal system.<sup>75</sup> His arguments are even more ominous when applied to Macau. Infiltration occurs because legal homonyms are often linguistic equivalents but do not represent the same legal concept, allowing translated terms to be interpreted in ways quite contrary to their original meaning. Glossaries of Chinese-English equivalents, such as the Chinese-Portuguese version Macau is preparing, "merely perpetuate the myth that translated terms mean the same as the original. Worse still, inevitable errors in such glossaries will distort and ultimately change the meaning altogether."<sup>76</sup> The dangers will increase as Chinese becomes the dominant language of law and as law students, lawyers and judges lose their ability to understand the law in its original language. "It is a cultural aspiration for Hong Kong people to use Chinese as a legal language but the price may be high."<sup>77</sup>

Making predictions is difficult. As Ujejski points out, English has persisted as the language of law in many former British colonies despite efforts to replace it with the national language of the new country in question. The shortages of qualified translators, the continued use of English to educate lawyers, the underdeveloped state of many native languages after years of colonisation, the use of case law and expert witnesses and the prevalence of English in international trade and commerce have all contributed to the failure of linguistic decolonisation. However, Ujejski cautions that the evolution of Hong Kong's law could take the

---

75. *Ibid.*, pp. 61-63, 73-74.

76. *Ibid.*, 61-63, 73-74.

77. *Ibid.*, 63.



opposite path because, unlike their counterparts in other British colonies, English-speaking professional and economic elites will not gain power and influence after 1997 and many are emigrating, while the PRC legal system can fill any vacuum left by the weakening of English common law, a situation which did not exist in other colonies.<sup>78</sup>

These arguments have serious implications for Macau, where opportunities for erosion and infiltration of Portuguese legal norms may be greater because the Portuguese language is unlikely to survive in the long term and because Macau has roots in the same Roman civil law as the PRC.<sup>79</sup> This common ancestor eases the translation of Macau's codes and legislation into Chinese. There are none of the voluminous reports of case law to worry about, Chinese equivalents already exist for some legal concepts and similarities in legal education mean Macau can bolster its tiny local pool of bilingual legal experts with specialists trained in the PRC. Some PRC officials can understand Macau's law more easily than that of Hong Kong.<sup>80</sup> However, differences in fundamental concepts of law and justice, human rights, court procedure, rules of evidence and other matters underlie the superficial compatibility in legal form, organisation and training. Contradictory PRC norms are bound to seep into Macau as use of the Chinese language increases and as Portuguese influence declines.

Furthermore, judicial systems based on Roman civil law traditions tend to be more centralised and isolated from society than those based on common

---

78. Ujejski, "The Future of the English Language," pp. 170-173, 177, 180-181.

79. China borrowed from Roman civil law during the republican period when it made efforts at legal codification. It has since borrowed from Japan, which, in turn drew from German law. The Soviet and Eastern European legal systems have also been influential (Epstein, "China and Hong Kong," p. 46); See also Davis, *Constitutional Confrontation*, p. 62.

80. Interview, Cabrita.

law traditions. Lawyers, judges and case law precedents play a much more influential role in the latter while civil law courts emphasise judges rendering tightly drafted decisions according to narrow rules of interpretation.<sup>81</sup> The highly concentrated nature of Macau's court system could make it more vulnerable to infiltration by foreign concepts of law because potential intruders have fewer centres of influence to conquer.<sup>82</sup> Macau's legal system could also succumb more easily because, not being dependent on precedent, it is unlikely to get as much direct fertilisation from Western legal systems as a common law jurisdiction such as Hong Kong could have after 1997.

On the other hand, some Portuguese officials argue that Macau's system can survive formally more easily than Hong Kong's because civil law systems do not depend on the courts and judicial precedents as much as common law systems do and are easier to teach to students. Civil law systems are easier to construct and, if damaged, to rebuild. They do not depend as much on a particular legal-cultural milieu and courts with high prestige and authority as do common law systems.<sup>83</sup> Cabrita argues: "In Hong Kong no intermediate system is possible. Either it stays or it goes. However, in Macau we can have a poor system survive formally even if at some date there are no contacts with Portugal and the spirit of the law is weakened."<sup>84</sup> The endurance of remnants of Portuguese law in Goa, a former Portuguese colony now a state within India, suggests some aspects of Portuguese law could

---

81. Merryman, *Civil Law Tradition*, pp. 34, 36-37, 108-110.

82. Interview, Paula Escarameia, law professor, University of East Asia, 8 Nov. 1990.

83. Interview, Povoas; Interview, Cabrita.

84. Interview, Cabrita.

well survive in Macau despite their position of linguistic and political disadvantage.<sup>85</sup>

The future ability of Macau's legal system to maintain external links through hiring outside legal professionals is also somewhat uncertain. The Sino-Portuguese Joint Declaration permits the Macau SAR to appoint judges of foreign nationality and allows lawyers from outside Macau to practice in the territory.<sup>86</sup> However, if it treats Macau as it has Hong Kong, China is likely to restrict key judicial positions such as the chief justice of the Court of Final Appeal and the chief judge of the High Court to Chinese nationals who are permanent residents of the Macau SAR and have no right of abode in any foreign country.<sup>87</sup> Macau, even more than Hong Kong, will have trouble finding local Chinese legal professionals with judicial training and the willingness to forfeit right of abode overseas to take these senior positions on the bench. The enclave's ranks of future bilingual candidates are already disturbingly thin. Applying the additional nationality and right of abode restrictions from Hong Kong's Basic Law would effectively eliminate those few Macanese and Macau-born Chinese residents with Portuguese nationality who might otherwise qualify. Treating Macau like

---

85. Under the Goa, Daman and Diu Administration Act of 1962, Goa retains its Portuguese laws unless they are revoked by the competent legislature. Thirty years after the Indian army took the territory from the Portuguese by force, Goa still maintains Portuguese family laws and many parts of the Portuguese civil code, although substantial numbers of Portuguese laws have been repealed. While some of Goa's laws have been translated into English by local bilingual jurists, they are not officially recognised and the government has never taken up the project of translation. In the case of family laws, translators employed terms from the Louisiana Code of 1870, which might serve as a model for Macau should it decide to translate any of its laws into English ( M.S. Usgaoncar, "Apropos Conference held on 22nd March, 1989 at the Hotel Mandovi on the Occasion of the Visit of Instituto Juridico de Macau to Goa," in *Goa Law Times* 1 [Apr. 1989]: 18-20; "Evolution of Portuguese Laws in Goa after 19th December, 1961," in *ibid.*, pp. 37-39; Correia and Horta e Costa, "Por uma Politica de Traducao Juridica," pp. 132-133 at note 3); Louisiana and Quebec provide other examples of civil law traditions which have survived within common law systems despite some erosion (Epstein, "China and Hong Kong," pp. 60-66).

86. *Macau JD*, Annex I (IV) .

87. *Hong Kong BL*, Art. 90.

Hong Kong in this regard ignores the special problems confronting its legal system as it prepares for 1999.

On the other hand, legal intrusion could also go the other way. As the nationality question shows, China's attitude towards Macau's legal system cannot but have an important impact on its survival potential. Some Portuguese legal experts suggest the civil law affinity between Portuguese and Chinese laws and the relatively harmonious relationship between the Portuguese and Chinese authorities could make China more sympathetic to Macau's legal system and interested in learning from it.<sup>88</sup> Overall, it seems improbable that China would look to Macau for successful examples of a legal regime enhancing economic and social development, especially with Hong Kong's successful common law system so close at hand. China has already demonstrated its interest in importing certain parts of the British colony's law, relating to such areas as internal economic affairs, foreign trade and investment, through the Shenzhen Special Economic Zone bordering Hong Kong.<sup>89</sup> Ironically, however, the vulnerability of Macau's legal system to erosion by Hong Kong commercial law could be one of its biggest advantages from China's point of view. The Macau government has recently prepared a proposed new Company Law of Macau, which includes some innovations from the commercial law used in Hong Kong and others from various contemporary civil law Company Codes in the Asia-Pacific region and Europe.<sup>90</sup> The new law will make Hong Kong legal norms a part of Macau law in a codified form which China can understand because of its own civil law

---

88. Correia and Horta e Costa, "Por uma Política de Tradução Jurídica," p. 158; Interview, Oliveira Rocha.

89. Epstein, "China and Hong Kong," pp. 67-68.

90. Interview, Povoas.



heritage and might want to emulate. Other innovatively updated Macau laws might catch the eye of PRC legal experts, making the enclave's legal system more influential than Macau's size and history might otherwise suggest possible. Commercial laws would be the most attractive but the Macau government's proposed revised Penal Code might prove interesting to the PRC should the political climate improve. The prospect, however small, of a hybrid legal system emerging in Macau offers some hope that the enclave's legal system could help build Macau's own particular brand of autonomy within China. One analyst comments:

With a good team of well trained bilingual legal experts, there is a possibility of creating a unique legal system in Macau after 1999, a system based upon the Portuguese continental law, absorbing some practical aspects of the Hong Kong common law (especially in commerce) and from the Chinese civil law (especially concerning marriage, inheritance and family relations.)<sup>91</sup>

The development of such a system would depend in part on the willingness of Portuguese authorities to see the goal of preserving Portuguese law and language take second place to the goal of creating a made-in-Macau legal regime drawing from those parts of neighbouring legal systems that best serve Macau people. The spirit of Macau's law will only thrive if it meets the community half way. According to one Macau official, the only significant difference between the future of the law in Hong Kong and Macau is that many Hong Kong people see the legal system as an asset and are more likely to be willing to fight to defend it after 1997, while the majority of Macau people will not.<sup>92</sup> For this reason, he and others advocate such measures as translating Macau laws into English as well as Chinese as a way

---

91. Ngai, "Pluralism," p. 15.

92. Interview, Jacinto; For a discussion on the complex attitudes of Hong Kong people towards the legal system see Lau and Kuan, *Ethos*, pp. 119-143; Kuan, Lau and Wan, "Legal Attitudes," pp. 207-223; Davis, *Constitutional Confrontation*, p. 7.

to bring the law to the people as well as attract foreign investors unable to read Portuguese or Chinese laws.<sup>93</sup> Such a move would have to overcome the difficulties posed by Macau's shortage of translators and possible resistance from both Portuguese and PRC authorities. Nevertheless, the adjunct secretary for justice said he hopes to translate the revamped Penal Code into both English and German and the new Company Law into English to make them more accessible both at home and internationally.<sup>94</sup>

### Constitutional Interpretation and Review

All of these factors--language, external ties, localisation and community support--will affect the future ability of Macau's courts to take on one of their key roles in building a viable autonomy process--that of constitutional control. Their authority to interpret the future Macau Basic Law and review legislation to ensure compliance with its provisions will either permit the courts to play an active role in setting the boundaries of Macau's political autonomy or relegate them to a sideline position. However, the courts' constitutional control role in an autonomous territory is not necessarily only that of a border guard for local self-government. In a common law legal context, Alexander Bickel explains constitutional lawmaking as a process of communication in which the judiciary, through its power of constitutional interpretation and review, conducts an ongoing dialogue with the elected branches of government and the political

---

93. Interview, Jacinto; Victor F.S. Sit argues English should be made an official language along with Chinese and Portuguese "to meet the demands of the business world" (Sit, "Industrial Policies for Macau in the 1990s," p. 72).

94. Interview, Povoas.

community as a whole about the fundamental collective values of the society.<sup>95</sup> Constitutional review makes "the dialogue in this area more ordered and thus advances stability.... the court is not engaged in an unrelenting search for principle but takes account of the competing needs of expediency.... This permits judicial participation in a wider dialogue."<sup>96</sup> Mauro Cappelletti compares this with a more restricted role for constitutional judicial review in civil law countries.<sup>97</sup> In some of them, lingering resistance to the notions of fixed constitutions and judicial review of legislative or executive acts have led to the development of separate constitutional courts. These often take a more timid view of their role and largely exclude ordinary courts from participating in constitutional control. In other cases, constitutional control remains the prerogative of political bodies rather than courts.<sup>98</sup> Although important in all societies, stabilising the constitutional dialogue through judicial participation takes on major importance in an autonomy process, where jostling between political leaders over the division between central and local authority and basic political values are fundamental dynamics. Writing about this phenomenon in Hong Kong, Davis argues, "By providing structure for development and elaboration of higher norms, constitutional judicial review is a valued stabilising force."<sup>99</sup>

---

95. Alexander Bickel, The Least Dangerous Branch: The Supreme Court at the Bar of Politics, 2d ed. (New Haven: Yale University Press, 1986), p. 117 cited in Davis, Constitutional Confrontation, p. 50.

96. Davis, Constitutional Confrontation, pp. 63, 73 at note 30.

97. See generally Cappelletti, Judicial Review, especially pp. 79-84; Davis, Constitutional Confrontation, pp. 56-60.

98. Merryman, The Civil Law Tradition, pp. 133-140, 155-158.

99. Davis, Constitutional Confrontation, p. 51.

According to Bickel and Charles Black, a crucial part of the court's stabilising affect is its ability to give government policy a legal stamp of approval, thereby legitimising it in the eyes of suspicious citizens.<sup>100</sup> This legitimising role is especially important when citizens' distrust of government runs high, as it well could in post-1999 Macau and other places where major political realignments place constitutional control in a tenuous position.<sup>101</sup> In this sense, the Beijing government should have little to fear and much to gain from vesting constitutional interpretation and review powers in the courts of the Macau SAR, especially given the more cautious role of civil law courts in constitutional control. Empowering the SAR's highest court to function as a constitutional court within the scope of its legal autonomy is consistent with the contemporary civil law tradition and with the Joint Declaration and would flow naturally from Portuguese plans to authorise the enclave's new High Court of Justice to rule on the constitutionality and legality of legislation before 1999.<sup>102</sup>

So far, the Beijing government seems only partly convinced by such arguments. Hong Kong's Basic Law leaves the question of judicial review and interpretation in a fuzzy position. It vests the power of interpretation of the Basic Law and legislative review in the NPC Standing Committee in matters concerning central authority and local-central relations. The SAR courts will have delegated interpretative authority regarding matters

---

100. Bickel, *The Least Dangerous Branch*, cited in F.L. Morton, "Judicial Review in France: A Comparative Analysis," *American Journal of Comparative Law* 36, no. 1 (Winter 1988): 102, 105.

101. Morton, "Judicial Review in France," p. 96.

102. Vitorino, "Macau na Jurisprudencia do Tribunal Constitucional," pp. 17-22; Interview, Povoas; *Macau JD*, 2(2), Annex I (III).



within the scope of Hong Kong's autonomy.<sup>103</sup> However, their power of legislative review is implied only.<sup>104</sup> Furthermore, the scope of those matters considered questions of central authority and local-central relations is not clearly defined.

The role of the NPC Standing Committee in the Hong Kong Basic Law's legislative review formula injects a blatantly political element into the constitutional control process, raising questions that go to the heart of scholarly debate over the constitutional role of the courts. In simple terms, some scholars advocate constitutional judicial review based on a separation of the judicial and executive-legislative branches so that the courts can counter the dangers of unfettered democracy. Others argue for a more democratically accountable constitutional review process through mechanisms that permit political control over the judicial branch through the elected executive or legislature.<sup>105</sup> Several scholars assert that there are advantages and disadvantages to each approach. Morton argues that the "paradox of constitutionalism" is that systems for constitutional control must ensure government policies conform to constitutional principles while allowing the constitution to adapt to changing political and social values. Constitutional control is by nature a quasi-political, quasi-judicial activity.<sup>106</sup> Nevertheless, the arguments in favour of majoritarian control of the courts are derived from political systems where the legislative and

---

103. Hong Kong BL, Art. 17, 158.

104. Davis, "Piecemeal Human Rights in China: The Hong Kong Case" (Paper presented at the symposium on Human Rights, Columbia University, 19 Jan. 1991), p. 11.

105. For detailed discussions of this debate see Davis, Constitutional Confrontation, pp. 46-55; Morton, "Judicial Review in France," pp. 89-110; See generally, Cappelletti, Judicial Review; Merryman, Civil Law Tradition, pp. 133-140, 156-158.

106. Morton, "Judicial Review in France," pp. 100, 110.

executive branches are democratically elected and subject to the rule of law. This would not be the case in the Macau SAR. Public confidence in the autonomy arrangements would be harmed by entrusting constitutional control to the NPC Standing Committee.

An adaptation of the bifurcated constitutional control system Davis has proposed for the Hong Kong SAR would enhance the legitimacy of the constitutional control process in the eyes of mainland authorities and Macau people and would be compatible with Macau's civil law traditions.<sup>107</sup> Under such a system, the Macau SAR's High Court, in its role as a constitutional court, would have final authority to rule in concrete cases on the compliance of local legislative and executive acts with the Basic Law. However, consistent with the tradition of more politicised control over constitutionality in socialist and many civil law traditions, the SAR chief executive, two-thirds of the SAR legislature or the central government could refer certain constitutional questions directly to a special constitutional committee made up of an equal number of central government and SAR representatives. This committee's authority would extend to disputes over central-local government jurisdiction, central government powers and issues arising from the PRC Constitution. It could be constituted under the NPC, but must have more independence and authority than the advisory Committee for the Basic Law envisioned in the Hong Kong Basic Law.<sup>108</sup> To increase the committee's local legitimacy and

---

107. Davis, *Constitutional Confrontation*, pp. 63-64.

108. The Hong Kong committee will be composed of twelve members appointed by the NPC Standing Committee for a five-year term, six from the mainland and six from Hong Kong, including some legal professionals. The Hong Kong members shall be SAR permanent residents who are Chinese nationals without right of abode in a foreign country and shall be nominated jointly by the chief executive, Legislative Council president and SAR Court of Final Appeal chief justice (Hong Kong Bill, Proposal by the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region on the Establishment of the Committee for the Basic Law of

independence, the Macau chief executive, legislature and chief justice should each designate an equal number of representatives, who, like those from the central government, would be subject to recall by their respective nominating authorities. The committee should not be able to make decisions unless all members are present.<sup>109</sup> This clear connection with political organs in the SAR would help prevent the committee from developing into a shadow government that might erode the authority of these local organs. A similar committee exists in the Aland Island autonomy arrangement and has developed into an important forum for consultation and dispute settlement between representatives of the Finnish and Aland governments.<sup>110</sup>

Nevertheless, even if the PRC authorities were to grant the Macau High Court constitutional control powers, the civil law heritage of its judges could hamper their ability to participate in the constitutional process in the way Bickel envisioned. In addition, constitutional judicial review through a separate Constitutional Court is only a recent addition to the Portuguese legal system inserted after the 1974 military coup. It is not well established in Macau. The Portuguese Constitutional Court has ruled on the constitutionality of only two Macau laws, one dating from 1977 which prohibited individuals convicted of certain crimes from entering casinos and another from 1936 which defined crimes of abuse of press freedom.<sup>111</sup> Neither have Macau's administrative courts been active in reviewing the

---

the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress).

109. A similar system is used to constitute the Aland Delegation in the Aland Islands, which supervises the territory's finances and issues advisory opinions on the compliance of Aland legislation with the territory's Autonomy Act (Jansson, Gustafsson, Henriksson, Fagerlund and Johansson, "Aland," p. 34).

110. Hannum, *Autonomy*, p. 374.

111. Vitorino, "Macau no Jurisprudencia do Tribunal Constitucional," pp. 13-14.

legality of administrative law.<sup>112</sup> Judicial review has been grafted onto civil law systems, but it needs time to root.

A court's authority consists not in its ability to command, but in the willingness of other political actors, and ultimately of public opinion, to obey. In a democracy, where accountability is the touchstone of political legitimacy, the authority of the constitutional court is precarious, especially in the beginning. Obedience to constitutional decisions must become a political habit of the people and their leaders, and this takes time.<sup>113</sup>

The processes could be aided if Hong Kong successfully develops its own form of constitutional judicial review. Since the two SARs will share similar Basic Laws, they might exchange judges in constitutional cases. Macau legal professionals who initially study law in Hong Kong would provide further cross-fertilisation between the two systems. The years left before 1999 might not be enough time to sensitise Macau judges and other legal professionals, officials, political leaders and citizens to the use and legitimacy of judicial review. However, it is in the interests of the SAR's autonomy to make a start now.

---

112. Interview, Povoas.

113. Morton, "Judicial Review in France," p. 94.



## CHAPTER 7

## EXTERNAL SUPPORT

The experience of other autonomous territories shows that dual political identity and internal political and legal institutions and processes will work better to maintain Macau's distinctness after 1999 if the enclave has external support for its autonomy process, that is, if Macau is externally effective.<sup>1</sup> PRC authorities have implicitly acknowledged this reality by making provisions for internationalising the Macau and Hong Kong questions in the Sino-British and Sino-Portuguese Joint Declarations.<sup>2</sup> However, particularly since the 1989 Beijing student democracy movement, Chinese leaders have balked at the implications of their decision. The final draft of the Hong Kong Basic Law attempts to limit internationalisation.<sup>3</sup> Nevertheless, the Joint Declarations and Basic Law for Hong Kong still envision an SAR with a high degree of international personality, including autonomous external links befitting Hong Kong's growing regional and global

---

1. See pp. 53-60 of the present study.

2. Under the Joint Declarations, foreign nationals can hold some public and judicial posts and act as SAR government advisors. The Hong Kong courts can refer to precedents in other common law jurisdictions and both territories can maintain reciprocal juridical assistance with foreign states. Foreign investment is protected by law. Both territories can issue their own travel documents. While China has responsibility for foreign affairs and defence, it will delegate the SARs the authority to maintain their own external economic and cultural relations including official and semi-official economic and trade missions in foreign countries, "conclude relevant agreements with states, regions and relevant international organisations," participate in PRC delegations as permitted by the central government and, with the aid of China, continue to participate in international organisations in which the PRC is not a member. Foreign consular and other official, semi-official and non-governmental missions can set up in the SARs. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong are to remain in force even though China is not a signatory to the former international agreement. Both Macau and Hong Kong can maintain their status as free ports and separate customs territories with their own currencies. Hong Kong can also keep its shipping register and status as a regional aviation centre and can conclude some international air service agreements (Hong Kong JD, 2[2][4][5][6][7][9][10], Annex I[III][IV][VI][VII][IX][X][XI][XIII][XIV]; Macau JD, 2[2][3][6][7][8], Annex I[1][IV][V][VI][VII][VIII][IX][X][XI][XIII]).

3. See generally Michael C. Davis, "Tiananmen in Hong Kong" (Paper presented at the 19th Sino-American Conference on Mainland China, Taipei, June, 1990).

economic and cultural position as a capitalist free port and financial, service and communications centre.

The PRC's internationalisation policy for Hong Kong seeped into the Joint Declaration on Macau as well. With some notable exceptions reflecting Macau's lesser international economic status, many of its provisions were copied almost verbatim from the earlier Sino-British accord. However, Macau's external economic and cultural personality being significantly less developed than Hong Kong's, the suit of international clothes handed the tiny Portuguese enclave is somewhat too big for it to wear. Convinced of the benefits for both Macau and Portugal of expanding the enclave's external economic, political and cultural links, the Portuguese and Macau governments are trying to help the territory grow into its post-1999 clothes. They aim to leave behind a significantly more internationalised Macau than currently exists. Since many territories recognised as states have even fewer resources than Macau, the task seems achievable.

Macau's potential sources of external effectiveness come from individuals, institutions and processes whose external links give them some leverage with or autonomy from the PRC government and its Macau allies. The external links associated with adherence to international agreements, membership in international organisations and maintenance of representative missions abroad can bolster the external effectiveness of both government and nongovernment actors in Macau. Participants in international organisations and agreements gain certain rights and must observe certain obligations, both of which bring internal leverage. This international involvement also gives participants outside networks and forums for protecting their internal interests. Foreign investment in Macau creates important external links too. Some transnational investors, whose presence

often depends on adequate institutional and legal protections, are able to relocate their assets quickly, giving them a degree of independence from central and local authorities and leverage often unavailable to local businesses. Importantly, by boosting external recognition of Macau's achievements, citizen pride in their community and trust in their autonomy arrangement, external effectiveness also could strengthen local identity and, potentially, loyalty to the PRC.

Macau could also draw on sources of external support more peculiar to its unique situation. The ability of Macau people to leave the territory because of the passports and related citizenship rights granted them by Portugal's nationality law could give them some leverage with PRC authorities. Furthermore, within China's broader "one country, two systems" reunification scheme, Macau acts as the canary in the mine shaft. Because it is particularly vulnerable to PRC interference, Hong Kong and Taiwan could watch the progress of the Macau SAR to gage the success of the scheme, thereby encouraging Beijing to protect the tiny territory's autonomy if only to reassure the two larger communities.

I stress that these are only potential means of external effectiveness. At critical moments, actors with external leverage could be unwilling or unable to use their power to enhance Macau's autonomy. Alternatively, they could be interested in protecting some less controversial aspects of Macau's autonomy, its economic independence within the PRC for example, but not those aspects which Beijing is more sensitive about, such as the autonomy of Macau's political and judicial institutions. Although the number and importance of nonstate actors have expanded dramatically in recent years, the remaining barriers to their full participation in today's international system could also limit Macau's ability to cultivate external



links.<sup>4</sup> States are still the key international players in some international forums and in diplomatic circles, even though some international governmental organisations have opened their membership to nonstate territorial members. It is in the uncertain interstices between the lingering state system and the growing status of nonstate entities that Macau must build its external effectiveness.<sup>5</sup>

This chapter focuses primarily on assessing the nature and extent of Macau's potential external links, discussing where practical the likelihood that key actors will transform them into backing for Macau's autonomy process, giving the enclave the level of international effectiveness that successful autonomy arrangements require. It examines the enclave's international position when the Sino-Portuguese Joint Declaration was signed. Then it turns to some conceptual and concrete issues concerning efforts by the Portuguese and Macau governments and others to build further external links for Macau through international agreements, membership in international organisations, foreign investment, cultural networking and Hong Kong and Taiwan connections.

#### External Links Prior to the Transition Period

Macau began its autonomy process with strong ties to Hong Kong but weak links to the rest of the world. This relative isolation coupled with dependence on Hong Kong reflected Macau's paucity of independent communication links with the outside world. The territory's banking sector

---

4. "The Sovereign State and the World System," in Richard Falk, Samuel S. Kim and Saul H. Mendlovitz, eds., *Towards a Just World Order*, vol. 1 (Boulder, Colo.: Westview Press, 1982), p. 56; Hedley Bull, "The State's Positive Role in World Affairs," in *ibid.* p. 61; Samuel S. Kim, *The Quest for a Just World Order* (Boulder, Colo.: Westview, 1984), p. 54.

5. "The Sovereign State and the World System," pp. 55-112.



was expanding, but its regional financial role remained limited.

Telecommunications were improving, but Macau was no where near the regional transportation, communications and media centre Hong Kong had become.

Although there was significant Hong Kong capital in Macau, most other outside investors were deterred by Macau's weak infrastructure and communications isolation.<sup>6</sup> Even foreign firms with strong PRC activities did not use Macau as a marketing base.<sup>7</sup> The enclave was not a significant re-export point for Chinese goods destined for overseas markets.<sup>8</sup>

Nor was Macau extensively involved in international governmental activity. Its limited social and economic development--the latter focusing on lower-technology light manufacturing--underdeveloped political pluralism, tiny size and political dependence on China and Portugal restricted its membership in international organisations and adherence to

---

6. R. Feitor, "Macau's Modern Economy," in Cremer, *Macau*, p. 140, 148.

7. A 1984 survey of 100 members of the American Chamber of Commerce in Hong Kong, all heavily involved in the China trade, found fewer than one in three had ever made a sale to China through Macau and only six had had dealings with PRC firms based in Macau. Only eleven had made purchases from or through Macau (Kamm, "Macau's Economic Role in the West River Delta," in Cremer, *Macau*, p. 180).

8. *Ibid.*, pp. 174-175; By contrast, at the time of the Sino-British Joint Declaration, Hong Kong was already a recognised international economic entity. It was an important regional financial and service centre, a major foreign exchange market, a media centre serving southeast Asia, a regional and international air transport hub and one of the world's busiest container ports with an important shipping registry. Large numbers of financial businesses and international companies had a presence in Hong Kong including about 1,000 Japanese enterprises and 800 U.S. corporations, twenty U.S. banks, thirty-six deposit-taking companies, thirty-one wholly U.S.-owned insurance companies and branches of many U.S. law firms (Mineo Nakajima, "The Hong Kong Agreement and its Impact on the International Position of Japan," in Jurgen Domes and Yu-ming Shaw, eds., *Hong Kong: A Chinese and International Concern* [Boulder, Colo.: Westview, 1988], p. 201; Jan S. Prybyla, "The Hong Kong Agreement and its Impact on the World Economy," in *ibid.*, p. 171; Hungdah Chiu, "The Hong Kong Agreement and U.S. Foreign Policy," in *ibid.*, pp. 185-186).

international agreements.<sup>9</sup> Macau's links with Portugal, a country which itself has not been active in international organisations until recently, probably contributed to the enclave's own limited external participation.<sup>10</sup> In 1980, Macau was a party to only four international agreements. Three were textile export quota agreements with Finland and the European Economic Community dating from the late 1970s and the other a multilateral World Health Organisation Sanitation Regulation agreement dating from 1951.<sup>11</sup> Furthermore, in 1984 Macau had only one representative office abroad, located in Lisbon.<sup>12</sup> Diplomats accredited in Macau were all based in Hong Kong, a situation which persists.

#### Internationalising Macau: The Portuguese and Macau Government Views

Particularly since the signing of the Joint Declaration, the Portuguese and Macau governments have recognised the importance of internationalising

---

9. "Pluralistic ideology and a high degree of technological and economic development" characterise societies highly involved in international organisations (Gerald Chan, China and International Organisations: Participation in Non-Governmental Organisations Since 1971 [Oxford: Oxford University Press, 1969], p. 157; Kjell Skjelsbaek, "The Growth of International Nongovernmental Organization in the Twentieth Century," in Robert O. Keohane and Joseph S. Nye, Jr., eds., Transnational Relations and World Politics [Cambridge, Mass., Harvard University Press, 1972], p. 83).

10. Even though it was a founding member of NATO in 1949, an OECD country and a member of the UN since 1955, Portugal has not traditionally taken an active role in these organisations. It was not until democratic government was established after the 1974 revolution that Portugal's visibility in international organisations grew, culminating in membership in the Council of Europe in 1976, a term as a nonpermanent member of the UN Security Council and membership in the European Community in 1986 (Ferreira, Portugal, p. 91).

11. Peter H. Rohn, ed., World Treaty Index, vol. 4, 2d ed. (Santa Barbara: ABC-CLIO, 1983); By contrast, Hong Kong was party to fourteen agreements including seven bilateral textile quota accords, a water supply agreement with China and multilateral agreements on arbitration, radio and telegraph regulations, international refugee status, broadcasting and sanitation as well as the agreement establishing the Asian Development Bank (*ibid.*).

12. In 1984, Hong Kong had nine government economic and trade offices and other official representatives abroad, as well as twenty Hong Kong Trade Development Council and sixteen Hong Kong Tourist Association offices. Sixty-nine countries had diplomatic representatives in Hong Kong, including thirty-four consulates and eight commissioner's offices for British Commonwealth countries (Hong Kong Government, Hong Kong 1985 [Hong Kong: Government Information Services, 1985], pp. 305-307).

Macau. They see it as a key means of establishing Macau's administrative, economic and financial autonomy, maintaining Portuguese as an official language after 1999 and securing the future of a Portuguese-style judicial system in the SAR.<sup>13</sup> The governments have begun expanding Macau's membership and participation in international organisations. The enclave has opened a new office in Brussels and expanded its office in Lisbon and has moved to attract foreign investment and enhance Macau's external cultural, economic, educational and sporting links before the transfer to China in 1999.<sup>14</sup>

The push to build external links to support Macau's future political autonomy is reinforced by the enclave's need for injections of foreign capital and high technology to diversify and expand its economy. As a small, open economy heavily dependent on foreign trade, Macau's economic health depends on the decisions of the international organisations that regulate commercial and economic matters. Its participation in these organisations has become increasingly necessary for its economic survival. Cultural, social and educational ties abroad also bring much needed resources and technical and professional expertise for Macau's development efforts while providing a source of potential external effectiveness.

Government officials and other political leaders argue that, if established before 1999 and extended under the SAR government, this diverse gamut of external links has the potential to strengthen Macau's internal

---

13. "Discurso do Governador de apresentacao da proposta de lei de autorizacao das receitas e despesas para 1986," in *Governo de Macau, Linhas de Accao Governativa Plano de Investimentos, 1986* (Macau: Imprensa Oficial de Macau, 1986), n.p.

14. See generally Annex 1 in *Linhas de Accao Governativa 1988, 1989, 1990*; "Governador foi ler discurso na A.L." *JM*, 28 Apr. 1990.

autonomy.<sup>15</sup> Portuguese President Mario Soares has said it will be impossible to preserve Macau's cultural and historic legacy or the presence of Portugal in the Orient if the enclave does not establish itself internationally and regionally by 1999.<sup>16</sup> According to Jorge Rangel, "Because Macau is small, if we rely only on ourselves and China, in due course China's influence will become stronger and stronger until we are in trouble. That is why we need outside nurturing."<sup>17</sup>

#### The Joint Declaration as External Support

Just as international agreements have provided external effectiveness to autonomous territories such as South Tyrol and Aland, the Sino-Portuguese Joint Declaration is a potential source of outside backing for Macau.<sup>18</sup> However, its strength is limited by the willingness and ability of Portugal or other interested countries or individuals to compel China to comply with the agreement. There are weaknesses inherent in the terms of the agreement as well. Like many autonomy agreements, the Joint Declaration leaves many issues unresolved. The technique of using declarations on both sides was a means to mask disagreements over fundamental matters like nationality and the parameters of China's autonomy commitments, leaving ambiguities that make its terms difficult to enforce.<sup>19</sup> One scholar asserts that the substance of the Joint Declaration on Hong Kong is at the disposal of China

---

15. "Melancia sublinha papel moderador de Portugal," *JM*, 11 June 1990.

16. *Ibid.*

17. Interview, Rangel.

18. See pp. 54, 56-59 of the present study.

19. Georg Ress, "The Hong Kong Agreement and its Impact on International Law," in Domes and Shaw, *Hong Kong*, pp. 133-136.



alone and it is very doubtful the United Kingdom could demand restoration of its sovereignty if the PRC does not fulfil its obligations.<sup>20</sup> In the case of Macau, Portugal's ability to demand restoration of its administration in case of a breach of the agreement by China would be even more shaky given it has already accepted Chinese sovereignty over Macau. To make matters worse, the Joint Declaration is full of vague and ambiguously worded articles, leaving room for China to claim it is keeping to the literal terms of the agreement while violating its spirit or intent from Portugal's view.<sup>21</sup> Therefore, finding multiple alternative sources of international support seems critical for building confidence in Macau's autonomy process.

Furthermore, the Sino-Portuguese accord makes virtually no provisions for a bilateral observatory commission that might help settle disputes over interpretation and ensure Macau maintains its autonomous status for fifty years. The main job of the Joint Liaison Group is "to ensure effective implementation of the Joint Declaration ... and create appropriate conditions for the transfer of government."<sup>22</sup> However, its ability to ensure China complies with the accord is virtually nil given that the Joint Liaison Group will cease to exist on 1 January 2000, only eleven days after

---

20. Ibid., pp. 136-136.

21. Ibid., p. 141.

22. Macau JD, Annex II.

the transfer of administration to China.<sup>23</sup> Nor is there provision for third-party adjudication of disputes over implementation of its terms.<sup>24</sup>

Given China's resistance to such outside involvement and its rejection of the jurisdiction of the International Court of Justice, Portugal should at the very least seek PRC agreement for extending the life of the Joint Liaison Group beyond 1 January 2000.<sup>25</sup> However, in order to agree to such a commitment, China would first have to overcome the idea that this would be an intrusion on its sovereignty. By registering the Joint Declarations on both Hong Kong and Macau with the UN, the Beijing government has already made an important symbolic gesture, the first step that would allow Britain or Portugal to invoke the agreements before any UN organ.<sup>26</sup> China would gain considerable applause by also agreeing immediately to extend the mandate of the Sino-Portuguese Joint Liaison Group. By showing its willingness to go beyond the terms of the original agreement, it would increase its international prestige, improve the confidence of Macau people in the Joint Declaration and win points with Taiwan. In addition, Ress argues that extension of the Joint Liaison Group is needed to secure Hong Kong's position relative to some strategic international organisations and agreements, an argument equally valid for Macau. Such a move would forestall requests from third countries, or international organisations in

---

23. Ibid., Annex II(I)(4); The Sino-British Joint Liaison Group will operate until the same date, two and one-half years after sovereignty over Hong Kong is transferred on 1 July 1997 (Hong Kong JD, Annex II[8]).

24. Hungdah Chiu, "The 1984 Sino-British Agreement on Hong Kong and its Implications on China's Unification," *Issues and Studies* 21, no. 4 (1985): 15.

25. Ress, "The Hong Kong Agreement," p. 141; Ress makes a similar argument regarding Hong Kong (ibid.).

26. A. Leroy Bennett, *International Organizations*, 4th ed. (Englewood Cliffs, N.J.: Prentice-Hall International, 1986), p. 57.

which membership of the SARs is expedient for China, that oversight procedures be set up to ensure the SARs fulfil their international obligations.<sup>27</sup>

China could also gain by agreeing to third-party adjudication of disputes over implementation of the Joint Declaration, perhaps through the International Court of Justice. Portugal's desire to maintain good relations with China would prevent it from going to the court except when all political and diplomatic channels were exhausted. If a dispute actually reached the court, previous cases suggest it might be decided in China's favour. The judges sided with the central government in the Interpretation of the Statute of the Memel Territory and the Lighthouses in Crete and Samos cases, both conflicts involving autonomous territories and adjudicated by the Permanent Court of International Justice. According to one scholar, this indicates:

An autonomy arrangement may divest the central government of a State of most of its powers in the autonomous region, but sovereignty as such is not affected. Sovereignty may be purely nominal, nevertheless its violation will be regarded as a breach of international law. The autonomous region continues to form an integral part of the territory of the local State.<sup>28</sup>

At some future date these rulings might be overridden by new legal norms recognising a right to autonomy, which some scholars claim are emerging.<sup>29</sup> However, since the inclination of the court would likely never be put to the test anyway, the real benefit of third-party adjudication would be its ability to fortify local and international confidence in the Joint Declaration.

---

27. Ress, "The Hong Kong Agreement," p. 141.

28. Dinstein, "Autonomy," pp. 296-299.

29. Hannum, *Autonomy*, pp. 473-474.

### The Portuguese Connection

The ability of Macau's colonial links with Portugal to provide channels of external effectiveness after 1999 also depend on Portugal's foreign policy priorities and its future cultural and economic ties with the enclave. Since its entry into the European Community in 1986 and the signing of the Joint Declaration the next year, there have been signs of Portugal's belated awakening to the economic potential of relations with East Asia and Macau's importance as a strategic jumping off point for building those connections. The Macau and Portuguese governments have increased their efforts in Macau and throughout the region to promote Portuguese culture and Portugal's investment and trade potential. Nevertheless, the history of Portuguese foreign relations suggests Macau is unlikely to shoot to the top of Lisbon's priority list in future.

Macau and East Asia have been on the fringes of Portuguese external economic and political concerns virtually since the mid-seventeenth century. For most of the twentieth century, Portugal's eyes instead have been firmly fixed on Western Europe, Africa and the United States, the sources of lucrative remittances from Portuguese emigrants, of most trade and investment capital and, until decolonisation, of most colonial profits and raw materials.<sup>30</sup> Far away in south China, Macau has been of little importance. It absorbed comparatively insignificant amounts of exports and excess Portuguese population. It provided little in the way of raw

30. Antonio de Figueiredo, "Portugal and Africa," in Kenneth Maxwell, ed., Portugal in the 1990s: Dilemmas of Democratic Consolidation (Westport, Conn.: Greenwood Press, 1986), pp. 90, 95-96, 98-99; Rainer Eisfeld, "Portugal and Western Europe," in *ibid.* p. 41, 43; "Unlike the leading industrial nations, the projection of Portugal's interests abroad is not based upon capital investments, strategic calculations, or technology ascendancy but upon the density of Portuguese emigration and volume of exports.... The extent of the Portuguese 'diaspora,' which does not coincide with the geographical scope of the historical period of overseas expansion, can be grasped by bearing in mind that one out of every three Portuguese lives abroad.... Remittances, savings, and tourism from emigrants are still one of Portugal's two biggest single sources of foreign currency, the other being foreign tourists" (Figueiredo, "Portugal and Africa," p. 95).



materials, profits or remittances. Nor has Asia as a whole been important.<sup>31</sup> In 1973, trade with all of Asia accounted for less than 5 percent of the value of Portugal's global two-way trade, while its transactions with Western Europe made up about 62 percent. Western Europe's share had climbed to 77 percent by 1988, while trade with Asia had increased only marginally to about 6 percent. A Portuguese journalist commented in 1986: "Although once a powerful force in the Far East, Portugal today has few experts who know Asia well, not to mention distinguished China hands. In Portuguese diplomacy, Asia is far away and forgotten."<sup>32</sup>

Four major events of the 1980s have encouraged Portuguese foreign policy makers and business people to take a fresh look at Asia and Macau: the emergence of the capital-rich East Asian newly industrialised countries (NICs), China's open door policy, Portugal's membership in the EC and the Sino-Portuguese Joint Declaration. The Portuguese and Macau governments have begun trying to revitalise Portugal's trade links with Macau, China, Hong Kong, Taiwan and Japan with the aim of securing new export markets, sources of tourism revenue and foreign investment. Their policies promote Macau, and its own growing commercial ties in the region, as a unique Portuguese-language service centre and advantageous window-on-Asia for Portuguese businesses trying to expand into China and other parts of the region. At the same time, they market the attractiveness of Portugal's low-cost labour to East Asian investors looking for tariff-free access after

---

31. Ferreira, *Portugal*, pp. 101-103.

32. Goncalo Cesar de Sa, "Lisbon's obligation to Macau's future," *EEER*, 8 May 1986, pp. 40-41.

1992 to the EC's more than 320 million consumers.<sup>33</sup> Former Governor

Melancia spoke of Macau as China's special European link:

As a part of the EC and the country responsible for the administration of Macau until 1999, Portugal can at this time once again fulfil the role of a hinge, proving that in the long term, Macau's future depends not only on its administration launching the territory among the new tigers of Asia.... but also on the presence of Portugal in the new Europe.<sup>34</sup>

In addition, Lisbon aims to get immediate benefits from its last years in Macau. During the Sino-Portuguese talks, then Adjunct Secretary Carlos Monjardino spoke openly of a gentlemen's agreement on commercial matters, revealing that Macau would be useful to Portugal's future activities in China, but not indispensable:

We want an agreement with China for certain projects, such as engineering, road and bridge building, things which we are exceptionally good at. We also want to keep commercial links with China so that we can sell our products and services.... We want to build up the infrastructure here so that we can use Macau for these links when we are gone. But if Macau cannot do it, we will deal directly with China.... We want to be assured that Portuguese will continue to be an official language here after we are gone. We also intend to provide financial help to Macau on cultural and social projects after our departure.<sup>35</sup>

The benefits are arguably not all one sided. In 1987, the Macau government and the Portuguese news service Lusa entered into an agreement enabling both Portugal and Macau to expand their information links with Asia. The Macau government pays part of Lusa's costs in operating news bureaux in Macau, Hong Kong, Beijing, Taipei and Tokyo. In exchange, Lusa, which is

---

33. Ferreira, *Portugal*, p. 61.

34. Speech by former Governor Carlos Melancia, Macau, 28 Feb. 1989 (my translation), printed in *Governo de Macau, Macau: Um Desafio Nacional. Visita a Macau de Sua Excelencia o Presidente de Republic Dr. Mario Soares. Discursos e Mensagens* (Macau, 1989); The policy has been articulated in other speeches by Portuguese and Macau officials. See, for example, the speech by Portuguese President Mario Soares in the same publication and the report on a remarks by Portuguese Education Minister Robert Carneiro in "Ministro Roberto Carneiro: Macau tem papel importante na regioa" (*Lusa*, 29 Sept. 1988).

35. Emily Lau, "Rush to progress," *FEER*, 25 Sept. 1986, pp. 46-47.

partly owned by the Portuguese government, provides its wire services free of charge in both Chinese and Portuguese to Macau print and electronic news rooms.<sup>36</sup>

Promoting Portuguese culture and language is an important component of these efforts, as it is in most Portuguese foreign policy initiatives. Particularly when it involves countries that use Portuguese as an official language, this cultural diplomacy is a way for a small country like Portugal to expand its foreign resources and strengthen the position of the Portuguese language in international forums and organisations.<sup>37</sup> The Portuguese and Macau governments aim to bolster the numbers of Portuguese speakers in the Asia Pacific and in Macau, promote Portuguese literature, art, history and other aspects of culture and strengthen ties with communities of Macau people abroad.<sup>38</sup> Enshrining guarantees for Portuguese language and culture in the Joint Declaration is part of these efforts.

However, it is unlikely these eleventh-hour initiatives will substantially halt the gradual erosion of Macau's Portuguese speaking-community after 1999. The Macau SAR will continue to benefit from Portugal's desire to enhance Portuguese culture in Asia and its support for the remnants of Portuguese culture in Macau. However, this alone cannot

---

36. Eddie Farr, "Portuguese news agency is opened in Macau," HKS, 6 Feb. 1988; Interview, Paulo Ramalheira, chief correspondent, Lusa News Agency, Macau, 17 Mar. 1990; "A Lusa nao vai desaparecer de Macau, nem agora, nem depois de 1999," CM, 2 Mar. 1991.

37. Ferreira, *Portugal*, pp. 26-32; The foreign policy of Portugal's current government includes promotion of technical, social, scientific and linguistic cooperation with and support for Portuguese-speaking countries and territories, enhancement of cultural and linguistic ties with the Portuguese emigrant diaspora and promotion of Portuguese as an international language. The policy aims to project Portugal as a valuable link to its network of former colonies in South America, Africa and Asia (ibid., pp. 25-26, 77-78, 82, 85-86).

38. See generally Annex I of *Linhas de Accao Governativa* 1988, 1989, 1990; "Centro cultural abriu em Seul," JM, 26 Nov. 1990.

ensure Portugal remains vigilant about China's adherence to the Joint Declaration.

The prognosis for gaining external effectiveness through ongoing economic links with Portugal is not much more encouraging. Former Governor Melancia frequently argued that Portuguese culture and other links will not survive unless there is a strong Portuguese business presence in the enclave beyond 1999.<sup>39</sup> Although there has been some limited success in attracting Portuguese businesses in recent years, long-term commercial interest remains limited.<sup>40</sup> Portuguese banks are active in import and export as well as infrastructure financing.<sup>41</sup> Construction and related companies are participating in short to medium-term infrastructure and other public building projects.<sup>42</sup> The 1990 purchase of 45 percent of the local electric utility, Companhia Electricidade do Macau, by a group of Portuguese public and private sector companies is a notable exception that drew praise as a demonstration of Portuguese confidence in Macau's future.<sup>43</sup> A bright spot in attempts to build Portugal-Macau business links was the announcement in 1989 that some Macau business interests, largely from the local Chinese community, planned to invest in a joint-venture

---

39. "Melancia quer mobilizar agentes economicos," JM, 18 Mar. 1990; "Melancia sublinha papel moderador de Portugal," JM, 11 June 1990.

40. Interview, Maria Louisa de Mello Braganca Jalles, department chief, Studies Cabinet, Economic Services Management, Government of Macau, 7 Feb. 1991.

41. "BCM vai instalar-se em Portugal ate ao final de 1989," GM, 16 June 1989.

42. "Gabinete Cinco: Complexo Desportivo da Taipa" (Lusa, 20 Jan. 1989).

43. "Grupo Portugues assume posicao na CEM," JM, 7 Dec. 1990; Other exceptions include plans by part of the Portuguese business conglomerate, Interfina, to open an office in Macau to expand its activities in the territory, which already include a construction company and weekly newspaper. There has also been talk of Portuguese participation in Macau's first risk-capital society ("Grupo Interfina vai-se instalando," JM, 23 Feb. 1990; "Treze empresas Portuguesas na primeira sociedade de capital de risco a actuar em Macau" [Lusa, 20 July 1990]).



parquet and wood panelling factory in Portugal that would export to Western Europe. However, two-way trade between Portugal and Macau remains tiny, earning only US\$14.2 million in 1988, partly because both economies depend on textiles and clothing for a major chunk of their exports.<sup>44</sup> Unless Portugal's economic position in Europe were seriously disrupted, Portuguese business people's preoccupation with Europe and their general disinterest and difficulties in doing business in Asia will prevent them from investing in Macau or China in significant numbers before 1999.<sup>45</sup>

On the other side, Portugal's success in making itself economically useful to China, particularly through its EC membership, could bolster its influence with Beijing on questions relating to Macau beyond 1999.<sup>46</sup> This depends to a large degree on the PRC's assessment of the value of its EC connections overall. China has traditionally supported development of the EC trading bloc as a balance to the strength of the superpowers and an alternative source of technology, investment and trade. However, while its commercial contact with the EC is increasing, it remains underdeveloped compared to its economic relations with Japan, the United States and Hong Kong. The latter three command larger roles in total trade, joint equity ventures, technology transfer agreements and credit supply than Western European countries.<sup>47</sup> Nevertheless, over the long term, problems such as

---

44. "Grupo de Macau investe em Portugal," JM, 14 Dec. 1989.

45. "China: mercado potencial para comercio Portugues," JM, 18 Aug. 1990; "MNE a postos para o dialogo," JM, 20 Feb. 1991; Ferreira, Portugal, pp. 102-103; Interview, Jalles.

46. Ferreira, Portugal, p. 101.

47. Harish Kapur, *China and the European Economic Community: The New Connection* (Dordrecht: Martinus Nijhoff Publishers, 1986), pp. 76-82, 93-95; Davis B. Bobrow, "The Continuing Challenge: Balancing Autonomy and Interdependence," *Issues and Studies* 25, no.4 (Apr. 1989): 44-47; Long-term trade growth is hampered by the comparatively high cost of EC products of interest to China, EC protectionist barriers, Concom (Committee for Multilateral Export Control) restrictions on the sale of potentially strategic technology, better export prospects for Soviet technology now that Sino-Soviet relations have improved and European

its battle to retain most-favoured-nation trading status with the United States could encourage China to significantly expand its political and economic relations with Western Europe. Portugal could prove an economical and politically harmonious entry point for some Chinese trade and investment ventures.<sup>48</sup>

The links are small so far. Moves to twin the Portuguese city of Setubal with Zhuhai, the PRC special economic zone neighbouring Macau, are a small step in this direction. A Zhuhai company plans to export semifinished clothing to Setubal, where they will be finished and exported into EC countries duty free.<sup>49</sup> The Portuguese company Incerpor is opening a disposable syringe factory in Zhuhai, the only Portuguese direct investment in China, and some large Portuguese companies export to and carry on other business in the PRC.<sup>50</sup> Two-way trade between China and Portugal remains a miniscule portion of either country's global external trade despite its increase since diplomatic relations began in 1979.<sup>51</sup>

Overall, Portuguese authorities have had little success convincing their compatriots that their economic future lies not only across the Pyrenees Mountains in Europe, but also across the oceans their trading ancestors sailed to the rich markets of the Far East. Portugal's economic and cultural presence in Macau and China are unlikely to provide more than

---

support for trade and other sanctions following the 1989 Beijing democracy demonstrations (ibid.).

48. Susumu Awanohara, "Falling from Favour," *EEEB*, 2 May 1991, p. 10-11.

49. "Pequim quer gemear Zhuhai and Setubal," *JM*, 19 Mar. 1990.

50. "China: mercado potencial para comercio Portuguese," *JM*, 18 Aug. 1990.

51. In 1988, Portugal's exports to China accounted for 0.29 per cent of its total exports while imports from China made up 0.36 per cent of its total imports ("Dez anos de relacoes comerciais Portugal/China" [*Lusa*, 19 Mar. 1989]).

minimal external support for the enclave's autonomy after 1999. Portugal's participation in the EC and relationship with its former colonies in Africa could prove more useful to Macau. Almost two years after the EC imposed diplomatic and economic sanction against China because of the military suppression of the 1989 student democracy movement, Portugal was the first stop on PRC Foreign Minister Qian Qichen's 1991 European visit. It was the first such trip by a Chinese official since the Beijing massacre. Portuguese officials attributed the gesture to China's desire to reestablish a dialogue with the EC at a time when Portugal's imminent participation in the EC leadership troika put Lisbon in a particularly influential position. They said China also wants to use its links to Portugal as a channel to southern Africa, where Portugal has been active in peace negotiations to end the wars in Mozambique and Angola.<sup>52</sup>

Some Portuguese believe their country's international prestige is at stake in Macau, its first and last opportunity to depart a colony without bloodshed.<sup>53</sup> However, it is uncertain whether Portugal's desire to avoid another embarrassing decolonisation process will result in tragic compromises with China or use of whatever limited means Lisbon has at its disposal to support Macau's autonomy. In 1989, the Portuguese government demonstrated its reluctance to jeopardise its tenuous position in Macau by criticising China too loudly when Prime Minister Anibal Cavaco Silva refused to have Macau mentioned in an EC declaration condemning China for the Beijing massacre. The declaration noted the anxiety the PLA crackdown

---

52. "MNE a postos para o dialogo," JM, 20 Feb. 1991

53. Goncalo Cesar de Sa, "Lisbon's obligation to Macau's future," FEER, 8 May 1986, pp. 40-41.



had caused in Hong Kong.<sup>54</sup> Since the Joint Declaration itself provides no institutionalised means for resolving post-1999 disputes over implementation of the Joint Declaration, Portugal will be forced to depend on diplomacy, perhaps backed by other interested states or international organisations. Such efforts run the risk of offending China because of its leaders' tendency to see such actions as foreign interference in what they consider their internal affairs.<sup>55</sup>

### International Organisations

The absence of reliable Portuguese leverage over China after 1999 means other channels of external effectiveness will be important. Among these are Macau's participation in international organisations of both an intergovernmental (IGO) and nongovernmental (INGO) nature.<sup>56</sup> While international organisations were once the domain of a small group of

---

54. Despite the unprecedented public demonstrations in Macau, Cavaco Silva argued that Macau was not in same position as Hong Kong because it had a semidemocratic legislature and the Portuguese nationality law created a climate of confidence and stability ("Macau left off EC declaration," HKS, 29 June 1989).

55. Hungdah Chiu has made similar arguments about the limited ability of U.S. policymakers to pressure Beijing authorities to keep their side of the Joint Declaration (Hungdah Chiu, "The Hong Kong Agreement," p. 191).

56. I divide international organisations into intergovernmental organisations (IGOs) and international nongovernmental organisations (INGOs) according to definitions used in the Yearbook of International Organisations and by Gerald Chan, with a few minor additions. Accordingly, IGOs are those international organisations which are "based on a formal instrument of agreement between the governments of nation states," include "three or more nation states as parties to the agreement" and possess "a permanent secretariat performing ongoing tasks" (Union of International Associations, ed., Yearbook of International Organisations, 1990/91, vol. 1, 27th ed. [Munich, New York, London and Paris: K.G. Saur, 1990], p. 1642 [hereafter YIQ 1990/91]); Some IGOs also count the governments of nonstate territorial communities among their members, sometimes under some form of associate membership which restricts their rights and obligations. INGOs "share most of the characteristics of intergovernmental organisations except that they are not formed by intergovernmental agreement, nor are their members nation states. They include organisations which accept members designated by government authorities, provided that such membership does not interfere with the free expression of views of the organisations," thus serving "as mechanisms for co-operation among 'private' citizens and 'private' national groups in international affairs, especially in the economic social, cultural, humanitarian, and technical fields" (Chan, China and International Organisations, p. 6); In addition to allowing governmental representatives to participate in their activities, some INGOs have advisory status in IGOs or other INGOs.



Western states, nowadays they are increasingly inclusive, with participation from both non-Western states and nonstate actors. Within the latter category are representatives of nonstate territorial communities.<sup>57</sup> Macau can take advantage of these changing membership and participation patterns, which are reflected in the Joint Declaration's provisions for participation in international organisations by the SAR. However, it can expect to encounter some hazards in making this particular avenue of external support effective.

### Intergovernmental Organisations

After Macau's years of near inactivity in the international field, Portuguese authorities are working to get China's agreement through the Joint Liaison Group for Macau's current and post-1999 membership in several IGOs and have indicated a desire to participate more actively in those in which Macau is already an observer or member.<sup>58</sup> They have already secured Macau's current and post-1999 participation in the General Agreement on Tariffs and Trade (GATT), International Maritime Organisation, World Tourism Organisation, Olympic Council of Asia and the UN Economic and Social Commission for Asia and the Pacific (ESCAP), all organisations in which Hong Kong already has membership and PRC agreement for continued

---

57. Bennett, *International Organisations*, p. 5.

58. See generally "Discurso do Governador de apresentacao da proposta de lei de autorizacao das receitas e despesas para 1988," and Annex I in *Linhas de Accao Governativa 1988, 1989, 1990*; "Reuniao Internacional de Radio e Televisao" (Lusa, 6 Apr. 1988); Prior to these initiatives Macau was a member, associate member or sub-bureau of seven IGOs including the International Textiles and Clothing Bureau, Asian-Pacific Postal Training Centre, International Criminal Police Organisation-Interpol, Latin American Information Centre on Migration, World Health Organisation (WHO) Regional Office for the Western Pacific, WHO Western Pacific Regional Office for the Promotion of Environmental Planning and Applied Studies and the World Tourism Organisation (YIQ 1990/91, 2: 765-766).

participation after 1997.<sup>59</sup> Again following Hong Kong's lead, the Portuguese also want to get China's approval on Macau's current and/or post-1999 membership in, among others, the Asian Productivity Organisation, the Asia-Pacific Telecommunity, the International Olympic Committee and the Asian Development Bank (ADB), as well as other communications, culture, education and labour and product standards organisations.<sup>60</sup> The government is reportedly also seeking PRC approval in the Joint Liaison Group for membership in UNESCO (the United Nations Educational, Scientific and Cultural Organisation), partly in connection with a bid to have the enclave listed as a protected place of world heritage.<sup>61</sup>

Other types of institutionalised connections with IGOs offer potential ongoing channels of external effectiveness for the SAR. The Macau government has hosted international conferences on technical subjects such as statistics and broadcasting, in some cases under the auspices of international organisations in which it is not a member.<sup>62</sup> The setting up of a UN University software centre in Macau will bring a permanent UN-linked international presence to the enclave in a form China supports.<sup>63</sup> Macau officials hope to make the centre a focus for international research

---

59. "Comunicado da reuniao do grupo de ligacao," JM, 22 Sept. 1990; Harald Bruning, "Macau accepted as GATT member," HKS, 13 Jan. 1991; "Macau in UN group," HKS, 2 Apr. 1991; In the 1980s, Indonesia blocked Macau's attempts to join ESCAP because of its ongoing dispute with Portugal over the status of East Timor (Interview, Ana Soares, advisor, Cabinet for Transition Affairs, Macau Government, 7 Feb. 1991).

60. "Reuniao ja deu resultados praticos," JM, 3 July 1990; Interview, Soares; See generally Annex I of Linhas de Accao Governativa, 1988, 1989, 1990.

61. "Cuellar visit marks entry to UN group," HKS, 12 Mar. 1990; Thus far Macau has not expressed interest in joining the Asia-Pacific Economic Cooperation group, in which the PRC, Taiwan and Hong Kong are all seeking membership (Curtis Young, "Apec may look at HK entry," HKS, 5 Mar. 1991).

62. "Mundo de estatistica reune em Macau," JM, 17 Oct. 1990.

63. "Melancia sublinha papel moderador de Portugal," JM, 11 June 1990.

on software development and related international conferences. They are also discussing establishment of an international library that would act as a depository of UN and other international documents, thereby attracting related conferences and researchers from throughout the region.<sup>64</sup>

IGOs dealing with technical subjects such as trade, maritime transport or broadcasting provide some of the best potential for building Macau's external and internal effectiveness because of the implicit constraints they place on China. Although these organisations are nominally within the control of national governments, "in practice, many technical requirements make it necessary for governments to operate closely within a set of rules ... established under the auspices of [the] international organizations."<sup>65</sup> For instance, GATT requires contracting parties to be responsible members with separate customs territory backed by full autonomy in the conduct of external commercial relations.<sup>66</sup> Thus, if China wants Macau to remain a contracting party to GATT, it must allow Macau to maintain its status as a separate customs territory, including the authority to secure its own customs borders.<sup>67</sup> The fact that China hopes to join GATT, but is being blocked by concerns about its own ability to meet the organisation's membership criteria, should encourage China to allow Macau enough economic

---

64. Interview, Rangel.

65. Peter Calvert, The Foreign Policy of New States (Brighton: Wheatsheaf Books, 1986), p. 31.

66. Ress, "The Hong Kong Agreement," pp. 145, 139.

67. Maintaining its customs borders has been a problem for Macau authorities. In autumn 1990, the U.S. Trade Department threatened to revoke the Macau-U.S. bilateral textile quota agreement, alleging knitwear from third countries was entering the U.S. illegally from Macau bearing fraudulent Macau certificates of origin. The Macau government blamed the problem on occasional cases of contraband from China through Macau (Harald Bruning, "Truce in US-Macau row," HKS, 29 Nov. 1990).

autonomy to meet its GATT obligations.<sup>68</sup> Similar constraints could come from links with Cocom (the Coordinating Committee on Export Controls) and the multifibre agreement, the members of which could threaten to merge Macau's textile quotas with those of China should the enclave's status as a separate customs territory become dubious.<sup>69</sup>

Similarly, Macau government officials argue membership in the International Maritime Organisation, a specialised UN agency encouraging intergovernmental cooperation on merchant shipping, shipping safety, navigation, prevention of sea pollution and reduction of shipping hindrances, will strengthen Macau's historically uncertain authority in its surrounding waters. This could improve operation of its new deep-sea port and allow for setting up of an international shipping registry in future.<sup>70</sup> Other than protecting Macau's free port status, the Sino-Portuguese Joint Declaration contains none of the protections afforded Hong Kong's port and shipping industry in the Sino-British Joint Declaration.<sup>71</sup>

Macau's membership in organisations of a more technical, less political nature in areas like economics, trade, finance, communications, tourism, culture, science and sports could also be a fruitful means of external effectiveness. Because these organisations might be less politically

---

68. Byron S.J. Weng, "Divided China and the Question of Membership in International Economic Organisations," in Yun-han Chu, ed., *The Role of Taiwan in International Economic Organisations* (Taipei: Institute for National Policy Research Press, 1990), p. 51 (Hong Kong Institute of Asia-Pacific Studies Reprint Series, no. 6, Chinese University of Hong Kong, Apr. 1991).

69. Y.C. Jao, "Hong Kong's Future as a Free Market Economy," in Domes and Shaw, *Hong Kong*, p. 223.

70. Interview, Soares.

71. *Macau JD* 2(8) and Annex I (X); *Hong Kong JD*, 2(6) and Annex I(VI)(VIII).



threatening to China, the territory's freedom of action could be greater.<sup>72</sup> Furthermore, their potential for building patterns of external cooperation between China and the SAR could lead to Macau's membership in more overtly political organisations. Functionalist theory calls such an effect "task expansion," the idea that "the positive outcome of cooperation in one area of activities between the parties in conflict will spread to and facilitate cooperation in other areas."<sup>73</sup> Gerald Chan asserts that some "task expansion" has occurred in China's participation in international organisations. It is the result of the PRC government learning and adjusting to the realities of international politics through its involvement in IGOs and INGOs which, in turn, have had to adapt to Chinese participation, particularly those organisations trying to accommodate both Taiwan and the PRC as members. China's admission in 1986 to the more politically contentious Asian Development Bank using the dual membership formula worked out for the less sensitive International Olympic Committee was the first such case of "task expansion" from a nongovernmental to an intergovernmental organisation.<sup>74</sup> Similarly, cooperation between China and Macau at the international level--through parallel memberships in certain organisations, Macau's participation in PRC international delegations and Macau's advocacy of PRC interests in organisations in which China is not a member--could enhance cooperation between the two governments in internal

---

72. Among the UN specialised agencies, more technically oriented organisations like the International Maritime Organisation as well as the Universal Postal Union, World Intellectual Property Organisation, International Telecommunication Union and the World Meteorological Organisations have been less affected by the political strains between rich and poor nations that have rocked the UN system in general (Douglas Williams, The Specialized Agencies and the United Nations. A System in Crisis [London: C. Hurst, 1987], pp. 27, 37, 196).

73. Chan, China and International Organisations, pp. 8-9.

74. *Ibid.*, pp. 9, 154-157, 161-162.

spheres. It could also encourage China to support Macau's participation in more politically sensitive international organisations. To the extent that China regards Macau's international activities as less threatening than those of Hong Kong, mutually beneficial Macau-China cooperation in the external sphere could also encourage Hong Kong-China cooperation.

However, there are some serious theoretical and practical problems with the task expansion argument. Distinguishing between political and nonpolitical organisations is not always possible in practical or political terms, as China's objections to Hong Kong's participation in a recent World Meteorological Organisation-sponsored conference attest.<sup>75</sup> Nor can we assume that increasing central-SAR cooperation at the international level will necessarily enhance Macau's autonomy. Some scholars have drawn attention to the role of international organisations as important channels of transnational communication and cooperation among both state and nonstate actors, important inclusive influences moderating state behavior and forums in which smaller states and nonstate actors such as Macau can more easily express themselves and have influence on the territorial system, particularly on major states.<sup>76</sup> Following this argument, Macau's participation in international organisations could expand both its external and internal effectiveness by improving civic pride and public confidence in "one country, two systems" and generally rendering its relationship with China more externally transparent. On the other hand, China could merely use Macau's membership in international organisations as an extra voice and

---

75. Bennett, *International Organisations*, p. 13; "Eamonn Fitzpatrick, "HK pullout at world panel sparks row," *SCMP*, 8 Jan. 1991.

76. *Ibid.*, p. 5; Johan Galtung, "The Nonterritorial System: Nonterritorial Actors," in Falk, Kim and Mendovitz, *Towards a Just World Order*, 1: 100; Bengt Sundelius, "Coping with Structural Security Threats," in Otmar Holl, ed., *Small States in Europe and Dependence* (Boulder, Colo.: Westview, 1983), pp. 293-294, 299.

vote in favour of its own interests. Other states could accept the situation much as they accepted Belorussian and Ukrainian membership in the UN despite their being Soviet puppets. Such a development would seriously harm Macau's distinct international personality and its ability to use international forums to boost its internal autonomy. It would reflect the argument that international organisations are still primarily adjuncts to the state system, perpetuators of the traditional distribution of power and authority and a forum in which stronger state powers can more easily boss weaker state and nonstate actors.<sup>77</sup> If China dominates Macau's participation in IGOs through its power over the SAR government, the enclave's membership in INGOs will be critical.

#### Nongovernmental Organisations

Some Macau officials are already convinced that the territory's future participation in IGOs will offer little protection if the local government falls under PRC sway. One official said he is encouraging community groups, institutions and individuals to establish ties with INGOs and other external actors as more secure alternatives:

My first preoccupation is with local private organisations becoming members in international organisations. I think these links are important because I don't know who will be running the government after 1999.... It is very important that Macau has links with outside people in art, with historians, sociologists and others in China and in other parts of the Asia-Pacific.... I hope we can develop a whole series of small connections that will be harder to control centrally after 1999.<sup>78</sup>

---

77. Bennett, *International Organisations*, p. 5; Galtung, "The Nonterritorial System," p. 100.

78. Interview, Macau government official who asked to remain anonymous due to the sensitivity of the comment.

Taiwan's experience suggests China will be more tolerant of participation in INGOs, particularly those whose members are private individuals and groups rather than government agencies or national organisations.<sup>79</sup> Macau individuals and organisations are already members in more than eighty-one INGOs, most concerned with religion, sports, arts and culture, economics, professional contacts, training and education and ideological affairs. In only nine cases are the Macau members government departments or agencies.<sup>80</sup> However, should the executive level of the Macau government come under strong PRC influence, links with INGOs could provide administrative subunits of the SAR government with channels of external communication. Chinese authorities and the SAR executive might tolerate these administrative contacts because they are more discrete and potentially less threatening.

#### Corporations with Foreign Links

Because of their desire to use Macau and Hong Kong as capitalist motors and windows-on-the-world for China's economic development, PRC leaders may be more willing to tolerate any external effectiveness the SARs gain through local investments by corporations with foreign links. I include in this group those companies with at least part of their ownership or assets outside Macau and Hong Kong. Some internationalised Hong Kong-based companies, those few foreign companies with investments in Macau and Macau companies which have diversified their assets offshore fall into this

---

79. Chan, *China and International Organisations*, pp. 5, 157-158.

80. Interview, Soares; *YIQ* 1990/91, 2: 765-766.



category.<sup>81</sup> These external links could provide Macau with channels of communication to the outside world effectively outside the control of government. These links potentially give these companies leverage with the SAR and PRC governments because of their increased ability to threaten to pull their investments out of the community or cause other economic shocks.<sup>82</sup> Most of the external effectiveness available to Macau through foreign investment channels will come through its economic links with Hong Kong. Therefore, I will first briefly examine the impact of business internationalisation on Hong Kong's future autonomy before turning to Macau itself.

An increasing number of Hong Kong companies have considerable external resources that give them some autonomy from the central government in the future, should they chose to use it. A former president of the American Chamber of Commerce in Hong Kong, John Kamm, has been particularly outspoken in encouraging foreign chambers of commerce to actively defend Hong Kong's status, especially as an international economic and trade entity distinct from the PRC in bilateral treaties and multilateral organisations such as GATT and Cocom.<sup>83</sup> Some foreign firms and chambers of commerce have actively lobbied their governments to provide special

---

81. Since the signing of the Sino-British Joint Declaration, many Hong Kong companies have begun "precautionary diversification" or "precautionary internationalisation." This includes: (1) "transfer of liquid assets abroad, leaving only money balances enough for transaction purposes in Hong Kong; (2) establishment of branches or offices in foreign countries or acquisition of foreign firms in whole or in part; (3) sale of the firm's equity to a foreign firm or formation of a joint venture with a foreign firm in Hong Kong; and (4) removal of a firm's registered head office from Hong Kong to a foreign country, especially a tax haven," but not the total abandonment of Hong Kong or China (Jao, "Hong Kong's Future as a Free Market Economy," pp. 222-223; William Overholt, *Hong Kong and China: The Real Issues* [Strategy Paper, Bankers Trust Securities Research, 26 Aug. 1990, pp. 8-9]).

82. Phillip Taylor, *Nonstate Actors in International Politics. From Transregional to Substate Organizations* (Boulder, Colo.: Westview, 1984), p. 204.

83. Curtis Young, "Chambers urged to take role on autonomy," HKS, 6 Dec. 1990.

immigration visa schemes for their Hong Kong Chinese employees, thereby encouraging these employees to remain in the territory. These cases suggest it is not inconceivable that foreign corporations could in future attempt to use their external links as instruments of external support for Hong Kong.<sup>84</sup>

However, the type of autonomy these corporations would be willing to demand for the SAR could be limited. Securing Hong Kong's economic autonomy from China is business leaders' primary interest. To what extent they believe Hong Kong's stability and prosperity as an internationalised capitalist entity requires political autonomy from the mainland, direct elections or protection for human rights is a vital question that cannot be answered in full here. Notably, however, some voices in the international business community have linked the survival of Hong Kong's capitalist machine--particularly media, financial and other information-based international service industries--to the survival of personal liberties, media freedoms and an independent judiciary.<sup>85</sup> The need for direct democratic elections figures less prominently or not at all in business views of Hong Kong's future autonomy.<sup>86</sup> For example, William Overholt of Bankers Trust Securities Research has said the prospects are poor for full-fledged Western democracy in Hong Kong, but the chance of "maintaining a

---

84. A comprehensive study of their resources and behavior is beyond the scope of my research. Such a study would not easily prove or disprove the hypothesis that transnational corporations are instruments of external support given that much of their behavior and interaction with government would be conducted privately and would be extremely difficult to document.

85. See, for example, Overholt, *Hong Kong and China*, p. 19; "Southward Ho. Censorship remains Singapore's sore point," *HongKong Inc.*, June 1990, p. 32.

86. See, for example, "Business and Politics: A Hong Kong Viewpoint" (Speech by Paul M.F. Cheng, Hong Kong Legislative Councillor, to the Hong Kong Exporters Association, 10 Apr. 1991).

high degree of personal liberty, press freedom, and judicial fairness by Third World standards, along with stability and prosperity are far from hopeless."<sup>87</sup> Nevertheless, he cautioned:

On its side, the Chinese government has moved so far toward a hard line that it is raising legitimate doubts about whether freedom of press and opinion after 1997 will be adequate to sustain information-intensive businesses such as regional banking, stockbroking, and publishing, and also to sustain a large population of the kinds of sensitive, opinionated, highly educated individuals who are the principal resource of such businesses.... [T]here remain areas of profound concern for the future, most notably the integrity of Hong Kong's judicial system.... Hong Kong's economy could not survive a major compromise with the PRC system, because international firms expect to be able to sue the state, to sue firms belonging to the state without prejudice, and to have complex disputes adjudicated under the final authority of an independent court system. The further Beijing goes toward assuring the detailed continuation of such a system, excepting national security and foreign policy issues, the more prosperous Hong Kong will be.<sup>88</sup>

Business analysts cite Singapore's less liberal political climate and tight censorship laws as a major barrier to some international businesses and one reason why the island state could not easily replace Hong Kong as the region's media and financial centre.<sup>89</sup> These views indicate some businesses with foreign leverage might use it to defend Hong Kong's legal system and protections for rights and freedoms.<sup>90</sup>

Macau could benefit indirectly from internationalised investment in the British territory and any support it brings Hong Kong's autonomy. Macau's

<sup>87</sup>. Overholt, *Hong Kong and China*, p. 7.

<sup>88</sup>. *Ibid.*, 19.

<sup>89</sup>. A report by the consulting firm Business International warned that Singapore's "restrictions on information could be a major setback to some OHQs [operational headquarters] such as those of banks who rely heavily on in-depth information and varied, international views. Any censorship of the information in international economic and political publications could be a huge disadvantage" ("Southward Ho. Censorship remains Singapore's sore point," *HongKong Inc.*, June 1990, p. 32).

<sup>90</sup>. The U.S. Consul General in Hong Kong has made similar statements about the importance of continued protection for rights and freedoms and maintenance of the current legal system for Hong Kong's attractiveness as an international business centre (Juanito Concepcion, "Envoy warns on HK freedom," *HKS*, 23 May 1991).



ability to benefit from its own internationalised business connections is less certain. With the exception of money from Hong Kong, the role of outside capital in Macau is small and what there is must compete with the influence of mainland Chinese corporations.<sup>91</sup> In 1985, 70 percent of the capital invested in Macau came from Hong Kong, while 20 percent was local and only about 4 percent from other countries.<sup>92</sup> In recent years, the Portuguese and Macau governments have more actively promoted Macau as an investment location and Japanese, Singaporean, Taiwanese and Portuguese companies have interests in the enclave.<sup>93</sup> The government is trying to set up a technology institute and to attract higher-technology industry to an industrial park to be built on reclaimed land between Taipa and Coloane Islands.<sup>94</sup> However, these are long-term ventures whose success in drawing investors is uncertain. The new airport and other infrastructure developments underway are improving Macau's investment climate, but it is still tarnished by relatively poor international communication links, inefficient government administration and poor trade support services, inaccessible laws, government documents written only in Portuguese and shortages of labour, particularly personnel with sufficient foreign-language training for trade-related jobs.<sup>95</sup>

---

91. Kamm, "The Macau Connection," pp. 46-48.

92. Government of Macau, "Seminario sobre as relacoes entre Macau e Guangdong" (A summary of a seminar on relations between Macau and Pearl River Delta region of Guangdong province, held 7-8 Jan. 1988, Zhuhai, PRC) pp. 2-3.

93. See for example "Macau procura captar investimentos em Espanha" (Lusa, 6 Nov. 1989).

94. See point five of "Discurso do Governador de apresentacao da proposta de lei de autorizacao das receitas e despesas para 1990," in Linhas de Accao Governativa, 1990, n.p.

95. Tse, "Macau's International Trade Relations," p. 62.



Furthermore, Macau's financial, media and other information-sensitive industries are not yet well developed. As a result, there are no significant transnational actors in these sectors with direct economic stakes in preserving the liberal freedoms and institutions needed to operate information-dependent businesses. There are few foreign companies depending on Macau's Portuguese judicial system to provide a secure legal framework for their regional business ventures.<sup>96</sup> In fact, some foreign firms have been deterred from investing in Macau because of dissatisfaction with Macau's commercial laws and administrative and legal red tape, which are only slowly being reformed.<sup>97</sup>

Much could depend on the leverage of Stanley Ho, whose own business internationalisation and diversification efforts in recent years offer Macau possible sources of external effectiveness. In addition to making significant equity investments in Macau's infrastructure, tourism, residential property, land reclamation, banking and television sectors, Ho has expanded his Hong Kong, PRC and overseas interests. He now has significant investments in Canada, the United States, China, Portugal, Malaysia and Spain in such areas as hotels, shipping, casinos, retailing and computer, telephone and light electronics manufacturing. As the bulk of his interests are still in Macau and Hong Kong, this strategy "will strengthen Ho's bargaining power should Peking [Beijing] insist upon taking partial, or even total, control of STDM."<sup>98</sup> It could also strengthen Ho's

---

96. Political and social stability, economic freedom and the rule of law are widely respected as key institutional factors responsible for Hong Kong's economic miracle after the Second World War (Jao, "Hong Kong's Future as a Free Market Economy," pp. 205-210, 226).

97. Interview, Jalles.

98. Jonathan Friedland, "A winning streak," *FEER*, 6 Sept. 1990, pp. 56-58, 59; See also "Venda da Transinsular passou por Hong Kong," *JM*, 15 Aug. 1990.

ability to influence other aspects of Beijing's Macau policy should he chose to.

### The Taiwan Connection

Growing trade and investment ties with Taiwan are another potential source of external support for Macau's autonomy arrangement. As they increase, so might the PRC's inclination to regard Macau as a small showpiece of its "one country, two systems" policy in its attempts to entice Taiwan into reunification. In the past four years, Macau has taken advantage of the economic opportunities accompanying the more cordial relations established between the Taipei and Beijing governments to establish commercial links with Taiwan. Some Taiwan tourists enter the PRC through Macau. Investors from the island are involved in the Macau Jockey Club, are reportedly investing in Macau real estate and have expressed interest in the proposed industrial park.<sup>99</sup> While still small in absolute terms, two-way Macau-Taiwan trade is growing.<sup>100</sup> In early 1990, the Taipei government opened an unofficial tourism and trade bureau in Macau, its first presence in the enclave since the PRC forced Macau to expel all Taiwan citizens after the 1966-1967 riots. Beijing, which refuses to allow official or semiofficial Taiwan representation in Macau, has welcomed the office providing it does not engage in politics or issue visas.<sup>101</sup> The office could lead to more business and tourism contacts with Taiwan and act as the island's unofficial observer on China's implementation of the Joint Declaration.

---

99. "China pressiona agencia de Taiwan em Macau a alterar a sua denominacao" (Lusa, 19 Mar. 1990); Harald Bruning, "Taipei base in Macau," HKS, 18 Sept. 1988.

100. "Nota a comunicacao social sobre o comercio externo de Macau nos primeiros onze meses de 1989" (Macau: Macau Government, 1990).

101. Harald Bruning, "China wants Taiwanese office out of Macau," HKS, 18 Mar. 1990.

### Prospects for External Effectiveness

Barring moves by China to follow flexible policies toward the Macau SAR that would allow it to take full advantage of the range of international participation opportunities permitted under the Joint Declaration, Macau's best potential sources of external effectiveness could be participation in INGOs and its links with Hong Kong and to some extent Taiwan. The Taiwan government's announcement in May 1991 of new immigration rules for overseas Chinese showed it has some desire to support Macau and Hong Kong's future autonomy. Under the changes, overseas Chinese can apply for residence in Taiwan if "extraordinary" events happen in the areas where they live, if they invest in the island or have contributed to Chinese society.<sup>102</sup> The enclave will benefit from Hong Kong's richer array of external resources and more active use of international links to build support for its autonomous status.<sup>103</sup> Macau will have some external effectiveness as long as China seeks to avoid major economic or political disruptions in the enclave in order to avert confidence crises in Hong Kong or distrust in Taiwan. Furthermore, Portuguese and Macau government efforts to fortify the enclave's foreign investment, participation in international organisations and other external ties cannot hurt and may even help. At the very least, they provide a framework of international support ready for use by the future Macau SAR should China's leaders permit. They mark the birth of a more active and distinct international personality for Macau, which is

---

102. "Taipei opens door to immigrants," *SCMP*, 23 May 1991.

103. For example, local Hong Kong human rights groups have actively used the international forum provided by the UN Human Rights Committee to protest against the government's record on human rights questions (Ursula Yeung, "UN talks on local rights," *HKS*, 5 Mar. 1991).

bound to foster some local pride and with it, local identity. The danger is that, in their anxious efforts to avoid setting precedents that would lead to what they perceive as threatening developments in Hong Kong, Chinese authorities will do little to nurture the Macau SAR's infant international personality, harming the community's economy, identity and autonomy in the process.



## CONCLUSION

This thesis has proposed a framework for analysing autonomy arrangements involving territorial communities that want to be left alone to pursue their distinctive goals but must remain inside the jurisdiction of a larger territorial community for some purposes. It has argued that autonomy arrangements are not static. Rather, they are dynamic processes characterised by ongoing conflict and bargaining between actors in the larger and smaller polities. The original agreements outlining the boundaries of the smaller polity's autonomy and related limits on central government authority reflect the particular distribution of power among the parties at the time of the accord. However, because they are compromises between groups with different and often contradictory goals, they do not solve all outstanding issues. Nor can they anticipate all future problems. Subsequent bargaining occurs as the parties struggle to shape the rules of the game in their favour, continually renewing the autonomy process if their demands are sufficiently met, or causing it to break down if they are not.

Given these characteristics, I have argued that successful autonomy processes develop institutions, processes and attitudes which help channel this ongoing conflict into forums that encourage mutual trust, tolerance and cooperation. The goal cannot be to construct a wall to protect the autonomous community from the central government, particularly if the process is occurring within a unitary political system such as China's. Instead, the aim should be to foster habits of give and take that satisfy the essential symbolic and substantive needs of all parties. A workable

autonomy arrangement is something that can be built. It does not necessarily exist at the onset.

The experiences of several autonomy arrangements of international legal concern stretching from Eritrea and southern Sudan, to South Tyrol, the Aland Islands and Greenland reveal that four ingredients in particular have contributed to the successful construction of viable systems. These include: dual political identity in the autonomous community; government in autonomous community politically accountable only to local institutions and electorates and not to the central government; strong legal systems with independent judiciaries and other institutions for minimising and adjudicating central-local disputes which enjoy the confidence of all parties; and external effectiveness for the autonomous community.

Measured in terms of these ingredients, the future of Macau's autonomy process is bleak. Distrust in the PRC leadership, especially after the 1989 Beijing massacre, and weak local identity among many Chinese residents are undermining the development of dual identity. The probable departure of many Macanese before 1999 will only make matters worse. The central-government-dominated and executive-centred, partly democratic political institutions planned for the SAR create a chief executive dangerously accountable to both central and local political masters. The resulting political system will lack sufficient autonomy to win support from local people. Belated localisation means the civil service is unlikely to be sufficiently effective, autonomous and locally oriented to act as a counter balance. Parts of the civil service and legal system could end up accountable to Beijing should local staff shortages force Macau to recruit personnel in the PRC. Slow localisation and reform, as well as the Macau legal system's lack of experience with constitutional and administrative

review, jeopardise the SAR courts' capacity to stabilise Macau's autonomy process by defending human rights and settling jurisdictional and other central-local constitutional disputes. Other channels for dispute resolution will be central-government-controlled and not oriented to engendering mutual trust or tolerance between the two polities. Macau's capacity to strengthen its internal effectiveness through external support is fragile.

Given these weaknesses, it seems likely that PRC values and practices will gradually erode Macau's current liberal values, rights and freedoms and legal system. The "high degree of autonomy" China promises the SAR is illusory because the enclave does not have the conditions to build and maintain it in the face of overwhelming PRC economic might and political power. Assembly Deputy Alexandre Ho laments:

The fact that Macau exists and the SAR will exist are only due to historic factors, because the Portuguese have been here for more than four centuries, not because the local conditions for autonomy exist.... Our autonomy is forced, not natural.<sup>1</sup>

Nevertheless, keeping in mind that successful autonomy arrangements are made, not born intact, there are some small reasons for hope. The traditionally harmonious relations that many Macau people and the Portuguese authorities have generally enjoyed with the Chinese government could be a tremendous asset if they are balanced with improved local identity and efforts to win the trust of nontraditional, reform-minded leaders and their sympathisers. Although late in coming and painfully slow, the localisation, legal translation and legal reform and economic infrastructural policies of the Portuguese authorities are beginning to bear fruit. They alone cannot save Macau. However, should they manage to

---

1. Interview, Alexandre Ho.

convince some younger Macau-born Chinese and Macanese to stay in Macau after 1999, those who appreciate the distinctive liberal values and institutions that exist in Macau and have the skills needed to defend them, then the Portuguese will leave behind a more internally effective community than existed before the signing of the Joint Declaration.

Preserving the remnants of Portuguese language and culture should be part of these efforts. They will help reassure the Macanese, smooth the transition and maintain the architectural and other features that make Macau attractive to tourists. However, priority must be given to building efficient and durable political, legal and administrative institutions and external links that serve and have the support of the enclave's Chinese majority. This depends on the willingness of the Portuguese to accept that their language and culture are of no importance to most Macau Chinese in and of themselves. There is, however, some appreciation among younger local Chinese that Portuguese culture was one of the vehicles that brought liberal values and institutions to Macau and is one, but not necessarily the best potential means of securing their preservation and strength after 1999. The recent incorporation of aspects of Hong Kong and other non-Portuguese law into the Macau law codes under revision is a sign some Portuguese officials are adopting a pragmatic approach. More must be done to find creative, but not necessarily Portuguese ways of rooting Macau's legal and political institutions, rights and freedoms firmly into the local community.

Much depends on the success of government and private-sector efforts to develop and internationalise Macau's economy. PRC authorities will have a stronger stake in preserving Macau's autonomy if the enclave becomes more uniquely valuable to China's broader economic modernisation



drive as an internationalised, liberal, capitalist business service centre for Guangdong province's West Pearl River Delta region. Southern China's rapidly growing industrial economy increasingly exposes Macau's economic weaknesses and its decreasing ability to compete with and differentiate itself from the economy of Guangdong.<sup>2</sup> Should Macau successfully improve its international transportation and communications links, build a more internationally accessible legal system, cultivate financial services expertise and attract regional service industries, it will be in a better position to fill a more unique niche in the economy of southern China.

Much depends on China's own policies. Macau's localisation efforts and its future autonomy are in serious trouble should the PRC authorities continue to ignore the enclave's urgent problems in their rush to squelch perceived threats to their sovereignty in Hong Kong. This will be the case should the Macau Basic Law currently being drafted turn out to be a near copy of the Hong Kong Basic Law, as reports suggest it will be. A more flexible, Macau-sensitive approach is needed on issues such as nationality, selection of the chief executive, human rights, judicial finality, interpretation of the Basic Law and central-local dispute settlement.

The histories of the Aland Islands and South Tyrol are proof that a satisfactory autonomy process can emerge even when the minority community is unhappy and distrustful at the onset and the majority government shows little willingness at times to making concessions that

---

2. For a discussion of the economic changes underway in southern China and their impact on Hong Kong see Elizabeth Cheng and Michael Taylor, "Delta force," *EEER*, 16 May, 1991, pp. 64-67.

give substance to its promises of autonomy. However, such success requires committed support from outside, from Hong Kong, Portugal and the broader international community. Emerging norms in international law recognise that this support is not a violation of China's sovereignty. Rather, it is an effective means of helping Macau's autonomy process endure and fostering both international and domestic peace and stability.

## BIBLIOGRAPHY

## Primary Sources

- Declaracao Conjunta do Governo da Republica Portuguesa e do Governo da Republica Popular da China Sobre a Questao de Macau (Initialled Text) 26 Sept. 1987. Macau: Impresa Oficial de Macau.
- Hong Kong. Hong Kong 1985. Hong Kong: Government Information Services, 1985.
- 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 (Initialled Text) 26 Sept. 1984. Hong Kong: Xinhua News Agency, 1984.
- Macau. Gabinete para a Traducao Juridica. "Memorando, Traducao Juridica em 1990." Macau: Gabinete para a Traducao Juridica, 1991.
- Macau. Linhas de Accao Governativa Plano de Investimentos. Macau: Impresa Oficial de Macau, 1988-1990.
- Macau. Macau: Um Desafio Nacional. Visita a Macau de Sua Excelencia o Presidente de Republica Dr. Mario Soares. Discursos e Mensagens. Macau, 1989.
- Macau. "Nota a comunicacao social sobre o comercio externo de Macau nos primeiros onze meses de 1989." Macau: Macau Government, 1990.
- Macau. Recursos Humanos da Administracao Publica de Macau 89. Macau: Servico de Administracao e Funcao Publica, 1990.
- People's Republic of China. The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, 4 Apr. 1990. Hong Kong: The Consultative Committee for the Basic Law, 1990.
- Republic of Portugal. Proposta Lei de Bases da Organizacao Judiciaria de Macau.
- Republic of Portugal. Estatuto Organico de Macau, 1990. In Macau: Boletim Oficial, 12 May 1990.
- Rohn, Peter H, ed. World Treaty Index, vol. 4. 2d ed. Santa Barbara: ABC-Clío, 1983.
- Union of International Associations, ed. Yearbook of International Organisations, 1990/91, vol. 1. 27th ed. Munich, New York, London and Paris: K.G. Saur, 1990.

## Periodicals

- Asia Yearbook
- Beijing Review
- Comercio de Macau (CM)
- Far Eastern Economic Review (FEER)
- Gazeta Macaense (GM)
- Hongkong Standard (HKS)
- Jornal de Macau (JM)
- South China Morning Post (SCMP)
- Tribuna de Macau (TM)

## Books

- Almond, Gabriel A. and Sidney Verba. The Civic Culture. Political Attitudes and Democracy in Five Nations. Boston and Toronto: Little, Brown and Company, 1965.
- Amaro, Ana Maria. Filhos da Terra. Macau: Instituto Cultural de Macau, 1988.
- Bender, Gerald J. Angola Under the Portuguese. The Myth and the Reality. London: Heinemann, 1978.
- Bennett, Leroy A. International Organisations. 4th ed. Englewood Cliffs, N.J.: Prentice-Hall International, 1988.
- Calvert, Peter. The Foreign Policy of New States. Brighton: Wheatsheaf Books, 1986.
- Cappelletti, Mauro. Judicial Review in the Contemporary World. New York: Bobbs-Merrill Co., 1971.
- Chan, Gerald. China and International Organisations: Participation in Non-Governmental Organisations Since 1971. Oxford: Oxford University Press, 1989.
- Clapham, Christopher. Transformation and Continuity in Revolutionary Ethiopia. Cambridge: Cambridge University Press, 1988.
- Cohen, Jerome Alan, ed. China's Practice of International Law: Some Case Studies. Cambridge, Mass.: Harvard University Press, 1972.



- Cohen, Jerome Alan and Hungdah Chiu. People's China and International Law. A Documentary Study. 2 vols. Princeton, N.J.: Princeton University Press, 1974.
- Conceicao, Lourenco Maria da. Macau Entre Dois Tratados com a China. 1862-1887. Macau: Instituto Cultural de Macau, 1988.
- Crawford, James. The Creation of States in International Law. Oxford: Clarendon Press, 1979.
- Cremer, R.D., ed. Industrial Economy of Macau in the 1990s. Conference Proceedings. Hong Kong: API Press and China Economic Research Centre, University of East Asia, 1990.
- , ed. Macau. City of Commerce and Culture. Hong Kong: UEA Press, 1987.
- Cristovao, Fernando. Noticias e Problemas da Patria da Lingua. 2d ed., rev. Lisbon: Ministerio da Educacao e Cultura, Instituto de Cultura e Lingua Portuguesa, 1987.
- Dahl, Robert A. Polyarchy, Participation and Opposition. New Haven and London: Yale University Press, 1971.
- Davis, Michael C. Constitutional Confrontation in Hong Kong. Issues and Implications of the Basic Law. London: Macmillan Press, 1989.
- Dinstein, Yoram, ed. Models of Autonomy. New Brunswick, U.S.A. and London: Transaction Books and Tel Aviv University, 1981.
- Domes, Jurgen and Yu-ming Shaw, eds. Hong Kong. A Chinese and International Concern. Boulder, Colo. and London: Westview Press, 1988.
- Dookhan, Isaac. A Post Emancipation History of the West Indies. Harlow, Essex: Longman, 1975.
- Duchacek, Ivo D. The Territorial Dimension of Politics Within, Among, and Across Nations. Boulder and London: Westview Press, 1986.
- , ed. Comparative Federalism. The Territorial Dimension of Politics. New York: Holt, Rinehart and Winston, 1970.
- Edmonds, Richard Louis. Macau. World Bibliographical Series, vol. 105. Oxford, Santa Barbara, Denver: Clio Press, 1989.
- Edwards, R. Randle, Louis Henkin and Andrew J. Nathan. Human Rights in Contemporary China. New York: Columbia University Press, 1986.
- Eleazu, Uma O. Federalism and Nation-Building. The Nigerian Experience 1954-1964. Elms Court, Ilfracombe, Devon: Arthur H. Stockwell, 1977.

- Falk, Richard, Samuel S. Kim and Saul H. Mendlovitz, eds. Toward a Just World Order. vol. 1. Boulder, Colo.: Westview Press, 1982.
- Farer, Tom J. War Clouds on the Horn of Africa: A Crisis for Detente. New York and Washington, D.C.: Carnegie Endowment for International Peace, 1976.
- Ferreira, Jose Medeiros. Portugal. Os Proximos 20 Anos. Lisbon: Fundacao Calouste Gulbenkian, 1988.
- Hannum, Hurst. Autonomy, Sovereignty, and Self-Determination. The Accommodation of Conflicting Rights. Philadelphia: University of Pennsylvania Press, 1990.
- Hicks, Ursula K. Federalism: Failure and Success. A Comparative Study. London and Basingstoke: Macmillan Press, 1978.
- Kapur, Harish. China and the European Economic Community: The New Connection. Dordrecht: Martinus Nijhoff Publishers, 1986.
- Kim, Samuel S. The Quest for a Just World Order. Boulder, Colo.: Westview, 1984.
- Lane, Kevin P. Sovereignty and the Status Quo. The Historical Roots of China's Hong Kong Policy. Boulder, Colo.: Westview Press, 1990.
- Lau Siu-kai and Kuan Hsin-chi. The Ethos of the Hong Kong Chinese. Hong Kong: Chinese University Press, 1988.
- Merryman, John Henry. The Civil Law Tradition. An Introduction to the Legal Systems of Western Europe and Latin American. 2d ed. Stanford: Stanford University Press, 1985.
- Pomerance, Michla. Self-Determination in Law and Practice. The New Doctrine in the United Nations. The Hague, Boston, London: Martinus Nijhoff Publishers, 1982.
- Reisman, W. Michael. Puerto Rico and the International Process. New Roles in Association. Washington, D.C.: West Publishing and the American Society of International Law, 1975.
- Scott, Ian. Political Change and the Crisis of Legitimacy in Hong Kong. Hong Kong: Oxford University Press, 1989.
- Silva, F.A. All Our Yesterdays: The Sons of Macau--Their History and Heritage. California: UMA, 1979.
- Taylor, Phillip. Nonstate Actors in International Politics. From Transregional to Substate Organisations. Boulder, Colo.: Westview, 1984.
- Wacks, Raymond, ed. The Future of the Law in Hong Kong. Hong Kong, Oxford, New York: Oxford University Press, 1989.

Williams, Douglas. The Specialised Agencies and the United Nations. A System in Crisis. London: C. Hurst, 1987.

#### Articles in Journals and Books

- Afonso, Rui and Francisco Goncalves Pereira. "The Political Status and Government Institutions of Macau." Hong Kong Law Journal 16 (1986): 28-57.
- Almeida, Antonio and Carlos Veiga. "Defendo a controlo da conformidade com a Lei Basica atraves dos tribunais locais." O Direito, no. 2 (Jan. 1991), pp. 12-15.
- Bernhardt, Rudolph. "Federalism and Autonomy." In Yoram Dinstein, ed. Models of Autonomy. New Brunswick (U.S.A.) and London: Transaction Books, 1981, pp. 23-30.
- Bobrow, Davis B. "The Continuing Challenge: Balancing Autonomy and Interdependence." Issues and Studies 25 (1989): 36-56.
- Bruning, Harald. "The Position of Macau in the Portuguese Constitutions Since 1822." Journal of the Macau Society of Social Sciences, no. 1 (1986), pp. 12-21.
- Bull, Hedley. "The State's Positive Role in World Affairs." In Richard Falk, Samuel S. Kim and Saul H. Mendlovitz, eds. Towards a Just World Order, vol. 1. Boulder, Colo.: Westview Press, 1982, pp. 60-73.
- Canas, Vitalino. "Relacoes entre o Ordenamento Constitucional Portugues e o Ordenamento Juridico do Territorio de Macau." Revista Juridica de Macau 1 (1988): 32-52.
- , "Vias de Participacao Politica das Diferentes Comunidades de Macau." In D.Y. Yuan, Wong Hon Keong and Libanio Martins, eds. Population and City Growth in Macau. Macau: Centre of Macau Studies, University of East Asia, 1990, pp. 299-303.
- Chang, Jaw-ling Joanne. "Settlement of the Macau Issue: Distinctive Features of Beijing's Negotiating Behavior." Occasional Papers/Reprints Series in Contemporary Asian Studies, no. 4, 1988 (87).
- Cheek-Milby, Kathleen. "The Changing Political Role of the Hong Kong Civil Servant." Pacific Affairs 62 (1989): 219-234.
- Chen, Albert H.Y. "The Legal System." In Richard Y.C. Wong and Joseph Y.S. Cheng, eds. The Other Hong Kong Report 1990. Hong Kong: Chinese University Press, 1990.
- Chen, Lung-chu and W.M. Reisman. "Who Owns Taiwan?: A Search for International Title." Yale Law Journal 8 (1972): 599-671.



- Chiu, Hungdah. "The Hong Kong Agreement and U.S. Foreign Policy." In Jurgen Domes and Yu-ming Shaw, eds. Hong Kong, A Chinese and International Concern. Boulder, Colo.: Westview Press, 1988, pp. 183-195.
- . "Nationality and International Law in Chinese Perspective." Occasional Papers/Reprints Series in Contemporary Asian Studies, no. 3, 1990 (98).
- . "The 1984 Sino-British Agreement on Hong Kong and its Implications on China's Unification," Issues and Studies 21, no. 4 (1985): 13-22.
- Chowdhury, S. "The Status and Norms of Self-Determination in Contemporary International Law." In Frederick E. Snyder and Surikiart Sathirathai, eds. Third World Attitudes Toward International Law. Dordrecht: Martinus Nijhoff, 1987, pp. 87-99.
- Correia, Sergio de Almeida and Pedro Horta e Costa. "Por uma Politica de Traducao Juridica e Producao Legislativa Bilingue no Actual Contexto do Periodo de Transicao." Revista de Administracao Publica de Macau 3 (1990): 131-159.
- Costa, Alberto, "Continuidade e Mudanca no Desenvolvimento Juridico de Macau a Luz da Declaracao Conjunta Luso-Chinesa," Revista Juridica de Macau 1 (1988): 53-69.
- Cremer, R.D. "A Model for Macau." Asian Affairs 13 (1986-1987): 41-55.
- Davis, Michael C. "The Concept of Statehood and the Status of Taiwan." Journal of Chinese Law 4 (1990) 135-160.
- Dinstein, Yoram, "Autonomy." In Yoram Dinstein, ed. Models of Autonomy. New Brunswick (U.S.A.) and London: Transaction Books, 1981, pp. 291-303.
- Edwards, R. Randle. "Civil and Social Rights: Theory and Practice in Chinese Law Today." In R. Randle Edwards, Louis Henkin and Andrew J. Nathan, eds. Human Rights in Contemporary China. New York: Columbia University Press, 1986, pp. 41-75.
- Eisfeld, Rainer. "Portugal and Western Europe." In Kenneth Maxwell, ed. Portugal in the 1980s, Dilemmas of Democratic Consolidation. New York: Greenwood Press, 1986, pp. 29-62.
- Epstein, Edward J. "China and Hong Kong: Law, Ideology, and the Future Interaction of the Legal Systems." In Raymond Wacks, ed. The Future of the Law in Hong Kong. Hong Kong, Oxford, New York: Oxford University Press, 1989, pp. 37-75.
- Erlich, Haggai. "The Eritrean Autonomy 1952-1962: Its Failure and its Contribution to Further Escalation." In Yoram Dinstein, ed. Models of Autonomy. New Brunswick (U.S.A.) and London: Transaction Books,



1981, pp. 171-182.

- Feitor, R. "Macau's Modern Economy." In R.D. Cremer, ed. Macau: City of Commerce and Culture. Hong Kong: UEA Press, 1987, pp. 139-153.
- Figueiredo, Antonio de. "Portugal and Africa." In Kenneth Maxwell, ed. Portugal in the 1980s: Dilemmas of Democratic Consolidation. New York: Greenwood Press, 1986, pp. 89-108.
- Foighel, Isi. "A Framework for Autonomy: The Greenland Case." In Yoram Dinstein, ed. Models of Autonomy. New Brunswick (U.S.A.) and London: Transaction Books, 1981, pp. 31-52.
- Friedlander, Robert A. "Autonomy and the Thirteen Colonies: Was the American Revolution Really Necessary?" In Yoram Dinstein, ed. Models of Autonomy. New Brunswick (U.S.A.) and London: Transaction Books, 1981, pp. 135-150.
- Galtung, Johan. "The Nonterritorial System: Nonterritorial Actors." In Richard Falk, Samuel S. Kim and Saul H. Mendlovitz, eds. Towards a Just World Order, vol. 1. Boulder, Colo.: Westview Press, 1982, pp. 98-112.
- Gilmore, William C. "Legal Perspectives on Associated Statehood in the Eastern Caribbean." Virginia Journal of International Law 19 (1979): 489-555.
- Gustafsson, Henrik. "The Aland Islands." In Erik Allardt, Nils Andren, Erik J. Friis, Gylfi P. Gislason, Sten Sparre Nilson, Henry Valen, Frantz Wendt and Folmer Wisti, eds. Nordic Democracy. Ideas, Issues and Institutions in Politics, Economy, Education, Social and Cultural Affairs of Denmark, Finland, Iceland, Norway and Sweden. Copenhagen: Det Danske Selskab, 1981, pp. 201-207.
- Hannum, Hurst and Richard B. Lillich. "The Concept of Autonomy in International Law." In Yoram Dinstein, ed. Models of Autonomy. New Brunswick (U.S.A.) and London: Transaction Books, 1981, pp. 215-254.
- Harhoff, Frederik. "Greenland's Withdrawal from the European Communities." Common Market Law Review 20 (1983): 13-33.
- ". "Le Statut Juridique de Regime d'Autonomie Interne du Groenland." Inter-Nord, no. 17 (1985), pp. 203-210.
- ". "Security and Policy Aspects of the Arctic, A Greenlandic Perspective." Vite-Bulletin, May 1989, pp. 15-18.
- Henkin, Louis. "The Human Rights Idea in Contemporary China: A Comparative Perspective." In R. Randle Edwards, Louis Henkin and Andrew J. Nathan, eds. Human Rights in Contemporary China. New York: Columbia University Press, 1986, pp. 7-39.
- Ieong Wan Chong. "Macau, Ponto de Intercambio Cultural Entre o Oriente e

- o Ocidente." Revista de Administracao Publica de Macau 5 (1989): 385-404.
- Jao, Y.C. "Hong Kong's Future as a Free Market Economy." In Jurgen Domes and Yu-ming Shaw, eds. Hong Kong, A Chinese and International Concern. Boulder, Colo.: Westview Press, 1988, pp. 205-230.
- Johansson, Ingmar. "The Autonomy of Aland, Basis of a Flourishing Society." In Peace Society of Aland. The Aland Islands Autonomous Demilitarised Region. Mariehamn: Tryckeri Ab, 1984, pp. 20-40.
- Kamm, J.T. "Macau's Economic Role in the West River Delta." In R.D. Cremer, ed. Macau: City of Commerce and Culture. Hong Kong: UEA Press, 1987, pp. 165-183.
- . "The Macau Connection." Chinese Business Review 12 (Sept.-Oct. 1985) pp. 46-49.
- King, Ambrose Y.C. "The Hong Kong Talks and Hong Kong Politics." Issues and Studies 22 (1986): 52-75.
- Kuan Hsin-chi, Lau Siu-kai and Wan Po-san. "Legal Attitudes." In Lau Siu-kai, Lee Ming-kwan, Wan Po-san and Wong Siu-lun, eds. Indicators of Social Development, Hong Kong 1988. Hong Kong: Hong Kong Institute of Asia-Pacific Studies, Chinese University of Hong Kong, 1991, pp. 207-223.
- Lo Shiu Hing. "Aspects of Political Development in Macau." China Quarterly 120 (1989): 837-851.
- . "Political Culture and Participation in Macau." Occasional Papers, no. 1 (1990), Faculty of Social Sciences, University of East Asia, Macau.
- Lume, J.M.R. "Centre for Portuguese Language and Culture." In R.D. Cremer, ed. Macau: City of Commerce and Culture. Hong Kong: UEA Press, 1987, pp. 115-123,
- MacQueen, Norman. "Macau: End of a Special Case?" World Today 41 (1985): 167-169.
- Mariano, Jose Gabriel. "A Procuratura dos Negocios Sinicos." O Direito, no. 2 (Jan. 1991), pp. 18-22.
- McKibben, Lizabeth. "The Political Relationship Between the United States and Pacific Islands Entities: The Path to Self-Government in the Northern Mariana Islands, Palau, and Guam." Harvard International Law Journal 31 (1990): 257-293.
- Modeen, Tore. "The Situation of the Finland-Swedish Population in the Light of International, Constitutional and Administrative Law." McGill Law Journal 16 (1970): 121-139.
- Morton, F.L. "Judicial Review in France: A Comparative Analysis."

American Journal of Comparative Law 36 (1988): 89-110.

Nai, Gary. "Reforma Politica e Juridica em Macau e a Lei Basica." Revista de Administracao Publica de Macau 1 (1988): 209-222.

Nathan, Andrew J. "Sources of Chinese Rights Thinking." In Edwards, R. Randle, Louis Henkin and Andrew J. Nathan. Human Rights in Contemporary China. New York: Columbia University Press, 1986, pp.

Nathan, Andrew J. "Political Rights in Chinese Constitutions." In Edwards, R. Randle, Louis Henkin and Andrew J. Nathan. Human Rights in Contemporary China. New York: Columbia University Press, 1986, pp.

Overholt, William. Hong Kong and China: The Real Issues. Bankers Trust Securities Research Strategy Paper, 28 Aug. 1990.

Pires, B.V. "Origins and Early History of Macau." In R.D. Cremer, ed. Macau: City of Commerce and Culture. Hong Kong: UEA Press, 1987, pp. 7-21.

Pye, Lucian W. "China: Erratic State, Frustrated Society." Foreign Affairs 69 (1990): 56-74.

Rangel, Jorge. "Human Resources Development in Macau." In D.Y. Yuan, Wong Hon Keong and Libanio Martins, eds. Population and City Growth in Macau. Macau: Centre of Macau Studies, University of East Asia, 1990, pp. 39-47.

Ress, Georg. "The Hong Kong Agreement and Its Impact on International Law." In Jurgen Domes and Yu-ming Shaw, eds. Hong Kong, A Chinese and International Concern. Boulder, Colo.: Westview Press, 1988, pp. 129-166.

Rodrigues, Jose Narciso da Cunha. "A Administracao da Justica e a Transicao Politico-Administrativa em Macau." Revista Juridica de Macau 1 (1988): 11-31.

Rustow, Dankwart A. "Transitions to Democracy: Toward a Dynamic Model," Comparative Politics 2 (Apr. 1970): 337-363.

"Settlement in the Middle East: What Would It Look Like and Can We Get There from Here?" American Society of International Law, Proceedings of the 77th Annual Meeting (1983), pp. 271-287.

Seyersted, Finn. "The Aland Autonomy and International Law." In Nordisk Tidskrift for International Ret 53 (1982): 23-38.

Schram, Stuart R. "Decentralization in a Unitary State: Theory and Practice, 1940-1984." In Stuart R. Schram, ed. The Scope of State Power in China. London: School of Oriental and African Studies, 1985, pp. 81-125.



- Schreuer, Christoph. "Autonomy in South Tyrol." In Yoram Dinstein, ed. Models of Autonomy. New Brunswick (U.S.A.) and London: Transaction Books, 1981, pp. 53-66.
- Shaked, Haim. "Anatomy of an Autonomy: The Case of Southern Sudan." In Yoram Dinstein, ed. Models of Autonomy. New Brunswick (U.S.A.) and London: Transaction Books, 1981, pp. 151-170.
- Sit, Victor F.S. "Industrial Policies for Macau in the 1990s." In R.D. Cremer, ed. Industrial Economy of Macau in the 1990s. Conference Proceedings. Hong Kong: API Press and China Economic Research Centre, University of East Asia, 1990, pp. 67-76.
- Sohn, Louis B. "Models of Autonomy Within the United Nations Framework." In Yoram Dinstein, ed. Models of Autonomy. New Brunswick (U.S.A.) and London: Transaction Books, 1981, pp. 5-22.
- "The Sovereign State and the World System." In Richard Falk, Samuel S. Kim and Saul H. Mendlovitz, eds. Towards a Just World Order, vol. 1. Boulder, Colo.: Westview Press, 1982, pp. 55-56.
- Sundelius, Bengt. "Coping with Structural Security Threats." In Otmar Holl, ed. Small States in Europe and Dependence. Boulder, Colo.: Westview, 1983, pp. 281-305.
- Tse, H.K. "Macau's International Trade Relations: the Changing External and Internal Environment." In R.D. Cremer, ed. Industrial Economy of Macau in the 1990s. Conference Proceedings. Hong Kong: API Press and China Economic Research Centre, University of East Asia, 1990, pp. 57-67.
- , "Population and Economic Development in Macau." In D.Y. Yuan, Wong Hon Keong and Libanio Martins, eds. Population and City Growth in Macau. Macau: Centre of Macau Studies, University of East Asia, 1990, pp. 79-100.
- Ujejski, Tomasz. "The Future of the English Language in Hong Kong Law." In Raymond Wacks, ed. The Future of the Law in Hong Kong. Hong Kong, Oxford: Oxford University Press, 1989, pp. 164-185.
- Usgaoncar, M.S. "Apropos Conference held on 22nd March, 1989 at the Hotel Mandovi on the Occasion of the Visit of Instituto Juridico de Macau to Goa." Goa Law Times 1 (Apr. 1989): 17-25.
- Usgaoncar, M.S. "Evolution of Portuguese Laws in Goa after 19th December, 1961." Goa Law Times 1 (Apr. 1989): 28-59.
- Weng, Byron S.J. "Divided China and the Question of Membership in International Economic Organisations." In Yun-han Chu, ed. The Role of Taiwan in International Economic Organisations. Taipei: Institute for National Policy Research Press, 1990, pp. 27-61. Reprinted by Hong Kong Institute of Asia-Pacific Studies, Reprint Series, no. 6 (April 1991), Chinese University of Hong Kong.



- Wesley-Smith, Peter. "Macau." In Albert P. Blaustein and Phyllis M. Blaustein, eds. Constitutions of Dependencies and Special Sovereignties, vol. 2. New York: Oceana, June 1987.
- Wong Siu-lun, "Chinese Entrepreneurship in Macau." In R.D. Cremer, ed. Industrial Economy of Macau in the 1990s. Hong Kong: API Press and China Economic Research Centre, University of East Asia, 1990, pp. 27-48.
- Yavetz, Zvi. "Autonomous Arrangements in the Balkan States." In Yoram Dinstein, ed. Models of Autonomy. New Brunswick (U.S.A.) and London: Transaction Books, 1981, pp. 85-96.
- Zepp, R.A. "Interface of Chinese and Portuguese Cultures." In R.D. Cremer, ed. Macau: City of Commerce and Culture. Hong Kong: UEA Press, 1987, pp. 125-136.

#### Unpublished Articles and Theses

- Canas, Vitalino. Padroes do fenomeno politico em Macau. Teaching material prepared for the Law and Public Administration Programme, 1989, University of East Asia, Macau.
- Davis, Michael C. Piecemeal Human Rights in China: The Hong Kong Case. Paper presented at the Symposium on Human Rights, Columbia University, 19 Jan. 1991.
- . Tiananmen in Hong Kong. Paper presented at the 19th Sino-American Conference on Mainland China, June 1990, Taipei.
- Macau. Seminario sobre as relacoes entre Macau e Guangdong [A summary of a seminar on relations between Macau and Pearl River Delta region of Guangdong province], 7-8 Jan. 1988, Zhuhai, PRC.
- Hui, Philip Kwok Fat. "Development of Higher Education in the Context of Political and Economic Changes: The Case of Macau." M.Phil. thesis, University of Hong Kong, 1990.
- Jansson, Gunnar, Henrik Gustafsson, Bjarne Henriksson, Anders Fagerlund and Lars Ingmar Johansson. Aland: A Model of Territorial Autonomy. Report commissioned by the Human Rights Project Group, a Soviet-American nongovernmental organisation promoting rule of law and democratic institutions in the USSR [1990].
- Kuan Hsin-chi. Power Dependence and Democratic Transition: The Case of Hong Kong. Paper presented at the American Political Science Association conference, 1990.
- Ngai, Gary. Pluralism in a Fast Transforming Society: On Political-Judicial Reform in Macau. Unpublished paper, 1990.

- Rocha, J.A. Oliveira. Sistema Politico de Macau. Teaching material prepared for the Law and Public Administration Programme, University of East Asia, Macau, 1990.
- . Formacao Historica do Sistema Politico de Macau. Teaching material prepared for the Law and Public Administration Programme, University of East Asia, Macau, 1990.
- Yee, Herbert S. and Lo Shiu Hing. Macau in Transition: The Politics of De-Colonisation. Paper presented at the conference on China and Hong Kong at the Crossroads, 3-5 Sept. 1990, Baptist College, Hong Kong. Forthcoming in Asian Survey.
- Yung Wing Kwong, "Political Identity of Overseas Chinese: A Study of the Indonesian Chinese in Hong Kong." M.Phil. thesis, Chinese University of Hong Kong, 1984.

## APPENDIX

## Interviews\*

(Conducted primarily between 8 Nov. 1990 - 14 Mar. 1991)

Almeida, Christina, deputy director, Education Department, Macau Government, 7 Feb. 1991.

Cabrita, Eduardo, co-ordinator, Cabinet for Legal Translation, Macau Government, 13 Feb. 1991.

Escarameia, Paula, professor, Law and Public Administration Programme, University of East Asia, 8 Nov. 1990.

Ho, Alexandre, deputy in Macau Legislative Assembly, training department chief at Macau Government Tourist Office Hotel and Tourism Training School, 22 Feb. 1991.

Ho, Edmund, business person, vice-president of Macau Legislative Assembly, member Macau Basic Law Drafting Committee, 21 Feb. 1991.

Jacinto, Francisco Teodosio, procurator of the republic, Macau, 29 Nov. 1990.

Jalles, Maria Louisa de Mello Braganca, department chief, Studies Cabinet, Economic Services Management, Macau Government, 7 Feb. 1991.

Leong Kam Chun, deputy in Macau Legislative Assembly, accountant, 21 Feb. 1991.

Marreiros, Carlos, president, Macau Cultural Institute, Macau Government, 5 Feb. 1991.

Mok Lai Meng Caterina, chief, information radio department, Chinese channel, Teledifusao de Macau, 22 Feb. 1991.

Ng Kwok Cheong, president, Macau Democracy Development Union, 4 Mar. 1991.

Povoas, Sebastiao, adjunct secretary for justice, Macau Government, 21 Feb. 1991.

Ramos, Joao de Deus, adjunct secretary for transitional affairs, Macau Government, 14 Mar. 1991.

---

\* In addition to the people listed above, I also interviewed four Macau residents who asked to remain anonymous.

Jorge Rangel, president, Macau Foundation, member Macau Basic Law Drafting Committee, 7 and 12 Feb. 1991.

Rocha, J.A. Oliveira, advisor, Cabinet for Legislative Modernisation, Macau Government and professor, Law and Public Administration Programme, University of East Asia, Macau, 15 Nov. 1990.

Rui Rocha, deputy director, Service of Administration and Public Function, Macau Government, 6 Feb. 1991.

Soares, Ana, advisor to the adjunct secretary for transitional affairs, Macau Government, 7 Feb. 1990.





CUHK Libraries



000325550