

CRS Report for Congress

Received through the CRS Web

Hong Kong's Ongoing Transition: Implications of Chinese Sovereignty in 2001

March 23, 2001

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Hong Kong's Ongoing Transition: Implications of Chinese Sovereignty

Summary

Given the surprisingly smooth passage of the date on which Hong Kong reverted to Chinese sovereignty (July 1, 1997) issues involving Hong Kong have virtually ceased to be debated in the United States. By nearly all accounts, the “one country, two systems” formula that China promised for Hong Kong is working. Hong Kong remains remarkably different from China, with credible legal institutions, entrenched individual liberties, and a diverse and free-wheeling public debate on both major and minor policy questions.

Still, Hong Kong continues to be confronted with significant and unique challenges that put extra pressure on government decision makers. Hong Kong's policy environment now is more diverse than the single issue it faced – whether or not to trust China – prior to the handover. Officials in Hong Kong must deal with a growing range of issues – social welfare programs, housing, industrial competitiveness, education – upon which there is an increasingly diverse public debate. They must operate in a governmental setting in which normal dialogue with their own capital, Beijing, is not only greatly constrained by international agreement, but subject to continual international scrutiny. At times, Hong Kong government officials have been criticized as being insufficiently vigilant in protecting Hong Kong's interests against encroachment, real or imagined, by Beijing. Since late 1999, a series of unpopular decisions by the Hong Kong government has contributed to increased public criticism and disaffection. Moreover, some Hong Kong residents believe that since March 2000, Beijing has become increasingly concerned about developments in Hong Kong and has begun to be somewhat more assertive and more visible in its involvement.

As a result, a spirited debate has been underway in Hong Kong over a number of issues that have implications for U.S. interests: what Hong Kong should want for its future; whether and how to make the Hong Kong government more accountable to the public; how fast Hong Kong should move toward more complete democratization; and how close – or distant – should be Hong Kong's relationship with China. The decisions Hong Kong makes will have implications for the United States, which currently cites Hong Kong's promised autonomy as a reason for treating Hong Kong more favorably than China under U.S. law.

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Hong Kong's Ongoing Transition: Implications of Chinese Sovereignty in 2001

Introduction

This report focuses on the situation in Hong Kong as it continues its political and social transformation after the July 1997 reversion to Chinese sovereignty. Part of the report's findings are based on a study mission to Hong Kong in late November-early December 2000. That visit, sponsored by the Hong Kong Economic and Trade Representative's Office in Washington D.C., involved a series of 27 interviews with representatives of the Hong Kong government and legislature, U.S. officials stationed in Hong Kong, locally based journalists and foreign correspondents, scholars, members of human rights and religious organizations, and representatives of the Hong Kong and international business communities. The purpose of the trip was to assess developments in Hong Kong's political, economic, and social environment in the more than three years since its reversion from British to Chinese rule on July 1, 1997, and analyze the challenges that Hong Kong faces in the coming years. In addition, the report draws on independent assessments of developments before and since the study mission, based on reports in the press and on continuing discussions with government officials, journalists, and scholars.

Background

Britain's return of its premier colony, Hong Kong, to China in 1997 had its roots in the terms under which the British originally acquired the territory – through a combination of wartime concessions and a 99-year lease, the latter negotiated and signed with China in 1898. In 1982, approaching the end of its lease, the British Government began a series of difficult bilateral negotiations with the People's Republic of China (PRC) about Hong Kong's future. These ultimately led to the Sino-British Joint Declaration of 1984, which provided for returning all of Hong Kong, including land held in perpetuity, to Chinese sovereignty on July 1, 1997.

Throughout their lengthy negotiations through the 1980s and 1990s leading up to 1997, both the British and PRC governments made promises and took actions that continue to affect Hong Kong today. Beijing devised a “one country, two systems” policy in which it promised that after the PRC resumed sovereignty over Hong Kong, the territory would be run by Hong Kong people themselves without central government interference. Under the “high degree of autonomy” that it said Hong Kong would enjoy as a Special Administrative Region (SAR) of China, Beijing pledged that Hong Kong could keep its current political, economic, and legal systems for 50 years. Beijing reserved the right to make decisions on foreign and national security affairs for Hong Kong and to be the ultimate authority for interpreting Hong

Kong's new constitution.¹ For its part, London sought to lay a foundation of governance by which Hong Kong could continue the freedoms and capitalist system it had as a British colony. British negotiators were able to incorporate a broad range of protections for legal institutions and personal liberties into Hong Kong's constitution. In addition, London succeeded in establishing a framework for an elected legislature, broader public participation, and other democratic initiatives which Hong Kong had not known during most of its existence under British rule.

Since its reversion to Chinese sovereignty – often called “the handover” – Hong Kong, in essence, has been reinventing itself based on the blueprints and fledgling institutions laid out in Sino-British negotiations. By nearly all accounts from a wide social and ideological spectrum, the “one country, two systems” experiment is working. Hong Kong remains a remarkably free and unfettered place with credible legal institutions, remarkable individual liberties, and a critical and even raucous press. There is frank and public debate on political, social, and economic issues, and people appear unafraid to criticize Hong Kong government officials or governmental policies. In September 2000, Hong Kong held its second round of legislative elections for the Legislative Council (Legco), and to date, political enfranchisement generally is continuing at the pace and in the manner envisioned in the Basic Law.

Still, Hong Kong has been criticized at times as being insufficiently vigilant in protecting its own authority and jurisdiction from encroachment, either actual or perceived, by Beijing. While many of those interviewed by the author in November/December 2000 felt that Beijing had been nearly invisible in Hong Kong's affairs for the first two and a half years after the handover, a surprising number seemed to think that there had been a slight but perceptible change in Beijing's attitude and level of involvement in Hong Kong beginning in February/March 2000. They attributed this to a variety of reasons – partly, for instance, to the fact that the Hong Kong public had begun to grow increasingly dissatisfied with the government during this period and had been vocal in expressing that dissatisfaction. These observers variously described this February/March period as: the time of “an outbreak of democracy” in Hong Kong; the start of deepening pessimism in Hong Kong; the beginning of Beijing's fears that there was a “conspiracy” in Hong Kong against the current Chief Executive, Mr. C.H. Tung; and simply as “the February/March 2000 watershed.”

U.S. Policy Toward Hong Kong. Current U.S. policy toward Hong Kong is set out in the U.S.-Hong Kong Policy Act of 1992 (P.L. 102-383). This Act allows the United States to treat Hong Kong differently from the way it treats China throughout a wide range of legal, economic, and trade laws. The Act specifically states that such special treatment is predicated upon an autonomous Hong Kong. Under the Act, the President has the power to halt agreements or take other steps if he determines that Beijing is interfering unduly in Hong Kong's affairs, and that the

¹ Hong Kong's *de facto* constitution is known as the Basic Law. Information about the Basic Law, including full text, can be found at: [http://www.info.gov.hk/basic_law/flash.html]

territory is not sufficiently autonomous.² Among other provisions, the U.S. Hong Kong Policy Act does the following:

- ! Declares that support for democratization is a fundamental principle of the United States that should apply to U.S. policy toward Hong Kong after 1997.
- ! Declares congressional support for the Sino-British Joint Declaration and makes a number of findings about what that agreement provides for, including the fact that there will be elections for Hong Kong's legislature (Legco), and that all agreements the United States has implemented with Hong Kong by June 30, 1997, will continue in force after that date.
- ! Requires the United States to apply the same laws toward Hong Kong after 1997 as were in force before then, but permits the President to suspend those agreements beginning July 1, 1997, if he determines China is not giving Hong Kong sufficient autonomy.
- ! Requires the Secretary of State to report to Congress every 18 months on the situation in Hong Kong, including on the development of Hong Kong's democratic institutions.³

This report discusses some of the challenges that Hong Kong currently faces, and attempts to assess how they fit into the “autonomy” framework.

Trends in Political Institutions and Governance

Hong Kong is currently wrestling with several problems of governance related to the handover, including problems with the structure of government, its accountability and responsiveness to the electorate, the pace of further democratic changes, and Hong Kong's political relations with its sovereign government, the People's Republic of China (PRC). According to interviews, official statements, and press accounts, many feel that some of these problems are systemic and that they have arisen because the Hong Kong government is forced to operate within the confines of an imperfect political framework inherited from a series of Sino-British compromises. There appears to be agreement across the ideological spectrum, including within both pro-democracy and “pro-Beijing” groups, that the current political system in the territory is flawed and unsustainable. Views differ, however, about how these flaws should be fixed.

² A specific intention of the Hong Kong Policy Act was to permit the U.S. government to treat Hong Kong differently from the way it treats the rest of China in U.S. law. Thus, the United States has an extradition treaty with Hong Kong but not with China; maintains a liberalized export control regime with Hong Kong but a restrictive one with China; and gives Hong Kong permanent most-favored-nation (MFN) trade status – or “normal trade relations” as it is now known – but will not give it to China until China joins the World Trade Organization, or WTO.

³ For the text of the April 25, 2000 report, see:
[http://www.state.gov/www/regions/eap/000401_us-hk_pol_act_rpt.html]

One reason that the current system's problems have become more apparent, some suggest, is that Hong Kong's principal concern during Sino-British negotiations – whether or not to trust Beijing – has changed since the handover. Thus, in the year 2000, Beijing's involvement in Hong Kong is perceived to be minimal; “one country two systems is working,” is a constant refrain. As public fear of Beijing's interference has faded, new problems of governance have arisen for which there is no sovereign power to hold responsible, since Beijing ostensibly is not serving in this direct role (as was London). Absent the buffer of an assertive and active sovereign power, the entire Hong Kong government structure has been put under increasing pressure, with the Hong Kong public increasingly vocal in its reaction to and criticism of unpopular policy decisions and performance problems.

Legislative Elections of 2000. On September 10, 2000, Hong Kong held elections for its 60-seat legislature, the Legislative Council (Legco). These were the second Legco elections since the handover.⁴ In contrast to the first post-handover Legco elections of 1998, when 53% of the electorate voted, only 43.57% of Hong Kong's 3 million registered voters cast ballots in 2000. Martin Lee's Democratic Party remained the largest party in Legco with twelve seats, but it picked up no more seats than it had in the 1998 elections, and its share of the total votes actually fell to 34.7% – down from 42.6% in 1998. This was referred to in later press accounts as a “severe setback” for the Democrats.⁵

On the other hand, the Democratic Alliance for the Betterment of Hong Kong (DAB – often referred to as a “pro-Beijing” party) picked up one more seat (a total of eleven) despite a last-minute scandal involving a key party leader. The DAB share of total votes grew to nearly 30% – 5 percentage points more than its showing in 1998. The pro-business Liberal Party lost two seats, winning only eight, and none in a directly elected slot. One verdict on the elections in Hong Kong was that the low voter turnout reflected public disillusionment with both its limited political role and with the policy decisions of the Hong Kong government. Others pointed out that the turnout was actually a reversion to a “norm” after the high-water mark of the 1998 elections.

The “Accountability” Problem. On the executive side, a primary political problem is consistently described as lack of “accountability” – a function, many suggest, of the hybrid framework for governance established under the Basic Law. The Chief Executive (now Mr. Tung Chee-hwa, serving a five-year term until 2002) at times has been said to be the only “accountable” person in the executive arm of the government. He has an Executive Council to advise him on policy matters as he

⁴ After he arrived in 1992, Hong Kong's last British Governor, Christopher Patten, made electoral changes that greatly broadened the Hong Kong franchise for the 1995 legislative elections. The Chinese government claimed the changes violated Sino-British agreements. In protest, China in 1997 dissolved the legislature elected under the new rules in 1995, and appointed a “provisional legislature” for one year. The first official Hong Kong Legislative Council elected under Chinese sovereignty, then, was elected to a two-year term in 1998 under new and more restrictive electoral arrangements.

⁵ Yeung, Chris, “Back to basics, vow Democrats; slide in support prompts soul searching by leaders...”, *South China Morning Post*, September 12, 2000, p. 1.

carries out the responsibilities of his office, but Council members serve on a part-time basis and are minimally accountable to the electorate.⁶ Of the thirteen current Executive Council members, only three are Hong Kong government officials; the ten current non-official members do not have responsibility for managing government departments, although they do draw a monthly “honorarium” of 60,000 Hong Kong dollars for their services (about \$7,700).

The real work of managing the government’s bureaucracy is carried out by Hong Kong’s civil service, senior members of which head government departments and bureaus. But while Hong Kong’s civil service is widely regarded as highly competent and effective, there are limits to its public accountability as well. Civil servants are not elected by the public, nor are they under a “schedule c” type of appointment, as in the American system. Even at the cabinet level, most civil servants tend to be career track employees with lifetime contracts. They may be dismissed in a case of serious malfeasance, but according to Hong Kong observers, they cannot be fired to satisfy a political need. Thus, Hong Kong’s Chief Executive is seen to have limited leverage over his own government bureaucracy, and it owes no special political allegiance to him.

Critics, then, say that it is primarily the Chief Executive who pays the political price for public dissatisfaction with Hong Kong government policies or performance. Given the nature of Tung’s office and the manner of his selection (by an 800-member Election Committee rather than by direct public franchise), the Hong Kong public has little recourse to register disapproval, and the Chief Executive has limited options with which to handle public dissatisfaction. As one observer put it, “what is [Tung] to do to satisfy the people? Condemn himself daily? Or resign?”⁷ By all accounts, the perceived problems in government accountability worsened in 2000, and translated into lower popularity ratings for the government in general and for the Chief Executive personally.

Among the reasons cited for growing public dissatisfaction throughout the year were: lower public confidence in the ability of Hong Kong’s economy to maintain its competitive edge against the rising economic power of Chinese cities such as Shanghai and Shenzhen; deepening concerns about the strength of Hong Kong’s “social safety net” of government programs; and a growing perception that Hong Kong has an “elite-driven” government which pays little attention to the needs and desires of average citizens. In addition, a series of scandals involving the Hong Kong Housing Authority, including revelations about shoddy construction in public housing dating back to 1999, appear to have been important catalysts for growing public dissatisfaction early in the year. Although the Chairwoman of the Hong Kong Housing Authority, Rosanna Wong, ultimately resigned as a result of the Housing Authority’s difficulties, the scandals prompted a vigorous debate over what should

⁶ The Executive Council is provided for in Articles 54-56 of the Basic Law. Its make-up and membership are at the sole discretion of the Chief Executive.

⁷ From a conversation with a scholar in Hong Kong, December 2000.

happen to the senior Hong Kong government officials in charge in such cases.⁸ Both the Chief Executive, C.H. Tung and the Chief Secretary, Anson Chan, stressed that the senior officials involved had done nothing wrong, but had uncovered and publicized the problems and had attempted to launch reforms. In return, they had been “put on public trial in a manner that has potentially damaging effects on the governance of the SAR.”⁹

One of the proposals being discussed to address the government’s “accountability” problem is the establishment of a ministerial system that would make senior civil servants political appointees who would be more accountable to the Chief Executive. For his part, Mr. Tung, in his annual policy address of October 11, 2000, acknowledged the problem of government accountability as one of three major areas of public concern, and he appeared to be contemplating the establishment of a “contract system” for senior civil servants rather than the current system of career appointments.¹⁰ His most recent senior-level appointment reinforces this notion; on February 15, 2001, Mr. Tung announced that he was choosing Mr. Antony Leung, a businessman and non-official Executive Council member, as Hong Kong’s new Financial Secretary.¹¹

But while many portray the Hong Kong government’s “accountability” problems as systemic byproducts of its hybrid governmental structure, others see them more as a deliberate strategy of Chinese leaders who are frustrated with their inability to exert direct control over Hong Kong. According to these critics, Beijing’s wishes for Hong Kong are that it remain a firmly executive-led government whose decisions support China’s national interests and are carried out by a quiet and compliant civil service taking little independent initiative. Chinese leaders are said to be particularly upset by more independent-minded civil servants who have supported initiatives in Hong Kong that Beijing strongly opposes. Thus, this group sees Beijing maneuvering behind the scenes – putting pressure on Hong Kong government officials, promising financial incentives or retribution to Hong Kong businesses, and intimidating critics by harsh public pronouncements. According to these critics, making Hong Kong’s traditionally apolitical civil service more “accountable” to outside pressure serves to undermine its traditional political neutrality and integrity.

Political Parties and Legco/Executive Relations. A related problem of governance concerns Hong Kong’s legislature, the Legislative Council, particularly its relationship to the Executive arm of the Hong Kong government. Constituted

⁸ Ms. Wong resigned as Chairwoman of the Housing Authority on June 24, 2000; the Director of Housing, Tony Miller, remained in his post. An article in *The South China Morning Post* of June 29, 2000, quoted him as saying, “I have no intention of resigning on the basis of political factors or other pressure. As a non-political civil servant, one can resign only on a matter of principle or belief.”

⁹ *South China Morning Post*, June 29, 2000.

¹⁰ The address can be found at: <http://www.info.gov.hk/gia/general/200010/11/1011140.htm>

¹¹ Mr. Leung will replace the current Financial Secretary, Donald Tsang, whom Mr. Tung named as the successor to Chief Secretary Anson Chan when she leaves that post and retires at the end of April 2001. Both Mr. Tsang and Mrs. Chan are career civil servants.

largely by election, Legco does not have a comparable “accountability” problem to the Executive; legislators have constituencies to which they are accountable, and they must stand for reelection according to a fixed timetable.¹²

But there are other systemic problems of governance involving Legco. For one, it is a weak body with limited jurisdiction. Legco can impeach the Chief Executive and can vote no on legislation, but Legco members cannot introduce legislation relating to government policies without the written consent of the Chief Executive.¹³ Chief Executive Tung is described as often excluding Legco from his policy calculus, seeming to view Legco as a competitor or even an adversary rather than as a partner in governance. Others cite an equally important problem to be that Legco is by and large the only part of the Hong Kong government in which political parties are represented (although some parties are represented in the Executive Council). As a result, Hong Kong’s political parties have little voice in the executive arm or government bureaucracies, and the executive arm has no natural ally in the legislature. There is “no oil smoothing the machinery of government,” in the words of one Hong Kong government official.¹⁴ Not surprisingly, members of Hong Kong’s political parties – including parties thought to be supportive of Beijing – suggested that political parties must be “let into the executive side” of the government for a smoother working relationship between the branches.

Legco is also in transition because the issues important to Hong Kong are changing. Prior to and just after the handover, democratic-minded parties in Hong Kong were able to capitalize on public fears about China to support rapid democratization. In that environment, pro-democracy parties, such as Martin Lee’s Hong Kong Democratic Party, received broad electoral support. But in recent years, as fears about China have faded in Hong Kong, political parties that continue to emphasize pro-democracy and anti-China platforms are seen to have lost political ground to others focusing on issues that affect people’s daily lives, such as education, social welfare, and a stronger and more equitable economy. On these issues, the Democratic Alliance for the Betterment of Hong Kong (DAB) – a party often identified with pro-Beijing sentiments – is judged to have read the public mood more successfully and to have gained support, while pro-democratic parties appear to have lost support.

Ironically, the growing importance of these social welfare issues may have contributed to a marginal increase in Legco’s independence as a legislative body. In summer of 2000, for instance, during the scandal involving the Hong Kong Housing Authority, the Hong Kong Democratic Party proposed an unprecedented “no-confidence” vote in Legco on officials in the Housing Authority. The motion passed easily, supported even by the supposedly pro-Beijing DAB – a move that was said to

¹² Give Basic Law timetable.

¹³ There is currently an ongoing debate in Hong Kong about interpreting Article 74 of the Basic Law – which states, among other things, “The written consent of the Chief Executive shall be required before bills relating to government policies are introduced.”

¹⁴ From an interview with an official from Hong Kong’s Constitutional Affairs Office.

have surprised the Chief Executive and others in the Hong Kong government.¹⁵ Some suggested that as issues of public policy become more predominant in Hong Kong, Legco may become what one observer called “the conscience of Hong Kong,” acting as a greater advocate for its perceived constituencies.

Pace of Democratization. Debate over the pace of Hong Kong’s democratization is continuing, although not at the same intensity as prior to and immediately after the handover. The Basic Law, which stipulates that universal suffrage is the ultimate goal for selection of both Legco and the Chief Executive, offers a blueprint for democratization up to 2007, but not beyond.

For Choosing the Legislature. Legco already has begun the transition from a wholly appointed body (as it was during most of British rule) to an elected body. In keeping with the timetable specified in the Basic Law, the 60-member Legco elected in 2000 is comprised of 24 members elected by universal suffrage, 30 elected by “functional constituencies” – select peer groups from the community, such as the professions, commerce, and labor – and 6 by a special 800-member Election Committee. (The Election Committee itself, which also elects the Chief Executive, is comprised of 800 people elected in separate “sub-sector” elections – including such interests as the hotel sector, the finance sector, the agricultural sector, etc.) In 2004, the Election Committee will cease playing its role in legislative elections, and the ratios of legislators in Legco will change to 30 members elected by universal suffrage and 30 elected by functional constituencies. The Basic Law does not specify how the Legco election is to be conducted after the Third Term of 2004, but instead states:

With regard to the method for forming the Legislative Council...after 2007, if there is a need to amend the provisions of this Annex, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People’s Congress for the record.¹⁶

Since the Basic Law does not specify anything further beyond the 2004 election for Legco, it is unclear what decisions the Hong Kong government will make for the legislature’s election in 2008 and 2012. Pro-democracy advocates in Hong Kong generally argue for a faster pace of democratization – as soon as 2008 – and are fearful that Hong Kong’s current government, backed strongly by Beijing, is opting for as slow a pace as possible. Some, however, have pointed out that dismantling the functional constituencies – a necessary step before universal suffrage – will be problematic, as this move is likely to be strenuously opposed by those professions that benefit from this unique voting arrangement. These observers believe that a slower pace toward universal suffrage will be unavoidable in order to accommodate these diverse interests.

For Choosing the Chief Executive. While the position of Chief Executive is also ultimately to be subject to universal suffrage (article 45 of the Basic Law),

¹⁵ The scandal led to the resignation, prior to the Legco vote, of Rosanna Wong, Chairman of the Housing Authority who had been appointed to the post by Chief Executive Tung.

¹⁶ The Basic Law, Annex II (III). p. 90.

many observers in Hong Kong thought this more problematic than direct elections for Legco, and thus highly unlikely for the foreseeable future. The Basic Law specifies that in 2002 and 2007, Hong Kong's Chief Executive is to be chosen by a special 800-member "Election Committee," thus providing the appearance of democratic choice for this top position.¹⁷ Such an Election Committee chose the current Chief Executive, Tung Chee-hwa, in 1997. However, it is a widely accepted view in Hong Kong and elsewhere that the Election Committee chose Mr. Tung because he was the candidate that Beijing demonstrably preferred, and that when Mr. Tung speaks, it is really Beijing who is speaking. The Basic Law limits a Chief Executive to no more than two consecutive five-year terms; thus, Tung is eligible to be chosen again as Chief Executive in 2002. On the method for selecting the Chief Executive after 2007, the Basic Law states:

If there is a need to amend the method for selecting the Chief Executives for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for approval.¹⁸

Hong Kong's Relationship with the PRC. Less visible political debates in Hong Kong involve issues concerning Hong Kong's unique relationship with its sovereign power in Beijing. There appears to be, for instance, a subtle change underway in Hong Kong's perception of how close its contacts with the PRC should be. Early on in the transition process, while Sino-British negotiations were continuing, the broad view in Hong Kong was that the territory's interests would best be served by insulating it as much as possible from entanglement with mainland China. There was broad support then for assuring the integrity of the Hong Kong/China border, protecting Hong Kong from a potentially massive migration of labor from the PRC, maintaining Hong Kong's separate currency and financial systems, and other similar protections consistent with a "high degree of autonomy."

Now, however, many in Hong Kong appear to be finding somewhat stifling the disciplines imposed in the name of "one country-two systems" – what one observer called the "tight corset of non-conjugal relations" applied by Sino-British agreements. A broadening view in Hong Kong is that these special protections now appear increasingly artificial, that they are actually hampering trade and other normal contacts. Many feel that Hong Kong may be losing business opportunities on the mainland to other, "uncorseted" global competitors. Reflecting this, official exchanges and contacts between Hong Kong and the PRC have increased in the past

¹⁷ The Basic Law provided that in 1997, the first term, the Chief Executive would be chosen by a special 400-member "Selection Committee" which was chosen by a special handover "Preparatory Committee," which itself was appointed by Beijing. Annex I of the Basic Law provides for the 800-member Election Committee for choosing the Chief Executive in the 2nd (2002) and 3rd (2007) terms, and states that the method for choosing this Election Committee shall be determined by Hong Kong itself in an electoral law. This same 800-member Election Committee also chooses the limited Legco seats subject to Election Committee selection.

¹⁸ The Basic Law, Annex I, 7, p. 87.

three years – to a total of 2,815 in 2000, according to the Hong Kong Economic and Trade Office in Washington D.C.

Taiwan, Falun Gong. Some of Hong Kong’s uneasiest public moments in its relations with China arise when the former’s notions of personal liberty bump up against Beijing’s notions of national state security. These moments tend to involve Taiwan, as in the case when a Chinese official warned Hong Kong businesses not to do business with pro-independence partners in Taiwan. Hong Kong’s acting Chief Executive at the time strongly defended Hong Kong’s ability to trade freely, saying “In our view, business decisions are best left to businessmen and should not invite the interference of any official of whatever status.”¹⁹ Another notable policy difference involves the Falun Gong spiritual group, which Beijing has banned as an illegal, “evil cult” posing the severest of security threats to the nation. In China, Public Security Bureau officials routinely round up Falun Gong followers and imprison them. In Hong Kong, however, Falun Gong is a legally registered group whose members can practice freely, exercise and meditate publicly, and petition the government without retribution. To date, the Hong Kong government has resisted pressure from Beijing to adopt different policies on both trade with Taiwan and on the treatment of Falun Gong. Still pressure continues, both from Beijing and from within Hong Kong, to adhere more to Beijing’s line on such issues.²⁰

Anti-Subversion Laws. Related to Hong Kong’s continuing policy differences with China about personal liberties are ongoing concerns about the potential enactment of “anti-subversion” laws in Hong Kong. Such laws in China are broadly interpreted to include a wide range of activities often considered benign and non-threatening in the United States, such as peaceful public demonstrations and public criticism of government decisions. Although the Hong Kong government has not enacted any anti-subversion laws, Article 23 of the Basic Law directs Hong Kong to enact its own laws “to prohibit” subversive activities against the Chinese government. Debate is continuing in Hong Kong over the prospects for such laws and how they are likely to be enforced.

Government Opinion Polls. Since early in 2000, many feel, Beijing has begun to grow increasingly anxious about public criticism of the Hong Kong government and the Chief Executive. According to one observer, Beijing has come to believe that Hong Kong civil servants have sometimes openly undermined Tung’s policies. Consequently, Chinese leaders early in 2000 were thought to have taken steps to try to bolster Tung’s popularity ratings and rally the government apparatus to support him. These perceptions were bolstered by: allegations in widespread Hong Kong news reports that an aide to Hong Kong’s Chief Executive had pressured a university political scientist to stop continued polling of public opinion about Mr. Tung and the Hong Kong government; a meeting Chinese leaders held with Hong

¹⁹ *South China Morning Post*, June 2, 2000, p. 1.

²⁰ In January 2001, for instance, Ms. Regina Ip, Hong Kong’s Secretary for Security, warned local Falun Gong members about their activities. In early February 2001, Ms. Nellie Fong, a member of Chief Executive Tung’s Executive Council, was quoted in a television interview as appearing to suggest that Falun Gong activities in Hong Kong would come under anti-subversion laws that may be enacted under Article 23 of the Basic Law.

Kong business tycoons which was portrayed in the press as an effort to pressure the tycoons to support Mr. Tung for a second term; and Chinese Vice-premier Qian Qichen's reported statement to Hong Kong's Chief Secretary, Anson Chan, that he "encouraged" her to better support Mr. Tung, a statement described in some Hong Kong press accounts as a "scolding" for not giving more vocal support to Mr. Tung.

According to one scholar, "China finds it painful to have to support Tung openly, risking criticism of interference," because of Beijing's determination to demonstrate to the world – and especially to Taiwan – that China can be trusted to keep its international agreements.²¹ Negative opinion polls about Mr. Tung are thought to be particularly disturbing to Beijing because of the prevailing public perception that China strongly supported his selection. Any inadequacies in Mr. Tung's administration therefore reflect poorly on Beijing – and yet, Chinese leaders are constrained by international agreement from taking any direct action. Even more troubling to Beijing is the credibility problem it faces if dissatisfaction with Tung's policies in Hong Kong remains high. If an Election Committee were to re-elect Tung in 2002 despite widespread and measurable public discontent with his policies, Beijing would find it difficult to disassociate itself from responsibility for Tung's selection.

Freedom of the Press

The broad general view in Hong Kong remains that the press in Hong Kong is still raucous and boisterously free, but that there also is some evidence of growing political pressure being exerted on the press to curb negative reporting. According to individual accounts, this pressure appears related to the Hong Kong government's political problems. Beijing's concerns about declining public support for the Chief Executive, some reporters suggest, has translated into greater pressure on Hong Kong's media to be less critical of the Chief Executive and of Hong Kong government decisions.

Beijing's criticism of the Hong Kong press – through intimidating comments by Chinese leaders and critical articles in Chinese official media – is only the most visible source of this pressure.²² The less visible sources of pressure are Hong Kong's newspaper owners themselves, most of whom have significant business and economic interests with the mainland which they want to protect. In addition, some reporters felt that in cases of controversy over media reporting, there has been no strong defense of the press or of press freedom by Hong Kong's Chief Executive²³ or by

²¹ Interview with a Hong Kong scholar, December 2000.

²² Observers pointed out in particular the very public tirade of China's Party Secretary, Jiang Zemin, against Hong Kong's media on October 27, 2000.

²³ On April 17, 2000, Mr. Tung was quoted in a RTHK Radio 3 interview as making the following statement about press freedom: "In reality, Hong Kong's press freedom, freedom of speech, freedom of publication are protected by the Basic Law....As chief executive, I shall continue to implement the Basic Law, which protects the freedom of the press."

other senior Hong Kong officials, with the exception of the Chief Secretary, Anson Chan.²⁴

With one exception, no one interviewed recalled an instance where an official from either Beijing or Hong Kong had interfered directly in a press report or had put direct pressure on a reporter to kill or change a story.²⁵ Instead, according to some, press freedom in Hong Kong is being “attacked at the fringes,”²⁶ and succumbs at times to self-censorship. While straight news reporting of events in the mainland is still unfettered, these critics say, there now is less editorial comment in newspapers or periodicals, less analysis of the news, and less effort to identify trends and determine what they mean. Moreover, according to these reporters, some issue areas in Hong Kong are widely seen to be off-limits to the media entirely, including stories reporting on the activities in Hong Kong of: the People’s Liberation Army (PLA) garrison; the Chinese Liaison Office (CLO); the Chinese Communist Party (CCP); and China’s Ministry of Foreign Affairs (MOFA). Coverage of issues involving Taiwan is also considered to be extremely sensitive, and the one area where Beijing is most likely to “overstep” by attempting to intervene directly.²⁷

But while some reporters sense pressure at the margins on Hong Kong’s media, others see no particular change in press freedoms. The primary problem for the press in Hong Kong, they say, is lack of access to information – the same problem Hong Kong’s press had under British rule as well. Some reporters speculate that critical statements from Chinese leaders, in particular Party Secretary Jiang’s “explosive tirade” of October 27, 2000, actually are a sign of Beijing’s frustration at its lack of control over the content of Hong Kong reporting. Questioned about the controversial case of Willy Lam, the *South China Morning Post* reporter who had written an article alleging undue Beijing pressure on Hong Kong business tycoons, and who had resigned rather than agree to having his China-reporting duties at the paper changed, some reporters pointed out that even though Lam’s article included unflattering implications about the controlling shareholder of Lam’s newspaper, Robert Kuok, the paper still had published the column.

²⁴ Anson Chan, a long-time Hong Kong civil servant, served as Chief Secretary, the number two position in the Hong Kong government, under Hong Kong’s last British Governor, Christopher Patten, and continued in that position under Hong Kong’s current Chief Executive, C.H. Tung. On January 12, 2001, Mrs. Chan announced she would be stepping down and retiring from government service by the end of April 2001, over a year before her current term of office is up.

²⁵ The exception was the case of Willy Lam, a long-time *South China Morning Post* reporter, editor, and columnist who had written a column that appeared June 27, 2000 alleging Chinese leaders were pressuring Hong Kong tycoons to support C.H. Tung. Claiming he was being re-assigned to other duties as a result of his column, Mr. Lam resigned from the paper late in 2000.

²⁶ From an interview with two western journalists working for an international newspaper based in Hong Kong, November 2000.

²⁷ From interviews with western journalists, supported by an interview with a U.S. diplomat in Hong Kong, November-December 2000.

Other Long-Term Trends

Apart from political trends and issues involving press freedom, observers note a number of other continuing and competing trends as Hong Kong proceeds in its transition. Several saw the most significant developments in Hong Kong to be cultural rather than political. According to these observers, Hong Kong is becoming a distinctly more Cantonese and less a Western city – a not unexpected development given the change in sovereignty. Some suggested that even now, less than four years after the handover, the Chief Executive’s personal style of governance resembles more the autocratic and patriarchal style of mainland Chinese communist leaders than it does those of developed democracies.

Moreover, this cultural trend appears inexorable, with Hong Kong finding its identity tied more closely to China as each year passes. As China continues to improve its infrastructure, for example – including in the transportation and housing sectors – some Hong Kong residents may even find it more economical and attractive to live in China and commute to Hong Kong, further blurring the cultural and physical boundaries between the two.

Related to this trend is a spirited debate over what kind of future Hong Kong wants for itself – what amounts to an “identity crisis.” This debate over identity has been underway since shortly after the handover, and it appears to have multiple roots. In part, it is related to the special identity Hong Kong acquired during the early and mid-1970s – as the “gateway to China” through which Western capital and business know-how could gain special advantage in the mysterious and potentially vast China market. Hong Kong’s current identity crisis also appears based on its assessment that Beijing’s willingness to grant Hong Kong “a high degree of autonomy” has been based largely on the many benefits China’s own economy has derived from Hong Kong’s exceptional economic performance and superior economic management – what one observer has referred to as “life and death for Hong Kong.”²⁸ Thus, Hong Kong’s ability to continue to generate these purely economic benefits for China has crucial political implications for Hong Kong’s future. Some parts of the Hong Kong community stress that Hong Kong can only remain competitive by strengthening its current standing as an international financial and services center. Others believe Hong Kong should focus on gaining prominence as a high-technology manufacturing center.

Still another trend is the growing fear of some that Hong Kong’s wealthy elite are growing wealthier, more politically powerful, and less accountable to government. This group has enviable access to top Chinese leaders, and stands to benefit enormously from “mainland-style” politics which emphasize personal connection over institutional authority. Some believe that this group shares Beijing’s interest in forestalling the expansion of political pluralism in Hong Kong and assuring control by a small Hong Kong elite, of which they would be the principal members. Some also fear that in light of rampant official corruption in China, this group’s great wealth could be used to undermine the long tradition of rule of law in Hong Kong and affect

²⁸ Overholt, William, “Hong Kong politics: the second transition begins,” in *Nomura Asia*, January 19, 2001, p. 2.

Hong Kong government decisions, while at the same time rendering the group's members immune from official sanction.

Relatedly, some see signs that over the longer term, Hong Kong's government may be less open to criticism, less responsive to public demands, and less resistant to the demands of those with powerful personal connections.²⁹ There has been particular speculation about whether the departure of Chief Secretary Anson Chan in late April 2001 signals a "sea-change" in Hong Kong along these lines. Mrs. Chan has long been seen to be the government's strongest advocate and defender of Hong Kong's autonomy. Among other positions, she supported the rights of Falun Gong practitioners in Hong Kong to continue their activities, despite the group's having been banned as an "evil cult" in China. She has also forcefully advocated delaying indefinitely the passage of anti-subversion legislation favored by Beijing, and strongly defended the rights of the Hong Kong business community to do business with pro-independence partners in Taiwan. Some have suggested that Beijing's opposition to Mrs. Chan's principled outspokenness was the reason for her decision on January 12, 2001, to step down early.

Finally, despite the concerns sometimes raised about Beijing's encroachment and Hong Kong's problems of governance, there appears to be a broad perception in Hong Kong that freedom of expression and political activism are more apparent now than ever before. Moreover, many see this trend also as inexorable, and likely to put even greater pressure on the government. Public dissatisfaction with current governmental decisions, for instance, is widely known and reported, and is capable of forcing the government to action. Public debate over issues remains diverse and dynamic. And public sentiment about the government will continue to be measured and made known even as the Election Committee convenes in 2002 for its decision over the next Chief Executive.

Assessment and Implications

China appears to remain keenly interested in the success of Hong Kong and of the "one country-two systems" formula. In addition, Beijing assiduously appears to be trying to live up to its promises not to be involved in the daily running of Hong Kong. Beijing is "practically invisible," in the words of one American official in Hong Kong, and so the possibilities for Chinese interference in Hong Kong have faded perceptibly as issues that generate public concern. Nevertheless, Beijing seems to have become slightly less invisible on the Hong Kong scene since early in 2000. Chinese leaders apparently feel themselves to be under increasing pressure to react to, and even to defend, Hong Kong government decisions in an environment of increasing criticism.

Since the handover, issues involving Hong Kong largely have ceased to command much attention in the United States. Nevertheless, Hong Kong continues to be confronted with significant and unique challenges that put extra pressure on government decision makers. Officials in Hong Kong must deal with a growing range

²⁹ See, for example, Gilley, Bruce, "Beijing Tightens its Grip," in *Far Eastern Economic Review*, January 25, 2001.

of issues – social welfare programs, housing, industrial competitiveness, education – upon which there is an increasingly diverse public debate. They must operate in a governmental setting in which normal dialogue with their own capital, Beijing, is not only greatly constrained by international agreement, but subject to continual international scrutiny. Ultimately, the verdict on Hong Kong’s ability to be successful and autonomous will have implications for the international community’s significant investments and economic interests in Hong Kong; for the credibility of China’s international commitments; and for the future of Taiwan’s relationship with China. Observers from within and outside Hong Kong continue to watch for signs of unwarranted Chinese intervention – what one Hong Kong government observer referred to as “Beijing’s fingerprints” – in Hong Kong’s affairs.

Although Hong Kong’s reversion to Chinese sovereignty is progressing without major incident, the Bush Administration and Members of Congress will be faced with several decision points as the transition continues to unfold. U.S. policymakers will have to assess the impact of the March 2001 departure of Chief Secretary Anson Chan, regarded as the principal government defender of Hong Kong’s autonomy and a major link of continuity with Hong Kong’s past. They will have to assess whether, in 2002, the special Election Committee actually appears to be reflecting measurable public preference in its voting for Hong Kong’s next Chief Executive, and thus whether that choice appears either to validate or subvert the notion of Hong Kong autonomy. Ultimately, assessing Hong Kong’s future decisions solely on the basis of an “autonomy” litmus test is likely to prove increasingly problematic for U.S. policymakers.

Appendix I: Chronology of Significant Developments in Hong Kong

- 01/12/01** — Chief Secretary Anson Chan announced that, for personal reasons, she would be stepping down at the end of March 2000 instead of serving out her term until June 2002.
- 09/26/00** — China's Vice-Premier, Qian Qichen, was reported to have told Hong Kong's Chief Secretary Anson Chan Fang On-sang that she and the civil service should give "better support" to Chief Executive Tung Chee-Hwa. Chief Secretary Chan said that press reports of her meeting with the Vice-Premier were "colourful (sic) and imaginative."
- 09/10/00** — Voter turnout for the second Legislative Council elections since the handover declines 43 per cent, compared with two years ago. About 1.33 million people vote. The Democratic Party saw its vote slip from 42.6 percent in 1998 to 34.7 percent in the 2000 Legislative Council elections. In comparison, the Democratic Alliance for the Betterment of Hong Kong increased its share to 29.68 per cent from 25.22 per cent two years earlier.
- 07/07/00** — *The South China Morning Post* reported that Robert Chung Ting-yiu, a professor at Hong Kong University, had alleged that one of Chief Executive Tung's advisers had warned him several times to stop conducting surveys on Tung's popularity or the government's credibility.
- 06/01/00** — Responding to remarks of a Chinese official warning Hong Kong businesses not to do business with pro-independence Taiwan concerns, Mrs. Anson Chan, Hong Kong's acting Chief Executive at the time, was quoted in Hong Kong's newspapers as saying: "...trade and business matters should be kept strictly separate and apart from political considerations....In our view, business decisions are best left to businessmen and should not invite the interference of any official of whatever status."
- 05/31/00** — An official of China's Hong Kong liaison office, He Zhiming, warned Hong Kong businessmen not to do business with Taiwanese partners who are pro-independence for Taiwan.
- 04/12/00** --- Wang Fengchao, Deputy Director of China's liaison office in Hong Kong warned the Hong Kong media not to report views that favored Taiwan independence. "It has nothing to do with freedom of press," he was quoted as saying at a forum sponsored by the Hong Kong Association of Journalists.

- 05/21/99** — China announced that it would suspend, until further notice, U.S. Navy port visits to Hong Kong.
- 02/26/99** — The Court of Final Appeal issued a clarification of its January 29, 1999 decision, clarifying that China’s National People’s Congress had the authority “to do any act” in accordance with the Basic law.
- 01/29/99** — Hong Kong’s Court of Final Appeal rendered a controversial verdict giving right of abode in Hong Kong to mainland children with a Hong Kong parent.
- 05/24/98** — Hong Kong held its first post-transition legislative elections. Democratic candidates were elected to one-third of the 60 seats in a record voter turnout.
- 10/20/97** — From October 20-28, 1997, as a consequence of the growing Asian financial crisis, the Hong Kong stock index lost about a third of its value, and severe pressure was placed on the Hong Kong dollar, which is pegged to the U.S. dollar at 7.8/1.
- 09/28/97** — Hong Kong’s provisional legislature adopted electoral reforms proposed in the post-handover government, after first adopting a number of amendments, some of which increased the electorate base of the functional constituencies.
- 09/08/97** — Hong Kong’s new Chief Executive, C.H. Tung, visited the United States.
- 07/01/97** — Hong Kong reverted to Chinese sovereignty after more than a century of British rule. China dissolved Legco, Hong Kong’s legislature elected in 1995,
- 02/19/97** — Deng Xiaoping, China’s paramount leader and principal architect of the “one country, two systems” approach, died at age 92.
- 12/11/96** — C.H. Tung, a wealthy Hong Kong shipping magnate, was selected to be Hong Kong’s first Chief Executive beginning July 1997. Mr. Tung was widely regarded as Beijing’s choice for the position.
- 09/17/95** — Hong Kong held Legco elections which for the first time returned a wholly elected body: 20 members from geographical (direct) constituencies; 30 from functional constituencies; and 10 from an Election Committee constituency — for a total of 60 members.
- 02/24/94** — China first announced it would dissolve Legco and Hong Kong’s Municipal Councils and District Boards in 1997.
- 10/07/92** — Christopher Patten, the 28th and last British Governor of Hong Kong, unveiled his plan for democracy – later known as the “Patten reforms” – in his inaugural annual policy address