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Committee for the Basic Law of the
Hong Kong Special Administrative
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FINAL REPORT ON
POLICIES REGARDING SHIPPING
AND CIVIL AVIATION

(passed by the Executive Committee on 8 August 1987)

Special Group on
Finance, Business, and Economy

I Policy regarding Shipping

The Basic Law should have provisions to cover the following points:

- 1 Free access to the port -- All ships may enjoy access to the port unless restricted by HKSAR laws or, in areas of foreign affairs or defence, by the Central Government.
- 2 There should be a general reference in the Basic Law to ensure that there will be no discrimination between privately-owned firms and organisations owned by the Central Government i.e. PRC organisations in public ownership engaging in commercial activities in the HKSAR cannot claim privileges as state organisations.
- 3 Ownership -- In the case of corporate-owned ships, the right to register on the Hong Kong Register should be limited to companies incorporated in the HKSAR. In the case of individual owners, persons with the right of abode in the HKSAR should have the right to register on the Hong Kong Register. In all cases, the management and control of the ship would have to be exercised from the HKSAR.
- 4 All qualified ship owners shall be free to register their ships on and deregister from the Hong Kong Register.

It is suggested that since Hong Kong-registered ships are Chinese ships, arrangements should be made under Chinese law to guarantee free access of these ships to all ports in the PRC, and the freedom to trade among these ports.
- 5 Taxation on ships registered on the Hong Kong Register shall be decided by the HKSAR Government.

(The Central Government shall not impose any other taxation on Hong Kong-registered ships.)

(It is suggested that this point may be included in a general provision on taxation in the Basic Law, and need not necessarily be written into the section on shipping.)
- 6 The nationality and flag of ships on the Hong Kong Register -- The arrangements should follow the proposals contained in the paper "Hong Kong Register of Shipping -- General

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Principles to be Adopted for the Modified Register" prepared by the Economic Services Branch of the Government Secretariat. (Appendix I section 3), i.e. in order to indicate both the nationality of the ship and the fact that it is on the Hong Kong Register, a Hong Kong-registered ship shall fly two flags; the upper flag would be the flag of the PRC and the lower flag would be the HKSAR regional flag.

- 7 Jurisdiction over Hong Kong-registered ships and their personnel when no foreign state is involved -- Although the nationality of the ships on the Hong Kong Shipping Register will be Chinese, these ships are registered in the HKSAR under the dual flag arrangement. It follows that the HKSAR should have autonomy in shipping administration and legislation i.e. the HKSAR Government should have jurisdiction over the HKSAR ships and their personnel but it is accepted that the PRC is entitled to requisition powers over Hong Kong-registered ships. Requisition powers are understood to mean the right of the sovereign state to take over control of ships in the event of war.

- 8 International protection for the ships -- In the international arena i.e. in the event of actions of other countries vis-a-vis Hong Kong-registered ships, protection of and responsibility for the ships will rest with the PRC.

- 9 The position of the HKSAR in international organisations and international maritime agreements -- As in the Joint Declaration, it should be stipulated in the Basic Law that, subject to the principle that foreign affairs are the responsibility of the Central People's Government, the HKSAR may on its own maintain and develop relations and conclude and implement agreements with relevant international organisations. For example, the HKSAR may retain its status in the IMO.

- 10 There should be no restrictions on the nationality of officers and seamen manning Hong Kong-registered ships. The HKSAR Government should however encourage the employment of HKSAR seamen on Hong Kong-registered ships and should encourage HKSAR seamen to serve on Hong Kong-registered ships.

- * Appended is the "Hong Kong Register of Shipping -- General Principles to be Adopted for the Modified Register" prepared by the Economic Services Branch of the Hong Kong Government Secretariat. Members are aware that the principles were discussed and agreed upon by the British and Chinese governments and acknowledge that these principles are to be the basis on which the Register of the HKSAR is to be established.

香港基本法
新法

II Policy regarding Civil Aviation

The Basic Law should have provisions to cover the following points:

- 1 Nationality and registration marks of aircraft registered in the HKSAR: It is suggested that while the nationality of these aircraft will be Chinese, the HKSAR Government should have jurisdiction over these aircraft, their crew and passengers. International protection for the aircraft - In the international aspect i.e. in the event of actions of other countries vis-a-vis Hong Kong-registered aircraft, protection of and responsibility for the aircraft will rest with the PRC. Registration marks should follow the current practice (i.e. "VR" registration) while the HKSAR emblem shall be shown on the tail of each Hong Kong-registered aircraft.

- 2 The Joint Declaration stipulates that "airlines incorporated and having their principal place of business in Hong Kong may continue to operate". This will mean that any interested party of any nationality irrespective of any rights of abode in the HKSAR will be able to incorporate an airline in Hong Kong and seek an air operators' certificate before 1997 and may continue to operate after 1997. But whether an airline will be able to be designated for scheduled services will depend on the terms of the Air Service Agreements concluded by the HKSAR with other countries. In other words, while an HKSAR airline could be in existence and in possession of all necessary HKSAR licences, its rights to fly to other countries on a scheduled basis will depend on whether or not other countries accept the lack of nationality criteria for ownership and control presently applied.

- 3 It is stipulated in the Joint Declaration that the HKSAR Government, "acting under the specific authorisations from the Central People's Government", may negotiate, conclude, renew, and amend Air Service Agreements or provisional arrangements for scheduled air services to, from or through the HKSAR which do not operate to, from, or through the mainland of China.

It should be made clear in the Basic Law that this specific authorisation should mean in the field of aviation and within the parameters laid down in the Joint Declaration that the HKSAR Government shall have autonomy to negotiate and conclude such agreements.

4 The designation of airlines under the Air Service Agreements or equivalent agreements mentioned in point 3 should be left to the HKSAR Government.

The HKSAR Government should have autonomy in deciding on its designation policy (such as the "one airline per route" policy announced by the Financial Secretary in the Legislative Council on 20 November 1985 or any change thereto or amendment thereof, or any contrary policy which may be adopted in future) for scheduled and non-scheduled air services operating to, from, or through Hong Kong without touching on points in the mainland of China.

5 The system of civil aviation management, such as the Air Transport Licensing Authority (ATLA) regulations applicable to licensing, or the adoption of technical, operational, training, certification, etc. standards should be left to the administrative discretion of the HKSAR Government and need not be specified in the Basic Law.

6 It is stated in the Joint Declaration that "The Central People's Government shall, in consultation with the HKSAR Government, make arrangements providing for air services between the HKSAR and other parts of the People's Republic of China for airlines incorporated and having their principal place of business in the HKSAR and other airlines of the People's Republic of China." This consultation should include an assessment of an appropriate balance of opportunities for access for airlines of the PRC to the HKSAR, and airlines of the HKSAR to the PRC.

The designation issue does not arise here because the situation will be considered a "domestic" or "regional" one and be subject to special arrangements between the Central Government and the HKSAR Government.

* If there is any discrepancy between the Chinese and the English versions, the Chinese version shall prevail.

航運及民航政策

最後報告

(1987年8月8日經執行委員會通過)

中華人民共和國香港特別行政區基本法諮詢委員會
金融財務經濟專責小組

I. 航運政策

- I. 基本法應有條文以包括下列各點：
1. 自由使用港口——除受香港法律禁止，或因國防、外交理由受中央政府禁止外，船舶可自由使用港口。
 2. 基本法應有一般性條文，保證私營商號與中央政府經營的機構不會受到不同的待遇，即在香港的中國公有商業機構不得以國家機構身分要求享有特權。
 3. 所有權——如屬公司擁有的船舶，則祇有在香港特別行政區註冊的公司才有權在香港船舶登記處登記。如屬個別人士擁有的船舶，則享有在港居留權的船東應有權在香港船舶登記處登記，在上述任何一種情況下，船隻的管理及控制均須由香港方面執行。
 4. 所有合資格船東可自由把其船隻加入或退出香港的船舶登記。
有建議謂在香港登記的船舶既屬中國船舶，中國法律應保證其可自由使用中國各港口，並可自由經營來往各港口的貿易。
 5. 在港登記的船舶的課稅應由香港特別行政區政府決定。
(中央政府不再向在港登記的船舶徵收其他稅項。)
(有建議謂這點可列入基本法有關稅收的一般條文中，而不必在航運一節內訂明。)
 6. 在港登記船舶的國籍及船旗——採納布政司署經濟科《香港船舶登記處：進行修改時所採取的一般原則》所提的建議(附件一第三節)。為表明船舶的國籍及在港登記的身份，在港登記的船舶須懸掛兩面旗幟。懸掛在上面的旗幟是中華人民共和國國旗，而在下面的則為香港區旗。
 7. 在不牽涉外國的情況下，在港登記的船隻及其員工的管轄權——雖然香港船舶登記處登記的船隻屬中國籍，但這些船隻是按照懸掛兩旗的做法在香港特別行政區登記的。因此特區在船隻管理及立法方面應有自治權，即香港特別行政區政府對香港特別行政區的船隻及其員工行使管轄權，但委員同意中國有權徵用在港登記的船隻。所謂徵用權，即主權國在戰爭時接管民用船隻的權利。
 8. 為船隻在國際上提供保護——在國際方面(就其他國家對在港登記船隻採取的行動)，中國得提供保護及承擔責任。

9. 香港特別行政區在國際組織及國際海事公約的地位——如中英聯合聲明一樣，基本法應規定在外交事務屬中央人民政府管理的原則下，香港特別行政區可單獨地同世界各國、各地區及有關國際組織保持和發展關係，並簽訂和履行有關協定。例如，香港特別行政區可保留在國際海事組織的地位。
10. 在港登記船隻的高級船員及其他船員，其國籍應不受限制。但香港特別行政區政府應鼓勵在香港登記的船隻任用香港特別行政區的船員，亦應鼓勵這些船員在香港登記的船隻上工作。
11. 附件是由布政司署經濟科編製的《香港船舶登記處：進行修改時所採取的一般原則》。委員皆明瞭該文件所載的原則為由中英雙方政府經討論後協議而成，並認為應根據這些原則成立香港船舶登記處。

II. 民航政策

I. 基本法應有條文以包括下列各點：

1. 飛機的國籍標誌及登記標誌：建議飛機的國籍雖屬中國籍，但香港特別行政區對飛機、機上人員及乘客應享有管轄權。在國際上為飛機提供保護——在國際方面（就其他國家對在港登記飛機採取的行動），中國得對在港登記的飛機提供保護及承擔責任。登記標誌可採取目前的做法（即使用VR登記字號），並在每架在港登記的飛機機尾，顯示香港特別行政區的區徽。
2. 《中英聯合聲明》規定「在香港註冊並以香港為主要營業地的航空公司……可繼續經營。」即任何有意在香港經營民航服務的人士，不論其國籍或是否在特區享有居留權，如於九七年前在港註冊成立航空公司，並取得航空營業證書，則可在九七年後繼續經營。至於航空公司能否獲得定期航班的航線代表權，則視乎特區與其他國家簽訂的民用航空運輸協定條款而定。換句話說，一家香港航空公司可以存在並取得所有必需的特區執照，但至於能否經營飛往其他國家的定期航班，則要視乎將來缺少了有關航空公司擁有權及控制權的國籍規定後，其他國家是否接受。
3. 《中英聯合聲明》規定「經中央人民政府具體授權」，香港特別行政區可以為不涉及往返、經停中國內地而祇往返、經停香港特別行政區的定期航班，商談、簽訂、續簽及修改民用航空運輸協定或臨時協議。
基本法應清楚訂明這種具體授權是指在民航方面，祇要符合《中英聯合聲明》所規定的範圍，香港特別行政區便應可自行商談及簽訂上述協議。
4. 民用航空運輸協定或臨時協議所訂明的航線代表權應由香港特別行政區政府處理。
香港特別行政區應可就不涉及往返、經停中國內地而祇往返、經停香港特區的定期及不定期航班，自行決定航線代表權政策（例如一九八五年十一月二十日財政司在立法局宣布「每線祇限一家航空公司」的航線代表權、或修訂現行政策、或將來採納另一不同政策）。
5. 民航管理制度如空運牌照局有關發牌的規例及技術、經營、培訓、資歷的標準，都應由香港特區政府在行政方面斟酌決定，而不必由基本法訂明。
6. 《中英聯合聲明》規定「中央人民政府經同香港特別行政區政府磋商作出安排，為在香港特別行政區註冊並以香港特別行政區為主要營業地的航空公司和中華人民共和國的其他公司，提供香港特別行政區和中華人民共和國其他地區之間的往返航班」。在磋商時，需考慮中國的航空公司飛往香港特區的航班數目與香港特區的航空公司飛往中國的航班數目，應維持適當的平衡。
這方面因屬「國家內部」或「地區」事務，所以不會產生航線代表權的問題。這方面的民航事務，將由中央政府及香港特區政府作出特別安排。