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342.202                Opinions of the Special Group  
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                             amendment of the Basic law of  
                             the HKSAR" of  
                             [Hong Kong : s. n., 1987]

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OPINIONS OF THE SPECIAL GROUP ON LAW  
REGARDING CHAPTER 9  
"THE INTERPRETATION AND AMENDMENT OF THE BASIC LAW OF THE HKSAR"  
OF THE DRAFT (AUGUST 1987) OF THE BASIC LAW

(passed by the Executive Committee on 4 November 1987)

Special Group on Law

The Special Group on Law held a meeting to discuss the draft articles of Chapter 9 of the Basic Law, and drafters from the legal sector were invited to the meetings. The following is a collation of the views expressed by members of this Special Group during the meetings. These views are now submitted for the reference of the Drafting Committee.

On Article 1:

1. A member held that the power enjoyed by the courts at present regarding the interpretation of laws would be eroded by this article which gave the power of interpretation of the Basic Law to the NPC Standing Committee. The member pointed out that under the present system, the legislature enacted laws whereas the judiciary enjoyed full power to interpret laws independently. Such an arrangement ensured that the interpretation of laws would not be affected by political pressure. The member maintained that paragraph 1 of this article, "The power of interpretation of the Basic Law shall be vested in the NPC Standing Committee", contravened the Joint Declaration which provided that the HKSAR would have independent judicial power, including that of final adjudication.
2. A member pointed out that the legal systems practised in China and in Hong Kong were basically different: in the mainland, the legislative power and interpretation power were both vested in the legislature, whereas in Hong Kong, the legislature enacted laws and the judiciary interpreted them. Hence, the member proposed that all laws except for those concerning defence and foreign affairs would be interpreted by the courts of the SAR; should any dispute arise, they would be referred to the Basic Law Committee (comprising Hong Kong and mainland members of equal number) which would decide whether the law in question involved defence and foreign affairs, and whether it should be interpreted by China or Hong Kong. Another member emphasised that the Basic Law Committee would be a committee for classifying laws, only responsible for deciding whether certain laws involved defence and foreign affairs.

3. In addition, a member proposed that the Basic Law specify the following: the power of interpretation of the Basic Law should be vested in the NPC Standing Committee, but the NPC Standing Committee should refrain from interpreting any laws regarding the internal affairs of the SAR.
4. A member held that neither the interpretation of the NPC nor that of the SAR should have any retrospective effect.
5. A member proposed deleting the provision in paragraph 2 that the SAR courts could interpret only those articles of the Basic Law which were within the scope of autonomy of the SAR.
6. A member pointed out that since the Joint Declaration provided that the SAR would enjoy the power of final adjudication, there should not be any restriction on the power. The SAR should be allowed to enjoy the real power of final adjudication.
7. A member raised the following questions: Who had the right to request the NPC Standing Committee to interpret the Basic Law? Under what circumstances could such request be made? Was the NPC Standing Committee supposed to interpret the Basic Law at any time?

On Article 2:

Members had no objection to this article.

法律專責小組對基本法第九章  
「香港特別行政區基本法的解釋和修改」  
條文草稿(一九八七年八月)的意見

(1987年11月4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  
法律專責小組

本組曾就基本法第九章條文草稿舉行會議，並邀得起草委員會中法律界委員參加討論。茲將本組委員在會議中發表的意見整理如下，供起草委員會參考。

- 關於第一條：1. 有委員認為此條文削弱了現時法院解釋法律的權力，而把基本法解釋權賦予人大常委會。該委員指出，根據現行的制度，立法機關制訂法律而司法機關則可獨立地、全權地解釋法律。這樣的安排可使法律的解釋不受政治壓力所影響。該委員並指出，聯合聲明規定特區將有獨立的司法權和終審權；現在這條文的第一段：「基本法的解釋權屬於全國人民代表大會常務委員會」便違反了聯合聲明。
2. 有委員指出國內及香港現行的法律制度有基本的分別：國內立法權及法律解釋權均集於立法機關，但香港則由立法機關立法，司法機關解釋。所以該委員建議除有關國防外交的法律，其他均由特區法院解釋；遇有爭議時，便交由基本法委員會（有一半國內的委員及一半香港委員）決定某條法律是否涉及國防和外交事務，應由香港抑或是中國方面作解釋。另有委員補充強調基本法委員會將是個負責區別法律種類的委員會，只負責決定某些法律是否涉及國防和外交事務。
3. 此外，有委員建議在基本法上寫明解釋權屬於人大常委會，但人大常委會應抑制對特區內部事務的法律作解釋。
4. 有委員認為不論是人大或是特區的法律解釋均應無回溯力。
5. 有委員認為第二段規定特區法院只可解釋特區自治權範圍內的條款應該刪除。
6. 有委員認為既然聯合聲明規定特區將擁有終審權，便不應在這終審權中開洞，特區應可擁有真正的最終審判權。
7. 有委員提出以下問題：誰人有權要求人大常委會解釋基本法？在甚麼情況下可作出此要求？人大常委會是否可隨時作出解釋？

關於第二條：委員對這條沒有異議。