

FINAL REPORT ON  
THE STRUCTURE OF BASIC LAW

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(passed by the Executive Committee on 14 March 1987)

Special Group on  
The Structure of Basic Law

## FINAL REPORT OF

### THE SPECIAL GROUP ON THE STRUCTURE OF THE BASIC LAW

#### FOREWORD

The Special Group on the Structure of the Basic Law has held six meetings to discuss in-depth the "Structure of the Basic Law (Draft)" since it started work in April. Apart from studying the structure of the Basic Law, the Special Group is also responsible for the issues which have not been dealt with by the other seven Special Groups (i.e. the Contents, the Preamble, General Provisions, and Supplementary Provisions in the "Structure of the Basic Law (Draft)" ).

In addition to collating the results of the discussions conducted over the past four months by the Special Group, this final report also collects the opinions of members of the public on the "Structure of the Basic Law (Draft)". The appendix to the final report is a collection of opinions expressed at the public hearing. The aim of the public hearing was to provide an opportunity for our members and people outside to give additional comments on the structure of the Basic Law.

## 1. "Preamble".

## 1.1 Section 1

"Hong Kong's territory and historical background, the signing of the Sino-British Joint Declaration and the resolution of the Hong Kong. "

1. To add a map of the HKSAR in Chapter 8 or Chapter 10.

The Preamble itself has no similar legal status. If there are legal disputes relating to the territorial boundary of the HKSAR, a map of the HKSAR can be used as a reference.

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5th August, 1986

2. To mention the territorial boundary of the HKSAR briefly in the Preamble, leaving the details in Chapter 8 or Chapter 10.

As it is complicated to produce a map, it is only necessary to write down clearly the territorial boundary, or to express clearly that the map(s) kept by the future government can be referred to.

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5th August, 1986

3. To define clearly the territorial boundary of the HKSAR.

Andrew Wong  
(Legco Member)  
Ming Pao  
22nd April, 1986.

## 1.2 Section 2

"The setting up of the HKSAR under the guiding principle of one country two systems".

1. To illustrate the meaning of "two systems"

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the Basic Law  
for the HKSAR  
under Article  
31 of the  
Constitution  
to safeguard  
state sovereignty  
and the prosperity  
and stability  
of Hong Kong."

1.4 Supplement

1. To specify in the Preamble that the capitalist system will remain unchanged for 50 years.

2. To indicate clearly whether the Preamble has the same status as the other ten Chapters.

Since the fundamentals of the HKSAR will be defined in the Preamble, the Preamble can be used as a legal authority to resolve legal disputes.

2. "General  
Principles".

2.1 Section 1

" The HKSAR is  
an inseparable  
part of the  
People's Repu-  
blic of China.  
Authorized by  
the National  
People's Congress,  
the HKSAR shall  
enjoy a high  
degree of auto-  
nomy. "

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Law Wing Sing  
Hong Kong Economic  
Journal Daily  
1st June, 1986.

"the Government and the legislature shall be composed of local inhabitants".

Chapter is not clear.

chief executive, executive authorities, the legislature and the judiciary. However, in the "General Principles", it is only laid down that "government and legislature shall be composed of local inhabitants", without defining the candidature of the chief executive. It may imply that there is a difference between the standard for the candidature of the "chief executive" and that of the members in the "government and legislature".

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Pai Shing  
Semi-Monthly  
issue no. 119  
1st May, 1986.

2.3 Section 3  
"socialist  
system and  
policies shall  
not be practised".

1. This section contradicts with the freedom of association mentioned in section 3 of Chapter 3.

Section 3 of Chapter 1 can be interpreted as that the socialist policy of the "four insistences" shall not be practised in the HKSAR. In other words, the leadership of the Communist Party will not be insisted on and the capitalist system will be maintained. On the other hand, if the people enjoy the freedom of forming or joining any parties, the Communist Party will definitely be the largest party highly influential in the HKSAR. (According to the practice of China, there are Communist Party organization in every government department, factory, school, hospital and army.)

Law Wan Sing  
Hong Kong  
Economic  
Journal Daily  
1st June, 1986.

2.4. Section 4

"The ownership  
of private  
property shall  
be protected.

The ownership  
of enterprises  
and the legal  
right of inheri-  
tance shall be  
protected."

2.5 Section 5

"The right of  
ownership,  
management and  
disposal of  
land."

2.6 Section 6

"The right of  
ownership,  
management and  
disposal of  
natural  
resources."

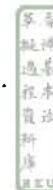
2.7 Section 7

"The laws previously in force shall remain basically unchanged".

1. To specify that "any legislation in Hong Kong can not contravene the "Joint Declaration".

To guarantee that the HKSAR will not apply the legislation of the Chinese Central Government. As the Basic Law will be constitutionally higher than the ordinary laws, any laws contravening the Basic Law will be invalid. The significance of laws is on its spirit. If the Joint Declaration and the Basic Law are unchanged, the spirit of law can be actualized.

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- 2a. To specify that the Joint Declaration and its Annexes have legal effect constitutionally higher than any HKSAR legislation.

To make sure that the aim of the Joint Declaration is to keep Hong Kong unchanged for 50 years after 1997.

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Meeting on  
6th May, 1986.

To guarantee that the HKSAR legislation can not change the policies specified in the Annex I.

- b. It is not appropriate to specify the provisions too detailedly.

The heading already incorporates the contents. Too specific illustration may cause restriction.

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6th May, 1986.

3. To specify the sources of the laws of the HKSAR, avoiding the misunderstanding that they originate from the Chinese Constitution.

The Chinese Constitution and other legislation by the National People's Congress will not be applied in the HKSAR. In Section II of the Annex I of the Joint Declaration, it is laid down that "the laws of the HKSAR shall be the Basic Law, and the laws previously in force in Hong Kong and laws enacted by the HKSAR legislature as above". This implies that the Chinese laws will not be applied in the HKSAR. It is appropriate to have the corresponding specification in the Basic Law.

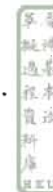
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Semi-Monthly  
issue no. 119  
1st May, 1986.



4. To specify that the sources of the laws of the HKSAR are the existing laws (i.e the common law, rules of equity, ordinances, subordinate legislation and customary law), the laws enacted by the HKSAR legislature and the Basic Law.

To guarantee that the laws previously in Hong Kong will be basically unchanged by showing indirectly that the Chinese Constitution, except Article 31 and other appropriate provisions, cannot be applied in the HKSAR.

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5. This section has solved the problem of "emergency power".

According to present Hong Kong laws, the governor has "emergency power".

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6th May, 1986.

## 2.8 Section 8

"Languages  
and scripts"

## 2.9 Supplement

1a. To add in the "General Principles" that "There will be a special committee or commission under the National People's Congress to handle any problems concerning the Basic Law on the relationship between the Central Government and the HKSAR".

b. To illustrate the above suggestion in Chapter 2 but not in the "General Principles".

The "General Principles" should not incorporate any items opened for disputes.


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6th May, 1986.

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Meeting on  
6th May, 1986.

2. To specify in this Chapter that the HKSAR will be established according to the Joint Declaration and Article 31 of the Chinese Constitution.

In the "Structure of Hong Kong Basic Law (Draft)", the source of authority for the HKSAR is only mentioned once in section 1 of Chapter 1 that "Authorized by the National People's Congress, the HKSAR shall enjoy a high degree of autonomy". However, the binding power of this provision is not enough to guarantee that the HKSAR shall enjoy a high degree of autonomy.

Law Wan Sing  
Hong Kong Economic  
Journal Daily  
1st June, 1986.



3. It should be stipulated in the General Principles of the Basic Law that the executive authorities, the legislature and the judiciary are to maintain checks and balances among themselves, and human rights, freedom and equality should be safeguarded.

Meet-the-public  
session  
26th July, 1986

### 3. Chapter 2 'Relationship between the central Govern- ment and the SAR'.

### 3.1 Section 1

"The HKSAR  
shall be  
under the  
direct au-  
thority of  
the Central  
People's  
Government."

### 3.2 Section 2

"Foreign  
Affairs  
shall be  
managed by  
the Central  
Government.  
(HKSAR shall  
dispose of  
those external  
affairs as  
specified  
in Chapter 7  
and other  
related  
clauses)."

### 3.3 Section 3

"The Central Government is responsible for affairs concerning defence and garrison."

### 3.4 Section 4

"The HKSAR shall be vested with administrative power (The executive power of HKSAR in matters of personnel, security, government finance, taxation, finance, currency, postal service, industry and commerce, trade, tariffs, education, science, culture, immigration and other fields)."

3.5 Section 5

"The HKSAR shall be vested with legislative power."

3.6 Section 6

"The HKSAR shall be vested with independent judicial power, including the final adjudication".

1. To set up a HKSAR Constitutional court, as the case in the U.S.A., leaving the interpretation of the Basic Law to the judges. This provision can be incorporated here or in Section 2 of Chapter 9, "the interpretation of the Basic Law".

The "final adjudication" mentioned here only refers to civil and criminal cases.

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3.7 Section 7

"other powers authorized by the National People's Congress and the State Council".

- 1a. To authorize those power not mentioned in Section 1 to Section 6 to the HKSAR by the National People's Congress or the State Council.
- b. The above method does not solve the problem of residual power.

To solve the problem of residual power.

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2. To specify in the Basic Law that except defence and foreign affairs, the HKSAR can handle other affairs based on the Basic Law.

3. To list all powers enjoyed by one party while those not mentioned are enjoyed by the other. The method operates as follows: if the powers listed are enjoyed by the Central Government, then those not mentioned are vested in the HKSAR; or the powers listed are vested in the HKSAR while those not mentioned are enjoyed by the Central Government. This method can be applied to the executive, the legislative and the judiciary branches. The three branches can have different arrangements.

4. To add a provision of "emergency power" in this Chapter.

5. To specify the powers retained by China apart from defense and foreign affairs, the powers vested in the HKSAR and other unclassified powers authorized by the Central Government to the HKSAR.

This can solve the problem practically and avoids the use of "residual power". On the international law level, there will be no problem of residual power between China and the HKSAR because China is a unitary state, not a federal one. The suggestion is based on the assumption that "one country, two systems" can be successful. As there is no precedent, special arrangements should be adopted.

"Residual Power" is a concept of division of power, which can be used to consider the relationship between China and the HKSAR. The Joint Declaration incorporates the element of the theory of residual power as it can be shown that "the HKSAR shall be directly under the authority of the Central People's Government of the People's Republic of China. Except for foreign and defence affairs, the HKSAR shall enjoy a high degree of autonomy."

To clarify the concept of "high degree of autonomy".

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strations CUHK)  
Ming Pao Evening News.  
23rd April, 1986.

Wong On Yin  
Hong Kong  
Economic Journal  
Daily  
29th April, 1986.

Special Group  
Meeting on  
6th May, 1986.

Ko Gra Yee  
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Tai Kung Pao  
25th April, 1986.

6. To specify certain policies adopted in China, for instance, the "four insurances", will not be applied in the HKSAR. The "four insurances" are:

- (i). insistence of Socialism;
- (ii). insistence of the People's Democratic Dictatorship;
- (iii). insistence of the leadership of the Chinese Communist Party; and
- (iv). insistence of Marx-Leninism and thought of Mao.

7. To specify that there will be a special committee under the National People's Congress to handle the problems concerning the Basic Law on the relationship between the Central Government and the HKSAR.

The Social system of China and that of the HKSAR are different.

To avoid the direct confrontation between the Central Government and the HKSAR. A Special Committee under the National People's Congress will provide a mechanism for consultation to solve the problems between the Central Government and the HKSAR and in other grey-area. It is problematic to use the method of "power division on 3 levels and areas" to tackle the relationship between the Central Government and the HKSAR. The 3 levels are:

- (i). affairs concerning the sovereignty and the integral welfare of the country will be the responsibility of the Central Government;

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- (ii). internal and external affairs will be the responsibilities of the HKSAR Government;
- (iii). "residual powers" refer to those not mentioned in (i) and (ii) and belong to HKSAR.

The problem arises from levels (ii) and (iii) as there are some powers which are difficult to be determined whether they should be enjoyed by the Central Government or by the HKSAR Government. There may be confrontation between the Central and the HKSAR Government if the powers are divided explicitly.

8. There is an upper limit for a "high degree of autonomy". The HKSAR can demand the maximum degree of power within this limit. However, the HKSAR cannot demand any power exceeding the limit, or any restricted powers, or any power not bound by the Central Government. "Residual power" implies that the HKSAR will enjoy some unlimited self-government power exceeding the limit of "high degree of autonomy".

**This contravenes the Joint Delcaration.**

Zee Sze Yong  
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9. To set up an institutional machinery to arbitrate the disputes arising from the power division between the Central and the HKSAR Government. Unlike the "interpretation power" which focuses on the general interpretation of the provisions, this institution should focus on the problems of implementation.

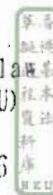
10. To assure and emphasize the concept of autonomy on the basis of power division in the Basic Law. There should be provisions clarifying that the HKSAR will have exclusive power on the self-government affairs specified in the Basic Law. Within the boundary of the self-government affairs, the HKSAR will have the power of policy-formulation and legislation while the Central Government will have no power to issue administrative orders.

"Residual power" will not be a key issue if there are detailed provisions in the Basic Law to guarantee the high degree of autonomy described in the Joint Declaration.

There may be disputes when the Basic Law takes effect because one party may deliberately contravene the Basic Law; or there are differences in interpreting the Basic Law between the two governments; or those are problems which the Basic Law does not deal with. Though Section 2 of Chapter 9, "the interpretation of the Basic Law", will define who will have the power of interpretation, it is not always necessary to employ this "final judgement". A specially designed institution may provide a mechanism of arbitration.

The main feature of autonomy is that the self-government has the exclusive power to determine the policies of the self-government affairs which the Central Government has no power to issue administrative orders or directions or to legislate on these affairs. If the Central Government has another interpretation of "autonomy" that the Central Government has another interpretation of "autonomy" that the Central Government will retain the power to issue orders or directions on the self-governing affairs specified in the self-governing law (i.e the Basic Law), than the so-called "autonomy" or the "Basic Law" are merely central delegation of power to the self-government. There will be only functional division of the management but no real division of power if the Basic

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issue no. 119  
1st May, 1986.

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Law does not bind the Central Government in the sense that there is no legal authority to restrict the Central Government from issuing orders or directions to the self-government on any issues.

Self-government should be the sole authority to determine the policies on the self-governing affairs, and not merely plays a functional role on the administration of those affairs.

11. To specify in the Basic Law that the HKSAR will have exclusive power to handle the self-governing affairs specified in the Basic Law. The Central Government cannot issue orders or directions on these affairs. To set up a HKSAR Committee under the National People's Congress, acting as a consultative mechanism for the Central and the HKSAR Government to solve any problems on the power in the grey-area.

12. The term "residual power" is not appropriate, and can be replaced by listing in details the division of power between the Central and the HKSAR Government.

The reason why Hong Kong people raise the issue of "residual power" is not only that they are hoping to get more powers but also for the actual exercise of these powers. Therefore, the provision "other powers authorized by the National People's Congress" cannot relieve the anxiety of the Hong Kong people.

Shi Xue  
"The Structure  
of the Hong Kong  
Basic Law (Draft)  
--solving basically  
two great problems",  
Pages about  
Hong Kong

Lau Nai Keung  
(CCBL Member)  
Tin Tin Daily  
28th April, 1986.

### 3.8 Section 8

"HKSAR representatives and their participation in the administration of national affairs".

### 3.9 Section 9

"The relationship between all the departments of the Central Government as well as provincial, autonomous region and municipal governments and the HKSAR (but there shall not be interference in the internal affairs of the HKSAR)".

### 4. Chapter 3

"The Fundamental Rights and Duties of Hong Kong Inhabitants".

4.1 Section 1  
"The definition  
of Hong Kong  
inhabitants".

1. To clarify the definition of Hong Kong  
people (including the inhabitants of  
the HKSAR and Chinese National living  
in Hong Kong.

4.2 Section 2  
"Right to  
vote and  
stand for  
election".

4.3 Section 3  
"Freedom of  
speech, of  
the press,  
of assembly,  
of association,  
of forming  
and joining  
trade unions,  
of strike and  
of demonstration".

1. To add "freedom of the news media" in  
this Section or in this Chapter.

2a. To add a Section of "labour right" by  
grouping the provisions concerning the  
labour in Section 3 and Section 8.  
The "labour right" should include the  
following items:

- (i). freedom of forming or joining  
trade unions;
- (ii). the right of collective bargaining ;
- (iii). freedom of correspondence with  
and joining foreign trade unions;
- (iv). the right to strike;
- (v). comprehensive social security;

"Freedom of the news media" different from  
"freedom of speech and of the publishing" in  
that the journalists have the rights to  
report, to interview, and to publish and are  
free from censorship.

Andrew Wong  
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Ming Pao  
22nd April, 1986



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6th May, 1986.

Education Centre  
of Hong Kong Trade  
Unions and  
many other  
trade unions  
Letter on  
19th June, 1986.

- (vi).security of employment; and
- (vii).freedom to choose occupations.

b. It is not necessary to add a new provision for the labours.

It is laid down in Section 4 of this Chapter that "the legal rights of other persons living in Hong Kong shall be protected". This means the legal rights of all occupations are protected. Therefore it is not necessary to single out the right of labour. Otherwise, it may be divisive.

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6th May, 1986.

#### 4.4 Section 4

"Freedom of  
the person".

#### 4.5 Section 5

"Inviolability  
of the home and  
freedom of corres-  
pondence".

#### 4.6 Section 6

"Freedom of  
movement and  
exit and entry  
across the  
national bound-  
ary".

4.7 Section 7

"Freedom of religion and belief".

4.8 Section 8

"Freedom of choice of occupation and of academic research".

1a. To replace "freedom of academic research" by "academic freedom".

b. There are only differences in terminology but no differences in principles.

2. To add "freedom of expression (literature and art)" in this Section.

"Academic freedom" has a wider scope than "freedom of academic research".

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4.9 Section 9

"The right to have secret legal advice, to take legal proceedings, to choose lawyer as proxy at court and to have judicial compensation. The inhabitants are entitled to appeal to court against conducts of administrative departments."

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6th May, 1986.

4.10Section 10  
"The rights to benefit from social welfare in accordance with law welfare benefits of retired or resigned public servants shall be protected".

4.11Section 11  
"The right to marry and the right to raise a family".

4.12Section 12  
"The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economics, Social and Cultural Rights as applied to Hong Kong shall remain in force".

1. To place this provision in Section 6 "public servants" of Chapter 4 and add other details concerning public servants such as employment procedure and early termination of employment.

1a. To insert the "International Labour" in this Section, rewriting this Section as "The provisions of the International Covenant on Civil and Political Rights, the International Convention on Economics, Social and Cultural Rights and the International Labour Covenant as applied to Hong Kong shall remain in force".

b. Detailed specification on the International Labour Convention is not appropriate as it may affect the flexibility of its implementation.

At present, 49 articles of the International Labour Convention are applied to Hong Kong (not being a sovereign state) while only 19 articles are applied to China. In the future, when Hong Kong becomes a subordinate of China, the position of Hong Kong should be specified in the Basic Law.

It is quite impossible to apply every provision of the International Labour Convention as all nations treat the Convention as a scale of reference only. Moreover, many provisions of this convention may not be appropriate to Hong Kong.

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Meeting on  
6th May, 1986.

Education Centre  
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Letter on  
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Centre Daily  
28th April, 1986.

4.13Section 13

"Other rights  
and freedoms  
as provided  
by the Common  
Law".

4.14Section 14

"The legal  
rights of  
other persons  
living in  
Hong Kong  
shall be  
protected".

1. To give more prominent status to this provision.

Written opinion of  
Mr. Daniel R. Fung  
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2nd August, 1986

4.15Section 15

"The legal  
rights of  
the original  
inhabitants  
in the New  
Territories  
shall be pro-  
tected".

4.16Section 16

"It is the  
duty of the  
Hong Kong inha-  
bitants to  
abide by the  
Basic Law and  
other laws of  
the SAR".



- 1a. To add a section of "system of redress" in this Chapter.
  - b. It is not appropriate to emphasize on the "system of redress". It is enough to point out that apart from access to the court, there are appeal channels including the Umelco, the Police Complaint Committee, the ICAC and the Ombudsmen etc.
2. To define Hong Kong inhabitants and citizenship in detail. For instance, to specify the necessary period of residence in Hong Kong and to clarify the right to vote and to be elected.
  3. A distinction should be drawn between those rights which ought to ensure to the benefits of all persons within the jurisdiction of the Hong Kong SAR and those which should be conferred only upon SAR residents. That Chapter 3 of the Draft is to re-cast along the following lines:
    - i. Tabulation of jurisdiction-based rights;
    - ii. Tabulation of residence-based rights with a provision *ex abundanti cautela* that there are rights conferred upon SAR residents in addition to those set out under (i) above i.e. SAR residents enjoy jurisdiction-based as well as residence-based rights;

Chapter 3 of the Draft appears to contemplate the conferring of the rights and freedoms enumerated therein only upon SAR residents. The above is confirmed by the inclusion of the provisions on the definition of SAR resident and on voter and candidacy eligibility as sections 1 and 2 of that Chapter. If the rule of law ("All men are equal before the law and are entitled to the equal protection of the laws") is to be embraced as a fundamental principle in the Basic Law, such a right must ensure to all within the jurisdiction. It would enhance neither the stability nor the prosperity of the Hong Kong SAR if the Basic Law were to confer such a right only upon SAR residents so that visiting business-

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26th May, 1986.

Written opinion of  
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2nd August, 1986

- iii. Non-exhaustion clause;
- iv. Non-derogation clause;
- v. Supremacy clause;
- vi. Non-restriction clause;
- vii. Savings clause:-

- a. Savings in respect of rights and freedoms protected by Common Law;
- b. Savings in respect of rights and freedoms enshrined in
  - 1. the International Covenant on Civil and Political Rights and
  - 2. the International Covenant on Economic, Social and Cultural Rights.

viii. Adjudication and Remedies Section.

- 4. The tabulation of the individual rights under (i) and (ii) above should, wherever possible, follow the equivalent wording used in the European Convention on Human Rights.

men would find themselves deprived of such protection.

The European Convention was drafted with an eye to protection and enforcement of human rights and freedoms within the jurisdiction of EEC member states; the efficacy of its provisions have been tested in the courts and case precedents exist which may be relied upon for assistance in continuing the Basic Law provisions on rights and freedoms.

Written opinion of  
Mr. Daniel R. Fung  
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2nd August, 1986

5. Chapter 4  
"HKSAR political  
structure".

5.1 Section 1

"The chief  
executive".

- i. "His selection,  
appointment  
and dismissal".
- ii. "His term of  
office".
- iii. "His powers  
and duties".

5.2 Section 2

"The executive  
authorities".

- i. "The formation  
of the executive  
organization,  
and the selec-  
tion, appoint-  
ment and dis-  
missal of the  
members".
- ii. "The term of  
office of chief  
officials".

iii. "Powers and duties".

iv. "Relationship between the executive organization and legislature." 1. To define in what ways the executive will be accountable to the legislature.

### 5.3 Section 3

"The Legislature".

i. "Method of composition and formation."

ii. "Terms of office of the members."

iii. "Terms of Reference of the legislature."

iv. "The convention of meetings and law-making procedures."

v. "Terms of reference of members of the legislature."

### 5.4 Section 4

"The Judiciary".

i. "Its organizational structure."

ii. "Terms of Reference."

iii. "The appointment and dismissal of judges and other judicial officers."

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(Legco Member)  
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22nd April, 1986.



- iv. "Independent trial."
- v. "The jury system."
- vi. "Principles of defence."
- vii. "Criminal prosecution."
- viii. "Judicial links with other provinces, autonomous regions, and municipalities."
- ix. "Mutual assistance of the judiciaries."

#### 5.5 Section 5

"District and regional administration".

"Functions and organization of district and regional administration".

#### 5.6 Section 6

"public servants".

1. To clarify every aspects about the public servants, including the employment, resignation and retirement etc. To put Chapter 3, Section 10, "welfare benefits of retired and resigned public servants shall be protected" in this provision.

Special Group  
Meeting on  
6th May, 1986.

5.7 Supplement

1a. To add a section on "ICAC" in this Chapter.

b. It is not appropriate to emphasize the "ICAC" in the Basic Law.

2. To add "system of redress" in this Chapter.

3a. To add "emergency power" in this Chapter.

b. "Emergency power" is part of the authority of the legislature.

6. Chapter 5

"HKSAR Economy".

6.1 Section 1

"Financial  
management  
and taxation  
policy".

"ICAC" has great contributions in Hong Kong.

The work of the "ICAC" is very important and it will remain in existence because it is an organization created by legislation. If the existing laws will remain basically unchanged, ordinances about the "ICAC" will also not be changed. The power of the "ICAC" threatens personal freedoms. Therefore, it is not appropriate to mention "ICAC" in the Basic Law.

Special Group  
Meeting on  
6th May, 1986.

Special Group  
Meeting on  
6th May, 1986.

Special Group  
Meeting on  
6th May, 1986.

Special Group  
Meeting on  
6th May, 1986.

## 6.2 Section 2

"Financial system and policy (International finance centre; issuing and circulation of the Hong Kong currency; no exchange control. Market for foreign exchange, gold, securities and futures shall remain open)".

## 6.3 Section 3

"Free trade policy (free port, the independent customs territory and the right as a separate unit to fill export quota and to negotiate tariff preference and other related arrangements, and to issue certificates of origin)".

6.4 Section 4  
"Industrial  
policies on  
manufacturing  
and other  
industries".

1. To replace this Section by "Manufacturing, industry, fishery and farming" or to add a new Section on "fishery and farming policies".

Fishery and farming are different from manufacturing and industry and are very important to Hong Kong.

Special Group  
Meeting on  
6th May, 1986.

6.5 Section 5  
"Policies on  
commerce,  
tourism and  
real estates".

6.6 Section 6  
"Shipping and  
civil aviation  
management".

6.7 Supplement

1. To delete this Chapter.

The list might omit some items. Though there are suggestions to list policies on areas such as population, environment, labour and welfare, it is not significant to specify these policies in detail because policies have to change accordingly as social conditions change. To delete this Chapter may allow the Basic Law to be more flexible to adapt to the social and changing environment.

Chan Jo Wai  
(Associate Lecturer,  
Department of  
Religion and  
Philosophy Baptist  
College)  
Fai Pao  
26th May, 1986.



Special Group  
Meeting on  
6th May, 1986.

2. To delete the word "policy" or to define "policy" in the Basic Law, to avoid any unnecessary disputes.

"Policy can be interpreted as:

- (i). principles, and directions  
(ii). practice, arrangements and methods.

## Chapter 6

### 7. "HKSAR Education, Science, Technology, Culture, Sport, and Religion"

#### 7.1 Section 1

"Education policy and system".

#### 7.2 Section 2

"Science and technology policy".

#### 7.3 Section 3

"Culture policy. Sports promotion".

#### 7.4 Section 4

"Religion policy".

#### 7.5 Section 5

"Professional qualifications of the professionals".

1. To replace this Section by "professional qualifications and recognition".

Professional qualifications are not limited to the professionals.

Special Group  
Meeting on  
6th May, 1986.

## 7.6 Section 6

"Other social  
affairs."

## 7.7 Supplement

1a. To add "labour" in the heading of this Section and to include "labour policy" in this section. "labour policy" includes "security of employment, low-paid labour, political right of trade unions, right of collective bargaining and relationship between Hong Kong and foreign trade unions".

b. It is not necessary to emphasize on a particular social class in this Chapter.

2. To delete this Chapter.

Labour issue is within the scope of economic policies. Hong Kong has already developed an integral social security system. Chapter 3 has incorporated the legal right of all social sectors. It will be unbalanced if this Chapter mentions the labour issue.

The list might omit some aspects. Though there are suggestions to list policies on areas such as population, environment, labour and specify these policies in details because policies have to change accordingly as social conditions change. To delete this Chapter may allow the Basic Law to be more flexible to adapt to the changing social environment.

Education Centre  
of Hong Kong  
Trade Unions  
and many other  
trade unions  
Letter on  
19th June, 1986.

Special Group  
Meeting on  
6th May, 1986.

Chan Jo Wai  
(Associate Lecturer,  
Department of  
Religion and  
Philosophy, Baptist  
College)  
Fai Pao  
26th May, 1986.

8. Chapter 7  
"HKSAR External  
Affairs".

8.1 Section 1  
"Participation  
in related  
diplomatic  
negotiations".

8.2 Section 2  
"Partici-  
pation in  
international  
organizations  
and conferences;  
conclusion and  
implementation  
of related inter-  
national treaties".

8.3 Section 3  
"The appli-  
cation of  
international  
treaties in  
Hong Kong".

1. To illustrate the policy on "freedom  
of trade" in this Section.

1a. To replace this Section by "Application  
of international treaties and their  
legal effect in Hong Kong".

b. There is no need to specify the legal  
position of the international treaties  
in Hong Kong.

Freedom of trade can be an entirely external  
affair.

According to the practice of common law,  
international treaties will take effect in  
Hong Kong only after the enactment by the  
Hong Kong legislature. If Hong Kong's  
existing laws will remain basically unchanged,  
it is clear enough by the phrase "Application  
of international treaties in Hong Kong".

Special Group  
Meeting on  
6th June, 1986.

Special Group  
Meeting on  
3rd June, 1986.

Special Group  
Meeting on  
3rd June, 1986.

2a. To specify in this Section that the Sino-British Joint Declaration as an international agreement has legal effect and the provisions of the Joint Declaration cannot be changed by the enactment of the HKSAR legislature.

b. The above suggestion may confuse local affairs with external affairs. All issues about the authority of HKSAR legislature should be clarified in Section 3 of Chapter 4.

Special Group  
Meeting on  
3rd June, 1986.

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Special Group  
Meeting on  
3rd June, 1986.

8.4 Section 4  
"The issuing  
of passports  
and other  
travel docu-  
ments".

8.5 Section 5  
"Matters of  
vise abolition  
with states  
and regions".

8.6 Section 6  
"The establish-  
ment of official  
or semi-official  
economic and  
trade missions  
in countries  
and regions".

1. To specify in this Section that the HKSAR as an independent entity, using the title "China-Hong Kong", will set up governmental and quasi-government commercial and trading organizations in foreign countries. This may guarantee that Hong Kong can maintain economic connection with foreign countries.

Special Group  
Meeting on  
3rd June, 1986.

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## 8.7 Section 7

'Conditions and procedures of setting up offices by countries and regions in Hong Kong'.

## 9. Chapter 8

'HKSAR Flag and Emblem'.

### 9.1 Section 1

'Apart from displaying the National Emblem, the HKSAR may use a Regional Flag and Emblem of its own'.

### 9.2 Section 2

'The Flag of the HKSAR'.

1. To design a HKSAR emblem by adding some symbols characterizing Hong Kong to the National Flag which is higher in status than a Regional Flag.

Special Group  
Meeting on  
3rd June, 1986.

### 9.3 Section 3

'The Emblem of the HKSAR'.

### 9.4 Supplement

1. To use the National Flag and National Song in the HKSAR to symbolize the sovereignty of China over Hong Kong.

Special Group  
Meeting on  
6th May, 1986.

10. Chapter 9

"The legal status of the HKSAR Basic Law and its Interpretation and Amendment"

10.1 Section 1

"The legal status of the Basic Law and its relationship with the constitution".

1. To specify in the Basic Law that the Capitalist System of the HKSAR will remain unchanged for 50 years because it is a right enjoyed by the Hong Kong people, not a concession given by the Central Government to the Hong Kong people. To specify that the Chinese Constitution, with the exception of some appropriate provisions, will not be enforced in the HKSAR for 50 years.
2. Section 3 of Chapter 1 "General Principles" of the "Structure of Hong Kong Basic Law (Draft)" has already clarified that the capitalist system of the HKSAR will remain unchanged for 50 years.
3. To specify in the Basic Law that the Basic Law originated from the Chinese Constitution, but, for those matters concerning the specific situations of the HKSAR, the Basic Law will be referred to.

Special Group  
Meeting on  
1st July, 1986.

Special Group  
Meeting on  
1st July, 1986

Special Group  
Meeting on  
1st July, 1986

4. To pass a resolution in the General Committee of the National People's Congress (using the power of legislative interpretation by Article 67 of the Chinese Constitution) to clarify that Article 31 is not contradictory to other provisions of the Chinese Constitution, but the Basic Law will be referred to on matters concerning the specific situations of the HKSAR.

5. To amend Article 31 of the Chinese Constitution so that the Basic law originating from Article 31 will not be contradictory to the Chinese Constitution.

6. To set up a special committee under the National People's Congress to handle any conflicts between the Basic Law and the Constitution.

Special Group  
Meeting on  
1st July, 1986



Special Group  
Meeting on  
1st July, 1986

Special Group  
Meeting on  
1st July, 1986

7. To specify in Section 3 of Chapter 3 of the "Structure of Hong Kong Basic Law (Draft)" that the Sino-British Joint Declaration and its Annexes have legal effect. In this way, it can be guaranteed that the provisions of the Chinese Constitution will not be applied to Hong Kong if they are contradictory to the Basic Law because the Joint Declaration has clarified that the laws that will be in force in the HKSAR will be the Basic Law, the existing laws and the legislation by the HKSAR legislature.

8. To specify in the Basic Law that the sources of the laws of the HKSAR are the Basic Law, common law, written laws, and legislation by the HKSAR legislature, implying the Chinese Constitution will not be applied in Hong Kong.

9. To set up a Constitutional Court to handle the relationship between the Basic Law and the Constitution.

10. To amend Article 31 by the National People's Congress to illustrate that the mainstream of "one country, two systems" is socialist system, but the HKSAR will adopt the capitalist system.

Special Group  
Meeting on  
1st July, 1986

Special Group  
Meeting on  
1st July, 1986

Special Group  
Meeting on  
3rd June, 1986

Ying Yam  
Research Fellow,  
Centre for  
Contemporary  
Asian Studies,  
CUHK)  
Ming Pao,  
22nd April, 1986.



11. There will not be an issue of supremacy of the Basic Law over the Chinese Constitution if some provisions of the Constitution are classified as applicable to Hong Kong in the Basic Law while some classified as inapplicable. An appendix can be used in the Basic Law to list out and to group the provisions of the Chinese Constitution into 3 categories:

- (i). Those applicable to a socialist society will be inapplicable to the HKSAR;
- (ii). Those unrelated to socialism will be applicable to the HKSAR; and
- (iii). Those ambiguous but based on socialism will be inapplicable to the HKSAR.

12. To clarify the contradictions between the Basic Law and the Chinese Constitution in the latter document. Disputes on contravening the Constitution should be resolved by judicial adjudication. To amend the Chinese Constitution is the best way to solve the problems arising from the relationships between the Constitution and the Basic Law.

There are contradictions between the Basic Law and the Chinese Constitution, for instance, whether the "four instances" will be applied to the HKSAR is a question. Article 31 of the Chinese Constitution is not a sufficient authority to allow Hong Kong to adopt another social system different from that of China.

Byron Weng  
(Head of Dept. of the Government and Public Administrations CUHK)  
Ming Pao Evening News  
23rd April, 1986.

Lau Nai Keung  
(CCBL Member)  
Tin Tin Daily  
28th April, 1986.

13. It is necessary to find a way to allow the HKSAR to be exempted from the Chinese Constitution. Specifying which provisions are applicable to Hong Kong, which are not, would affect the rights already enjoyed by the Hong Kong inhabitants.

14. According to the spirit of Article 31 of the Chinese Constitution provisions concerning the "four insistances", socialist system and unification of the legal system are not applicable to the HKSAR. The Basic Law, or the "Hong Kong Mini-constitution", will be a constitutional document which will have constitutional effect in Hong Kong. The Basic Law can be an appendix of Article 31.

The basic doctrines of China are Marxism, Leninism and the thought of Mao, which are entirely different from that of Hong Kong. Except a small part of Article 2 "the basic rights and liabilities of citizens" of the Chinese Constitution may be applicable to the HKSAR, other provisions are not applicable. The rights enjoyed by the Hong Kong inhabitants are more than those specified in Article 2.

Hong Kong people expect a clarification on the relationship between the Basic Law and the Constitution. It is not only a legal issue, but also a socio-psychological one. Different from China, Hong Kong people treat the Basic Law as the supreme basis of the "Hong Kong people ruling Hong Kong" Policy. There will be socio-psychological disturbances among the Hong Kong people if the legal position of the Basic Law is not clear.

Ng siu Wing  
Hong Kong  
Economic  
Journal Daily  
23rd April, 1986.



Shi Xue  
"The Structure  
of the Hong  
Kong Basic Law  
(Draft)  
---Solving  
basically two  
great problems",  
Pages about  
Hong Kong

15. To specify the legal status of the Basic Law.

Since the National People's Congress is the supreme authority in China, there is clearly no problem about the legal status of its enactment. However, the conception of Hong Kong people is different. In their mind, law is the supreme authority. Moreover, Hong Kong people are not quite clear about the authority of the National People's Congress.

Cheung Yam  
(Research Fellow)  
Centre for  
Contemporary  
Asian Studies,  
CUHK)  
Pai Shing  
Semi-Monthly  
issue no. 119  
1st May, 1986.

16. To specify the status of the Basic Law by drafting in a positive way. It is no need to specify in the Basic Law that socialism will not be extended to Hong Kong. However, it is necessary to specify that the HKSAR will be ruled by which laws. It is suggested to draft the provisions as follows: the Basic Law which is enacted according to Article 31 will be the law ruling the HKSAR. The system, policy and life-style of the HKSAR will be determined by the Basic Law. Those who claim that the Chinese Constitution has to be amended do not have sufficient reason.

Most of the provisions of the Chinese Constitution are drafted in a positive manner. If the National People's Congress adopts this style of drafting and explains clearly when the Basic Law is promulgated, that it does not contravene the Constitution, it will be alright. Because the Basic Law as accepted by the National People's Congress will have the power of legislating, interpreting and amending the constitution. If there is a resolution by the National People's Congress that the Basic Law does not contravene the constitution, the National People's Congress will accept that the HKSAR will be ruled by the Basic Law. Article 31 enables the HKSAR to be exempted from some of the provisions of Constitution.

Marin Tam  
(Member of the  
Draft committee  
of Basic Law)  
Wen Wei Po  
15th June, 1986.

10.2Section 2  
"Interpretation of the Basic Law".

1. To illustrate the final adjudication of the Basic Law.

Special Group  
Meeting on  
6th May, 1986

10.3Section 3  
"Amendments to the Basic Law".

1. To amend the Basic Law may produce problems of contravening the Joint Declaration.

Special Group  
Meeting on  
3rd June, 1986

10.4Supplement

1. To specify in the Basic Law the supervision of its implementation. Although the supervision may be carried out by the same authority having the power of interpretation, it is necessary to clarify which authority has the power to supervise because it is different from the power of interpretation.

Albert Chan  
(Lecturer, Faculty  
of Law, HKU)  
Pai Shing Semi-  
Monthly, issue no.  
119, 1st May, 1986



11.1 Section 1

"The formation of the first HKSAR government"

1. The government in the run-up to 1997 may continue after 1997 and become the first HKSAR government so that the mode of the first HKSAR government may start its operation around 1997.

For the sake of Hong Kong's prosperity and stability, and avoiding drastic changes. As the political structure of the SAR government will have been drawn up by 1997 and the Basic Law will be promulgated in 1990, if the mode of the first government is in operation before 1997 (e.g. the legislature is formed by election and a Chinese is appointed governor), the experience which the new government will have acquired a few years before the reversion of sovereignty will make a smooth transition possible.

2. The mode of the first government should be in operation in 1994 at the latest. From 1991 onwards, the post of the Chief Secretary should be filled by a Chinese, and starting from 1994, Hong Kong should have a Chinese governor. From 1991 to 1994, the Sino-British Joint Liaison Group may participate in the appointment of principal officials. (According to Annex 2 of the Joint Declaration, the Joint Liaison Group shall continue its work until 1 January, 2000).

Special Group  
Meeting on  
5th August, 1986

Special Group  
Meeting on  
5th August, 1986

3. The Joint Liaison Group is responsible for facilitating the smooth transition of Hong Kong and making arrangements for the formation of the first SAR government.

Special Group  
Meeting on  
5th August, 1986



4a. If the mode of the first SAR government is in operation before 1997, sovereignty problems may arise.

Special Group  
Meeting on  
5th August, 1986

b. Such problems will not exist.

Provided that the members and the mode of operation of that government are accepted by the government of Hong Kong, China and Britain at that time.

Special Group  
Meeting on  
5th August, 1986

5. Localization should not be carried out just for localization's sake. The principle of choosing the most suitable person for the job irrespective of nationality should be upheld except for the posts which could only be filled by Chinese nationals according to the Joint Declaration.

Special Group  
Meeting on  
5th August, 1986



Special Group  
Meeting on  
5th August, 1986

6. The legislature is to formulate some transitional provisions for Hong Kong as a sort of legal basis during the transitional period.

11.2Section 2

'The continued validity of original laws, documents and contracts'

1. The issue of the continued validity of original laws, documents, contracts and proceedings can be dealt with through individual legislation, and/or a global enabling act. This a problem to be solved by the future legislature.
2. Those laws which do not violate the Basic Law shall remain in force.
3. It is proposed that the existing laws shall be examined one by one and duly amended.
4. As this question is too technical, it is suggested that the relevant legal bodies such as the Hong Kong Bar Association should study this question and prepare a discussion report for the reference of the special group on the structure of the Basic Law.

For preventing the probable confusion arising from the question whether the laws of Hong Kong or the Chinese constitution shall serve as the legal basis for contracts, and the probable disputes arising from the reversion of sovereignty.

Special Group  
Meeting on  
5th August, 1986

Special Group  
Meeting on  
5th August, 1986

Special Group  
Meeting on  
5th August, 1986

Special Group  
Meeting on  
5th August, 1986

11.3Section 3

'The enactment of the Basic Law'.

1. It is only necessary to state in the Basic Law that the Basic Law shall come into effect on 1st July, 1997 and remain effective for at least 50 years. The Basic Law shall remain in force after 2047 unless under special circumstances.

12. General issues

1. The provisions in the Basic Law should clearly state the principles only. It should not contain concrete and detailed policy derived from these principles. Too detailed illustration will be unfair to the future HKSAR government.
2. To treat the Basic Law as an "Art of Delegation of Power". Enacted by the National People's Congress. China had delegated power to the HKSAR government, to be responsible for the administration of Hong Kong, with the necessary exceptions specified in the Basic Law. This may help to realize the high degree of autonomy of the HKSAR.

The Basic Law as an "Art of Delegation of Power" is a clearer concept than "residual power", solving the problem of division of power.

Special Group.  
Meeting on  
5th August, 1986

Special Group  
Meeting on  
3rd June, 1986

Andrew Wong  
(Legco member)  
Ming Pao  
22nd April, 1986



3. The aim of the Basic Law is not only for maintaining the present situations, but also for future development.

4. Except provision on National Flag, National Emblem and Capital in the constitutions, other concepts such as law, human rights, freedom and liabilities etc., should not be written in the Basic Law, to avoid the confusion caused by the different conceptions between China and Hong Kong.

"The Old  
Spacemen"  
Ming Pao  
12th May, 1986.

Maria Tam  
(Member of  
the Drafting  
Committee for the  
Basic Law)  
Wen Wei Po  
15th June, 1986.

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

ITEM	OPINIONS	REASONS	SOURCES
1. "Preamble"			
1.1 Item 3 "The Enactment of the Basic Law of the Hong Kong Special administrative Region in accordance with Article 31 of the Constitution of the PRC to safeguard state sovereignty and maintain the prosperity and stability of Hong Kong".	1. Apart from explaining the legal basis of the Basic Law, the proposal for establishing the Hong Kong Special Administrative Region of the People's Republic of China to be passed by the National People's Congress should also be mentioned. In addition, it should also be explained why the adoption of the principle of "one country, two systems" and the establishment of a special administrative region is necessary.		Written submission of Tsang Yin Ling dated 13 September
	2. This section should be revised.	This section gives the impression that to maintain the prosperity and stability of Hong Kong is the only objective of establishing the Hong Kong Special Administrative Region.	Written submission of Tsang Yin Ling dated 13 September



2. Chapter I  
"General  
Provisions"

2.1 Item 1  
"The Hong  
Kong Special  
Administrative  
Region is an  
inalienable  
part of the  
People's  
Republic of  
China and  
shall enjoy  
a high degree  
of autonomy  
as authorized  
by the National  
People's Con-  
gress of China".

1. It was suggested that this item should  
be followed by a provision under the  
Joint Declaration: "Except for foreign  
and defence affairs which are the respon-  
sibilities of the Central People's  
Government, the Hong Kong Special Admini-  
strative Region shall be vested with  
executive, legislative and independent  
judicial power, including that of final  
adjudication."

This is to explain what is meant by  
"a high degree of autonomy" as the  
guiding principle of the Basic Law.

Written submission  
of Tsang Yin Ling  
dated 13 September

2.2 Item 2  
"The executive  
authorities  
and legislature  
shall be composed  
of local inhabi-  
tants".

1. It was suggested that this item should  
be modified by adopting the wording of  
the Joint Declaration: "The Government of  
the Hong Kong Special Administrative  
Region will be composed of local inhabi-  
tants".

To avoid any contradictions between the  
Basic Law and the Joint Declaration.

Written submission  
of Tsang Yin Ling  
dated 13 September

2.3 Item 3

"The socialist system and socialist policies shall not be practised and the previous capitalist system and life-style shall remain unchanged for 50 years".

1. It was suggested that "the previous capitalist system and life-style" should read "the previous capitalist system, and pre-1997 social system".

It is to conform to the Joint Declaration.

Written submission  
of Tsang Yin Ling  
dated 13 September



2.4 Item 7

"The laws previously in force shall remain basically unchanged".

1. It was agreed that the source of the laws to be implemented in the SAR should be specified here.

2. The Joint Declaration should not be regarded as a legal document after 1997.

The Joint Declaration is basically a political document rather than a legal document. If the provisions under the Joint Declaration are made more specific and given definite status by the Basic Law, the Joint Declaration can be replaced and should not enjoy any legal status.

Written submission  
of Tsang Yin Ling  
dated 13 September

Public Hearing on  
14 September

## 2.5 Supplement

1. It was suggested that the following spirit be added:

The spirit of the Basic Law lies in promoting the realization of "one country, two systems" and community development in order to maintain a stable, prosperous and fair society where the people are free to develop their resources and their basic human rights are protected. To achieve these ideals, the existing rule by law and the efficient administrative structure must remain unchanged. On the other hand, the structure of the Executive Authorities and the Legislature as well as the quality of the people's life should improve continuously.

3. Chapter 11  
"The Relationship between the Central Government and the Hong Kong Special Administrative Region".

The written submission of Fraternity for the Sharing of the Christian Way dated 8 August



3.3 Item 7

"Other functions and powers conferred on the Hong Kong Special Administrative Region by the National People's Congress and the State Council".

1. It was agreed that a special group should be formed under the National People's Congress to deal with matters concerning the Basic Law in relation to Central and the SAR.

2. It was agreed that the concept of "a high degree of autonomy" should be clarified in this item. It should be expressly provided that the SAR has exclusive jurisdiction in the administration of autonomous affairs and scope of autonomy as mentioned in the Basic Law, and the formulation of relevant policies and laws.

3. One should not rule out the possibility of defining the jurisdiction of the SAR Government in terms of residual powers.

The concept of "residual powers" is not only applied to the constitution under a federal system but also applied to the constitutions of many autonomous regions in the world.

Written submission  
of Tsang Yin Ling  
dated 13 September

Written submission  
of Tsang Yin Ling  
dated 13 September

Written submission  
of Tsang Yin Ling  
dated 13 September

4. Chapter III

"The fundamental Rights and Duties of Hong Kong Inhabitants".

Public Hearing on  
14 September

Written submission  
of Tsang Yin Ling  
dated 13 September

- 3.1 Item 4
- "The Hong Kong Special Administrative Region shall be vested with executive power (the administrative powers of the Hong Kong Special Administrative Region in such matters as the personnel, public security, finance, taxation, monetary, currency, postal service, industry and commerce, trade, customs, education, science, culture, immigration, etc".
1. It was suggested that the administrative power in public security enjoyed by the HKSAR should be provided for in detail e.g. establishment of the police force.
  2. The administrative powers of in such matters as "external affairs, aviation, shipping, airport, transport, telecommunications and energy resources" should be included.

- 3.2 Item 3
- "Defence and garrison shall be the responsibilities of the Central Government".
1. It was suggested that rights and duties of the garrison in Hong Kong and the deployment should be specified.

Written submission  
of Tsang Yin Ling  
dated 13 September

Public Hearing on  
14 September

4.1 Item 1                      1. It was suggested that the terms  
    "The defini-                "inhabitants", "permanent inhabitants",  
    tion of Hong                "other persons" and "local inhabitants"  
    Kong Inhabi-                should be defined in this item.  
    tants".

4.2 Items 3-11

1. It was suggested that there should be separate clauses defining the various freedoms, or the SAR should be authorized to enjoy legislative power in respect of such freedoms and rights i.e. they are provided for in detail by ordinances. For instance The Freedom of the Press Act in Sweden has played a active role in safeguarding freedom of the press in society.

Written submission  
of Tsang Yin Ling  
dated 13 September

4.3 Item 3

"Freedom of speech, of publication, of assembly, of association, to form and join trade unions, of strike and of demonstration".

1. It was hoped that the concept of freedom of the press will be included in the Basic Law.

Freedom of speech and of publication is not equivalent to freedom of the press.

Public Hearing on  
14 September



4.4 Item 12

"The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force".

1. It was agreed that the International Labour Convention should be added to this item.

The International Labour Convention, with definite effect on the GATT, has direct bearing on the economy of the signing nation. Hong Kong is often in a passive and unfavourable position in negotiating quotas with other countries because many provisions of the International Labour Convention are not applicable in Hong Kong. Moreover, the International Labour Convention is no less important than the two international covenants.

Public Hearing on  
14 September



4.5 Item 14

"The legitimate rights and interests of other persons living in Hong Kong shall be protected".

1. There was opposition to the view that "other persons" are interpreted as people of the various professions. Hence the labour sector should not be included in "other persons". "Other persons" should refer to tourists, refugees and people who do not ordinarily reside in Hong Kong.

Public Hearing on  
14 September

1. It was proposed that the "labour policy" be included in this chapter simply by embodying the principle rather than defining specific policies.

The labour issue is part of the economic policy as well as related to basic human rights. If labour policy is not given the same status as other policies, the working population will be overlooked. As labourers form the majority in the working population, they should be given protection. Since the policy protecting investors is included in the Structure of the Basic Law, there should also be a policy safeguarding the rights and interests of the labour sector to enable an overall development of the capitalist society.

Public Hearing on  
14 September



2. The Basic Law should specify that there will be channels for appeal in the future HKSAR.

Public Hearing on  
14 September

3. It was suggested that the freedom to take part in cultural life and creative work should be added.

Written submission  
of Tsang Yin Ling  
dated 13 September

4. It was suggested that explanation of the civil rights bill should be added.

Apart from clearly defining the rights enjoyed by citizens, the civil rights bill has demonstrative and guiding function as the citizens will clearly understand their own rights through the civil rights bill.

Public Hearing on  
14 September

5. Chapter IV  
"The Govern-  
ment Struc-  
ture of the  
Hong Kong  
Special Admini-  
strative  
Region".

5.1 Item 1  
(1) "The selection,  
appointment  
and removal  
of the chief  
executive".

1. It was suggested that "impeachment and  
automatic resignation" should be added.

The power of the chief executive will be  
checked in this way.

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5.2 Item 3  
"The Legis-  
lature"

1. It was suggested that the system of  
"Commissioner for administration" should  
be considered.

The operation of government will be  
monitored in this way.

Written submission  
of Tsang Yin Ling  
dated 13 September

5.3 Item 4  
"The Judiciary"

1. It was suggested that the formation,  
appointment and dismissal of the "inde-  
pendent commission" for recommending  
judges should be mentioned.

Written submission  
of Tsang Yin Ling  
dated 13 September

(6) Principles  
of defence

This item should be deleted.

Since the SAR will adopt a separate  
legal system, the principles of defence  
adopted by the PRC lawyers under a  
socialist system will obviously not be  
applied to the HKSAR. Hence to mention  
the principles of defence is unnecessary.

Written submission  
of Tsang Yin Ling  
dated 13 September

#### 5.4 Supplement

1. It was suggested that the following be added to item 3 of this chapter: The executive authorities and the legislature should jointly formulate the policy of the SAR in a cooperative manner.
2. The Basic Law and the legislation of the mainland should deal with the possibility of dual prosecution of a criminal defendant.
3. It was suggested that the terms of reference and term of office of Hong Kong representatives at the National People's Congress be included. It was suggested that the chief executive should be ex-officio representative at the National People's Congress.
4. It was suggested that the exercise of emergency power should be provided for.

There is no system of Government with absolute separation of powers.

Pursuant to Article 3 of Chapter 1 of the Criminal Law of China, "This Law is applicable to all who commit crimes within the territory of the People's Republic of China except as specially stipulated by law". "When either the act or consequence of a crime takes place within the territory of the People's Republic of China, a crime is to be deemed to have been committed within the territory of the People's Republic of China".

If the representatives at the NPC and the executive authorities/legislature are totally unrelated, it will certainly give rise to a second power centre.

To ensure the legal effect of the Constitution so that it will not be abused or laid aside.

Written Submission  
of Tsang Yin Ling  
dated 13 September

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6. Chapter V  
"The Economy  
of the Hong  
Kong Special  
Administrative  
Region".

6.1 Supplement

1. It was proposed that the public utilities of the SAR be governed by the stipulations of previous agreements.
2. It was proposed that the mass media be governed by the stipulations of previous agreements.

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7. Chapter VI  
"Education,  
Science, Tech-  
nology, Culture,  
Sports and  
Religion of  
the Hong  
Kong Special  
Administrative  
Region".

7.1 Supplement

1. It was proposed that the following be added: "Normal religious activities in the HKSAR should be protected. Such activities already protected by the laws previously should continue to enjoy the same protection."

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8. Chapter VII  
"The External  
Affairs of the  
Hong Kong  
Special Admini-  
strative Region".

8.1 Supplement

1. This chapter should mention whether the Central would sign any treaties that would influence the SAR affairs, and the application procedure of such treaties in the SAR.

External affairs fall under the category of foreign affairs.

Written submission  
of Tsang Yin Ling  
dated 13 September

9. Chapter VIII  
"The Regional  
Flag and the  
Regional Emblem  
of the Hong  
Kong Special  
Administrative  
Region".

The sign of the national flag should be included in the regional flag of the HKSAR.

Public Hearing on  
14 September

10. Chapter IX  
"The Legal  
Status, Inter-  
pretation and  
Amendment of  
the Basic Law  
of the Hong  
Special Admini-  
strative Region".

10.1 Item 1

"The legal status of the Basic Law and its relationship to the Constitution".

The Basic Law will remain effective once it is passed, unless there is any amendment or annulment.

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10.2 Supplement

1. It was proposed that the following be included in the Structure of the Basic Law: A committee for bilingual law-drafting shall be set up in the HKSAR. The committee shall be responsible for drafting the bills in both Chinese and English. Such bills shall become the laws of the HKSAR after going through the legislative procedure.

During the hand-over of sovereignty in many places, bilingual law-drafting is adopted as the transitional method of legislation.

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11. General issues

1. Policies (whether in terms of principles, directions, specific measures, arrangements and methods) should not be written down in the Basic Law in order to avoid imposing unnecessary restrictions on the SAR Government.

Except for socialist countries, most countries do not have policies written down in their constitutions.

Public Hearing on  
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2. The Basic Law should only write down principles and general concepts instead of listing specific ordinances.

Written submission  
of the Fraternity  
for the Sharing of  
the Christian Way  
dated 8 August