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Is China Abandoning its Obligations in the Sino-British Joint Declaration?

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Abstract

In 2014, the Chinese government issued its first white paper on Hong Kong: “*The Practice of the ‘One Country, Two Systems’ Policy in the Hong Kong Special Administrative Region*” (*White Paper*). This dissertation explores whether Beijing has changed its Hong Kong policy after the White Paper, by comparing the White Paper to the *Sino-British Joint Declaration on the Question on Hong Kong (the Joint Declaration) (1984)*, which laid the legal foundation for China to resume its exercise of sovereignty over Hong Kong in 1997 and to set up Hong Kong Special Administrative Region (HKSAR). This dissertation argues that, the White Paper marks a shift in Beijing’s Hong Kong policy as Beijing deviates from the obligations it signed up to in the Joint Declaration. On the one hand, the White Paper redefines its promises in the Joint Declaration; on the other hand, Beijing attempts to sideline the Joint Declaration in its official rhetoric. This shift in rhetoric can also be observed in HKSAR government’s rhetoric. Although Chinese officials have repeatedly claimed that the Joint Declaration has no significance, according to the *Vienna Convention of Law of Treaties (VCLT) (1969)*, the Joint Declaration, as a treaty under international law, is still in force. However, the lack of enforcement mechanism makes it difficult to hold Beijing accountable for breaching the Joint Declaration. China’s rising soft power also make it less prone to shaming diplomacy. This interdisciplinary analysis integrates political and international law perspectives, and will consequently benefit Hong Kong’s politicians and opinion leader in better addressing Hong Kong’s autonomy.

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Chapter 1: Introduction

In 1984, the People's Republic of China (PRC) and the United Kingdom signed the *Joint Declaration on the Question of Hong Kong (the Joint Declaration)* and laid the legal foundation for China to resume its exercise of sovereignty over Hong Kong. The Joint Declaration, set out on the basis on "One Country Two Systems" (OCTS), declared that the PRC government would set up Hong Kong Special Administrative Region (HKSAR). It sets out 12 basic policies (or 12 Basic Principle) of the PRC regarding Hong Kong, including the promise of a high degree of autonomy, a government composed of Hong Kong people, and for the way of life remain unchanged for 50 years.

However, in 2014, the Information Office of the State Council, PRC, released a white paper "*The Practice of the 'One Country, Two Systems' Policy in the Hong Kong Special Administrative Region*" (The White Paper) (The Information Office of the State Council, PRC, 2014), and fuelled speculation that Beijing was changing its basic policies on Hong Kong. This White Paper is the first ever white paper China had ever published regarding Hong Kong. The White Paper pronounced its "comprehensive jurisprudence" over Hong Kong and stated that Hong Kong has no residual power. Beijing's declaration of its total control over Hong Kong stirred concerns on whether Beijing was taking the promise of OCTS seriously. This concern was further developed with the NPCSC on 31 August 2014 (the "8.31 Decision") which allowed Beijing to vet candidates running for the Chief Executive - the top leadership of the city (Davis, 2015; Cheung, 2015)¹. NPCSC's "8.31 Decision" sparks Umbrella Movement, which was by far the largest demonstration in Hong Kong, lasting 79 days. One year after the Umbrella Movement, China President Xi Jinping pledged to uphold OCTS "without being bent or distorted" (不走樣、不變形) in his meeting with the Chief Executive Leung Chun-ying's annual duty visit in December, 2015 (South China Morning Post, 24/12/2015). However, an unprecedented seating arrangement sparked more speculations. Instead of sitting side by side as was the previous protocol, the Hong Kong Chief Executive was seated at the side of the table,

¹ The NPCSC decision in 31 August 2014 allows only two or three candidates to run the Chief Executive Election. The candidate need approval from a majority of a 1,200 Nomination Committee. The Nomination Committee would be chosen by 250,000 individual and corporate voters, which is roughly equivalent to 7% of the total registered voters (approx. 3,500,000) in Hong Kong (as in 2014) (<http://www.voterregistration.gov.hk/eng/statistic20161.html#1>). The Hong Kong Legislative Council eventually vetoed the electoral reform proposal based on this NPCSC decision on 18 June, 2015.

see: "Decision of the Standing Committee of the National People's Congress on Issues Relating to the Selection of the Chief Executive of the Hong Kong Special Administrative Region by Universal Suffrage and on the Method for Forming the Legislative Council of the Hong Kong Special Administrative Region in the Year 2016" <http://www.2017.gov.hk/filemanager/template/en/doc/20140831b.pdf>

while Xi sat at the head of a long conference table, suggesting the two were not on the same footing. After the meeting, Leung acknowledged that the significance of the changed seating arrangement “reflects the constitutional position of Hong Kong and the central authorities” while the State Council’s Hong Kong and Macau Affairs Office (HKMAO) declared the new seating arrangement would make such duty visit “more regulated and solemn” (ibid). Such nuanced details in the political choreography stirred heated debate on whether “One Country” override “Two Systems”, and whether the Hong Kong “system” with its “high degree of autonomy” was subordinate to the China “system”.

Beijing’s change of tone on OCTS not only happened at the domestic level, it could also be noticed at international level. Ever since the White Paper was published, the Beijing Foreign Ministry expressed its position that the Joint Declaration has no significance in discussion of the Hong Kong issue, and maintained that the UK government had no right to interfere in Hong Kong’s affairs (Tsoi, 18/12/2014; South China Morning Post, 30/6/2017).

This sequence of events sparked the interest of this researcher for the dissertation. This dissertation will be divided into two sections. The first section will compare the government’s rhetoric in the White Paper to that of the Joint Declaration. I will explore whether China has changed its Hong Kong policy after issuing the White Paper. This dissertation argues that Beijing has redefined its Hong Kong policy as promised in the Joint Declaration in the White Paper. I will argue that Beijing did this in two ways. First, the White Paper redefined the principle of OCTS enshrined in the Joint Declaration. The White Paper states that Hong Kong has no “residual power”, it imposed an ambiguous requirement of patriotism and introduced a “correct understanding” of the Basic Law. These rhetoric are inconsistent with the text of the Joint Declaration and Deng Xiaoping speeches back in the 1980s. Secondly, I will argue that by marginalising the Joint Declaration in its official rhetoric, Beijing has attempted to disavow its obligation to the international treaty. These changes of the OCTS would not be possible had the HKSAR government defended its own autonomy. However, I will illustrate that HKSAR government is essentially powerless to defend its autonomy, but has to follow Beijing’s position, as the White Paper notably introduces a rhetorical shift in the HKSAR regarding the Joint Declaration.

The second section of the dissertation will seek remedy under the International Law framework. As Beijing insists the Joint Declaration has no significant upon the PRC government resume its sovereignty over Hong Kong. This dissertation will then analyse the validity of the Joint Declaration under the Vienna Convention of Law of Treaties (VCLT) (1969) . Finally, I will

discuss that, while the Joint Declaration is still valid, given the lack of enforcement mechanism and China growing soft power make it difficult to press Beijing to honour its promise in the Joint Declaration.

Literature Review

Hong Kong was the most recent colony where the British relinquished their power. However, unlike other British colonies, independence was never an option for the people of Hong Kong, who were absent from the negotiation of their future. After two years of painstaking negotiation between China and the UK from 1982 to 1984, Hong Kong was transferred from this liberal democratic regime and “recolonised” (Chan, 1996; Gordon, 2015) by the communist authoritarian one. China invented a hybrid political system “One Country, Two System”, but how a 1,100km² city could maintain its autonomy, democratic institutions, and freedom, while embedded in an autocratic political sphere, remains of a considerable interest when considering its in the subject of history, politics, and law.

Prior to the handover in 1997, there was a sizeable body of literatures holding a pessimistic view of Hong Kong’s future. These arguments can be summarised in three reasons. First, academics and media were skeptical that communist authoritarian China would honour its promise in the Joint Declaration, especially when China evidently had a restrictive understanding of human rights (Finer, 1985). Second, concerning the realisation of the Joint Declaration from treaty to law, the drafting of the Basic Law was dominated by Beijing and the UK government has no official standing in the drafting of the Basic Law. The Basic Law Drafting Committee consisted of 40 Chinese members appointed by the PRC government and 23 Hong Kong members selected by the initial 40 Chinese members. As Bowie (1990) argues, this composition makes it likely that PRC views would prevail (Bowie, 1990), and as Ghai (2013) notes, leaves ample room for Beijing to interpret its promise in the Joint Declaration and write into laws. Thirdly, scholars had reservations on the implementation of the Joint Declaration. As Kuan and Lau (1987) indicate, the Joint Declaration provides little guidance for the design and they were also doubtful whether would be sustainable after the handover. Skepticism about Beijing’s commitment reached its highest point after the Tiananmen Square incident in 1989. For example, “The end of Hong Kong”(Cottrell, 1993) and “the Fall of Hong Kong” (Roberti, 1996), depicted Sino-British negotiation, in which Hong Kong was a puppet in the power struggle between China and the British.

Over the 20 years after the handover, scholars have routinely published works analysing the crisis and transformation after Hong Kong’s handover. Some researchers have focused on Hong

Kong's autonomy in its external affairs. For example, Mushkat (2006) focused on Hong Kong participation in regional and international organisations; while Panditaratne (2008) studied Hong Kong's reports to the United Nations human rights treaty bodies. Other research have focused on how autonomy is implemented in Hong Kong (Baum, 1999; Chan and So, 2002; Horlemann, 2003; Flaherty, 2013). For example, Flaherty (2013) points out the grey area between the the "two systems". Chan (2002a) and Flaherty (2013) and observed freedom of press and the rule of law in Hong Kong has slipped from pre-handover baseline to different extents.

The dynamics between the PRC government and the HKSAR government remain as the main interest in the study of Hong Kong politics. Various studies have analysed Beijing's Hong Kong policy. For example, a number of literatures point out that 2003 was a turning point in Beijing's Hong Kong policy, after the failure of the legislation of "Article 23" - the National Security Act (Zheng and Tok, 2007; Ma, 2016). Zheng and Tok (2007) noted that Beijing's institutional change in the bureau overseeing Hong Kong issues after 2003 reflects Beijing's policy priority over Hong Kong. Chou (2016) suggests that Beijing's Hong Kong policy, in fact, mirrors Beijing's governance in its restive borderlands such as Tibet and Xinjiang, which are governed through politico-administrative control; cultural assimilation; and economic integration and domination. Some scholars focus on the HKSAR government's behaviour under the OCTS and analysis how the HKSAR government maintains its autonomy with growing economic domination from China. For example, Lo (2008) adopts the patron-clientelism framework and argues the HKSAR government has a tendency to "mainlandise" Hong Kong. Other research also suggests that Hong Kong's growing economic dependence on China gradually reduce the autonomy and bargaining power of Hong Kong's local elites, particularly those in the pro-democracy camp (Holliday et al, 2004).

Another dimension with growing interest pertains to the constitutional foundation of autonomy in Hong Kong. The model of OCTS provides an interesting case for the study of constitutional pluralism and governance in autonomous area. For example, different scholars have pointed out the limits in Hong Kong's autonomy lies in the NPCSC's ultimate power in interpreting the Basic Law - the law which entrenches the principle of OCTS and Hong Kong's autonomy (Tsang, 1997; Horlemann, 2003; Ghai, 2007). As Richard (1997) describes, the promised "high degree autonomy" is, in fact, enacted with "a high degree of ambiguity". The extent of freedom and autonomy that the HKSAR could enjoy hugely depends on the tolerance of the Chinese government. A number of literatures point out the arbitrariness of NPCSC past interpretations on the Basic Law (Langer 2008; Boniface, 2010; Davis, 2015; Ip, 2016; Yap, 2017; Cheung

2015). For example, Cheung (2015) argues, in NPCSC's decision in 2007 and 2014, Beijing repeatedly push back the deadline for democratisation, or in Cheung's words, Beijing was "moving of the goalposts". Another focus of the study is about the nature of NPCSC interpretation. On the other hand, Langer (2008) points out that NPCSC has a tendency of interpreting matters which is quintessentially domestic, which is contradict to Article 158 Basic Law, which vest the local court to interpret on their own of the provision within the limit of the autonomy of the HKSAR.

The NPCSC indeed has the right to interpret the Basic Law. Technically, the NPCSC can amend or repeal the Basic Law any time. However, as the Basic Law is a measure of entrenchment of the Joint Declaration, any significant change in the Basic Law would put China in violation of the Joint Declaration (Flaherty, 2015). There is a growing and renewed interests in seeking remedy outside Hong Kong's constitutional framework, ie the Basic Law, and appeal to the international law framework under the Joint Declaration (Langer, 2008; Gordon, 2015; Cheung, 2015). This dissertation follows this new trend and look beyond the national frame. As Beijing maintains the UK has no rights to monitor the implementation of OCTS in Hong Kong, and the provisions as a state in the Joint Declaration have been fulfilled. This dissertation will study if Beijing's claim is valid under VCLT (1969) and to seek remedy under the international law framework.

Methodology

The analysis is divided into two parts. The first part of the dissertation will address if Beijing has abandoned its promises in the Joint Declaration. And how Beijing has redefined its promise in the Joint Declaration and the impact on HKSAR government. In the first part, I will compare the content in the 2014 White Paper to the Joint Declaration and Deng Xiaoping speeches in the 1980-90s, from the *Selected Works of Deng Xiaoping (Vol. 3)* which selected Deng's significant speeches from 1982-1992, during which over the time between the negotiation regarding the Joint Declaration. This book was chosen for two reasons. Firstly, prior to the handover, Hong Kong issues were partly a foreign policy matter and had the undivided attention of China's top leaders, especially Deng Xiaoping, who provided "overall guidance" in the negotiation and had the "final say" (Zheng et al, 2007; Tsang, 2004). Therefore, Deng's speech represented Beijing's position. In addition, the book was edited by China's official media, People's Daily, which reflects Beijing propaganda. Speeches with the keyword "Hong Kong" were chosen to study (Appendix I).

In light of previous literatures observed a growing subservient culture in the HKSAR government, I will examine how the HKSAR government accommodate to Beijing shift in policy affected Hong Kong's local policy by analysing official government speeches. The speeches will be extracted from the online archives of Information Service Department (ISD), HKSAR². Search keywords include: "Sino-British Joint Declaration" and "Joint Declaration". Both English and Chinese are the official languages in Hong Kong. Most of the speeches will be translated, and archives are bilingual, however, some speeches only have records in Chinese. Chinese speeches with the keyword the "Joint Declaration" (中英聯合聲明/聯合聲明) will also be analysed. A list of speeches can be found in Appendix II.

The second part of the dissertation will analysis if Beijing's change of rhetoric adheres to its obligation signed up to in the Joint Declaration. The analysis will adopt VCLT (1969) and analysis if the Joint Declaration is still in force, and finally, the possibility to seek remedy under the international law framework, if Beijing breaches the Joint Declaration.

² Archives for July-December, 1997: <http://www.info.gov.hk/isd/speech/sensp97.htm>; Archives for 1998 onward: http://www.info.gov.hk/gia/ISD_public_Calendar_en.html?fontSize=1

Chapter 2: The Promised Autonomy

*“... The Hong Kong Special Administrative Region will enjoy a **high degree of autonomy**, except in foreign and defence affairs which are the responsibilities of the Central People's Government.”*

Sino-British Joint Declaration Article 3(2)

*The Hong Kong Special Administrative Region will be vested with **executive, legislative and independent judicial power**, including that of final adjudication. **The laws currently in force in Hong Kong will remain basically unchanged.***

Sino-British Joint Declaration Article 3(3)

*The Government of the Hong Kong Special Administrative Region will be composed of **local inhabitants**...*

Sino-British Joint Declaration Article 3(4)

The formula of OCTS was regarded as a shield to separate Hong Kong from Chinese communist rule, creating a different “system” for the HKSAR. Introduced in the aftermath of the Tiananmen Square Massacre in 1989, the idea of OCTS aimed to win back the Hong Kong people’s confidence in returning to China and provide a fundamental guarantee for the resumption of China's sovereignty over Hong Kong and the maintenance of Hong Kong's stability and prosperity (Tsang, 2004, p.219-224). The phrases “High Degree of Autonomy”, “Hong Kong people ruling Hong Kong” and “Judicial Independence” thus became the mantra, if not the essence of OCTS.

2.1 The Joint Declaration as an international treaty

Both China and the UK have adopted the VCLT (1969). The VCLT adopts a relatively broad definition of a treaty. Article 2 of the VCLT defines a “treaty” by three elements, as “an *international agreement* concluded between States in *written form* and *governed by international law* whether embodied in a single instrument or in two or more related instruments and whatever its particular designation” (emphasis added).

The Joint Declaration is the product of a 2-year bilateral negotiation between the Chinese government and the UK government from 1982 to 1984. Secondly, the text in the Joint

Declaration suggests that the Declaration is a binding agreement; for example, in para. 8 of the Joint Declaration is stated “This Joint Declaration and its Annexes shall be equally binding”. There are three Annexes in the Joint Declaration. Annex I, titled “Elaboration by the Government of the PRC of its basic policies regarding Hong Kong”, lists out the practicalities of the 12 Basic Principle. While the title of Annex I might seem to be set out in the form of a unilateral declaration, it is part of the jointly agreed text, and equally binding on China as is the main part of the Declaration. Therefore, the whole Joint Declaration, the main text and its annex is valid after the handover, according to VCLT.

2.2 Ambiguity in Autonomy

Hong Kong lacks the crucial component of autonomy - the capability of the autonomous region to amend its own charter or constitution, as the NPCSC has the final power of interpretation of the Basic Law. Some scholars have even suggested that, the Basic Law should not be regarded as a constitutional, but rather as an ordinary law, under the Chinese constitution (Horlemann, 2003). Against such a constitutional setting, Hong Kong’s autonomy is indeed fragile in nature (Horlemann, 2003; Ghai 2007, 2013). To maintain the high degree of autonomy therefore would only succeed if China voluntarily renounced the exercise of that sovereignty and self-restraint. As Richard (1997) describes, the autonomy is indeed accompanied by “a high degree of ambiguity”.

The ambiguities of both the Joint Declaration and the Basic Law leave ample room for the PRC government to define autonomy (Chan 2002a; Horlemann, 2003; Ghai, 2007, 2013). Even if Hong Kong can make laws and policies within the “system”, with its autonomy in legislation and policies, Hong Kong has no liberty in altering the essential framework. The HKSAR cannot change its government institutions on its own, nor the electoral laws, nor significantly, a rather laissez-faire economic system. These restrictions are supported by another aspect of the institutional arrangements, which centre on the office and powers of the Chief Executive, and are part of Beijing's plan to acquire ultimate control over Hong Kong’s affairs.

More importantly, Hong Kong’s autonomy is largely built on pragmatic and strategic considerations for economic development, and peaceful reunification with Taiwan (Boniface 2010; Ip, 2016). As Chan (2002a) points out, as time passes, if the relative economic importance of Hong Kong is diminished in view of the rapidly developing economy on the mainland, the PRC government’s respect, or “tolerance” of Hong Kong autonomy, may diminish.

Chapter 3. The First White Paper on Hong Kong:

“The Practice of the ‘One Country, Two Systems’ Policy in the Hong Kong Special Administrative Region”

3.1 Significance of the 2014 White Paper

White papers provide guidance for the political action of a state, and are also a means for the state to justify and portray its stance in front of foreign countries. The Chinese government have issued 105 white papers since 1991, covering national policy, foreign policy, human rights, and local issue. China has issued White Papers on Tibet (1992, 1998, 2000, 2001, 2003, 2004, 2008, 2009, 2011, 2013, 2015), Xinjiang (2003, 2009, 2015, 2016, 2017), and Taiwan (1993, 2003). However, the 2014 White Paper was the first time China issued a White Paper on Hong Kong, 17 years after it resumed sovereignty. The White Paper was published at the time when Hong Kong was striving to fulfill its autonomy and the principle of “Hong Kong people ruling Hong Kong”: when the city was mounted with heated debate of political reform and civil society was deliberating to launch a massive civil disobedience movement to fight for universal suffrage: Occupy Central. It is worth noting that this paper only focused on the implementation of the OCTS policy in Hong Kong, but not in Macau, which was handed over to China in 1999, also under the principle of OCTS and enjoying equal constitutional autonomy as entrenched by the Macau Basic Law. Macau enacted its National Security Law (Article 23) back in 2009. However, the same bill for HKSAR is still on the rocks. Chan (2002a) described China had “a great sensitivity to anything remotely related to sovereignty”. Therefore, in Beijing’s eye, the political reform in 2014 could probably be a national threat to China's sovereignty: it was a demand of “one man, one vote” which resorted to civil disobedience demonstration, happened in a city where there was no legislation to protect China’s national security. It should not be surprised that the main theme of the White Paper revolves around China’s national security.

The White Paper provided a summary for the implementation of OCTS, and most importantly, outlined “a comprehensive and correct understanding” of OCTS (the White Paper, foreword). In the White Paper, the word “sovereignty” appears 14 times, and “security” seven times. The conclusion of the White Paper underscores two objectives of the document. First, it aims to address those “conspicuous” “deep-seated problems” that have built up over a long period of time. Secondly, it emphasis that it is necessary to be alert to the attempt of “outside forces to use Hong Kong to interfere in China’s domestic affairs, and to prevent and repel the attempt made by a very small number of people who act in collusion with outside forces”. The White Paper does not explicitly point out what the collusion is. However, it clearly states that some

people “have not yet felt comfortable with the changes” after the handover. This illustrates China’s sensitivity to its sovereignty. Also, it is in line with China recent geopolitik nationalism. As Woon (2017) puts it: “every event involving other actors happened in China’s backyard should be seen as a challenge to China’s status”.

This observation is further supported by the state propaganda respond. On the same day the White Paper was issued, Xinhua, the semi-official news agency, published a commentary entitled "Rectify from the root. Clarify the origin. Build consensus." (正本清源 凝聚共識). The commentary criticised some Hong Kong people for having a “vague and superficial” understanding of OCTS and the Basic Law. The article also pointed out that some “imprecise understanding” of social, economic and political development will affect Hong Kong’s social order, economic development and democratisation, muddling the progress of OCTS on the right track (Xinhuanet, 10/6/2014)³, resonating with the theme of national security in the White Paper. On the other hand, Beijing showed no hesitation in announcing its new rhetoric of OCTS internationally to the “outside forces”. The White Paper serves as a pivot for Beijing to lay out the legal basis of OCTS internationally, and was translated and published in seven different languages. In fact, Beijing reportedly intended to sign an “outcome report” with the British government regarding the implementation of the Joint Declaration on the 30th anniversary of the signature during the then Premier Li Keqiang's official visit to the UK (Wenweipo, 13/6/2014). However, this did not happen during the visit.

In the following section, I will first compare the rhetoric in the White Paper with the text in the Joint Declaration and selected speeches by Deng Xiaoping during the time of the Sino-British negotiation. The analysis will be conducted under three different themes, including how the White Paper rewrites 1. Hong Kong high degree of autonomy; 2. the promise of “Hong Kong people ruling Hong Kong”, and 3. the judiciary independence. After analysing what is said in the White Paper, I will analyse what is not mentioned in it. Then, I will investigate how the HKSAR government accommodated to Beijing’s rhetoric shift.

³ **Original quotation in Chinese:** “遺憾的是，當前香港一些人對“一國兩制”和基本法存在模糊認識和片面理解，一些在經濟社會和政制發展問題上的不正確觀點影響著香港社會安全，經濟發展，民主進步，對繼續推動“一國兩制”實踐沿著正確的軌道向前發展造成困擾。”

Translation: “Regrettably, some Hong Kong people hold a vague and superficial view on One Country Two System and the Basic Law. Misunderstandings in socio-economic and political development have consequences for the security of Hong Kong society and its economic development, as well as democratic progress. These factors cause difficulty in keeping the progress of One Country Two system on the right track” (Xinhuanet, 10/6/2014)

3.2 Redefining One Country, Two System

3.2.1 “High degree of autonomy” is not “full autonomy”

“As a unitary state, China's central government has comprehensive jurisdiction over all local administrative regions, including the HKSAR.”

(White Paper, Part V, Division 1, para 1)

The White Paper for the first time, pronounces Beijing’s “comprehensive jurisdiction” over Hong Kong. It states that the high degree of autonomy of HKSAR is not an “inherent power”, but one that comes solely from authorisation by the central leadership (White Paper, Part V, Division 1, para 1). The high degree of autonomy of HKSAR is neither a “full autonomy” nor “decentralised power”, but is subject to the level of the central leadership’s authorisation (ibid), and Hong Kong enjoys no residual power. Another significant remark is that the White Paper parallel HKSAR with other “local administrative regions”. Hong Kong and Macao are the only two Special Administrative Regions (SARs) in China. Unlike other local administrative or autonomous region such as Tibet and Xinjiang, the SARs are set up on the grounds of Art 31 in the Chinese constitution, whereas the other local administrative or autonomous regions are set up according to Art 30. The difference between to the two lies in their administrative power. A different set of laws will be adopted in the autonomous region set up under Article 31. In order words, their autonomy is entrenched by a specific law, that is the Basic Law in Hong Kong’s case.

The Basic Law set out a number of provisions which confine Beijing’s jurisdiction over Hong Kong. For example, The Basic Law guarantees Hong Kong to be free of interference from the PRC government. All departments of the Central Government must obtain the consent of the HKSAR to set up office in Hong Kong and the personnel of those offices shall abide by the law of the region (Article 22). Basic Law Article 18 stipulates that Chinese national law shall not be applied in HKSAR except for those listed in Annex III, which includes resolution on the National Anthem, National Flag and Nationality Law, or in the event of war or turmoil which endanger national unity or security and is beyond the control of the HKSAR government. While Beijing claims its comprehensive jurisdiction in the White Paper and states that “high autonomy is not fully autonomy”, it ignores its promises of self-restraint and non-interference in the Joint Declaration and the Basic Law.

3.2.2 Patriots ruling Hong Kong

“The Hong Kong people who govern Hong Kong should above all be patriotic”

(White Paper, Part V, Division 3)

“Hong Kong people ruling Hong Kong” is one of the mantras of OCTS. However, the White Paper replaced this mantra with a paramount requirement: Hong Kong should be governed by patriots. The White Paper argues that “loving the country is the basic political requirement for Hong Kong’s administrator” well grounded in law, as the Basic Law requires administrator to swear allegiance and to give up dual nationality. However, the exact word “patriotic” does not appear in the Joint Declaration nor the Basic Law. According to Article 104 of the Basic Law, “the Chief Executive, principal officials, members of the Executive Council and of the Legislative Council, judges of the courts at all levels and other members of the judiciary in the HKSAR must, in accordance with law, swear to uphold the Basic Law of the HKSAR and swear allegiance to the HKSAR of the PRC.”

Under the context of one party-state China, “patriotism” implies a broad array of meanings. The design of OCTS aims to separate Hong Kong from the communist system. A democratic government is an essential part of this autonomy (Ghai, 2013). Before full democracy can be realised in Hong Kong, a government representing the citizens of Hong Kong would then be a minimum requirement to sustain its autonomy and its separation from China. Indeed, the Joint Declaration declares “the Government of the Hong Kong Special Administrative Region will be composed of local inhabitants”. Deng Xiaoping touched on the issue of “Hong Kong people ruling Hong Kong” back in the 1980s, when the goal was to maintain stability in Hong Kong. In his speech, while Deng demonstrated his sentiments of anti-imperialism and his clear target of decolonisation, in that the “old colonial mentality” should be abandoned and the population should have faith in Chinese ruling Hong Kong, Deng acknowledged that Beijing should adopt a policy that both the people of Hong Kong, and the investors in Hong Kong could accept (Deng, 24/9/1982) in order to maintain stability both economically and politically. When Deng said “Chinese” ruling Hong Kong, he was referring to the “Chinese of Hong Kong”, for example, “we should have faith in the Chinese of Hong Kong, who are quite capable of administering their own affairs” (Deng, 22-23/6/1984).

Deng never denied the possibility for Beijing to intervene in Hong Kong affairs, describing it as “not a realistic idea” (Deng, 16/4/1987). However, he confined Beijing interference to

whenever China and Hong Kong's interests were harmed. To achieve this end, Deng suggests that Hong Kong should be governed by patriots as a mainstay and set up the criteria of a patriot:

“What is a patriot? A patriot is one who respects the Chinese nation, sincerely supports the motherland’s resumption of sovereignty over Hong Kong and wishes not to impair Hong Kong’s prosperity and stability. Those who meet these requirements are patriots, whether they believe in capitalism or feudalism or even slavery. We don’t demand that they be in favour of China’s socialist system; we only ask them to love the motherland and Hong Kong.”

Deng Xiaoping (22-23/6/1984)

*Talks with members of a Hong Kong industrial and commercial
delegation*

Selected Works of Deng Xiaoping Vol. 3

Deng holds a broad and inclusive definition of patriots, as those who respect and support the “Chinese nation”, regardless of their ideological beliefs. Apart from the “mainstay” of patriots, the body of administrator, Deng added, “should include other Chinese, too, as well as foreigners invited to serve as advisers.” This explain why the current Legislative Council of Hong Kong allows no more than 20 percent of its members to hold foreign nationality, as stated in Article 67 of the Basic Law. Therefore, the claim in White Paper that the people in Hong Kong who govern Hong Kong “should above all be patriotic” is contrary to the spirit of the Joint Declaration.

3.2.3 A potential threat to judicial independence

The White Paper poses threats to Hong Kong judicial independence in two ways. First, the White Paper shows that Beijing has little appreciation of the separation of powers and includes the judiciary as “administrator”; secondly, the White Paper states the NPCSC “oversees” the implementation of the Basic Law, and implies NPCSC “oversees” Hong Kong courts as well. This violates the principle that courts should be free from any interference.

Judges as “administrator”

The White Paper describes judges and the judiciary as “administrators” like the executive and legislative branches in Hong Kong. This shows Beijing has little appreciation of the separation of powers. In fact, this position can be traced back to Deng’s speech in 1980s, where he noted that Hong Kong’s political system should not be wholly “westernised” and that the “separation

of powers” and multiparty elections would not be “appropriate” for Hong Kong (Deng, 16/4/1987). Despite the exact wording of “separation of power” not being mentioned in the Joint Declaration, the spirit of “check and balance” is embodied in Annex I of the Joint Declaration. For example, it stipulates that executive authorities shall “abide by the law and shall be accountable to the legislature” (Joint Declaration, Annex I, Part I); the legislature may “on its own authority” enact laws (Joint Declaration, Annex I, Part II); and the courts shall exercise judicial power independently and free from any interference (Joint Declaration, Annex I, Part III). However, the clarity of provision stipulated in the international law treaty could hardly alter Beijing’s position. When Xi Jinping visited Hong Kong back in 2008 as the Vice-president, he said “there should be mutual understanding and support among the executive authorities, the legislature and the judiciary” (South China Morning Post, 8/7/2008) which has caused debate and concerns over the independence of the judiciary in Hong Kong. The White Paper’s notion of including judges and the judiciary under the list of “administrator” follows this rationale, and consequently undermines the “checks and balance” among the executive, legislative, and judiciary branches. One of the important functions of the judiciary is to scrutinise the legality of government action. This can only be achieved with a judiciary independent from the administration. However, as I will illustrate in the following section, the White Paper is exerting pressure on the Hong Kong judiciary, by rewriting NPCSC’s role in the Basic Law.

NPCSC “oversees” Hong Kong court

As mentioned above, the Achilles heel of Hong Kong’s autonomy is shown in the NPCSC’s ultimate power to interpret the Basic Law. The Joint Declaration provides little clue to the substantial power of the NPCSC, apart from acknowledging that the National People's Congress (NPC) shall enact and promulgate a Basic Law of the HKSAR. Besides, any legislations passed, as well as appointment or removal of principal judges, shall be reported to NPCSC “for the record” (the Joint Declaration, Annex I). The substantial power of the NPCSC as described in the Basic Law Article 158, which states that the NPCSC has the ultimate power to interpret and amend the Basic Law. However, Article 158 also states that courts in the HKSAR are constitutionally authorised by the NPCSC, to interpret “on their own” for provision “within the limits of the autonomy” of HKSAR. This pinpoints the boundary of the constitutional pluralism between Hong Kong and mainland. Scholars and the legal profession has continually point out that, NPCSC interpretation should be undertaken rarely and cautiously (Chan, 2016; Hong Kong Bar Association, 11/6/2014)

The Joint Declaration Annex I guarantees courts in Hong Kong the right to exercise judicial power independently, and free from any interference (Joint Declaration, Annex I, Part III). However, while the White Paper claims the NPCSC's power to "maintain" the rule of law and "oversee" the implementation of the Basic Law, it also states that all the people who administrate Hong Kong, including the judges, "have on their shoulders the responsibility of correctly understanding and implementing the Basic Law", so as to safeguard the country's sovereignty, security and development interests, which pose a threat to judicial independence in Hong Kong.

The wording "correctly understanding and implementing the Basic Law" reflects the significant differences in the legal system adopted on the mainland and HKSAR. While the mainland adopts the civil law system, Hong Kong continues to use common law. As the Hong Kong Bar Association comments, the White Paper suggests there is a "correct" meaning of the Basic Law which "exists separately as an objective fact which could be learned" (Hong Kong Bar Association, 11/6/2014). Beside, the White Paper is consistently posing political requirement to the courts - from the patriotic requirement as explained in the last section, to the safeguarding of the the country's sovereignty, security, as well as development interests in their judgement. As the Bar Association put it, this "erroneous categorisation of judges and judicial officers as 'administrators' or official exhortation for them to carry out any political mission or task" would send out the wrong message to Hong Kong natives and the international community (Hong Kong Bar Association, 11/6/2014).

3.3 The missing Joint Declaration

While China is expressively and aggressively claiming its jurisdiction over Hong Kong, the unspoken or omitted subtext deserve no less attention. As Duara (1997, p.26) suggests, China has sought to obliterate or appropriate the "otherness" of those who do not belong to its "ideal of self-consciousness". Similar obliteration is also found in the White Paper: The Joint Declaration.

The 2014 White Paper spent one third of its length on the historical background of the handover in 1997, starting from the Sino-British Negotiation in 1982. However, the White Paper attempted to omit the role of the Joint Declaration. Firstly, the White Paper emphasis the 12 Principles formulated by the Chinese government after "in-depth investigations and research" back in early 1983 (White Paper, Part I). The White Paper then elaborates Beijing position in the Sino-British negotiation and mention the signature of the declaration and the drafting of the Basic Law. Secondly, the White Paper pronounces the Basic Law as "formulated in accordance

with the Constitution of the People's Republic of China" (White Paper, Part I), implying that the Chinese constitution is the only source of the Basic Law. This rhetoric is only partly correct. It shows Beijing's effort to erase the role of the British or the declaration in the narrative, and paving the way to detach itself from the Joint Declaration.

The 12 Principles were not solely crafted by Beijing. While Beijing did formulate the 12 Principles in 1983, before the Sino-British Joint declaration started, when Deng first leaked the 12 principle to Hong Kong media, the rigid position caused a crisis of public confidence in Hong Kong (Tsang, 2004, 219-224). The 12 Principles were then revised, as part of the United Front work, before the NPC passed the new constitution, Article 31 which laid the ground for the establishment of the Special Administrative Region. In fact, the final adoption of the 12 Principles adopted was a result of political bargaining. As Ghai (2013, p.320) describes the Declaration, "the principles are Chinese, but the details british". Beijing did not have much intention to have a detailed agreement for the handover, let alone to formalise it as a binding agreement. The only condition Deng laid down was to resume sovereignty within one or two years⁴ (Deng, 24/9/1982). As for the British, their aim was "extracting concessions of substance from Peking and enshrining them in a binding agreement... within the Chinese Timetable" and to "insert" their substance and details into the outline of the 12 Principles (Cradock, 1994, p192-197; cited in Tsang, 2004, p.224), which was eventually set out in the three Annexes in the Joint Declaration. At a late stage of the negotiation, when the two governments were negotiating on the Annexes, the then British Ambassador to China Percy Cradock mentioned Zhao "was still difficult about what he called 'excessive detail'" (Prime Minister's Office, 1984, PREM 19/1267).

Secondly, the White Paper implies the Chinese constitution as the source of the Basic Law (the White Paper, Part I). However, this description is misleading. the role of the Joint Declaration as the source of the Basic Law is clearly stated and recognised in both the Preamble of the Basic Law and by the Court in Hong Kong. As the Preamble of the Basic Law clearly states that "The basic policies of the People's Republic of China regarding Hong Kong have been elaborated by the Chinese Government in the Sino-British Joint Declaration." (Preamble, Basic Law). In *Ng Ka Ling v Director of Immigration* ([1999] HKCFA 72), Hong Kong Court of Final Appeal also follow this position: "*The purpose of a particular provision may be ascertainable from its nature or other provisions of the Basic Law or relevant extrinsic materials including the Joint*

⁴ **Original quotation in Chinese:** "我們可以再等一、二年宣布, 但肯定不能拖延更長的時間了" Translation: "We can wait for one or two year more to announce it, but it cannot be delay anymore.", in *Our Basic Position on the Question of Hong Kong*. (Deng 24/9/1982)

Declaration.” (para. 75). The HKSAR government explained the role of the Joint Declaration in the Basic Law in a more straight-forward way:

“According to the HKSAR government: The Joint Declaration provides that these basic policies shall be stipulated in a Basic Law of the HKSAR”

(Basiclaw.gov.hk)

To sum up, the Basic Law is enacted according to both the Chinese Constitution and the Joint Declaration. In fact, the Joint Declaration provides a more substantial description of the Basic Law as seen in its three annexes. However, the role of the Joint Declaration as a source of the Basic Law is omitted in the White Paper. The marginalised role of the Joint Declaration as portrayed in the White Paper suggests Beijing’s intention to disavow its international legal obligation in the Joint Declaration (Davis, 2015). This argument is supported by Chinese diplomatic gestures following the White Paper: the Chinese diplomats had more than once indicated the declaration was “void”. In November 2014, Beijing banned the British House of Commons’ Foreign Affairs Committee’s (FAC) inquiry visit to Hong Kong for the 30th anniversary of the implementation of the Joint Declaration. The committee’s chairman, Sir Richard Ottaway conveyed a message from China’s deputy ambassador saying that the “Joint Declaration signed by China and Britain is now void and only covered the period from the signing in 1984 until the handover in 1997.” (Tsoi, 18/12/2014). More recently, on the eve of the 20th anniversary handover, the Chinese Foreign Ministry told reporters during a regular briefing that the Joint Declaration no longer binds China: the declaration, as it is a “historical document”, “no longer has any practical significance, and it is not at all binding for the central government’s management over Hong Kong. The UK has no sovereignty, no power to rule and no power to supervise Hong Kong after the handover,” said Lu Kang, the Foreign Ministry spokesman.

The above analysis shows how the White Paper redefines OCTS. This is done in the following ways. First, by muddling, or omitting facts and terms; for instance, HKSAR was described as a local administrative region. The White Paper grouped judicial personnel with the executive and the legislature, and naming the three branches as the “administer” in Hong Kong. By insisting on an ambiguous requirement of patriotism as a qualification for those administering Hong Kong, the White Paper deviates from the intention of “Hong Kong people ruling Hong Kong”. More importantly, it militates against judicial independence by posing this ambiguous requirement on the judges. The White Paper as well suggests that the Hong Kong judiciary has a “correct” understanding of the Basic Law and undermine the common law tradition.

The role of the Joint Declaration is largely diminished in the White Paper, and the way Beijing challenged the validity of the Declaration denotes its attempt to disavow its obligation to the international treaty. The implementation of OCTS requires a considerable degree of goodwill on both the Beijing and HKSAR government side. It requires the Beijing government to exercise self-restraint, while a robust HKSAR government is necessary to resist interference from Beijing and maintain the separation between Hong Kong and China. Despite its avowed attempt at depoliticisation, a subservient culture has been developing inside the HKSAR leadership since the handover (Chan, 2002a; Lo, 2008; Holliday et al.). The HKSAR leadership has been practicing a new kind of political correctness, by increasingly looking toward Beijing often in an anticipatory and solicitous mood (Chan, 2002a), in purely domestic and hence supposedly autonomous matters. The following section will contend that the White Paper induced a rhetorical shift in the HKSAR regarding the Joint Declaration.

3.4 HKSAR government rhetoric regarding the Joint Declaration

The White Paper notably induced a rhetorical shift in the HKSAR regarding the Joint Declaration. Changes could be observed in three different stages. In the early days after the handover, when HKSAR officials constantly assured the international community of the smooth transfer of sovereignty, the Joint Declaration was used as a tool for reassurance. In 2004, the rhetoric of “the Declaration has been fully implemented” emerged. However, the denial of British “moral obligation” did not emerge after the White Paper in 2014.

3.3.1 HKSAR government rhetoric in 1997-2004

In the early days after the handover, HKSAR officials actively attended different international business or legal conferences and assured foreign governments, and perhaps most importantly, foreign investors that, nothing had changed after the handover in 1997. In the first year after the handover, between 1997-1998, HKSAR leadership attended over eleven events overseas event in the United States, Australia, Japan and the Philippines. Their speeches and interviews can be summarised in three different themes.

First, the transfer of sovereignty was “smooth” and there has been “no big change”. In the event on June 4, 1998 in Tokyo, Anson Chan, the then Chief Secretary for Administration, was asked about her view on the June 4th incident commemoration event in Hong Kong. Chan pointed out that, the commemoration event reflected that there was “no change” to the rights and freedom enjoyed by the Hong Kong people.

“As you all know, the rights and freedoms that we enjoyed before July 1 are protected and guaranteed under the Joint Declaration and the Basic Law. There has been no attempt whatsoever on the part of leaders in Beijing to interfere in any way in the exercise of these rights and freedoms.”

Anson Chan, the then Chief Secretary for Administration, HKSAR

Chan tactfully used the Joint Declaration to highlight this “smooth transition” was a bilateral agreement between the Chinese and British Governments: the promise of OCTS, although “invented” by Deng Xiaoping and stipulated in the Basic Law, was agreed on and guaranteed by the British as well. As for the legal status of the Joint Declaration, the Secretary of Justice, Elsie Leung, explicitly pointed out at the LAWASIA Biennial Conference that, the Declaration was a “binding international agreement” registered with the United Nations. Indeed, China has been adhering faithfully to this treaty. As if China’s commitment alone was not convincing enough, the HKSAR leadership also tended to point out the universal recognition the Joint Declaration had received. As Anson Chan put it in her speech:

“If you think we are blowing our own trumpet, let me refer you to third party endorsements from Britain, co-signatory to the Joint Declaration on the future of Hong Kong and your own State Department and Congressional Reports. They all confirm that "the overall transition to Chinese sovereignty has gone smoothly".

Anson Chan, the then Chief Secretary for Administration, HKSAR

at the Asia Society Conference on Hong Kong in Seattle

June 16, 1998 (Emphasis added)

Ultimately, the Joint Declaration also played an important role in HKSAR government policy rhetoric. For example, when the HKSAR Government sought interpretation from the NPCSC for the first time in 1999 on the issue of the rights of abode, the Government made references to the Joint Declaration in the report to the State Council, indicating the Joint Declaration was the source of the Basic Law. Another example is shown in land ownership and land lease policy. In the government’s replies to questions on land leases and indigenous rights of land in the Legislative Council, the government emphasised Annex III of the Joint Declaration, which elucidates land lease and other related matters after the handover⁵.

⁵ Examples can be seen in the reply by Secretary for Planning and Land regarding government rent <http://www.info.gov.hk/gia/general/200205/15/0515210.htm> in May 15, 2002, and

With increasing dependence on China, the HKSAR government also aimed to display their determination in safeguarding the high degree of autonomy. As the Chief Secretary for Administration demonstrated below:

In enhancing the value of our interdependence with the Mainland, we are acutely aware that in doing so we must vigilantly protect the high degree of autonomy guaranteed to us by the Joint Declaration and the Basic Law. Dilute that autonomy and you diminish Hong Kong; and, you damage Deng Xiaoping's dream of recovering China's lost territories.

*Donald Tsang, the then Chief Secretary for Administration, HKSAR
at Hong Kong Association at the Cavalry and Guards Club in London
May 17, 2002*

However, the dilution of autonomy might have come quicker than the HKSAR government had expected. The shift in tone started to emerge in 2003, after the government's defeats on the Article 23 Legislation. It was also during this time, when the city was debating political reform. That the Secretary for Constitutional Affairs, Stephen Lam, reminded the people of Hong Kong that political reform required an amendment in the Basic Law approved by the NPCSC, and that a "high degree of autonomy" is not "complete self-rule".

3.3.2 HKSAR government rhetoric in 2004-2013

The change of tone of the HKSAR government became more apparent in 2004, after the NPCSC made the decision on universal suffrage in the 2007 Chief Executive and 2008 Legislative Council election (hereafter: 07/08 Universal Suffrage).

The NPCSC's decisions made in 2004 denied Universal Suffrage for the Chief Executive election and Legislative Council election in 2007 and 2008 respectively. More importantly, the decisions inserted two more steps to the reform process, which required the HKSAR government to have NPCSC approval to commence the reform process. It also stated that the final reform proposal needed to be approved by the NPCSC. Beijing's attempt to tighten its control on Hong Kong's electoral reform drew international attention. For example, the British

reply by the Secretary for Financial Service and Treasury regarding indigenous villagers defaulting payment of Government rent and rates in March 9, 2005 <http://www.info.gov.hk/gia/general/200503/09/03090208.htm>

Foreign Office Minister issued a statement after NPCSC's interpretation, stating that the further steps added to the political reform process "appears to us to erode the high degree of autonomy which is guaranteed under the terms of the Joint Declaration", while the US consul general in Hong Kong said the NPCSC decision was disappointing (New York Times, 26/4/2004). The NPCSC decision also triggered the U.S. House of Representatives to approve a resolution regarding Hong Kong democratisation progress in July.

Concerns from the international community put the HKSAR government under a stress test, which exposed the frailty of its autonomy. The HKSAR government demonstrated two obvious rhetoric change in its response to the House of Representative resolution. First, the government held that OCTS had been fully implemented since the reunification. Secondly, according to the Joint Declaration, Hong Kong's Chief Executive would be appointed by the Central Government on the basis of the result of elections, and the Legco would be constituted by elections. And "*these* provisions in the Joint Declaration have already been fulfilled" (Information Service Department, 2/7/2004, emphasis added). The statement asserted that since the reunification, Beijing has been firmly committed to upholding the principle of OCTS, "there is no erosion whatsoever of Hong Kong's high degree of autonomy". The statement then recounted that, with the "strong support" of the Central Authorities, "we have successfully turned "One Country, Two System" into an everyday reality" (ibid). The HKSAR government was aware of public concerns over the NPCSC's decision; as Solicitor-General Bob Allcock noted in November 2004, the NPCSC is a legislative body, "lawyers trained in the common law tradition may be uncomfortable with the idea of a legislative body interpreting the law" (Information Service Department, 9/11/2004). However, Allcock conceded in his speech that the interpretation reflects the Chinese Constitution and should be described as "legislative interpretation" (ibid). Meanwhile, the Secretary for Justice Elsie Leung continued her tour to convince the international community to clarify these "misunderstanding of the interpretation of the Basic Law" by the NPCSC. In her visit to London in January 2005, she reiterated that that the guarantees in Hong Kong's Basic Law were not empty promises, and were enforceable through Hong Kong's fiercely independent judiciary (Information Service Department, 25/1/2005).

Another subtle change was the government's attempt to sideline the Joint Declaration. For example, in then Secretary for Constitutional Affairs Stephen Lam's speech in April, 2005, he mentioned that the principles of "One Country, Two Systems", "Hong Kong People Ruling Hong Kong" and "A High Degree of Autonomy" were transferred from the Joint Declaration into the Basic Law in 1990 (Information Service Department, 9/4/2005). This intention to focus

on the Basic Law over the Joint Declaration was more obvious in 2007. On the 10th anniversary of the implementation of the Basic Law, the chairman of the NPC, Wu Bangguo, issued a stern warning in a forum, declaring that Hong Kong did not enjoy “residual powers”, an area not explicitly granted to it by Beijing, declaring that, “however much power the central government decides to assign to the SAR, this is what the SAR gets” (South China Morning Post, 7/6/2007). Wu’s comment sparked criticism from members of the pro-democratic camp, questioning the promised autonomy and universal suffrage (Hong Kong Economic Journal, 25/6/2007; South China Morning Post, 4/8/2007). In response to the criticism, the government stressed that the ultimate aim of universal suffrage for the Chief Executive and the Legislative Council election was stated in the Basic Law, whereas the Joint Declaration “only prescribed” that the legislature of the HKSAR shall be constituted by elections, and that the Chief Executive shall be selected by elections or through consultations held locally (Information Service Department, 30/8/2007). Thus, the Basic Law is more “democratic” or “progressive” than the Joint Declaration (Information Service Department, 26/7/2007; 4/8/2007).

This government rhetoric was inconsistent with previous statement which regarded the Joint Declaration as a source of the Basic Law. However, the rhetoric of “Basic Law is more progressive than the Joint Declaration”, by articulating the dichotomy between the two, suggesting the pre-eminence of the Basic Law. In the 2010 political reform debate, the HKSAR government describe the undertaking of universal suffrage in the Basic Law “surpasses” the provision in the Joint Declaration (Informational Service Department, HKSAR, 18/11/2010).

3.3.3 HKSAR government rhetoric from 2014 onwards

The most significant change happened in 2014, as the city was mounted by political reform debate and the discussion of Occupy Central. On the 25th anniversary of the promulgation of Basic Law, the then Chief Executive Chun-ying Leung reiterated that universal suffrage is not mentioned in the Joint Declaration, and it “wasn’t by way of agreement between the Chinese Government and the United Kingdom Government”. He also noted that, the 12 Principles in the Joint Declaration have been well stipulated in the Basic Law. After the handover and implementation of the Basic Law, therefore, problems such as “violation of the declaration” were out of the equation (Information Service Department, 4/4/2015b)⁶. When asked if the Joint

⁶ **Original quotation in Chinese:** “二十五年前頒布的《基本法》，沒有違反中國政府在《聯合聲明》中的十一條基本方針政策，因此，在香港回歸，和實施《基本法》之後，只有《基本法》的執行和落實問題，不存在違反不違反《中英聯合聲明》的問題。在香港實施《基本法》十七年後，有人要調查中國政府有沒有違反《中英聯合聲明》，是自己不懂《聯合聲明》。”

Translation: The Basic Law promulgated 25 years ago has not breached the eleven [sic] Basic Principles proposed by the Chinese government in the Joint Declaration. After Hong Kong’s reunification with China and the

Declaration was still valid, Leung asserted that as the articles and terms in the Joint Declaration had been realised in the Basic Law, therefore, China's declaration had been "substituted" by the 160 articles stipulated in the Basic Law. (Information Service Department, 4/4/2015a)⁷.

The HKSAR government's line notably changed after China's deputy ambassador expressed the view that the Joint Declaration was "void" in response to the FAC visit. As the Secretary of Justice Rimsky Yuen explained during his visit to London, details of political reforms in Hong Kong are not defined in the Joint Declaration. Therefore, the UK government has no specific obligation on those matters. Yuen then followed with a warning: "Continuation of the FAC enquiry at this moment would perhaps attract unintended consequences, which might not be in the best interest of Hong Kong, an aspect which I am sure everyone here would like to safeguard." In his reply to the Hong Kong Legislative Council regarding the visit ban, Raymond Tam, the then Secretary for Constitutional and Mainland Affairs, put it more clearly: The provisions of the Joint Declaration had been fully implemented, and its purpose and objectives had also been completely fulfilled. As stated above, the United Kingdom has no sovereignty, jurisdiction or right of supervision over Hong Kong, and there is no such thing as "moral obligation" (Information Service Department, 17/12/2014). Meanwhile, the UK Foreign Secretary emphasised that the Joint Declaration remains "as valid today as when it was signed in good faith by Margaret Thatcher and Zhao Ziyang", the UK's commitment to the Joint

implementation of the Basic Law, the only problem [we have] will be the implementation of the Basic Law, but not whether the Joint Declaration is breached. The Basic Law has been implemented in Hong Kong for 17 years, [if] some people now demand to investigate whether China has breached the Joint Declaration, they do not know the Joint Declaration well. (Information Service Department, 4/4/2015b)

⁷ **Original quotation in Chinese:** 大家看《聯合聲明》，其實《聯合聲明》並不長，大家看《聯合聲明》的條文，一條是關於中華人民共和國政府收回香港，一條是關於英國聯合王國政府交還香港，跟着就是講中華人民共和國政府在收回香港後在香港實施的一些基本方針、政策。其他，還有中英聯合聯絡小組，還有關於土地的問題等。收回、交還、中英聯合聯絡小組，以至土地等的問題，這些已經完全完成了，都是過去式。剩下來的就是那11款中國政府對香港的基本方針政策。正如我剛才在發言時所說，這11款方針政策已經通過《基本法》，這個亦是在《聯合聲明》裏面中國政府的聲明，就是以《基本法》規定之，現時這11款已經更具體和更詳細地體現在《基本法》裏面160條的法律條文，不單止是一個國際條約的條文，亦是法律條文。所以，中國政府在《聯合聲明》裏面所作出的基本方針、政策的聲明已經被《基本法》的160條取代了。這個是十分清楚的。

Translation: We can have a look at the Joint Declaration. It is not very long. The first provision of the Joint Declaration concerns the PRC government taking back Hong Kong, the other is about the UK government's obligation to return Hong Kong. It then stipulate PRC government's basic policies regarding Hong Kong. The Declaration also cover the Sino-British Joint Liaison Group, as well as the issue of land lease. The part of "take back", "return", Sino-British Joint Liaison Group, as well as the issue of land lease have been completed. They are in the past tense. The remaining issue would be China's 11 basic policies regarding Hong Kong. As I have said in my speech, all these 11 basic policies have been stipulated - according to the part of China's declaration in the Joint Declaration - in the Basic Law. These 11 basic policies are embodied in the Basic Law in specifically and detailed in the 160 articles in the Basic Law. They are not just provisions in an international treaty, but provision in law. Therefore, the basic policies as states in the Joint Declaration by the Chinese government have been replaced by the 160 articles in the Basic Law. This is very clear. (Information Service Department, HKSAR, 4/4/2015a)

Declaration is “as strong as ever”, the UK has a clear right to monitor and comment on its implementation, and we will continue to do so. (Foreign and Commonwealth Office, 27/2/2015)

Twenty years after the handover, HKSAR government rhetoric on the Joint Declaration changed. The Joint Declaration was once regarded as an international instrument to gain international confidence in the early days after the handover; however, as the political reform debate emerged, with Beijing claiming its comprehensive jurisdiction over Hong Kong, the Joint Declaration was belittled in the government’s narrative, suggest abandonment of its commitment. The provisions of the international agreement have been fully implemented, and the UK has no “moral obligation” over Hong Kong. On the eve of the handover, the Foreign Ministry spokesperson said the declaration as a historical document, no longer has any practical significant nor any binding force on the central government’s administration of HKSAR. (Xinhua, 30/6/2017).

Chapter 4: The Joint Declaration and the Law of Treaties

“It is certain that the contents of the Joint Declaration will not change. And our Central Government and the Central Committee of the Communist Party always live up to their international obligations; that was true even during the years of turmoil. Acting in good faith is a Chinese tradition, not something invented by our generation. It is an essential quality of our magnificent old country. Ours is a great and proud nation. A great nation should preserve its dignity and adhere to the principles it has formulated.”

Deng Xiaoping

*At a talk with Chinese visitors from Hong Kong and Macao
attending the National Day celebrations in Beijing*

October 3, 1984

Three decades after Deng Xiaoping avowed China’s commitment to the Joint Declaration, China’s dedication is far off the mark. In fact, China expressed reservations toward placing the agreement as a binding treaty, having a preference for a very brief agreement (Ghai, 2013). Scepticism that authoritarian China would honour her promise started in the early days of the negotiation. However, when the Joint Declaration was finally published after two years of painstaking negotiation, Hong Kong society suddenly swung from blind panic to intense relief, or as Finer described back in 1985, a “euphoric delight”. As the euphoria fades, and Beijing is evidently sidelining the Joint Declaration, the following section will discuss possible remedies under international law.

4.1 Termination upon handover?

The Joint Declaration does not have explicit provision for termination, or for either side to withdraw. There is a general presumption that existing treaties continue in force, even if all obligations are fulfilled (Gordon, 2016). One example is the treaty of state boundaries – the treaty will not be void once states have set up borders and claimed sovereignty over the territories (ibid). It should be noted that in paragraph 3(12) of the Joint Declaration states that China’s policy on Hong Kong, the 12 Principles, as stipulated in the Basic Law by the NPCSC, will remain unchanged for 50 years. Besides, the Chinese and the British government have set up a Joint Liaison Group for transition matters. This group operated after 1997, up until 2000, and its function, composition and power are well-defined in Annex II of the Joint Declaration.

In other words, Beijing indeed recognised the validity of the Joint Declaration after the handover.

Nonetheless, according to Part V of VCLT, signatory states are eligible to relieve themselves of their obligation under a certain condition. VCLT Articles 46 to 53 lists the factors that may invalidate a treaty, which includes: if the treaty is incompatible to its internal law of fundamental importance (Article 46); error (Article 48); fraud (Article 49); or if the representative of the state has been made subject to restriction (Article 47), corruption (Article 50), under coercion (article 51). A treaty will also be void if its conclusion has been procured under coercion (Article 52) or the treaty conflicts with a peremptory norm of general international law (*jus cogens*). As for the termination and suspension of the operation of treaties. Article 54 states this could be done in conformity with the provision of the treaty or the consent of all parties (Article 54). Article 56 covers terms of denunciation or withdrawal, however, a party shall give not less than twelve months' notice of its intention to denounce or withdraw from the treaty. In the case of the Joint Declaration, both Beijing and the UK never publicly challenged the validity of the Declaration or triggered any denunciation or withdrawal procedure.

Another possible argument Beijing might put forward is that, all the provisions in the Joint Declaration has been enshrined in the Basic Law. VCLT article 59 states that a treaty shall be considered terminated if all the parties to it conclude a "later treaty" relating to the same subject-matter. China can argue that the Basic Law is the later treaty of the Joint Declaration. In fact, a similar argument could be noticed in HKSAR government rhetoric, as shown above. For example, the HKSAR Government described the Declaration as having been "substituted" by the 160 articles stipulated in the Basic Law in a statement in 2015 (Information Service Department, 4/4/2015a). Nonetheless, this argument has little support in law, as the UK has no standing in the drafting of Basic Law; hence, the Basic Law does not fit with the basic criteria of a treaty - an agreement between two states (British Institute of International and Comparative Law, 2014).

VCLT allows for a unilateral breach of treaty if there exists a material breach (Article 60), supervening impossibility of performance (Article 61), fundamental change of circumstances (Article 62), or severance of diplomatic or consular relations (Article 63). However, there is no evidence that Beijing has claimed any material breach, or fundamental change of circumstances for the implementation of the Joint Declaration. Indeed, the Chinese-British diplomatic relationship is still in place. Therefore, the Joint Declaration is still in force.

4.3 Problem of enforcement

There are some aspects of the Joint Declaration which place obstacles in the enforcement of the Joint Declaration. In a 20th anniversary interview, David Wilson, the ex-governors of Hong Kong agreed the British still had an obligation to ensure that Joint Declaration promises are kept for Hong Kong. However, he also pointed that “Nobody should pretend that there is a realistic way in which Britain can actually intervene in Hong Kong. Britain shouldn’t intervene in Hong Kong affairs.” (South China Morning Post, 24/6/2017).

The Joint Declaration is a binding treaty between the China and UK for the transfer of sovereignty. As Deng put it in the early days of the negotiation, the Joint Declaration aimed to assure the people of Hong Kong and “put their hearts at ease” (Tsang, 2007, p.215); yet, in international law, China’s obligations are owed only to the UK but not to any third party, including the people of Hong Kong - the intended beneficiaries (British Institute of International and Comparative Law, 2014; Lim, 2015). Lim (2015) therefore holds a more cautious view, and suggests that the only “responsibility” is Britain’s moral responsibility to Hong Kong to press its own treaty rights against China. One possibility is to bring a judicial review case in the UK courts to oblige the Government to make diplomatic representations to China regarding its compliance with the Joint Declaration, or to exercise diplomatic or consular protection on behalf of UK nationals or companies in Hong Kong (British Institute of International and Comparative Law, 2014). However, the UK government has limited options to choose from, as the Joint Declaration does not specify any consequences in case of a breach (Langer, 2008). The Joint Declaration is registered under Article 102 of the United Nations charter; yet, since China has not accepted the mandatory jurisdiction of the International Court of Justice, the UK could not compel China to settle any dispute about its interpretation in front of the International Court of Justice (ICJ). Moreover, fulfilment of the treaty is ultimately dependent on the promulgation and enforcement of the PRC law, which Beijing saw as a domestic matter, where no foreign interference was permitted. (Tsang, 2004; Ghai, 2013). Beijing and the HKSAR government’s recent shrill denial of the UK’s moral obligation indicates that it would not be easy for the UK to uphold its moral obligation.

4.4 Are sanctions still an effective remedy?

During the time of the Sino-British negotiation, British repeatedly suggested sanctions as an effective remedy if China breached the Joint Declaration. When Prime Minister John Major visited Hong Kong in March 1996, he pledged that Britain would have the “duty to pursue every legal and other avenues available” if the Joint Declaration were breached and called for

international support (South China Morning Post, 3/5/1996, cited from Langer, 2008). The then British Ambassador to China Percy Cradock emphasised he was confident that Beijing would honour the Joint Declaration, otherwise *“we will publicise the fact and denounce them. These are not valueless sanctions; the Chinese wish to be seen to be playing by the rules: they do not wish to be seen as a bandit state. After all, they have gone into the elaborate business of negotiating and signing this Agreement. So I think we do have some persuasive power over China. China also wishes to be seen as a country which can be believed by Taiwan. If they make a public mess of Hong Kong, then that is the end of any hopes they may have of bringing Taiwan back into the fold.”* (Adams, 1995)

This assessment might have been valid back in 1995. However, this was not the case when Li Keqiang paid his visit to the UK, with over £18bn of investment in his pocket. When the White Paper was published, both UK and US merely responded with mild language. While the UK maintained Hong Kong’s constitutional framework has worked well (Foreign & Commonwealth Office, 2014), the US cautiously states that they supported “Deng’s One Country Two System” (Apple Daily, 12/6/2014). When Li Keqiang paid a state visit to the UK, after the White Paper was published in 2014, it was reported that Beijing had prepared an “outcome document” to celebrate the 30th anniversary of the signing of the Joint Declaration. However, the outcome document did not happen. It was also anticipated that the UK government might use the occasion to put some pressure on Beijing regarding the political debate in Hong Kong; however, Hong Kong’s progress in democracy or autonomy was barely on the agenda. In the joint press conference after their meeting, while David Cameron briefly noted that it was the 30th anniversary of the signature of the Joint Declaration on Hong Kong (Prime Minister Office, 18/6/2014), no reference was made regarding the White Paper. The UK government’s silence was roundly criticised by the FAC in the House of Commons, especially in the case of the inquiry visit ban. The FAC was “profoundly disappointed” with the FCO’s weak response to the visit ban, as the FAC described the ban to be “unprecedented” and “wholly contrary to the spirit of the Joint Declaration”. Most importantly, the ban was an “obstruction” to the conduct of UK parliamentary duties. (Foreign Affairs Committee, House of Commons, 10/12/2014, 3/5/2015).

In 2015, five Hong Kong-based publishers went missing, and eventually turned up in the custody of mainland Chinese authorities. It is widely believed that the publishers were abducted, then detained by the Chinese authority. As some of the publishers had dual citizenship, the incident was soon under international spotlight. The UK, US, and the European Union all expressed their concerns. The UK Foreign Minister declared that Beijing would be

guilty of an “egregious breach” of Hong Kong’s autonomy if speculation that Chinese security forces had abducted a British bookseller was confirmed (The Guardian, 6/1/2016). The UK scrupulous respond was criticised by the victim’s family, as one of the victim's daughter openly criticised that the UK “is looking away as China tramples on the freedom of Hong Kong” (The Guardian, 22/6/2017).

China’s growing economic power and military power brought it a surge of “soft power”, changing the landscape of the international community greatly in past decades. The diplomacy of shaming adopted by Western countries towards China’s human rights has declined. In the 2000s, except for continuing to criticise China’s human rights record in its Department of State’s annual country report of human rights practices, the United States generally ceased to criticise China’s human rights situation in international organisations, especially after 2005, the year in which Robert Zoelick, then Deputy Secretary of State of the United States gave a speech that encouraged China to be a “responsible stakeholder” (Wu, 2009). China’s increasing soft power enables it to “mute” most of the criticism of its human rights record or divert the issue into a channel of “quiet diplomacy”. On the other hand, businesspeople and scholars in the West increasingly emphasised the importance of maintaining smooth ties with China and a subservient culture is forming - even the liberal Scandinavians may find it hard to resist. After Liu Xiaobo, the Chinese dissident was awarded the Nobel Prize with an empty chair, Norway’s market shares of salmon exports to China plummeted from 92 per cent in 2010 to just 29 per cent in 2013 (Financial Times, 15/8/2013). The two countries restored ties six years later in 2016. Norway promised it “will not support actions that undermine” “China’s core interests and major concerns”, while China celebrated Norway having “deeply reflected upon the reasons bilateral mutual trust was harmed”. China’s carrot and stick approach is evidently effective. Norway's reaction to Liu’s death was significantly toned down (Quartz, 14/6/2017; China Policy Institute: Analysis, 17/7/2017).

Human rights organisations constantly complain few substantial pressures on China over worsening human rights record were observed (Human Rights Watch, 2016). However, it is arguable if traditional tactics like “naming and shaming” is effective in China (Wachman, 2011; Nathan and Scobell, 2012). Indeed, “naming and shaming” can sometimes be counterproductive, as China sometimes treats “naming and shaming” as an affront and revenge to its dissident (Nathan and Scobell, 2012, p.318-342). For example, after Liu Xiaobo was awarded the Nobel Peace Prize in 2010, in the same year, his wife Liu Xia was under house arrest. Wachman (2001) suggested an interesting finding which could broaden discussion of human rights protection in China. Wachman points out that there is little evidence that

diplomacy of shame would promote human rights in China. As there is no viable opposition within China to mount major challenge to the regime, a diplomacy of shaming would only arouse “indignation born of national pride”. In addition, with China’s official discourse characterising these ideas as “foreign infiltration, and have a great sensitivity to anything related to sovereignty (Chan 2002a; Woon, 2017), the “foreignness” of the effort may in return strengthen the arguments made in policy to tighten its control over its people. This practice is well illustrated in the White Paper, where China on one hand, claims its comprehensive jurisdiction over Hong Kong, on the other hand, it raises the implementation of OCTS to the level of national security.

Chapter 5: Conclusion

China has consistently upheld state sovereignty as its ultimate guiding principle in international relations (Langer, 2008). This rationale could also be noticed in the White Paper, as the whole theme is developed on the basis of Chinese national sovereignty, interests, and security. While President Xi Jinping reiterated that the central government would “unswervingly” implement the policy of OCTS, and ensure that OCTS is fully applied in Hong Kong “without being bent or distorted” (不走樣、不變形) (South China Morning Post, 24/12/2015; 1/7/2017), from the above analysis, we can see how Beijing twists the principles of OCTS, if not “bends” or “distorts” the principles. In the White Paper, Beijing, for the first time claims its comprehensive jurisdiction over Hong Kong, it points out “one country” and “two systems” are not on the same footing, and that Hong Kong’s autonomy is subject to Beijing’s authorisation where the HKSAR has no “residual power”. Secondly, it inserts patriotism as a paramount requirement of “Hong Kong people ruling Hong Kong”, which is contrary to the spirit of the Joint Declaration. Thirdly, the White Paper declares that the NPCSC has a right to “oversee” the implementation of the Basic Law through interpreting the Basic Law. This undermines the independency of Hong Kong’s court, with its connotations of a “correct” understanding of the Basic Law, which contradicts Hong Kong’s common law tradition. While Beijing attempts to redefine OCTS in the White Paper, it has a tendency to sideline the Joint Declaration in its rhetoric; for example, the foreign diplomat claimed that the Joint Declaration has no significance and denied a British moral obligation in monitoring the Joint Declaration. This rhetorical shift could be noticed in HKSAR leadership speeches.

Rather than focusing on Hong Kong’s constitutional autonomy from China, this dissertation sheds lights on how China, as an emerging world power, adhere with international instruments. Beijing continuously alleges that the Joint Declaration has no significance. However, according to the Law of Treaties, the Joint Declaration is still in force. Yet, the lack of enforcement mechanism makes it difficult to held Beijing accountable. As the treaty is only binding between the signatories, the people of Hong Kong have no standing to press Beijing to conclude the treaty. One possibility is to bring a judicial review case in the UK courts to seek to oblige the Government to fulfill its “moral obligation” and compel China to conclude the Joint Declaration. As China has not accepted the mandatory jurisdiction of the ICJ, the UK cannot compel China to settle any dispute about its interpretation in front of the ICJ. China’s rising soft power also make it less prone to shaming diplomacy, making sanction a less effective

means with which to hold Beijing accountable. Unfortunately for Hong Kong, there are few effective measures to press Beijing to honour its promise in the Joint Declaration.

Nonetheless, this interdisciplinary analysis integrates political and international law perspectives, and will consequently benefit Hong Kong's politicians and opinion leaders in better addressing Hong Kong's autonomy. In the face of the sovereign challenge in Hong Kong, China issued the White Paper to pronounce its comprehensive jurisdiction over Hong Kong, at the cost of disavowing its obligations in the Joint Declaration.

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Appendices

Appendix 1: List of Deng Xiaoping Speeches regarding Hong Kong

Date	Speech Title	Context
September 24, 1982	“Our Basic Position On the Question of Hong Kong”	A talk with British Prime Minister Margaret Thatcher.
July 31, 1984	“We Shall Be Paying Close Attention To Developments In Hong Kong During the Transition Period”	Excerpt from a talk with the British Foreign Secretary, Sir Geoffrey Howe.
June 22-23, 1984	“One Country, Two System”	Summation of separate talks with members of a Hong Kong industrial and commercial delegation and with Sze-yuen Chung and other prominent Hong Kong figures.
October 3, 1984	“Maintain Prosperity and Stability In Hong Kong”	Excerpt from a talk with Chinese visitors from Hong Kong and Macao attending the National Day celebrations in Beijing.
October 22, 1984	Speech At the Third Plenary Session of the Central Advisory Commission of the Communist Party of China	
October 31, 1984	“The Principles of Peaceful Coexistence Have a Potentially Wide Application”	Excerpt from a talk with President U San Yu of Myanmar.
December 19, 1984	“China Will Always Keep Its Promises”	Excerpt from a talk with Prime Minister Margaret Thatcher of the United Kingdom.
April 16, 1987	Speech At A Meeting With the Members of the Committee For Drafting the Basic Law of the Hong Kong Special Administrative Region	
June 3, 1988	“We Should Draw On the Experience of Other Countries”	Excerpt from a talk with the participants in the International Conference on China and the World in the Nineties.
February 17, 1990	“The Basic Law of the Hong Kong Special Administrative Region Is of Historic and International Significance”	Impromptu remarks to members of the Drafting Committee for the Basic Law of the Hong Kong Special Administrative Region who were attending its Ninth Plenary Meeting.

Source: The Selected Works of Deng Xiaoping Vol 3
<http://www.people.com.cn/english/dengxp/contents3.html>

Appendix 2: List of HKSAR officials' speeches on "Sino-British Joint Declaration"

August 25, 1997	Speech by The Financial Secretary, Mr Donald Tsang, at the International Business Conference of the New South Wales State Chamber of Commerce, Sydney, Australia
August 26, 1997	Speech by the Financial Secretary, Mr Donald Tsang, at the briefing for the Australian Securities Institute, Sydney, Australia
August 28, 1997	Speech by the Financial Secretary, Mr Donald Tsang, at a dinner hosted by the Committee for Economic Development in Australia (CEDA), Melbourne, Australia
August 30, 1997	Speech by the Secretary for Justice, Ms Elsie Leung, at the 15th LawAsia Biennial Conference's Luncheon in Manila, Philippines
September 15, 1997	Speech by the Chief Secretary for Administration, Mrs Anson Chan, at the American Chamber of Commerce
September 16, 1997	Speech by the Secretary for Economic Services, Mr Stephen Ip, on "Hong Kong's Future as an International Maritime Centre" at Hong Kong Shipowners' Association Luncheon
December 1, 1997	Speech by the Chief Secretary for Administration, Mrs Anson Chan, at the luncheon for the launch of the 1998 Index of Economic Freedom
December 4, 1997	Speech by the Chief Secretary for Administration, Mrs Anson Chan, at the Business Summit sponsored by the General Chamber of Commerce
June 4, 1998	Transcript of a speech given by the Chief Secretary for Administration, Mrs Anson Chan, followed by a question and answer session at the National Press Club in Tokyo, Japan,
June 5, 1998	Speech by the Chief Secretary for Administration, Mrs Anson Chan, at the International Conference on "The Future of Asia", organised by Nihon Keizai Shimbun (Nikkei)
June 9, 1998	Speech by the Chief Secretary for Administration, Mrs Anson Chan, on "Hong Kong: Stability Amid The Asian Turmoil" at the Hong Kong Trade Development Council annual dinner at Waldorf-Astoria Hotel, New York
June 12, 1998	Speech by the Chief Secretary for Administration, Mrs Anson Chan, at the Asia Society Annual Dinner in Washington D.C.
June 13, 1998	Speech by the Chief Secretary for Administration, Mrs Anson Chan, at the Asia Society Annual Dinner in Washington D.C.
June 16, 1998	Speech by the Chief Secretary for Administration, Mrs Anson Chan, at the Asia Society Annual Dinner in Washington D.C.
July 27, 1998	Statement by Secretary for Security Mr Peter Lai
October 25, 1998	Chief Secretary for Administration's transcript of interview with BBC Television Programme
October 27, 1998	Transcript of Chief Secretary for Administration's press conference in London
November 11, 1998	Speech by the Secretary for Justice, Ms Elsie Leung, at the 1998 International Dispute Resolution Conference
November 25, 1998	Speech by Mr John C Tsang, Director-General of the Hong Kong Economic & Trade Office in London at the Oxford University Asia-Pacific Affairs Society
December 5, 1998	"Letter from Hong Kong" delivered by the Secretary for Home Affairs, Mr David Lan, on Radio Television Hong Kong
March 11, 1999	Speech by the Chief Secretary for Administration, Mrs Anson Chan, in the Legislative Council's motion debate on vote of no confidence in the Secretary for Justice
May 18, 1999	Transcript of press conference on right of abode issue (Chinese only) (居留權事宜記者會答問全文)

May 18, 1999	Speech by the Secretary for Justice, Ms Elsie Leung at the Legislative Council House Committee meeting
May 19, 1999	Speech by the Secretary for Security, Mrs Regina Ip, in the Legislative Council
May 19, 1999	Speech by the Chief Secretary for Administration, Mrs Anson Chan, in the Legislative Council's motion debate on right of abode
June 8, 1999	Speech by the Secretary for Constitutional Affairs, Mr Michael Suen at the closing ceremony of the Harvard Project for Asian and International Relations 1999 Conference
June 24, 1999	Speech delivered by the Chief Secretary for Administration, Mrs Anson Chan, at the business luncheon in Chicago organized by the Hong Kong Trade Development Council
June 26, 1999	Speech by the Chief Secretary for Administration, Mrs Anson Chan, at the Business Luncheon in New York organized by the Hong Kong Trade Development Council
July 28, 1999	Speech by the Financial Secretary, Mr Donald Tsang, at a dinner co-hosted by the African Asian Society and the Trade Development Council at Johannesburg
July 29, 1999	Speech by the Financial Secretary, Mr Donald Tsang, at a lunch co-hosted by KwaZulu Marketing Initiatives and Hong Kong Trade Development Council at Durban
August 4, 1999	Speech by the Financial Secretary, Mr Donald Tsang, at a dinner co-hosted by the African Asian Society and the Hong Kong Trade Development Council at Cape Town
November 1, 1999	Speech titled "The New Constitutional Order under the Basic Law" by the Secretary for Justice, Ms Elsie Leung at the Annual Reunion Dinner of St John's College, University of Hong Kong
December 8, 1999	Question by the Hon Emily Lau and a reply by the Secretary for Justice, Ms Elsie Leung in the Legislative Council
December 21, 1999	Chief Executive acknowledges JLG's historic achievement
January 12, 2000	Speech by Secretary of Constitutional Affairs Mr Michael Suen in the Legislative Council (政制事務局局長孫明揚今日在立法會會議上就「政制改革」動議辯論致辭全文)
April 1, 2000	Speech by the Law Officer (Civil Law) of the Department of Justice, Mr Ian Wingfield at a Basic Law seminar
April 8, 2000	Letter from the Secretary for Justice, Ms Elsie Leung to Professor Helen Siu Fung-har of the Anthropology Department, Yale University in RTHK's "Hong Kong Letter" programme
April 10, 2000	Speech by the Acting Chief Executive, Mrs Anson Chan, at Basic Law exhibition (署理行政長官《基本法》展覽致辭全文)
April 28, 2000	Welcoming speech by the Secretary for Justice, Ms Elsie Leung at the "Constitutional Law Conference on Implementation of the Basic Law: A Comparative Perspective" co-organised by the Department of Justice and the Faculty of Law, University of Hong Kong
November 1, 2000	Speech by the Acting Chief Executive, Mrs Anson Chan, at the luncheon of the Heritage Foundation
November 9, 2000	Speech by the Secretary for Justice, Ms Elsie Leung at the People to People International Conference - 'The Promise of Asia: Hong Kong - A City in Transition'

November 23, 2000	Speech by the Solicitor General, Mr Bob Allcock on "Hong Kong: the Regional Hub for Legal Services and a Gateway to Mainland China" at the In-House Congress Asia Pacific 2000
February 28, 2001	Government's Statement on FCO's Eighth Six-monthly Report on Hong Kong
March 4, 2001	Speech by the Secretary for Justice, Ms Elsie Leung to the Asia-Pacific Society, Oxford University in the U.K.
July 19, 2001	Government's Statement on FCO's Ninth Six-monthly Report on Hong Kong
March 6, 2002	Government's Statement on FCO's Tenth Six-monthly Report on Hong Kong
May 15, 2002	Question by Dr Hon Tang Siu-tong and a written reply by the Acting Secretary for Planning and Lands, Mr Thomas Tso, in the Legislative Council
May 17, 2002	Speech (English only) by the Chief Secretary for Administration, Mr Donald Tsang, to the Hong Kong Association at the Cavalry and Guards Club in London
June 30, 2002	HK-UK links continue to grow: Blair, Tung
July 4, 2002	Speech by the Chief Secretary for Administration, Mr Donald Tsang, at the Gala Luncheon of the Hong Kong Festival in London, Claridge's Hotel
July 23, 2002	Government's Statement on FCO's Eleventh Six-monthly Report on Hong Kong
October 17, 2002	Speech delivered by the Secretary for Justice, Ms Elsie Leung, entitled "A Legal Perspective of the Proposals to Implement Article 23 of the Basic Law" at the luncheon meeting of Newspaper Society of Hong Kong
September 23, 2003	Transcript of the question-and-answer session given by the Financial Secretary, Mr Henry Tang, at the Credit Lyonnaise Securities Asia (CLSA) Investors' Forum 2003
October 2, 2003	Keynote address by the Secretary for Justice, Ms Elsie Leung, at "Law and Language in International Arbitration" at the City University of Hong Kong
December 12, 2003	Secretary for Constitutional Affairs: Central Authorities have role in constitutional development
May 15, 2004	Speech delivered by the Secretary for Justice, Ms Elsie Leung, at a seminar of Joint Committee for the Promotion of The Basic Law of Hong Kong 律政司司長梁愛詩出席香港基本法推介聯席會議《基本法》頒布十四週年研討會就「從政制發展認識《基本法》」致辭全文
May 15, 2004	Transcript of a stand -up briefing by the Secretary for Constitutional Affairs, Mr Stephen Lam, after attending a seminar to mark the 14th anniversary of the promulgation of the Basic Law
July 2, 2004	HKSAR Government responds to US House Resolution
July 12, 2004	Translation of the speech by the Chief Executive, Mr Tung Chee Hwa, at the ceremony to celebrate the centennial birthday of Deng Xiaoping and the launch of the book "Deng Xiaoping on 'One Country, Two Systems'"
July 21, 2004	Transcript (English portion) of a standup briefing given by the Secretary for Constitutional Affairs, Mr Stephen Lam, after attending the regional forum on constitutional development
November 9, 2004	Speech by the Solicitor-General, Mr Bob Allcock, on "Challenges to Hong Kong's Legal System in view of Hong Kong's Return to Chinese Sovereignty" at a conference on the Bicentenary of the French Civil Code at the City University of Hong Kong
January 25, 2005	Speech entitled "Implementation of One Country, Two Systems in HKSAR - Some Legal Aspects" delivered by the Secretary for Justice, Ms Elsie Leung, at the Hong Kong Association Members' Lunch in London
March 9, 2005	Question by the Hon Emily Lau and a reply by the Secretary for Financial Services and the Treasury, Mr Frederick Ma, in the Legislative Council

April 9, 2005	Speech delivered by Secretary for Constitutional Affairs Mr Stephen Lam at International Conference on Comparative National Experiences of Autonomy : Purpose, Structures, and Institutions at the University of Hong Kong
May 4, 2005	Question by the Hon Frederick Fung and a written reply by the Secretary for Justice, Ms Elsie Leung, in the Legislative Council
November 3, 2005	Transcript of remarks by the Chief Executive, Mr Donald Tsang, at a Q&A session held at the FCO in London
November 3, 2005	Speech entitled "The Future Role of Hong Kong in the Region" delivered by the Chief Executive, Mr Donald Tsang at the Wilton Park Conference on November 3
November 18, 2005	Transcript (English portion) of a media session by the Chief Executive, Mr Donald Tsang, in Busan
March 17, 2006	Speech by the Solicitor General, Mr Bob Allcock, on Hong Kong's Unique Constitutional Status at the University of Pennsylvania Law School, Philadelphia,
June 7, 2006	Full text of the address by the Secretary for Justice, Mr Wong Yan Lung, SC, entitled "The Rule of Law and Legal Services in Hong Kong: The Future", at the Breakfast Meeting with the English Law Society, the English Bar Council, and Hong Kong Economic and Trade Office, London
June 9, 2006	Speech by the Secretary for Justice, Mr Wong Yan Lung, SC, entitled "One Country, Two Systems", at Chatham House, London
September 14, 2006	Speech by the Secretary for Justice, Mr Wong Yan Lung, SC, entitled "One Country, Two Systems", at Chatham House, London
April 4, 2007	Hong Kong constitutional system matures the day Chief Executive elected by universal suffrage
June 6, 2007	Speech by the Acting Chief Secretary for Administration, Mr Michael Suen, at the opening ceremony of the 20th Biennial LAWASIA Conference at the Hong Kong Convention and Exhibition Centre
June 24, 2007	Government's response to remarks made by Hon Yeung Sum
July 26, 2007	Response to UK Six-monthly Report on HK: Provisions of Basic Law more democratic than those in Joint Declaration
August 4, 2007	Government's response to Anson Chan's open letter to CE
August 29, 2007	Hong Kong has constitutional foundation to attain democratic goal
August 30, 2007	Secretary for Constitutional and Mainland Affairs's remarks at Chinese Manufacturers' Association
September 3, 2007	Secretary for Constitutional and Mainland Affairs's remarks at Hong Kong Democratic Foundation luncheon
October 17, 2007	Financial Secretary's speech at Chatham House Conference in London
December 15, 2008	Chief Executive speaks at farewell dinner in honour of Professor Poon Chung-kwong
April 6, 2009	Chief Justice's Speech at Opening Ceremony of the 16th Commonwealth Law Conference in Hong Kong
April 7, 2009	Secretary of Justice speaks at luncheon of Commonwealth Law Conference 2009
April 8, 2009	Secretary for Constitutional and Mainland Affairs speaks at Commonwealth Law Conference luncheon
June 8, 2009	Speech by Financial Secretary at Royal Sweden Hong Kong Society 25th anniversary

November 20, 2009	Response to US-China Economic and Security Review Commission (USCC) 2009 Annual Report on Hong Kong
January 9, 2010	SCMA speaks at National Democratic Institute's political reform forum
November 18, 2010	Response to US-China Economic and Security Review Commission 2010 Annual Report on Hong Kong
March 13, 2012	Hong Kong currency exhibition reveals story of city's evolution
April 9, 2013	Chief Executive expresses condolences on death of Baroness Thatcher
December 4, 2013	Statement by the Chief Secretary for Administration, Mrs Carrie Lam, in the Legislative Council today (December 4) on the "Consultation Document on the Methods for Selecting the Chief Executive in 2017 and for Forming the Legislative Council in 2016"
July 15, 2014	Transcript of remarks at press conference on release of constitutional development public consultation reports
September 4, 2014	Chief Executive's Office responds to media enquiries
September 14, 2014	"Letter to Hong Kong" by the Chief Executive, Mr C Y Leung, broadcast on RTHK
October 15, 2014	Speech delivered by the Secretary for Justice, Mr Rimsky Yuen, SC, at a luncheon organised by the Hong Kong Association in London
October 16, 2014	Transcript of remarks by the Chief Executive, Mr C Y Leung; the Chief Secretary for Administration, Mrs Carrie Lam; and the Secretary for Constitutional and Mainland Affairs, Mr Raymond Tam, at a media session at Government House
October 31, 2014	Speech by the Financial Secretary, Mr John C Tsang, at the Hong Kong Association luncheon in London
November 20, 2014	HKSARG's response to United States-China Economic and Security Review Commission 2014 Annual Report
November 21, 2014	Response to media enquiries
December 17, 2014	Question by the Hon Lee Cheuk-yan and a reply by the Secretary for Constitutional and Mainland Affairs, Mr Raymond Tam, in the Legislative Council
January 14, 2015	2015 Policy Address Press Conference 2
April 4, 2015	Speech delivered by the Chief Executive Leung Chun Ying at the Seminar celebrating the 25th anniversary of the promulgation of the Basic Law (行政長官出席「《基本法》頒布二十五周年研討會」致辭全文)
August 16, 2016	Transcript of remarks by CE at media session before ExCo meeting 行政長官於行政會議前會見傳媒談話全文
December 14, 2016	Question by the Hon Nathan Law and a reply by the Under Secretary for Constitutional and Mainland Affairs, Mr Ronald Chan, in the Legislative Council

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