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<td><strong>Author(s)</strong></td>
<td>Yip, Jolin Yi Ling (葉伊翎)</td>
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<td><strong>Citation</strong></td>
<td>Yip, J. Y. L. (2014). The impacts of Sino-British Joint Declaration to the political status quo in Hong Kong  (Outstanding Academic Papers by Students (OAPS)). Retrieved from City University of Hong Kong, CityU Institutional Repository.</td>
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<tr>
<td><strong>Issue Date</strong></td>
<td>2014</td>
</tr>
<tr>
<td><strong>URL</strong></td>
<td><a href="http://hdl.handle.net/2031/7447">http://hdl.handle.net/2031/7447</a></td>
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The Impacts of Sino-British Joint Declaration to the Political Status Quo in Hong Kong

Jolin, YIP YI LING

The Sino-British Joint Declaration in 1984 was an important and historical watershed for the political development of Hong Kong. It has great effect on the existing political system as it acknowledges Hong Kong’s operation under the doctrine of "one country, two systems" and guarantees a "high degree of autonomy" and "Hong Kong people ruling Hong Kong". However, to what degree that HKSAR is indeed running under such framework? The ambiguous and inadequate contents of the Joint Declaration left ample space for Beijing when drafting The Basic Law, the disparate interpretation for the Declaration thus threatening Hong Kong’s political independence. This paper aims to illustrate the contribution from Sino-British Joint Declaration to Hong Kong political situation and discuss the interpretation and position from Beijing so as to explode if the core principles of Joint Declaration have been adhered since the sovereignty transferred to China until today.

Introduction of Sino-British Joint Declaration

With regards of the future of Hong Kong, Zhao Ziyang, the Prime Ministers of People's Republic of China (PRC) and Margaret Thatcher, from United Kingdom (UK) reached the agreement and signed the "Sino-British Joint Declaration" on behalf of their respective governments on December 18, 1984. Will the stipulation of Joint Declaration in The Basic Law of the HKSAR and by the National People’s Congress of the People’s Republic of China, it enshrines the crucial concepts of ‘one country, two systems’, ‘a high degree of autonomy’ and ‘Hong Kong People ruling Hong Kong’. (CMAB, 2014)

Firstly, it sets out that the socialist system and policies from China shall not be practiced in the HKSAR, instead, the capitalist system of Hong Kong and its way of life will be maintained for a period of 50 years. (art. 3) Secondly, it outlines that HKSAR will enjoy “high degree of autonomy” in which Hong Kong will be independent in its judiciary system and "the common law, rules of equity, ordinances, subordinate legislation and customary law remain unchanged". (art. 2, 3 (3) and (5)) The Basic Law in HKSAR also ensures the "Rights and freedoms, i.e. of speech, of the press, of assembly, of association, of movement, of strike" etc. (ISD, 2013)
From the acknowledgment of “high autonomy” to The Basic law

Despite China’s commitment to the Joint Declaration, the vague and inadequate contents allows Beijing to retain its own interpretation for the core value. The Basic Law is a convincing evidence that demonstrate Beijing has low intention to abide the main principles of declaration and thus grant the “high degree of autonomy” and “Hong Kong people ruling Hong Kong” as it was promised.

The reiterated principle of endowing this territory of “Hong Kong people ruling Hong Kong” is just the cosmetics largely. When drafting of The Basic Law, All committee were manipulated by the Chinese Communist Party tremendously, i.e. The Basic Law drafting Committee (BLDC), The Basic Law consultative Committee (BLCC), the Preliminary Working Committee (PWC), the Preparatory Committee (PC) and the Selection Committee (SC). All "Hong Kong" members who are overwhelmingly friendly toward China were appointed by NPC to help Beijing to exercise their influence and secure the desired results. (Horlemann, 2003)

Therefore, the degree of "high autonomy" is highly dependent on the self-restraint and subject to Beijing’s authorization. The Basic Law outlines that Hong Kong comes directly under the CPG as it is the 'local administrative region' of the PRC. (art. 12 BL). Meanwhile, Beijing retains responsibility for all matters regarding the relationship between the central authorities and the region' and those within the responsibility of the central authorities, in addition to defense and foreign relations". (art. 17 (3) BL) Moreover, as being an ordinary law under the terms of the Chinese constitution, The Basic Law can be seen as the "mini-constitution" for Hong Kong because it can be altered by the NPC without a qualified majority at any time. (Conrad, 2005) Worse still, the provisions of The Basic Law gave Beijing power and reasonable explanation if they want to control over Hong Kong in extreme circumstances. By declaring a state of emergency in Hong Kong ( art. 18 BL), Beijing can apply Chinese state of emergency laws and deploy People's Liberation Army (PLA) troops stationed in Hong Kong for “assistance” to maintain public order. (art. 14 BL). (Cheung, 2014) In other word, Beijing has full authority to receive any and all rights that Hong Kong citizens presently enjoy. (Chang, 2014)

The loose interpretation of “high degree of autonomy” from Beijing

The white paper launched on June 2014 is the first time that central government
public a paper on the “One Country, Two Systems” principle in 17 years. It essentially contradicts with the Joint Declaration as it places Hong Kong in the position of all other municipal and provincial administrative regions and then emphasizes that “China’s central government has comprehensive jurisdiction”, in the Chapter 5 of the White Paper. (SCMP, 2014) It also emphasized that “One Country” is the foundation and predominant condition for “Two Systems” in which the latter is subject to the former. (China Daily, 2014; Wall street journal, 2014) In other word, it implies that “high degree of autonomy” is not equal to “full autonomy nor a decentralized power, but the power to run local affairs as authorized by Beijing.

The inadequacy of Joint Declaration and the Basic Law brought disparate interpretation on the issue of ‘HK universal suffrage’

Moreover, the recent controversy over the Hong Kong universal suffrage and the constitutionality of electoral reforms reveals the inadequacy and fundamental contradiction of Joint Declaration and The Basic Law. Thus it raises concern of whether Hong Kong is indeed operating under the “one country two systems” and enjoys “high degree of autonomy”.

On August 30, 2014, the Standing Committee of the NPC issued its plan to have universal suffrage in 2017 Hong Kong elections for its chief executive (CE). Yet, the majority of a 1,200 member nominating committee will finalize the two or three final candidates for the CE before they stand for public vote. Such proposal has disappointed the majority of Hong Kong citizens who are demanding the true democratic election in 2017. (The standard, 2014)

Noteworthy, the Sino-British Joint Declaration and The Basic Law indeed do not mention any specific details about the universal suffrage. (The diplomat, 2014) Hence, to rename the Nominating Committee and grant the privilege for Hong Kong citizens of endorsing the Beijing-vetted candidates allows central government to claim that it has fulfilled its promise, resulting from the authorization for Hong Kong to elect its Chief Executive through universal suffrage elections. Beijing notes that such policies are indeed in line with the Basic Law and the 2017 CE election is “more than what Hong Kong ever had under the British”. (Bloomberg, 2014! China Daily, 2014)

However, the proposal can also be seen as a breach of the Joint Declaration and The basic Law. Firstly, the article 45 and 46 from The Basic Law indicates that
“the ultimate goal is the selection of the Chief Executive by universal suffrage upon nomination by a broadly representative nominating committee”. Together with the word of ‘in accordance with democratic procedures”, it grants Hong Kong permanent resident’s "right to vote and stand for elections”. Furthermore, The General Comment No. 25 outlines that "the effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates". The Article 3(5) declares the freedoms, the equal right to vote and to stand for election; while Article 3(2) guarantees a high degree of autonomy. Yet it is in fact unconstitutional as the nominating committee is dominated by one political faction so as to screen out candidates from opposing factions (The diplomat, 2014). Meanwhile, Beijing proposal thus ensures the candidates who gain major support from Hong Kong residents will fail to be nominated and thus disables electors from freely directing the process of affairs falling within the granted autonomy. (Cheung, 2014)

**Conclusion**

The core principles of Sino-British Joint Declaration can be seen as adhered in Sino’s eyes but have been violated in Hong Kong’s perceptive. Despite the acknowledgement of “one country two systems” and “high degree of autonomy” from Beijing, the foregoing evidences demonstrated that the concepts are more-or-less just an empty shell as Beijing could have power and proper explanation to influence Hong Kong and its political system. The inadequacy contents from Joint declaration lead to contradiction with The Basic Law and thus allow Beijing to have its own favorable interpretation, resulting in high possibility to restrict Hong Kong’s political independence without theoretically violating the expressed terms. Therefore, in slight extent that Hong Kong enjoys “high degree of autonomy” and operates under the doctrine of "one country, two systems" since the handover in 1997.
References:


Cf. Consultative Committee for the Basic Law (ed.), *The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* (abbrev: Basic Law), Hong kong, April 1990


