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BLDC
P. Lee

Hongkong agrees on Basic Law structure after concessions from Peking

Advise and consent

By Emily Lau in Peking

China has made several key concessions in the draft structure of Hongkong's future Basic Law — a mini-constitution for the British territory — when it becomes a special administrative region (SAR) of China in 1997.

During five days of meetings in Peking on 18-22 April, several Hongkong representatives on the Peking-appointed Basic Law Drafting Committee (BLDC) spoke out strongly on what they viewed as important omissions in the draft structure, prepared by the BLDC secretariat under the leadership of Li Hou, vice-director of the Chinese State Council's Hongkong and Macau Affairs Office. Hongkong members also expressed concern over the use of phrases with political overtones.

Martin Lee, a BLDC member who also serves on Hongkong's Legislative Council (Legco), a lawmaking advisory body, proposed that the Basic Law's structure should include a section on the relationship between the Basic Law and the Chinese Constitution. Although the 1984 Sino-British joint declaration on Hongkong's future stipulates that the SAR will be able to retain its capitalist system for 50 years after 1997, Lee said he felt it was nevertheless important to state clearly in the Basic Law which sections of the Chinese Constitution would apply to the SAR.

Chinese officials said that besides Article 31 of the Chinese Constitution, which provides for the setting up of SARs, at least the article dealing with the national flag and the national emblem would also apply to the SAR.

Initially, Lee's proposal got a frosty reception. Chinese officials and legal experts on the BLDC agreed it was a

problem but said that since the Basic Law would have less status than the Chinese Constitution, it would be inappropriate to incorporate into the Basic Law limits on the Chinese Constitution.

They also pointed to technical difficulties in listing all the articles which would apply to the SAR, sparking off concern over just how many articles would apply. Lee said if his proposal was not accepted he would vote against the draft structure.

Hongkong BLDC members Szeto Wah and Maria Tam, also Legco members, proposed including the concept of residual power for the SAR in the Basic Law draft structure. Szeto said Hongkong people are concerned with how much autonomy the SAR will actually have after 1997. Some in Hongkong have proposed that Peking leave the running of the SAR to the Hongkong

Government, with Peking retaining control over the SAR's foreign affairs and defence matters. Szeto also threatened to vote against the draft structure if the proposal on residual power was rejected.

Although this proposal was supported by several other Hongkong representatives sitting on the BLDC, it was opposed by the Chinese side. Zhang Youyu, 86, a member of the National People's Congress (NPC) standing committee and deputy director of the NPC legal commission, said the concept of residual power only applied to federal governments — not to China, which is a united republic.

In federal governments, Zhang said, individual states voluntarily surrender some of their power to a central government and keep residual power. However, this is not the relationship existent between Hongkong and China, he argued, noting: "Hongkong has been snatched away by the British and will be returned to China in 1997."

Hongkong BLDC members Sanford Yung and Liu Yiu-chu both criticised the use of what they viewed as "socialist" terminology in the draft structure, such as "... under the leadership of the central government."

Yung said that since the Basic Law is to be implemented in Hongkong, it must be drafted in terms more familiar to Hongkong people. He said the Basic Law will be a legal document, so there is no need to include what he views as political propaganda.

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XINHUA



Lee; Ji: frosty reception.

A step towards autonomy

The Basic Law structure sets Hongkong apart from China

The draft of the Basic Law consists of a preamble and 10 chapter headings broken down into a number of sub-issues. On some points the draft already contains phraseology which is fundamental to the objectives of the law. On other points, the draft is more of a list of issues to be tackled and fleshed out in the future.

The chapter headings include general principles; the relationship be-

tween the central and SAR governments; the rights and obligations of Hongkong inhabitants; the political structure; the economy; education and culture; external affairs; the SAR flag; interpretation and amendments, and an appendix dealing with problems of continuity and transition from the colonial era.

General principles spelled out include the principle that the executive

and legislature be composed of local inhabitants, and that capitalism and the protection of private property are assured. The chapter on the SAR's relations with the central government promises the independence of the SAR judiciary and its right of final adjudication of cases. The chapter also firmly states that "the SAR is under the direct authority of the central people's government" and that defence and the stationing of troops are central responsibilities. But at the same time the draft provides some protection against meddling by stating that no central or

Yung was also unhappy with the BLDC secretariat, which he said only accepted amendments suiting its purpose. He said the secretariat was being manipulated by its chairman Ji Pengfei (director of the Hongkong and Macau Affairs Office), and eight vice-chairmen, while the other BLDC members were "left out in the cold." The draft structure of the Basic Law, Yung said, was put together without consulting the Hongkong BLDC members and was only given to them on the eve of the meeting.

Liu said that if Yung's and her suggestions were not accepted she would have no choice but to vote against the draft structure. Yung said he and several other members might abstain. Hongkong BLDC member Raymond Wu said some Hongkong representatives were unhappy because many of their suggestions had been rejected.

Faced with a revolt among the Hongkong delegates, the Chinese moved rapidly to contain the situation. After several meetings, they decided to accept most of the suggestions — except the proposal on residual power, which they said could be included in a memorandum attached to the draft structure.

After these major differences were ironed out, the draft structure was unanimously passed on 22 April. Ji said the draft structure can be amended in future if necessary.

Five specialist BLDC sub-groups were also set up, dealing with areas identified in the draft structure. The most sensitive was one on the future political system, and the Chinese have appointed the publisher of the influential Hongkong Chinese-language daily newspaper *Ming Pao*, Louis Cha, to be a co-convenor of the sub-group, together with a mainland BLDC member.

Less than a week before the BLDC meeting, Cha made a speech in Hongkong opposing direct elections to Legco. He said the Hongkong Government should postpone any decision on direct elections until the Basic Law is drafted in order to avoid conflicts with Peking.

Cha told the REVIEW that if the Hongkong Government insisted on in-

roducing direct elections in 1987, there is bound to be confrontation with China because Peking does not want the British Government rushing into such important political decisions and, in its view, trying to force them on China.

Cha warned that the results of a planned 1987 review of political reforms already under way in Hongkong by the colonial government will not affect the drafting of the Basic Law because Peking will not accept any fait accompli presented by the British. Further, it is up to the Hongkong Government to ensure that its political reforms "converge" with the political system to be laid down in the Basic Law and not vice versa, but he said his group will not release any documents to influence the 1987 review.

Cha said Hongkong must have a strong government in order to counter any possible interference from leftists in Peking. Although direct elections would enable more people from the grassroots to participate in the political process, Cha said direct elections make businessmen and industrialists uneasy because candidates standing for election make wild promises and, when elected, squander taxpayers' money to meet their constituencies' demands.

Further, Cha argued, grassroots politicians would not have the political clout necessary to counter possible intervention from Peking which, he argued, only respects professionals and businessmen, not the masses. He said the communists are very pragmatic and unscrupulous, and are determined to get what they want — a prosperous and stable Hongkong — and will not let anything stand in their way. Therefore, he proposed elections by functional constituencies, or professional groups, whereby elite groups of doctors, lawyers and other professionals would choose candidates from among themselves for Legco.

Cha's political sub-group will start meeting soon and will prepare a report for the BLDC in 1987. Cha said since the discussion of political developments is so sensitive, to avoid repercussions in Hongkong and worldwide, no information will be released to the public until the BLDC has approved it. **□**

provincial departments will be able to set up offices in the SAR without the consent both of the SAR and the central governments.

The rights and obligations of Hongkong people include freedoms such as those of speech and the press, the right to strike and demonstrate, freedom of movement and the right to challenge executive decisions in the courts. It also provides for Hongkong's continued adherence to international covenants on human rights.

The critical chapter dealing with political structure has a detailed program-

me of five sections and more than 20 items to be dealt with. It includes the selection of the SAR chief executive, the nature and composition of the legislature and the relationship between legislature and executive. However, the draft makes no attempt to suggest what the answers to these questions will be.

Similarly, economic, education and external affairs chapters are simply lists of items to be dealt with. Nor is there any attempt at this stage to suggest how and by whom the law will be interpreted or to lay down the circumstances under which it could be amended. **□**