

On Trust Foundation, Conditions and Mechanism in the Relationship between the Central Authorities and the Special Administrative Regions

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I. Introduction

Deng Xiaoping once remarked in his article entitled “*One Country, Two Systems*” that nothing can be achieved if the People’s Republic of China and the Central Government are not trusted.¹ This assertion puts forward two basic points: first, divergence and contradiction will be inevitable in the implementation of the “One Country, Two Systems” policy due to the discrepancy between the two systems, so more trust is demanded for the coexistence of the two systems; second, the core and foundation of mutual trust between the two systems lies in country recognition. The paper explores why mutual trust should be established and how to establish and ensure mutual trust under the principle of “One Country, Two Systems”.

II. Why mutual trust should be established?

Under the principle of “One Country, Two Systems”, contradiction between the two systems, which is unavoidable, will be manifested in different forms. For example, within the scope of system, there exists objective divergence regarding the general election system, the legal interpretation system and the system of human rights freedom which have triggered controversies in recent years. Another example is that, within the scope of culture and ideology, topics such as patriotism, judiciary independence, principles of judicial assistance and means of consultation have led to heated discussions and people have varied understanding and interpretations of them. In this case, the intention to eliminate the divergence and difference is not only infeasible, but also goes against the principle of “One Country, Two Systems”. The key is to prevent possible conflicts caused by the divergence, to reconcile the contradiction brought about by the divergence and to strive for consensus despite the divergence. To this end, mutual trust turns out to be indispensable.

Trust serves as the foundation for conflict prevention and contradiction mediation. Under the principle of “One Country, Two Systems”, a solid foundation for establishing mutual trust needs to be laid and establishing mutual trust means laying the common foundation.

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III. How to establish mutual trust?

3.1 Adherence to the principle of "One Country" is the common foundation for trust

3.1.1 Trust should be established on the basis of "One Country"

As is remarked by Deng Xiaoping, the common foundation for mutual trust is the love for the motherland, that is, country recognition. "One Country" is the very precondition, without which "Two Systems" is in peril.

First, one of the purposes of implementing the "One Country, Two Systems" policy is to realize the reunification of our nation. The implementation of the "One Country, Two Systems" policy aims not only at realizing the reunification of our nation, but also at strengthening the reunification of our nation. "Two Systems", which is supposed to work for "One Country" instead of being an excuse for disrupting "One Country", should be maintained under the condition that national unity shall not be jeopardized; otherwise the implementation of "Two Systems" will lead to nowhere. "Two Systems" is meaningful only if its implementation is instrumental in materializing "One Country". Therefore, no matter how much discrepancy there exists between the two systems, they should work coordinately to achieve the common goal, maintaining national unity, which is the common foundation for "Two Systems" and for the sound relationship between the Central Authorities and the Special Administrative Regions (SAR).

Second, the principle of "One Country, Two Systems" pursues national unity rather than a unified system. As long as national unity prevails, such unity serves as the common foundation despite the discrepancy between the two systems. However, if a unified system is taken as the ultimate goal, which signifies eliminating the coexistence "Two Systems", the common foundation will be lost.

3.1.2 An increase in mutual trust depends on emphasizing the recognition of "One Country"

If there is no country recognition, there will not be any mutual trust. Why should country recognition be emphasized?

First, the aim of "One Country" is legitimate. The proposal of the "One Country, Two Systems" principle is intended for realizing China's reunification. Hong Kong and Macao have been part of the territory of China since ancient times; they were occupied by western powers due to historical reasons, thus it is the long-cherished common aspiration of the Chinese nation for centuries to end foreign occupation of our territory and to realize the reunification of our nation. More importantly, national unity must be achieved for it is indispensable for realizing modernization of China; secessionism which hinders the progress of modernization must be cleared away. As a result, the aim of "One Country" is perfectly legitimate in terms of history and reality.

Second, the proposal of the "One Country, Two Systems" principle is reasonable. Considering the real conditions of Hong Kong and Macao as well as the wish of their residents, the previous capitalist system and way of life shall remain unchanged in the two regions to realize national reunification. This approach not only helps achieve national unity, but also maintains stable development of the SAR, in conformity with the fundamental interests of the Country and the SAR. On the common foundation of the "One Country, Two Systems" principle, "One Country" combines "Two Systems", which brings into full play the advantage of "One Country", so as to optimize the benefits of "Two Systems" and to offer the platform for common development.

Third, country recognition is significant. Having a correct understanding of the concept of country is of great importance to implement the “One Country, Two Systems” policy. “One Country” indicates recognizing the country, maintaining national unity and promoting national development.

(1) What is country recognition?

Country recognition, which is specific rather than abstract, refers to the recognition of one specific country instead of the recognition of the abstract concept of country.

Country recognition in the principle of “One Country, Two Systems” refers to the recognition of the People’s Republic of China, and the recognition of the Constitution of the People’s Republic of China in terms of law. The concept of country is abstract, but the country itself is substantial and specific. For example, the government is an integral component in the concept of country, and things like how the government comes into being, whether it is characterized by centralization of power or decentralization of power, with a single or a composite structure, vary from country to country; this variation does not influence the existence of a country.

Country recognition consists of the recognition of the country view both from the perspective of nation, geography, culture and system and from the perspective of constitution. It is not allowed to set one perspective against the other and to take it as the excuse for opposing country recognition. For instance, it is unreasonable to deny the principle of “One Country” and to resist country recognition simply because of the influence of western culture and system upon Hong Kong and Macao.

Country recognition in the principle of “One Country, Two Systems” mainly refers to the recognition in terms of nation state, because the focus of the principle of “One Country, Two Systems” proposed by Deng Xiaoping is on the unity of the Chinese nation. Anyone who advocates secessionism, an act of betraying one’s country, shall be condemned as a traitor through the ages. The “Country” within “One Country, Two Systems” refers to the country in the form of the Chinese nation. In this regard, there are always some people who plausibly propose to judge country recognition with political standards, in accordance with which if the system of a country does not conform to a certain political or ideological theory or value, country recognition will be impossible. However, it has been neglected that country recognition under the principle of “One Country, Two Systems” differs from that under the principle of “One Country, One System”. Country recognition under the principle of “One Country, One System” requires the unity of political values, which is hardly impossible for the case of “One Country, Two Systems” because the two different systems have different values. If the two different systems are forced to take in the same set of political values, “One Country, Two Systems” will be distorted to “One Country, One System”. In fact, country recognition under the principle of “One Country, Two Systems” transcends political values and gives top priority to the interests of the nation and the country. Deng Xiaoping advocated patriotism, and particularly mentioned any doctrine that supports national unity should be regarded as patriotism, regardless of the political values.² Therefore, country recognition should be achieved by investigating “Two Systems” in terms of “One Country”, rather than by investigating “One Country” in terms of “Two Systems”. On the basis of “One Country”, “Two Systems” are allowed to coexist. On the contrary, if “Two Systems” serves as the precondition, “One Country” cannot exist.

As a result, it is unreasonable to deny country recognition because of the difference in political values from the Central Government, because the denial is an act of disregarding the principle of

"One Country, Two Systems". Under the principle of "One Country, One System", non-recognition of the Government due to the difference in political values is allowed, but denying the Central Government due to the difference in political values is intolerable. "Two Systems" coexist on the basis of the recognition of different political values; to deny the basis is to destroy the spirit in the principle of "One Country, Two Systems".

Therefore, unity of a nation state lays the bottom foundation for "One Country, Two Systems". It is the mission and responsibility for a nation state to maintain its unity and to build itself into a unified and powerful nation state.

(2) Why country recognition is required?

Common country recognition gives rise to common recognition of "One Country", which in turn leads to a common language and foundation. Thus the relations between "One Country" and "Two Systems" and between the Central Authorities and the SAR can be established on a common foundation of trust. Having a common country view is the basis for building trust in the country. How can we build trust in the country without country recognition? Moreover, to achieve peaceful coexistence, mutual respect, cooperation and common development would be impossible without trust in the country. On condition of a common country view, we will feel responsible for maintaining national unity, resist any secessionist words and deeds, make more efforts in the interests of the country and refrain from doing anything that may go against national unity; only in this way can national cohesion be materialized.

3.2 Mutual respect between "Two Systems" is the prerequisite for establishing mutual trust

How can we realize mutual respect between "Two Systems"? While expatiating on the principle of "One Country, Two Systems", Deng Xiaoping made it clear that neither of the two systems will gobble up the other and vice versa.³ What we mean by "remaining unchanged" is that all aspects of policies on the whole remain unchanged; any change in any aspect may still exert certain influence upon other aspects.⁴ Therefore, it is imperative to get rid of thought of resistance, because the intention of transforming one system with the other on either part leads to no mutual trust at all but contradiction and conflict. Only when "Two Systems" coexist with each other peacefully with mutual respect can common interests of them be realized and interests on both sides be optimized.

Many issues need to be examined in order to realize mutual respect between "Two Systems". For example, a much-discussed one analyzed from the perspective of the rational attitude towards "Two Systems" concludes that to realize mutual respect it is imperative to get rid of prejudice, not to probe into the relationship between different systems from an outdated angle, not to take a part for the whole nor to have one's view of the important shadowed by the trivial, and to evaluate the development of "Two Systems" from the angle of development. To realize mutual respect, mind of resistance and thought of resistance should be discarded while tolerance is very much required. However, the author notes that there is an unavoidable issue that must be examined, because this issue determines the choice between mutual respect and mutual resistance; it is a fundamental issue, that is, what position the SAR takes and what role the SAR play under the principle of "One Country, Two Systems", the answer to which determines the attitude in dealing with the relations between different systems.

Varied opinions arise regarding whether the position and the role of the SAR should be

approached in terms of politics or economy.

Some people within the SAR assert that since democracy serves as the basis for the successful implementation of the “One Country, Two Systems” policy, the SAR should function as the model of democracy to influence our country’s development, so the position of the SAR should be approached mainly in terms of politics. Such an opinion gains more and more popularity as the economy of the mainland keeps advancing and the influence of the SAR upon the whole country in terms of economy declines. Throughout the modern history of China’s reunification, political democracy and economic development are the two major excuses turned to time and again to oppose national unity and the exercise of sovereignty by the Central Authorities. When the level of economic development is not in a position to be an excuse, democratic politics will be the only excuse. Consequently, in order reach the expected position and to play the role as expected, some people spontaneously oppose and disrespect the social system practiced in the mainland, always in the hope of transforming it. The so-called “opposing the rule of the CPC in the name of democracy” is the specific manifestation. The confrontation resulting from contradiction completely disrupts mutual respect and mutual trust. Nevertheless, the principle of “One Country, Two Systems” serves the purpose of realizing China’s reunification, the resumption of sovereignty over Hong Kong and Macao and works for the construction of Four Modernizations of China; economic contributions made by the SAR are needed, but the political value of the SAR has never been taken as the goal of pursuit. Suppose the political value of the SAR is the future of our country, wouldn’t it be much easier to implement the “One Country, One System” policy instead? This is indeed a thought-provoking issue.

The economic interaction between “Two Systems” which are of relatively the same economic structure and common economic pursuit, driven by their common interests and needs, is beneficial for both sides. However, neither side is ready to accept common political pursuit, because without the basis of the same political structure, common foundation and needs, to impose exact conformity will set “Two Systems” apart, thus conflicts rising and “One Country” disrupted. As can be concluded, to approach the position the SAR take and the role the SAR play in the country is detrimental to the development of the “One Country, Two Systems” approach, and will bring about nothing but lead the “One Country, Two Systems” approach to a dead end. Is it helpful for establishing mutual trust between “Two Systems” for some of those in power to lay down the burden of being pioneers of democracy? We might as well have a try.

IV. How to ensure mutual trust?

Trust, a kind of integrity, should be defined within the scope of value system and features subjectivity. In order to ensure lasting and stable trust under the principle of “One Country, Two Systems”, apart from deepening and strengthening the understanding of the “One Country, Two Systems” principle as well as country recognition, system guarantee is also required. Specific systems are needed to facilitate the establishment of trust while specific measures should be taken to prevent and punish any act that may sabotage the establishment of trust. The construction of systems not only provides the basis for establishing trust, but also serves as the prerequisite for ensuring trust. This is similar to the process of signing of a contract, which entails the consent and integrity of the two parties. However, in order to fulfill the promise, mandatory provisions for

fulfilling the obligation on a contract cannot be omitted though integrity is universally acknowledged as the prerequisite for contract-singing; on the contrary, only by resorting to mandatory provisions for performing an act can integrity be ensured. Any party that fails to fulfill the promise shall bear the responsibility thus caused.

The relationship between trust and systems can be defined as mutually conditional. The implementation of systems should be based on trust. Systems are not to blame if the trouble in operation results from a lack of trust, because without the foundation for trust, even if there are legal provisions, legal power will be challenged and the suspicious party always wants to limit the exercise of power of the other party, compressing the space for legal activities. Conversely, with mutual trust, the two parties will cooperate with each other, yielding twice the result with half the effort. The function of systems lies in promoting mutual trust on the one hand and correcting acts detrimental to mutual trust on the other hand. Hence, both trust and systems are required and indispensable; trust provides the basis for systems, which in turn commit to ensuring trust.

The following part gives an analysis of the three system arrangements of the Basic Law from the perspective of trust.

First, the relationship between the appointment and removal of the Chief Executive by the Central People's Government and the election of the Chief Executive in the SAR.

It is pointed out that since the Chief Executive shall be selected through election by residents of the SAR, the appointment of the Chief Executive by the Central Government seems unnecessary and redundant. The appointment by the Central government may be more procedural and nominal than substantial. Psychologically speaking, this point of view results from a lack of trust in the Central Government; from the perspective of systems, it intends to weaken system guarantee for trust, which makes it just a kickshaw. On the contrary, if the Central Government placed no trust in residents of the SAR, would it be possible for it to approve the election of the Chief Executive by the SAR on its own? The Basic Law authorizes the SAR to elect the Chief Executive, which indicates trust in residents of the SAR. However, trust must have the foundation that the candidates for the Chief Executive shall uphold the "One Country, Two Systems" principle and the Basic Law, swear allegiance to the country, accept leadership by the Central Government and be responsible for the Central Government. It is unlikely for the Central Government to refuse to appoint the Chief Executive elected by residents of the SAR who satisfies the above-mentioned conditions on the basis of their trust in the Central Government. The Basic Law provides that the purpose of exercising power of appointment by the Central Government is not to veto the candidate selected by election, but to take precautionary measures to restore mutual trust between the Chief Executive and the Central Government in case the candidate thus selected goes against the Central Government. This system arrangement proves to be necessary. Therefore, this provision of the Basic Law is based on trust in residents of the SAR, and only when such trust is eroded can the Central Government exercise its veto power. The top priority in operating this mechanism is to establish mutual trust, and in doing so, the criterion for selecting the candidate for the Chief Executive must be agreed on and recognized in the real sense to prevent some people from overtly agreeing but covertly opposing. The Central Government seems unlikely to abandon the substantial power of appointment finally, and even if it is assumed that the Central Government exerts no influence at all upon the election, the final appointment by the Central Government remains inevitable, because it is the only means by which the Central Government makes sure the Chief Executive is responsible for it. If resistance indeed arises, such a doomed lose-lose game leads to

nothing but more price for the society to pay, which is absolutely harmful for the relationship between the Central Government and the SAR. Another perspective should be taken to explore the issue, that is, the stress should not be placed on the limits of power but on upholding mutual trust; on that basis, the election of the Chief Executive will result in a win-win situation and no resistance at all, with the election result naturally approved by the Central Government. Anyone who expects successful implementation of the “One Country, Two Systems” policy will make a correct choice in the face of two entirely different outcomes. Thereby, it is imperative for us to probe into system arrangements in a whole new light and with trust. Any future amendments to the election methods shall be conducive to establishing mutual trust; otherwise they shall not be approved.

Second, the relationship between lawmaking by the Legislative Council of the SAR and legal review by the Standing Committee of the National People’s Congress (NPC).

In accordance with the Basic Law, the Legislative Council of the SAR enacts laws, on its own, maybe regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and the SAR, so the issue of mutual trust remains inevitable. Take Article 23 of the Basic Law as an example to make the following analysis. According to this article, the SAR shall enact laws, on its own, to prohibit any act of treason, secession, sedition, subversion against the Central People’s Government, or theft of state secrets. That the Basic Law authorizes the SAR to enact laws on its own indicates both respect for the legal system of the SAR on the part of the Central Government and trust in the SAR. On the basis of mutual trust, the SAR has the duty to perform the Basic Law and to enact laws regarding national security to perform Article 23 of the Basic Law. In 2009, the Legislative Council of the Macao SAR successfully passed laws regarding national security to manifest mutual trust. However, there are ones in Hong Kong who refuse to fulfill their duty to perform the Basic Law, and fundamentally oppose Article 23 of the Basic Law, with the real intention of sabotaging mutual trust between the Central Government and the SAR. From the result of Hong Kong’s suspension of Article 23 of the Basic Law, it can be seen whether it is conducive or detrimental to the implementation of “One Country, Two Systems” without mutual trust, to the development of the relationship between the Central Government and the SAR, and to the exercise of a high degree of autonomy. Obviously, the answer is undoubtedly “detrimental”. Hence, the Central Government has to take measures to rebuild the foundation for trust and to restructure corresponding systems. The reason for this is very easy. We can not abandon trust simply because there are ones trying to sabotage mutual trust, and conversely we need trust, so it is necessary to build and perfect the system for safeguarding trust. Shouldn’t we reflect over this issue to learn lessons from it?

As for other laws enacted by the Legislative Council of the SAR, they are valid as long as they are in conformity with the Basic Law, which fully demonstrates trust in the Legislative Council of the SAR by the Central Government. Only when the enacted laws contravene the Basic Law regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and the SAR should those laws in question be returned. The Central Authorities will not review in advance whether provisions of the laws enacted by the Legislative Council of the SAR regarding autonomy contravene the Basic Law. Suppose there is a lack of mutual trust, can this mechanism still function well if the Legislative Council of the SAR interferes in affairs within the responsibility of the Central Authorities or the Central Authorities interfere in autonomy of the SAR?

Third, the relationship between the exercise of judicial power by the courts of the SAR and the

interpretation of the Basic Law by the Standing Committee of the NPC.

In accordance with the Basic Law, if necessary, the courts of the SAR are authorized to interpret on their own, in exercising the judicial power, the provisions of this Law which are within the limits of the autonomy of the Region, and may also interpret other provisions of this Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the Region, on condition that the courts of the Region shall, before making their final judgments, seek an interpretation of the relevant provisions from the Standing Committee of the NPC. Such an arrangement is also based on trust in the courts of the SAR. What if the foundation for trust is removed and the courts refuse to seek an interpretation of the relevant provisions from the Standing Committee of the NPC when they should have done so? Only the interpretation of the Basic Law by the Standing Committee of the NPC can be resorted to. Some people always worry about the interpretation of the Basic Law by the Standing Committee of the NPC; they don't hope and oppose to seek an interpretation of the Basic Law from the Standing Committee of the NPC, taking it as intervention of judicial independence and always treat it with doubt, evasion or caution. The reason for this lies in different legal cultures, with one culture emphasizing judicial interpretation and the other providing legislative interpretation. However, with mutual trust, all these problems above can be solved. On the contrary, if the courts do not trust the Standing Committee of the NPC while expecting the Standing Committee of the NPC to trust them, the self-evident lack of equality and mutual trust doesn't conform to the provisions of the Basic Law and therefore leads to nowhere. Thereby, maintaining this mindset can do nothing to mediate contradiction but intensify the conflicts, because when inaccurate interpretation of the Basic Law arises, it is the duty that cannot be shunned for the Standing Committee of the NPC to correct inaccurate interpretation and also to provide accurate interpretation of the Basic Law.

From the analysis above, we can see that, the exercise of power should be based on trust, without which one party will necessarily want to limit the power of the other party and even oppose the exercise of power by the other party. This is the origin of conflicts. Trust is built through exercising their power and fulfilling their obligations respectively in accordance with the law, because granting power indicates trust and imposing obligations gives constraints, and trust is hidden behind both power and obligations. That the Central Authorities ensure the exercise of autonomy by the SAR is a manifestation of trust and that the SAR fulfills its obligations and commitments to the Central Authorities also demonstrates trust. Refusing to fulfill the obligations always in the hope of limiting the power of the Central Authorities is to sabotage the trust mechanism between the Central Authorities and the SAR.

It turns out that, during the past decade, the mechanism provided by the Basic Law hasn't been abused and mutual trust hasn't been sabotaged. It is entirely groundless to allege that the interpretation of the Basic Law by the Standing Committee of the NPC disrupts judicial independence and a high degree of autonomy. As long as we adhere to the "One Country, Two Systems" policy, to the principle of doing things in accordance with the Basic Law, and to mutual trust, the relationship between "One Country" and "Two Systems" and between the Central Authorities and the SAR must enjoy harmonious development.

Notes:

- ¹ Deng Xiaoping (2004). *Deng Xiaoping's Theory of "One Country, Two Systems"*. Hong Kong: Joint Publishing (Hong Kong) Co. Ltd. 14.
- ² Ibid. 14, 17, 19, 21.
- ³ Ibid. 5, 12, 36.
- ⁴ Ibid. 54.