

On the Constitutional Embodiment of “One Country” Under the “One Country, Two Systems” Policy

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According to the concept of “One Country, Two Systems”, the National People’s Congress (NPC) formed the relevant sections of the *Constitution of the People’s Republic of China* (hereinafter as “the Constitution”)¹, and made respectively the *Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China* (hereinafter as “the Hong Kong Basic Law”) and the *Basic Law of the Macao Special Administrative Region of the People’s Republic of China* (hereinafter as “the Macao Basic Law”) pursuant to the Constitution. And these two Basic Laws established the system of Special Administrative Region (SAR).² With the resumption of sovereignty over Hong Kong and Macao by the People’s Republic of China (PRC), both Basic Laws were implemented and the system of special administrative region established by them was practiced. Since then, the concept of “One Country, Two Systems” was realized.

The “One Country, Two Systems” concept refers to “two systems within one country”, the “two systems” are within “one country”. Therefore, “one country” is the basic prerequisite for “two systems”. As the basic prerequisite for the “two systems”, “one country” also applies to “two systems”. The “one country” in the “One Country, Two Systems” policy practiced in the Hong Kong SAR and the Macao SAR is the PRC, instead of China in general.³ Then, what is the legal embodiment of the “one country”, that is, the PRC, which also applies to the “two systems”? Is the legal embodiment only limited to the relevant provisions on the relationship of Central Government and the SARs and the provision about the Central Government’s exercise of power in SARs in both Basic Laws? Or are the national laws listed in Annex 3 to the two Basic Laws also included as such legal embodiment? The academic discussion on this issue is far from sufficient and definite. However, this issue is the key to resolve the relationship between Central Government and the SARs.

According to some scholars, China should make three constitutions after the practice of the system of SAR: one about “one country”, one about socialist system and one about the system of SARs. The constitution about “one country” also applies to “two systems”, the constitution about socialist system applies to the mainland, and the constitution about SAR applies to the Hong Kong SAR and the Macao SAR. Nevertheless, the sections about both “one country” and socialist system are provided in the same constitution, that is, the Constitution. Thus, (1) the constitution about the SARs is missing, and in this sense, the Basic Laws function as the constitution, it is even held that the nature of the Basic Laws are constitutional; (2) since the sections about “one country” and “socialist system” are provided in the same constitution, and the part of this constitution, that is the part about “one country” is applicable to the Hong Kong SAR and the Macao SAR, the part about socialist system is not applicable to Hong Kong and Macao.

Both Basic Laws are made in accordance with the Constitution, however, Article 31 and Article 62 of the Constitution are obviously not the basis for such two Basic Laws, instead, both

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Basic Laws are made pursuant to the provisions about “one country”. The “one country” in the “One Country, Two Systems” concept should be embodied in the Constitution first, and then partially embodied in both Basic Laws. The “one country” is actually embodied in the provisions of both Basic Laws, nevertheless, it is not embodied in such two Basic Laws at first and foremost, and the “one country” which is embodied in both Basic Laws is not the entire contents of “one country”.⁴

I. Provisions on the Status and Effectiveness of the Constitution

The preamble of the Constitution: This Constitution affirms the achievements of the struggles of the Chinese people of all nationalities and defines the basic system and basic tasks of the state in legal form; it is the fundamental law of the state and has supreme legal authority.

Article 5 of the Constitution: No laws or administrative or local rules and regulations shall contravene the Constitution. All state organs, the armed forces, all political parties and public organizations and all enterprises and undertakings must abide by the Constitution and the law. All acts in violation of the Constitution and the law must be investigated. No organization or individual may enjoy the privilege of being above the Constitution and the law.

Article 15 of the Amendment to the Constitution: The PRC practices ruling the country in accordance with the law and building a socialist country of law.

The Constitution is the collective and fundamental embodiment of the people’s will of a state, it embodies and represents the state sovereignty and forms the foundation for a state. In a state with rule of law, the Constitution is the supreme and fundamental law of a state, the source of all state powers and the supreme rules for the operation of all state powers. The effectiveness of all state laws originates from the Constitution, and all laws must be made in accordance with and on the basis of the Constitution, no laws shall be in contradiction with the Constitution, and all state powers, organizations and individuals within a state are subject to the Constitution.

The Hong Kong Basic Law and the Macao Basic Law are categorized as basic laws within the legal system of the PRC, therefore, they must be made in accordance with and in compliance with the Constitution. The effectiveness of the basic laws originates from and is subordinated to the Constitution. The preamble of the Hong Kong Basic Law provides that “in accordance with the Constitution of the People’s Republic of China, the National People’s Congress hereby enacts the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, prescribing the Systems to be practiced in the Hong Kong Special Administrative Region, in order to ensure the implementation of the basic policies of the Peoples Republic of China regarding Hong Kong.” The Decision of the NPC on the Hong Kong Basic Law in 1990 holds that the Hong Kong Basic Law is made in accordance with the Constitution and the specific situation of Hong Kong and it is constitutional. It is also why the NPC made the same decision while the Macao Basic Law was passed.

II. Provisions on Constitutional Government System

Article 2 of the Constitution: All power in the PRC belongs to the people. The organs through which the people exercise state power are the NPC and the local people’s congresses at different levels. The people administer state affairs and manage economic, cultural and social affairs through various channels and in various ways in accordance with the law.

Article 3 of the Constitution: The state organs of the PRC apply the principle of democratic centralism. The NPC and the local people’s congresses at different levels are instituted through

democratic election. They are responsible to the people and subject to their supervision. All administrative, judicial and procuratorial organs of the state are created by the people's congresses to which they are responsible and under whose supervision they operate. The division of functions and powers between the central and local state organs is guided by the principle of giving full play to the initiative and enthusiasm of the local authorities under the unified leadership of the central authorities.

The constitutional government system of the PRC is the people's congresses system based on the principle of democratic centralism. Under the principle of sovereignty of the people, the people institute the NPC and the local people's congresses at different levels to represent themselves to exercise state powers. And on this basis, the people's congresses create other state organs on behalf of the people and supervise other state organs; other state organs must report on their work to the people's representatives. People supervise the representatives elected by them and can even veto the disqualified representatives. People also supervise other state organs and their working personnel. Under such constitutional government system, the people's congresses are the organs exercising state powers on behalf of the people, and therefore, they are organs with state powers; other state organs are created by and under the supervision of the people's congresses. With respect to the constitutional status, the people's congresses and other state organs are not parallel, nor do they check against each other, instead, they prevail over all other state organs.⁵

Under such constitutional government system, the NPC is the supreme state authority⁶, and the Standing Committee of the NPC is its permanent organ. They decide the major issues of the state affairs, exercise the state legislative power, supervise the implementation of the Constitution, interpret the Constitution and the laws, elect or determine the leaders of other state organs, supervise the state organs created by them, and supervise the constitutionality and legality of the legal documents made by all state organs.

Under such constitutional government system, the President of the PRC is the head of the state, representing the PRC towards outsiders and exercising various ceremonial powers as the head of the state.

Under such constitutional government system, the State Council is the Central Government, the supreme administrative organ and the administrative organ of the supreme organ of state powers.

Under such constitutional government system, the Central Military Commission is the organ leading the national force.

Under such constitutional government system, the Supreme People's Court is the highest judicial organ of the PRC.

Under such constitutional government system, the Supreme People's Procuratorate is the highest procuratorial organ of the PRC.

III. Provisions on Basic Social Values

Article 5 of the Constitution: The state upholds the uniformity and dignity of the socialist legal system. No law or administrative or local rules and regulations shall contravene the constitution. All state organs, the armed forces, all political parties and public organizations and all enterprises and undertakings must abide by the Constitution and the law. All acts in violation of the Constitution and the law must be investigated. No organization or individual may enjoy the privilege of being above the Constitution and the law.

Article 33 of the Constitution: All persons holding the nationality of the PRC are citizens of the PRC. All citizens of the PRC are equal before the law. Every citizen enjoys the rights and at the same time must perform the duties prescribed by the Constitution and the law.

Article 48 of the Constitution: Women in the PRC enjoy equal rights with men in all spheres of life, political, economic, cultural and social, and family life. The state protects the rights and interests of women, applies the principle of equal pay for equal work for men and women alike and trains and selects cadres from among women.

Article 4 of the Constitution: All nationalities in the PRC are equal. The state protects the lawful rights and interests of the minority nationalities and upholds and develops the relationship of equality, unity and mutual assistance among all of China's nationalities. Discrimination against and oppression of any nationality are prohibited; any acts that undermine the unity of the nationalities or instigate their secession are prohibited.

Article 35 of the Constitution: Citizens of the PRC enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.

After people form society, there must be uniform order in every society. The formation and maintenance of any order depends on the uniform system of rules. The uniform system of rules can be formed and maintained with any system of rules. The choice of the system of rules is not arbitrary; it depends on the mainstream social values people recognize. In other words, any system of rules is the product of mainstream social values; it is also the embodiment, institutionalization and detailed representation of the mainstream social values. Since modern time, due to the new consensus on the mainstream social values, human people have chosen the constitution as the basis for the system of rules to form and maintain social order, and the supreme authority has been vested in the constitution. The order formed in accordance with the constitution is both the social order representing the mainstream social values and the order of life chosen by the social members.

With regard to the contemporary China after the opening up and reform, freedom, equality, justice and rule of law have become the consensus of the social members and have been included in the Constitution as the mainstream social values. There are sufficient provisions on these mainstream social values in the Constitution; in other words, the whole Constitution is formed in accordance with these mainstream social values.⁷ The Constitution is the supreme embodiment of these mainstream social values. In China, all the systems are created according to and on the basis of the Constitution; therefore, all these systems must be able to represent the mainstream social values confirmed by the Constitution. In other words, any system which does not comply with the mainstream social values confirmed by the Constitution must be abolished.

IV. Provisions on the State Structure

The preamble of the Constitution: The PRC is a unitary multi-national state built up jointly by the people of all its nationalities.

Paragraph 3 of Article 3 of the Constitution: The division of functions and powers between the central and local state organs is guided by the principle of giving full play to the initiative and enthusiasm of the local authorities under the unified leadership of the central authorities.

Paragraph 3 of Article 4 of the Constitution: Regional autonomy is practiced in areas where people of minority nationalities live in compact communities; in these areas organs of self-government are established for the exercise of the right of autonomy.

Article 31 of the Constitution: The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the NPC in the light of the specific conditions.

Article 62 of the Constitution: The NPC exercises the following functions and powers: (13) to decide on the establishment of special administrative regions and the systems to be instituted there;

Article 116 of the Constitution: People's congresses of national autonomous areas have the power to enact autonomy regulations and specific regulations in the light of the political, economic

and cultural characteristics of the nationality or nationalities in the areas concerned. The autonomy regulations and specific regulations of autonomous regions shall be submitted to the Standing Committee of the NPC for approval before they go into effect. Those of autonomous prefectures and counties shall be submitted to the standing committees of the people's congresses of provinces or autonomous regions for approval before they go into effect, and they shall be reported to the Standing Committee of the NPC for the record.

The form of state structure determines the legal relationship between and the status of the state as a whole and the local as the part. In light of the Chinese history, relationship of nationalities and traditional Chinese culture, the constitution clearly prescribes that China practices the unitary state structure, the relationship between the state as a whole and the local as the part is the relationship between the central and the local. The basic features of such relationship are: (1). The inherent state powers belong to the Central Government, and are not bested in every internal parts of the state; and the power of the Central Government is not granted by every internal parts of the state; (2). The powers of every internal parts are authorized by the central government through laws, in legal sense, the relationship between the central government and the internal parts is that between the authorizer and the authorized instead of the separation of powers at the level of the Constitution.; (3). If there is special circumstance in the internal parts, local autonomy could be practiced, and the local autonomous region enjoys autonomy within the authorization of the Central Government, they have powers to deal with internal affairs of the local government, however, they do not enjoy the power of self-determination, nor do they have power to determine their own legal status.

Without the standing point that the PRC has the unitary state structure, we cannot understand the autonomous power and high degree of autonomous power, the relationship between the Central Government and the SARs as that between the central and the local, the relationship between the Central Government and the SARs as that between the authorizer and the authorized, the exercise of power by the Central Government in the SARs and the power of the Central Government to supervise the SARs.

It is within the framework of this form of state structure that the Article 31 of the Constitution provides that the state may establish SARs when necessary. This form of state structure determines that the SARs are local governments of the PRC under the leadership of the Central Government, it is a special administrative territorial unit added to the original administrative territorial units in general and the autonomous regions of national minorities on the basis of the special circumstances of Hong Kong and Macao; therefore, it enriches the contents of the unitary state structure of China. It is also due to the establishment of the SARs that the special system, i.e. the system of SAR can be practiced in this special administrative territorial unit. Of course, the system of SAR is not only the new development in the contents of the state structure, but also the new development in the system of Chinese constitutionalism.

It is also within the framework of this form of state structure that the NPC made the Basic Laws to vest high-degree autonomy in the two SARs. It is also provided explicitly in the Basic Laws that the Hong Kong SAR / the Macao SAR is an inalienable part of the PRC (Article 1); the NPC authorizes the Hong Kong SAR / the Macao SAR to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of this Law (Article 2); the Hong Kong SAR / the Macao SAR shall be a local administrative region of the PRC, which shall enjoy a high degree of autonomy and come directly under the Central Government (Article 12). The allocation of powers between the Central Government and the SARs in the basic laws is also the institutional arrangement within the framework of the unitary state structure.

V. Provisions on the NPC

Article 2 of the Constitution: All power in the PRC belongs to the people. The organs through which the people exercise state power are the NPC and the local people's congresses at different levels.

Article 57 of the Constitution: The NPC of the PRC is the highest organ of state power. Its permanent body is the Standing Committee of the NPC.

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Article 62 of the Constitution: The NPC exercises the following functions and powers: (1) to amend the Constitution; (2) To supervise the enforcement of the Constitution.

The constitutional system practiced in the PRC is the system of people's congress based on the democratic centralism as its principle for organization and activities. Under the prerequisite that all the state powers are vested in the people, the organs exercising the state power on behalf of the people are the NPC and the local people's congresses at different levels. In the structure of the state power system, the local people's congresses at different levels are above other state organs; and the NPC is above all the national state organs, it is the organ with supreme state power. The NPC is composed of deputies who are most extensively representative elected by the provinces, autonomous regions and municipalities directly under the Central Government, and by the armed forces, it represents the fundamental interests and wills of all the people.⁸ Other state organs in the Central Government shall not be parallel to or above the NPC, and are subject to the supervision of the NPC, and they should also be responsible and report their work to the NPC. The NPC supervises the legality and constitutionality of the regulative legal documents made by the people's congresses at different levels and other state organs, the basic national laws and other significant issues are made or decided by the NPC⁹; and only the NPC has the power to amend the Constitution, and it is responsible for supervising the implementation of the Constitution.

VI. Provisions on the Standing Committee of the NPC

Article 57 of the Constitution: The NPC of the PRC is the highest organ of state power. Its permanent body is the Standing Committee of the NPC.

Article 58 of the Constitution: The NPC and its Standing Committee exercise the legislative power of the state.

Article 67 of the Constitution: The Standing Committee of the NPC exercises the following functions and powers: (1) To interpret the Constitution and supervise its enforcement; (2) To enact and amend statutes with the exception of those which should be enacted by the NPC; (3) To enact, when the NPC is not in session, partial supplements and amendments to statutes enacted by the NPC provided that they do not contravene the basic principles of these statutes; (4) To interpret statutes; (18) To decide, when the NPC is not in session, on the proclamation of a state of war in the event of an armed attack on the country or in fulfillment of international treaty obligations concerning common defense against aggression; (19) To decide on general mobilization or partial mobilization; (20) To decide on the enforcement of martial law throughout the country or in particular provinces, autonomous regions or municipalities directly under the Central Government; and (21) To exercise such other functions and powers as the NPC may assign to it.

According to the Chinese system of constitutional government, the NPC is the highest organ of state power in China, however, different from the congresses in western countries, it is not a permanent organ, it is in session only once every year which lasts about 10 days. Therefore, it is obviously impossible for the NPC to resolve all the significant issues in the state life, especially the

daily significant issues. Thus, it is necessary to establish a permanent organ composed of fewer members as the daily organ exercising very significant issues which are not to be resolved by the NPC and make the basic state laws. From the provisions about the function of the Standing Committee of the NPC in the current constitution, the function (19 items) of the highest organ of state power in China are exercised by the Standing Committee of the NPC, which is a state organ directly under the NPC and above all other state organs.

Therefore, the Standing Committee of the NPC is a component of the highest organ of state power in China, which exercise some important functions such as (1) supervising the enforcement of the Constitution; (2) interpreting the Constitution; (3) making the laws other than the Basic Laws; (4) amending the Basic Laws made by the NPC; (5) interpreting laws; (6) declaring the state of emergency. So, when we understand the nature and status of the Standing Committee of the NPC, we could understand the provisions about the powers of the Standing Committee of the NPC in the Basic Laws.

VII. Provisions on the President of the State

Article 81 of the Constitution: The President of the PRC receives foreign diplomatic representatives on behalf of the PRC and, in pursuance of decisions of the Standing Committee of the NPC, appoints and recalls plenipotentiary representatives abroad, and ratifies and abrogates treaties and important agreements concluded with foreign states.

The current constitution resumes the establishment of President in the Constitution of 1954 (the Constitution of 1975 and of 1978 did not establish President). There are still disagreements among the academics regarding the issue whether the President is the head of state in China. According to Liu Shaoqi in his report on the draft Constitution of 1954, the system of collective head of state is practiced in China, that is, the head of State composed of the NPC, the Standing Committee of the NPC. In other words, the decisions are made by the NPC and the Standing Committee of the NPC, and the President has the formality power to declare such decisions. Such view of Liu Shaoqi has been the general view in the academic sphere. In the report on the draft of the current Constitution, there is no explanation as to whether the President is the head of state after the reestablishment of the President. The President is regarded as the head of state in official reports. At present, the general academic view on this issue regards the President as the head of state in China. The major reasons for such view are: the President actually exercises the functions of the head of state whether it is substantive or formality power; the head of state in some countries exercises substantive power while in other countries, the head of state exercises formality power. Therefore, we cannot determine whether the President is the head of state with the single standard of whether he exercises substantive power.

It is explicitly provided in the current Constitution that the President represents the PRC, it was especially added in the amendment of 2004 to the Constitution that the President of the PRC, on behalf of the PRC, engages in activities involving State affairs. As the head of state, the President is the representative and symbol of the PRC. When the PRC resumed sovereignty over Hong Kong and Macao, the President was present and delivered speech, and the then newly elected Chief Executive of the SARs swore to office in front of the President, which is the embodiment of "One Country".

VIII. Provisions on the State Council

Article 85 of the Constitution: The State Council, that is, the Central Government of the PRC,

is the executive body of the highest organ of state power; it is the highest organ of state administration.

Article 89 of the Constitution: The State Council exercises the following functions and powers: (9) to conduct foreign affairs and conclude treaties and agreements with foreign states; (10) to direct and administer the building of national defense.

In accordance with the Constitution, the nature and status of the State Council are in the following three aspects: (1) Central Government. As the Central Government, that is, the Government of the PRC, it conducts foreign affairs on behalf of the PRC towards outside, and it leads the local people's governments at different levels inwardly; (2) the executive body of the highest organ of state power. After the NPC and its Standing Committee as the highest organ of state power make laws and decisions, the State Council is to execute them; (3) the highest organ of state administration. It administers the national significant executive affairs.

As the Central Government, the State Council certainly leads in the general sense the executives in the SARs; however, the NPC has authorized the SARs to exercise a high degree of autonomy through the Basic Laws, and the affairs within the scope of the high degree of autonomy as explicitly provided in the Basic Laws are to be dealt with independently by the Governments of the SARs. Although the State Council cannot directly order the Governments of the SARs, it can still instruct the exercise of the high degree of autonomy by the SARs; therefore, the State Council has established Liaison Offices of the Central Government in the SARs. The national external affairs as the symbol of the sovereignty should be conducted by the State Council as the Central Government, and the State Council has established the Office of the Commissioner of the Ministry of Foreign Affairs in the SARs.

As the highest organ of state administration, the State Council conducts significant national executive affairs, including those within the SARs. In countries practicing local autonomy, the law divides the powers between the Central Government and the local autonomous authorities. The powers belonging to the Central Government within the local autonomous territories are exercised by either the governor delegated by the Central Government or the local autonomous authorities authorized by the Central Government. According to the Basic Laws, the SARs enjoy a high degree of autonomy which is much greater than the local autonomous authorities in the countries practicing local autonomy. Nevertheless, the Central Government still has their own affairs to conduct within the SARs. The Basic Laws delegate a part of significant national affairs within the authority of the Central Government to the Governments of the SARs while leaving the other part with the Liaison Offices of the Central Government in the SARs and the Office of the Commissioner of the Ministry of Foreign Affairs in the SARs.

IX. Provisions on the Central Military Commission

Article 93 of the Constitution: The Central Military Commission of the PRC directs the armed forces of the country. In reality, the Central Military Commission of the PRC and the Central Military Commission of the CPC are composed of the "same personnel with two different names", which is determined by the nature of Chinese nation.

In 1997, the Law of the PRC on National Defense was made by the NPC, and the Article 2 provides: this Law is applicable to military activities conducted by the State to prepare against and resist aggression, thwart armed subversion, safeguard the sovereignty, unification, territorial integrity and security of the State, as well as military-related activities in the political, economic, diplomatic, scientific, technological and educational fields. It is only stipulated in the Constitution that the Central Military Commission of the PRC directs the armed forces of the country, however, it does not provide its detailed functions. Article 13 of the National Defense Law has detailed

provision that the Central Military Commission directs all the armed forces of the country and exercises the following functions and powers: (1) to exercise unified command of all the armed forces of the country; (2) to decide on military strategies and form concepts of operations for the armed forces; (3) to direct and administer the building of the Chinese People's Liberation Army, formulate programs and plans and arrange for their implementation; (4) to submit bills or proposals to the NPC or its Standing Committee; (5) to enact military rules and regulations, and issue decisions and orders in accordance with the Constitution and laws; (6) to decide on the system and organization for the Chinese People's Liberation Army and prescribe the tasks and powers and duties of the general departments, major military commands, services and arms and other units at the level of a major military command; (7) to appoint, remove, train, appraise, award and punish members of the armed forces in accordance with law and military rules and regulations; (8) to approve the system, development programs and plans for weapons and equipment of the armed forces, and to work together with the State Council in directing and administering defense research and production; (9) to administer defense expenditures and assets jointly with the State Council; and (10) other functions and powers as prescribed by law.

X. Provisions on Putonghua

Paragraph 5 of Article 19 of the Constitution: The state promotes the nationwide use of Putonghua (common speech based on Beijing pronunciation).

The Constitution provides that the state promotes the nationwide use of Putonghua. The nationwide use of Putonghua is significant in promoting the convenient communication between people, moreover, it is also conducive to the upholding of state sovereignty and national dignity, to unification of the country and unity of the nationalities, and to socialist material progress and ethical progress as provided in Article 5 of the *Law of the People's Republic of China on Standard Spoken and Written Chinese Language*. Article 9 of this law provides that Putonghua and the standardized Chinese characters shall be used by State organs as the official language, except where otherwise provided for in laws. And Article 10 provides: Putonghua and the standardized Chinese characters shall be used as the basic language in education and teaching in schools and other institutions of education, except where otherwise provided for in laws. Putonghua and the standardized Chinese characters shall be taught in schools and other institutions of education by means of the Chinese course. The Chinese textbooks used shall be in conformity with the norms of the standard spoken and written Chinese language.

Article 9 of the Hong Kong Basic Law and the Macao Basic Law provides: in addition to the Chinese language, English / Portuguese may also be used as an official language by the executive authorities legislature and judiciary of the Hong Kong SAR / the Macao SAR. Chinese language refers to the standard spoken Putonghua and written Chinese characters stipulated in the *Law of the People's Republic of China on Standard Spoken and Written Chinese Language*. This provision is not only conducive to the communication between the SARs and the mainland China, but also symbolizes state sovereignty and national dignity and is conducive to unification of the country.

XI. Provisions on Nationality

Article 33 of the Constitution: All persons holding the nationality of the PRC are citizens of the PRC.

Nationality is the basic standard to determine the national affiliation of a person with the background of sovereign state. National affiliation is the fundamental identity of a person in the

human society in today's world. It relates not only to international communication between individuals, but also to the basic relationship between an individual and the state. In accordance with the Constitution, all persons holding the nationality of the PRC are citizens of the PRC. Article 3 of the *Nationality Law of the People's Republic of China* provides that the PRC does not recognize dual nationality for any Chinese nationals. Article 4 provides: Any person born in China whose parents are both Chinese nationals and one of whose parents is a Chinese national shall have Chinese nationality. Article 5 provides: Any person born abroad whose parents are both Chinese nationals and one of whose parents is a Chinese national shall have Chinese nationality. But a person whose parents are both Chinese nationals and have both settled abroad, or one of whose parents is a Chinese national and has settled abroad, and who has acquired foreign nationality at birth shall not have Chinese nationality. Nationality is the only standard to determine the identity of a citizen. Only after acquiring the citizenship can one enjoy the basic rights and perform the basic obligations of the citizen, enjoy the legal rights and perform legal obligations according to the state laws, and be protected by the state according to the constitution and laws of the state where he resides. On the basis of the constitutional theory, only with citizenship can a citizen of a state only enjoy the rights to participate in the state political life, and form the common will of the state community and choose the social life and individual life he needs through his participation in the state political life.

In accordance with the provisions of the basic laws, the special administrative regions are only places within the territory of the PRC forming inalienable part of the PRC. The residents in the SARs are first of all citizens of the PRC, then, they are the residents of the SARs as part of the PRC. Therefore, the residents of the SARs have Chinese nationalities and are subject to the *Nationality Law of the People's Republic of China* as the specification of the Constitution. According to the *Interpretation by the Standing Committee of the National People's Congress on Some Questions Concerning Implementation of the Nationality Law of the People's Republic of China in the Hong Kong Special Administrative Region*: (1). Any Hong Kong resident who is an ethnic Chinese born in the territory of China (including Hong Kong), and any other person who meets the conditions for Chinese nationality as prescribed by the *Nationality Law of the People's Republic of China* are Chinese nationals; (3). The British citizen status of any Chinese national residing in Hong Kong granted by the British Government under the British Nationality Selection Scheme shall not be recognized according to the *Nationality Law of the People's Republic of China*. Such person shall still be Chinese national and shall not be entitled to British consular protection in the Hong Kong SAR or in any other part of the PRC; (6). The Government of the Hong Kong SAR is authorized to designate its Immigration Department as the competent authorities for handling nationality applications. The Immigration Department of the Hong Kong SAR shall deal with all matters relating to nationality applications in accordance with the *Nationality Law of the People's Republic of China* and the provisions mentioned above.

It is required in the qualification for the Chief Executive and the principle officials of the SARs that they must be have citizenship of the PRC.

The above understanding involves the issue whether the basic rights and obligations prescribed in the Constitution also apply to the residents of the SARs. There are provisions on the basic rights and obligations of the residents of SARs in both Basic Laws, which are not exactly the same as the equivalent provisions in the constitution, especially the provisions regarding the obligations. Are the provisions on the basic rights and obligations applicable to the residents of the SARs? If not, the residents in the SARs will only enjoy rights without performing any obligations, which is certainly implausible theoretically.

XII. Provisions on the Supreme People's Court

Article 127 of the Constitution: The Supreme People's Court is the highest judicial organ. The Supreme People's Court supervises the administration of justice by the local people's courts at different levels and by the special people's courts; people's courts at higher levels supervise the administration of justice by those at lower levels.

Article 128 of the Constitution: The Supreme People's Court is responsible to the NPC and its Standing Committee. Local people's courts at different levels are responsible to the organs of state power which created them.

The Supreme People's Court is the highest judicial organ of the PRC. Although it is not explicitly provided in the constitution that it is the judicial organ, the power of adjudication as the power to decide litigation is in reality the judicial power. Therefore, the Supreme People's Court is in reality the high-test judicial organ. As the highest judicial organ, the Supreme People's Court has original jurisdiction over complicated cases with national significance and appellate jurisdiction over appeals against decisions originally heard by the high people's courts in each respective province, autonomous region and municipality under direct administration of the Central Government; it also has authority to initiate the proceeding of retrying cases on which the adjudicating decisions have been effective; it has power to adjudicating such cases when necessary; it also has authority to approve death sentences, and with the authorization of the NPC, it has power to interpret the laws in hearing cases and it has power to make uniform trial rules. The decision made by the Supreme People's Court is final.

According to the theories of constitutional law, judicial power is independent and uniform throughout the nation, there is no distinction between the judicial power of the Central Government and that of the local government; thus, there is also no distinction between the central judicial organs and local judicial organs. The Supreme People's Court supervises and instructs the trial activities of all the people's courts throughout the nation, and according to its function, the Supreme People's Court has final jurisdiction over all complex cases which are significant nationwide. In this sense, as the highest adjudicating organ, the Supreme People's Court should also have final jurisdiction over significantly complex cases in the special administrative regions, which are not subject to the final jurisdiction of the special administrative regions.¹⁰ In all the states which practice local autonomy, the judicial power is independent and uniform, and in no way does it belong to the local autonomous body. The final jurisdiction belongs to the highest judicial organ established by the state.

XIII. Provisions on the Supreme People's Procuratorate

Article 132 of the Constitution: The Supreme People's Procuratorate is the highest procuratorial organ. The Supreme People's Procuratorate directs the work of the local people's procuratorates at different levels and of the special people's procuratorates; people's procuratorates at higher levels direct the work of those at lower levels.

Article 133 of the Constitution: The Supreme People's Procuratorate is responsible to the NPC and its Standing Committee. Local people's procuratorates at different levels are responsible to the organs of state power at the corresponding levels which created them and to the people's procuratorates at the higher level.

The Supreme People's Procuratorate is the highest procuratorial organ of the PRC, that is, the highest organ of legal supervision. Its major functions include initiating public prosecution on complex criminal cases which are significant nationwide, investigating cases of embezzlement, bribery, offense which are significant nationwide, exercising leadership over local and special

procuratorates in the supervision of law enforcement and supervising the trial activities of the Supreme People's Court. Therefore, in trying the criminal case by the Supreme People's Court, the Supreme People's Procuratorate should send personnel to appear in court and supervise the trial activities of the Supreme People's Court. It also has power to initiate trial supervision proceeding against decisions which are already effective while the Supreme People's Court is hearing civil or administrative cases.

XIV. Provisions on the Party System

The preamble of the Constitution: Under the leadership of the CPC and the guidance of Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory and the important thought of "Three Represents", the Chinese people of all nationalities will continue to adhere to the people's democratic dictatorship, follow the socialist road, persist in reform and opening-up, steadily improve socialist institutions, develop a socialist market economy, advance socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize industry, agriculture, national defense and science and technology step by step to turn China into a powerful and prosperous socialist country with a high level of culture and democracy.

The preamble of the Constitution: In the long years of revolution and construction, there has been formed under the leadership of the CPC a broad patriotic united front that is composed of the democratic parties and people's organizations and embraces all socialist working people, all patriots who support socialism and all patriots who stand for reunification of the motherland. This united front will continue to be consolidated and developed. The Chinese People's Political Consultative Conference (CPPCC) is a broadly representative organization of the united front, which has played a significant historical role and will continue to do so in the political and social life of the country, in promoting friendship with the people of other countries and in the struggle for socialist modernization and for the reunification and unity of the country. The system of multi-party cooperation and political consultation led by the CPC will exist and develop in China for a long time to come.

Since the modern times, party politics has been practiced in every country, there is no exception with the PRC. However, the party politics in PRC is different from that in any other countries, and it especially has fundamental distinction from the transfer of political parties practiced in western countries. The party system practiced in China is the system of multi-party cooperation and political consultation led by the CPC. Under such party system, the CPC is always in the position of governing party while the other 8 democratic parties are always in the position of cooperating and participating parties instead of opposition parties. The relationship between the CPC and other democratic parties is "long-term coexistence, mutual supervision, sincere treatment with each other and the sharing of weal or woe", political consultation and democratic supervision. The CPC leads other democratic parties politically while democratic parties are independent in their organization, equal in their legal status and free politically. The CPC forms patriotic front together with the democratic parties and patriots without party affiliation in the form of the CPPCC. Under such party system, the policies of the CPC are obviously significant or even decisive for governing the state and the society.

XV. Provisions on the State Symbols

Article 136 of the Constitution: The national flag of the PRC is a red flag with five stars.

Article 137 of the Constitution: The national emblem of the PRC is Tian'anmen in the centre

illuminated by five stars and encircled by ears of grain and a cogwheel.

Article 138 of the Constitution: The capital of the PRC is Beijing.

The state symbols, mainly including the national flag, national anthem, national emblem and the capital, represent and symbolize a sovereign state, and indicate the historical tradition and national spirit of a state. The state symbols of the PRC represent and symbolize the sovereign state of the PRC. Chapter 4 of the Constitution includes special provisions on such symbols of the PRC.

Article 10 of the Hong Kong Basic Law and the Macao Basic Laws provides that the Hong Kong SAR and the Macao SAR may also use their respective regional flag and regional emblem apart from displaying the national flag and national emblem of the PRC.

"One Country" is the basic premise for the "One Country, Two Systems" policy, and it is also the starting point and focus for the research of the theories and issues of the "One Country, Two Systems" policy. Only after the basic meaning and the constitutional symbolization of the "One Country" principle is clarified can we carry out the research on the "Two Systems" policy, especially the in-depth research on the SAR system. For example, regarding Article 23 of the Hong Kong Basic Law and the Macao Basic Law, there is dispute on whether the SAR is obligated to legislate. The conclusion on this dispute is obvious after the premise of the "One Country" principle is clarified. And in this respect, the Macao SAR was correct in making the *Lei relative à defesa da segurança do Estado (Law on Maintenance of State Security)* in 2009 (No. 2/2009). Therefore, the system of SAR will not be regarded purely as an issue of the form of state structure; instead, it should be researched as a special composite system under the "One Country" principle. On the basis of such understanding, it is natural to deem the system of SAR as a special fundamental system of our state; and it is also clearer to regard the Basic Laws regulating the system of SAR as basic state laws with special legal status and effectiveness which are different from other Basic Laws due to their special contents.

Notes:

- ¹ The provisions in the Constitution which are directly relating to the system of SAR include: (a) Article 31. The state may establish SARs when necessary. The systems to be instituted in SARs shall be prescribed by law enacted by the NPC in the light of the specific conditions. (b) Article 62. The NPC exercises the following functions and powers: (13) To decide on the establishment of SARs and the systems to be instituted there; and (c) Article 59. The NPC is composed of deputies elected by the provinces, autonomous regions and municipalities directly under the Central Government, and by the armed forces.
- ² It is definite that one of the "two systems" in the "One Country, Two Systems" principle is socialist system, but there are two different understandings concerning the other system: one viewpoint holds that the other system refers to capitalist system while the other holds that it refers to the system of SAR. Obviously, there is distinction between capitalist system and the system of SAR, and the system of SAR is not equivalent to capitalist system, however, at present, part of the system of SAR is capitalist system.
- ³ The "one country" of the "One Country, Two Systems" policy practiced in Hong Kong and Macao refers to the PRC while the "one country" of the same "One Country, Two Systems" policy to be practiced in the future in Taiwan refers to China.
- ⁴ The NPC passed the decision on the same day when the two Basic Laws were passed respectively that the Basic Laws are made pursuant to the Constitution and are constitutional. There was thus a misunderstanding that only the Basic Laws are implemented in the SARs while the Constitution is not implemented in the SARs. This involves the issue of whether the Constitution is applicable in the SARs or not. It is generally held among the scholars that the Basic Laws are the special laws under the Constitution which have reflected the spirit and provisions of the Constitution, so the Constitution can only be applicable indirectly instead of being directly applicable.

- ⁵ Among the three state powers in western countries, there is no single state power which is higher than the other two powers, one power is at most relatively superior. However, in China, the NPC is absolutely superior to other state organs in accordance with the principle of democratic centralism.
- ⁶ In western countries, the state power exercised by all state organs are state powers, therefore, all the state organs are the organs of state power and there is no single state organ which is not an organ of state power. However, in China, the NPC is the organ of state power while other state organs are not organs of state power.
- ⁷ The process of implementing the Constitution and the laws which are made pursuant to the Constitution is the process of manifesting and promoting the mainstream social values. The process of repealing any legal system which is not in compliance with the Constitution is also a significant way to communicate the mainstream social values to the society.
- ⁸ The amendment to the Constitution passed by the NPC in 2004 stipulates that the NPC is composed of deputies elected by the SARs. In reality, before the state resumed sovereignty over Hong Kong and Macao and before it is explicitly provided in the amendment to the Constitution, the deputies of the NPC had already included the deputies of Hong Kong and Macao residents.
- ⁹ The Hong Kong Basic Law and the Macao Basic Law were made and amended by the NPC, and the system of SAR was provided in the form of law by the NPC, which both indicate the nature of the NPC as the supreme organ of state power.
- ¹⁰ In accordance to the Constitution and the laws on autonomy by nationalities, the people's congresses and the people's governments are the autonomous organs among the state organs of local autonomy while the people's courts and people's procuratorates do not belong to the autonomous organs.