

# On the Connotation of “Resumption of the Exercise of Sovereignty”

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Macao, including the Macao Peninsula, Taipa Island and Coloane Island, has been part of the territory of China since ancient times; it was gradually occupied by Portugal after the mid-16th century, thus formed the Question of Macao. The settlement of the Question of Macao refers to the takeover of Macao, the end of occupation and governance of Portugal and the resumption of the exercise of sovereignty over Macao by the Government of the People’s Republic of China (PRC).

The origin and the settlement of the Question of Macao are clearly stated in the first paragraph of the preamble of the *Basic Law of the Macao Special Administrative Region of the People’s Republic of China* (hereinafter as “the Basic Law”). The resumption of the exercise of sovereignty is the core and inevitable result of the settlement of the Question of Macao as well as the logic beginning of the implementation of the policies of “One Country, Two Systems”, “Macao people Ruling Macao” and a high degree of autonomy after the settlement of the Question of Macao and the establishment of the Macao Special Administrative Region (Macao SAR) by the PRC Government. The overall, accurate and deep understanding of the connotation of “resumption of the exercise of sovereignty” is the theoretical basis of our understanding as well as the correct handling of the relationship between the Central People’s Government of the PRC and the Macao SAR.

## I. The substance of the resumption of the exercise of sovereignty referring to the resumption of the governance right

When the PRC Government negotiated the Hong Kong issue with the United Kingdom, it said the “transfer of sovereignty” at first. Taking the inaccuracy of the “transfer of sovereignty” into consideration, the PRC Government changed it to “resumption of the exercise of sovereignty” later, because Hong Kong has been part of the territory of China since ancient times, and its sovereignty belongs to China all the time; even though it was occupied by the United Kingdom, its sovereignty never belonged to the United Kingdom. Deng Xiaoping said the “handover of sovereignty” or “transfer of sovereignty” in his speech at first, and changed to “resumption of the exercise of sovereignty” later.<sup>1</sup>

The formulation of “resumption of the exercise of sovereignty” accurately expresses the connotation of “the sovereignty of Hong Kong belonging to China from beginning to end” in law. The *Joint Declaration of the Government of the United Kingdom of Great Britain and Northern*

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*Ireland and the Government of the People's Republic of China on the Question of Hong Kong* (the Sino-British Joint Declaration), the *Joint Declaration of the Government of the People's Republic of China and the Government of the Republic of Portugal on the question of Macao* (the Sino-Portuguese Joint Declaration), the *Basic Law of the Hong Kong Special Administrative Region* and the *Basic Law of the Macao Special Administrative Region* all used the formulation of "resumption of the exercise of sovereignty". Different from the Question of Hong Kong, Portugal declared that Macao was a special region under its governance after the "Carnation Revolution" in 1974. In 1979, Portugal established diplomatic relations with China, confirmed Macao as the territory of China and promised to return Macao to China through negotiation at the right time,<sup>2</sup> which laid the basis for the conclusion of Sino-Portuguese Joint Declaration. In Article 1 of Sino-Portuguese Joint Declaration signed on 13<sup>th</sup> April 1987, it is clearly pointed out that the PRC Government and the Portuguese Government stated that Macao region (including the Macao Peninsula, Taipa Island and Coloane Island) is part of the territory of China, and the PRC Government would resume the exercise of sovereignty over Macao on 20<sup>th</sup> December 1999.<sup>3</sup> That is to say, before the handover of Macao, even before the conclusion of Sino-Portuguese Joint Declaration, the question of the sovereignty of Macao had been settled, and what remained was just when to end the governance by Portugal over Macao. Consequently, the handover ceremony on 20<sup>th</sup> December 1999 can be only called the "regime handover ceremony", rather than the "sovereignty handover ceremony". The "regime handover ceremony" refers to the handover of the Portuguese "governance" right over Macao to China on the premise of sovereignty belonging to China.

The "resumption of the exercise of sovereignty" is not the resumption of sovereignty itself, but the "resumption of exercise" of sovereignty. The key word hereby is "resumption of exercise", because Macao has been part of the territory of China since ancient times, and the sovereignty of Macao belongs to China from beginning to end. How can one say China's resumption of sovereignty over Macao while its sovereignty belongs to China? The resumption of the exercise of sovereignty refers to the resumption of the right exercised by China as the sovereign country with the essence of the resumption of the governance right over Macao.

There is an opinion that the sovereignty is mainly a symbol and the major manifestation of the handover of Macao is the rise of the five-star red flag in Macao, which means the finish of the colonial domination and the accomplishment of resumption of the exercise of sovereignty. This is not right. The handover of Macao is the beginning of China's resumption of the exercise of sovereignty over Macao rather than the end. The sovereignty refers to the absolute and supreme power of a country. The resumption of the exercise of sovereignty is not only the ascription of the territorial sovereignty but also the beginning of the absolute and supreme power exercised by the PRC Government.<sup>4</sup>

The exertion of this absolute and supreme power refers to getting rid of the intervention of other countries and the control and influence of foreign forces on Macao's internal political affairs firstly ; therefore, it is clearly stipulated in the Basic Law that the Macao SAR is an inalienable part of the PRC (Article 1), shall come directly under the Central People's Government (Article 12), and shall enact laws on its own to prohibit foreign political organizations or bodies from conducting political activities in the Region, to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies (Article 23); when assuming office, the Chief Executive, principal officials, President of the Court of Final Appeal and Procurator-General of the Macao SAR must swear allegiance to the PRC (Article 102).

## II. Basic policy and basic mode over Macao by the PRC Government

China's resumption of the exercise of sovereignty over Macao refers to the resumption of the governance power over Macao and the resumption of the absolute and supreme power. Thus it brings about the question of the way to govern Macao. Under Chinese unitary system, it is to set up local administrative region and local government for the administration of the local authorities. There are two possibilities: One is to set up common administrative region and grant ordinary power, the other is to set up special administrative region and grant the power different from that of common local government. When solving the Question of Macao, the PRC Government promised not to practice the socialist system and policies, and the previous capitalist system and way of life shall remain unchanged for 50 years. Matching with the principle of "One Country, Two Systems", China shall set up the special administrative region and authorize Macao to exercise a high degree of autonomy (Article 2), and in order to make this policy put into real effect, exercise the mode of "Macao People Ruling Macao"; the executive authorities and legislature shall be composed of permanent residents of Macao (Article 3).

It is stipulated in Article 3 of the *Constitution of the People's Republic of China* (hereinafter as "the Constitution") that "the division of functions and powers between the central and local State organs is guided by the principle of giving full scope to the initiative and enthusiasm of the local authorities under the unified leadership of the central authorities." The PRC Government exercises the policies of "One Country, Two Systems", "Macao People Ruling Macao" and a high degree of autonomy in the Macao SAR, which is the very manifestation of "giving full scope to the initiative and enthusiasm of the local authorities". The policies of "One country, two systems", "Macao people governing Macao" and a high degree of autonomy are the basic policies and basic modes over the Macao SAR by the PRC Government. These basic policies and basic modes not only guarantee the unity of the country and the integrity of the territory, namely "One Country", but also permit the Macao SAR to remain and develop the previous capitalist system, and to exercise the "Macao People Ruling Macao" principle and a high degree of autonomy, namely "two systems".

In order to guarantee "One Country", the Central People's Government has to reserve and exercise the necessary power. Deng Xiaoping had ever clearly pointed out that the Central People's Government had to reserve certain power.<sup>5</sup> These reserved powers refer to the powers of foreign affairs and defense firstly. After the handover of Macao, the Central People's Government shall participate in political affairs on behalf of Macao in the world as the unique, and the Central People's Government shall be responsible for the foreign affairs relating to Macao (Article 13). The diplomatic negotiations directly affecting Macao shall be only conducted by the Central People's Government, and Macao may, as members of delegations of the PRC Government, participate in negotiations at the diplomatic level directly affecting Macao conducted by the Central People's Government (Article 135).<sup>6</sup>

Macao does not have the power to deal with foreign affairs, to declare to fight with other country, or to set up its own army. The Central People's Government shall be responsible for the defense of Macao (Article 14), and the Standing Committee of the National People's Congress (NPC) has the power to declare a state of war or decide that Macao is in a state of emergency (Article 18). These affairs, by their nature, are the constitutional responsibilities only subject to the Central People's Government, which Macao cannot and are unable to undertake. Therefore, China garrisons in the Macao SAR. The army garrisoned in Macao shall be directly under the lead of the

Central Military Commission and the Chief Executive shall not command the military garrisoned in Macao.

The Central People's Government shall exercise other powers besides foreign affairs and defense, for example, appoint or remove the Chief Executive, the principal officials of the government and the Procurator-General (Article 15), approve the acting Chief Executive during the vacancy period (Article 55), return the law enacted by the Legislative Council to make it invalid (Article 17), make a decision on whether the impeachment of the Chief Executive by the Legislative Council is right (Article 71), interpret and amend the basic law (Article 143 and Article 144), approve the amendment of Annex I (Annex I Art. 7) and accept the record of the amendment of Annex II (Annex II Art.3), etc.

In order to guarantee "Two Systems", the PRC Government also authorizes Macao to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication (Article 2), and a wide power to deal with foreign affairs (Article 13 and Chapter VII External Affairs). It is stipulated in the Basic Law that the previous capitalist system and way of life shall remain unchanged for 50 years (Article 5) and the previous laws shall be maintained basically (Article 8). The socialist system and policies of the mainland may not be practiced in the Macao SAR. As the high degree of autonomy of the Macao SAR is stipulated in the form of national basic laws, not only the Macao SAR shall abide by it, but also the state organs and the local organs shall abide by it. No department of the Central People's Government and no local organs may interfere in the affairs which the Macao SAR administers on its own in accordance with the principle of rule by law (Article 22).

Therefore, the governance of the PRC Government over the Macao SAR is divided into two aspects: one is the Central People's Government to exercise some powers directly; the other is to authorize the SAR to exercise some powers with a high degree of autonomy. Therefore, the governance over the special administrative region includes the power of the Central People's Government and also the high degree of autonomy of the special administrative region. The two aspects are not antithetic but supplemental with each other. As the high degree of autonomy is authorized by the Central People's Government, it leads to the fact that the special administrative region shall not confront the powers of the Central People's Government exercised according to the constitution and the basic law in the name of the so-called high degree of autonomy in any case.

The political system of the Macao SAR shall not be taken only as mutual operation of the executive, legislative and judicial power of Macao authorized by the NPC and the Central People's Government shall not be excluded from Macao's political system. The operation of Macao's political system cannot be separated from the participation of the Central People's Government itself. In fact, the political system of the Special Administrative Region is just operated in the state administrative system in accordance with the provisions of the basic Law. For example, the Chief Executive shall be appointed by the Central People's Government (Article 15 and Article 47), the principal officials of the government and the Procurator-General shall be appointed by the Central People's Government after the nomination of the Chief Executive (Article 15, Article 50 and Article 90), the Chief Executive shall be accountable to the Central People's Government (Article 45), the impeachment case by the Legislative Council over the Chief Executive shall be reported to the Central People's Government for decision (Article 71), laws enacted by the Legislative Council shall be reported to the Standing Committee of the NPC for the record, and the Standing Committee of the NPC has the right to return the law and make it invalid (Article 17), the power of

interpretation of this Law shall be vested in the Standing Committee of the NPC and the court shall follow the interpretation of the Standing Committee of the NPC (Article 143) and the power of amendment of this Law shall be vested in the NPC (Article 144), etc. That is to say, in this context, although the Macao SAR enjoys the executive, legislative and independent judicial power (including that of final adjudication) authorized by the National People's Congress in accordance with the Basic Law, including the separation, counterbalance and coordination of the powers, this political system cannot be called the political system of the "separation of powers". The political system of the Macao SAR is a form of local government organization in nature.

The resumed sovereignty over Macao by the PRC Government is not only a nominal power or a symbol, but a practical, absolute and supreme power. For example, it is stipulated in the Basic Law that the Chief Executive of the Macao SAR shall be selected by election or through consultations held locally and be appointed by the Central People's Government (Article 47), and this appointment refers to an essential power of appointment, which means to appoint or not to appoint, rather than a procedural or ceremonial power of appointment of the Central People's Government, which is just "a procedure" and virtual, after the election held locally. It is also stipulated in the Basic Law that the Chief Executive shall be accountable to the Central People's Government (Article 45), which is an essential accountability, too.

"One Country" is the basis and premise of "Two Systems". The capitalist system remaining in the Macao SAR is not independent from the Central People's Government or the mainland socialist system.<sup>7</sup> The "capitalism" practiced in the Macao SAR is the "capitalism" practiced within the scope of the Chinese sovereignty, and the "capitalism" under the leadership of the Central People's Government. How to keep and develop the previous capitalist system and how to maintain social stability and economic development in Macao are the inevitable issues of the Central People's Government to govern the country as well as the inevitable issues of the Macao SAR to exercise the power of a high degree of autonomy after China's resumption of the exercise of sovereignty over Macao.

### **III. Constitutional basis for the governance of the PRC Government over Macao**

China's resumption of the exercise of sovereignty over Macao is in accordance with the Constitution and the Basic Law, which jointly constitutes the constitutional basis for the governance of the PRC Government over Macao. There is one opinion that the Constitution does not apply to Macao and only the Basic Law constitutes the constitutional basis of the Macao SAR. This is not right. The Constitution is a symbol of the sovereignty unity. After China's resumption of the exercise of sovereignty over Macao and the handover of Macao as the local administrative region under the unitary state structure of China, the constitution surely applies to the established special administrative region hereinafter.

The problem lies in that the Constitution is the socialist constitution, and it is clearly stipulated in Article 1 of the Constitution that the socialist system is the basic system of the PRC and disruption of the socialist system by any organization or individual is prohibited. However, the "One Country, Two Systems" policy is to promise that the previous capitalist system and way of life in the Macao SAR will remain unchanged for 50 years. In the case of the seriously antithetic

ideology, socialism and capitalism are regarded as two systems which are fundamentally antithetic and even can be replaced by each other, and also are “incompatible like water and fire”. Therefore, such dispute is put forward: Can the socialist constitution apply to the Macao SAR with the previous capitalist system and way of life unchanged? If the socialist constitution applies to the Macao SAR, does the Basic Law which guarantees the previous capitalist system and way of life unchanged comply with the Constitution?

It is pointed out in the third paragraph of the preamble of the Basic Law that in accordance with the Constitution, the NPC enacts the Basic Law, prescribing the systems to be practiced in the Macao SAR, in order to ensure the implementation of the basic policies of the PRC Government regarding Macao. And it is stipulated in Article 11 that in accordance with Article 31 of the Constitution, the systems and policies practiced in the Macao SAR, including the social and economic systems, the system for safeguarding the fundamental rights and freedom of its residents, the executive, legislative and judicial systems, and the relevant policies, shall be based on the provisions of this Law, and no law, decree, administrative provisions and normative acts of the Macao SAR may contravene this Law. This suggests that the Basic Law is the basis of the legal system of the Macao SAR and the parent law of other laws.

However, in terms of the Basic Law and the Constitution, the Constitution is the parent law, while the Basic Law is the branch law; the Constitution is the higher-level law, while the Basic Law is the lower-level law. The provisions in the third paragraph of the preamble and Article 11 of the Basic Law are to point out that the systems and policies practiced in Macao shall be in accordance of the Basic Law, rather than the exclusion of the application of the Constitution in the Macao SAR, still less the negation of the supreme legal authority of the Constitution in the Macao SAR. That is because the Constitution itself is the supreme legal basis of the establishment of the Macao SAR. Article 31 of the Constitution stipulates that the state may establish special administrative regions when necessary and the systems to be instituted in special administrative regions shall be prescribed by laws enacted by the NPC in the light of specific conditions. Article 62 (13) of the Constitution stipulates that the NPC shall decide on the establishment of special administrative regions and the systems to be instituted there. Therefore, the high degree of autonomy of the Macao SAR cannot be only regarded as being endowed by the Basic Law but being endowed by the Constitution firstly and fundamentally. The special administrative regions stipulated in Article 31 and Article 62 (13) of the Constitution is obviously different from the established common administrative divisions in Article 30 of the Constitution, implying the authorization of special power itself.

Besides, the basis of the enactment of the Basic Law comes from the Constitution, which is not only in Article 31 and Article 62 (13) of the Constitution but also in the whole constitution. It is clearly pointed out in the Decision on the Basic Law of the Macao Special Administrative Region of the People’s Republic of China by the National People’s Congress that the Basic Law is enacted in accordance with the Constitution in the light of the specific conditions of Macao.

The fundamental basis of the establishment and operation of the Macao SAR lies in the Constitution rather than the Basic Law. The Constitution is the “fundamental law” of the whole China including the Macao SAR with the supreme legal authority.<sup>8</sup> That is why the expression regarding the Basic Law as the “constitution” or “minor constitution” of the Macao SAR is not suitable for official documents and legal documents.<sup>9</sup>

This is because China is a country with unitary system, and according to the classical

definition of the Chinese unitary system, such country can only have one constitution.<sup>10</sup> This is contrary to the federalism, which has the federal constitution and the state constitution, and the state constitution is enacted, interpreted and amended by the state itself. The Basic Law is different, as it is enacted by the NPC with the power of amendment vested in the NPC (Article 144), and the power of interpretation of this Law vested in the Standing Committee of the NPC (Article 143).

The Constitution is the fundamental legal basis of China's resumption of the exercise of sovereignty over Macao with the exercise of the policies of "One Country, Two Systems", "Macao People Ruling Macao" and a high degree of autonomy. As the lower-level law of the Constitution, the Basic Law is the specific legal guarantee of the exercise of the "One Country, Two Systems" of the PRC Government over the Macao SAR. Not only the Basic Law is enacted on the basis of the Constitution itself, but also the operation of many articles of the Basic Law cannot be separated from the application of the articles of the Constitution in the Macao SAR. For example, it is stipulated in the Basic Law that the Macao SAR shall come directly under the Central People's Government (Article 12). What is the Central People's Government? It shall be understood in accordance with Article 85 of the Constitution that the State Council, that is, the Central People's Government, of the People's Republic of China is the executive body of the highest organ of state power; it is the highest organ of state administration. It is also stipulated in the Basic Law that Chinese citizens who are residents of the Macao SAR shall be entitled to participate in the management of state affairs according to laws (Article 21). Who are the Chinese citizens? It shall be understood in accordance with Article 33 of the Constitution that all persons holding the nationality of the PRC are citizens of the PRC.

Of course, this does not mean that the Constitution is the supplement of the Basic Law. On the contrary, as the lower-level law of the Constitution, the Basic Law is the materialization of the Constitution in the Macao SAR. There is one opinion that the Constitution can be only indirectly applied in Macao rather than directly. This is not right. The socialist system and policies stipulated in the Constitution may not be practiced in the Macao SAR; however, the provisions in the Constitution related to the unified leadership of the central authorities, national sovereignty, national defense and diplomacy, the highest organ of state power and the highest organ of state administration, national flag, national emblem, national anthem and the capital, all apply to the Macao SAR. The Constitution and the Basic Law not only constitute the constitutional basis for the governance of the PRC Government over Macao, but also jointly constitute the constitutional basis of the operation of the Macao SAR itself. The Macao SAR has the obligation to observe the Constitution, respect the Constitution and defend the authority of the Constitution.

#### **IV. Resumption of governance over Macao under the unitary state structure of China**

Macao has been included into the national territory since the establishment of the centralization country during the Qin and Han Dynasty. When Qin Shi Huang (the first emperor of Qin) unified the six states and set up Fanyu County under Nanhai Prefecture in the south, Macao was under the jurisdiction of Fanyu County.<sup>11</sup> The system of prefectures and counties created by Qin Shi Huang was the predecessor of the unitary state structure under the Constitution.<sup>12</sup> After the settlement of the Question of Macao, it is certain to take Macao back in accordance with the unitary

state structure.

It is clearly stipulated in *the Basic Law* that the Macao Special Administrative Region is an inalienable part of the People's Republic of China (Article 1); "inalienable" means that Macao is a part of the PRC and it has no right to ask for independence, to withdraw from the PRC or to join in other country, which is clearly stipulated from the very beginning according to the classical definition of unitary system. China's resumption of the exercise of sovereignty over Macao shall be inevitably realized only under the established unitary state structure for the PRC to govern Macao.

The sovereignty of Macao belongs to China from beginning to end and Macao does not have the sovereignty itself. This is to say, the Macao SAR does not have any absolute or supreme power itself and its power must be authorized by the PRC. Therefore, the Basic Law clearly stipulates that the NPC 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), and further stipulates the legal status of the Macao SAR: "the Macao Special Administrative Region shall be a local administrative region of the People's Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People's Government" (Article 12). This clearly points out that the Macao SAR is a local region under the Chinese unitary state structure. The Macao SAR and the PRC are in the relationship of the central and the local, rather than that of the dependency and suzerain or that of the member state of the federation and the federation.

The Macao SAR is only a local region under the Chinese unitary system rather than a country or an independent or semi-independent political entity; therefore, Chapter III of the Basic Law is titled as the "fundamental rights and duties of the residents" rather than fundamental rights and duties of the "citizens". This is because under the Constitution, only people with a nationality can be called citizens. Macao is not a country, which does not have the problem of the nationality itself. Therefore, those people can only be called "residents" rather than "citizens". It is stipulated in the Basic Law that the Central People's Government shall be responsible for the defense of the Macao SAR (Article 14). Here the expression "defense" rather than "national defense" is used, because Macao is not a country and the "national defense of the Macao SAR" is wrong.

The Macao SAR enjoys independent judicial power, including that of final adjudication, in accordance with the Basic Law (Article 2). However, the highest court established in accordance with such power shall be called "Court of Final Appeal" rather than "Supreme Court" (Article 84). This is because the unitary state has only one supreme court, and the supreme court can only be the Supreme People's Court in Beijing in accordance with the general definition of the Chinese unitary system, while in the federal system, the federal supreme court and the state supreme court can be both set up.

Though the powers and functions of the Central People's Government and the Macao SAR are listed and divided under the Basic Law, in nature, it means that the powers of the Macao SAR come from the Central People's Government, which is authorization rather than separation of powers. Macao is not an independent or semi-independent political entity without inherent power itself. Since it does not have the inherent power, how can it "separate the powers" from the Central People's Government? Though the administrative region of Macao was formed in the history, it is divided by the Central People's Government rather than Macao itself.<sup>13</sup> Though Macao has its own regional flag and regional emblem, they are designed and made by the Central People's Government rather than Macao itself.<sup>14</sup> The Basic Law is an authorized legal document rather than

a "social contract" signed between the PRC and the Macao SAR.

This authorization or being authorized is in accordance with the internal logic of the principles of "One Country, Two Systems". "One Country" is the source, and "Two Systems" is the derivation. It is repeatedly emphasized in the Basic Law that the powers of the Macao SAR are "authorized", constituting an entire authorization system. Firstly, it is clearly stipulated in the Basic Law that the NPC "authorizes" Macao to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication (Article 2). Secondly, it is clearly stipulated in the articles of the Basic Law that the Central People's Government or the Standing Committee of the NPC "authorizes" the Chief Executive, the government or the court to conduct relevant affairs or exercise relevant powers, such as foreign affairs (the third paragraph of Article 13, Article 50 (13) and Article 64 (3)), reciprocal judicial assistance (Article 94), ship register (Article 116), civil aviation management systems (Article 117), passports of the Region and other travel documents (Article 139), visa waiver (Article 140), the interpretation of the Basic Law by the courts (Paragraph 2 of Article 143), etc. Thirdly, though the formulation of "authorization" can't be seen in some articles of the Basic Law, they are all established on the legal basis of authorization and being authorized on the premise of authorization by the Central People's Government; for example, Macao shall enact laws on its own to defend the national security (Article 23), and may using the name "Macao, China" to participate in international affairs (Article 136 and Article 137), etc. Fourthly, it is also stipulated in the Basic Law that Macao may enjoy other powers granted to it by the Central People's Government (Article 20).

The authorization only means the transfer of the exercise of the power rather than the transfer of the power itself. There is an opinion that the power cannot be exercised any more once it is authorized out; for example, it is stipulated in the Basic Law that the Standing Committee of the NPC shall authorize the courts of Macao to interpret, on their own, the provisions of the Basic Law which are within the limits of the autonomy of the Region (Article 143), which in their opinion means that the Standing Committee of the NPC cannot interpret these article of the Basic Law any more. This is not right. The power of interpretation of the Basic Law shall be vested in the Standing Committee of the NPC, whose fundament basis comes from the Constitution. That's just why the Standing Committee of the NPC has the right to authorize the power of interpretation of the articles within the limits of the autonomy to the courts of Macao; however, that is not to say that the power of the interpretation of such articles is transferred itself. The Standing Committee of the NPC still has the power to interpret all articles of the Basic Law.

Since the power of the Macao SAR is authorized by the Central People's Government, the Central People's Government, as the authorization organ, is responsible for the supervision of the authorized powers. Besides, the authorization shall be made within statutory and express limits. For those powers unauthorized by the Central People's Government, the Macao SAR shall not exercise at its discretion, nor authorize itself according to its own deduction. The Macao SAR does not have the inherent power or the so-called "residual power" problem.<sup>15</sup>

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<sup>1</sup> This is a suggestion put forward by Shao Tianren, a legal adviser of the Ministry of Foreign Affairs at that time,

and later adopted by the Central People's Government. See Zong Daoyi (Ed.) 2007. *Zhou Nan Dictation: Yaoxiang Dangnian Yushan Guanjin* (Zhou Nan dictation: recalling my past). Ji'nan: Qilu Press. 273.

<sup>2</sup> For the territory of Portugal, it is defined in Article 5(1) of the 1976 Constitution of Portugal that "Portugal comprises the territory defined by history on the European continent and the archipelagos of the Azores and Madeira" and in Article 292(1) that "while under Portuguese administration, the territory of Macao abides by a statute adequate to its special situation".

<sup>3</sup> It can be compared with the statement in Sino-British Joint Declaration: "(1) The Government of the People's Republic of China declares that it is the common aspiration of the entire Chinese people to recover the Hong Kong area (including Hong Kong Island, Kowloon and the New Territories), and that it has decided to resume the exercise of sovereignty over Hong Kong with effect from 1<sup>st</sup> July 1997. (2) The Government of the United Kingdom declares that it will restore Hong Kong to the People's Republic of China with effect from 1<sup>st</sup> July 1997." This is because when the PRC Government negotiated with the United Kingdom, China pointed out that China's takeover of Hong Kong and the resumption of the exercise of sovereignty should be clearly stated in the agreement. However, the United Kingdom did not accept the formulation of China's resumption of the exercise of sovereignty over Hong Kong, and the drafts put forward all contained the meanings of the validity of the three unequal treaties [namely Treaty of Nanjing (1842), Treaty of Peking (1860) and The Convention for the Extension of Hong Kong Territory (1898)] in which Hong Kong was ceded to the United Kingdom by China, and China could not accept them resolutely. In the end, both parties agreed to use the mode of the joint declaration, namely the declarations of the Government of the PRC and the Government of the United Kingdom.

<sup>4</sup> Bodin (1530-1596), French, put forward the concept of sovereignty firstly. In Chapter Eight "On Sovereignty" of the first book of his famous Six Books of the Commonwealth, Bodin clearly pointed out from the very beginning that, "Sovereignty is the absolute and perpetual power of a commonwealth". However, in the Latin Version translated by himself, the sovereignty was defined as "supreme and absolute power" without the modifier of the "perpetual". The perpetuity said by Bodin means that the sovereignty always exists with the country; therefore, he said, only the people or the monarch are always the legal owner of the sovereignty, and the local governor or the lieutenant of the monarch is just the trustee or the management agent of the powers, and has to return this power after the expiration of this position. The perpetuity said by Bodin hereby, in nature, means that the sovereignty is the original power which can generate other powers unlimitedly; otherwise, it is not the sovereignty. See Bodin, J. (2003). *On Sovereignty*. Beijing: China University of Political Science and Law Press. (Photocopy of Cambridge Texts in the History of Political Thought Series). 1.

<sup>5</sup> In the speech of Deng Xiaoping at the interview with the members of the Drafting Committee for the Basic Law of Hong Kong on 16<sup>th</sup> April 1987, Deng said, "Does Hong Kong sometimes have questions that can't be solved without the help of Beijing? The past questions of Hong Kong could be settled by the United Kingdom. There are always some matters difficult for you to settle without the help of the Central People's Government."

<sup>6</sup> Before the handover of Macao, it has no diplomatic power itself. It is stipulated in Article 3 of the *Estatuto Orgânico de Macau* ("Organic Statute of Macao") that the sovereignty organs of the Republic are represented by the governor at the local place except the courts. When there are affairs related to foreign countries or conclusions of the international agreements or international treaties, the president of the Republic shall exercise the power on behalf of Macao. For the affaires related to the benefit of Macao, the president of the Republic shall authorize such powers to the governor.

<sup>7</sup> In the speech of Deng Xiaoping at the interview with the members of the Drafting Committee for the Basic Law of Hong Kong on 16<sup>th</sup> April 1987, Deng ever pointed out, "Imagine how will Hong Kong be if China changes the socialist system and the socialist system with Chinese characteristics under the leadership of the Communist Party of China? The prosperity and stability of Hong Kong will be changed too. If we really want Hong Kong to stay

- unchanged for 50 years or more, we must keep the socialist system of the mainland unchanged.”
- <sup>8</sup> This is the last paragraph of the preamble of the Constitution of the People’s Republic of China: “This Constitution, in legal form, affirms the achievements of the struggles of the Chinese people of all nationalities and defines the basic system and basic tasks of the state; it is the fundamental law of the state and has supreme legal authority. The people of all nationalities, all state organs, the armed forces, all political parties and public organizations and all enterprises and institutions in the country must take the Constitution as the basic standard of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation.”
- <sup>9</sup> It is easier to understand the status and function of the Basic Law as some people refer it as “minor constitution” of Macao as an analogy. Therefore, there is also an academic opinion that it is only a vivid parlance in the folk to compare the basic law to the small constitution of the SAR, and it does not need to treat it too sensitively. See Ieong Wan Chong (2009). *The Successful Implementation of the “One Country, Two Systems” Policy and the Historical Advancement of the Constitutional Development of China*. In Ieong Wan Chong and et al. (Eds.) *“One Country, Two Systems” and Constitutional Development: Proceedings of the Academic Conference for the Celebration of the 10th Anniversary of the Establishment of the Macau SAR*. Macao: One Country Two Systems Research Center of Macao Polytechnic Institute. 1-14.
- <sup>10</sup> It is generally written in the constitutional jurisprudence textbooks and works in China that only one unified constitution is the primary characteristic of the unitary country. See Xu Chongde (1995). *Chinese Legal Dictionary: Constitution Volume*. Beijing: China Procuratorial Press. 92; Wei Dingren (Ed.) (1999). *Constitution*. Beijing, Peking University Press. 132; Xiao Weiyun and Jiang Ming’an (Eds.) (1999). *Peking University Encyclopedia of Jurisprudence: Constitutional and Administrative Law Volume*. 47; and etc.
- <sup>11</sup> Macao belonged to Dongguan Prefecture in Jin Dynasty, belonged to Nanhai County in Sui Dynasty and belonged to Dongguan County in Tang Dynasty. In Shaoxing 22th Year of the Southern Song Dynasty (1152), Xiangshan County was established and Macao had been included in the county till its full occupation by Portugal.
- <sup>12</sup> It is said in Mao Zedong’s poem that the laws of Qin Dynasty had been used for hundreds of dynasties, in which the system of prefectures and counties established in the whole China by Qin Shi Huang is included. This is the beginning of the Chinese local system construction and has been used till now. Mao Zedong also said that Qin Shi Huang did not build states in the country; instead, he adopted the centralization system and the Central People’s Government sent people to local places, and replaced them every few years, rather than the hereditary system. He thought highly of the local system established by Qin Shi Huang.
- <sup>13</sup> See Paragraph 1 of the Preamble of the Basic Law; the Decision of the NPC on the Establishment of the Macao SAR adopted by the NPC on 31<sup>st</sup> March 1993 and No. 295 Order released by the State Council on 20<sup>th</sup> December 1999.
- <sup>14</sup> See the Instructions on the Basic Law of the Macao Special Administrative Region of the People’s Republic of China (Draft) and Relevant Documents and Drafting Work made by Ji Pengfei at the first meeting of the 8<sup>th</sup> National People’s Congress on 20<sup>th</sup> March 1993.
- <sup>15</sup> The residual power usually refers to the power which is not stipulated to be exercised by the federal or to be prohibited to be exercised by the member states in the constitution of the federation, and the “residual power” is usually exercised by the member states. For example, it is stipulated in Article 10 of the amendments to the Constitution of the United States of America that the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. It is stipulated in Article 116 of 1971 Interim Constitution of the United Arab Emirates that the emirates shall exercise all powers not assigned to the Union by this Constitution.