

A Brief Review of the Special Administrative Regions and the Special Administrative Region System

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I. The Concept of the Special Administrative Regions

The concept of special administrative region can be defined at two levels. The first refers generally to special or unique administrative regions, vs. ordinary or general administrative regions, the latter being administrative divisions that the state sets up to suit general conditions of the country. Provinces that began to be established in China in the Yuan Dynasty, for example, were ordinary administrative regions. Special administrative regions are those that the state sets up for special regions, such as autonomous regions of national minorities or later the two Special Administrative Regions (SARs) of Hong Kong and Macao.

While general or ordinary administrative regions are the mainstay of the state's administrative system, special or unique administrative regions are exceptions. These exceptional regions generally are vested with more powers, and a higher degree of autonomy, than those of ordinary regions.¹

At the second level, an SAR refers to a specific region. As a general term for administrative divisions, it includes both ethnic autonomous regions and the SARs, the different names reflecting their different nature and characteristics. Autonomous regions were set up for solving ethnic issues while the SARs for solving legacy problems and achieving national reunification.²

It is worth noting there is yet another SAR in China, which is the Wenchuan Wolong Special Administrative Region in Sichuan province. It is located in the southwest of Wenchuan County, Aba Tibetan and Qiang Autonomous Prefecture of Sichuan. It was formerly known as Wolong Special Administrative Region of Wenchuan County, Sichuan Province and was founded in March 1983 with approval of the State Council. It was given its current name and placed under Sichuan provincial government with administrative supervision by the provincial department of forestry. Its area supersedes Sichuan Wolong National Nature Reserve and its administrative office is the same as the Administrative Bureau of the State Forestry Administration for the reserve.³ As an administrative division, it consists of Wolong Town and Gengda Township, and is part of Wenchuan County, Aba Prefecture. With supervision from the provincial Forestry Department, its administration covers not only forestry and panda preservation, but also economic and social development of the two townships, with input from other functional departments of the provincial government. Meanwhile, some of its government functions are also subject to administration by the county and prefecture government. For example, it has a court and a procuratorial office that were set up by the county court and procuratorial office. However, the social and economic development plans of either Wenchuan County or Aba Prefecture governments no longer cover the Wolong region.⁴

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Article 31 of the *Constitution of the People's Republic of China* (hereinafter as “the Constitution”) stipulates, “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 National People's Congress in the light of the specific conditions.” Wenchuan Wolong Special Administrative Region of Sichuan Province is not an SAR as defined by the Constitution. The Hong Kong SAR and the Macao SAR were established according to provisions of the Constitution. Given their internationally acknowledged achievements of in the practice of the “One Country, Two Systems” policy, with a high degree of autonomy, and the principles of “Hong Kong people ruling Hong Kong” and “Macao people ruling Macao”, the term “SAR” has come to be widely recognized as a specific term for these two regions. Therefore, it is proposed the Wenchuan Wolong Special Administrative Region of Sichuan Province change its name, with designations such as special area or township. The SARs established in Hong Kong and Macao are inseparable from Deng Xiaoping's concept of “One Country, Two Systems” which have three distinctive features: a) the “One Country, Two Systems” principle; b) a high degree of autonomy; c) the principles of “Hong Kong people ruling Hong Kong” and “Macao people ruling Macao”.

The legal status of the Hong Kong SAR and the Macao SAR are clearly defined by 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”) respectively. Their provisions include a) being part of the territory of China since antiquity (first paragraph in the preambles of the Hong Kong Basic Law and the Macao Basic Law); b) being an inalienable part of the People's Republic of China (PRC) (Article 1 of the Hong Kong Basic Law and the Macao Basic Law); c) being local administrative regions of the PRC, which shall enjoy a high degree of autonomy and come directly under the Central Government (Article 12 of the Hong Kong Basic Law and the Macao Basic Law).

According to these provisions, the legal status of the SARs can be viewed from the following angles:

First, from a historical point of view, Hong Kong and Macao have been a part of the territory of China since ancient times. China became a unified state under a centralized authority since the Qin and Han dynasties. This is the historical basis for the unitary state structure defined by the Constitution. Such a unitary state is precisely the fundamental prerequisite for the legal status of the Hong Kong SAR and the Macao SAR. Under such a precondition, the Hong Kong Basic Law and the Macao Basic Law stipulate that the two SARs are an inalienable part of the PRC. They could not be called states or federal republics after their return to China, but entities set up in accordance with the principles of the existing administrative system of China.

Second, we can identify the level that they occupy in the system of administrative divisions of China, given the unitary state structure and the two SARs being local administrative regions under the Central Government. The Hong Kong Basic Law and the Macao Basic Law stipulate that they come directly under the Central Government. This means that they have the legal status equivalent to that of provincial level administrative entities, which are China's first-tier local administrative division and component units of China's state structure.⁵

Third, the SARs are special local administrative regions in that they practice the policies of “One Country, Two Systems”, a high degree of autonomy and “Hong Kong people ruling Hong Kong” and “Macao people ruling Macao”. The two SARs do not practice the socialist system and policies of the Mainland. They can keep their previous capitalist system and way of life unchanged for 50 years, enjoy executive, legislative and independent judicial powers and power of final adjudication, have the right to issue their own currencies, and maintain fiscal independence. Further, they can use their own regional flags and emblems, conduct certain external affairs, and participate in international events in the names of “Hong Kong, China” and “Macao, China”. Their high

degrees of autonomy are authorized by the National People's Congress (NPC) (Article 2 of the Hong Kong Basic Law and the Macao Basic Law). Other organs of the Central Government, e.g. the NPC Standing Committee and the State Council, may further grant the SARs other powers (Article 20 of the Hong Kong Basic Law and the Macao Basic Law).

Thus, as we have seen, the SARs are an inalienable part of the PRC, and are local administrative regions that come directly under the Central Government. The relationship between the Central Government and the SARs is that of the Central Government and local entities within a unitary state. The SARs enjoy a high degree of autonomy authorized by the central authority but do not have sovereign powers, diplomatic and defense functions, and are not independent or semi-independent political entities. Their legal status is equivalent to those of provinces, autonomous regions and municipalities that come under the Central Government.

II. The Scope of the Special Administrative Regions

The Hong Kong Basic Law and the Macao Basic Law clearly define the two SARs as local administrative regions of China. By administrative region is meant a region set up by the unitary state when dividing its territory into administrative divisions with corresponding local government organs. Such divisions are set up to meet political, economic, ethnic, geographic and historical conditions of the state, to facilitate its overall administration. They are important components of a national system of governance.

Article 30 of the Constitution stipulates the administrative division of the PRC be structured as follows: (1) The country is divided into provinces, autonomous regions and municipalities directly under the Central Government. (2) Provinces and autonomous regions are divided into autonomous prefectures, counties, autonomous counties and cities. (3) Counties and autonomous counties are divided into townships, nationality townships and towns. Municipalities directly under the Central Government and other large cities are divided into districts and counties. Autonomous prefectures are divided into counties, autonomous counties, and cities. Article 31 stipulates, "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 National People's Congress in the light of the specific conditions."

According to provisions of the 1982 Constitution, there are three levels of administrative regions in China: provincial, county and township levels with an additional level in some areas. With the advancement of China's reform and needs of economic construction and development, there was a gradual evolution toward a four-level structure: provincial, prefecture, county and township. Article 62 of the Constitution allows the NPC to approve the establishment of provinces, autonomous regions, and municipalities directly under the Central Government, and to decide on the establishment of SARs and the systems to be instituted there. In other words, the establishment of provincial-level administrative regions is subject to decisions by the NPC. The establishment of the SARs was mandated by the NPC in keeping with procedures for administrative divisions established by the Constitution.

It was under such constitutional provisions, the NPC adopted its *Decision on the Establishment of the Hong Kong Special Administrative Region of the People's Republic of China* on 14th February 1990, and *Decision on the Establishment of the Macao Special Administrative Region of the People's Republic of China* on 31st March 1993. These two decisions provided: a) The Hong Kong SAR was to be established on 1st July 1997. The area of the Hong Kong SAR covers the Hong Kong Island, the Kowloon Peninsula, and the outlying islands and adjacent waters under its jurisdiction. The map of the administrative division of the Hong Kong SAR was to be published by the State Council separately. b) The Macao SAR was to be established as of 20th

December 1999; the area of the Macao SAR covers the Macao Peninsula, Taipa Island and Coloane Island. The map of the administrative division of the Macao SAR was to be published by the State Council separately. According to the map of the administrative division of the Hong Kong SAR published by the State Council, its territory comprises a land and sea sector. The land sector comprises three sections: Sha Tau Kok Town, Sha Tau Kok Town to Pak Kung Au, Pak Kung Au to the Mouth of the Shenzhen River. After the realignment of the Shenzhen River, the boundary will follow the new centre line of the river. The sea sector comprises three sections, i.e., those of Shenzhen Bay, Southern Sea Section and Mirs Bay. The writing statement by the State Council for the area range of administrative region of the Macao SAR indicates: the north part of the Macao SAR is linked with Gongbei of Zhuhai City of Guangdong Province by land route. Area to the south of the arched door of Portas do Cerco shall be administered by the Macao SAR. The area between the north of arched door of Portas do Cerco and the original flag building of the frontier inspection station shall be managed by original measure with no change. The Macao SAR shall maintain its managing range of the original customary water area with no change. The State Council also issued a circular designating the acronym in Chinese for the Hong Kong SAR as “Gang (港)”, the acronym in Chinese for the Macao SAR as “Ao (澳)”, and the Macao SAR’s place in the order of precedence in the national administrative division is after the Hong Kong SAR and before Taiwan Province.⁶

These arrangements show that the SARs were established in accordance with the system of administrative division of China. The principles for the system are based on multiple factors including that of historical situation and conditions.⁷ These are fully reflected in the two Basic Laws and relevant decisions by the NPC and the State Council.

First, the preamble of the Hong Kong Basic Law defines Hong Kong as being part of China’s territory since ancient times, and the Macao Basic Law stipulates in its preamble that Macao, including the Macao Peninsula, Taipa Island and Coloane Island, has been part of the territory of China since ancient times.

The Hong Kong Basic Law defines the territorial scope in a manner different from that for Macao. The reason is that during its drafting process, there was debate as to if the original term “New Territories” should be used for the Hong Kong SAR. The region was formerly known to comprise Hong Kong Island and Kowloon Peninsula. However, since the signing of the *Convention between China and Great Britain Respecting an Extension of Hong Kong Territory*, Britain had called the entire area of Kowloon Peninsula to the south of Shenzhen River and nearby islands that it leased as “New Territories”, as opposed to the “old territory” that it had occupied following the *Convention of Peking* in 1860. “New Territories” meant newly occupied territories with an obvious colonial twist. Thus, the Hong Kong Basic Law Drafting Committee decided that such colonial term should be abandoned when defining the territory range of the Hong Kong SAR. Therefore, the Preamble of the Hong Kong Basic Law does not specify the area range of the Hong Kong SAR. The Drafting Committee recommended that the State Council separately publish its definition of the administrative division of the Hong Kong SAR at an appropriate time.⁸ Article 40 of the Hong Kong Basic Law puts the term in quotation marks when stipulating that the lawful traditional rights and interests of the indigenous inhabitants of the “New Territories” shall be protected by the Hong Kong SAR.⁹

Second, the decision adopted by the NPC on 14th February 1991 clearly states that the territory range of the Hong Kong SAR covers the surrounding territorial waters. The Macao Basic Law and the decision adopted by the NPC on 30th March 1993 both clearly state that the area range of the Macao SAR covers Macao Peninsula, the islands of Taipa and Coloane only, without reference to territorial waters.

This is because when Hong Kong was occupied by the British under three unequal treaties, its area range had included the waters near Hong Kong. *The Convention between China and Great*

Britain Respecting an Extension of Hong Kong Territory specified that territories beyond the "old territory" on Kowloon Peninsula, including the land area between Shenzhen Bay and Mirs Bay and surface waters and over 200 outlying islands in both bays, were to be "leased" to Britain.¹⁰ Thus, area range of Hong Kong under British occupation had included the nearby waters.

After the Portuguese occupied Macao, the *Sino-Portuguese Treaty of Amity and Commerce* of 1887 provided that "the Great Qing government does not object to the agreement signed in Lisbon, the capital of the Atlantic state, and its Article 2 allowing the perpetual occupation and government of Macao by Portugal. It is further agreed that a separate agreement shall be executed after representatives of both countries have agreed on the definition of its area range. Prior to that, all shall remain as is and no alterations or changes shall be admitted." Thereafter, no further agreement was ever reached after several rounds of discussions to define the boundary of Macao. In other words, the boundary between Macao and the Chinese Mainland has never been formally delineated and the area range of Macao should thus cover only the area under the de-facto Portuguese occupation at the time, excluding all nearby waters, and the waters between the peninsula and offshore islands, which should be under the administration of the Chinese Government. The *Estatuto Orgânico de Macau (Organic Statute of Macao)* published by Portugal in 1976 also stipulated, "The territory of Macao covers Macao, the city of God's Name, and the islands of Taipa and Coloane."¹¹

However, prior to the return of Macao, in the interest of administrative efficiency and better management of security and transportation in Macao's nearby waters by both sides, the Portuguese administration in Macao and the Chinese Government agreed to a line roughly delineating areas of customary control by the respective sides.¹² The State Council reaffirmed this when it published the Map of the Macao SAR, stating, "the Macao SAR shall maintain its managing range of the original customary water area with no changing."

III. Similar Special Administrative Divisions in China's Past

Engels once argued that division of the citizens merely according to their place of residence, rather than membership of a kinship group, is an important sign of the beginning of the state.¹³ Administrative division is designed to facilitate state governance by dividing the territories of the state. Such division must take into account political, economic, cultural, ethnic, geographic, demographic, defense, historical and traditional factors. Thus, in many countries, administrative divisions are never uniform, often with exceptions of special administrative divisions for certain areas.

China has a system of administrative division in place since times of antiquity. When the Qin Dynasty divided the whole country into commanderies and counties after it had unified China, it also set up local administrative entities such as "dao" (circuit) and "tributary states" in remote areas populated by ethnic peoples. The system of commanderies and counties in the Qin Dynasty was in contrast to the system of dukedoms during the earlier Shang and Zhou dynasties. The commanderies were set up as local administrative entities throughout the state, with counties as the next level of local government. The emperor appointed both commandery and county governors and the titles were not hereditary. The commanderies and counties were general/ordinary administrative entities forming the mainstay of the local political system of the Qin state, which has largely remained as the basic pattern of administrative division through the millennia to this day.

In addition to this general system, the Qin Empire also established a system of special administrative entities. One was "dao", corresponding to county, in remote areas inhabited by ethnic minorities. The head of "dao" was not an official for a fixed term and directly appointed by the imperial court, but a tribal head of the ethnic group confirmed by the empire. The title was

hereditary so that bloodline of the tribal chiefs could be maintained.¹⁴ The other was the tributary or vassal state as a form of local administrative entity. Tributary states first appeared during the Warring States Period. By the Qin Dynasty, they included the ethnic tribal states in remote areas giving allegiance to or becoming vassal states of the Qin Empire.¹⁵ The heads of such tributary states were the ethnic tribal chiefs confirmed by the Qin court and their titles were hereditary. They were by nature different from “*dao*” in that a) ethnic tribes were not part of the Qin before they pledged allegiance; b) “*dao*” was a county level entity while a tributary state could correspond to either county or commandery level entity.¹⁶

This system was in the succeeding Han Dynasty that saw significant development in the local administration of “*dao*” and tributary states. They were governed by area commanders, which was not a merely a military title but also entail responsibilities for civic affairs. They were mostly ethnic tribal heads that had surrendered or pledged allegiance to the empire. Beneath them were appointed ministers, “*hou*” (head guards), “*qian ren*” (column commanders), and official registrars, which were all Han Dynasty official titles. During the Southern Dynasty, the system of commandery and counties continued across the country while “*zuo*” (“left-side” or supplementary) commanderies and counties were set up for remote ethnic regions (so-named because the left-sided opening of the front panel on the garments worn by people in those regions, as opposed to the right-sided cut prevalent in the main part of the country). Later, there were also “*zuo*” prefectures. In the Tang Dynasty, the system of administrative division with “*dao*”, commandery and county, and in the Song Dynasty, of “*dao*”, prefecture and county, were adopted across the country. For the outlying ethnic areas, a special form of local political control called “*ji mi*” (harness system) were instituted during these two dynasties, with tribal chieftains being appointed to control their own people. The term “*ji mi*” (literally means “control and harness”) implied controlling the ethnic people by local chieftains as if controlling beasts of burden with nasal rings and steering harness. The tiered system included the court of the area commander, under which were prefectures and counties, often collectively referred to as “*ji mi*” or barbarian prefectures.

Such indirectly administered prefectures covered areas inhabited by ethnic minorities and had been tribal territories by tradition. The emperor’s court affirmed its authority over them by endorsing the original tribal chieftains as their rulers rather than appointing officials. The tribal chiefs retained their titles and powers with additional courted granted titles of area commander, governor or mayor. They presided over civic affairs within their territories without court interference and retained their traditional custom and bylaws. Most of the “*ji mi*” prefectures were nominal part of the empire, without being subject to formal registration and tribute or tax contribution. A small number of them made formal registration with and paid tax to the treasury of the empire, but at a lower level than regular prefectures and often without being subject to fixed requirement.¹⁷

In the Yuan, Ming and Qing dynasties, the system of special administrative division continued to evolve. A unified system of province, “*lu* or *dao*” (circuit), prefecture and county was established across the country, while in remote ethnic areas a “*tusi*” (chieftain) system was instituted on the basis of the “*ji mi*” system of the earlier Tang and Song dynasties. During the Qing Dynasty, a “*mengqi*” (league-banner) system was instituted in areas inhabited by nomadic Mongolian people. The “*tusi*” was largely the same as the “*ji mi*” system. The titles of “*tusi*” chieftains were hereditary. They ruled over tribal affairs on their own. However, they were given rankings corresponding to those of state officialdom, had to pay tax/tribute contributions according to specific rules, and reported to the emperor’s court at designated intervals. Their descendants were also required to complete studies of official rules and rituals before they could inherit titles.

However, as the “*tusi*” system evolved, its pitfalls became increasingly irksome. As the “*tusi*” chiefs’ powers became more entrenched, they became despotic in internal rule and erratic in their submission or revolt against the central empire. Disputes among the chiefdoms led to constant

warfare. Thus, during the Ming and Qing dynasties, in regions where conditions were right, the hereditary "tusi" system was replaced by a system of appointed officials from the central government. Prefecture or county administrations, same as those in the inland regions, were set up with officials being assigned for fixed terms and dispatched by the central empire. Still, certain special local administrative entities continued to exist toward the end of the Qing Dynasty. A special administrative region of a different kind, called "shun tian fu" (capital region command) was created, encompassing all 24 prefectures and counties around the capital.

This demonstrates that since ancient times, China "often adopted special administrative arrangements in certain local regions, the ethnic regions in particular, within the spheres of its authority, while its administrative system in the main remained largely consistent throughout the state."¹⁸ Mao Zedong wrote in a poem of his, "the political and legal systems of the Qin endured a hundred generations."¹⁹ By Qin systems, he meant the political and legal systems established during the Qin Dynasty, which would include not only the general administrative divisions of commanderies and counties, but also the special administrative divisions, as they were understood. Such special administrative divisions had always been attendant to the centralized state and an important part of China's centralized government system through a long succession of dynasties.

After the Republican Revolution of 1911 that overthrew the Qing throne, the Beiyang Government set up the following special administrative areas: Rehe (Jehol), Chahar, Suiyuan and Chuanbian. The name of the capital region was changed from "Shun Tian Fu", used in the Qing Dynasty, to "Jing Zhao", and was headed by the Governor of "Jing Zhao".²⁰ When a Nationalist government was established in Nanjing in 1927, it set about setting up administrative regions of Weihaiwei, Yan'an, Qiongya and others and placed them directly under the central government. Of particular interest to our discussion are special administrative regions that were all set up following their recovery from foreign occupation. They include:

3.1 Eastern Railway Special Area

The Eastern Railway Special Area covered the area of Chinese Eastern Railway Zone. It straddles the provinces of Heilongjiang and Jilin. In 1896, Russia extracted from China consent to its construction and management of the China Eastern Railway in China's Northeast through inking the *Sino-Russian Secret Treaty* and *Sino-Russo Agreement on the Lease of the Liaodong Peninsula* in 1898. After the founding of the Republic of China, the Beiyang Government gradually recovered the administration of Chinese Eastern Railway Zone. Following a general strike by workers of the China Eastern Railway in March 1920, Chinese troops disarmed Russian troops stationed along the railway and took over control. In October, the government in Beijing recovered jurisdiction over the railway zone and promulgated the *Ordinance for Setting up the Court of Eastern Railway Special Area*, renaming the Chinese Eastern Railway Zone as the Eastern Railway Special Area. In the same month, it also promulgated *Guideline for the Organization of Police Forces in Eastern Railway Special Area*, setting up a police headquarters for Eastern Railway Special Area, recovering jurisdiction and policing power in the former Chinese Eastern Railway Zone. In February 1921, it set up a municipal authority for the Eastern Railway Special Area, declaring takeover of municipal administration of Harbin City and areas along Chinese Eastern Railway. On 8th December, it published the *Guideline for Administrative Affairs of the Chief Executive's Office of Eastern Railway Special Area*, specifying the chief executive as the highest administrative officer for the Special Area, who was to command the military, police forces and offices of external, administrative and judicial matter in the Special Area. Starting in 1924, the chief executive of the Special Area had been appointed by the President, with responsibilities for handling administrative affairs, instituting specific procedures and policies, exercising rights for supervision, reward, punishment and appointment for administration officials, and handling emergency incidents in consultation with military commanders stationed nearby.²¹ In 1932, the area was renamed Northern

Manchuria Special Area by the puppet regime of so-called Manchukuo when it was founded in 1932. On 23rd March 1935, the Soviet Union sold Russian rights to the Chinese Eastern Railway to the puppet regime and the Northern Manchuria Special Area was thus nullified.

3.2 Weihaiwei Administrative Region

On 1st July 1898 (the 24th year of Emperor Guangxu's Reign), the Qing Government and the United Kingdom signed an agreement for the lease of Weihaiwei, thus making it a British concession. In 1900, a commissioner's office for Weihaiwei was established and was placed under the United Kingdom's Colonial Office. In October 1930, the Nationalist Government recovered the naval base of Weihaiwei from the British Government and named it Weihaiwei Administrative Region. An administrative office was established and placed under the Executive Yuan, with a ranking corresponding to that of a province. National laws applicable to municipalities directly under the central government were also applicable to the region. It was given the mandate to issue specific local rules as long as they did not contravene any central government laws and decrees.²² The administration office was headed by a commissioner who presided over executive meetings to handle and pass decisions on administrative matters.²³ In March 1938, the Japanese army invaded the city of Weihai. Subsequently, North China Governing Council, the puppet regime set up under the Japanese occupation, changed the city into a county-level special area under the city of Yantai. In December 1942, the Nationalist government abolished the administration office for Weihaiwei Administrative Region.

3.3 Taiwan

In 1895, the Qing government signed the *Treaty of Shimonoseki*, which ceded Taiwan to Japan. At the start of the Resistance War against Japanese invasion, the Chinese Government declared all treaties, agreements and contracts relating to Sino-Japanese relations, including the *Treaty of Shimonoseki*, nullified.²⁴ In 1943, China, the United States and Britain jointly issued the *Cairo Declaration*, specifying that Taiwan must be returned to the Republic of China. In April 1944, the Nationalist Government in Chongqing set up a "Taiwan Investigation Committee" and proceeded to develop a plan for takeover of Taiwan. Opinions differed between those that proposed the exact same takeover approach as that for other occupied areas and a Taiwan province be created, and those who advocated the establishment of a "special administrative region" with military and police forces and other government powers. Chiang Kai-shek eventually adopted the recommendation by Taiwan Investigation Committee headed by Chen Yi, and ordered the creation of an Executive Office of Taiwan Provincial Administration with responsibilities for Taiwan takeover. The headcount for the office was initially set at 2,000. On 29th August 1945, the Nationalist government appointed Chen Yi "Chief Executive of Taiwan Province", and on 1st September, announced the formation of the Executive Office of Taiwan Provincial Administration and Taiwan Garrison Command Headquarters with Chen Yi as Commander-in-chief. On 20th September, the Nationalist Government issued *Organization Rules for the Executive Office of Taiwan Provincial Administration*.

On 25th October 1945, a ceremony was held in Taipei to accept surrender by the Japanese army in Taiwan Province of China Theater, which marked retrocession of Taiwan. On the same day, the Executive Office of Taiwan Provincial Administration was inaugurated. On 20th February 1946, the Chief Executive's Office declared completion of military handover in all locations of Taiwan by the former Taiwan governor's office. On 28th February 1947, the "228 Incident" erupted across Taiwan. On 22nd March 1947, Chen Yi was removed as Chief Executive. On 16th May the Nationalist Government declared the formation of Taiwan Provincial Government to replace the Executive Office of Taiwan Provincial Administration.²⁵

IV. The Positioning of the SAR System in State Governance System

China has a tradition of applying exceptional administration in special, remote and ethnic regions given ethnic factors, disparity in social, economic development and considerations for national unity. Such tradition began after China became a unified state under a centralized government during the Qin and Han dynasties. Thus, the system of special administrative regions has deep-seated historical origins, is a unique feature and forms an important part of centralized government system through a long succession of dynasties. The autonomous regions of ethnic minorities adopted since 1949 is a continuation of such a tradition. So are the SARs established upon return of Hong Kong and Macao.

However, the emergence of special administrative division was not a given but had been determined by certain conditions. They included socio-economic, political, legal, historical and cultural conditions. Specifically, these factors largely relate to: a) newly added/surrendered territories, or considerations for ethnic relations; b) socio-economic disparity between special and general administrative regions; c) preexisting social system being effective and requiring no imposed changes; d) barring potential challenge to central authority under a powerful centralized government.²⁶

These conditions were also applicable in the establishment of the Hong Kong SAR and the Macao SAR, with some additional factors:

First, historically, most of the areas under the administration of the central authority had been better developed socially and economically than ethnic or outlying regions. However, in the initial phase when China proposed the "One Country, Two Systems" principle, the economic prosperity in Hong Kong and Macao contrasted sharply with poverty on the Chinese Mainland. The economic gap has since been gradually narrowed with the advancement of China's reform and opening up and rapid economic development on the Mainland. Still, Hong Kong and Macao are in the forefront of all regions of the country given their overall levels of social development.

Second, the establishment of the Hong Kong SAR and Macao SAR also had a background of significant international legal issues. In the Sino-British Joint Declaration and Sino-Portuguese Joint Declaration, China committed to the practice of the policies of "One Country, Two Systems", a high degree of autonomy and "Hong Kong people ruling Hong Kong" and "Macao people ruling Macao" after the recovery of two regions. Such an international commitment was not present in the establishment of all previous special administrative divisions in China. In order to ensure fulfillment of such a commitment to the international community with binding legal provisions, China further formulated the Hong Kong Basic Law and the Macao Basic Law.

Third, when China first put forward the "One Country, Two Systems" policy as a solution to the Questions of Hong Kong and Macao and committed to the establishment of the SARs after their recovery in the early 1980s, it was against the background of conflicting ideologies. Special administrative division in China in the past did not have such a strong ideological underlining. With the advancement of China's reform and opening up, ideology in such matters have gradually ceased to have the same significance. However, many provisions in the Hong Kong Basic Law and the Macao Basic Law have strong ideological underpinning. Their preambles and Article 5 all state explicitly that the SARs shall not practice the socialist system and policies, and maintain the previous capitalist system and way of life.

The establishment of the SARs meant they must have certain special powers to be exercised within their regions and a special system of governance to be applied to them by the state, which are collectively reflected as the SAR system. It is a special system of governance for the two regions after their recovery by China. Like the systems for special administrative regions in China's past, the SAR system includes: a) formation of special administrative regions; b) adoption of special social, political and economic systems within such regions; c) a high degree of autonomy in

political, economic, fiscal, monetary, trade, industry and commerce, land resources, educational, and cultural spheres of the society under their administration, and the adoption of the governance principles of “Hong Kong people ruling Hong Kong” and “Macao people ruling Macao”.

Article 31 of the Constitution stipulates that 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. Clause 13 of Article 62 provides that the NPC shall decide on the establishment of SARs and the systems to be instituted there, i.e. those defined in the Hong Kong Basic Law formulated in 1990 and the Macao Basic Law in 1993.

The third paragraph in the preambles of both the Hong Kong Basic Law and the Macao Basic Law state: in accordance with the Constitution, the NPC enacts the Hong Kong Basic Law, the Macao Basic Law, prescribing the systems to be practiced in the Hong Kong SAR and the Macao SAR, in order to ensure the implementation of the basic policies of the PRC regarding Hong Kong and Macao. Article 11 of both the Hong Kong Basic Law and the Macao Basic Law state that in accordance with Article 31 of the Constitution, the systems and policies practiced in the Hong Kong SAR and the Macao SAR, including the social and economic systems, the system for safeguarding the fundamental rights and freedoms of its residents, the executive, legislative and judicial systems, and the relevant policies, shall be based on the provisions of the Constitution. These provisions show that the establishment of the SAR system has clearly defined legal and constitutional basis.²⁷

Therefore, it can be said that the SAR system has deep-seated historical origins and conforms to the principles of administrative division of China as a unitary state. The Central Government’s authority over the SARs is derived from the Constitution. The high degree of autonomy within the SARs is authorized in accordance with the Constitution and the previous capitalist system and way of life within the regions are affirmed in the Hong Kong Basic Law and the Macao Basic Law in accordance with the Constitution.

The system of special administrative division has always been the exception and supplemental to, rather than the mainstay of, the state governance structure. From a historical point of view, if the system for special administrative regions were to become the mainstay, the system of centralized government could not have continued. Similarly, governance of the SARs by the Central Government and their local administration compliment each other and form a holistic whole. The effective governance over the SARs by the Central Government is supported by the SAR system, whose effective functioning within the two regions is in turn enabled and guaranteed by procedures and policies concerning relations between the Central Government and the SARs. Therefore, the SAR system should not be discussed outside the context of such relations, or vice versa.

Notes:

¹ One opinion holds that, in a general sense, the term of special administrative region covers autonomous regions of minority nationalities, special autonomous regions and special administrative regions within a nation of federal structure. See Lok Wai Kin (2000). *An Introduction to the Basic Law of the Macao Special Administrative Region*. Macao: Macao Foundation. 51-53.

² For a discussion on differences between the SARs and autonomous regions minority nationalities on the Chinese Mainland. See Zheng Xianjun (Ed.) (2002). *Constitutionalism*. Beijing: Peking University Press. 106.

³ See the website of Baidu Encyclopedia: <http://baike.baidu.com/view/4188946.htm>, and the website of Wikipedia: <http://zh.wikipedia.org/wiki/%E5%9B%9B%E5%B7%9D%E7%9C%81%E6%B1%B6%E5%B7%9D%E5%8D%A7%E9%BE%99%E7%89%B9%E5%88%AB%E8%A1%8C%E6%94%BF%E5%8C%BA>.

⁴ *Ibid.*

- ⁵ For a discussion on components of state structure, see Wang Yu (2008). *The Study of the Constitutional Spirit of "One Country, Two Systems"*. Guangzhou: Guangdong People's Publishing House. 38 and 48.
- ⁶ *Circular of the State Council Concerning the Acronym of the Hong Kong SAR and its Place in the Order of Precedence in the National Administrative Division*, and *Circular of the State Council Concerning the Acronym of the Macao SAR and its Place in the Order of Precedence in the National Administrative Division*.
- ⁷ Wei Dingren (Ed.) (1999). *Constitutionalism*. Beijing: Peking University Press. 241-242; Zheng Xianjun (Ed.) (2002). *Constitutionalism*. Beijing: Peking University Press. 104.
- ⁸ Yang Jinghui and Li Xiangqin (1997). *A Comparative Study of Hong Kong and Macao Basic Laws*. Beijing: Peking University Press. 53.
- ⁹ However, the term "New Territories" continues to be used as an area name to this day.
- ¹⁰ *The Convention between China and Great Britain Respecting an Extension of Hong Kong Territory* (9th June 1898) and the *Contract for the Lease of New Territories in Hong Kong* (19th March 1899).
- ¹¹ Article 1 of *Estatuto Orgânico de Macau* (17th February 1976).
- ¹² Yang Jinghui and Li Xiangqin (1997). *A Comparative Study of Hong Kong and Macao Basic Laws*. Beijing: Peking University Press. 53.
- ¹³ Engels, F. (2009). *Works of Marx and Engels (Volume 4)*. Beijing: People's Publishing House. 32-177.
- ¹⁴ At the start of Qin Dynasty, 36 commanderies were set up across the country. As the Qin expanded its territories, this number was increased to over 40 and the total number of counties and circuits varied from 900 to 1,000, with no precise record of the number of circuits so far being unavailable. See Sun Guanlong and Sun Hua (2011). A Preliminary Research on Two Regional Political Systems in the Ancient China. *Academic Journal of One Country Two Systems (Chinese Version)*. Volume 9. 29-40.
- ¹⁵ A position for minister of subjugated states was instituted by the court of Qin Emperor. According to the chronicles of court officials and nobles in the Book of Han History, "the Minister of Subjugated States is responsible for barbarian states and tribes that have surrendered."
- ¹⁶ Sun Guanlong and Sun Hua (2011). A Preliminary Research on Two Regional Political Systems in the Ancient China. *Academic Journal of One Country Two Systems (Chinese Version)*. Volume 9. 29-40.
- ¹⁷ *Ibid.*
- ¹⁸ Liu Hainian (1998). "One Country, Two Systems": From Scientific Concept to Glorious Practice. In Leung, Priscilla M. F. and Zhu Guobin (Eds.) *The Basic Law of the HKSAR: From Theory to Practice*. Butterworth: Hong Kong.
- ¹⁹ The poem was composed by Mao Zedong in August 1973, entitled *To Elder Guo after Reading On Feudalism*: "My friend, please do not condemn Qin Emperor much more, / his purge of scholars is open to debate. / The spirit of the First emperor long vanquished while the land persists, / Confucius' vain fame not worth fodder. The political and legal systems of the Qin endured a hundred generations, / and your ten critical studies are hardly good writings. / Please read On Feudalism by the Tang essayist over and again, / but do not follow Zi Hou and indulge in antiquity." "Elder Guo" refers to Guo Moruo, a noted Chinese author and historian.
- ²⁰ Cheng Xinchao (1987). *China's Local Government*. Hong Kong: Chungghwa Book Co. 216-217.
- ²¹ *The Organization Rules for the Administration Office of Weihaiwei Administrative Region* (1930).
- ²² Chief Executives of the Eastern Railway Special Area included Zhu Qinglan, Wang Shuhan, Yu Chonghan, Zhang Huanxiang and Zhang Jinghui successively.
- ²³ Commissioners of Weihaiwei Administrative Region included Xu Zushan, Xu Dongfan, Sun Xifeng and Zheng Weipin (acting) successively.
- ²⁴ *The Declaration of War on Japan* by the Government of Republic of China (9th December 1941).
- ²⁵ The first governor of Taiwan provincial government was Wei Tao-ming.
- ²⁶ The establishment and development of special administrative divisions in China's history had been based on the premise of not threatening the stability of central government's rule. So is the establishment of the SARs. Article 23 of the Hong Kong Basic Law and the Macao Basic Law provide that the Hong Kong SAR and the Macao SAR shall enact laws on their own to prohibit any acts of treason, secession, sedition, or subversion against the Central

Government, or theft of state secrets, to prohibit foreign political organizations or entities from conducting political activities in the regions, and to prohibit political organizations or entities of the regions from establishing ties with foreign political organizations or entities.

- ²⁷ For discussions on if the SAR system should be regarded as China's basic political system, see Xu Chongde (2008). "One Country, Two Systems" is China's Basic Political System. *Law Science*. Issue 12; Tong Zhiwei (2012). The SAR System has Become China's Basic Political System. In Jeong Wan Chong and et al. (Eds.). *Constitutional Development and "One Country, Two Systems" Theoretical Exploration (Proceedings of the named academic conference)*. Macao: One Country Two System Research Center, Macao Polytechnic Institute; Li Lin (2012) Status and Function of the Special Administrative Region System in the Socialist Legal System with Chinese Characteristics. *Academic Journal of One Country Two Systems (Chinese Version)*. Volume 11. Such discussions may also be found in Jeong Wan Chong, Huang Laiji and Li Zhiqiang (Eds.) (2012). *Studies on the SAR System and China's Basic Political System*. Beijing: China Democracy and Legal Press.