

Study the Special Administrative Region System In-depth, Enhance the Implementation of the “One Country, Two Systems” Policy: Speech at the “One Country, Two Systems” Advanced Forum

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In about a fortnight, the Macao Special Administrative Region (SAR) will celebrate the 12th anniversary of its founding. In the Chinese zodiac with 12 animal symbols, 12 years completes the first cycle of one’s life. For the Macao SAR, the 12th anniversary shall mark a new starting point based on its past success. We are pleased to note that over the past 12 years, the Macao SAR has fully implemented the principle of “One Country, Two Systems” and the *Basic Law of the Macao Special Administrative Region of the People’s Republic of China* (hereinafter as “the Macao Basic Law”), and achieved step-change transformation, taken on a complete new look and built up momentum for greater accomplishment in future. All this was done with the support from the central authorities and local governments of all regions on the Chinese mainland, and with joint efforts by all walks of life in Macao. It is a very worthwhile undertaking of the One Country Two Systems Research Center of Macao Polytechnic Institute to host this forum to commemorate the 12th anniversary of Macao’s return to the motherland, with a review of the past and look into the future. Please allow me on behalf of the Macao Basic Law Committee of the Standing Committee the National People’s Congress (NPC) to extend our warmest congratulations on the successful organization of this Forum!

I would like to commend the organizers for choosing the topic of the SAR system, which is the essence of the Basic Law, as the theme of this Forum. We now often hear the various definitions of the Macao Basic Law. For example, it is deemed as a national law, an authorization law, a law to ensure adoption and implementation, throughout the country, of the principles and policies of “One Country, Two Systems”, “Macao People Ruling Macao” and a high degree of autonomy in Macao administration, a constitutional law of the Macao SAR, and an internal law for implementing 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*. All these interpretations are appropriate and have been based on in-depth studies of the Basic Law from different perspectives, which proves that such studies can help deepen our understanding of the Basic Law and promote its full implementation. Coming back to the theme of this Forum, we can see from the perspective of drafting the Macao Basic Law that the Law itself defines the SAR system for Macao. This is also an angle of discussions for today’s Forum. The third paragraph in the Preamble of the Macao Basic Law stipulates in clear wording, “In accordance with the Constitution of the People’s Republic of China, the National People’s Congress hereby enacts the Basic Law of the Macao Special Administrative Region of the People’s Republic of China, prescribing the systems to be practiced in

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the Macao Special Administrative Region, in order to ensure the implementation of the basic policies of the People's Republic of China regarding Macao." This indicates that the essence of the Basic Law is prescribing the systems to be practiced in the Macao SAR, i.e. the SAR system.

Why was the Macao Basic Law developed with an essential focus on SAR systems? We need to refer to constitutional provisions to answer this question. At present, there are three provisions in the *Constitution of the People's Republic of China* (hereinafter as "the Constitution") that concern the SARs. The first of these is Article 31 which 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." The second is section 13, Article 62, which stipulates that one of the functions and powers of the NPC is "to decide on the establishment of special administrative regions and the systems to be instituted there." The third is Article 59 which stipulates that "The National People's Congress is composed of deputies elected from the provinces, autonomous regions, municipalities directly under the Central Government, and the special administrative regions, and of deputies elected from the armed forces," with the wording for "special administrative regions" having been added in an amendment to the Constitution passed in 2004. Therefore at the time of drafting the Macao Basic Law, there were only the first two constitutional provisions concerning the SARs, from which we can see the Constitution only provided that the SARs could be established when necessary and the NPC had power to "decide" and "prescribe by law" systems to be instituted in SAR, without specifying what they should be. It was only appropriate that the Macao Basic Law was drafted with a view to laying down provisions for the systems to be instituted in the SARs in accordance with the Constitution. The Legislation Law enacted by NPC in 2000 stipulates in section 3, Article 8 that only national laws may be enacted in respect of matters relating to "autonomy system of ethnic regions, system of special administrative region, and system of autonomy at the grass-root level." This is the first legislative reference to the clearly and precisely defined term of "system of special administrative region", in accordance with Articles 31 and 62 (Section 13) of the Constitution. Therefore, I am glad to see the Forum's theme of "Special Administrative Region System", which is a very good approach for more in-depth discussions of the Macao Basic Law.

Studying the Macao Basic Law from the perspective of the SAR system will help us achieve more in-depth and thorough understanding of various provisions of the Basic Law and their rationale. In general terms, the SAR system is an important system for the administration of the SARs within China whereby the Central Government retains indispensable functions and powers reflecting state sovereignty, while granting a high degree of autonomy to the SARs, under the prerequisite conditions of safeguarding sovereignty, national unity and territorial integrity. In our studies of the Basic Law from the perspective of the SAR system, I believe we should focus on the following three key areas:

First, the SAR system is an important component of China's state administrative systems and is closely linked to the structure and constitutional system of the state. The SARs are local administrative regions within China enjoying a high degree of autonomy and are directly under the Central Government, rather than being an independent or semi-independent political entity. Such legal status defines the close link between the SAR system and other parts of the country's administrative system, with the former being an integral part of the latter. From a legal perspective, given that the state administrative system is prescribed by the Constitution and the SAR system by

the Basic Law enacted in accordance with the Constitution, the provisions of the Macao Basic Law should be understood in the larger framework of state administrative system prescribed by the Constitution. What is the legal basis, for example, for the NPC to exercise the power of prescribing SAR systems and authorizing its high degree of autonomy? Why should the power of interpretation of the Basic Law be vested in the Standing Committee of NPC, as stipulated in Article 143 on interpretation of the Basic Law? For answers to these, we need to look at the provisions of the Constitution and the power of the NPC Standing Committee for interpretation of the Constitution and national laws. It can be said that virtually all provisions of the Basic Law are intrinsically linked with the Constitution, based on the jurisprudence defining SAR system as integral part of state administrative system of China. Despite its special status, the SAR system has cooperative and mutually complementary relations with other components of the state administrative system.

Second, the SAR system itself has complete integrity and various provisions of the Basic Law are closely related. From a holistic point of view, the SAR system is an integral part of the state administrative system. However, for the system to work, it requires not only a coordinated relationship between this system and other components of the state administrative system, but also an internal integrity of and coordinated relationship within the system itself. From a legal perspective, we are all very familiar with the method of examining specific legal provisions in the context of the whole law when trying to understand and study a particular legal text. Such a method can also be applied in understanding and studying the provisions of the Basic Law, in addition to studying them in the context of the SAR system. Overall, the SAR system contains two component parts, namely the part concerning its relations with the Central Government and the part concerning a high degree of autonomy within the SARs. Of course, using different criteria, we can describe it as containing other segments, including for example administrative, legislative, judicial, social, political, and economic systems. An examination and study of the Basic Law provisions from the angle of the SAR system should begin with a comprehensive and systematic understanding of the SAR system prescribed by relevant provisions of the Basic Law. It then can be followed by an analysis of the functions of such provisions in the SAR system before arriving at definitions of the meanings of such provisions. Using such methodology, we may arrive at conclusions that allow us to see the forest for the trees and ensure effective functioning of various systems prescribed by the Basic Law, securing Macao's long-term prosperity, stability and development. I would like to point out in particular that the SAR system embodies both constitutional powers of the Central Government and the high degree of autonomy enjoyed by the SARs. The Central Government exercises its constitutional powers in accordance with the Constitution and national laws including the Basic Law, while the SARs exercise a high degree of autonomy in accordance with provisions of the Basic Law. The mechanisms for exercising constitutional powers by the central authorities and high degree of autonomy by the SARs are not independent of each other but intrinsically related. Take the relations between Central state institutions and the SAR government institutions for example. The Chief Executive and principal officers of the SARs are appointed by the Central Government. The Chief Executive is held accountable to the Central Government. Laws enacted by the Legislative Assembly of the SARs must be reported to the Standing Committee of NPC for record. The Standing committee of the NPC under certain conditions has the power to return any law enacted by the legislature of the SARs and returned laws shall be immediately invalidated. When an interpretation of Basic Law provisions concerning matters under administration by the Central Government or relationship between the Central Government and the SARs are required in

the process of the SAR courts adjudicating cases, the SAR Court of Final Appeal before any final judgment in question shall request interpretation by the NPC Standing Committee, should such interpretation impact court decisions on the case. These are matters of significance concerning the SAR system and worthy especially of our attention and in-depth study.

Third, the SAR system has many elements that are both based on the Macao Basic Law, which require measures by the SAR for their implementation, and closely linked with the previously existing systems in Macao. The Macao Basic Law is a constitutional law for the SAR which concerns general principles rather than specific matters. Their implementation requires adoption of various measures in consideration of Macao's actual conditions. In fact, full consideration had been given to the pre-existing systems in Macao in the process of drafting the Macao Basic Law and designing the Macao SAR system. Following the establishment of the Macao SAR, a host of measures including enacting laws, formulating administrative regulations, and other administrative measures have been adopted to implement the Basic Law. Studying the Basic Law from the perspective of the SAR system requires full attention to the relations between Basic Law provisions and Macao's previously existing systems, and clear understanding of the foundation of various systems prescribed by the Basic Law and actual practice of various systems in Macao, so as to effectively guide their future development meeting the needs of Macao. In this regard, the Macao SAR has had extensive operational practice with a wealth of valuable experience accumulated. The Macao Basic Law stipulates that the Macao Legislative Assembly has the power to enact laws and the Chief Executive to formulate administrative regulations. However the Basic Law as a constitutional law does not specify matters to which laws and administrative regulations should respectively apply. After several years of practice and trial, Macao SAR passed a law on the Legal Procedures for Formulating Internal Regulations, which defines the boundaries of powers of the Legislative Assembly in enacting laws and of the Chief Executive in formulating administrative regulations. Today, in our description of legislative system in Macao prescribed by the Basic Law, we will need to reference this procedural law which has become an integral part of the legislative system of the Macao SAR.

I believe this Forum with a focus on the SAR system in discussions of the Basic Law will open up a new area of study for the Basic Law. My comments just now captured my preliminary, albeit not exhaustive, thinking on the topic. But we can already see that if we study the Basic Law from the angle of the SAR system, the relationship between the provisions of the Basic Law and the state administrative system prescribed by the constitution, and relations between various provisions of the Basic Law, and between provisions of the Basic Law and pre-existing systems in Macao will be laid bear. Thus, we may see the Basic Law with all its multidimensional relations and vigor, a law that is relevant to actual conditions of the society and life of every resident, guiding us to a better future.

I welcome comments and critique if anything that was said was inappropriate. Finally, I wish the forum a complete success!