

# More on the Special Administrative Region System

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*Theoretical maturity is the basis for political conviction and advancing with the times theoretically is a prerequisite for forging ahead in action.*

– Hu Jintao

## **I. Practice, exploration and innovation – the development process that knows no boundary**

In summing up the historical experience of three decades of reform and opening up in China, Hu Jintao pointed out that “The development of practice, exploration and innovation knows no boundary. There is no ready model or unchanging path of development that applies to all countries in the world.”<sup>1</sup> In addressing this problem of identifying the right approach, first of all, we need to adjust our thinking and basis for judgment. “We shall neither regard individual judgments from books as doctrine to bind our minds and hands, nor regard effective practices as perfect modes.”<sup>2</sup> Second, we should unwaveringly adhere to reform and continue to promote reform and innovation in economic, political, cultural and social systems. We should accelerate reform in key and pivotal areas. We should make efforts to remove the theoretical and institutional obstacles hindering development, improve coordination of all aspects of modernization drive, enhance coordination of production relations and productive forces and relations between the superstructure and the economic base, and align development path and model so that they are in keeping with our national conditions. Third, we must adhere to the basic national policy of reform and opening up, expand the scope and depth of reform and opening up, and enhance the quality of opening up. “It was thanks to reform and opening up that China has developed rapidly in the past 30 plus years. We must ensure China’s future development by continuing to carry out reform and opening up.”<sup>3</sup> The most salient feature of the new period is reform and opening up, because this basic national policy is compatible with the fundamental laws of social progress and conforms to aspirations and fundamental interests of the people. “Reform and opening up is a great new revolution carried out by the people under the leadership of the Party in the new historical stage. They are a critical choice that holds the future of contemporary China. They are what we must pursue in upholding and building socialism with Chinese characteristics and achieving the great rejuvenation of the Chinese nation.”<sup>4</sup>

In his speech at a meeting commemorating the 90<sup>th</sup> Anniversary of the Founding of the

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Communist Party of China, Hu Jintao further stated, “The development of practice, cognition of the truth, and innovation of theories know no boundary. The practice of the Party and the people keeps progressing, so should the theories guiding it. The path of socialism with Chinese characteristics will definitely be expanded through the innovative practice of the Party and the people, and the system of socialism with Chinese characteristics will surely continue to improve as we deepen reform and open up wider.”<sup>5</sup> Practice, exploration and innovation are part of development process that knows no boundary. We should vigorously promote and fully implement this development ideology particularly in this new period with new situations. It reflects our tradition of national struggle that is in keeping with the times, proactive and unyielding. Only by “continuously improving institutions, standards, and procedures for exercising socialist democracy, can we give greater play to the superiority of China’s socialist political system,”<sup>6</sup> provide a better institutional guarantee for prosperity, development, and enduring political stability of the country, achieve continued improvement in China’s overall competitiveness and strength, and provide effective protection of interests and well-being of the people.

## **II. The scientific contents of socialist system with Chinese characteristics**

“We are facing drastic changes in the world and arduous tasks of promoting reform and development and maintaining stability in China. For our Party to unite with and lead the people in forging ahead, make new progress in its work and win new victories for its cause, it must hold high the great banner of socialism with Chinese characteristics, keep to and expand the path of socialism with Chinese characteristics, uphold and enrich the system of theories of socialism with Chinese characteristics, and adhere to and improve the socialist system with Chinese characteristics.”<sup>7</sup> In this remark, Hu Jintao referred to Chinese characteristics in four areas. To achieve Chinese characteristics in the first two areas, it is necessary to timely address Chinese characteristics in the last two areas. The first two concern overall direction and big principles while the last two are about theoretical guidance and institutional improvement. Only by upholding and enriching the system of theories of socialism with Chinese characteristics, and adhering to and improving the socialist system with Chinese characteristics, can we effectively hold high the great banner of socialism with Chinese characteristics and keep to and expand the path of socialism with Chinese characteristics, deepen reform under new circumstances and demonstrate the great vitality and unparalleled superiority of socialism with Chinese characteristics. Only by achieving correct understanding of and scientific judgment on a series of issues of fundamental and critical significance and of principle, such as definitions of system and systematic safeguard, socialism in general, socialism and socialist political system with Chinese characteristics, and how we can uphold and improve such systems, can we push forward with reform in greater depth, promote the great cause of national rejuvenation and continue to explore and innovate on our path forward.

“The socialist system with Chinese characteristics, which fully embodies the distinctive features and strengths of socialism with Chinese characteristics, is a fundamental institutional guarantee for development and progress of contemporary China.”<sup>8</sup> Following the completion of the new democratic revolution, the People’s Republic of China was founded on 1<sup>st</sup> October 1949, realizing national independence and liberation of the people. This was followed by prolonged exploration on socialism and establishment of a primary socialist system in this large independent

and unified country of the East with its complex national conditions. The reform and opening up over the past three decades, seen as a profound, unprecedented revolution, has resulted in the creation and development of socialism with Chinese characteristics. In promoting self-improvement and development of socialist system, we have put in place a complete set of interconnected systems in economic, political, cultural, and social fields, i.e. socialism with Chinese characteristics as Deng Xiaoping first phrased in a scientific manner. In his Opening Speech at the 12<sup>th</sup> National Congress of the Communist Party of China (CPC) on 1<sup>st</sup> September 1982, Deng Xiaoping pointed out, "We must integrate the universal truth of Marxism with the concrete realities of China, blaze a path of our own and build a socialism with Chinese characteristics that is the basic conclusion we have reached after reviewing our long history."<sup>9</sup> Regarding the basic contents of socialist system with Chinese characteristics, Hu Jintao offered a comprehensive and scientific definition in his speech at a meeting commemorating the 90<sup>th</sup> Anniversary of the Founding of the CPC. He said, "the system of people's congresses which is China's fundamental political system; the basic political systems which include the system of multiparty cooperation and political consultation under the leadership of the CPC, the system of regional ethnic autonomy, and the system of community-level self-governance; the socialist system of laws with Chinese characteristics; the basic economic system with public ownership being the leading sector and economic entities under diverse forms of ownership developing together; and specific economic, political, cultural, and social institutions based on the fundamental political system, basic political systems and the basic economic system. These systems and institutions are compatible with China's reality and conform to the trend of the times."<sup>10</sup>

In this basic definition, we can clearly see that socialism with Chinese characteristics can be figuratively described as a "1+3++" model. It includes our current fundamental political system, i.e. the system of people's congresses, as prescribed by the Constitution, and three basic political systems, i.e. the system of multiparty cooperation and political consultation under the leadership of the CPC, the system of regional ethnic autonomy, and the system of community-level self-governance. The "++" implies that there can be more basic systems, which however need to meet a set of criteria. They should be able to "keep the Party and country full of vitality and fully tap the enthusiasm, initiative, and creativity of the people and all sectors of society. They serve to free and develop the productive forces and promote all-around economic and social development. They uphold and promote fairness and justice and aim to bring prosperity to all. They make it possible to pool resources to undertake major national initiatives, and they can effectively defuse risks and meet challenges on our road ahead. They serve to maintain ethnic solidarity, social stability, and national unity."<sup>11</sup> Judged by these criteria, the system of "One Country, Two Systems", or the political system of the Special Administrative Regions (SARs), can be the most qualified and necessary addition to basic political systems of China and an integral part of socialism with Chinese characteristics.

### **III. The SAR system – an effective implementation of the basic national policy of "One Country, Two Systems"**

It is already more than three decades since Chinese leadership with Deng Xiaoping at its core first proposed "One Country, Two Systems" approach in the early 1980s, 21 and 18 years

respectively since this great concept was institutionalized in 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”), and more than 14 years and nearly 12 years respectively since the two SARs practicing the “One Country, Two Systems” policy were inaugurated. Now moving into the second decade of the 21<sup>st</sup> century, people can conclude without difficulty that following China's resumption of sovereignty over Hong Kong and Macao, governments of an entirely new form have been established there in accordance with the Basic Laws and have remained in sound operation. The SAR system embodied the superiority of the “One Country, Two Systems” policy and provides multi-layer protection for the basic rights and interests of the residents.

On the administrative map of China, two SARs appeared toward end of the 20<sup>th</sup> century. They are local administrative regions that enjoy a high degree of autonomy in accordance with the *Constitution of the People's Republic of China* (hereinafter as “the Constitution”) and practice political, economic and legal systems that are different from those in other administrative regions, i.e. provinces, autonomous regions and municipalities directly under the Central Government of China. Within the territory of the People's Republic of China (PRC), the main part of the country remains under the socialist system, while maintaining the pre-existing capitalist system and way of life in certain regions for an extended period of time, in the interest of solving historical legacy problems of Taiwan, Hong Kong and Macao. This shows that the SAR is a new form of local administrative regions beyond the pre-existing provinces, autonomous regions and municipalities directly under the Central Government. The SAR system is a system that effectively implements the basic national policy of “One Country, Two Systems”, which is different from the single political system within the unitary state of the PRC and other basic political systems practiced by countries around the world today.

Article 31 of the Constitution provides that “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. ” Article 62 provides that the National People's Congress (NPC) exercises the power “to decide on the establishment of special administrative regions and the systems to be instituted there.” The amendment approved on 14<sup>th</sup> March 2004 provides that the supreme organ of state power - the NPC is composed of deputies elected from the provinces, autonomous regions, municipalities directly under the Central Government, and the SARs, and of deputies elected from the armed forces (Article 59), placing SAR alongside provinces, autonomous regions and municipalities directly under the Central Government. Thus, there are three provisions in the Constitution that directly concern the SAR system.

The Legislation Law of the People's Republic of China adopted by the 3<sup>rd</sup> Session of the 9<sup>th</sup> NPC on 15<sup>th</sup> March 2000 provides that “only national law 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 (Article 8). Such law will be a basic law. The “Decision of the National People's Congress on the Basic Law of the Macao Special Administrative Region of the People's Republic of China” adopted by the 8<sup>th</sup> NPC at its First Session on 31<sup>st</sup> March 1993 stipulates, “the Basic Law of the Macao Special Administrative Region is constitutional as it is enacted in accordance with the Constitution of the People's Republic of China in the light of the

specific conditions of Macao. The systems, policies and laws to be instituted after the establishment of the Macao Special Administrative Region shall be based on the Basic Law of the Macao Special Administrative Region." Three years prior to this, the NPC adopted a similar decision when Hong Kong Basic Law was adopted on 4<sup>th</sup> April 1990.

This fully shows that the SAR, the SAR Basic Law and the SAR system have become important symbols of constitutional innovation and new political terms known to all, after over three decades of promoting their thorough understanding and more than a decade of their actual practice in the two SARs. The SAR system, as the most unique basic political system within the system of socialism with Chinese characteristics, is institutionalized in the Basic Law. In fact, all of its nine chapters with 145 articles, written in a style similar to a constitution, are intended to govern the SAR system. Its Article 11 specifically provides that "In accordance with Article 31 of the Constitution of the People's Republic of China, the systems and policies practiced in the Macao Special Administrative Region, 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 this Law." Thus the SAR system includes the following:

- (1) Social and economic systems with legal protection of private property rights as core;
- (2) System to protect basic rights and freedom of residents, ensuring basic rights, more than 30 of which are defined in the Basic Law, of all residents including those of Chinese and non-Chinese citizenship are under multi-layer protection;
- (3) Systems for administrative, judicial and legislative affairs, including an executive-led system with the Chief Executive at the core and the Legislative Assembly of the Macao SAR as the only legislature of the Region. The relationship between the executive and the legislature is one of mutual support and cooperation, and mutual checks and balances. The judiciary operates independently and has the power of final adjudication.

The Basic Law embodies the "One Country, Two Systems" principle with extensive and specific provisions. As the fundamental law of the SAR with supremacy in legal status and effectiveness, it comprehensively governs the SAR system, providing principles, norms and guidance concerning definitions of the SAR, its legal status, source of authority, relationship between the SAR and the Central Government, protection of residents' basic rights and interests, political, economic and cultural systems, and its right to handle external affairs. Through the basic laws for Hong Kong and Macao, people can clearly and accurately understand that the SAR system practiced in the two special administrative regions is complete with a systematic and scientific structure, and effective and standard mechanisms of safeguard.

The all-encompassing SAR system that practices the "One Country, Two Systems" policy contains subsystems and processes for the following:

- (a) the SAR laws of special nature;
- (b) Source of authority for a high degree of autonomy;
- (c) State's responsibilities for foreign affairs and defence which concern national sovereignty;
- (d) Relations between the central authorities and the SAR;
- (e) Protection of private property rights;
- (f) Multi-layer protection of residents' basic rights;
- (g) Executive-led political system with the Chief Executive at core;
- (h) Single legislature, independent judicial power including that of final adjudication;

- (i) Civil service system reflecting the principle of “Macao People Ruling Macao”;
- (j) Non-governmental civil organizations;
- (k) Public servants swearing allegiance;
- (l) Liberal economic system;
- (m) Multiculturalism and civic affairs;
- (n) Dealing with external affairs under authorization by Central Authorities;
- (o) Interpretation and amendment to the Basic Law; etc.

In the SAR, all political, economic, cultural, and civil activities need be aligned to uphold national sovereignty, safeguard overall interests of SAR, and ensure its long-term prosperity and stability, which is the top principle and goal. Specifically, under the new SAR system, the following should be achieved:

(a) In the relationship between the Central Government and local region, the SAR shall be an inalienable part of the state and a local administrative region directly under the Central Government of the socialist motherland;

(b) In its source of authority, the SAR enjoys a high degree of autonomy authorized by the central authorities in accordance with law, including executive, legislative and independent judicial powers and the power of final adjudication, with a political system of executive-led government, independent judiciary, and the executive and legislative branches of the government in a relationship of cooperation and checks and balances;

(c) In division of responsibilities, the SAR’s defence and foreign affairs, which concern national sovereignty, shall be handled by the Central Government, while all other matters are within the realm of autonomy;

(d) In government administration, the SAR should be governed by the local people and it must be required that patriots who respect the Chinese nation, sincerely support the motherland’s resumption of sovereignty over Hong Kong and Macao, and wish not to impair prosperity and stability in Hong Kong and Macao, form the main body of administrators.

(e) Regarding the extent of autonomy, the SAR enjoys a high degree of autonomy including the power of final adjudication which is far greater not only than that before the handover, but also than other local administrative and ethnic autonomous regions in China;

(f) In self-administration, the SAR may formulate its own economic, social and cultural policies, maintain independent finances and taxation, maintain its status of free port and separate customs territory, may on its own, using the name “Hong Kong, China” or “Macao, China”, maintain and develop external economic and cultural relations, continue issue its own currency, and be responsible for law and order within the SAR;

(g) In the use of national and regional symbols, regional flag and emblem can be displayed and used in addition to national flag and emblem.

These legal provisions and their vigorous implementation effectively ensure the SAR’s becoming a model of superior competitiveness and long-term prosperity and stability through innovations in socio-political system, structure and mechanisms. It is therefore absolutely no exaggeration to say that the adoption of “One Country, Two Systems” and the new SAR system has created a model of development that is a win-win for the central authorities and local administration, the state and the SAR. New members full of vigour and vitality have been added to the family of the motherland, enhancing the Chinese characteristics of the constitutional development. The SAR has become a benchmark of progressive development and epitome of the

superiority of the "One Country, Two Systems" principle.

#### **IV. The legal status of basic political system**

Political system (or political institution) in general refers to "the sum of all principles and methods whereby the ruling class in a society establishes its political regime and realizes its rule through appropriate organizational forms." "Political system in a narrow sense refers to forms of political regime, i.e. forms of government."<sup>12</sup> Modern Western political system is marked by separation of powers, checks and balances, system of political parties, representative democracy, universal suffrage and limited terms of political office. Its theoretical foundation is Western democracy theory with its essential components being "popular sovereignty", "separation of powers", "freedom, equality and human rights".

The socialist political system with Chinese characteristics is based on the socialist economic system with public ownership of the means of production, and a political system led by the working class and based on the alliance of workers and peasants with all power belonging to the people. The socialist political system is a new form of democracy. The basic principles of Communist Party of China (CPC) leadership and democratic centralism should be adopted in the organization and activities of socialist political system. Its theoretical foundation consists of Marxism-Leninism, Mao Zedong Thought and the theoretical system of socialism with Chinese characteristics. In China, the political systems are usually divided into fundamental, basic and specific political systems, in descending order of legal status, normative power and impact.

The PRC is a socialist state under the people's democratic dictatorship. The NPC system is universally recognized in China as the fundamental political system. All the power in the country belongs to the people. The organs through which the people exercise state power are the NPC and the local people's congresses at different levels. These principles are stipulated in Articles 1-3 of Chapter I (General Principles), Articles 57-58 of Section 1 (The National People's Congress) and Articles 95-104 of Section 5 (Local People's Congresses at Different Levels) of Chapter III (The Structure of the State) of the Constitution of the People's Republic of China. They take up more than 1/4 of all articles of the Constitution. In addition, a total of more than ten laws also stipulate provisions for the political system. They include the *Organic Law of the National People's Congress of the People's Republic of China*, the *Legislation Law of the People's Republic of China*, the *Electoral Law of The National People's Congress And Local People's Congresses of the People's Republic of China*, the *Law of the People's Republic of China on Deputies to the National People's Congress and Deputies to the Local People's Congresses*, and the *Organic Law of the People's Republic of China on the Local People's Congresses and Local People's Governments*.

Of the basic political systems, the system of multi-party cooperation and political consultation led by the CPC is of the foremost importance and influence. It is a socialist system of political parties with Chinese characteristics. It has been written into the Preamble of the Constitution and will exist and develop for a long time to come. Further, it has also become an actual political process with unique Chinese characteristics – the Chinese People's Political Consultative Conference (CPPCC), a quasi-parliamentary structure in parallel with the NPC and local people's congresses at various levels. Its significant features include: multiparty cooperation under the leadership of the CPC; multi-party political participation with the CPC as the ruling party. The

consultative democracy and electoral democracy are designated as two basic forms of socialist democracy. Some scholars have argued that “multi-party cooperation and political consultation is an institutionalized political process recognized in the Constitution, but not a fully constitutional system.”<sup>13</sup> They further stated that as there is not a single law dedicated to such institution, it is at a level lower than the systems of national autonomous regions and the SAR. However, there seems to be a lack of sufficient theoretical basis for this argument. The history of this basic political institution is longer than the country’s fundamental political system of the people’s congress. It is a system that reflects the superiority and unique features of democratic politics of socialism with Chinese characteristics, and is a new form of political process that epitomizes Chinese political wisdom.

The opening meeting of the first plenary session of the CPPCC was held on 21<sup>st</sup> September 1949, which declared the founding of the PRC, and announced its own role of fulfilling the functions of the NPC before it was convened later. It adopted the *Common Program of the Chinese People’s Political Consultative Conference*, deemed as the nation’s provisional Constitution and decisions on the national capital, adoption of Gregorian calendar, national anthem and flag, which was followed by a decision later on the national emblem. The *Charter of the Chinese People’s Political Consultative Conference* was adopted in 1982 which provides not only common guidelines for CPPCC and local CPPCC at various levels, but also guidance and regulative norms for political processes of the nation with full legal effect.

The Constitution in its Chapter I General Principles provides for regional autonomy in areas where people of minority nationalities live in concentrated communities. The *Law of the Peoples Republic of China on Regional National Autonomy* adopted at the 2<sup>nd</sup> Session of the 6<sup>th</sup> NPC on 30<sup>th</sup> May 1984 provides further normative rules. A total of five autonomous regions, 30 autonomous prefectures and 120 autonomous counties (or banners) constitute the system of self-government for regional national autonomy, reflecting the unique multi-ethnic feature of the PRC. The appropriate accommodation of ethnic and regional, economic and political, historical and practical, institutional and legal factors has ensured full exercise of self-government rights by the minority nationalities.<sup>14</sup> Regional national autonomy is a basic experience of China’s in handling ethnic issues and one of the political strengths of socialism with Chinese characteristics. Regional national autonomy “is a basic political system of the nation.” “The *Law on Regional National Autonomy* is a basic law for practicing the system of regional national autonomy mandated by the Constitution.”<sup>15</sup> This law was amended at 20<sup>th</sup> meeting of the Standing Committee of 9<sup>th</sup> NPC on 28<sup>th</sup> February 2001.

The system for community-level self-government was designated as the nation’s basic political system in the Legislation Law and the report of 17<sup>th</sup> National Congress of the CPC. The *Organic Law on Urban Residents Committees* and *Organic Law on Villagers’ Committees of the Peoples Republic of China* adopted by the Standing Committees of the 7<sup>th</sup> and 9<sup>th</sup> NPC respectively on 26<sup>th</sup> December 1989 and 4<sup>th</sup> November 1998 provide further normative rules for such system. The former stipulates, in its Article 2, that “an urban residents committee shall be a mass organization for self government at the grassroots level, in which the residents manage their own affairs, educate themselves, and serve their own needs.” The latter provides, in its Article 2, that “a villagers’ committee shall be the primary mass organization of self-government, in which the villagers manage their own affairs, educate themselves, and serve their own needs and in which election is conducted, decision adopted, administration maintained and supervision exercised by

democratic means." The biggest advantage of designating community-level self-government as a basic political system is that it is conducive to the construction of national legal system. Urban residents and rural villagers account for an overwhelming majority in population. It can be said that in a broad sense all people of the nation are subject to a certain extent to community-level self-government and its protection and regulation. Therefore, elevating the level of this system will not only enhance its connection with the system of the People's Congress (no people's congresses at the community-level at and below township), but is also conducive to the proper exercise and protection of basic civil rights.

Likewise, there is a need to adjust understanding of the SAR system. The nature of the SAR government has been made clear in the definition provided by the supreme organ of state power and through observation of the SAR practice over the past decade and more. The SAR "is an inalienable part of the People's Republic of China," and "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."<sup>16</sup> This shows that no matter how special it is, the SAR is still a component part of the state government system. The Basic Law, the fundamental law for the formation and administration of the SAR was formulated by the NPC with constitutional mandate. The Constitution is the parent law of the Basic Law, with the latter being correctly designated as a basic law of the state. In comparing relevant laws governing three basic political systems discussed earlier, the significance of the Basic Law can be seen in the following six aspects:

(1) Its formulation and amendment are within the powers of the plenum of NPC, whereas the *Law of the Peoples Republic of China on Regional National Autonomy* was formulated by the 2<sup>nd</sup> Session of the 6<sup>th</sup> NPC in May 1984 and amended at the 20<sup>th</sup> meeting of the Standing Committee of 9<sup>th</sup> NPC on 28<sup>th</sup> February 2001. The *Organic Law on Urban Residents Committees* and *Organic Law of the Villagers Committee* governing community-level self-government were formulated by the Standing Committee of NPC (respectively at the 11<sup>th</sup> meeting of the 7<sup>th</sup> NPC on 26<sup>th</sup> December 1989 and the 5<sup>th</sup> meeting of the 9<sup>th</sup> NPC).

(2) The lengthy deliberation and formulation. The formulation of two basic laws each took as long as four and half years to complete, which is far longer than it took to complete laws for the two other basic political systems, and more than twice the time it took to complete the drafting of the Constitution itself. This demonstrates the special significance of the Basic Law.

(3) Lengthy advance period between the official promulgation of the two basic laws and their coming into effect: respectively seven years three months and six years eight months, which are unprecedented in Chinese legal history and international legal history.

(4) The provision of bilingualism and regional symbols by the Basic Laws, mandating the display and use of SAR flags and emblems in addition to national flag and emblem within the SAR.

(5) Provision in the Basic Laws that the SAR may, on its own, using the name "Hong Kong, China" or "Macao, China", "maintain and develop relations with foreign states and regions and relevant international organizations in the appropriate fields." This is an important indicator of high degree of autonomy authorized by the Central Government.

(6) Establishment of the Hong Kong and Macao Basic Law Committees under the Standing Committee of the NPC. Setting up dedicated working committees within the supreme organ of state power for formulating laws is an unprecedented institutional innovation.

Of the three self-government systems of different political nature and varying degrees of autonomy, the SAR system enjoys a high degree of autonomy which is defined as having executive,

legislative and independent judicial powers including that of final adjudication, excluding only national defense and foreign affairs. Such a scope of autonomy is unprecedented in Chinese history, not practiced elsewhere in the political system of China and exceeds those enjoyed by any other regions under self-government around the world, including even regions in Western nations which claim to be democratic and have well-established rule of law. Such an innovative approach represents a profound change and breakthrough in the development of socialist constitutional theory with Chinese characteristics. It has also been successfully validated by the practice in the two SARs for more than 14 and 12 years respectively.

One further successful feature of the SAR is the practice of “Hong Kong People Ruling Hong Kong” and “Macao People Ruling Macao”, with the requisite that Hong Kong and Macao patriots must form the main body of administrators of the two regions. The criterion for the patriot is that he or she must respect the Chinese nation and sincerely support the motherland’s resumption of sovereignty over Hong Kong and Macao. This again is unprecedented in the history of community-level self-government. Although there are still instances in the SARs which are somewhat not in keeping with the general direction and principle of “One Country, Two Systems”, there is no doubt that the SAR residents with patriotic feelings for the motherland, Hong Kong and Macao “have the wisdom and capability to manage, build and develop”<sup>17</sup> the SARs well.

As for the socialist legal system with Chinese characteristics, we should also apply the perspective of dynamic development in our understanding. At present, it should broadly include the laws of the Hong Kong SAR and the Macao SAR, although they are not applicable on the mainland of China, with the exception of two Basic Laws.

To sum, we can conclude without difficulty that the establishment of the SAR and the implementation of the “One Country, Two Systems” policy and the launch of SAR system represent a major breakthrough, a historic achievement and a comprehensive gain for the nation, rather than the reverse. They are matters of holistic and national, rather than minor or local, significance. Therefore, it is only fair and appropriate to place the SAR system, as one of the country’s basic political systems, right behind the systems of multi-party cooperation and political consultation under the leadership of the CPC, regional national autonomy, and community-level self-government.

## **V. The necessity and plausibility of enhancing scientific positioning of the SAR system**

Well begun is half done. There is already a very good start to the practice and validation of the “One Country, Two Systems” principle. In the face of new challenges and imperatives brought on by new situations in the new era, we must “make bold changes and innovations, stay away from rigidity or stagnation”, “fear no risks and never be confused by any interference.”<sup>18</sup> Such an approach is based on historical experience and rational and pragmatic choice. Advancing the cause of “One Country, Two Systems” to ensure long-term prosperity and stability of the two SARs has been placed on the agenda of state leaders and become a shared historic mission of SAR residents and the people of all China, after resumption of sovereignty over Hong Kong and Macao by the Central Government and establishment of the Hong Kong SAR and the Macao SARs. The correct implementation of the “One Country, Two Systems” policy in the two SARs, namely, the correct

practice of the SAR system, has direct bearing on China's deepening reform and opening up and its national rejuvenation. "The cause of 'One Country, Two Systems' is an endeavor to promote common prosperity of the mainland and Hong Kong / Macao SARs and an important part of the great cause to rejuvenate the Chinese nation."<sup>19</sup> Thus, systematic and in-depth study of the theory of "One Country, Two Systems" and the Basic Law has become a very important and urgent task for both mainland and SAR scholars in relevant fields, so as to ensure successful practice and effective validation of the SAR system in the two regions.

In December 2004, Hu Jintao commented that "'One Country, Two Systems' is a pioneering cause. It is an entirely new challenge in government administration for the Central Government, as well as the Hong Kong and Macao SAR governments, to manage, build and develop the Hong Kong and Macao SARs well and ensure their long-term prosperity and stability in accordance with the principle of 'One Country, Two Systems', while maintaining socialism in the main part of China. " Therefore, "the Central Government, the two SAR governments, as well as Hong Kong and Macao compatriots need to proactively explore and move forward in their practice of implementing 'One Country, Two Systems'."<sup>20</sup> In June 2007, Wu Bangguo, Chairman of NPC, stated, "With the economic and social development in Hong Kong, there bound to be new situations and problems in the implementation of the Basic Law. While implementing the principle of 'One Country, Two Systems' and the Basic Law, we should further enhance the study of the Basic Law, review and gain experience of Basic Law interpretations over the past, solve problems in the process of implementing the Basic Law, expand the practice of the Basic Law and ensure its adequate implementation, in accordance with the principles of seeking truth from facts and keeping up with the times."<sup>21</sup> He further commented in December 2009, "With the social development in Macao, there bound to be certain issues of one kind or another in the implementation of the Basic Law. While implementing the principle of 'One Country, Two Systems' and the Basic Law, we should further strengthen the study of the Basic Law, review and gain experience and develop best practices, study and resolve new problems in new situations in the process of implementing the Basic Law, expand the theoretical support and practice for the Basic Law and ensure its adequate implementation."<sup>22</sup>

"It has been sufficiently proven in practice that the 'One Country, Two Systems' principle as an important component of the system of theories of socialism with Chinese characteristics has great vitality, and that the path for peaceful reunification of the motherland as an important component of socialist path with Chinese characteristics has great vitality. "<sup>23</sup> Qiao Xiaoyang, Deputy Secretary-General of the NPC Standing Committee, who presided over its Hong Kong and Macao Basic Law Drafting Committees over a long period of time, also pointed out, "'One Country, Two Systems' is yet another major contribution among the many contributions of the Chinese nation to the world and civilization, which provides a new way of thinking and best practice for solving similar problems around the world."<sup>24</sup> "The 'One Country, Two Systems' approach is a classic example of emancipating the mind and seeking truth from facts, of integrating principle and flexibility, fully reflecting the spirit of expanding common ground while shelving differences with an open-minded and inclusive attitude, reflecting the mentality of peace, harmony, cooperation and win-win. Thus, the 'One Country, Two Systems' principle embodies not only a wealth of political science and legal theories, but also a wealth of economic, philosophical and cultural theories, worthy of our serious study. "<sup>25</sup>

It is therefore a new challenge and test for the academic communities in the SARs and on the

mainland to promptly enhance their understanding of the innovative theory of “One Country, Two Systems”. A proper understanding of the notion that “One Country, Two Systems” as a basic national policy shall remain “unchanged for 50 years” should help us better understand the SAR system. As “remaining unchanged for 50 years” has been officially written into the Basic Law, convincing scientific reasoning concerning arrangement within and beyond the 50-year period should be absolutely necessary. The Hong Kong and Macao SARs have respectively gone through nearly 1/3 and 1/4 of the 50-year journey. Questions on how remaining portions of the 50-year period (the middle and later phases) should be covered and what should happen beyond the 50-year period need be considered and answered. As early as in the early 1980s, Deng Xiaoping reaffirmed in his meetings with different visitors that “If our policy for reform and opening up remains unchanged for the first half of the next century, it would be even more unlikely that it will change in the second half, as our international economic ties will have become closer and there will be greater interdependence.”<sup>26</sup> “In the agreement we stated that no change would be made for 50 years, and we mean it. There will be no changes in my generation or in the next. And I doubt 50 years after 1997, when the mainland is developed, people will handle matters like this in a narrow-minded way. So don’t worry, there won’t be any changes.”<sup>27</sup> “That is why I say that after the motherland is reunified under the ‘One Country, Two Systems’ formula, our policy towards Hong Kong, Macao and Taiwan will not change for 50 years and that it will remain unchanged even beyond that period.” “Our policy on Hong Kong will not change for 50 years after it is reunited with the motherland in 1997. That policy, along with the basic law you are now drafting, will remain in force for at least 50 years. And I want to add that there will be even less need to change them after the 50-year period.”<sup>28</sup> “As a matter of fact, 50 years is only a vivid way of putting it. Even after 50 years our policy will not change either. That is, for the first 50 years it cannot be changed, and for the second there will be no need to change it.”<sup>29</sup>

The theory of “One Country, Two Systems” was formed and put into practice in contemporary China. As a positive and highly innovative theoretical system, it is now coming into fruition. The theory with its great vitality and superiority in political, economic and cultural aspects will gradually change traditional viewpoints and value judgments in existing political science, legal studies, public administration and civil society. This process of change will touch upon a series of important and sensitive issues concerning constitutional theory, new understanding of constitutional traditions, positioning of basic political system, as well as determining the historical and cultural origins of the “One Country, Two Systems” theory. It will also involve scientific assessment of its theoretical and institutional innovation, rational development and utilization of its many advantages, and exploring new approaches to its practice. Experts and scholars in relevant fields in China, where the notion of “One Country, Two Systems” was first conceived, and the two SARs should not remain oblivious, passive and indifferent on such issues concerning major direction, principles, core national interests and the formation and definition of a new academic discipline.

Discussions on the SAR system began as early as in the 1990s during the later part of the transition before the return of Hong Kong and Macao. It is very gratifying to see growing engagement and interest in these discussions over the recent years. The positive effects of achieving consensus as soon as possible on some major issues of principle through joint efforts by scholars of the SARs and the mainland are many and not to be underestimated. They include:

(1) Maximizing positive effects of constitutional innovation, improvement of state and political systems, and deepening reform and opening up and reinforcing new mindset, while being

in keeping with SAR realities to the greatest possible extent.

(2) Timely augmenting basic contents of socialism with Chinese characteristics and adding new elements to the state's basic political systems.

(3) Promoting comprehensive enhancement of understanding of key topics in the Humanities and social sciences relating to SAR and international recognition of "One Country, Two Systems" and Chinese theoretical innovation.

(4) Promoting identification with the motherland by SAR residents and identification with "One Country, Two Systems" by people on the mainland, which is pivotal to the success of developing rule of law and civil society through continuous improvement of civil qualities of the people of the SARs and the mainland.

## **VI. Conclusion**

In summary, it is not difficult to see the practice of "One Country, Two Systems" is making rapid headway in SARs. The theory itself has transitioned from being the basis of high-level strategic decision-making into social practice with institutionalized regularity and momentum, although there may still be resistance, obstacles, risks and uncertainties to be addressed. It presents a mindset focused on process optimization. It is the fruition of innovative spirit with significance to civilization. The SAR system, still relatively new, will inevitably continue to develop and grow and take up a place worthy of its attributes in the nation's political and social development. With the establishment of the two SARs, the SAR system has already left an indelible mark in the annals of China's constitutional development and firmly taken root in the popular consciousness in China. As a basic national policy, the "One Country, Two Systems" policy and the SAR system cannot be changed and do not need to change. Further, it is possible and necessary that they will be expanded and further improved upon in the process of practice.

"Practice is the source of theory, the basis for its development, and the criterion for testing its truth."<sup>30</sup> Any actions that stick to dogma, ignore practice, or overstep or lag behind real life will not succeed. Any viewpoints and actions that degrade or reject, either intentionally or unintentionally, the huge significance and value of the SAR system are equally undesirable. The system of socialism with Chinese characteristics will surely continue to improve as we deepen reform and open up wider. Likewise, the SAR system that has been in practice for more than a decade should also continue to improve. The SARs are regions directly under the Central Government of the PRC, the SAR Basic Laws are part of the system of nation's basic laws enacted by the NPC, and the SAR system comprehensively defined and governed by the Basic Laws is a special basic political system of in the system of socialism with Chinese characteristics. This new political system, which best reflects Chinese characteristics, should by no means be regarded as non-socialist or capitalist, as it is by nature neither. It is not a doubtful negative and backward system subject to rejection. It is rather an advanced system with positive vitality and superiority, inspiring and full of promise. Therefore, it is extremely necessary, positively fair and highly constructive to arrive at a rational, balanced and timely conclusion on the positioning of the SAR system in the nation's overall development, a positioning that is scientific and truthful to reality.

## Notes:

- <sup>1</sup> Hu Jintao (2008). Speech at a Meeting in Commemoration of the 3<sup>rd</sup> Plenary Session of the 11<sup>th</sup> National Congress of the Communist Party of China. *People's Daily (Overseas Edition)*. 19<sup>th</sup> December 2008.
- <sup>2</sup> *Ibid.*
- <sup>3</sup> Hu Jintao (2011). Speech at the Ceremony Celebrating 90<sup>th</sup> Anniversary of the Founding of the Communist Party of China. *People's Daily (Overseas Edition)*. 2<sup>nd</sup> July 2011.
- <sup>4</sup> *Ibid.*
- <sup>5</sup> *Ibid.*
- <sup>6</sup> *Ibid.*
- <sup>7</sup> *Ibid.*
- <sup>8</sup> *Ibid.*
- <sup>9</sup> Deng Xiaoping (1993). *The Selected Works of Deng Xiaoping (Volume 3)*. Beijing: People's Publishing House. 3.
- <sup>10</sup> Hu Jintao (2011). Speech at the Ceremony Celebrating 90<sup>th</sup> Anniversary of the Founding of the Communist Party of China. *People's Daily (Overseas Edition)*. 2<sup>nd</sup> July 2011.
- <sup>11</sup> *Ibid.*
- <sup>12</sup> See *Encyclopedia of China* (2<sup>nd</sup> Edition) (2009). Volume 28. Beijing: Encyclopedia of China Publishing House. 312.
- <sup>13</sup> Tong Zhiwei (2011). The System of Special Administrative Region Has Become a Basic Political System of China. *Political Science and Law*, No. 4. 56-65.
- <sup>14</sup> State Ethnic Affairs Commission of PRC (2011). Review, Uphold and Promote the Successful Experience in Nine Decades of Work of the Communist Party on Ethnic Affairs. *Qiushi Magazine*, Number 12. 28.
- <sup>15</sup> See the Preamble of the *Law on Regional National Autonomy*.
- <sup>16</sup> Articles 1 and 12, the *Macao Basic Law*.
- <sup>17</sup> Hu Jintao (2004). Speech at the Ceremony Celebrating 5<sup>th</sup> Anniversary of Macao's Return to the Motherland and the Inauguration of the Second-term Government the Macao SAR. *People's Daily (Overseas Edition)*. 21<sup>st</sup> December 2004.
- <sup>18</sup> Hu Jintao (2009). Speech at the Ceremony Celebrating 10<sup>th</sup> Anniversary of Macao's Return to the Motherland and the Inauguration of the Third-term Government the Macao SAR. *People's Daily (Overseas Edition)*. 21<sup>st</sup> December 2009.
- <sup>19</sup> *Ibid.*
- <sup>20</sup> Hu Jintao (2004). Speech at the Ceremony Celebrating 5<sup>th</sup> Anniversary of Macao's Return to the Motherland and the Inauguration of the Second-term Government the Macao SAR. *People's Daily (Overseas Edition)*. 21<sup>st</sup> December 2004.
- <sup>21</sup> Wu Bangguo (2007). In-Depth Implementation of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and Advancement of the Great Practice of "One Country, Two Systems": Speech in Commemoration of 10<sup>th</sup> Anniversary of Entry into Force of the Hong Kong Basic Law. *People's Daily*. 7<sup>th</sup> June 2007.
- <sup>22</sup> Wu Bangguo (2009). Speech in Commemoration of 10<sup>th</sup> Anniversary of Entry into Force of the Macao Basic Law. *People's Daily (Overseas Edition)*. 5<sup>th</sup> December 2009.
- <sup>23</sup> *Ibid.*
- <sup>24</sup> Qiao Xiaoyang (2009). Enhanced Understanding of the Great Significance of "One Country, Two Systems". In Xu Chongde (Ed.). *"One Country, Two Systems" Introductory Series*. Beijing: China Democracy and Rule of Law Press. Preface.

<sup>25</sup> *Ibid.*

<sup>26</sup> Deng Xiaoping (1993). *The Selected Works of Deng Xiaoping (Volume 3)*. Beijing: People's Publishing House. 103.

<sup>27</sup> *Ibid.*, 73.

<sup>28</sup> *Ibid.*, 217, 215.

<sup>29</sup> *Ibid.*, 267.

<sup>30</sup> Hu Jintao (2011). Speech at the Ceremony Celebrating 90<sup>th</sup> Anniversary of the Founding of the Communist Party of China. *People's Daily (Overseas Edition)*. 2<sup>nd</sup> July 2011.