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AMERICA'S STAKE IN HONG KONG

INTRODUCTION

The strong showing of pro-democracy candidates in this month's legislative election in Hong Kong is a clear signal that the people do not trust Beijing's pledges to respect their autonomy and freedoms. Hong Kong residents voted overwhelmingly for pro-democracy candidates out of fear that China will scrap their democratic freedoms and legal system after Hong Kong reverts to China in 1997. For the first time, Hong Kong's entire 60-seat Legislative Council (LegCo) was elected at one time. Pro-democratic forces now constitute a working majority, but Beijing has promised to dissolve the LegCo when it takes over Hong Kong's government.

The British territory of Hong Kong will become a Special Administrative Region (SAR) of the People's Republic of China on July 1, 1997. The transfer from British to Chinese rule was agreed upon in the 1984 Sino-British Joint Declaration,¹ which provides autonomy to Hong Kong residents in local government, economic, social, and cultural affairs for at least fifty years after reversion. During this time, Hong Kong's government and courts are to remain intact, although China will assume control of Hong Kong's security and foreign affairs. The Basic Law,² Hong Kong's post-1997 constitution, mandates that China will refrain from imposing its socialist policies on Hong Kong and pledges to respect the Joint Declaration's guarantees of local government autonomy and an independent judiciary.

1 Sino-British Joint Declaration on the Question of Hong Kong, December 1984.

2 Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, promulgated April 1990.

Notwithstanding Beijing's assurances, America's political and economic interests in Hong Kong are significant and will endure. American corporations' multibillion-dollar investments and their use of Hong Kong as a regional operations center can continue only if Hong Kong remains as open and free as it is today.

Hong Kong is America's 12th-largest trading partner, with 1994 two-way trade in excess of \$21 billion.³ The U.S. enjoys an annual trade surplus with Hong Kong of nearly \$2 billion which is expected to rise as American technology and service-related industries commit themselves more deeply to the region and join the over 1,000 American businesses already there. The American Chamber of Commerce in Hong Kong is the largest outside of the U.S.

American economic interests in Hong Kong are built on its respect for the rule of law, which serves as the guardian of economic and political freedom. The U.S. therefore has a direct interest in Beijing's compliance with its pledges to respect Hong Kong's autonomy. Only if the rule of law continues can residents' freedom be protected and the economy continue to flourish.

The United States has an interest in seeing both the Joint Declaration and Basic Law implemented. These instruments provide the framework for a smooth and comprehensive transfer of sovereignty in 1997. They guarantee that Hong Kong will remain not only a leading international business center, but also a free society. The critical conditions of the Basic Law that Beijing must respect after 1997 include:

- ☞ **Continuation** of Hong Kong's autonomy and prosperity;
- ☞ **The existence** of a free market;
- ☞ **Commitment** to such democratic and open institutions as a free press;
- ☞ **Preservation** of Hong Kong's apolitical, independent civil service;
- ☞ **The rule of law** built upon the inviolability of human rights and civil liberties;
- ☞ **Maintenance** of Hong Kong's independence in fiscal and taxation matters; and
- ☞ **Cooperation** between Hong Kong and foreign law enforcement authorities.⁴

THE COURT OF FINAL APPEAL

The Court of Final Appeal (CFA) will replace the United Kingdom's Privy Council as Hong Kong's final appeals court. On June 9, 1995, the Sino-British Joint Liaison Group, established in 1985 to implement the Joint Declaration, reached agreement on the Court of Final Appeal of Hong Kong.⁵ It is envisaged that the CFA will provide continuity in the rule of law.

3 Richard D. Fisher, Jr., and John T. Dori, eds., *U.S. and Asia Statistical Handbook 1995* (Washington, D.C.: The Heritage Foundation, 1995), p. 43.

4 Excerpted from U.S. Department of State report on U.S.-Hong Kong Policy Act, March 1995, as required by U.S.-Hong Kong Policy Act, Public Law 102-383, October 5, 1992.

5 Hong Kong Court of Final Appeal Ordinance, Ordinance No. 79 of 1995.

Supporters of the Court deal, most notably Hong Kong's international business community, argue that it "sweeps away the uncertainty, for people and businesses, here and abroad, about a gap in the judicial system."⁶ Critics, such as Democratic Party leader Martin Lee and Hong Kong's Bar Association, accuse Britain of appeasing China.⁷ Lee condemns the agreement as the "final nail in Hong Kong's coffin."⁸

This deal is not without shortcomings. Most disturbing is that the Court of Final Appeal will be established not before the 1997 reversion, but immediately after the transfer of government authority to Beijing.⁹ Therefore, the danger exists that Beijing will not permit a truly independent judiciary.¹⁰ The Basic Law, drafted and approved by China, stipulates that China's National People's Congress will retain control over "acts of state," or "affairs that are the responsibility of the Chinese government." Beijing could exploit this language to reverse decisions reached by the Court of Final Appeal.

PROTECTING AND ADVANCING AMERICAN INTERESTS

Against a backdrop of growing uncertainty over Hong Kong's future, Congress in October 1992 adopted the U.S.-Hong Kong Policy Act, which defines America's economic, political, and human rights interests in Hong Kong and requires the State Department to report to Congress on these issues. The Act categorically states American support for Hong Kong's continued participation in international organizations after 1997 and asserts that the U.S. should regard Hong Kong as autonomous in all economic and trade matters.¹¹ It also specifies that U.S. laws "shall continue to apply with respect to Hong Kong, on and after July 1, 1997...unless otherwise expressly provided by law or by Executive order."¹²

Given continuing concerns over the fate of the recently elected Legislative Council, as well as over the future of democracy and the rule of law in Hong Kong, the U.S. should work during the remaining months of this transitional period to support American interests and strengthen Hong Kong's ability to shape its own future. Thus, the Administration should:

- ✓ **Firmly support Hong Kong's free enterprise system.** Hong Kong symbolizes the free-market system. In a recent Heritage Foundation study, *The Index of Economic Freedom*, Hong Kong far outstripped most of its competitors to place first in a global ranking of economic freedoms.¹³ But unless free-mar-

6 Chris Yeung, "Accord bodes well for future talks," *South China Morning Post*, June 10, 1995, p. 1.

7 Sally Blythe, "Appeasement carries the day," *Eastern Express*, Weekend, June 10-11, 1995, p. 2.

8 Peter Stein, "In its final vote under British rule Hong Kong backs ardent democrat," *The Wall Street Journal*, September 18, 1995, p. A14.

9 Because of Beijing's sensitivity on issues of sovereignty, the date of the Court's inception has not been established by the Court agreement. Rather, the inception date of July 1, 1997, is established by a separate agreement signed by both Britain and the PRC.

10 Hong Kong Court of Final Appeal Bill, June 1995, and Basic Law, April 1990.

11 U.S.-Hong Kong Policy Act, Sec. 103, Commerce Between the United States and Hong Kong, 106 STAT. 1450.

12 *Ibid.*, Sec. 201, Continued Application of United States Law, 106 STAT. 1452.

13 Bryan T. Johnson and Thomas P. Sheehy, *The Index of Economic Freedom* (Washington, D.C.: The Heritage Foundation,

ket policies and a strong, reliable system of dispute resolution continue after 1997, Hong Kong cannot retain its economic freedom and entrepreneurial dynamism. Should the rule of law be replaced by the rule of personal connections, which is often the practice in the PRC, Hong Kong's prosperity will be threatened.

- ✓ **Urge China not to dismantle Hong Kong's Legislative Council.** The current Legislative Council, elected on September 17, 1995, should be allowed to serve out its entire four-year term free of any disruption brought about by reversion to Chinese sovereignty. Beijing remains committed to nominating a provisional council to oversee Hong Kong after reversion. This would violate Beijing's commitment to non-interference in Hong Kong's affairs, sabotage international confidence in Hong Kong, and disappoint the expectations of its residents. The U.S. should communicate to China that a popularly supported legislative body is crucial to Hong Kong's future. The overwhelming victory won by pro-democracy candidates in the recent election emphasizes the need for LegCo's continued, uninterrupted existence.
- ✓ **Continue U.S. Navy port calls to Hong Kong while not accepting a new Chinese consulate in Honolulu.** Hong Kong has been a free port for visits by 60 to 70 U.S. Navy ships a year. These visits should be continued. They demonstrate America's engagement in the region, support the American position in Hong Kong, and provide evidence of a stable relationship with the PRC. The U.S. Navy resumed port calls to the Chinese mainland earlier this year, showing a commitment to a better U.S.-China relationship and removing a key obstacle to continuation of port calls to Hong Kong. However, the U.S. should rebuff China's attempt to trade acceptance of American port calls in Hong Kong for establishment of a Chinese consulate in Honolulu. It clearly is not in America's interest to allow China an official presence in such a militarily sensitive area, from which it could monitor U.S. naval movements in the Pacific.
- ✓ **Speak out in favor of a professional, non-biased civil service in Hong Kong after 1997.** Hong Kong's professional civil service is regarded as one of the keys to the territory's success. Its ability to remain impartial and unbiased during the run-up to 1997 will ensure a smooth and stable transition, and its continued existence after reversion will enhance confidence in Hong Kong's future.
- ✓ **Continue to support Hong Kong's participation in international organizations that do not require sovereignty for membership.** Hong Kong has played a valuable role in the World Trade Organization, the Asian Pacific Economic Cooperation (APEC) forum, and other international organizations. Its membership in these organizations should continue after 1997. Hong Kong's autonomous voice in these organizations has opened the door for free-market reforms in China and throughout Asia.

- ✓ **Continue high-level visits to Hong Kong.** Visits of high-level Americans to Hong Kong after reversion would help cement the U.S.-Hong Kong bilateral relationship and would provide an excellent forum in which the remaining agreements, including those on extradition and investment, can be established with the Hong Kong SAR after 1997. High-level visits also send a message to Beijing that Hong Kong is important to American interests throughout Asia.
- ✓ **Urge China to protect human rights in Hong Kong.** The uncertainty over Hong Kong's future requires constant vigilance on the part of the international community. The United Nations requires the United Kingdom to report to the U.N.'s Human Rights Committee on Hong Kong's human rights record. But China is not a member of the committee, so these reports will end after the 1997 transfer. Because China remains unwilling to enter into the U.N. covenant on human rights, the U.S. should continue to press China either to enter into the covenant or to allow Hong Kong to enter and report on human rights after 1997.
- ✓ **Insist that U.S. law enforcement agreements with Hong Kong continue.** Cooperation between Hong Kong and American law enforcement agencies has been one of long-standing goodwill and mutual benefit. Washington should ask that this cooperation continue after 1997. An extradition agreement with the Hong Kong authorities is nearing completion and soon will be placed before the U.S. Senate for ratification. The U.S. has worked with mainland authorities to control illegal narcotics, money laundering, and organized crime. This cooperation not only should continue after reversion, but should be intensified.
- ✓ **Complete negotiations on outstanding U.S.-Hong Kong agreements.** The three most important outstanding agreements involve extradition, civil aviation, and bilateral investment. The extradition agreement awaits final PRC approval within the Sino-British Joint Liaison Group (JLG). A civil aviation agreement has not yet been reached, and no new negotiations are planned. Completion of the investment agreement is mired in questions of format. The U.S. has a standard draft that it wishes to advance, while Hong Kong has its own model text from which it wants to develop an agreement. Negotiations are scheduled for later this year. The U.S. should strive to complete these agreements as soon as possible. They would relax barriers to American business in the region, increase official interaction with Hong Kong, and help ensure Hong Kong's autonomy after 1997. Some were drafted directly with Hong Kong authorities, others with the United Kingdom under an "entrustment" clause. Under international law, the latter agreements will lapse upon Hong Kong's reversion in 1997. It is in the interests of both sides to see them replaced with a new agreement before such a lapse occurs.
- ✓ **Encourage China to prepare a post-1997 travel document for Hong Kong residents.** Hong Kong's ability to remain a vibrant center of international commerce is only as strong as its residents' ability to travel abroad without undue interference. Without a document that allows them to travel abroad, Hong Kong's businessmen and women will lose to competitors, caus-

ing a natural erosion in the territory's competitive edge. Until the 1997 reversion, the U.S. should continue to recognize Hong Kong residents' British National Overseas (BNO) and British Dependent Territories Citizen (BDTC) passports as legal travel documents. In the meantime, Washington should urge Beijing to prepare travel documents for Hong Kong residents that respect their right to travel freely. Such freedom is vital to the continuation of Hong Kong as a business center.

- ✓ **Continue U.S.-sponsored international academic programs in Hong Kong.** The United States Information Agency's International Visitor Program, the Fulbright Program, and a host of unofficial academic exchanges strengthen American educational and cultural links to Hong Kong. The Hong Kong government has shown an interest in funding the development of a Hong Kong-American Center devoted to fostering academic ties. This effort should be encouraged by the U.S. It would increase American involvement after 1997 without adding significantly to U.S. government costs.
- ✓ **Prevail upon Beijing to keep its promise of eventual universal suffrage in Hong Kong.**¹⁴ This promise was written into the Chinese-crafted Basic Law. If honored, it would provide a further measure of confidence in Beijing's willingness to respect Hong Kong's autonomy. Furthermore, it would give residents of Hong Kong greater confidence in their ability to shape their own future. Failure to provide residents a say in their political system would cause the middle class to flee and dampen the enthusiasm felt by international businesses for Hong Kong.
- ✓ **Maintain an active consulate general up to and after 1997.** The American diplomatic presence in Hong Kong should not be scaled back just to defer to Beijing's wishes. Given American economic interests and numerous bilateral programs, it is natural that the U.S. government should remain committed to operating in Hong Kong. America's Hong Kong policy should be run from Hong Kong, not from Beijing. Therefore, the U.S. should maintain a consulate office in Hong Kong after 1997.
- ✓ **Urge resolution of the dispute over Container Terminal 9.** The delay in construction of Container Terminal 9 (CT9), a major infrastructure project at the port of Hong Kong, directly affects American economic interests. It is key to Hong Kong's ability to compete as a regional shipping and business center. The U.S. stake in the project is significant because a major American firm, Sea-Land Services Inc., has based a large part of its presence in Asia on the project's completion. The U.S. should make it clear to both Britain and the PRC that resolution of this dispute, which arose mainly over inclusion of the British Jardines Matheson consortium, would benefit all parties and ease the shipping bottleneck that already threatens to blunt Hong Kong's competitive edge over other ports in the region.

14 Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, April 4, 1990, Chapter IV: Political Structure.

CONCLUSION

Even in an area as economically vibrant as East Asia, Hong Kong stands out as a tremendous free-market success. Through its dynamism, free-market policies, entrepreneurship, and rule of law, Hong Kong has transformed itself into something much more than a successful economic center of six million people. It has become the focal point for social and economic development within China and in many ways is an inspiration to other countries in the region as well.

All of this will be jeopardized if Beijing fails to honor its promises after 1997. China's threats to dismantle the LegCo and run Hong Kong as it sees fit have eroded confidence in Hong Kong's future. And because the fate of Hong Kong will continue to be a factor in shaping American views of China, erosion of faith in the U.S.-China relationship is inevitable if Beijing breaks its word.

As this century draws to a close, China's emergence as a major global power will play a larger role in determining the American course of action in Asia. China's deeds and words carry growing weight. Its threats regarding Hong Kong's future autonomy, and the direct effect these threats have on American interests in Hong Kong, cannot be ignored. In addition to being an important economic interest of the United States, a prosperous and autonomous Hong Kong represents a test of China's intentions and behavior, both in Asia and in the rest of the world.

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