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## The Imminent Threat to China's Intervention in Macau's Autonomy: Using Hong Kong's Past to Secure Macau's Future

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# THE IMMINENT THREAT OF CHINA'S INTERVENTION IN MACAU'S AUTONOMY: USING HONG KONG'S PAST TO SECURE MACAU'S FUTURE

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\* J.D. Candidate, May 2001, American University, Washington College of Law; B.A. Political Science, 1994, University of California at Berkeley. I would like to thank the editorial staff of the *American University International Law Review* for their assistance with the publication process. In addition, I wish to express my sincere gratitude to my mentor, David Warner, at the Department of Justice, for his insight and guidance. Special thanks to my family and friends for their encouragement and support. Finally, I dedicate this Comment in memory of my father, William Luke.

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## INTRODUCTION

At midnight on December 19, 1999, European colonization in China<sup>1</sup> ended.<sup>2</sup> Based on the Sino-Portuguese Declaration of 1987 ("Macau Joint Declaration"),<sup>3</sup> Portugal ceded control of its oldest colony,<sup>4</sup> Macau,<sup>5</sup> to the People's Republic of China<sup>6</sup> ("PRC"). Macau followed in the footsteps of its neighbor, Hong Kong,<sup>7</sup> and through

1. See Guiguo Wang & Priscilla M.F. Leung, *One Country, Two Systems: Theory into Practice*, 7 PAC. RIM L. & POL'Y 279, 280 (1998) (commenting that China unfairly lost land to four countries through treaties).

2. See Martin Regg Cohn, *Macau's Blood-Stained Year*, TORONTO STAR, Jan. 31, 1999, at A2 (mentioning that Macau's reversion to China signifies the end of colonialism in East Asia).

3. See Joint Declaration of the Government of the People's Republic of China and The Government of the Republic of Portugal on the Question of Macau, Apr. 13, 1987, P.R.C.-Port., available in (visited June 17, 1999) <[http://www.imprensa.macao.gov.mo/dc/declconj\\_e.htm](http://www.imprensa.macao.gov.mo/dc/declconj_e.htm)> [hereinafter Macau Joint Declaration] (outlining the policies by which Portugal and China must abide upon reversion).

4. See Edward Neilan, *China to Sweep Macau Clean*, J. COM., May 20, 1999, at 4A (commenting that for the past 442 years, Portugal has ruled Macau, the oldest European colony).

5. See BUREAU OF PUBLIC AFFAIRS, U.S. DEP'T OF STATE, BACKGROUND NOTES: MACAU, AUGUST 1994 (Aug. 1994) (visited May 25, 1999) <[http://www.state.gov/www/background\\_notes/macau\\_0894\\_bgn.html](http://www.state.gov/www/background_notes/macau_0894_bgn.html)> (explaining that Macau consists of three areas: (1) The main area, which is a sixteen square kilometer zone situated on China's peninsula; (2) the islands of Taipa, which is 3 square kilometers; and (3) Coloane, a 7 square kilometer island); see also *Administrative Divisions, Hong Kong and Macau* (visited May 25, 1999) <<http://www.nyconsulate.prchina.org/news/HongKongMacao.html>> (indicating Macau's geographical position as west of the Pearl River Delta, 40 nautical miles to the west of Hong Kong near, China's Guangdong Province).

6. See *The People's Republic of China* (visited July 29, 1999) <<http://www.chaos.umd.edu/history/prc.html>> (detailing the rise of the PRC since its formation on October 1, 1949).

7. See John H. Henderson, Note, *The Reintegration of Hong Kong into the People's Republic of China: What it Means to Hong Kong's Future Prosperity*, 28

reversion, became China's second Special Administrative Region ("SAR").<sup>8</sup> As a result of this reversion, a Basic Law similar to the one that governs Hong Kong<sup>9</sup> now serves Macau.<sup>10</sup> Like a mini-constitution, the Basic Law guarantees Macau autonomy in all areas except foreign affairs and defense.<sup>11</sup>

Although the Basic Law appears to grant Macau enormous freedoms,<sup>12</sup> the international community is apprehensive that China will not adhere to the document.<sup>13</sup> This concern stems from China's recent overruling of Hong Kong's highest court's decision regarding an issue outside China's jurisdiction.<sup>14</sup> This revocation of Hong

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VAND. J. TRANSNAT'L L. 503, 508 n.14 (1995) (explaining that Hong Kong consists of four separate areas: Hong Kong Island, Kowloon Peninsula, the New Territories, and Stonecutters Island).

8. See Macau Joint Declaration, *supra* note 3, para. 2(1) (discussing the effect of Article 31 of the Chinese constitution); see also XIANFA, art. 31 (1982), reprinted in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD 43 (Albert Blaustein & Gisbert H. Flanz eds., Oceana Publications, Inc., 1992) [hereinafter CHINA CONST.] (granting China the power to create SARs). See generally Wang & Leung, *supra* note 1, at 283-84 (explaining that the SAR relationship to China is based on the "One Country, Two Systems" Policy).

9. See Hong Kong Trade Development Council, *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* (visited Nov. 12, 1999) <<http://www.tdc.org.hk/beyond97/hongkong/preamble.htm>> [hereinafter Hong Kong Basic Law] (serving as Hong Kong's mini-constitution).

10. See Macau Joint Declaration, *supra* note 3, para. 2(12) (stating that the provisions in the Macau Joint Declaration will be codified in Macau's Basic Law).

11. See *Basic Law: Macau*, Presidential Decree, No. 3 (Mar. 31, 1993), preamble, arts. 12-14 (visited May 25, 1999) <<http://www.umac.mo/basiclaw/english/main.html>> [hereinafter Macau Basic Law] (outlining the basic policies governing the region after reversion based on the "One Country, Two Systems" policy). China gained jurisdiction over matters of defense and foreign affairs, while the Macau government retained autonomy of its local affairs. See *id.*

12. See *id.* art. 27 (listing the civil liberties granted to Macau after its reversion). Such liberties include "freedom of speech, of the press and of publication; freedom of association, assembly, [o]f procession and of demonstration; and the right and freedom to form and join trade unions, and to strike." *Id.*

13. Cf. *A Question of Interpretation*, S. CHINA MORNING POST, May 19, 1999, at 17 [hereinafter *A Question of Interpretation*] (discussing the possible erosion of Hong Kong's autonomy if China persists in carving out exceptions to the rule of law).

14. See Michael Laris, *China Throws Out Ruling of Hong Kong Court*, WASH. POST FOREIGN SERVICE, June 27, 1999, at A23 (reporting that China's overruling of Hong Kong's highest court's decision regarding the right of abode, an issue out-

Kong's judicial autonomy illustrates China's willingness to intervene and limit decisions with which it disagrees, despite its lack of jurisdiction.<sup>15</sup>

The repercussions of China's treatment of Hong Kong extend far beyond the region's borders. In effect, because Macau's reversion parallels that of Hong Kong,<sup>16</sup> it is conceivable that China may intervene in Macau's autonomy in areas not within its jurisdiction.<sup>17</sup> In particular, there is reason to suspect that China may attempt to override Macau's judicial autonomy regarding its criminal laws<sup>18</sup> due to a recent crime wave<sup>19</sup> that has struck the region.<sup>20</sup> China's attempt to curb this violence by abrogating the Macau Joint Declaration and the Basic Law is potentially devastating to Macau's independent future.<sup>21</sup>

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side China's jurisdiction, threatens Hong Kong's autonomy); *see also* Hong Kong Basic Law, *supra* note 9, arts. 13-14 (limiting Hong Kong's autonomy on issues outside of foreign affairs and defense).

15. See Wang & Leung, *supra* note 1, at 287 (quoting Deng Xiaoping, China's former Communist leader, as outlining two instances in which China could intervene in Hong Kong's autonomy). The two instances are: (1) if the "One Country, Two Systems" policy is threatened; and (2) if Hong Kong itself needed assistance. *See id.*

16. See Macau Joint Declaration, *supra* note 3, para. 2 (explaining that Macau's transition is based on the "One Country, Two Systems" policy); *cf. People's Republic of China-United Kingdom: Agreement on the Future of Hong Kong*, Sept. 26, 1984, 23 I.L.M. 1366 (1984) [hereinafter Hong Kong Joint Declaration] (setting forth the "One Country, Two Systems" principle as the foundation for the transfer of Hong Kong's sovereignty from Britain to China).

17. See Bruce Gilley, *Officers of the Law, China's Plans for Macau's Garrison Raise Autonomy Concerns*, FAR E. ECON. REV. (July 15, 1999) (visited July 22, 1999) <[http://203.105.48.72/9907\\_15/p23macau.html](http://203.105.48.72/9907_15/p23macau.html)> (reporting that pro-democracy activists fear that China's decision to send in an army will not stop there, but could threaten Macau's autonomy not only on the issue of the garrison but on other issues as well).

18. See *id.* (commenting on China's concern regarding the increase in gang violence in Macau).

19. See Bertil Lintner, *End of an Empire: A Year Before Macau's Handover to China, Corruption and Crime Reign as Get-Quick-Rich Deals Abound* (Dec. 24, 1998) (on file with author) (analyzing the reasons behind the escalation in Macau's gang violence).

20. See *id.* (commenting on China's decision to station approximately 4,000 troops around Macau).

21. See Gilley, *supra* note 17 (commenting that China's willingness to intervene is a cause for concern for the SARs).

This Comment addresses the potential threat of China's intervention in Macau's autonomy regarding its criminal laws, an area outside China's jurisdiction. Furthermore, China's recent overruling of Hong Kong's highest court, regarding immigration, an issue not within China's authority, substantiates this fear. Part I of this Comment provides a brief history of the settlement of Macau and lays the foundation for its reversion. This part also discusses the relevant provisions of Macau's Basic Law.

To better understand China's relationship to its former colonies, Part II gives a brief summary of the origin and establishment of Hong Kong as a SAR as well as the laws that govern the former British colony. Part III outlines the differences between Macau and Hong Kong's transitions, and illustrates how Macau is more vulnerable to abuse. This part also analyzes the implications of China's recent overruling of Hong Kong's highest court and its possible impact on Macau. Part IV recommends strategies for the Macau government to safeguard its autonomy following reversion. Finally, this Comment concludes that Macau's future will be secure as long as it maintains its autonomy from the mainland, despite the challenges it faces upon its decolonization.

## I. THE END OF COLONIZATION IN ASIA

### A. BEHIND THE SCENES OF ASIA'S CASABLANCA

Macau, a tiny enclave located on the Southeast China coast, is often referred to as Hong Kong's sleepy neighbor.<sup>22</sup> Macau, unlike Hong Kong,<sup>23</sup> is better known for its gambling industry<sup>24</sup> and organized crime<sup>25</sup> than as a financial center.

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22. See John Colmey, *Tales from the Dragonhead*, 151 TIME ASIA 15, Apr. 20, 1998 (on file with author) (referring to Macau as a haven for organized crime). Macau is better known as "the Casablanca of the 1990s, a crossroads of international criminals, and the money laundering capital of Asia." *Id.*

23. See Henderson, *supra* note 7, at 506 (describing Hong Kong's evolution from a trading post to an international financial center).

24. See BUREAU OF PUBLIC AFFAIRS, *supra* note 5 (stating that in 1994, tourism and gambling made up 46% of Macau's economy).

25. See Neilan, *supra* note 4, at 4A (describing a range of illegal activities prevalent in Macau); see also *New Macau Leader to Focus on Crime, Chinese*

The history of Portuguese settlement in Macau dates back four centuries.<sup>26</sup> Prior to the arrival of the Portuguese in the sixteenth century, Macau was primarily a place for asylum from invaders.<sup>27</sup> When the Portuguese arrived in the sixteenth century,<sup>28</sup> Macau was only a small fishing community.<sup>29</sup> In 1553, the Portuguese bribed<sup>30</sup> local government agents in Guangdong, China<sup>31</sup> to authorize them to trade in Macau's harbor.<sup>32</sup> As a result, Macau became a major settlement for the Portuguese.<sup>33</sup>

Although Portugal succeeded in having China acknowledge its presence in Macau in 1557, it failed to achieve sovereignty.<sup>34</sup> To legitimately reside in Macau, the Portuguese paid rent to the native Chinese.<sup>35</sup> In the seventeenth century, the Dutch and the English ar-

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Handover CNN (May 15, 1999) (visited May 25, 1999) <<http://cnn.com/WORLD/asiapcf/9905/15/macau.elex>> (discussing the circumstances that led to the success of organized crime in Macau).

26. See Ma Zongshi, *Macau Handover Will Mark the End of Colonial Rule in Asia*, CHINA 2000, at 2 (Aug. 1999) (providing a brief description of the history of Macau, its transition period from the signing of the Joint Macau Declaration, and a forecast for its future).

27. See BUREAU OF PUBLIC AFFAIRS, *supra* note 5 (noting that the Chinese records for Macau dating back to 1152 indicate that Macau remained unpopulated until the 13th century, at which time, refugees arrived from the South Sung Dynasty).

28. See *Macau: History* (visited May 25, 1999) <[http://www.macau.gov.mo/eng\\_txt/history.html](http://www.macau.gov.mo/eng_txt/history.html)> (discussing Portugal's original intentions for Macau).

29. See *Macau: Review 1998*, ASIA & PAC. REV. WORLD OF INFO., Nov. 1998, at 1 (describing Macau in the 16th century).

30. See *Questions & Answers on Macau (Part I)* (Mar. 1999) (visited June 29, 1999) <<http://www.china-embassy.org/Cgi-Bin/Press.pl?macaoreturn1>> (explaining that Portugal persuaded China to permit the Portuguese to settle in Macau under false pretenses).

31. See Guangzhou (1996) (visited Oct. 25, 1999) <<http://www.chinapages.com/guangdong/guangzhou/guangzhou.htm>> (describing Guangdong as an old, commercial city located in the southern part of China).

32. See BUREAU OF PUBLIC AFFAIRS, *supra* note 5 (noting that Portugal found Macau attractive as a trading port).

33. See *id.* (explaining the history of Portugal's colonization of Macau).

34. See *id.* (commenting that despite the presence of a Portuguese executive in the enclave, Portugal could not prevent China from imposing taxes on Macau).

35. See *Questions & Answers on Macau (Part I)*, *supra* note 30, at question 1 (discussing Portugal's attempts to gain sovereignty over Macau from China).

rived in Macau to partake in trade.<sup>36</sup> The British simultaneously began to develop its trading industry in Hong Kong, which quickly became profitable.<sup>37</sup> To capitalize on the opportunities that Hong Kong's immense growth presented, many companies fled to Hong Kong.<sup>38</sup> The fierce competition from its neighbor drove Macau into a severe recession that lasted almost one hundred years.<sup>39</sup>

In 1687 and 1753, Portuguese ambassadors met with officials in Beijing, but failed to secure China's surrender of sovereignty over Macau to Portugal.<sup>40</sup> After the Opium War ended in 1842,<sup>41</sup> the Portuguese captured Taipa and Coloane Islands from the Qing<sup>42</sup> government.<sup>43</sup> Three decades later, in 1887, the Qing government concluded that Portugal had jurisdiction over Macau in perpetuity and signed the Sino-Portuguese Treaty of Peking,<sup>44</sup> also known as the Protocol of Lisbon.<sup>45</sup> This Treaty permitted the Portuguese to reside

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36. See *Macau: History*, *supra* note 28 (describing the competition among the various European countries over Asian commodities).

37. See *id.* (describing England's motives for concentrating on Hong Kong's trade industry).

38. See *id.* (discussing the advantages of trading in Hong Kong).

39. See *id.* (analyzing the cause of Macau's depressed trade industry).

40. See *Macau: History*, *supra* note 28 (describing Portugal's attempts to obtain sovereignty over Macau).

41. See Henderson, *supra* note 7, at 507 (providing a brief description of the Opium War, which lasted from 1839-1842).

42. See Jin Huang & Andrew Xuefeng Qian, "One Country, Two Systems," *Three Law Families, and Four Legal Regions: The Emerging Inter-Regional Conflicts of Law in China*, 5 DUKE J. COMP. & INT'L L. 289, 298 (1995) (describing the Qing Dynasty as the last dynasty of Imperial China, which ruled from 1640 to 1911).

43. See *Questions & Answers on Macau (Part I)*, *supra* note 30, at question 1 (noting that Portugal's occupation of Macau culminated after gaining control over Taipa and Coloane islands from the use of force between 1851 and 1864).

44. See *Administrative Divisions, Hong Kong and Macau*, *supra* note 5 (suggesting that the treaties were invalid because China was allegedly coerced into acquiescing).

45. See BUREAU OF PUBLIC AFFAIRS, *supra* note 5 (referring to the Manchu-Portuguese Agreement as the Protocol of Lisbon); see also *Administrative Divisions, Hong Kong and Macau*, *supra* note 5 (referring to the Manchu-Portuguese Agreement as the Sino-Portuguese Treaty of Peking).



in and govern Macau as a colony,<sup>46</sup> but limited Portugal from transferring Macau's sovereignty to another country.<sup>47</sup> Following the signing of this agreement, China and Portugal signed the Treaty of Commerce and Friendship<sup>48</sup> in 1888. This Treaty finally authorized the transfer of Macau's sovereignty to the Portuguese government.<sup>49</sup>

In 1949, the Chinese Communist Party ("CCP") found the Sino-Portuguese Treaty of Peking<sup>50</sup> unjust and voided the agreement.<sup>51</sup> According to the CCP, China was coerced into signing the treaty.<sup>52</sup> Although Beijing wanted to reunify Macau, it did not pursue reunification until 1955,<sup>53</sup> at which time Portugal acquired Macau as a colony.<sup>54</sup>

Despite Portugal's attempts to return Macau to China in 1966 and 1974;<sup>55</sup> it was unsuccessful because China was more concerned with

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46. See *Administrative Divisions, Hong Kong and Macau*, *supra* note 5 (explaining that Portugal began occupying Macau in 1887, following the signing of the Sino-Portuguese Treaty of Peking).

47. See BUREAU OF PUBLIC AFFAIRS, *supra* note 5 (reiterating the concept that despite Portuguese rule, Macau will always be considered part of mainland China).

48. See *Macau: History*, *supra* note 28 (stating that the Treaty of Commerce and Friendship was executed on August 28, 1888).

49. See *id.* (observing that while the Treaty of Commerce and Friendship recognized Portuguese sovereignty over Macau, China never ratified it).

50. See BUREAU OF PUBLIC AFFAIRS, *supra* note 5 (explaining the CCP's reasons for nullifying the Sino-Portuguese Treaty of Peking).

51. See generally Steven L. Chan, *Differences Between British and Chinese Views of Law Forebode Uncertainties for Hong Kong's People After the 1997 Transfer*, 15 UCLA PAC. BASIN L.J. 138, 145-46 (1996) (citing WILLIAM H. OVERHOLT, *THE RISE OF CHINA: HOW ECONOMIC REFORM IS CREATING A NEW SUPERPOWER* 250 (1993)) (noting that China has consistently maintained that many treaties, including the Sino-British Treaty that transferred Hong Kong's sovereignty to the United Kingdom, are one-sided).

52. See *id.* (asserting China's view that a treaty imposed by foreigners is unequal).

53. See BUREAU OF PUBLIC AFFAIRS, *supra* note 5 (noting that China prolonged addressing the issue of Macau because of other pressing matters).

54. See *Questions & Answers on Macau (Part I)*, *supra* note 30, at question 1 (describing Macau's transformation from a Chinese trading port to a Portuguese colony).

55. See BUREAU OF PUBLIC AFFAIRS, *supra* note 5 (commenting that the Portuguese attempted to return Macau to China after the 1966 Communist riots in Macau and the 1974 military coup d'état in Portugal).

reunifying Hong Kong.<sup>56</sup> In 1979, an amicable relationship developed between the two countries.<sup>57</sup> At that point, Portugal formally accepted Macau as Chinese territory and agreed to its reversion.<sup>58</sup> Soon thereafter, in 1987, the two countries executed 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 Macau."<sup>59</sup> This Declaration mandated the return of Macau to China as a SAR on December 20, 1999.<sup>60</sup>

## B. CHANGING OF THE GUARD

The Macau Joint Declaration is premised on Deng Xiaoping's<sup>61</sup> "One Country, Two Systems" policy.<sup>62</sup> The PRC contrived this policy to ensure a smooth reunification of the mainland.<sup>63</sup> China initially intended to apply this model to Taiwan.<sup>64</sup> The PRC decided to im-

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56. *See id.* (noting China's preoccupation with reunifying Hong Kong to the mainland).

57. *See id.* (illustrating China and Portugal's interest in resolving the Macau issue).

58. *See Macau: History, supra* note 28 (describing the events precipitating Portugal's decision to return Macau).

59. *See* BUREAU OF PUBLIC AFFAIRS, *supra* note 5 (noting that after the signing of the Macau Joint Declaration, Macau would remain a colony of Portugal for only twelve more years).

60. *See* Macau Joint Declaration, *supra* note 3, art. 1 (outlining the provisions of Macau's reversion pertaining to Chinese sovereignty).

61. *See* Chan, *supra* note 51, at 156-57 (explaining that the reformist approach of former Communist leader, Deng Xiaoping, stressed modernization and extenuated domestic central planning by loosening controls over pricing, wages, development, and industry). This modern approach to economics and investment transformed China's economy from being eighty percent state owned in 1978 to fifty percent in 1994. *See id.*

62. *See* Macau Joint Declaration, *supra* note 3, art. 2 (stipulating that the "One Country, Two Systems" policy will govern the provisions outlined in the Joint Declaration); *see also* Wang & Leung, *supra* note 1, at 284-85 (commenting that the "One Country, Two Systems" policy promotes the simultaneous but separate exercise of socialism and capitalism).

63. *See* Wang & Leung, *supra* note 1, at 284 (discussing Deng Xiaoping's belief that the "One Country, Two Systems" policy would be the most effective means to reunify China with Hong Kong, Macau, and Taiwan).

64. *See* Chang King-yuh, *Evaluation of "One Country, Two Systems" in Hong Kong* (visited June 1, 1999) <<http://www.taipei.org/hk/hk0618.htm>> (asserting that

plement this system earlier, however, because of the imminence of Hong Kong's transfer to China.<sup>65</sup>

The "One Country, Two Systems" policy is premised on the concept that the Central Government of China will serve as a socialist system, while the SARs, Hong Kong, Macau, and perhaps eventually Taiwan,<sup>66</sup> will maintain their economic systems and all laws in effect before its reversion for fifty years.<sup>67</sup> Under this system, the PRC may not intervene in the SARs' autonomy unless the issue concerns foreign affairs or defense.<sup>68</sup> Although the phrase "One Country, Two Systems" suggests separate and equal systems, the stress is on the "One Country" aspect.<sup>69</sup> In crafting this policy, Deng Xiaoping made clear that the SARs are a part of a socialist regime and that their freedom to engage in capitalism should not be taken for granted.<sup>70</sup>

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the "One Country, Two Systems" policy is not an appropriate model for Taiwan).

65. See Sean Cooney, *Why Taiwan is not Hong Kong: A Review of the PRC's "One Country Two Systems" Model for Reunification with Taiwan*, 6 PAC. RIM L. & POL'Y J. 497, 501-09 (1997) (discussing the origin and purpose of the "One Country, Two Systems" model and how it would be applied to Taiwan).

66. See Huang & Qian, *supra* note 42, at 301-02 (commenting on China's hope for reunification with Taiwan due to the opening of communications between the two governments). *But see* Cooney, *supra* note 65, at 546-47 (explaining that the "One Country, Two Systems" policy is no longer applicable to Taiwan).

67. See Macau Basic Law, *supra* note 11, art. 5 (stating that "the socialist system and policies shall not be practiced in the [Macau and Hong Kong] Special Administrative Region[s], and the previous capitalist system and way of life shall remain unchanged for fifty years"); Hong Kong Basic Law, *supra* note 9, art. 5; *see also* Macau Joint Declaration, *supra* note 3, art. 2.12 (establishing a 50 year period for the SARs to maintain their current systems).

68. See Wang & Leung, *supra* note 1, at 298 n.76 (discussing the implications of the exception to Hong Kong's autonomy).

69. See *id.* at 285 n.27 (citing Ioeng Wan Chong, "ONE COUNTRY, TWO SYSTEMS" AND THE MODERN CONSTITUTIONAL SCIENCE 89-90 (1996) (suggesting that the "One Country" principle trumps the "Two Systems" aspect of the policy, such that Beijing would intervene into the SAR's internal affairs, if necessary to preserve the "One Country" principle); *see also* Byron Weng, *As the PRC Political Culture Seeps into Hong Kong*, CSIS HONG KONG UPDATE (Jan. 1998) (visited July 1, 1999) <<http://www.csis.org/html/hk5.html>> (comparing the differences between the United States' system of federalism and China's "One Country, Two Systems" policy).

70. See Wang & Leung, *supra* note 1, at 284-85 n.23 (citing *A Reliable Guarantee of Hong Kong's Long-Term Stability and Prosperity*, HONGQI, Oct. 21, 1984, at 21-22, *quoted in* Denis Chang, *Towards a Jurisprudence of a Third Kind* "One

Thus, according to the PRC, the autonomy of the SARs is limited.<sup>71</sup> Accordingly, based on the underlying concept of the policy, China may legitimately interfere in the SARs' autonomy, if the principle of "One Country" is hindered.<sup>72</sup>

### C. SIGNIFICANCE AND PURPOSE OF THE MACAU JOINT DECLARATION

The Macau Joint Declaration authorizes Macau's return to the PRC<sup>73</sup> and lays the foundation for its reversion.<sup>74</sup> The parties codified the policies set forth in the Macau Joint Declaration in the Basic Law,<sup>75</sup> which serves as the enclave's mini-constitution.<sup>76</sup>

The signing of the Declaration signifies that both Portugal and the PRC hope to strengthen the economic and social prosperity of Macau.<sup>77</sup> The enforcement of the Declaration assures the international community that the citizens of Macau<sup>78</sup> will be guaranteed

*Country, Two Systems*", 20 CASE W. RES. J. INT'L L. 94, 103-04 (1988)) (explaining the purpose of SARs and their relationship to China under the "One Country, Two Systems" policy).

71. See Wang & Leung, *supra* note 1, at 285 (discussing the circumstances that may bring about China's intervention in the SARs' autonomy).

72. See *id.* (forecasting China's intervention in the SARs' autonomy). The four "cardinal principles" of China's socialist system are upholding the pursuit of the socialist road, proletarian dictatorship, communist party leadership, and adherence to Marxist-Leninism-Mao Zedong thought. See *id.* at 285 n. 24.

73. See Macau Joint Declaration, *supra* note 3 (identifying the major provisions of the Treaty, which the Chinese government agreed to adhere to regarding the transfer of sovereignty).

74. See *id.* (listing the provisions of the treaty that are to govern the transfer of Macau).

75. See BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, *U.S. Department of State, Macau Country Report on Human Rights Practices for 1998* (Feb. 26, 1999) (visited May 25, 1999) <[http://www.state.gov/www/global/human\\_rights/1998\\_hrp\\_report/macau.html](http://www.state.gov/www/global/human_rights/1998_hrp_report/macau.html)> (explaining briefly the purpose of the Macau Basic Law, namely to serve as Macau's constitution and to preserve many laws which were in effect prior to reversion).

76. But see Chan, *supra* note 51, at 160 (discussing the reasons why the Hong Kong Basic Law cannot be considered a mini-constitution).

77. See Macau Joint Declaration, *supra* note 3 (outlining the means by which Macau may succeed in these two areas).

78. See *Macau: Country Profile*, ASIA & PAC. REV. WORLD OF INFO., Nov. 1998, at 1 (reporting that Macau's population in 1996 was comprised of approxi-

freedoms and rights based on Portuguese and Western principles.<sup>79</sup> China's and Portugal's execution of the Declaration illustrates their commitment to Macau.<sup>80</sup> Thus, because China is a signatory to this Treaty, it should fulfill its pledge under international law.<sup>81</sup>

Under the Macau Joint Declaration, Macau became a SAR ("MSAR") of the PRC based on Article 31 of the Chinese Constitution.<sup>82</sup> Macau maintains a "high degree of autonomy" in its executive, legislative, and judicial power but accedes to Chinese governance concerning matters of foreign affairs and defense.<sup>83</sup> The reversion did not alter Macau's current social or economic systems, including all laws in effect prior to the handover.<sup>84</sup> The Declaration also grants the Macau government the right to have its own law enforcement.<sup>85</sup>

In addition to domestic benefits, the Declaration also permits

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mately 455,000 people, of which 96% were ethnic Chinese and 4% were mixed Portuguese and Chinese, or "Mavanese"); *see also* Neilan, *supra* note 4, at 4A (describing Macau's population as consisting primarily of priests, pirates, and prostitutes).

79. *See* BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, *supra* note 75 (describing the extensive human rights principles that are prevalent in Macau, including abolition of the death penalty, life imprisonment, and protection of civil liberties); *see also* Macau: *The Judicial System* (last modified Apr. 7, 1999) <[http://www.macao.gov.mo/eng\\_txt/judicial.html](http://www.macao.gov.mo/eng_txt/judicial.html)> (describing Macau's Penal Code as humanitarian and modern).

80. *See Questions & Answers on Macau (Part I)*, *supra* note 30, at question 2 (explaining that the Macau Joint Declaration is a bilateral international agreement).

81. *See generally* Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, art. 11, U.N. Doc. A/Conf. 39/27, 1155 U.N.T.S. 331, 8 I.L.M. 679 (1969) (explaining that under Article 11, certain actions, such as a signature, indicate that a nation has consented to binding itself to the international agreement).

82. *See* CHINA CONST., *supra* note 8, art. 31 (stating that when necessary the state may establish special administrative regions and the National People's Congress ("NPC") can enact the governing laws which prescribe the system particular to the SAR). Accordingly, Article 62(13) of the Constitution grants the NPC jurisdiction over the formation of SARs and its institutions. *See id.* art. 62(13).

83. *See* Macau Basic Law, *supra* note 11, arts. 2, 19 (outlining the MSAR's powers).

84. *See id.* art. 8 (reinforcing the concept of the "One Country, Two Systems" policy by letting the SAR remain a capitalistic economy rather than converting it to a socialist system).

85. *See id.* art. 14 (stating that the MSAR will have jurisdiction over law enforcement).

Macau to remain a party to any international agreements to which it was a member, despite China's absence.<sup>86</sup> Furthermore, China shall ensure that Macau maintain its affiliation with all international organizations even though China is not a participant.<sup>87</sup> By permitting Macau to remain connected to these international agreements and organizations, China also is indirectly committing itself to these international agreements.<sup>88</sup>

In order to implement the Declaration, China and Portugal selected China's National People's Congress ("NPC") to legislate a Basic Law for Macau.<sup>89</sup> The Basic Law codifies all provisions outlined in the Macau Joint Declaration<sup>90</sup> and will serve as the MSAR's mini constitution.<sup>91</sup>

#### D. MACAU'S BASIC LAW AS THE NEW RULE OF LAW

On March 31, 1993, the NPC ratified the Macau Basic Law, which the Sino-Portuguese Joint Liaison Group<sup>92</sup> drafted.<sup>93</sup> The purpose of the Basic Law is to reinforce the "One Country, Two Systems" pol-

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86. *See id.* art. 138 (allowing Macau to retain a separate identity from China through the implementation of international agreements to which China is not a party).

87. *See id.* art. 137 (explaining that regardless of its membership, the PRC will take steps to ensure that the MSAR will remain a participant of the international organizations to which Macau committed itself to prior to reversion).

88. *See* Gilley, *supra* note 17 (reporting that pro-democracy leaders suggest that one of China's priorities is to present a new respectable image to the international community through its handling of the SARs).

89. *See* Macau Joint Declaration, *supra* note 3, Annex I, at 1 (authorizing the Central People's Government to integrate the policies outlined in the Macau Joint Declaration into Macau's Basic Law).

90. *See id.* at 12 (noting that the policies set out in the first one through eleven sections of Article 2 of the Joint Declaration will be codified in Macau's Basic Law and will remain in effect for 50 years).

91. *See* Wang & Leung, *supra* note 1, at 294-96 (explaining why the Hong Kong Basic Law does not constitute a constitution).

92. *See* BUREAU OF PUBLIC AFFAIRS, *supra* note 5 (setting forth the responsibilities of the Sino-Portuguese Joint Liaison Group).

93. *See* Macau Basic Law, *supra* note 11 (confirming the ratification of the Basic Law).

icy into the domestic law affirmed by the Macau Joint Declaration.<sup>94</sup> Thus, by implementing a Basic Law, China is guaranteed that Macau will recognize its policies.<sup>95</sup>

The Macau Basic Law models itself after the Hong Kong Basic Law<sup>96</sup> and ensures that the current laws<sup>97</sup> of Macau, with the exception of foreign affairs and defense,<sup>98</sup> will remain in effect for fifty years after Macau's reversion.<sup>99</sup> The Organic Statute of 1976, revised in 1990,<sup>100</sup> stipulates the present laws that were maintained at the turn of the century.<sup>101</sup> Based on the Portuguese legal system,<sup>102</sup> the statute grants the enclave significant autonomy in various areas.<sup>103</sup> In particular, China has integrated Macau's judicial autonomy into the

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94. See *Questions & Answers on Macau (Part I)*, *supra* note 30, at question 4 (explaining why the codification of the Macau Joint Declaration is necessary).

95. See *id.* (noting that Macau's autonomy is authorized through the implementation of a Basic Law).

96. See Chan, *supra* note 51, at 160 (commenting on the differences between Hong Kong and Macau's Basic Law).

97. See *Questions & Answers on Macau (Part I)*, *supra* note 30, question 10 (discussing types of laws currently in effect that are expected to survive reversion).

98. See Macau Basic Law, *supra* note 11, art. 19 (stating that the MSAR will lack jurisdiction over acts of defense and foreign affairs issues); see also *Questions & Answers on Macau (Part I)*, *supra* note 30, at question 13 (explaining the limited national laws applied to Macau under Article 18).

99. See Macau Basic Law, *supra* note 11, art. 5 (providing that the current legal, economic, and social systems will survive at least five decades from the day of reversion); see also *id.* art. 8 (commenting on the criteria for determining which laws are to remain in effect following reversion).

100. See Estatuto Organico de Macau, 1976 (visited June 29, 1999) <<http://www.imprensa.macao.gov.mo/eo/cap2.htm>> [hereinafter ORGANIC STATUTE OF 1976] (setting forth Macau's laws that are to be maintained after reversion).

101. See *Questions & Answers on Macau (Part I)*, *supra* note 30, at question 10 (explaining the method in which Portuguese laws may remain in effect after Macau's reversion).

102. See Huang & Qian, *supra* note 42, at 300 (giving a general description of the Macau legal system); see also Manuel Trigo, *Macau's Civil Law*, GABINETE PARA A TRADUCAO JURIDICA (visited June 17, 1999) <<http://www.gjtj.macao.gov.mo/html/perdir/02/pd02f002.asp>> (describing the principles behind Macau's civil law system, which are premised on the Portuguese legal system).

103. See *Lusa News Portfolio* (visited May 25, 1999) <<http://www.lusa.pt/lusanews/portfol.html>> (listing five areas where Macau has autonomy under the Organic Statute).

Macau Basic Law through the creation of a Court of Final Appeal.<sup>104</sup>

In addition to providing the MSAR with great autonomy, the Macau Basic Law also incorporates Macau's criminal laws<sup>105</sup> that were enacted while subject to Portuguese rule.<sup>106</sup> Macau's criminal system is based on Portugal's policy of rehabilitating criminals.<sup>107</sup> The Basic Law recognizes both the principles behind the criminal procedures stipulated in the Macau Penal Procedure Code<sup>108</sup> and the substantive criminal laws set forth in Macau's Penal Code.<sup>109</sup> Given that Portuguese principles are instilled throughout Macau's Basic Law,<sup>110</sup> the death penalty and life imprisonment prohibition continues even after reversion.<sup>111</sup> Macau's sentencing requirements<sup>112</sup> also pre-

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104. See Macau Basic Law, *supra* note 11, art. 84 (describing the various courts and their responsibilities); see also *Macau: The Judicial System*, *supra* note 79 (analyzing Macau's present judicial system).

105. See *Legislacao de MacauCodigo Penal*, arts. 129, 288 (visited June 29, 1999) <<http://www.gtj.macao.gov.mo/html/legismac/cpindex.asp>> [hereinafter Macau Penal Code] (outlining the crimes and corresponding penalties in Macau); see also *Macau's Criminal Law Becomes Effective 1 Jan.*, BEIJING XINHUA IN ENGLISH (Jan. 1, 1996) (visited June 15, 1999) <[http://199.221.15.211/cgi-bin/cqcg...5+6+7+8+9+10&CQ\\_DOC\\_MARKUP\\_STYLE=1](http://199.221.15.211/cgi-bin/cqcg...5+6+7+8+9+10&CQ_DOC_MARKUP_STYLE=1)> (commenting on the method by which Macau's criminal laws came into effect).

106. See Macau Basic Law, *supra* note 11, art. 85 (alluding to the preservation of Macau's Penal Code).

107. See Harold Bruning, *Judiciary Under International Spotlight*, S. CHINA MORNING POST, Apr. 30, 1999, at 17 (giving reasons as to why the Macau penal system is considered humane).

108. See Macau Basic Law, *supra* note 11, art. 29 (addressing the criminal rights of Macau's residents regarding Macau's criminal procedures). If Macau's residents are subjected to criminal prosecution, they shall be presumed innocent and given an early trial. See *id.*; see also *Macau: The Judicial System*, *supra* note 79 (discussing the history of the Macau Penal Procedure Code).

109. See Macau Penal Code, *supra* note 105.

110. See *Macau: The Judicial System*, *supra* note 79 (describing Portugal's position on punishment). Macau's Penal Code is based on the more humanistic principles of the Portuguese legal system, which deems imprisonment as a vehicle for rehabilitation rather than punishment. See *id.*

111. See Macau Basic Law, *supra* note 11, art. 28 (outlining specific criminal rights of Macau's citizens).

112. See Macau Penal Code, *supra* note 105, art. 129 (stipulating the sentence requirements for crimes committed in Macau).



vailed<sup>113</sup> even though they differ from China's policy toward criminal law.<sup>114</sup> Moreover, because Macau's Basic Law does not explicitly eradicate capital punishment or life imprisonment, scholars may inquire as to whether China will adhere to the International Covenant on Civil and Political Rights ("ICCPR")<sup>115</sup> and other international agreements after Macau's reversion.<sup>116</sup>

## II. LESSONS FROM HONG KONG

### A. HONG KONG'S REVERSION

China has granted Macau certain liberties and a great level of autonomy through its Basic Law, however, these rights are not guaranteed.<sup>117</sup> China may conceivably alter Macau's Basic Law to suit its own interests.<sup>118</sup> An accurate forecast of how the PRC will handle

113. See Macau Basic Law, *supra* note 11, art. 8 (granting Macau the right to institute most laws that are in effect before the reversion); see also *Macau Questions & Answers (Part I)*, *supra* note 30 (explaining what laws constitute local laws). See generally Xiao Shengxi & Suo Zhengjie, *Comparative Study of the Criminal Procedure in Macau and in China*, GABINETE PARA A TRADUCAO JURIDICA (visited Oct. 25, 1999) <<http://www.gtj.macao.gov.mo/html/perdir/01/abstracts.asp>> (analyzing the principal differences between China and Macau's criminal procedure laws).

114. See CRIMINAL LAW OF THE PEOPLE'S REPUBLIC OF CHINA, art. 48 (Procuratorial Press 1st ed. 1997) (explaining implementation requirements for the death penalty in particular cases).

115. See International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force on Mar. 23, 1976) [hereinafter ICCPR]. Although this covenant is non-binding, the signatories to this covenant ensure its citizens and the citizens of its respective colonies that they will abide by these civil and political rights. See *id.*; see also *Concluding Observations of the Human Rights Committee: Portugal (Macau): Portugal Macau*, U.N. Doc. CCPR/C/79/Add.77, at B(4) (1997) [hereinafter *Observations of the Human Rights Committee*] (suggesting that Macau is still bound to the ICCPR because of secessionist principles even though China was not a signatory to the covenant).

116. See Huang & Qian, *supra* note 42, at 305-06 (analyzing potential conflicts between the local laws of various geographical regions and the international treaties applicable to those regions); see also Macau Basic Law, *supra* note 11, art. 40 (authorizing Macau's affiliation with any agreements that existed before the reversion, including the ICCPR).

117. See Macau Basic Law, *supra* note 11, arts. 11-14 (stating three exceptions where China may impose upon Macau's jurisdiction).

118. See Wang & Leung, *supra* note 1, at 285 (reiterating that certain instances

Macau may be determined by analyzing Hong Kong since its reversion.<sup>119</sup> China recently intervened in a case before the Hong Kong judiciary<sup>120</sup> involving an issue unrelated to foreign affairs or defense.<sup>121</sup> China's intervention in Hong Kong should alert the international community that China might do the same with Macau.<sup>122</sup>

Hong Kong's transition serves as a good paradigm for Macau because both Portugal and Britain relinquished sovereignty of their colonies to China under the "One Country, Two Systems" policy.<sup>123</sup> In addition, it is worth noting that Macau and Hong Kong each have their own separate Basic Laws.<sup>124</sup> Although the Basic Law that governs Hong Kong differs from Macau's mini-constitution,<sup>125</sup> the concepts behind both documents are similar.<sup>126</sup> Both Basic Laws outline China's commitment to preserving the capitalist systems that are prevalent in each territory.<sup>127</sup> Furthermore, both mini-constitutions provide the SARs with high autonomy in areas unrelated to foreign

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may arise that allow China to intervene).

119. See Gilley, *supra* note 17 (reporting that China's overruling of Hong Kong's Supreme Court on an issue outside its jurisdiction reflects the possible disintegration of Macau's Basic Law).

120. See *HK Constitutional Row Looms Over China Immigrants*, INSIDE CHINA TODAY (June 29, 1999) (visited June 29, 1999) <<http://www.insidechina.com/news.php3?id=76059>> (referring to problems with China's immigration ruling).

121. See Anthony Spaeth et al., *So Much for Autonomy*, TIME ASIA, May 31, 1999, at 22 (setting forth examples of China's intervention in the internal affairs of Hong Kong).

122. See, e.g., 145 Cong. Rec. E1148-03, E1151 (daily ed. June 7, 1999) (statement of Rep. Bereuter) (explaining concerns on the future of Hong Kong's legal system because of China's recent intervention).

123. See Macau Joint Declaration, *supra* note 3, art. 2; *cf.* Hong Kong Joint Declaration, *supra* note 16 (detailing the similarities between both documents).

124. See Macau Basic Law, *supra* note 11; see also Hong Kong Basic Law, *supra* note 9 (providing each territory its own set of laws and freedoms).

125. See Huang & Qian, *supra* note 42, at 300 (asserting that the divergence between the Macau Basic Law and Hong Kong's mini-constitution is a direct result of their separate historical evolutions).

126. See *id.* at 290-91 (explaining that MSAR's and HKSAR's joint declarations and mini-constitutions incorporate Deng's policy).

127. See *id.* at 303 (noting that Hong Kong and Macau remain capitalist societies, despite China's commitment to socialism).

affairs and defense.<sup>128</sup> To better compare Hong Kong and Macau, and their relationship with China, an understanding of the events precipitating Hong Kong's transfer to a SAR is necessary. Accordingly, the sections that follow will highlight the key events that led to Hong Kong's transition.

## B. FROM RAGS TO RICHES

During the nineteenth century, Britain's interest in Hong Kong increased as it pursued Chinese commodities.<sup>129</sup> Initially, the British suffered a trade deficit<sup>130</sup> with China because Britain was unable to export high quantities of goods to the Chinese. When the British started to barter opium with the Chinese, however, the trade imbalance began to diminish.<sup>131</sup> The British soon realized that the foregoing solution was inadequate because the Chinese put an embargo on the drug, which ultimately resulted in the Opium War.<sup>132</sup>

At the end of the war in 1842, the Treaty of Nanking conveyed Hong Kong Island to the United Kingdom.<sup>133</sup> Despite Britain's victory, China and Britain continued their feud.<sup>134</sup> When negotiations ended, Britain acquired the Kowloon Peninsula and Stonecutters Island from the Chinese through the 1860 Convention of Beijing.<sup>135</sup> Approximately thirty years later, in 1898, Britain acquired a ninety-

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128. See Hong Kong Basic Law, *supra* note 9, arts. 12-14 (granting the HKSAR full autonomy except in areas of foreign policy and defense); *cf.* Macau Basic Law, *supra* note 11, arts. 13-14 (limiting Macau's autonomy in the same areas).

129. See Henderson, *supra* note 7, at 505-06 (tracing Hong Kong's economic growth as a British colony).

130. See *id.* at 507 (explaining the cause for Britain's trade deficit with China).

131. See *id.* (citing G.B. Endacott, *A History of Hong Kong* 10 (2d ed. 1973)) (discussing why the British began trading opium with the Chinese).

132. See *id.* (detailing the causes of the Opium War, and describing why China blocked the import of opium).

133. See Chan, *supra* note 51, at 141 (commenting that the method by which Britain acquired Hong Kong was unfair).

134. See Henderson, *supra* note 7, at 508 (remarking on the lengthy battle between Britain and China over Hong Kong).

135. See Chan, *supra* note 51, at 147 (detailing the history of Hong Kong's transfer of sovereignty to Britain).

nine year lease to the New Territories.<sup>136</sup> Today, Hong Kong consists of the aforementioned areas.

Despite the lease covering the New Territories, China acknowledged Britain to have jurisdiction over all the areas it received through the Convention of Beijing.<sup>137</sup> Based on this logic, it was reasonable that all of the regions comprising Hong Kong would expire simultaneously when the New Territories' lease lapsed in 1997.<sup>138</sup> Thus, in 1984, when China and Britain discussed the consequences of terminating the lease, Britain acquiesced to return all of its holdings of Hong Kong.<sup>139</sup> China and Britain then formalized their negotiations through the Joint Declaration of the Government of the United Kingdom and Northern Ireland and the Government of the People's Republic of China ("Hong Kong Joint Declaration").<sup>140</sup>

### C. HONG KONG JOINT DECLARATION

The Hong Kong Joint Declaration provided for the reversion of Hong Kong from the United Kingdom to China in July 1997.<sup>141</sup> Similar to the Macau Joint Declaration, the Hong Kong Joint Declaration laid the foundation for the way in which China would administer the colony after its reversion.<sup>142</sup> The Declaration also authorized

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136. See Henderson, *supra* note 7, at 509 (describing the areas that constitute Hong Kong); see also Chan, *supra* note 51, at 147 (explaining that Britain was persistent in its attempt to attain sovereignty over the New Territories because of inhabitable conditions on other parts of Hong Kong).

137. See Henderson, *supra* note 7, at 509-10 (laying out the foundation for Britain's return of Hong Kong).

138. See *id.* at 510 (citing Patricia H. Palumbo, *Analysis of the Sino-British Joint Declaration and the Basic Law of Hong Kong: What Do They Guarantee the People of Hong Kong After 1997?*, 6 CONN. J. INT'L L. 667, 670-71 (1991)) (discussing why Britain ceded all of Hong Kong to China in 1997).

139. See Erik Alexander Rapoport, *Extradition and the Hong Kong Special Administrative Region*, 4 ASIAN L.J. 135, 147 (1997) (stating why Britain was unfairly pressured into relinquishing its sovereignty over Hong Kong to China).

140. See generally Hong Kong Joint Declaration, *supra* note 16 (documenting the transfer of sovereignty of Hong Kong to China).

141. See *id.*, Introduction (laying the foundation and principles for Hong Kong's reversion).

142. See Henderson, *supra* note 7, at 511 (outlining the relevant provisions of the Hong Kong Joint Declaration).

the legislation of the Hong Kong Basic Law, which now serves as the territory's mini-constitution.<sup>143</sup>

According to the Hong Kong Joint Declaration, the former British colony became a SAR ("HKSAR") under Article 31 of China's constitution.<sup>144</sup> Although the Hong Kong Joint Declaration includes numerous provisions, the most relevant concern Hong Kong's autonomy and the maintenance of its economic and social systems.<sup>145</sup> Similar to that of Macau, the Hong Kong Joint Declaration provides for Hong Kong's autonomy in all areas except foreign policy and defense.<sup>146</sup> In addition to granting Hong Kong enormous freedoms, the Declaration also authorizes Hong Kong sovereignty over issues relating to its legislature, judiciary, and executive branches of government.<sup>147</sup>

Moreover, the Declaration promised the residents of Hong Kong that they would continue to enjoy the benefits of Hong Kong's current social system, including the exercise of civil liberties.<sup>148</sup> More importantly, the Declaration provided that Hong Kong would retain its capitalist economic system for at least fifty years upon reversion.<sup>149</sup> This aspect of the Hong Kong Joint Declaration sought,

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143. See *id.* at 511-14 (giving a history of the origin and purpose of the Joint Declaration).

144. See CHINA CONST., *supra* note 8, art. 31 (granting China the power to create SARs).

145. See Hong Kong Joint Declaration, *supra* note 16, art. 3 (refraining China from interfering in Hong Kong's economic autonomy); see also Macau Joint Declaration, *supra* note 3 (confirming China's approval of Macau's present capitalist system).

146. See Hong Kong Joint Declaration, *supra* note 16, art. 3 (describing the areas in which Hong Kong shall exercise autonomy).

147. See *id.* art. 3(3) (authorizing the HKSAR to govern itself in these areas of government).

148. See *id.* art. 3(5), Annex I (XIII) (promising the people of Hong Kong the right to continue enjoying basic democratic rights). The rights include "those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research, and of religious belief." *Id.*

149. See *id.* at Annex I (VI) (confirming China's promise that HKSAR maintain its economic and trade systems). China will apply the concept behind the "One Country, Two Systems" principle to Hong Kong for at least half a century. See *id.* art. 3(12).

among other things, to ensure foreign direct investors in Hong Kong that their businesses would still flourish under the new regime.<sup>149</sup>

#### D. HONG KONG BASIC LAW

The Hong Kong Basic Law codified the provisions set forth in the Hong Kong Joint Declaration.<sup>151</sup> China approved the mini-constitution even though Hong Kong leaders influenced the document.<sup>152</sup>

The Hong Kong Basic Law authorizes retention of all laws previously in force in the region<sup>153</sup> except those that oppose the Basic Law or that of the PRC.<sup>154</sup> The Hong Kong Basic Law is similar to the Macau Basic Law because it also provides the HKSAR with independent judicial power,<sup>155</sup> including final adjudication.<sup>156</sup> As a result, the Hong Kong Basic Law authorizes the HKSAR to form its own judiciary, including the Court of Final Appeal.<sup>157</sup> Among a list of other provisions, the Hong Kong Basic Law specifies the requirements to assert the right of abode in Hong Kong.<sup>158</sup> Hong Kong resi-

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150. See Henderson, *supra* note 7, at 525-27 (discussing Hong Kong's authority over its commercial industry, and explaining the need for economic provisions in the Joint Declaration to address concerns of foreign companies).

151. See Hong Kong Basic Law, *supra* note 9 (listing all rights granted to the Hong Kong government and its citizens that were outlined in the Hong Kong Joint Declaration).

152. See Henderson, *supra* note 7, at 528 (discussing the appointment of the Hong Kong Basic Law drafting committee, and commenting on the composition of the group).

153. See Huang & Qian, *supra* note 42, at 296-97 (analyzing the laws that comprise Hong Kong's legal system).

154. See Hong Kong Basic Law, *supra* note 9, art. 8 (describing in detail which current laws are to remain in effect after reversion).

155. See Huang & Qian, *supra* note 42, at 300-01 (analyzing the similarities and differences between Hong Kong and Macau's courts).

156. See Hong Kong Basic Law, *supra* note 9, art. 19 (discussing areas where Hong Kong may exercise judicial autonomy); see also Macau Basic Law, *supra* note 11, arts. 82-94 (describing the jurisdiction of the MSAR's judicial autonomy).

157. See Hong Kong Basic Law, *supra* note 9, art. 81 (discussing the various courts the HKSAR may create, and authorizing the continuance of the judicial system before reversion).

158. See *id.* art. 24 (detailing the conditions to be satisfied for a person to become a HKSAR citizen).

dents regard this provision as important<sup>159</sup> because it ensures their right to exercise basic freedoms and maintain the capitalist system.<sup>160</sup>

In addition, the Hong Kong Basic Law permits fulfillment of international agreements already enacted even though China is not a signatory.<sup>161</sup> For these covenants to remain valid in Hong Kong, however, the Hong Kong judiciary must codify these international agreements into local laws.<sup>162</sup> Essentially, both the Hong Kong and the Macau Basic Laws attempt to reassure their respective residents that they will continue to enjoy the liberties previously granted to them under British<sup>163</sup> and Portuguese rule.<sup>164</sup>

### III. THE ROAD TO EROSION

#### A. FAREWELL BRITAIN, ADEUS PORTUGAL

Although Hong Kong and Macau are similar in that they both are SARs under Deng Xiaoping's policy, their transitional periods differed significantly.<sup>165</sup> First, the international community was fasci-

159. See Spaeth et al., *supra* note 121, at 22 (noting that immigration was a controversial issue for both England and China even before Hong Kong's reversion).

160. See 145 Cong. Rec. E1148-03, at E1151 and accompanying text (commenting that before reversion, the Hong Kong and international community suspected that China would cause a downward slope of the SAR's economic and democratic freedoms after the transfer of sovereignty).

161. See Hong Kong Basic Law, *supra* note 9, art. 39 (explaining that this provision guarantees Hong Kong's commitment to the ICCPR, despite the SAR's reversion).

162. See, e.g., Chan, *supra* note 51, at 163-64 (describing in detail the effectiveness of the covenant and the procedure by which Hong Kong may remain subject to the ICCPR after its reversion to China).

163. See Hong Kong Basic Law, *supra* note 9, arts. 27-38 (distributing basic democratic rights to Hong Kong residents).

164. See Macau Basic Law, *supra* note 11, arts. 26-39 (granting Macau residents such civil liberties, including, but not limited to, democratic and criminal rights).

165. See Henderson, *supra* note 7, at 525 (illustrating concerns over Hong Kong's economic and capitalist system after reversion); cf. *China Passes Law on Stationing Troops in Macau After Handover*, INSIDE CHINA TODAY (June 29, 1999) (visited June 29, 1999) <<http://www.insidechina.com/news.php3?id=75918>> (describing Macau's unstable environment that China will gain back at the end of the year); see generally Rik De Gendt, *Macau Doesn't Fear Hand-Over*, J. COM.,

nated with Hong Kong's transition because it was the world's first financial center to apply the "One Country, Two Systems" policy.<sup>166</sup> Second, China did not have to address organized crime in Hong Kong in 1997 as it did in Macau.<sup>167</sup> Furthermore, because the international community scrutinized China's every move in 1997,<sup>168</sup> it was more difficult for the PRC to quickly intervene in Hong Kong's autonomy upon reversion.<sup>169</sup>

Macau's reversion, on the other hand, drew less attention worldwide because it is not a vibrant, international city.<sup>170</sup> In addition, its transition faced more obstacles than its neighbor did.<sup>171</sup> Unlike Hong Kong,<sup>172</sup> Macau brought with it an unseasoned civil service<sup>173</sup> coupled

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July 22, 1999, at 7 (highlighting the difference in attitude of Hong Kong and Macau residents regarding their reversions).

166. See Louise do Rosario, *A Change of Dynasty: Macau*, THE BANKER, Feb. 1, 1999, at 62 (comparing the transition periods of Hong Kong and Macau, stressing the negative aspects of Hong Kong's transition period).

167. See *id.* (explaining the various social, political, and financial difficulties Macau is facing as compared to Hong Kong).

168. See generally Martin Lee, *Hong Kong 1997 Review: Prospects for 1998*, in CSIS HONG KONG UPDATE (Jan. 1998) (visited July 1, 1999) <<http://www.csis.org/html/hk5.html>> (suggesting why China did not actualize the international community's fears that Hong Kong would revert to socialism immediately upon reversion).

169. See 145 Cong. Rec., E1148-03, at E1148 and accompanying text (noting the United States' concern regarding the application of the "One Country, Two Systems" policy to Hong Kong, causing Congress to appoint a committee to examine the situation); see also King-yuh, *supra* note 64, at 1 (discussing the domino effect that would occur if China diverted from the "One Country, Two Systems" policy after Hong Kong's reversion).

170. See Rosario, *supra* note 166, at 62 (describing Macau's present day atmosphere, economy, and transition period).

171. See *Crime, Economy to Test Macau's Anointed Leader*, MUZI LATELINE NEWS, May 16, 1999 (visited Nov. 1, 1999) <<http://dailynews.muzi.net/cgi/lateline/news?p=29296>> (describing a host of criminal and financial problems presently affecting Macau).

172. See *id.* (commenting on Hong Kong's political, social, and economic environment before it reverted to China).

173. See *Interview—Macau's Untested Leadership a Problem*, MUZI LATELINE NEWS, Mar. 21, 1999 (visited Nov. 1, 1999) <<http://dailynews.muzi.net/cgi/lateline/news?p=22279>> (explaining the character of Macau's cabinet to the government body that administered the colony before the ratification of the Macau Basic Law).



with a history of rampant crime.<sup>174</sup> Furthermore, when Hong Kong reverted, Tung Chee-hwa,<sup>175</sup> Hong Kong's Chief Executive leader, selected government officials from a pool of experienced people.<sup>176</sup> These individuals were able to tackle Hong Kong's problems without soliciting Beijing's assistance.<sup>177</sup> In contrast, Macau's cabinet was composed of less experienced government officials.<sup>178</sup> Such less-seasoned leadership could impair the territory following the transition and make Macau more vulnerable to both gang violence<sup>179</sup> and China.<sup>180</sup> Given that Macau's transfer of sovereignty was more volatile than Hong Kong's reversion,<sup>181</sup> it is conceivable that Macau's

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174. See *Macau Governor Calls For Joint Anti-Crime Operation With China*, AGENCE FRANCE PRESS, Sept. 24, 1999, available in LEXIS, News Group File [hereinafter *Joint Anti-Crime Operation*] (describing the havoc that has consumed Macau over the last few years).

175. See *Tung Chee-hwa's Vision* (visited Nov. 1, 1999) <<http://www.primenet.com/~ltseung/tung.htm>> (describing Tung Chee-hwa's positions in the Hong Kong government, including his professional experience and his outlook for Hong Kong after reversion).

176. See *Interview—Macau's Untested Leadership a Problem*, *supra* note 173 (commenting on Tung Chee-hwa's appointments to the Hong Kong government and their level of expertise).

177. See *Crime, Economy to Test Macau's Anointed Leader*, *supra* note 171 (comparing levels of expertise between Macau and Hong Kong's cabinet, and explaining why Macau's government is at a disadvantage).

178. See *Interview—Macau's Untested Leadership a Problem*, *supra* note 173 (noting that Portuguese nationals will continue to hold certain key positions in Macau's government after reversion); see also Rosario, *supra* note 166, at 62 (commenting that Portuguese governance predominated Macau's government, thus Beijing's priority after Macau's reversion was to appoint more Macanese residents to official posts).

179. See Lintner, *supra* note 19 (attributing the fears and attitude of gangsters in Macau toward China to the mainland's reputation and exercise of capital punishment).

180. See 145 Cong. Rec., E1148-03, at E1151, and accompanying text (explaining that the international community should be cautioned that China may feel obligated to intervene in Macau's autonomy in response to the crime wave that has created an unstable financial and social environment in the region); see also Rosario, *supra* note 166, at 62 (noting Macau's vulnerability to China in light of the colony's previous laws, and querying whether the law will be able to adapt to Macau's transformation into a SAR).

181. See Rosario, *supra* note 166, at 62 (explaining that Macau's turbulent transition surprised the international community because evidence of Macau's problems surfaced unexpectedly).

government may invite Beijing to help it in combating crime.<sup>182</sup> An unfortunate side effect of such action would likely be the erosion of Macau's autonomy.<sup>183</sup>

## B. CHINA DROPS ITS GAVEL ON HONG KONG

When Hong Kong reverted to Chinese sovereignty on July 1, 1997, critics feared that the PRC would immediately intervene and impose its own laws regarding economic and democratic freedoms.<sup>184</sup> Surprisingly, Beijing kept its commitment to preserving capitalism and refrained from intervening during Asia's financial crisis.<sup>185</sup> Two years after the reversion, however, China eagerly accepted Hong Kong's invitation to interpret a provision in the Basic Law on an issue not pertaining to defense or foreign affairs.<sup>186</sup> China's clarification resulted in the erosion of the HKSAR's judicial autonomy.<sup>187</sup>

Essentially, the PRC overruled the Court of Final Appeal's deci-

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182. See *Joint Anti-Crime Operation*, *supra* note 174 (referring to Macau's current governor, Vasco Rocha Viera's request for China's cooperation in fighting organized crime). But see Macau Basic Law, *supra* note 11, arts. 10, 28 (granting Macau the powers to preserve public order and enact its criminal laws).

183. Cf. Gilley, *supra* note 17 (mentioning that critics fear that China's recent overruling in Hong Kong coupled with the PRC's alteration of Macau's Basic Law regarding the garrison reflect a slow erosion of the SARs' autonomy and detracts from the "One Country, Two Systems" principle).

184. See Frank Ching, *Hong Kong Reality Check*, FAR E. ECON. REV. (June 3, 1999) (visited July 22, 1999) [http://www.feer.com/Restricted/99jun\\_03/cover.html](http://www.feer.com/Restricted/99jun_03/cover.html) (noting that the Hong Kong residents' fear of changes in the social and economic realm were not immediately realized upon reversion).

185. See 145 Cong. Rec., E1148-03, at E1148-03 and accompanying text (observing that the Hong Kong government has been able to exercise full autonomy in its capitalist economic industry amidst all the concerns of Asia's recession).

186. See *A Question of Interpretation*, *supra* note 13, at 17 (noting China's interpretation of Hong Kong's court ruling as legal and necessary even though the Hong Kong courts did not request it); see also *Hong Kong to Ask Beijing to Reinterpret its Constitution*, AGENCE FRANCE PRESSE, May 19, 1999, available in LEXIS, News Group File (providing statistics for the vote on whether China had the jurisdiction to interpret Hong Kong's Basic Law regarding the right of abode issue).

187. See *Lawyers, Activists Slam HK Gov't Over Migrant Row*, INSIDE CHINA TODAY, June 29, 1999 (visited June 29, 1999) <<http://www.insidechina.com/news.php3?id=75919>> (referring to the effect China's interpretation of the Hong Kong Basic Law had on the SAR's community).

sion regarding the right of abode in Hong Kong at the HKSAR's request.<sup>188</sup> The Hong Kong Basic Law guarantees that all children born to Hong Kong residents have the right to live in Hong Kong.<sup>189</sup> The breadth of this provision caused controversy in the courts<sup>190</sup> because it failed to address illegitimate children and children who were born to parents who were not residents before the child's birth.<sup>191</sup>

In January 1999, the Court of Final Appeal in Hong Kong ruled that children of Hong Kong residents have the right to live in the SAR even though their parents were not Hong Kong residents before their birth.<sup>192</sup> In addition, Hong Kong's highest court held that illegitimate children also fell under the protection of the Hong Kong Basic Law.<sup>193</sup> The prospect of a large influx of mainland immigrants alarmed numerous Hong Kong residents<sup>194</sup> and Tung-Chee-hwa,<sup>195</sup>

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188. See *Chan Kam Nga (An Infant) & ORS V Director of Immigration*, 1999-1 HKC 347 (Hong Kong), (citing the Court of Final Appeal case regarding the right of abode issue in Hong Kong, where the Court held that the petitioners had a right of abode if one parent currently resided in Hong Kong).

189. See Hong Kong Basic Law, *supra* note 9, art. 24 (providing the guidelines for attaining citizenship in the HKSAR). This article grants Chinese nationals or foreigners who were born to Hong Kong residents the right to citizenship in the HKSAR. See *id.*

190. See Frank Ching, *Hong Kong Inviting Trouble: Appeal to Beijing Seen as a Threat to Judicial Independence*, FAR E. ECON. REV. (Jan. 21, 1999) (visited Nov. 2, 1999) <[http://203.105.48.72/9901\\_21/p22hongkong.html](http://203.105.48.72/9901_21/p22hongkong.html)> (discussing why Hong Kong's Court of Final Appeal granted certiorari to the immigration case).

191. See *id.* (explaining that the broad scope of the immigration provision in the Basic Law resulted in confusion as to who legitimately qualifies for residency).

192. See *id.* (reporting on the Court of Final Appeal's ruling in Hong Kong in favor of the immigrants).

193. See Frank Ching, *Judgment Call*, FAR E. ECON. REV. (Feb. 18, 1999) (visited Nov. 1, 1999) <[http://203.105.48.72/9902\\_18/p22hongkong.html](http://203.105.48.72/9902_18/p22hongkong.html)> (remarking that the decision of Hong Kong's Court of Final Appeal was so broad that massive immigration would occur, if the government were to actually enforce the ruling).

194. See Frank Ching, *Scare Tactics*, FAR E. ECON. REV. (May 13, 1999) (visited Nov. 6, 1999) <[http://www.feer.com/Restricted/99may\\_13/hongkong.html](http://www.feer.com/Restricted/99may_13/hongkong.html)> (estimating that surprisingly 1.6 million mainlanders could legitimately immigrate to the HKSAR as a result of the court of final appeal's decision); see also Laris, *supra* note 14, at A23 (monitoring Hong Kong's public view on the immigration ruling).

195. See Bruce Einhorn, *Tung Should Leave Hong Kong's Courts Alone*, BUS. WEEK, May 31, 1999 (describing Tung Chee-hwa's reaction after the Hong Kong's highest court's ruling).

because they feared a rise in unemployment. To deter social and economic problems that mass immigration could bring, such as overcrowding, Tung-Chee-hwa immediately sought the PRC's interpretation<sup>196</sup> of the right of abode provision in the Hong Kong Basic Law.<sup>197</sup> The Chief Executive's other option was to ask Beijing for permission to amend<sup>198</sup> the Basic Law, however, he chose the former method because interpreting the law was more expedient.<sup>199</sup>

On June 26, 1999, the Standing Committee<sup>200</sup> of the NPC in Beijing overturned Hong Kong's Court of Final Appeal's ruling regarding the right of mainland children to live in Hong Kong.<sup>201</sup> The PRC interpreted the Hong Kong Basic Law to read that at least one parent must have been a resident at the time of the child's birth to obtain residency.<sup>202</sup> As a result of this clarification, critics fear that Beijing's ruling has set a precedent that China has the authority to diminish Hong Kong's autonomy.<sup>203</sup>

Although the Hong Kong leader requested the PRC's assistance because it was allegedly in Hong Kong's best interest to prevent widespread immigration,<sup>204</sup> China's willingness to accept the

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196. See Ching, *supra* note 190 (explaining that the Hong Kong government erred in asking China directly to interpret the Basic Law provision). The proper procedure for seeking interpretation is for the judiciary to petition the Chinese government. *See id.*

197. See Spaeth et al., *supra* note 121, at 22 (describing the implications of mass immigration).

198. See Ching, *supra* note 194 (noting that the NPC is the sole group capable of amending the Basic Law).

199. See Einhorn, *supra* note 195, at 25 (remarking on Tung Chee-hwa's superficial approach to solving crises).

200. See Macau Basic Law, *supra* note 11, arts. 17-18, 20 (describing the responsibilities of the Standing Committee of the NPC).

201. See Laris, *supra* note 14, at A23 (reporting the PRC's overruling and its implications).

202. See *Mainlanders Stage Hunger Strike as Hong Kong Government Firm on Abode*, INSIDE CHINA TODAY, June 29, 1999 (visited June 29, 1999) <<http://www.insidechina.com/news.php?id=76057>> (illustrating a situation where a mainlander could not become a resident of the HKSAR under the Basic Law).

203. See Laris, *supra* note 14, at A23 (quoting Hong Kong democracy activist, Martin Lee, as remarking that China's overruling clearly signifies a constitutional breakdown in the HKSAR).

204. See 145 Cong. Rec. E1148-03, at E1150, and accompanying text (explain-

HKSAR's request on an issue outside its jurisdiction circumscribes the Hong Kong Basic Law.<sup>205</sup> The PRC's intervention and alteration of Hong Kong's law signifies erosion of the SAR's autonomy.<sup>206</sup> The PRC's revocation of Hong Kong's highest court's decision indicates to the international community that despite the assurances of the Basic Law, Hong Kong is not completely autonomous in areas unrelated to defense and foreign affairs.<sup>207</sup>

### C. THE HONG KONG MODEL VIS-À-VIS MACAU

China's recent interpretation of Hong Kong's Basic Law fore-shadows its authority to alter Macau's mini-constitution after its reversion.<sup>208</sup> Due to the PRC's involvement in Hong Kong's local affairs,<sup>209</sup> Macau's post-reversion future does not seem as bright.<sup>210</sup>

Over the past two years, Macau has suffered from an economic recession, which, in addition to gang-related gambling disputes, has led

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ing the HKSAR government's underlying reasons for seeking Beijing's interpretation). After the Court of Final Appeal's ruling, Hong Kong wanted to clarify any misperceptions China may have had regarding the Hong Kong judiciary, and used the problems associated with mass immigration as a disguise to gain public support. *See id.*

205. *See* Hong Kong Basic Law, *supra* note 9, arts. 2, 13-14 (granting Hong Kong the right to exercise full autonomy in various areas except in cases relating to foreign affairs or defense).

206. *See id.* art. 19 (granting the HKSAR judicial system the right of final adjudication except in issues relating to foreign affairs or defense).

207. *See A Question of Interpretation*, *supra* note 13, at 17 (discussing many critics' views that China's action regarding the right of abode issue may set a precedent for future constitutional crises).

208. *See Macau Governor Says No Final Court Before Handover*, MUZI LATELINE NEWS (July 4, 1999) (visited Oct. 29, 1999) <<http://dailynews.muzi.net/cgi/lateline/news?p=34537>> (suggesting that the failure to establish a Court of Final Appeal in Macau before reversion makes the region vulnerable to China's intervention in light of the PRC's recent overruling of the immigration case in Hong Kong).

209. *See* Ching, *supra* note 184 (discussing how the "One Country" aspect of Deng's policy is piercing through by means of China's intervention in Hong Kong's internal affairs). Hong Kong's residents fear that their government's action undermines the authority of the region's judicial and legal systems and sets a precedent for Beijing to intervene in other local matters. *See id.*

210. *See* Zongshi, *supra* note 26, at 3 (commenting that Macau's residents anticipate that reunification will not improve their problems).

to a recent increase in gang violence.<sup>211</sup> Despite China's lack of authority over Macau at this time,<sup>212</sup> the PRC has slowly invited itself to help curb crime.<sup>213</sup> China mandated the stationing of People's Liberation Army troops in Macau upon reversion.<sup>214</sup> This action angered the Portuguese because the military presence was neither authorized nor warranted under Macau's Joint Declaration or Basic Law.<sup>215</sup> Unlike Hong Kong,<sup>216</sup> these documents do not explicitly authorize the

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211. See *Macau Preparing to Rejoin China After 400 Years of Colonial Rule*, CNN (Mar. 22, 1999) (visited June 29, 1999) <<http://europe.cnn.com/WORLD/europe/9903/22/MacauHandover.ap>> (describing the host of problems that gambling has brought into the region); see also *Macau Review 1998*, *supra* note 29, at 1 (explaining that the crimes associated with gambling have caused Macau's tourism industry to plummet, which is detrimental to its economy).

212. See Rosario, *supra* note 166, at 62 (suggesting that upon Macau's reversion China may consider intervention to end the violence because Macau will no longer be under Portuguese sovereignty).

213. See *Zhuhai Rounds Up Triads Before Macau Handover*, MUZI LATELINE NEWS (June 15, 1999) (visited Oct. 30, 1999) <<http://www.lateline.com/cgi/lateline/news.cgi?p=3224&l=english>> (reporting the significant efforts the Chinese government has already undertaken in its own country to fight crime); *China Police in Anti-Crime Offensive to Prepare for Macau's Return*, MUZI LATELINE NEWS (May 31, 1999) (visited Oct. 30, 1999) <<http://lateline.com/cgi/lateline/news.cgi?p=30740&l=english>> (commenting that China enacted a garrison law to be enforced in Macau, as the Macau Basic Law did not authorize the stationing of Chinese troops in Macau). China's new law also gives the troops the opportunity to exercise broad police powers, despite Macau's jurisdiction over law enforcement. See *id.*; see also Macau Basic Law, *supra* note 11, art. 14 (granting the MSAR authority over public order).

214. See *China Passes Law on Stationing Troops in Macau After Handover*, *supra* note 165, at 7 (explaining the significance of China's decision to send a garrison to Macau).

215. See *Questions & Answers on Macau (Part I)*, *supra* note 30, at question 11 (explaining that China believed it was justified in its decision to send troops under a broad interpretation of the defense provision of Article 14 of Macau's Basic Law); see also *Portugal's President Sampaio, China's Qian in Macau*, JAPAN ECON. NEWSWIRE (Mar. 18, 1999) (reporting that the Macau Basic Law does not permit China to station troops in the region); see also *Portugal Unhappy at China's Macau Moves*, BBC NEWS (Mar. 18, 1999) (visited May 25, 1999) <<http://news5thls.bbc.co.uk/hi/english/world/europe/newsid%301000/301067.htm>> (reporting that the President of Portugal did not think that China was justified in sending a garrison to Macau because of the absence of such language in Macau's Basic Law).

216. See *Questions & Answers on Macau (Part I)*, *supra* note 30, at question 11 (noting that the Hong Kong Basic Law contains a provision that explicitly author-

stationing of troops in the MSAR.<sup>217</sup> China, however, supports its position by stating that the stationing of troops is clearly within its jurisdiction because it concerns defense.<sup>218</sup>

The stationing of troops is a symbol of China's heavy hand and a reminder that Macau is not completely autonomous.<sup>219</sup> The decision to station troops is China's first step in eroding Macau's autonomy.<sup>220</sup> It also reinforces the reality that the PRC has the final say regarding the implementation of the Macau Joint Declaration and the Basic Law.<sup>221</sup>

#### D. LAW ENFORCEMENT AS A VEHICLE TO ERODE MACAU'S AUTONOMY

Critics fear that in addition to the garrison, China may attempt to curb the violence in Macau by altering its criminal laws.<sup>222</sup> Such action would detract from Macau's autonomy because the Macau Basic Law authorizes the SAR to control public order.<sup>223</sup> Furthermore, po-

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ized the PRC to send in a garrison in Hong Kong after its reversion); *see also* Hong Kong Basic Law, *supra* note 9, art. 14 (stipulating the role of the garrison in Hong Kong). China explicitly granted police powers to Hong Kong's garrison and made the troops available to the SAR even though Hong Kong has sole responsibility for preserving public order. *See id.*

217. *See Background: ABCs of Macau SAR Basic Law (17)*, XINHUA NEWS AGENCY, at 1 (Apr. 8, 1999) (illustrating the controversy over China's alleged jurisdiction regarding the stationing of troops in the MSAR).

218. *See id.* (explaining that under Article 14 of Macau's Basic Law the Central People's Government is responsible for Macau's defense, justifying China's decision to send in a garrison).

219. *See* Lintner, *supra* note 19, at 3 (explaining the purpose and significance behind China's decision to send a garrison to Macau).

220. *See China Passes Law on Stationing Troops in Macau After Handover*, *supra* note 165 (discussing the implications of China's new garrison). *But see* Macau Basic Law, *supra* note 11, art. 14 (authorizing the MSAR with the power to maintain social stability). The new law that authorizes the stationing of troops is contrary to Macau's Basic Law. *See id.*

221. *See A Question of Interpretation*, *supra* note 13, at 17 (noting that, in Hong Kong, the Basic Law is considered a national law of China, and the NPC is the ultimate interpreter of that law).

222. *See* Gilley, *supra* note 17, at 2 (remarking that China's intervention in Hong Kong's judicial autonomy together with its decision to grant law enforcement responsibilities to the garrison in Macau reflect future constitutional erosion).

223. *See* Macau Basic Law, *supra* note 11, art. 14 (granting the power to moni-

licing the region is clearly not a defense or national security issue that would prompt Beijing's attention.<sup>224</sup> If the PRC were able to convince the Macau government that the gang wars were within its jurisdiction, then it is possible that China might attempt to impose the death penalty or life imprisonment upon Macau's most violent criminals.<sup>225</sup>

Democracy activists are also concerned that China may interfere in Macau's criminal laws because the gang violence has severely threatened Macau's gambling and tourism industries, which significantly contribute to the local economy.<sup>226</sup> The head of the gambling board in Hong Kong, Stanley Ho, who distributes gambling licenses in Macau, has pressed the PRC and the Macau governments to impose harsher sentences on gangsters.<sup>227</sup> Ho has even mandated the implementation of the death penalty and has stated that he may not renew Macau's gambling franchise if the violence is not resolved.<sup>228</sup> The denial of Macau's gambling license would be extremely debilitating to Macau's economy, which is a major concern of the PRC.<sup>229</sup>

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tor public order to the MSAR).

224. See 'Part 28' of *ABCs of Macau SAR Basic Law*, BEIJING XINHUA IN ENGLISH (Apr. 13, 1999) (visited June 21, 1999) <[http://199.2212.15.211/cgi-bin/cqcg...5+6+7+8+9+10+CQ\\_DOC\\_MARKUP\\_STYLE=1](http://199.2212.15.211/cgi-bin/cqcg...5+6+7+8+9+10+CQ_DOC_MARKUP_STYLE=1)> (commenting that the handling of criminal activity falls under Macau's local affairs).

225. See *Joint Anti-Crime Operation*, *supra* note 174, at 1 (noting that Macau's Governor has requested China's help in combating the recent rise in organized crime).

226. See Lintner, *supra* note 19, at 3 (reporting the dramatic decrease in the gambling revenues); see also Gilley, *supra* note 17, at 2 (providing statistics indicating the decline in tourism is due to violence).

227. See *Macau Risk Pointers*, GEOPOLITICAL SENTINEL WORLD RISK POINTERS—CHINA AND NORTHEAST ASIA—MACAU (1999) (visited Oct. 30, 1999) <[http://www.janes.com/geopol/sentinel/CNARSA/CNARSA\\_Macau.html](http://www.janes.com/geopol/sentinel/CNARSA/CNARSA_Macau.html)> (conveying a supporter's view on the implementation of capital punishment in Macau).

228. See Harold Bruning, *Portuguese President Expects Death Penalty Ban to Continue*, HONG KONG STANDARD IN ENGLISH (Feb. 18, 1997) (visited June 25, 1999) <[http://199.221.15.211/cgi-bin/cqcg...5+6+7+8+9+10+CQ\\_DOC\\_MARKUP\\_STYLE=1](http://199.221.15.211/cgi-bin/cqcg...5+6+7+8+9+10+CQ_DOC_MARKUP_STYLE=1)> (quoting a casino owner in Macau as saying that in order to regain Macau's social and economic stability, Macau must institute capital punishment).

229. See Rosario, *supra* note 166, at 62 (indicating Macau's dependence on its gambling and tourism industry); see also Macau Joint Declaration, *supra* note 3, art. 4 (explaining that China and Portugal are interested in maintaining the stability of Macau's economy after reversion).



Thus, this pressure on the PRC to intervene and strengthen Macau's law enforcement capabilities may lead China to justify its efforts to diminish Macau's autonomy in exchange for economic and social stability.<sup>230</sup>

If China decides not to directly intervene, other critics argue that it may instead exert pressure on Macau to institute harsher punishments, including the death penalty.<sup>231</sup> Macau has the authority to alter its criminal laws through its Penal Code.<sup>232</sup> If Macau changes its laws to include the death penalty, the international community may criticize such an amendment, because it would contradict the principles of the ICCPR, which is codified in the Basic Law<sup>233</sup> and the Macau Joint Declaration.<sup>234</sup>

Macau may also conceivably attempt to follow Hong Kong's steps and request that Beijing interpret its Basic Law or amend it to include harsher penalties.<sup>235</sup> As evident in Hong Kong, the PRC would

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230. See Gilley, *supra* note 17, at 1 (explaining China's renewed interest in maintaining Macau's stability); see also Macau Basic Law, *supra* note 11, art. 18 (granting China the authority to intervene in situations where national security is threatened or in times of emergency). The article specifically stipulates that the PRC can intervene in the event that the Standing Committee of the NPC decides to declare a state of war, by reason of turmoil within the MSAR, which endangers national unity or security and is beyond the control of the government. See *id.*; see also Wang & Leung, *supra* note 1, at 287 (explaining that if the SAR is unstable then it inevitably affects China as a whole).

231. See *Macau Risk Pointers*, *supra* note 227 (recognizing one possible influential supporter for the implementation of capital punishment in Macau). Ho may have some clout over China and Macau because he distributes Macau's gambling licenses, which significantly affect Macau's autonomy. See *id.* But see Bruning, *supra* note 228, at 17 (expressing Portugal's confidence that capital punishment will not be exercised in Macau even after the colony's reversion). The prohibition on capital punishment is part of Macau's cultural heritage. See *id.* (noting that the death penalty has not been a part of Macau's criminal law since the mid-nineteenth century).

232. See Macau Basic Law, *supra* note 11, art. 85 (stating that Macau's previous criminal system shall be maintained); see also 'Part 28' of *ABCs of Macau SAR Basic Law*, *supra* note 224 (noting that the MSAR has the full power to implement local criminal laws under its Basic Law).

233. See Macau Basic Law, *supra* note 11, art. 40 (allowing Macau to maintain its affiliation with the ICCPR).

234. See Macau Joint Declaration, *supra* note 3, Annex I, at VIII (explaining the continued application of previous international agreements).

235. See *Macau Government Drafts New Penal Code*, UNITED PRESS INT'L,

likely welcome such an invitation,<sup>236</sup> notwithstanding the probability that this would violate the Macau Basic Law<sup>237</sup> and possibly Macau's commitment to the ICCPR.<sup>238</sup>

Allowing Macau's government to curb the violence as mandated under the Macau Basic Law is the most appropriate way to handle this situation.<sup>239</sup> China, however, may find this method ineffective because despite Portuguese sovereignty, Macau has primarily controlled its own law enforcement in recent years and has proven incapable of curbing the violence.<sup>240</sup> If Macau remains incapable of stabilizing the region on its own, the PRC may intervene under the guise of a state of emergency.<sup>241</sup>

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Nov. 17, 1995 (commenting that only the future government can determine whether the death penalty ought to continue); *see also* Macau Basic Law, *supra* note 11, art. 143 (stating that the Standing Committee of the NPC authorizes the Macau courts the power to interpret the provisions of the Basic Law that are within the SAR's autonomy). If the provision is not within the MSAR's jurisdiction, the Macau Court of Final Appeal shall seek the Standing Committee's interpretation before the court makes its final judgment. *See id.*

236. *See Top Chinese Official Confident Guangdong Police Can Curb Macau Crime*, AGENCE FRANCE PRESSE, Aug. 19, 1999 (reporting that a high-ranking Communist Party official in China's Guangdong Province expressed confidence in the ability of the Chinese police to resolve Macau's crime problems after reversion without interfering in its internal affairs).

237. *See* Macau Basic Law, *supra* note 11, arts. 12-14, 18 (granting Macau full autonomy in all areas except foreign affairs, defense, and national security). Procedurally, when a provision of law is not within the MSAR's jurisdiction, the Macau Court of Final Appeal requests the Standing Committee of the NPC to interpret the law prior to the Court's final adjudication. *See id.* (allowing the Standing Committee to express its opinion on matters China considers within its jurisdiction).

238. *See Observations of the Human Rights Committee*, *supra* note 115, at B(3) (explaining Macau's obligation to the ICCPR, despite its reversion to a non-signatory). *But see* Chan, *supra* note 51, at 163-67 (explaining that for the ICCPR to be binding in the HKSAR, it must be codified through its local law).

239. *See* Macau Basic Law, *supra* note 11, art. 14 (delegating to the Macau government the authority to control public order).

240. *See supra* notes 221-25, 232-37 and accompanying text (detailing China's concern over the recent crime wave in Macau, and addressing fears that China's responsive actions may result in a reduction in Macau's governing freedom); *see also* BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, *U.S. Department of State, Macau Country Report on Human Rights Practices for 1998*, *supra* note 75, at 1 (describing the civilian composition of Macau's police force and the fact that there is no Portuguese army presence in Macau).

241. *See supra* note 230 and accompanying text (reiterating Article 18 of the

Although Macau's dilemma concerns crime rather than the right of abode issue in Hong Kong, the two situations are similar because neither falls within China's jurisdiction.<sup>242</sup> Moreover, it is conceivable that Macau may follow in Hong Kong's footsteps because Macau residents have already approved China's decision to send a garrison, even though the Basic Law does not explicitly authorize such intervention.<sup>243</sup> Accordingly, the international community should closely monitor China and Macau in order to prevent any potential constitutional crises.<sup>244</sup>

#### IV. RECOMMENDATIONS

In light of the recent crime wave that has engulfed Macau<sup>245</sup> and China's recent overruling of Hong Kong's highest court's decision,<sup>246</sup> Macau must take precautions to safeguard its autonomy from China in areas outside of China's jurisdiction.<sup>247</sup> Essentially, there are three approaches that Macau may take to protect its autonomy from China's possible intervention.

These recommendations are mostly derived from an analysis of the Hong Kong model.<sup>248</sup> In addition, because Hong Kong and Macau

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Macau Basic Law).

242. See Macau Basic Law, *supra* note 11, arts. 13-14; Hong Kong Basic Law, *supra* note 9, arts. 13-14 (prohibiting Macau and Hong Kong from interfering on issues related to foreign affairs and defense).

243. See Gilley, *supra* note 17, at 1 (commenting on the attitude of Macau residents regarding China's decision to bring soldiers into Macau).

244. See *Observations of the Human Rights Committee*, *supra* note 115 (noting that the United Nations is closely monitoring the situation in Macau). See, e.g., *supra* notes 122, 169, 180 and accompanying text (demonstrating that the international community is monitoring China with respect to both Hong Kong and Macau, and is sensitive to any potential constitutional violations in the region).

245. See *Gangsterland*, THE ECONOMIST, May 9, 1998, at 41 (reporting that since 1997, approximately 20 people, including three civil servants, have died as a result of gang violence in Macau).

246. See *Lawyers, Activists Slam HK Gov't Over Migrant Row*, *supra* note 187 (reporting that lawyers and pro-democracy legislators regard China's overruling of Hong Kong's highest court's decision as destructive to the independence of the SAR's judiciary).

247. See Macau Basic Law, *supra* note 11, arts. 2, 13-14 (granting Macau autonomy in all areas except foreign affairs and defense).

248. See *A Question of Interpretation*, *supra* note 13 (justifying China's inter-

are facing similar dilemmas,<sup>249</sup> recommendations for Hong Kong are also applicable to Macau. The suggestions to Macau's government may be summarized accordingly. First, Macau can petition China to amend its Basic Law.<sup>250</sup> Second, Macau can amend its Penal Code to maintain its criminal laws.<sup>251</sup> Third, Macau can implement institutional safeguards to preserve the sanctity of its judicial system.<sup>252</sup>

#### A. AMENDING MACAU'S BASIC LAW

Amending the Macau Basic Law is the most democratic and constitutional way to preserve Macau's autonomy.<sup>253</sup> The PRC may not favor this method, however, because it is slow<sup>254</sup> and, thus, the PRC would be unable to adapt to emergencies, such as the violence in Macau. Amending the Basic Law may also appear inefficient be-

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pretation of the Basic Law provision regarding right of abode).

249. See Spaeth et al., *supra* note 121, at 22 (explaining recent instances where China has intervened in Hong Kong's local affairs and its implications); see also Gilley, *supra* note 17 (discussing potential erosion of the mini-constitution based on China's authorization of troops).

250. See Macau Basic Law, *supra* note 11, art. 144 (granting the NPC the authority to amend Macau's Basic Law); see also Spaeth et al., *supra* note 121, at 22 (noting that constitutional experts and local democrats suggest amending the Basic Law); Conor O'Clery, *A Bamboo Curtain Faces Hong Kong*, IRISH TIMES, May 22, 1999, at 11 (proposing that amending the Hong Kong Basic Law would be preferred to reinterpreting it because the latter would be subversive to judicial autonomy in the SAR).

251. See *China Said to Have Accepted New Penal Code That Bans Death Penalty and Abortion*, THE BRITISH BROADCASTING CORPORATION, Nov. 9, 1995 (explaining that the purpose of negotiating the abolishment of the death penalty, abortion, and life imprisonment in Macau's penal code is to prevent China from amending the code after reversion).

252. See Vincent Wei-Cheng Wang, *Lessons from Hong Kong*, ASIA WEEK, Mar. 26, 1999, at 8 (suggesting that Hong Kong should establish constitutional measures, such as judicial review, to forestall China's interference with the SAR's autonomy).

253. See Spaeth et al., *supra* note 121, at 22 (explaining that amending the Basic Law is more legally sound than interpreting the provisions because the latter may give the Central Government broad powers). For example, because Beijing has the power to interpret the provisions of the Basic Law under special circumstances, the PRC has been able to intervene in Hong Kong's local affairs when they were clearly within Hong Kong's jurisdiction. See *id.*

254. See Einhorn, *supra* note 195, at 25 (discussing the advantages and disadvantages of constitutional amendments).

cause the Standing Committee of the NPC, which is the only group that has the authority to amend the mini-constitution,<sup>255</sup> only meets annually.<sup>256</sup> Thus, if the matter is one of grave concern, such as the escalation of gang violence in Macau,<sup>257</sup> China may select another more expedient method to solve the problem.

Due to the heightened crime in Macau, some think it possible that the PRC may attempt to usurp Macau's autonomy regarding its criminal laws.<sup>258</sup> Macau should ask Beijing to insert explicit language in the Basic Law that abolishes capital punishment.<sup>259</sup> To protect its citizens from capital punishment, the MSAR must not leave any loopholes in the Basic Law that would allow Beijing to infer that the death penalty or life imprisonment can be used as a form of defense or national security.<sup>260</sup> China has already enacted a garrison law un-

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255. See Macau Basic Law, *supra* note 11, art. 144 (stipulating that the NPC has the authority to amend the Basic Law).

256. See Spaeth et al., *supra* note 121, at 22 (noting that the Standing Committee of the NPC would not have been able to amend the HK Basic Law regarding the right to abode until the following year); see also Ching, *supra* note 194 (discussing when the NPC will next convene).

257. See *China, Portugal to Discuss Macau Return to Beijing* (Mar. 17, 1999) (visited June 29, 1999) <<http://forums.mercurycenter.com/asia/docs/070550.html>> (noting China's attentiveness to the violence that has recently disturbed Macau).

258. See Harold Bruning, *Garrison Law Gain*, S. CHINA MORNING POST, July 16, 1999, at 19 (reporting on China's newly enacted garrison law, effective upon Macau's reversion, which permits China to station troops in the region and authorizes the soldiers to conduct police duties). This article also suggests that the garrison law is not an encroachment on the SAR's local autonomy. See *id.* But see Macau Basic Law, *supra* note 11, art. 14 (characterizing the garrison law as contrary to the Macau Basic Law because it grants the troops local law enforcement responsibilities); *Questions & Answers on Macau (Part I)*, *supra* note 30, at question 11 (noting that defense is a broad concept which may authorize China to exercise certain rights not explicitly granted to it under the SAR's Basic Law).

259. See Macau Basic Law, *supra* note 11, art. 28 (stipulating that "torture or inhuman treatment of any resident shall be prohibited"). But see *Questions & Answers on Macau (Part I)*, *supra* note 30, at question 20 (explaining that according to the Chinese Embassy, the death penalty will not be exercised in the enclave after its reversion despite the lack of explicit language in the text of the Basic Law because of the MSAR's independent legislative authority).

260. See 'Part 28' of *ABCs of Macau SAR Basic Law*, *supra* note 224 (explaining that the Macau Basic Law does not abolish the death penalty because it is a purely local criminal matter and is within Macau's autonomy to decide whether it wants to administer such punishment).

der the defense clause of the Basic Law;<sup>261</sup> thus it is not unlikely that it would try to do the same with the death penalty, if the crime in Macau persists.

Macau should also petition China to rewrite any broad provisions of the Basic Law.<sup>262</sup> For example, Article 138 of the Basic Law states that "[i]nternational agreements to which the People's Republic of China is not a party but which are implemented in Macau may continue to be implemented in the Macau Special Administrative Region."<sup>263</sup> The word "may" implies that China has the discretion to prevent Macau from exercising its commitment to such international agreements.<sup>264</sup> Thus, in order to protect its autonomy regarding international treaties, Macau should request that China change the word "may" to "shall," thereby changing the provision from discretionary to mandatory.

Another area that requires clarification is the term "exceptional circumstances."<sup>265</sup> The PRC may interpret any provision of Macau's Basic Law that is unrelated to foreign affairs or defense if justified as a matter of "exceptional circumstance."<sup>266</sup> Due to the inherent vagueness of the term, Macau should amend the Basic Law to explicitly

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261. See Bruning, *supra* note 258 (discussing the enactment and purpose of China's new law regarding the troops).

262. See 145 Cong. Rec., E1148-03 at E1150 and accompanying text (noting that the Hong Kong government had several choices in addressing the Court of Final Appeal's decision).

263. See Macau Basic Law, *supra* note 11, art. 138 (authorizing the MSAR's affiliation with former international agreements).

264. See *Summary Record of the 31st Meeting: Portugal Macau*, 26/11/96, U.N. Committee on Economic, Social and Cultural Rights, 15th Sess., 31st mtg., para. 19, U.N. Doc. E/C.12/1996/SR/31 (1996) (explaining the particular language China chose in drafting the Macau Joint Declaration regarding international covenants).

265. See *A Question of Interpretation*, *supra* note 13, at 17 (explaining that the HKSAR had the right to seek Beijing's intervention because the right of abode case was an exceptional circumstance).

266. See Macau Basic Law, *supra* note 11, art. 143 (explaining in which cases the courts in the MSAR may ask the PRC to interpret provisions concerning the relationship between China and Macau). See, e.g., *Ng Ka Ling (An Infant) & Anor v. Director of Immigration*, (Court of Final Appeal, Feb. 26, 1999) 1999-1 HKC 425 (citing a right to abode case where the Hong Kong Court of Final Appeal considered the immigration issue to be an exceptional situation).

define which situations constitute "exceptional circumstances," to prevent Hong Kong's constitutional crisis from reoccurring in Macau.<sup>267</sup>

If Macau does not ask China to amend such broad language in its Basic Law, China may interpret the law to benefit the Central Government.<sup>268</sup> Evidence of such broad interpretation in favor of the PRC has already been seen in both Macau<sup>269</sup> and Hong Kong.<sup>270</sup> For example, despite China's lack of jurisdiction, the PRC has successfully ordered a garrison against Portugal's wishes under the broad provision concerning defense.<sup>271</sup> Similarly, in Hong Kong, the right of abode provision was written so broadly<sup>272</sup> in its Basic Law that China was able to clarify the provision to prevent mainland immigrants from reuniting with their Hong Kong resident parents.<sup>273</sup> Given that China broadly interprets Basic Law provisions to benefit the PRC,<sup>274</sup> it is crucial that Macau ask China to amend any vague provisions in its mini-constitution to safeguard its autonomy.<sup>275</sup>

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267. See *A Question of Interpretation*, *supra* note 13, at 17 (providing the Hong Kong Government's reasoning for regarding the right of abode situation as an exceptional circumstance that invoked Beijing's authority to interpret the Basic Law).

268. See *Backgrounder: ABCs of Macau SAR Basic Law (17)*, *supra* note 217 (remarking that although the stationing of troops is not covered in the Basic Law, it is authorized under the defense clause).

269. See *id.* (reporting that China's decision to send an army into Macau was in response to its interpretation of Macau's Basic Law).

270. See Lee, *supra* note 168 (commenting on the reasons why the HKSAR's courts have no basis to challenge China, and thus confirming China's authority over Hong Kong's administration of its Basic Law).

271. See *Backgrounder: ABCs of Macau SAR Basic Law (17)*, *supra* note 217 (justifying China's use of troops in Macau); see also Macau Basic Law, *supra* note 11, art. 14 (containing the defense exception).

272. See Ching, *supra* note 190 (referring to the broad manner in which the Hong Kong Basic Law may be interpreted).

273. See O'Clery, *supra* note 250, at 11 (commenting on a case in which a Chinese resident was denied the right to reunite with a family member that was a Hong Kong resident as a result of China's decree).

274. See Wang, *supra* note 252, at 8 (reiterating that China is the ultimate interpreter of the Basic Law).

275. See *Hong Kong Government Gets Public Support, Media Lashing on China Abode Move*, AGENCE FRANCE PRESSE, May 19, 1999 (reporting that a Hong Kong paper stated that the HKSAR's invitation to China to reinterpret the law was seen

## B. AMENDING MACAU'S PENAL CODE

In response to the heightened crime, Macau should also consider protecting its citizens from capital punishment and life imprisonment by implementing extradition<sup>276</sup> language in its Penal Code.<sup>277</sup> Macau's criminal law reflects domestic concerns.<sup>278</sup> Hence, Macau could change its Penal Code without China's approval as long as it does not infringe upon the Basic Law.<sup>279</sup> Macau would not be opposing China or its Basic Law by inserting clear language<sup>280</sup> in its Penal Code that prohibits individuals from extradition to China.<sup>281</sup> The Basic Law authorizes Macau's enforcement of the ICCPR<sup>282</sup> and permits the existence of Macau's former criminal procedure system.<sup>283</sup> Thus, extradition language in the Macau Penal Code would codify the principles of the ICCPR and allow Macau to carry on the Portuguese principles of rehabilitation for its criminals.<sup>284</sup>

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in a negative light for various reasons).

276. See BLACK'S LAW DICTIONARY 247 (Pocket ed. 1996) (defining extradition). Extradition means "1. to surrender or deliver (a fugitive) to another jurisdiction, 2. to obtain the surrender of (a fugitive) from another jurisdiction." *Id.*

277. See *Death Penalty Excluded from New Penal Code*, THE BRITISH BROAD. CORP., Nov. 1, 1994 (commenting on Portugal's position regarding whether extradition language should be transcribed into Macau's Penal Code).

278. See 'Part 28' of *ABCs of Macau SAR Basic Law*, *supra* note 224 (asserting that Macau's enactment of criminal laws is a domestic affair, which is within the MSAR's jurisdiction); see also Macau Basic Law, *supra* note 11, arts. 14, 85 (alluding to Macau's jurisdiction over Macau's criminal laws).

279. See Macau Basic Law, *supra* note 11, art. 11 (prohibiting Macau from enacting any law that contradicts the Macau Basic Law).

280. See *Death Penalty Excluded from New Penal Code*, *supra* note 277 (noting Portugal's desire to insert a clear rule regarding extradition in Macau's Penal Code).

281. See *id.* (discussing why China is displeased with Macau's insistence that extradition language be added to its Penal Code).

282. See Macau Basic Law, *supra* note 11, art. 40 (permitting Macau to remain under the ICCPR's umbrella).

283. See *id.* art. 85 (authorizing Macau's extension of the existing penal code).

284. See *Macau Government Drafts New Penal Code*, *supra* note 235 (explaining the history behind Portugal's decision to abolish the death penalty and life imprisonment in Portugal and Macau).



## C. IMPLEMENTING INSTITUTIONAL SAFEGUARDS

In addition to amending the Basic Law and the Penal Code, Macau should implement institutional safeguards into its judicial system. China's establishment of a Court of Final Appeal<sup>285</sup> in Macau indicates that the Macau judiciary is the ultimate authority in deciding issues unrelated to foreign affairs and defense. The judiciary, however, may ask China to interpret the provisions of the Basic Law<sup>286</sup> under "exceptional circumstances."<sup>287</sup> This approach grants the PRC overwhelming power to override decisions with which it disagrees, as evidenced by China's overruling of Hong Kong's Court of Final Appeal. Thus, in order to preserve the sanctity of the judicial system, the MSAR should mandate an institutional check and balance system, such as judicial review.<sup>288</sup>

The foregoing constitutional mechanism is indispensable because it would protect Macau's judicial autonomy from China's unwarranted interventions.<sup>289</sup> More importantly, it would prevent the executive branch from seeking China's interpretation of Macau's Basic Law.<sup>290</sup> Macau's judicial system is highly autonomous in nature, and

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285. See *Macau Governor Says No Final Court Before Handover*, *supra* note 208 (commenting on the problems that prevented Portugal and China from establishing Macau's court of final appeal before reversion); see also Macau Basic Law, *supra* note 11, art. 84 (discussing the creation of the Court of Final Appeal and describing its responsibilities).

286. See O'Clery, *supra* note 250, at 11 (explaining why China's interpretation would erode the SAR's autonomy); see also Macau Basic Law, *supra* note 11, art. 143 (giving the Macau government guidelines on how to seek interpretation of the Basic Law from the Standing Committee of NPC).

287. See *A Question of Interpretation*, *supra* note 13, at 17 (discussing why the NPC is the only committee that has the authority to amend the Basic Law).

288. See Wang, *supra* note 252, at 8 (providing a constitutional alternative that Hong Kong may use to prevent China from imposing on Hong Kong's rule of law).

289. See Macau Basic Law, *supra* note 11, art. 19 (granting the Court of Final Appeal with the power of final adjudication in all areas except foreign affairs and defense). No department of the Central Government may interfere with Macau's domestic matters. See *id.* art. 22.

290. See *HK Constitutional Row Looms Over China Immigrants*, *supra* note 120 (discussing the proper channels for a SAR to have the Basic Law interpreted). But see *A Question of Interpretation*, *supra* note 13, at 17 (explaining the benefits of having the Standing Committee of the NPC interpret the Basic Law).

judicial review would preserve the fundamental rights and freedoms of Macau's citizens.<sup>291</sup> Without judicial review, Macau's judicial autonomy may fall prey to China's heavy hand<sup>292</sup> because China does not have the proper judicial instruments to prevent violations of citizens' rights.<sup>293</sup>

## CONCLUSION

On the eve of the millennium, the curtain closed on the oldest colony in East Asia. China reunified another piece of the puzzle to the mainland. Macau, unlike Hong Kong, brings with it heavy baggage including a weak economy, inexperienced leaders, and widespread gang violence. Although China has attempted to assure the international community and Macau that it will not interfere in issues unrelated to foreign affairs or defense, China may not abide by its commitment. China's recent overruling of Hong Kong's Court of Final Appeal adds credibility to this fear. In order for Macau to flourish, it must take advantage of the "One Country, Two Systems" policy and exercise its autonomy to the fullest extent by amending its Basic Law and Penal Code and effectuating institutional safeguards. Despite uncertainties, as Macau familiarizes itself with its SAR status, Macau should take concrete steps to secure prosperity for its people that will survive beyond the next century.

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291. See *Macau: The Judicial System*, *supra* note 79 (describing the characteristics of Macau's judicial system); see Macau Basic Law, *supra* note 11, arts. 27-39 (granting various civil rights to Macau citizens).

292. See Spaeth et al., *supra* note 121, at 22 (stating various examples in which China has encroached in some of Hong Kong's internal affairs including its criminal laws).

293. See Wang, *supra* note 252, at 8 (giving a constitutional solution for Hong Kong's predicament).