THE APPLICATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS TO HONG KONG

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Abstract: As a dependency of the United Kingdom, Hong Kong is ineligible to ratify international agreements such as the International Covenant on Civil and Political Rights. The United Kingdom ratified the ICCPR and in so doing extended it to Hong Kong, with certain reservations. Full implementation of the ICCPR in Hong Kong requires that it be incorporated into domestic law, however. That was accomplished in 1991 with the passage of the Hong Kong Bill of Rights. This Article discusses the incorporation of the ICCPR into Hong Kong law via the Hong Kong Bill of Rights and the Basic Law, and proposes an interpretation of these three documents which will yield a possible legal foundation for the continued application after 1997 of the human rights protections of the ICCPR in Hong Kong.

During the past one hundred and fifty years that Hong Kong has been open to the outside world, human rights and its international protection have never been such outstanding issues as they have now become, causing profound concerns among both the Hong Kong society and the international community. As of June 1991, as a regional economic and administrative entity constituting a non-sovereign state, three legal documents exist concerning the protection of human rights in Hong Kong: the International Covenant on Civil and Political Rights (ICCPR),1 the Basic Law of the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China (the Basic Law)2 and the Hong Kong Bill of Rights Ordinance of 1991 (the Bill of Rights)3. The ICCPR provides for universally applied standards of human rights and measures for their protection internationally; the Bill of Rights introduces the ICCPR into the Hong Kong judicial system by means of local legislation; and the Basic Law offers a constitutional foundation for the ICCPR which may permit its applicability in Hong Kong to continue after 1997.

A key issue concerning the protection of human rights in Hong Kong turns on the application of the ICCPR there. This Article addresses this issue and some of the principal questions it raises: the legal basis for the protection of universal standards of human rights in Hong Kong at present and after 1997; the legal status of the Bill of Rights; and problems that might emerge in connection with the operation of the Basic Law when it takes effect. These questions involve the interaction of the foregoing three documents; this Article examines the interrelationships of these three legal documents in order to truly comprehend the legal issues involved in the protection of human rights in Hong Kong.

I. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

A. The Birth of the ICCPR and Its Monitoring Mechanism

In reaction to the brutal violations of human rights during the Second World War, one of the primary aims of the United Nations has been to protect human rights.\footnote{U.N. Charter, Preface and art. 1, para. 3.} It has been working diligently toward this goal for the past fifty years. The Universal Declaration of Human Rights,\footnote{Universal Declaration of Human Rights, International Bill of Human Rights, Dec. 10, 1948. U. N. Res. 217, U.N. GAOR (Part 1), Third Comm., Sess. III, pt. 1, agenda Item 58, at 71 (1948).} which was passed by the General Assembly of the United Nations in 1948, provided an authoritative interpretation of the concept of human rights. However, since it is merely a political document and has no legal authority, two international covenants on human rights were adopted separately by the United Nations General Assembly in 1966: the International Covenant of Economic, Social and Cultural Rights (ICESCR),\footnote{International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR].} and the International Covenant on Civil and Political Rights. Both covenants embody the Declaration, making the Declaration a legally binding international agreement among the signatory states.

The goals of both covenants are to define international human rights standards and to require signatory states to adopt measures to enforce those rights. However, due to the different characters of the rights safeguarded by the Covenants and the differing requirements for their signatory states, the two Covenants have usually been treated differently in international practice. The rights provided by the ICCPR are usually regarded as basic human rights standards and to require signatory states to adopt measures to enforce those rights. However, due to the different characters of the rights safeguarded by the Covenants and the differing requirements for their signatory states, the two Covenants have usually been treated differently in international practice. The rights provided by the ICCPR are usually regarded as basic human rights
that should be viewed as restrictions on the governments of signatory states, which aim to prevent the abuse of rights by the government and its officials. These rights become effective immediately upon ratification and are to be carried out directly by the signatory state's judicial system.\(^7\) The rights listed on the ICESCR, on the other hand, are usually regarded as principles to guide the signatory states.\(^8\) They may be carried out progressively depending on the relative stage of economic and social development within a given signatory country. The Convention that is most concretely relevant to the protection of Human Rights in Hong Kong and this discussion is the ICCPR.

The ICCPR is valid for its signatory states, binding all parties of the Covenant;\(^9\) every signatory government is obligated to observe its provisions.\(^10\) It comprises fifty-three articles in six sections.\(^11\) The first three sections, comprising twenty-seven articles, are the substantive provisions, which detail the rights and freedoms of residents in the areas of person, politics, and jurisdiction. The second three sections, comprising twenty-three articles, are procedural provisions, which govern implementation, monitoring, interpretation, amendment, ratification, accession, and enforcement of the ICCPR. The substantive provisions are important in that they establish an international standard for fundamental rights and freedoms that the peoples of signatory states can rely on as a basis in international law for protection of their fundamental human rights.\(^12\) The procedural provisions are equally significant, in that they provide for the legal effect and implementation of the ICCPR and safeguard its enforcement.

Implementation of the ICCPR is monitored in three ways under the Covenant.\(^13\) First, the signatory state must report to the Human Rights Committee on the state's implementation of the ICCPR.\(^14\) These reports are

\(^{7}\) ICCPR, supra note 1, art. 2, 999 U.N.T.S. at 173.
\(^{8}\) ICESCR, supra note 6, art. 2, 933 U.N.T.S. at 5.
\(^{9}\) Signatory states may also apply the ICCPR to their non-signatory dependencies.
\(^{10}\) ICCPR, see supra note 1, art. 2, 999 U.N.T.S. at 173.
\(^{11}\) The ICCPR took effect on March 23, 1976, after the thirty-fifth instrument of ratification or instrument of accession to the ICCPR was received by the Secretary-General of the United Nations, as prescribed in Article 49 of the ICCPR. By June 1, 1990, there were ninety-two countries which had ratified or acceded to the Covenant, twenty-four countries which had declared under Article 41 of the ICCPR that they recognized the competence of the Human Rights Committee to consider appeals initiated by state parties, and fifty-one countries which had signed the Optional Protocol to the ICCPR. ENCYCLOPEDIA OF HUMAN RIGHTS Annex C, 1842 (Edward Lawson ed. 1991).
\(^{12}\) ICCPR, supra note 1, arts. 6–27, 999 U.N.T.S. at 174–79.
\(^{13}\) ICCPR, supra note 1, arts. 28–45, 999 U.N.T.S. at 179–84.
\(^{14}\) Article 40 of the ICCPR requires that "the state Parties undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights." ICCPR, supra note 1, art. 40, 999 U.N.T.S. at 181–82.
submitted to the Human Rights Committee established pursuant to the Covenant; the Committee reviews and comments on the reports.16

Second, a state party can sue another state party in the Human Rights Committee. Pursuant to Article 41 of the ICCPR, a state party can complain to the Committee that another state party is not fulfilling its obligations under the Covenant. The Committee can then mediate the dispute between them and urge them to accept its suggestions voluntarily. The Human Rights Committee, however, is not an international tribunal and lacks power to try and punish state parties which transgress the Covenant.17

Third, residents of the signatories can appeal directly to the Human Rights Committee. This appeal procedure differs from the other two monitoring mechanisms; it applies only to the state parties which signed the Optional Protocol to the ICCPR.18 The Protocol permits the residents of its signatory states to appeal directly to the Human Rights Committee to protest any transgression the Covenant or infringement of rights committed by their own governments. The Protocol thus places the signatory state under more extensive and effective international supervision.19 Of course, the Human Rights Committee is unable to sit in judgment of, and prescribe penalties for, state parties which violate the provisions of the Protocol. It can only recommend a settlement.20

Although the three methods of monitoring and implementation mentioned above are only "soft laws" in legal effect (as is generally the case in international law), they nevertheless serve as important standards for determining whether or not the ICCPR is properly being applied in the signatory states.

B. Legal basis for the Application of the ICCPR to Hong Kong

Hong Kong is not a sovereign state and therefore lacks capacity to accede to the ICCPR itself;21 rather, the ICCPR is currently applied to Hong Kong through the United Kingdom. When it signed and ratified the

15 ICCPR, supra note 1, arts. 28-40, 999 U.N.T.S. at 179-82.
16 Id., art. 40(4), 999 U.N.T.S. 182.
17 Id., arts. 41-42, 999 U.N.T.S. 182-84.
19 Id., arts. 1-4, 6 I.L.M.
20 Id., art. 5, 6 I.L.M.
21 ICCPR, supra note 1, art. 46, 999 U.N.T.S. 184-85.
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Covenant, the U.K. declared that the ICCPR would also apply to its dependencies, including Hong Kong, but that it would reserve application of certain clauses. This declaration provided a basis in international law for the application of the ICCPR to Hong Kong. Article 2 of the Covenant provides, "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant." In accordance with the declaration made by the U.K. in ratifying the Covenant, the Hong Kong Government, as a dependency, is bound by the same promise. Consequently, Hong Kong residents should enjoy the rights and freedoms protected by the ICCPR.

However, not all of the articles of the ICCPR apply to Hong Kong. The U.K. declared certain reservations, some of which are applicable to the entire United Kingdom and its dependencies, and others which relate specifically to a given dependent. Nevertheless, except for the articles reserved by the United Kingdom, all other articles of the Covenant should, theoretically, have legal effect in Hong Kong. Because it is currently applied through the U.K. (until 1997), the actual effect of the ICCPR in Hong Kong is limited, however.

C. Key Issues in the Application of the ICCPR to Hong Kong

During the fifteen years from the United Kingdom's initial declaration in 1976 that ICCPR would apply to Hong Kong, until the Hong Kong Bill of Rights was promulgated in 1991, the application of ICCPR to Hong Kong was limited due to the limitations of Hong Kong's legal system and Hong Kong's lack of sovereignty. Moreover, the fate of the ICCPR in Hong Kong will face further challenges and technical barriers after the transfer of

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24 See Appendix A.
25 See Appendix B.
26 Some specific parts of the reservations would seem inappropriate given certain changing conditions in Hong Kong. For example, with regard to Article 25 (which states that the citizens may take part in the conduct of public affairs), the United Kingdom stated that based on the fact that no seats in the Legislative Council in Hong Kong were elected at that time, it would reserve Article 25 for the reason that its intent was not to require the establishment of an elected executive or legislative council in Hong Kong, where none had previously existed. Changes have since occurred which put into question the necessity of continuing this reservation. See generally, ICCPR, art. 25 at p. 179.
sovereignty in 1997. The obstacles to implementation of the ICCPR's human rights protections in Hong Kong both pre- and post-1997 are briefly discussed below.

First, the Covenant has no direct legal effect in Hong Kong and cannot be directly enforced in the Hong Kong judiciary. The present legal system in Hong Kong follows that of the U.K., a common law system. According to the custom in common law, international treaties merely declare rights and obligations agreed to by the signatory states vis-à-vis each other internationally, and do not automatically constitute part of domestic law for a signatory. They have no binding force for the governments of signatory states unless they are introduced into domestic law by legislation; only then can they be enforced within the signatory states. The United Kingdom has not incorporated the ICCPR into its domestic law by way of legislation. Thus, although the U.K. extended the ICCPR to cover Hong Kong when it ratified it, Hong Kong residents like their U.K. counterparts have no recourse to sue in U.K. courts on the basis of the ICCPR.2

Moreover, no legislation has been promulgated by the Legislative Council in Hong Kong which would make the ICCPR enforceable in Hong Kong, either. As a result, the ICCPR has not become an official part of Hong Kong law. Hong Kong residents thus cannot now rely on the ICCPR to protect their rights and freedoms, nor can the ICCPR be enforced by the courts in Hong Kong. Therefore, if the Hong Kong Government transgresses

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27 Speech by the British representative in the Human Rights Committee, U.N. "Reports on the Human Rights Committee, 1978", U.N. GAOR, 33rd Sess., Supp. No. 40 at 31, 35, U.N. Doc. A/33/40 (1978). In the U.K.'s first report to the Human Rights Committee of the United Nations, it claimed that the British legal system was operating in keeping with the provisions of ICCPR and was fulfilling its human rights obligations under the Covenant through its existing law, thus it was not necessary to incorporate the Covenant into British law. In fact, the report went so far as to declare that the Covenant could not be directly cited in the United Kingdom and its dependencies.

Assuming that this argument is otherwise tenable, it is at best only applicable to Britain itself and is not a ground for universal application, for it ignores the differences between the U.K. legal system and those of its dependencies. Indeed, the United Kingdom has a long tradition of rule by law and more fully developed legal protections for the rights of its citizenry than does Hong Kong. Even if Article 2-2 of the Covenant is not implemented in the U.K. and the Covenant is not legislated into its domestic law, the rights of British citizens would still be reasonably well safeguarded. (Article 2(2) of ICCPR provides that "where not already provided for by existing legislative or other measures each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.")

However, the inference cannot be drawn from the above point of view that all of Britain's dependencies, including Hong Kong, have an equally effective legal system as the U.K. and would be able to carry out the obligations of the Covenant without domestic legislation providing for enforcement of the ICCPR. Hong Kong legislation concerning fundamental human rights and freedoms is far from complete when measured against the standards of the ICCPR.
the Covenant, but does not violate Hong Kong law, an injured resident cannot sue the government for a tortious act in violation of the ICCPR in either Hong Kong or British courts, nor can the courts cite the Covenant's principles as a basis for their judgments. Thus, from the point of view of domestic law, the Covenant is not enforceable in Hong Kong.

Additionally, unlike the situation in the U.K., those human rights protections that exist in the law of Hong Kong are insufficient to duplicate the coverage that the ICCPR would afford if it could be fully implemented. Although Hong Kong Government officials have expressed their belief that the standards of human rights provided in the Covenant were already being met and guaranteed by Hong Kong's statutes, common law, and administrative measures, a comparison of the provisions of the ICCPR with human rights protections in Hong Kong law reveals that not all of the Covenant's human rights protections have relevant counterparts in local Hong Kong law. For example, the right of privacy and the right of information have not yet been recognized under the existing law in Hong Kong, whereas Articles 17 and 19, respectively, of the Covenant provide for these rights. Indeed, both Article 18 of the Registration of Persons Ordinance (Cap 177) and the Official Secrets Act (Cap 199) are in apparent conflict with the rights of privacy and information. The right of keeping silence may be deprived under the Crimes Ordinance (Cap 200) on the false pretense of the crime of loitering; freedom of expression may be restricted under the Public Security Ordinance (revised edition) on the pretense of false news; freedom to engage in social activities can be restricted by the Societies Ordinance (Cap 151), and so on.

Third, the ICCPR is effective with respect to Hong Kong only on the international level, and even then, only through the intermediary of the U.K. Government. Hong Kong cannot be made directly subject to international law; it cannot be a signatory state to the Covenant since it is not a sovereign nation. The Covenant is only applicable to Hong Kong by virtue of the fact that its metropolitan state, the United Kingdom, acceded to ICCPR and placed Hong Kong, as its dependency, within the scope of its application. The U.K., not the Hong Kong Government, is responsible for Hong Kong's international obligations under the procedural provisions of the ICCPR. The U.K. is obliged to report to the United Nations Human Rights Committee.

regarding the implementation of the Covenant in Hong Kong. Complaints by other ICCPR signatory states of violations by Hong Kong must be brought in the U.N. Human Rights Committee against the U.K. Government. Thus, even from the point of view of international law, the ICCPR can only be enforced vis-à-vis Hong Kong indirectly.

Fourth, as compared with the application of the ICCPR in Britain, Hong Kong lacks sufficient measures for international protection. As mentioned above, the Optional Protocol to the ICCPR provides an appeal mechanism: citizens of signatories of the Protocol can appeal directly to the Human Rights Committee from their home countries. The U.K. has not ratified the Protocol; thus Hong Kong citizens do not enjoy the protections it affords. In declining to ratify the Protocol, the U.K. explained that it had already acceded to the European Convention on Human Rights, which was based on the ICCPR; thus, a more effective system of international supervision already exists in the two monitoring institutions at Strasbourg. British citizens therefore enjoy better protection under the European Convention. Hong Kong, however, was specifically excluded when the United Kingdom extended application of the European Convention to some of its dependent territories. Therefore, Hong Kong citizens enjoy neither the international protections provided by the Optional Protocol to the ICCPR, nor those of the European Convention.

Finally, the implementation of the ICCPR in Hong Kong will face further challenges when sovereignty is transferred to the PRC in 1997. Pursuant to the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong in 1984 (The Joint Declaration), the United Kingdom will restore Hong Kong to China on July 1, 1997. From that date on, the U.K. will no longer undertake responsibility for any international treaties to which it acceded and extended to Hong Kong. The decision whether to assume those responsibilities will rest with China.

29 ICCPR, supra note 1, art. 40, 999 U.N.T.S. at 181–82.
30 Complaints by signatories of the ICCPR of violations by other signatories may be filed with, and heard by, the U.N. Human Rights Committee pursuant to the monitoring mechanism provided in Article 41 of the ICCPR.
31 See supra note 18.
33 Id., art. 19, at 234.
34 Id., sections III and IV, arts. 20–56, at 234–49.
Until the present, however, the Chinese Government has not acceded to many of these international treaties, such as the ICCPR; therefore, China is not bound by these treaties.

The Chinese Government promised, in Section XI of Annex I of the Joint Declaration, that "international agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may remain implemented in the Hong Kong Special Administrative Region." Section XIII of Annex I specifically provides that the provisions of the ICCPR as applied to Hong Kong "shall remain in force." The foregoing statement merely represents a principle or position. Actual implementation of an international agreement such as the ICCPR will entail consideration of several issues: will the obligations of the ICCPR currently undertaken by the U.K. be shouldered by China? How can the ICCPR be given direct legal effect in Hong Kong? How are the provisions remaining in force to be implemented? Unless these matters are resolved, the application of the ICCPR in Hong Kong after 1997 amounts to mere speculation.

The two key problems to be resolved in implementing the ICCPR in Hong Kong both now and in the future are 1) how to incorporate the Covenant into Hong Kong's legal system, and 2) how to ensure that ICCPR works as an international safeguard for Hong Kong.

D. Possible Solutions

The applicability of the Covenant in Hong Kong prior to 1997 depends on whether it can be given effect as local municipal law. In considering this problem, prior to the passage of the Bill of Rights in 1991, some Hong Kong scholars believed that the simplest and most effective way to apply effectively all the fundamental rights and freedom confirmed by the Covenant to Hong Kong would be either to write the whole Covenant into its legal system and make these rights a part of local laws under the direct authority of the judiciary, or to create a Bill of Rights which would take precedence over other local laws in order to guarantee the fundamental rights for residents. The latter alternative has been the subject of informal debate since the early 1980s. The problem was finally resolved in favor of the latter alternative on June 6, 1991, when the Bill of Rights was promulgated.

After 1997, the first important problem will be to establish a legal foundation for the application of the ICCPR in Hong Kong. If China accedes to the Covenant, the Covenant will thus be applicable to Hong Kong as a special administrative region of China. The Central Government of China might follow the U.K.'s precedent and undertake the international responsibilities which are borne by Britain today. This would resolve the issue of the application of the ICCPR to Hong Kong at the international level, although questions would remain concerning the reservations relating to Hong Kong during the period of transfer.

If China does not accede to the Covenant, however, the problem will become more complex; it is unlikely that the PRC Government will be able to resolve the problems alone. As the PRC said in Section XI of Annex I of the Joint Declaration, "the Central People's Government shall, as necessary, authorize or assist the Hong Kong Special Administrative Region Government to make appropriate arrangements for the application to the Hong Kong Special Administrative Region of other relevant international agreements."

The Sino-British Joint Liaison Group was established pursuant to the Joint Declaration in part to consider "action to be taken by the two Governments to ensure the continued application of international rights and obligations affecting Hong Kong." One of its tasks will be to determine what the relationship of the ICCPR to Hong Kong will be after 1997. China will be required to consult on this matter jointly with the United Kingdom, the Human Rights Committee of the United Nations, and even some of the other principal signatory states of the ICCPR. One possibility being considered is to have China's Central Government accede to the ICCPR on behalf of Hong Kong and state that the Covenant would apply only to Hong Kong. This would require, however, that China bear the international obligations which are currently undertaken by the U.K. Whatever the final result, the Sino-British Liaison Group bears the responsibility of designing a solution.

Another possibility that was considered during the drafting of the Basic Law entails the incorporation of the ICCPR into Hong Kong law via the Basic Law. The Basic Law will enjoy constitutional status in Hong Kong after 1997; the belief is widespread among Hong Kong residents that the legislative

introduction of the ICCPR into Hong Kong municipal law will be accomplished via the constitutional foundation of the Basic Law.\(^{38}\)

The following three approaches were among those considered during the drafting of the Basic Law. One advocated that the entire text of the ICCPR be written into the Basic Law. Another held that the text of the ICCPR should be written into the Basic Law as an annex. Yet another maintained that the existing laws in Hong Kong already cover the principal parts of the ICCPR; the Basic Law needs only to list those rights and freedoms which are not currently provided under the existing law in Hong Kong.\(^{39}\) The Drafting Committee for the Basic Law of the HKSAR ultimately opted to incorporate the substantive human rights provisions of the ICCPR into the Basic Law, after weighing the alternatives.

Thus, while the Bill of Rights currently provides some human rights protections for Hong Kong residents at present, the framework for the protection of the fundamental rights of Hong Kong residents after 1997 will be a function of the interaction of the Bill of Rights, the ICCPR, and the Basic Law. These issues are discussed more fully in the succeeding sections.

II. BASIC LAW

A. Basic Law's "Double Safeguard"

It is a goal of the PRC to maintain the prosperity and stability of Hong Kong after 1997; the guarantee of fundamental rights and freedoms for Hong Kong residents is one of the necessary conditions for accomplishing that goal. Long before the Sino-British Joint Declaration was signed in 1984, Mr. Liang-Yong Cha, who heads *Min Pao* in Hong Kong, devised a famous formula concerning the future of Hong Kong, "Freedom + Rule by law = Stability + Prosperity." His definition of freedom referred to "every freedom and personal right enjoyed by Hong Kong citizens at present."\(^{40}\) Later, he further pointed out, in the first plenary session of the Drafting Committee of the Basic Law of HKSAR, that "the Basic Law should contain provisions to safeguard the freedom and human rights of Hong Kong citizens. It would not only tally with the promise made separately by the Chinese and British Governments in the Joint Declaration, but also constitute a necessary means

\(^{38}\) CHEN, *supra* note 36, Preface.

\(^{39}\) Weiyun Xiao at 129–130 (cited in note 28).

\(^{40}\) CHEN, *supra* note 36, at 6.
to safeguard the free economy." The Government of the PRC completely accepted this view. The Chinese Government not only promised to safeguard the fundamental rights of Hong Kong residents by its signing of the Sino-British Joint Declaration, but also confirmed these rights by ensuring that a double protection was built into the Basic Law.

First, the Basic Law is the first statutory law in Hong Kong to confirm comprehensively the broad range of fundamental rights which the residents of Hong Kong would enjoy under the ICCPR. In the past, it had merely relied on the British Residual Principle to protect rights and freedoms. The protections were incomplete and had, to a great extent, the character of colonial laws. The Basic Law, on the other hand, establishes a special chapter (Chapter III, "Fundamental Rights and Duties of the Residents") confirming, item by item, current universal norms of human rights. It has effectively incorporated the principal substantive human rights provisions of the ICCPR with the exception of the reservations made by the U.K. Moreover, since the Basic Law will have constitutional status in Hong Kong after 1997, its provisions will supersede other Hong Kong laws and ordinances. Hong Kong residents have thus gained more powerful legal protections.

The second element of the Basic Law's "double safeguard" resides in a special article which provides principles for the relationship between the Covenant proper and Hong Kong municipal law (in conjunction with the Basic Law's separate enumeration of the substantive provisions of the ICCPR). Article 39 of the Basic Law states that "the provisions of the International Covenant on Civil and Political Rights, . . . as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region." This is clearly intended to safeguard the application of the Covenant in Hong Kong after 1997. A careful examination of the Letters Patent and other Hong Kong statutes

41 Id. at 63.
42 The Joint Declaration, supra note 37, art. 3(5); and the Joint Declaration Annex I, art. 13.
43 As the Hong Kong government reported to the U.N. Human Rights Committee, prior to June 1991 "there [were] no legal documents providing comprehensive human rights." Reports submitted by the Hong Kong Government to the Human Rights Committee, 1978. In 1991 the Bill of Rights was passed which incorporated many of the substantive protections of the ICCPR, but the Basic Law went further in its coverage.
44 Weiyun Xiao, supra note 28, at 117–22.
45 See Appendix C.
reveals no definite provisions concerning the application of the ICCPR. The Basic Law, on the other hand, not only affirmatively undertakes that pertinent provisions of the ICCPR "shall remain in force" after 1997, but also stipulates in explicit terms that it they be implemented by Hong Kong municipal law. Compared with the current state of the law regarding human rights in Hong Kong, the Basic Law represents great progress.47

B. Comparison of Basic Law and ICCPR Human Rights Provisions

A comparison of the human rights provisions of the Basic Law with those of the ICCPR reveals that the majority of the substantive human rights articles of the ICCPR with the exception of those reserved by the U.K. have been reproduced in the Basic Law.48 The Basic Law exceeds the Covenant in some respects. For example, the right to strike and the right of private ownership of property are embraced by the Basic Law, while no analogous provisions are contained in the Covenant.

Also, the Basic Law is not confined to those rights explicitly enumerated in the Covenant. Article 38 of the Basic Law states that "Hong Kong residents shall enjoy the other rights and freedoms safeguarded by the laws of the Hong Kong Special Administrative Region." In other words, any Hong Kong law concerning human rights, except those that contravene the Basic Law and are subject to amendment by the HKSAR legislature, will remain in force, even if it is not within the scope of rights stipulated by either the Basic Law or the Covenant. Moreover, the Hong Kong legislature, under the Basic Law, is able to pass new laws safeguarding the rights and freedoms of Hong Kong residents.

In addition, the Basic Law establishes a principle under which the provisions concerned of ICCPR is a prerequisite for legislature in Hong Kong. Section 2, Article 39 of the Basic Law provides, "[t]he rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless as prescribed by law. Such restrictions shall not contravene the provisions of the preceding paragraph of this Article." This provision, on the one hand, affirms that the rights and freedoms enjoyed by Hong Kong residents may not be restricted unless prescribed by law; and on the other hand emphatically establishes that such restrictions may not conflict with the provisions of the ICCPR, thus safeguarding the long-term effectiveness of the Covenant. This

47 The ICCPR is one of the handful of international treaties which the Basic Law mentions explicitly and stipulates continued application to Hong Kong.

48 See Appendix C.
provision gives the provisions of the ICCPR precedence over the general laws and thus relieves Hong Kong residents from the worry that the rights affirmed by ICCPR might be restricted by legislatures after 1997.

Finally, the Basic Law regards the safeguard by law of the rights and freedoms of Hong Kong residents as a fundamental principle and writes in it into Chapter I, Article 4, "General Principles." At the same time, the scope of subjects who may enjoy the rights and freedoms provided in Chapter III extends to people other than Hong Kong residents.

The principal difference between the Basic Law and the ICCPR is that the former only constitutes general principles for each of the rights and freedoms it seeks to protect, while the ICCPR sets forth the fundamental human rights it protects in detail, and, additionally, provides for monitoring of their implementation. Moreover, not all of the ICCPR's substantive protections have been incorporated into Chapter III of the Basic Law. Thus, the Basic Law still does not provide all the human rights protections desired by Hong Kong's residents. Even under the Basic Law, the Covenant

49 "The Hong Kong Special Administrative Region shall safeguard the rights and freedoms of the residents of the Hong Kong Special Administrative Region and of other persons in the region in accordance with law." Basic Law, supra note 2, art. 4, 29 I.L.M. 1521.

50 "Persons in the Hong Kong Special Administrative Region other than Hong Kong residents shall, in accordance with law, enjoy the rights and freedoms of Hong Kong residents prescribed in this Chapter." Id. at art 41, 29 I.L.M. 1527.

51 The Drafting Committee did not explain why it failed to introduce the entire text of the ICCPR (or at least its substantive provisions in their entirety) into the Basic Law. According to Professor Xiao Weiyun of Peking University, who personally participated in the entire drafting process and collected the proceedings later in a book he edited, there are four reasons:

1) To avoid unnecessary repetition. Since the Basic Law provides fundamental rights and freedoms for Hong Kong residents which are nearly identical with the provisions of the ICCPR, it seems unnecessary for it to duplicate the entire text of ICCPR. In addition, it is only important that the Basic Law include those rights of the ICCPR that are not safeguarded under existing Hong Kong law.

2) To comply with the provisions of Annex I of the Sino-British Joint Declaration. The Chinese government promised under Annex I of the Joint Declaration that "the provisions of the International Covenant on Civil and Political Rights . . . as applied to Hong Kong shall remain in force." Today, the characters of Section 1, Article 39 of the Basic Law repeat Paragraph 4, Section XIII, Annex I of the Joint Declaration nearly verbatim.

3) To accord with the current situation in Hong Kong. The U.K. reserved several provisions of the ICCPR from application to Hong Kong and, in addition, stated that it was unnecessary to incorporate the Covenant into the law of either the U.K. or Hong Kong. The Basic Law follows the British precedent and provides in Section 1, Article 39 that the Covenant "shall be implemented through the laws of the Hong Kong Special Administrative Region."

4) To comply with the PRC's customary handling of international agreements. Although the PRC has consistently abided by international conventions, treaties and agreements to which it has acceded, it has never incorporated these documents into its domestic law; this has also been its approach to the ICCPR. Professor Xiao Weiyun concluded that such a stipulation of the Covenant made by the Basic Law is "better." Weiyun Xiao, supra note 28, at 130–32.
retains the same status with respect to Hong Kong that it has before 1997 and therefore the Hong Kong courts may not rely on its authority.

C. Implementation of Article 39 of the Basic Law

Article 39 of the Basic Law stipulates that the ICCPR shall be applied to Hong Kong and provides a legal basis in Hong Kong municipal law for its application. Several issues remain to be resolved regarding the practical implementation of this article, however.

The first issue relates to the language in the article, "the provisions of the ICCPR as applied to Hong Kong." At present, theoretically, the whole Covenant, except for those provisions reserved by the U.K., is applied to Hong Kong (through the U.K.), including both the substantial articles (enumerating the fundamental rights and freedoms) and the procedural articles (concerning monitoring and enforcement). The question is, does Article 39 refer to all the provisions of ICCPR, or only to part of them? It seems clear that all the substantial articles concerning the fundamental rights and freedoms (or the majority of them at any rate) are meant to be included in the "provisions concerned," because they represent the established international norms of human rights and as such must be observed by the signatory states of the Covenant, and also because most of them are affirmed in Chapter III of the Basic Law.

However, the Basic Law does not incorporate the procedural provisions of the ICCPR. As mentioned above, thus far the ICCPR's procedural provisions are applicable in Hong Kong only through the British Government acting as intermediary. If the PRC does not accede to the Covenant and thus would not be bound by the ICCPR, these procedural articles aimed at monitoring and enforcement would be meaningless to China. Evidently, the "provisions . . . as applied to Hong Kong" only refers to the substantial articles; the scope of provisions "remaining in force" is thus greatly reduced. Therefore, the interpretation of the words "provisions concerned" has a direct bearing on the scope of the ICCPR in Hong Kong and may prove an insurmountable technical barrier to enforcement of Article 39. The solution of this problem depends not so much on the interpretation of the meaning of the Article as on establishing a basis in international law by which the Covenant can be made to apply to Hong Kong after 1997. Such a basis

52 Basic Law, supra note 2, art. 39, 29 I.L.M. 1526.
must, of course, be decided by an international agreement reached among the relevant parties.

Another issue regarding the implementation of Article 39 arises with respect to the interpretation of the words "remain in force." At least three levels of meaning are included in a reasonable understanding of this phrase: 1) the reservations made by the U.K. for Hong Kong "shall remain in force"; 2) the fundamental rights and freedoms protected in the ICCPR "shall remain in force" in Hong Kong; and 3) the means by which the provisions of the ICCPR can be applied to Hong Kong "shall remain in force," i.e., their implementation through the municipal laws of Hong Kong. Some of the same problems that exist at present in applying the ICCPR to Hong Kong will continue after 1997 under this provision; in particular, the Basic Law does little or nothing to further the legal effect of the Covenant under the judicial system in Hong Kong, and basically maintains its status quo ante. The key problem here lies is whether it will be possible to safeguard effectively the enforcement of the Covenant in Hong Kong in the future.

Indeed, some judicial remedial measures are provided in the Basic Law. Section 2, Article 35 stipulates that "Hong Kong residents shall have the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel." Such lawsuits mainly refer to the infringement upon residents' rights by the executive authorities and their personnel. If the rights infringed belong to the scope confirmed by ICCPR but not to the range safeguarded by the present Hong Kong laws, such as the right to privacy and the right to information, the courts will not able to try these cases based on the Covenant.

In addition, the language of Section 1, Article 39 which provides for the implementation of the provisions of the ICCPR through the laws of the Hong Kong Special Administrative Region should be made clear and definite, by specifying which laws it refers to and whether there is any time limitation on the effective period of these laws. The conventional understanding would seem to be that the provision does not intend to restrict or forbid passage of a Hong Kong statute by which the Covenant could be fully incorporated into Hong Kong law, so long as the statute did not conflict with the Basic Law.

53 Id. at Annex III, "National Laws to be applied in the Hong Kong Special Administrative Region," 29 I.L.M. 1548.
III. BILL OF RIGHTS

A. Incorporation of the Covenant into Hong Kong Law through the Bill of Rights

Under powerful pressure from Hong Kong residents, the Hong Kong Legislature promulgated the Bill of Rights on June 6, 1991. One of principal reasons for the Bill's passage may be that the Covenant was unenforceable in Hong Kong. The Preliminary to the Bill of Rights stated that "the purpose of this Ordinance is to provide for the incorporation into the law of Hong Kong of provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong."54 Although the passage of this Bill aims at restricting the Hong Kong Government after 1997 and thus focuses on a long-term, not a short-term, target, it nevertheless achieves the effect of incorporating the Covenant into the law of Hong Kong at present.

The Ordinance is composed of three parts: part I, the Preliminary, part II, the Hong Kong Bill of Rights, and part III, the Exceptions and Savings. The key point of the Preliminary is to provide the following principles for the relationship between this Bill and the other Hong Kong laws and ordinances: all pre-existing legislation that permits a construction consistent with this Bill shall be given such a construction; that inconsistent with it will be repealed; and all legislation enacted on or after the commencement date shall be construed so as to be consistent with the Covenant as applied to Hong Kong.55

Part III reaffirms four of the original reservations made by the U.K.:56 the provisions concerning juveniles under detention, immigration legislation, persons not having the right of abode, and the Executive and Legislative Councils. Additionally, a grace period is provided for: for a period of one or two years beginning on the commencement date, the Bill of Rights is subject to the six ordinances listed in an annex so that they may adjust themselves to be consistent with the Bill of Rights.57

The substantive provisions of the Bill of Rights are the 23 within part II. These reproduce rights enumerated in the 27 articles of the first three

54 Bill of Rights, supra note 3, at 1313.
56 See Appendix B.
57 Bill of Rights, supra note 3, part III; 30 I.L.M. 1319.
parts of the ICCPR. In a certain limited sense the Bill of Rights may be regarded as a Hong Kong reproduction of the Covenant.

Articles 1, 4, 5, 20 of the ICCPR's substantive provisions were not reproduced in the Bill of Rights. Article 1 (concerning self-determination) was omitted because it is not appropriate for Hong Kong. Article 4 (relating to public emergency) is actually confirmed by Article 5, Part I of the Bill of Rights. Article 5 of the ICCPR (rights recognized or not yet recognized by the Covenant will not be restricted or derogated) is confirmed separately by Article 2(4) and (5), Part I of the Bill of Rights. The U.K. reserved Article 20 of the ICCPR because its content is very close to that of Articles 19-21; it is thus unnecessary to list it in the Bill of Rights separately. Thus, nearly all the substantive articles of the ICCPR, except for Articles 1 and 20, are incorporated into the law of Hong Kong.

While the Bill of Rights transplants nearly all the substantive provisions of ICCPR, it nevertheless maintains the reservations made by the U.K. It thus conforms strictly to the scope of application of the ICCPR. Therefore, it is exactly consistent with the "provisions of ICCPR as applied to Hong Kong" stipulated in Section XII, Annex I of the Joint Declaration and Article 39, Chapter III of the Basic Law.

B. Legal Status of the Bill of Rights

The key function of the Bill of Rights lies in transplanting the relevant provisions of ICCPR into Hong Kong law and making them enforceable. Its legal status directly concerns the effectiveness of the human rights provisions of the ICCPR in Hong Kong.

The present statutory framework in Hong Kong is broadly divided into three levels: 1) Hong Kong's Letters Patent and the Royal Instructions with constitutional status in Hong Kong; 2) legislation of the British Parliament as applied to Hong Kong; and 3) ordinances and other laws passed by the Hong Kong Legislature. The Bill of Rights is an ordinance passed by the Hong Kong Legislative Council and belongs to the level of local legislation (general law). According to common law custom, if the Bill of Rights conflicts with other general laws adopted later by the Hong Kong Legislative Council based on a simple majority, it may be superseded by the new ordinances. As one of the general laws, under the common law the Bill of Rights enjoys no

\[58\] See Appendix D.

\[59\] Bill of Rights, supra note 3, arts. 10–13, 30 I.L.M. 1316–17.
predominance. Although Article 4, Part I provides that all legislation hereafter shall be construed so as to be consistent with the ICCPR as applied to Hong Kong, this article, as a part of the Bill of Rights itself, would be invalidated along with the Bill in the event of a conflict.

In view of this obvious defect in the Bill, remedial measures were adopted by Britain simultaneously. On the same date (June 8, 1991) that the Bill of Rights took effect, Hong Kong's Letters Patent was also amended to incorporate provisions of the ICCPR into the laws of Hong Kong. The amendment, together with the Bill of Rights, not only confirmed the direct legal effect of the ICCPR human rights protections that were written into the Bill of Rights, but also vested these provisions with a constitutional status, giving them predominance over all other legislation. Thus, a law in violation of the Bill of Rights is also in violation of the Covenant. Under the current protection of Hong Kong's Letters Patent, the Bill of Rights is able to play significant role in safeguarding the rights and freedoms of Hong Kong residents until June 1997.

The status of the Bill of Rights will be uncertain after June 1997, however, when Hong Kong's Letters Patent will be declared invalid along with the other colonial laws. Whether the Bill of Rights will continue to exist and if so, what its legal status will be are important questions.

After Hong Kong returns to the PRC's control, the legal framework in Hong Kong will be restructured in two levels: one level will comprise the Basic Law as a constitutional document together with some other specific national laws to be applied to Hong Kong Special Administrative Region, and the other level will comprise the laws previously in force in Hong Kong together with any laws passed by the Legislative Council in Hong Kong after 1997.

The definition of the "laws previously enforced" is addressed in Article 8 of the Basic Law, which provides that "the laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinance, subordinate legislation and customary law shall be maintained, except for any that contravene this law, and subject to any amendment by the legislature of the Hong Kong Special Administrative Region." However, Article 8 gives no specific time restriction on the term of "laws previously in force in Hong Kong." When is the line of demarcation for these laws? Do these laws refer only to those in force prior to the signing of the Sino-British Joint

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60 Id., Introductory Note, 30 I.L.M. 1310–11.
61 Basic Law, see supra note 54.
Declaration, or does the category also cover those adopted during the period from December 1984 through June 1997? Thus far there has been no definite explanation of this point. It would seem logical that "the laws previously in force in Hong Kong" should be understood as all laws in force in Hong Kong before the Basic Law takes effect on July 1, 1997. In accordance with this understanding, the Bill of Rights is certainly included in "the laws previously in force in Hong Kong."

Whether a given "law previously in force" can be maintained or not will depend on whether or not it contravened the Basic Law or was subject to amendment by the legislature. As stated above, the Bill exactly reproduces most of the substantive provisions of the ICCPR; thus, even in the most conservative view, it should be deemed to fall within the ambit of "the provisions of the ICCPR as applied to Hong Kong" language found in Section XII, Annex I of the Joint Declaration and Article 39, Chapter III of the Basic Law. The Basic Law affirms that these provisions "shall remain in force"; it is only logical that the Bill of Rights, in conformity with these provisions, will continue exist lawfully.

Even if the Bill of Rights is affirmed to "remain in force" after 1997, it cannot be inferred from the foregoing that it would remain in force forever. Without the protection of Hong Kong's Letters Patent, the Bill will return to its original status as general law. If the Bill of Rights were to contravene any new ordinances adopted by the HKSAR Legislative Council after 1997, the courts would proclaim the Bill invalid. It is this possibility that gives Hong Kong residents cause to worry.

How can the predominance of the Bill of Rights be maintained after 1997? Some people put their hopes on amending the Basic Law to permit writing the Bill into the Basic Law or making it one of its annexes to give it constitutional status. They hardly realize that amendment of the Basic Law is not a small matter and is only available in limited circumstances. The Government of the PRC has stated repeatedly that it is impossible to amend the Basic Law before it takes effect on July 1, 1997. It is therefore unrealistic to assume that the Bill could be restored to predominance by amending the Basic Law.

Some legal ground for the continued predominance of the Bill of Rights may be found in Section 2, Article 39 of the Basic Law, however, which can

62 See Meifen Liang, supra note 36 at 237.
63 Basic Law, supra note 2, Chapter VIII, "Interpretation and Amendment of the Basic Law," art. 159, 29 I.L.M. 15-45.
64 Enzhu Jiang, Shih Chien Jih Poo, WORLD JOURNAL, June 9, 1992, at 7.
be read to provide such a basis, although that may not be its original intent. Article 2 states, "the rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless prescribed. Such restriction shall not contravene the provisions of the preceding paragraph of this Article." This provision establishes a principle for future legislative acts: any laws which restrict the rights and freedoms of Hong Kong residents must not contravene Section 1, Article 39; i.e., this constitutes a standard to obey. Therefore, Section 1, Article 39 has detached status and overrides other laws.

What is the implication for the provisions within Section 1? There may be two interpretations. In the narrow sense, it may refer only to the provisions of the ICCPR as applied to Hong Kong; in the broad sense, taken in the context of the entire Section 1, it may be read to include not only the "provisions concerned" but also "the laws of the Hong Kong Special Administrative Region" through which "the provisions concerned" shall be implemented. As shown above, the Bill of Rights is, in effect, a reiteration of the substantial provisions of ICCPR in Hong Kong as well as a specific law in force in Hong Kong by which the provisions of the ICCPR are introduced into Hong Kong law and are made enforceable. From any angle, then, the Bill of Rights should be deemed to fall within the scope of Section 1, Article 39, and so should enjoy the status of predominance affirmed by Section 2, Article 39.

IV. CONCLUSION

The foregoing reflects only this writer's personal understanding of the Basic Law. While it must be borne in mind that under Article 158 of the Basic Law, "the power of interpretation of this law shall be vested in the Standing Committee of the National People's Congress," nevertheless, Section 2 of the same Article also stipulates that "the Standing Committee of the National People's Congress shall authorize the courts of the Hong Kong Special Administrative Region to interpret on their own, in adjudicating cases, the provisions of this law which are within the limits of the autonomy of the Region." Insofar as the provisions of the ICCPR have been incorporated into municipal law they fall within the scope of the autonomy of HKSAR, so the courts in Hong Kong should be authorized to interpret Article 39 of the Basic Law. It is fully possible for the courts of Hong Kong to

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65 Basic Law, supra note 2, art. 158, 29 I.L.M. 1545.
66 Id.
follow principles which conduce to the enforcement of the Bill in Hong Kong and yield the same interpretations as those expressed in this discussion.

Thus, the Bill of Rights may find the legal foundation required to maintain its status of predominance. The residents of Hong Kong should be able to cherish the Bill of Rights as an amulet protecting their rights and freedoms, so long as the requirements of the Basic Law are fulfilled conscientiously.

The technical barrier to the application of ICCPR to Hong Kong which caused a long delay was overcome by the passage of the Bill of Rights; the universal standards of human rights stipulated in the ICCPR thus have achieved direct legal effect in Hong Kong. The Bill of Rights will be seen as a milestone in Hong Kong's legal history, having provided comprehensive human rights protections for its citizens.

After 1997 the constitutional basis for the Bill of Rights' guarantee of human rights protections will be provided by the Basic Law. This is supplemented by the promises undertaken by the PRC in the Joint Declaration and the reasonable arrangement made between the PRC and the U.K. for continuing the application of the Covenant to Hong Kong. The citizens of Hong Kong have good reason to be optimistic about the continued protection of their rights and freedoms after 1997.
APPENDIX A: RIGHTS PROTECTED UNDER THE ICCPR

1. Self-determination (Art. 1)⁶⁷
2. Equality (Art. 2, 3, 26)
3. Judicial remedy (Art. 2)
4. Freedom from violation and limitation of fundamental rights (Art. 5)
5. Life (Art. 6)
6. Freedom from torture, cruel, inhuman, or degrading treatment or punishment (Art. 7)
7. Freedom from slavery, servitude, and forced or compulsory labor (Art. 8)
8. Freedom from arbitrary arrest or detention (Art. 9)
9. Rights of persons deprived of their liberty (Art. 10)
10. Right not to be imprisoned for inability to fulfill a contractual obligation (Art. 11)
11. Liberty of movement and freedom to choose a residence (Art. 12)
12. Right of aliens to freedom from expulsion (Art. 13)
13. Fair trial (Art. 14)
14. Protection against retroactive legislation (Art. 15)
15. Recognition as a person (Art. 16)
16. Privacy (Art. 17)
17. Freedom of thought, conscience and religion (Art. 18)
18. Freedom of expression (Art. 19)
19. Prohibition of propaganda for war and incitement to discrimination (Art. 20)
20. Peaceful assembly (Art. 21)
21. Freedom of association (Art. 22)
22. Protection of the family unit (Art. 23)
23. Children's rights (Art. 24)
24. Right to take part in the conduct of public affairs (Art. 25)
25. Freedom from discrimination (Art. 26)
26. Right of minorities (Art. 27)⁶⁸

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⁶⁷ The suitability of this provision in Hong Kong is debatable. Throughout history, Hong Kong has at all times been a part of China. Only in the last century was it brought into the British colonial system through inequitable treaties. Hong Kong is quite different from the other autonomous and trust territories of the British Commonwealth; self-determination has never been an issue. Under the Sino-British Joint Declaration, China will resume its sovereignty over Hong Kong as of July 1, 1997.
APPENDIX B: U.K. RESERVATIONS TO THE ICCPR

1. With regard to the right of self-determination and the disposition of natural resources, Britain stated that in the event of a conflict between the provisions under Article 1 of ICCPR concerning the right of self-determination and the disposition of natural resources, and the related articles under the United Nations Charter, the obligations under the Charter shall prevail.  

2. With regard to juvenile persons who are detained, Articles 10-2(b) and 10-3 of the Covenant require that the above juvenile should be accommodated separately from adults. The United Kingdom reserved the right not to comply with this requirement if there was a lack of suitable facilities or if the mixing of adults and juveniles was deemed to be mutually beneficial.  

3. With regard to the right to liberty of movement and freedom to choose a residence, Article 12-1 provides that everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Articles 12-2 and 12-4 provide that everyone shall be free to leave any country, including his own and no one shall be arbitrarily deprived of the right to enter his own country. Britain reserved the right to apply the principle of freedom of movement separately to each of the territories comprising the United Kingdom and its dependencies and the right to continue to apply immigration legislation governing entry into, stay in, and departure from the United Kingdom on all but those who enjoyed the right of abode therein.  

4. With regard to the right of aliens to freedom from expulsion, the United Kingdom reserved the right not to apply Article 13 of ICCPR in Hong Kong insofar as it confers a right of review of a decision to deport an alien who is lawfully within the territory of Hong Kong, and a right to be represented for this purpose before the competent authority.  

5. With regard to the prohibition of propaganda for war and incitement to discrimination, Article 20 provides that any propaganda for war, or any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence be prohibited by law. (Britain

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68 ICCPR, supra note 1, arts. 1–27, 999 U.N.T.S. 173–79.  
69 Id. at 287.  
70 ICCPR, 1007 U.N.T.S. 393.  
71 Id. at 394.  
72 Id.
interpreted this article consistently with the rights conferred by Articles 19
and 20 of the Covenant and having legislated in matters of practical concern
in the interests of public order reserved the right not to introduce any further
legislation.) The British Government also reserved a similar right in regard to
each of its dependent territories.73

7. With regard to the equality of right and obligation between husband
and wife, the first sentence of paragraph 4 of Article 23 provides that the
husband and wife are equal in marriage. Britain stated that it had to reserve
the right not to apply the above sentence insofar as it concerns any inequality
which may arise from the operation of the law of domicile.74

8. With regard to children's nationality, Article 24-3 provides that every
child, without any kind of discrimination has the right, inter alia, to be
registered immediately after birth, to have a name, and to acquire a
nationality. The United Kingdom reserved the right to restrict the acquisition
and possession of citizenship to those having sufficient connection with the
United Kingdom or any of its dependent territories. Accordingly, Britain's
acceptance of Article 24-3 and of the other provisions of the Covenant is
subject to the provisions of any local nationality legislation.75

9. With regard to the right of taking part in the conduct of public affairs,
Article 25 provides that every citizen shall have the right and opportunity to
take part in the conduct of public affairs, to vote, and to be elected at genuine
periodic elections by universal adult suffrage by secret ballot, and to have
equal access to public service in his country. Britain reserved the right not to
establish an elected legislative Council or Executive Council in Hong Kong;76
also the right not to apply Article 25(C) to the employment of married women
in the Civil Service of Hong Kong.77

73 Id.
74 ICCPR, supra note 68.
75 ICCPR, supra note 70 at 394.
76 Id.
77 ICCPR, supra note 1, at 288.
APPENDIX C: COMPARISON OF HUMAN RIGHTS PROVISIONS
IN THE HONG KONG BASIC LAW AND THE ICCPR

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APPENDIX D: COMPARISON OF THE HUMAN RIGHTS PROVISIONS IN THE HONG KONG BILL OF RIGHTS AND THE ICCPR

| Entitlement to rights without distinction | Art. 1 | Art. 2, 3 |
| Right to life | Art. 2 | Art. 6 |
| No torture or inhumane treatment | Art. 3 | Art. 7 |
| No slavery or servitude | Art. 4 | Art. 8 |
| Liberty and security of person | Art. 5 | Art. 9 |
| Rights of persons deprived of liberty | Art. 6 | Art. 10 |
| No imprisonment for breach of contract | Art. 7 | Art. 11 |
| Liberty of movement | Art. 8 | Art. 12 |
| Restrictions on expulsion from Hong Kong | Art. 9 | Art. 13 |
| Equality before courts and rights to fair and public hearing | Art. 10 | Art. 14-1 |
| Rights of persons charged with or convicted of criminal offense | Art. 11 | Art. 14-2-7 |
| No retroactive criminal offenses or penalties | Art. 12 | Art. 15 |
| Right to recognition as person before law | Art. 13 | Art. 16 |
| Protection of privacy, family, home, correspondence, honor and reputation | Art. 14 | Art. 17 |
| Freedom of thought, conscience and religion | Art. 15 | Art. 18 |
| Freedom of opinion and expression | Art. 16 | Art. 19 |
| Right of peaceful assembly | Art. 17 | Art. 21 |
| Freedom of association | Art. 18 | Art. 22 |
| Rights in respect of marriage and family | Art. 19 | Art. 23 |
| Rights of children | Art. 20 | Art. 24 |
| Right to participate in public life | Art. 21 | Art. 25 |
| Equality before and equal protection of law | Art. 22 | Art. 26 |
| Rights of minorities | Art. 23 | Art. 27 |