

Chapman Chen : Co-location Arrangement—An Oedipal Self-castration Scheme for Hong Kong

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Transport and Housing Bureau website、Highways Department website

(中文版《割地自宮石敬瑭》，作者曾焯文，見英文版之後)

In his Final Policy Address, Chris Patten, the last governor of Hong Kong, presents a list of benchmarks for checking whether one country-two systems fares well in Hong Kong after 1997, one of which is:- “Is the integrity of Hong Kong/Guangdong border being maintained, including the separate border controls operated by the Hong Kong Immigration Department.” The co-location arrangement of the Hong Kong Section of the Guangzhou-Shenzhen-Hong Kong Express Rail is precisely a scheme designed and packaged with law by the Hong Kong Communist Government, with a view to masochistically inviting Communist China to cross the border, erode Hong Kong jurisdiction, and damage one country-two systems.

On 25 July, the Hong Kong SAR Government announced the co-location plan, whereby part of the area of West Kowloon Terminus of Express Rail Link (XRL) will be designated as Mainland Port Area, where China law, instead of Hong Kong law, will prevail. At a press conference held on the same day, the Secretary for Justice, Rimsky Yuen, said that the Basic Law does not “define” the territory of Hong Kong, that all the land and resources within Hong Kong belong to the State, and that the co-location plan does not amount to ceding HK land to Mainland China. Yuen maintained that since the co-location arrangement does not change the ICQ procedures, the rights and obligations of (HK) passengers will remain the same. He also stressed that the arrangement was put forth by the HK Government rather than the Central Government, that the Hong Kong Government will, based on Article 20 of the Basic Law, request the State Council to authorize Hong Kong to implement the arrangement.

In the following paragraphs, I will retort Rimsky Yuen’s argument point by point. Admittedly, the territory of HK is only demarcated by Order of the State Council of the People’s Republic of China No. 221, as an instrument attached to the Basic Law of Hong Kong, whilst the basic law of most autonomous regions in the whole world clearly demarcates their boundary. Nonetheless, if all Hong Kong land belongs to China, how could Hong Kong lease it back to China, as argued by the Hong Kong Government? While Hong Kong has always been enforced in the geographical area of West Kowloon Terminus, China law will take its place there after the implementation of the co-location system. How can it be maintained that the rights of Hongkongers there will remain the same? Despite Hongkongers’ objection, the Hong Kong Communist Government constructed Express Rail Link, proposed the co-located arrangement, and is going to appeal to Beijing for authorization of Hong Kong to forsake its own jurisdiction over portions of West Kowloon Terminus, thereby enabling the claws of Communist China to stretch into the heart of Hong Kong. Only a colonial regime betraying the interests of local people will take such pathetic, suicidal, self-emasculating measures.

Tenant Leasing Room to Owner?

First, Rimsky Yuen maintained that “there is no question of any cession or giving up of land. The reasons are obvious. According to Article 7 of the Basic Law, the land and natural resources within the HKSAR shall be State property. The HKSAR shall be responsible for their management, use and development and for their lease or grant to individuals, legal persons or organisations for use or development... the Mainland Port Area will be leased to the relevant Mainland authorities, and there will not be any transfer of property ownership.” This is, however, self-

contradictory, illogical and preposterous. For, on the one hand, “there will not be any transfer of property ownership” implies that Hong Kong has “property ownership” of the land; on the other hand, all land in Hong Kong is “State property”. In other words, if all the land within Hong Kong belongs to China, then Hong Kong is a tenant and China is the owner. How could a tenant possibly lease to the owner a room rent from the owner? (Rimsky actually said, “why not”.) According to Yiu Chung-yim, an expert in city planning, if a tenant allows the owner to freely enter and leave the rented place, an essential component of the tenancy is already violated, in accordance with British case law. Consequently, the lease rights originally enjoyed in Hong Kong will be invalidated immediately. ([Apple Daily article](#))

Does the Basic Law Define the Territory of Hong Kong?

At the press conference, when asked by a reporter, “Now that the Basic Law clearly demarcates the boundary of Hong Kong, isn’t the co-location system overriding the Basic Law by way of local legislation?” Yuen replied, “When the National People’s Congress set up the Hong Kong Special Administrative Region in 1990, the State Council was authorized to handle the boundary of Hong Kong, which is demarcated by Order of the State Council No. 221. Thus, from a legal perspective, the Basic Law does not define [sic] the boundary of Hong Kong, neither do Hong Kong ordinances define the boundary of Hong Kong.” Yuen went on to clarify that the co-location agreement, which is based on the Shenzhen Bay Area model, will be submitted by the State Council, decided by the Standing Committee of National People’s Congress, and approved by the State Council. Thus, “it is not local legislation overriding the State Council’s order.”

Order of the State Council of the People’s Republic of China No. 221 turns out to be [Instrument 11 as attached to the Basic Law](#) . It states the boundary of Hong Kong, but the Basic Law does not specify that the boundary of Hong Kong will always have to strictly follow the 1997 version of Order of the State Council No. 221. Contrastively, Act on the Autonomy of Åland (1991/1144) stipulates that “Åland comprises the territory it has at the time of the entry into force of this Act.” Since the order was passed by the State Council, presumably it has the right to change its contents. In fact, the Hong Kong Basic Law is neither by the people of HK, nor for the people of HK, nor of the people of HK ([Stand News article](#)) .

The Basic Law of Most Autonomous Polities in the World Clearly Demarcates their Boundaries

For instance, The Special Statute for Trentino-Alto Adige Südtirol (2001) — Trentino-Südtirol being a German-speaking autonomous region under Italy — states, “The Region consists of the Provinces of Trento and Bolzano/Bozen. 2. The communes of Proves, Senale, Termeno, Ora, Bronzolo, Valdagno, Lauregno, San Felice, Cortaccia, Egna, Montagna, Trodena, Magrè, Salorno, Anterivo and the district of Sinablana within the commune of Rumo in the Province of Trento” (Art. 3 1) .

Moreover, to change any portion of the aforementioned Act of Autonomy of the Swedish-speaking autonomous region Åland under Finland, including the demarcated boundary of the region, consent of both the Åland and the Finnish parliaments must be gained by a qualified majority of two thirds of votes cast.

Will the Rights of HK Passengers Really Remain Unchanged?

Rimsky Yuen also claimed that “the co-location system will not change the CIQ (customs, immigration, quarantine) procedures or the applicable law, and the rights and obligations of passengers when going through the procedures will remain the same.” The fact is that Hong Kong Law has already been enforced in the geographical area of West Kowloon Terminus. But when the co-location arrangement is implemented, Communist China Law will be enforced in the Mainland Port Area on B2, B3, and the platform on B4, some passages in the terminal as well as carriages traveling and stopping in HK. How can the Secretary for Justice so unreasonably argue that the rights of Hong Kong passengers will remain the same?! (Article 18 of the Basic Law: “National laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III to this Law... Laws listed in Annex III to this Law shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by this Law.”)

A White Elephant Project

The Secretary for Justice asserted that “it is the HKSAR Government who decided to construct the XRL.” However, the Express Rail Link is simply a white elephant project. The HK Communist Government took the initiative to build it exactly because it has been a colonial government betraying Hong Kong to Communist China. On 16 January 2010, the Legislative Council, in contravention of public opinion, forcefully passed an allocation of 66.9 billion HK dollars for the construction of Express Rail Link. Thousands of angry Hong Kong protestors consequently besieged the Legco building. Subsequently, there have been additional funding requests such that the cost of the project would eventually amount to 100 billion HK dollars. Many civil organizations and individuals have already pointed out that the Express Rail Link is an ineffective, eco-hostile, money-wasting rail ([Hong Kong In-Media article](#)) .

HK Government as Self-castrating Oedipus

According to Sigmund Freud’s interpretation, when King Oedipus found that he had married his mother and killed his father, he identified with his aggressive father and punished himself by piercing his own eyes in an act of symbolic self-castration. The Hong Kong Communist Government seems to be doing something similar. (cf. Tanya Chan, 2017). The Secretary for Justice said, “It is the HKSAR Government who proposed to study the implementation of the co-location arrangement; the implementation of co-location arrangement is neither a directive nor an order by the Central People’s Government.” After a co-operation arrangement is made by Hong Kong with the Mainland Government, it will be submitted by the State Council for approval by the Standing Committee of the National People’s Congress. Then, based on Article 20 of the Basic Law, Hong Kong will be authorized by the Central Government to implement the co-location plan, to which effect will finally be given by way of local legislation. Article 20 of the Basic Law states that “The Hong Kong Special Administrative Region may enjoy other powers granted to it by the National People’s Congress, the Standing Committee of the National People’s Congress or the Central People’s Government.” Unexpectedly, the Hong Kong Communist Government is now using it to apply for power to give up part of its jurisdiction. The co-location system enables the claws of Communist China to directly extend to the very core of Hong Kong. After its implementation, Hong Kong dissidents, like the Causeway Bookstore directors, may no longer need to be escorted to China by boats. If the HKSAR Government were a government serving local interests, it would not propose such a treacherous plan as the co-location scheme and would not apply for power to emasculate its home town.