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China through the lens of Hong Kong

A new book by a legal scholar sheds light on the bargaining that shaped the treaty on the handover of Hong Kong.

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For The Straits Times

Discussing Hong Kong dispassionately is near impossible. This is not only because of the many public protests since 2014 that have polarised world opinion. While Taiwan is currently making headlines, Hong Kong is also a declared "core" interest for Beijing. As such, what happens in Hong Kong is more than just a matter of local politics – Hong Kong becomes in effect a lens for assessing China's character and intentions. This plays into heightened Sino-American tensions.

Dr Elizabeth Economy, an American expert on China, sees domination over Hong Kong as integral to the country's strategic vision and frames its fate squarely within the contest between democracy and autocracy.

Critics of China accuse Beijing of tearing up pledges to Britain in the handover agreement with measures such as the National Security Law of 2020. Certainly, a sizeable proportion of Hong Kong residents pushed for democracy, and China is not one. But is it irrefutable that Beijing reneged on its undertakings?

WHAT DID CHINA AGREE TO?

A new book closely examines the handover process and key documents, including the Joint Declaration and Basic Law as well as declassified British records and the notes of key participants. Treaty For A Lost City is written by Professor C. L. Lim, an expert on international law now living in Hong Kong. With strong ties in both the UK and China, the Malaysian is a former colleague of mine at the National University of Singapore and the book is published by Cambridge University Press.

He is not a pro-China propagandist. Yet his scholarship elucidates a number of generalisations about Hong Kong and China. The book addresses legal arguments that are not widely known and often ignored elsewhere. It explains the Chinese viewpoint that China has met its obligations, as negotiated with the United Kingdom. We are reminded that when negotiations began in September 1982, the initial idea was that Britain would continue to administer Hong Kong, even if sovereignty was formally transferred. Although then much poorer and just coming out of the Cultural Revolution, China never countenanced that.

It took the position that treaties which signed over Hong Kong and Kowloon after the Opium Wars had always been inherently unequal, and therefore void. As such, rather than a transfer of sovereignty, the Chinese spoke of the recovery of Hong Kong and the resumption of sovereignty. There was never any doubt that they, and not the British, would be in charge after.

It was the British who had to climb down, notwithstanding that their then prime minister was the formidable Margaret Thatcher. She was to recount how China's paramount leader Deng Xiaoping told her that China could easily take Hong Kong by force in less than an afternoon. While the Iron Lady had been willing to wage war against Argentina over the Falklands, with China she could only reply that while she could not stop him, the world would know what China was like.

The British lowered their sights to push for a treaty between the two countries that could legally tie the Chinese to conditions to keep the status quo. Yet, as Prof Lim concludes, the 1984 Joint Declaration that paved the way for the transfer of control of Hong Kong to China in 1997 fell short of British ambitions.

There were three pages in the main body of the text, reflecting China's 12-Point Plan, while Annex I contained a more detailed elaboration of China's basic policies towards Hong Kong after 1997. The Basic Law – commonly known as Hong Kong's mini Constitution – was then passed by Beijing to implement Annex I.

The "one country, two systems" principle is enshrined in the Basic Law, which sets out the structures of governance as well as rights such as those of freedom of assembly and freedom of speech. There were concessions to British requests with wording that China would seek to maintain a "high degree of autonomy" for 50 years. This forms the basis for accusations by democracy advocates today that Beijing broke its promises.

But China's view is that, even though binding, Annex I only sets out elaborations of their intended policies and their undertakings have been fully implemented by passing the Basic Law, entrenched constitutionally under Chinese law.

The reassurances of continuity and autonomy were premised on the fact that since Hong Kong was a colony, there was no pre-existing democracy to preserve. In essence, the Joint Declaration and Basic Law would be for Beijing to implement in more detailed terms, as its leaders saw fit.

In the history traced by Lost City, one discerns shifts in the UK's position. At first, after the British realised that the Chinese would not allow them to continue to administer Hong Kong, a certain pragmatism took over. The British foreign secretary, Sir Geoffrey Howe, together with veteran civil servant Percy Cradock, sought to extract some assurances from Beijing. Prof Lim appears to admire their mix of pragmatism, skill and persistence in negotiations, based on what Britain would be willing to do politically and practically.

The book recounts how a Hong Kong delegation was consulted but this comprised mainly conservative elements and business representatives. When asked about a system of fuller representation, they felt that any movement should be taken cautiously. The British negotiators and elites they consulted were prepared to compromise for stability.

However, the British never opened those negotiations nor explained the full bargain reached to the Hong Kong public, let alone call for a vote to accept or reject it.

Then came the last British governor, Christopher Patten. Although the Sino-British agreement had been concluded before he took office, he changed tack sharply. In the last years before the handover, democracy was pushed in a way that no colonial governor ever had before.

While some alleged the British were "shifting the goal posts", the taste of participation appealed to pro-democracy advocates. It has since blossomed into a sizeable movement, especially among the young. Lord Patten continues to suggest that China's leaders had undertaken to protect democracy in recent interviews and his 2022 book, The Hong Kong Diaries. So do many British politicians.

While no role was granted for Britain to supervise matters post-handover, the practice emerged for the British Foreign Office to present a six-monthly report on Hong Kong to its own Parliament for comment. This has little legal or practical weight but has grown into grand political theatre.

The transition in Hong Kong was never going to be easy. While some shout for "two systems", others emphasise "one country". Many in Hong Kong resolutely believe that the Basic Law promised to move forward on electoral reforms and, instead, Hong Kong today is more controlled than before. Such expectations may be unrealistic and ahistorical but they are strongly felt and acted upon.

Lost City diligently clarifies the historical record and treaty obligations. Some sentiment is reflected in the title of the book, elegiacally evoking a "lost city". But Prof Lim cleaves to the facts and sharp legal analysis. The bottom line of Lost City is that China adroitly crafted its legal commitments and has indeed kept its side of the bargain. This will not persuade democracy advocates. Critics are more likely to quiz its author's personal allegiances.

We must not be naive about China. Consider how Mr Deng told Mrs Thatcher that force could be an option, at a time when China was opening and learning about the world. Today's China has risen to considerable power and is known to use sanctions to press its interests and signal its displeasure.

If China considers its obligations complete in Hong Kong, what of Taiwan?

Beijing seeks reunification while Taiwan's leaders see Hong Kong's example as a reason to push off that embrace. Very few observers today envisage a negotiated reunification under a "one country, two systems" approach. Instead, there is a real and rising risk that force will be used to that end.

No one can guarantee how China will behave on the question of Taiwan, which is a democracy unlike colonial era Hong Kong. But if there remain some who still hope for a peaceful solution, Lost City is a rich and useful reference. Negotiations and legal commitments – even if imperfect and contested – might be more benign than the alternatives.

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A Chinese resident reading the Beijing Youth Daily, which carried a photo of the Hong Kong sovereignty-switch ceremony on July 1, 1997 with the headline, "The British government has handed Hong Kong back to Chinese sovereignty". What happens in Hong Kong is more than just a matter of local politics – Hong Kong becomes in effect a lens for assessing China's character and intentions, playing into heightened Sino-American tensions. PHOTO: REUTERS

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