AUTONOMY AS A TOOL FOR PEACE – SOME TOPICS
USING AS A REFERENCE POINT THE CHINESE SARS
SEASONED WITH A KANTIAN PERPETUAL PEACE
FRAGRANCE #

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We can begin, on a sort of an ending note, by bringing in here some words of HURST HANNUM: «In conclusion, autonomy is not a magic bullet that can resolve all conflicts, prevent violence, or guarantee political and social development. It cannot automatically ensure social justice or bring good things to all people. Autonomy remains a useful concept, but it will be successful only where there is a sufficiently strong willingness to live together, combined with an understanding of which purposes autonomy is – and is not – likely to serve.»1

One should bring here telegraphically some basic assessments on autonomy.

Autonomy as a tool conceptualized for a possible variety of goals: e.g., as a mere tool of decentralization (basically driven by administrative-political reasons), as a conflict resolution tool, that is to say, broadly, as a tool for peace, as an alternative to secession (from inside out), or as a way of reunification (from out to inside). Autonomy can be seen as a bag of concepts

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1 Territorial autonomy: permanent solution or step towards secession?, in Beyond a One-Dimensional State: An emerging right to autonomy? (ed. Zelim A. Skurbaty), Martinus Nijhof, 2005, p. 159.
in concretization. Specified concepts that may differ strongly on nature, scope, level of
entrenchment, origins, main purposes, mechanisms of «dialogue» and competence conflicts
between the center and the periphery, solely based on domestic instruments or based (alone or
also) on international instruments2 (for example, Macau, Hong Kong, South Tyrol3, Aaland
islands4, or, in the past, Memel, etc.).

Have we new autonomies blurring even more its, once (?) distinct feature vis-à-vis federalism. As GIUSEPPE DE VERGOTTINI cautions for some time, the distinction between the federal and the regionalist models are not obvious now.5

For example: in the Special Administrative Regions of China (SARs), but also in Italy and Spain after the last reforms and regional/autonomic statutes? Autonomic States in fieri?6. Or rather, autonomic States pushing towards (new) federalisms, as claimed namely by relevant doctrine?7 This avenue of evolution, trashing the autonomy traditional model and reaching (if

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4 See, e.g., MARKKU SUKSI, The self-government of the Aland islands in Finland: Purpose, structures and institutions, paper presented to the International conference on comparative national experiences of autonomy: Purpose, structures and institutions, Centre for Comparative and Public Law, UHK / Forum of Federations, Hong Kong, 2005.
6 For example, MANUEL TEROL BECERRA, El Estado Autonómico in fieri, 2005.
7 To point just some examples, LUCA MEZZETTI, Il sistema (qua si) federale italiano, ENRIC ARGULLOL, El federalismo en España, both in El federalismo en España in Federalismo y regionalismo, Valadés, Diego, Garza, José María Serna de la, (coord), UNAM; For an updated panoramic work covering both cases, JOSEP CASTELLÀ ANDREU/MARCO OLIVETTI (coords.), Nuevos Estatutos y Reforma del Estado – Las experiencias de España e Italia a debate, Atelier, 2009. Or, regarding the SARs, PETER T.Y CHEUNG, Toward federalism in China? The Experience of the Hong Kong Special Administrative Region, in Baogang He, Brian Galligan and Takashi Inoguchi (eds.), Federalism in Asia, Edward Elgar, Cheltenham UK, 2007, at 242-265, PAULO CARDINAL, The judicial guarantees of fundamental rights in the Macau legal system – a parcours under the focus of continuity and of autonomy in One Country, Two Systems, Three Legal Orders — Perspectives of Evolution —: Essays on Macau’s Autonomy after the Resumption of Sovereignty by China, P.
not surpassing in some cases) to the federalism one, can be sensed and palpable not just in political-organizational issues but also in other relevant and emblematic spheres such as general fundamental rights\textsuperscript{8} and tax issues, not to mention adventurous paths in some exercising of external competences.

Autonomy as a possible way – among others: secession, with independence or with aggregation into another entity; total disintegration\textsuperscript{9}; federalism – to find/guarantee peace. The relevance of the foundational moment and the foundational reasoning. Peace in a broad sense.

And, one should point, peace as functionalized to the structural motto of accommodating diversity within unity. Or, in another way of putting it, all different yet all the same. As opposed to the solutions for peace that rest in fully realizing diversity «within» diversity: for example, the independence of East Timor, by virtue of a parcel demanding separation from the whole, the peculiar «second» independence of Singapore, by being expelled from the Malaysian federation, or in other words, the whole amputating a parcel.

Settling ourselves in Asia now, a brief connection to Singapore, as proposed by LUIS PESSANHA, might be of use, and not just because «*The sudden creation of an independent Singapore as a unitary republic on 9 August 1965 was an accident of history*» No one ever

\textsuperscript{8} One is aware of the polemic involving the fundamental rights inscribed in the autonomic/regional statutes and the denial of such nature by many. Nevertheless, and not discussing in here the true nature of those local rights, regarding Hong Kong and Macau, both Basic Laws undisputedly encompass a set of true fundamental rights.

\textsuperscript{9} As happened, for example, with the West Indies Federation in 1962, just a handful of years after it was created. With the implosion of the federal unit several distinct colonies were reborn, most to become fully independent later. One chooses this specific example – besides having influenced the parting ways formalization process regarding Singapore and Malaysia - since this Caribbean federation was an internally self-governing, federal state comprised of ten units, but all remaining being British colonies, implying as such an autonomic model. The federation was created by the United Kingdom in with the aim of paving the way to the transformation into a fully independent state.
imagined that a tiny island totally bereft of natural resources and populated by immigrants with a heady mix of three major ethnic people was viable as a state, much less as a nation.\(^{10}\)

In 1958, a State of Singapore would be created, with its own citizenship, and the Prime Minister and cabinet would control all aspects of government except defense and foreign affairs\(^{11}\), or, as elsewhere explained in a nutshell, «the British Government granted Singapore self-governing status. This meant that while Singapore’s new Legislative Assembly had power to legislate over almost all matters. The portfolios of defense and foreign affairs, however, remained in the hands of the British.»\(^{12}\).

One can easily notice here strong similarities with Hong Kong and Macau SARs with the idea of strong self-government except, basically, in the sovereign fields of defense and foreign affairs, which rest, precisely, in the sovereign entity: UK for Singapore (at the time) and China for Hong Kong and Macau\(^{13}\).

Remaining still with the Singapore connection to allude to an uncommon way of parting ways in order to (not only) maintain/achieve peace: The expel of Singapore from the Malaysian federation, in 1963, by a vote of 126 to 0 in the Malaysian parliament.\(^{14}\)

\(^{10}\) KEVIN YL TANN, International Law, History And Policy: Singapore In The Early Years, CIL, 2011, p. 1.


\(^{13}\) Cfr., for example, the Sino-Portuguese Joint Declaration wording, 2. 2. «The Macau Special Administrative Region will be directly under the authority of the Central People's Government of the People's Republic of China, and will enjoy a high degree of autonomy, except in foreign and defense affairs which are the responsibilities of the Central People's Government. The Macau Special Administrative Region will be vested with executive, legislative and independent judicial power, including that of final adjudication.». Naturally one has to stress that the SARs really are international legal subjects, though with limited capacity, and do engage, per se, in jus tractum. The Basic Laws accord the SARs the power to conduct relevant external affairs on its own, while the central government is responsible for the foreign relations relating to the SARs, as stated in articles 13 of each Basic Law.

\(^{14}\) «On August 9, with the Singapore delegates not attending, the Malaysian parliament passed a bill favoring separation 126 to 0. That afternoon, in a televised press conference, Lee declared Singapore a sovereign, democratic, and independent state.», BARBARA LEITCH LEPOR, ed. Singapore: A Country Study. Washington, 1989, available at http://countrystudies.us/singapore/. However this apparent formal crude and unilateral expel was not so crude and so unilateral, «By July 1965, the tension between the central government in Kuala Lumpur and the Singapore government had reached breaking point. A decision was made that Singapore
It is time to focus now our attention on the Chinese SARs.

One must refers, taking in consideration the title of this conference and before proceeding into the SARs discussion, rather brief notes on two topics: Protection of National Minorities and Cultural Heritage as Tools for Peace. Regarding the Chinese SARs, the issue of national minorities and its protection cannot be seen as a factor, at least a decisive one, although in Macau the Macanese (over simplifying it, mixed Chinese-Portuguese origin) or in a wider concept, Portuguese people, do seem to be addressed by specific protective norms on the Basic Law, concerning both of the above issues. But, the point that is needed to be made is that the overwhelming majority of the population, in both SARs, is Chinese Han, as it happens in Mainland. Thus, the protection of national minorities was not the rationale behind the high degree of autonomy of the SARs. Regarding cultural heritage, besides the above, one can detect some norms related to the language – Portuguese in Macau, English in Hong Kong, are official languages –, Law, also a cultural element, is also guaranteed to stay different from the Mainland one, freedom of religion, including the Roman Catholic faith, is to be maintained, and the Basic law expressly guarantees that the religious organizations and believers in the SARs may maintain and develop their relations with religious organizations and believers elsewhere, educational institutions of all kinds may retain their autonomy and enjoy academic freedom, and, specifically in the case of Macau but not in the Hong Kong

should secede from the Federation, but this decision was known only to a select group of government ministers and civil servants. Such secrecy was necessary to prevent this news from reaching the British High Commissioner, Lord Head, who would certainly have done everything possible to prevent Singapore from seceding. An agreement had to be worked out between the two governments to ensure that things went smoothly and that there would be no legal hiccups., KEVIN YL TANN, International Law, History And Policy: Singapore In The Early Years, CIL, 2011, p. 34. Later on, a number of formal acts were approved both by Malaysia and Singapore, by Malaysia alone, and by Singapore alone, which finally provided the necessary legal format to several issues emerging from the separation.

15 «Article 42 - The interests of the residents of Portuguese descent in Macau shall be protected by the Macau Special Administrative Region in accordance with law, and their customs and cultural traditions shall be respected.». Whereas, in Hong Kong, Article 40 states «The lawful traditional rights and interests of the indigenous inhabitants of the "New Territories" shall be protected by the Hong Kong Special Administrative Region.». The point to make is that the different wording (or conceptualization?), is that regarding Macau the Portuguese element is pivotal in several areas – language, legal system, architectural patrimony, etc. in terms of specific guarantees directed to conquer the trust of the non-Chinese population in order for them to stay after the handover, but the «New Territories» issue is not. It is a confined element.
Basic law, historical sites and relics are to be protected. Again, all of the above serve as (important) guarantees of the «second system», as a solemn message of trust but, one believes, they are merely consequential but not the driving force behind the process. They are relevant and emblematic accessories but not the essential issue that pre-determined the concretization of autonomy. The rationale was the reunification. The rest followed. And the rest, among other purposes, serve to show Taiwan that the formula works.

Proceeding now to the Joint Declarations. These international treaties, deposited at the UN by the contracting parties, set out the fundamentals of the process of the transfer of sovereignty with implications for the legal system, public administration, exercise of sovereignty powers, political structure, judiciary, and fundamental rights, among many others, as well as providing a transition framework that is attached to the act of the transfer of sovereignty itself.

The first Joint Declaration was the one on the Question of Hong Kong, the Sino-British Joint Declaration from 1984, resulting from negotiations between China and the British – the later were, as seen, involved in the question of Singapore before independence a few decades before and as mentioned earlier one must wonder how much influence some solutions regarding Singapore had. The second Joint Declaration, was the one on the Question of Macau, between China and Portugal, from 1987, and basically and structurally followed on the steps, many times verbatim, of the other Joint Declaration.

16 For example, very specifically retaining the areas of defense and foreign affairs on the true sovereign (although, as seen, in the SARs case a parcel of external relations do reside in the SARs) whereas the rest was trusted on the hands of the autonomic institutions – parliament, executive, etc. One more similarity to the political-juridical history of Singapore can be pointed out though regarding a later stage: the formal guarantee of continuity of the legal system. In fact, in accordance with the Constitution and Malaysia (Singapore Amendment) Act 1965, all laws in force in Singapore immediately before Singapore Day «shall continue to have effect according to their tenor ... subject however to amendment or repeal by the Legislature of Singapore» and in the Hong Kong Basic Law, article 8, «The laws previously in force in Hong Kong, ... 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.».
This process via international treaty presents itself, somehow, as revisiting and reinvigorating the application of the Kantian perpetual peace\textsuperscript{17}, namely his purported cosmopolitanism especially in connection with the hospitality ideal, in the international arena, at least in some of its aspects such as a peaceful and in \textit{pacta} solution, a smooth ending of a colonial rooted external presence and thus aligning with the cosmopolitan right idea; a give-and-take and mutual respect approach between the two parties in spite of their different size and power\textsuperscript{18}; a flavor of hospitality and a preeminence of the rights and freedoms and respect of the idiosyncrasies of the envisaged populations - and this is so even if the said populations were not heard in public consultations.

A fact even more noteworthy when occurring in times where territorial conflicts are often being solved in a non peaceful manner and bordering, if not disrespecting, the limits of international law.

One can add that, as known, KANT purported an idea of hospitality around the world, and this, among other reasons, resulted in strong disagreement towards colonialism.

\textsuperscript{17} Kant's \textit{Toward Perpetual Peace}, 1795, is the most universalized and cosmopolitan, the one that really \textit{entrones} values such as freedom and equality, the one that purports the \textit{republican constitutions}, the one that envisages 3 \textit{layers} of Law (\textit{Civil Law of States}, \textit{International Law} and \textit{Cosmopolitan Law}), it is the apex philosophical project of peace, albeit not the first, one does not ignore other projects of transnational peace that were previous or contemporary, such as those from William Penn (\textit{An Essay Towards the Present and Future Peace of Europe}, 1693, available online at http://archive.org/stream/anessaytowardsp00penngoog#page/n2/mode/2up), the Abbé Charles-Irénée de Saint-Pierre, (\textit{Paix Perpétuelle}, 1712/1714, which was translated into English in 1714 as \textit{A Project for Settling an Everlasting Peace in Europe}), Jean Jacques Rousseau (\textit{Judgement on Perpetual Peace}, 1756, cfr. also \textit{A Lasting Peace through the Federation of Europe and The State of War}, by Jean Jacques Rousseau, trans. by C. E. Vaughan, 1917, including a Statement of St. Pierre's Project and Rousseau's Criticism of Saint Pierre's Project), Jeremy Bentham (\textit{A Plan for a Universal and Perpetual Peace}, in The Principles of International Law, publishes in 1833 but written in 1789).

\textsuperscript{18} For example, let us revisit and adapt State to a portion of State, the following Kantian words on his \textit{Perpetual Peace}, «No Independent States, Large or Small, Shall Come under the Dominion of Another State by Inheritance, Exchange, Purchase, or Donation» (a preliminary article for perpetual peace among states) and, «A state is not, like the ground which it occupies, a piece of property (patrimonium). It is a society of men whom no one else has any right to command or to dispose except the state itself. It is a trunk with its own roots. But to incorporate it into another state, like a graft, is to destroy its existence as a moral person, reducing it to a thing; such incorporation thus contradicts the idea of the original contract without which no right over a people can be conceived.». In here, imperialism, colonialism, foreign occupation, wars of conquer are criticized and denied.
Now, the Joint Declarations ended situations of colonialism or neocolonialism and on the other hand one can underline the inhabitants of Macau and of Hong Kong even those of Portuguese or British background, are (under certain circumstances) seen as permanent residents of the SARs after the transition in (almost) total parity with permanent residents of Chinese nationality. They are, in other words, recipients of a *hospitality right* – in truth more than that in the sense of having the right to settle and not just to approach, but less in the sense that is not universal but rather directed primarily to Portuguese and British that were in Macau and Hong Kong respectively\(^\text{19}\) – even if not citizens of the sovereign State.

On the other hand, one knows that Kant on his *pax sempiterna* project placed relevance on trade, business, commercial relations namely across borders, something that has a clear impact in the foundational reasoning and in the concretizations of the SARs, and can be seen as epitomized in *allowing* the SARs to maintain capitalism and hence an open market whereas Mainland will keep its socialist economic delineation\(^\text{20}\).

In face of the above, for example, ACÍLIO ESTANQUEIRO ROCHA refers to Macau as «*a true enclave of perpetual peace*»\(^\text{21}\).

But one must point that not only KANT perpetual peace may be seen as *seasoning*, as providing/adding a special flavor, this «One country, Two systems» philosophy. One can

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\(^{19}\) «*Hospitality means the right of a stranger not to be treated as an enemy when he arrives in the land of another. One may refuse to receive him when this can be done without causing his destruction; but, so long as he peacefully occupies his place, one may not treat him with hostility. It is not the right to be a permanent visitor that one may demand. A special beneficent agreement would be needed in order to give an outsider a right to become a fellow inhabitant for a certain length of time. It is only a right of temporary sojourn, a right to associate, which all men have.», wrote Kant in his *Perpetual Peace*, on the Third Definitive Article for a Perpetual Peace *"The Law of World Citizenship Shall Be Limited to Conditions of Universal Hospitality*" (emphasis added). See, for example, PAULINE KLEINGELD, *Kant's Cosmopolitan Law: World Citizenship for a Global Order*, Kantian Review, Volume 2, 1998, pp. 72 and ff., especially pp. 75 and 76.

\(^{20}\) As said by Deng Xiaoping in a famous meeting with the British prime minister, «*When we speak of two systems, it is because the main part of China, with a population of one billion, is practising socialism. It is under this prerequisite that we allow capitalism to remain in a small part of the country. This will help develop our socialist economy, and so will the policy of opening to the world.».

bridge to the land of the mandarins and recall the pacifists teachings of MOZI in China, a man that had the reputation of desiring the peace and repose of the world, anchored in the ethical maxim of «universal love/inclusive care»: «Great states attacking small ones, great families overthrowing small ones, the strong oppressing the weak, the many harrying the few, the cunning deceiving the stupid, the eminent lording it over the humble — these are harmful to the world.» and also «When all the people in the world love one another, the strong will not overcome the weak, the many will not oppress the few, the strong will not insult the poor».

And, «If everyone treats other people’s states as he treats his own state, who will invade into the territories of the others? Asks MOZI, to answer, «Under such circumstances, there will be no more cases of (...) feudal lords attacking each other’s states. »

China is the birthplace of the One Country, Two Systems principle, by the pen and the vocalization, in famous dialogues, of DENG XIAOPING. Hong Kong and Macau are returned to China in 1997 and 1999 respectively, under the framework of Sino-British Joint Declaration and Sino-Portuguese Joint Declaration, and the Basic Law of each region, via the open gate created by article 31 of the People's Republic of China Constitution, in order to accommodate diversity under unity.

Thereafter, they are Special Administrative Regions of China, enjoying a high degree of autonomy, except in foreign affairs (this is however, with significant exceptions, as

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22 «One loves others at the same time as one loves oneself. One loves other countries at the same time as one loves one’s own. In this way, both sides reap the benefit.», as synthetized by HIDEKI YUKAWA, Creativity and intuition – a physicist looks at East and West, Kadansha International, 1966, p.75.


mentioned before\footnote{A situation} and defense, besides a few delimited powers such as appointments of certain government officials as well as typified mechanisms of interaction such as the ones regarding (official) interpretation of some aspects of the Basic Law.

The Joint Declarations first stipulate that the government of the People's Republic of China will resume the exercise of sovereignty over Hong Kong and Macau with effect from 1 July 1997 and 20 December 1999, respectively, thus allowing for the accomplishment of reunification with China, and consequently the establishment of the SARs enjoying high autonomy, integrated with, but separate from, the PRC. The SARs are the juridical persons that embody the new autonomic reality within Chinese sovereignty.

In this way, the Joint Declarations present a framework for SARs’ internationally plugged autonomy, in the sense that the autonomy does not rely solely upon a domestic act and the sovereign power, but comes from an international treaty, which resulted from the free will of two sovereign States in each case of the SARs. The Joint Declarations are the genesis, the anchor and the guarantee of Hong Kong and Macau’s autonomy. On the other hand, and in accordance with the JDs, it was necessary to further detail the contents of the policies/principles agreed, thus the necessity of a domestic legal act—the Basic Law.

Macau and Hong Kong Special Administrative Regions of the People’s Republic of China enjoy, via a complex web of constituent legal instruments (international treaties, norms of the PRC Constitution and, last but not the least, the Basic Laws) a remarkable high autonomy – namely in key areas such as fundamental rights, the continuation and evolution of a distinct

\footnote{A situation} that led one author to point out that «The semi-sovereign status of the regions is more evident in their direct foreign policy. Here they can behave as sovereign states in a wide range of areas and as a rule they are not obliged to seek any (pre-emptive or subsequent) authorization of the Centre.», MARCO OLIVETTI, The Special Administrative Regions of the PRC in Comparison with Autonomous Regions Models, in One Country, Two Systems, Three Legal Orders — Perspectives of Evolution —: Essays on Macau’s Autonomy after the Resumption of Sovereignty by China, P. CARDINAL/J. OLIVEIRA (eds.), Springer-Verlag, Berlin Heidelberg, 2009, p. 791. For further densification and bibliography see PAULO CARDINAL, La protezione giurisdizionale dei diritti fondamentali nelle Regioni autonome di Hong Kong e di Macao e l’influenza delle carte internazionali in materia di diritti, in Il sistema europeo di protezione dei diritti fondamentali e i rapporti tra le giurisdizioni, Giancarlo Rolla (cura), Giuffrè, 2010, pp. 99 – 137.
legal system, including an almost universal range of legislative power *stricto sensu* (and not merely administrative regulations or subordinate legislation), an independent judicial system, the economic and financial dimensions, including taxation, and also, at least to some extent, in the spheres of political organization based in elements of separation of powers doctrines and openness to pluralism, and an international law capacity - which provides the condition for the existence and ongoing evolution of subnational constitutionalism.

The extent, scope and nature of these two imaginative and pragmatic autonomy arrangements clearly show that they do not fit in any classical model, be it federal, be it of territorial autonomy, be it confederate (even if one can detect elements of all the above). Its results, albeit imperfect, are deemed positive so far.

And, basically positive, from several angles, one can add. From the Center perspective, from the subnational units perspective, and from the international community perspective also. Reunification was achieved. In a peaceful manner. Big China became even bigger, albeit with *two islands* of difference, and showed/reinforced international community that behaves in accordance with international treaties, it gained a couple of extra external voices in some international arenas, such as in the World Trade Organization, it has to excellent open doors to international commerce and a privileged one to the *Portuguese World* and the Commonwealth. In the SARs there are traces of true democracy (not a full democracy but one needs to remind that before the handovers there was not a full democratic system implemented in neither place); in the SARs there is a generous and complex *bill of rights* in place (for example in Macau, ex vi the JD, the Basic Law, ICCPR, ICESCR, etc.); in the SARs certain sensitive fundamental rights, such as *rights of personal freedom*, freedom of religion, right not to be tortured or subjected to inhuman treatments, etc., are established and are respected, the economic system was basically maintained and not merged with the mainland one, the legal systems of Macau and Hong Kong basically maintain its own roots and structural principles, the social system is basically maintained, etc.. As for the international community perspective (not discussing here what this might encompass or not),
the fact is that the usual reports on Hong Kong and/or Macau do give positive scores (not 100 in 100), namely regarding fundamental rights and economical system, as it happens, for instance with EU institutions reports, UN specialized committees bodies, and, as seen from the continues adherence of big financial companies regarding Hong Kong or big casino enterprises regarding Macau. The economic-financial trust does exist.

The Basic Laws of Hong Kong and Macau serve basically as subnational constitutions, which lay down the foundation for continuing development of subnational constitutionalism. The sovereign constitutional norms are the same and the Basic Laws – as the Joint Declarations - are essentially identical; that is, the normative superstructure has a high degree of similarity, however, the dynamics of constitutionalism show certain divergences appeared in the two regions with a first decade of evolutionary praxis pointing to somehow different avenues that may, by the end of the day (2047 and 2049, respectively), result in different SARS profiles and different sedimentation of the autonomic traits of Macau and of Hong Kong.

A few words regarding the autonomy of the SARs versus that of Ethnic Autonomous Regions in China should be brought in here, namely to point the abyssal differences between these two autonomic systems within one State, thus purporting an asymmetric autonomic State27.

27 «Here it is important to underline that the main problem, seen from a federal perspective, is the asymmetrical context in which the SARs’ autonomy is placed: the autonomy that they enjoy is totally different from that recognized to the other autonomous regions, provinces and cities directly subjected to central government in which China is divided. If viewed from the Chinese point of view, the SARs are the peak of an asymmetrical regional system.», MARCO OLIVETTI, The Special Administrative Regions of the PRC in Comparison with Autonomous Regions Models, in One Country, Two Systems, Three Legal Orders — Perspectives of Evolution —: Essays on Macau’s Autonomy after the Resumption of Sovereignty by China, P. CARDINAL/J. OLIVEIRA (eds.), Springer-Verlag, Berlin Heidelberg, 2009, p. 794. As GIANCARLO ROLLA further assesses, «Just like any order moving towards decentralization, even the Chinese Constitution sanctions the coexistence of distinct forms of autonomy. This choice clearly constitutes a fracture within the Chinese tradition, which for centuries was focused on the principles of unification, centralization and uniformity. There are identity-based autonomies that are defined by the specific localization within a certain territory of ethnic and linguistic minorities. These systems respond to the need of ensuring the multicultural character of the People’s Republic of China. There are domestic autonomies (...). Finally, there are also regions possessing a special autonomy status, that are established to solve historical issues of international importance, such as in the instances of Hong Kong, Macau and, Taiwan (Article 31 of the Constitution). In this case, the distinct characteristic is provided also by the decision to admit the coexistence between of opposite economic models and legal systems. The Chinese pattern of autonomous systems is rather complex and varied, as well as being characterized by a functional rationale and a pragmatic spirit. This immense country seems to embrace a summation of the many different regionalist
something that can be immediately intuitable by the reading of the two distinct articles of the Chinese Constitution, the article 30\textsuperscript{28} and the article 31\textsuperscript{29}.

In brief, the comparison reveals that the SARs enjoy a much higher autonomy than that of ethnic autonomous regions at provincial level as well as a different nature and foundation. The ethnic autonomous regions of China have to implement national policies, albeit with the power to make certain changes in some cases. Their own autonomy is restricted because of the limitations on their legislative power and the wide-ranging and intrusive central power; hence one does not find a case of subnational constitutionalism. In short, these two autonomy systems – of the SARs and of Mainland China - are based on different rationales, one is to let the ethnic minorities govern themselves, under the same system, and the other is to allow and assure the prosperity of the other system with its values and principles, especially the open market\textsuperscript{30}.

We will bring in here one note that fits the Macau case alone (and not mirrored in Hong Kong), due to very specific heavy circumstances that do operate in the real realm of tiny Macau SAR.

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\item[28] Examples offered in the Western world. Therefore, there is the coexistence of distinct legal systems (Canada, USA); the recognition of historical rights (Spain); the codification of special autonomies (Italy); the introduction of autonomies on grounds of ethnicity and language (Belgium); and a “leopard-spot” regionalism (United Kingdom). There are also cases of regional autonomy established on account of international treaties (Hong Kong, Macau), just as like the Aland Islands (created by way of a treaty between Sweden and Finland) or of South Tyrol (treaty between Italy and Austria).\textsuperscript{27}, The development of asymmetric regionalism and the principle of autonomy in the new constitutional systems: a comparative approach, in idem, pp. 473 and 474.
\item[29] \textsuperscript{27} «Article 30. The administrative division of the People's Republic of China is as follows: (1) The country is divided into provinces, autonomous regions and municipalities directly under the Central Government; (2) Provinces and autonomous regions are divided into autonomous prefectures, counties, autonomous counties and cities; (3) Counties and autonomous counties are divided into townships, nationality townships and towns. Municipalities directly under the Central Government and other large cities are divided into districts and counties. Autonomous prefectures are divided into counties, autonomous counties, and cities. All autonomous regions, autonomous prefectures and autonomous counties are national autonomous areas.».
\item[30] «Article 31. The state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific conditions.».
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Macau is a very small territory virtually without classical industry and without natural resources. Have we another case of a *de facto* encrusted autonomy? A sort of chain of *feitorias*\(^{31}\) personified in the huge *alien* casino/resorts? A XXI century revival of *feitoria*, this time structured around the hugely profitable gaming industry (gaming plus other surrounding economic activities)?

The really dominant percentage of public revenue directly derived from gaming, the amount of labor force guaranteed, the relevant percentage of square meters effectively occupied, all these elements amassed amount to a *de facto* force that overshadows any of the circumstances that may be present in Hong Kong (strong financial, banking and shipping sectors) but do not reach at all the State-denial situation of the *Bananas Republics* in the American continent decades ago.

Still the question remains on how much power is effectively drained from the Macau SAR and how much effective power the Gaming giants do have and do exert – no matter by an avenue under the spotlight or a *somber alleyway*, or any other way.

In concluding these brief remarks on the Chinese SARs one can point the effectiveness of the formula\(^{32}\) *One country, Two systems*, and even its success, albeit not absolute. Much can be done to effectively reinforce autonomy (within the sovereign), to emphasize more such values as democracy and human rights, separation of powers and accountability, and not just (wild)

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\(^{31}\) *Feitoria*: factory – trading post.  
\(^{32}\) See, GIANCARLO ROLLA, «When considering the de-colonization process, the measures provided by the Basic Law are indeed appropriate in solving all the international issues relevant to the aggregation of new territories from one sovereign entity to another, and to carry out the de-colonization process without giving rise to new sovereign legal orders, while simultaneously upholding a territory’s history and traditions. Besides, the utter peculiarity of the experience is given by the fact that the incorporated territory preserves its own economic and legal system, which completely contrasts with the new homeland’s system», *The development of asymmetric regionalism and the principle of autonomy in the new constitutional systems: a comparative approach*, in One Country, Two Systems, Three Legal Orders — Perspectives of Evolution —: Essays on Macau’s Autonomy after the Resumption of Sovereignty by China, P. CARDINAL/J. OLIVEIRA (eds.), Springer-Verlag, Berlin Heidelberg, 2009, p. 473.
capitalist market and its accessories. One should care for the *Words* of autonomy (JDs, Basic Law, legislation, etc.) but also for the *Men* of autonomy (strangely though be it the men in the SARs and the men in the center – sometimes one may even wonder if the later, in some issues, are more prone to the autonomy than the former).

As one can underline again the option for the use international law as a peaceful way of solving a colonialism web of problems. All this bringing up some scents of the Kantian perpetual peace, even if revisited, updated, adapted.""}33.

This example might be able to serve as a model for other similar situations that is to accommodate diversity within unity in peace. One believes on the potential exportability of the model, even if in natural need of fine-tuning and adaptation to local needs and characteristics.

In fact, this SAR model was and has been the subject of studies and or proposals on the possible importability to other areas of the Globe: for example regarding East Timor before independence and in the Indian subcontinent. As said, «In the world today, there is no lack of precedent for the use of the armed forces to solve many knotty problems. The solution of the Hong Kong issue by China and Britain demonstrates that it is entirely possible to solve certain international disputes by the method of "one country, two systems." Therefore, the "one country, two systems" concept has enriched the principle of peaceful coexistence and made it possible to avoid sharp domestic and international conflicts. It is not difficult to see that the "one country, two systems" concept will become an important factor for long-term stability in the world; it is where its significance to world peace lies.»34.

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Besides, of course, its implementation and adaptation in a possible future to Taiwan – after all the original, and primarily, destiny of the *One country, Two systems* policy. One must add, on a sort of very succinct information footnote, that very recently, a new formula – or just a new terminology? – surfaced: «*One Country, Two Areas*». This new formula was brought forward by a KMT party former leader (not by State officials) and remains still unclear mostly as to what concerns the differences with the established «*One Country, two systems*» one.

Autonomy clearly is not the only solution for achieving peace, for conflict resolution regarding territorial, nationalities, historical or other sort of *similar* disputes. There can be other options. But autonomy is also a respectable solution and a proved one. Autonomy does not guarantee, *ipso facto*, as mentioned right in the beginning of this paper, as a sort of wonder potion, success, and success scrutinized in several domains or from several angles. But autonomy as a whole – or better, autonomic models, given the profound differences between them – do carry the potential for, and do prove so in several cases, success. And do contribute to peace in our Globe.

And going back again to the anchor of Peace, as putted some decades ago, «"*One country, Two systems*" is a scientific concept put forward by Deng Xiaoping for the peaceful solution to the issue of China's reunification;»35 (Emphasis added).

*Post Scriptum:*

For further research and densification, and given the nature of short paper in here brought, we will leave here some relevant bibliography, in English, on the SARs autonomy and with a special emphasis on comparative approaches:

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J.J. GOMES CANOTILHO, *The autonomy of the Macau Special Administrative Regions: between centripetism and good governance*, at 745 and ff.,

ALBERT CHEN, *The Theory, Constitution and Practice of Autonomy: the Case of Hong Kong*, at 751 and ff.,

F. DOMÍNGUEZ GARCÍA, *Autonomy experiences in Europe — a comparative approach: Portugal, Spain and Italy*, at 409 and ff.,

MARCO OLIVETTI, *The Special Administrative Regions of the PRC in Comparison with Autonomous Regions Models*, at 777 and ff.,

GIANCARLO ROLLA, *The development of asymmetric regionalism and the principle of autonomy in the new constitutional systems: a comparative approach*, at 461 and ff.,

PAULO CARDINAL, *The judicial guarantees of fundamental rights in the Macau legal system — a parcours under the focus of continuity and of autonomy* at 221 and ff.


IEONG WAN CHEONG, One China, Two systems and the Macao SAR, University of Macau, 2005.


YASH GHAI, The imperatives of autonomy: contradictions of the Basic Law, in Hong Kong Constitutional Debates, Johannes Chan/Lison Harris (eds.) HKLJ, 2005, at 29 and ff.


ZHU GUOBIN, Redefining the Central-Local Relationship under the Basic Law, paper given at One Country, Two Systems: Theory and Practice international conference, 1997