COMPARATIVE SUBNATIONAL FOREIGN RELATIONS LAW IN THE CHINESE SPECIAL ADMINISTRATIVE REGIONS

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Abstract The increasing importance of subnational governments in interstate affairs calls for international and comparative law scholars to take subnational foreign relations law more seriously. This article conceives this law as the legal rules that regulate the vertical allocation of foreign relations powers within and across States, and constructs an analytical framework that addresses the questions of why any sovereign would grant extensive foreign relations powers to constituent entities and how such an arrangement plays out in actual practice. This study takes a comparative approach to case studies of the Special Administrative Regions (SARs) of the People's Republic of China: Hong Kong and Macau, which are known for their unusually extensive paradiplomatic powers, which not only defy conventional categories but also surpass those of other substates.

Keywords: China, foreign relations law, Hong Kong, Macau, paradiplomacy.

I. INTRODUCTION

Foreign relations law, consisting of the legal rules that regulate the sovereign State's interaction with the outside world,[1] transcending domestic constitutional and public international law, has until recently received less scholarly attention than it deserves.[2] The neglect of this field is perplexing, for it concerns such weighty matters as the optimal allocation of competence for foreign affairs across State organs and between States.[3] Foreign relations law scholars have nevertheless until now concerned themselves almost exclusively with what might be termed the 'horizontal' allocation of foreign affairs competence between the executive, legislative, and judicial branches of national governments.[4] Far less studied is its 'vertical' allocation between national and subnational governments in the light of the rapid ascendance of 'paradiplomacy', viz. the engagement in foreign affairs of the constituent units of national States.[5]

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[1] CA Bradley, 'Foreign Relations Law and the Purported Shift Away From "Exceptionalism"' (2015) 128 HarvLRev Forum 294. [2] C McLachlan, *Foreign Relations Law* (CUP 2014) 20.

[3] D Abebe, 'Great Power Politics and the Structure of Foreign Relations Law' (2009) 10 ChiJIntlL 125.

[4] See C McLachlan, 'The Allocative Function of Foreign Relations Law' (2012) 82 BYBIL 349.

[5] AS Kuznetsov, *Theory and Practice of Paradiplomacy: Subnational Governments in International Affairs* (Routledge 2015) 2; RB Ahdieh, 'Foreign Affairs, International Law, and the New Federalism: Lessons from Coordination' (2008) 73 MoLRev 1185, 1187.

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Paradiplomacy is sometimes at odds with the foreign policies of the home nations, and presents novel challenges to traditional notions of diplomacy, which conceive foreign affairs as the exclusive competence of central governments.[6] The time is ripe to take comparative subnational foreign relations law seriously.

As a pioneering study of subnational foreign relations law, this article adopts a comparative methodology that features two 'most similar'[7] case studies, Hong Kong and Macau, economically consequential former European dependencies, but now highly autonomous Special Administrative Regions of the People's Republic of China.[8] The unprecedented annexation to the world's most populous, officially Leninist Party-State of cosmopolitan and capitalist Hong Kong and Macau in 1997 and 1999, respectively, marked the formal end of the last major British colony and the longest-lasting Portuguese enclave on foreign soil.[9] Despite the resumption of Chinese sovereignty, however, Hong Kong and Macau have retained, in accordance with their constitutional documents—the Basic Law[10] and the *Lei Básica*[11]—both anchored in international treaties registered with the United Nations, certain State attributes[12]—such as permanent residents,[13] defined territories,[14] autonomous governments with executive, legislative and judicial powers, including that of final adjudication,[15] and, most importantly, competence to enter into treaties and to belong to international organizations not solely restricted to sovereign States.[16] Notably, the two Regions, unlike ordinary non-sovereign entities,[17] have competence to bring claims against foreign States arising from violations of international law, and international personhood to be held responsible for non-compliance with international obligations.[18]

[6] N Skoutaris, 'Comparing the Subnational Constitutional Space of the European Sub-State Entities in the Area of Foreign Affairs' (2012) 4 Perspectives on Federalism 239, 240.

[7] EC Ip, 'The Evolution of Constitutional Adjudication in the Chinese Special Administrative Regions' (2013) 61 AmJCompL 799, 800.

[8] This article excludes from its discussion Taiwan, which, despite Beijing's claims of sovereignty, is not (yet) a Special Administrative Region of the People's Republic of China established under the 'One China, Two Systems' scheme, and is, for all practical purposes, an autonomous international actor. See T Grant, 'Who Can Make Treaties? Other Subjects of International Law' in DB Hollis (ed), *The Oxford Guide to Treaties* (Oxford University Press 2012) 132.

[9] See LWY Heong, 'One Country, Two Ideologies: The Rule of Law in the Hong Kong Special Administrative Region' (2002) 16 Temple International and Comparative Law Journal 447; MK Chan, 'Beyond the Luso Twilight: Into the Sino Glow: A Historical Sketch of Macao's Transformation' in WY Yu and MK Chan (eds), *China's Macau Transformed: Challenge and Development in the 21st Century* (City University of Hong Kong Press 2014) lxiii.

[10] Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (Adopted at the Third Session of the Seventh National People's Congress on 4 April 1990).

[11] *Lei Básica da Região Administrativa Especial de Macau da República Popular da China* (Adopted by the Eighth National People's Congress at its First Session on 31 March 1993).

[12] PCW Chan, 'China's Approaches to International Law since the Opium War' (2014) 27 LJIL 859, 876; R Mushkat, 'The International Legal Personality of Macau' (1994) 24 HKLJ 328, 331.

[13] Art 24 of the Basic Law; art 24 of the *Lei Básica.*

[14] Art 116 of the Basic Law; art 112 of the *Lei Básica.*

[15] Art 2 of the Basic Law; art 2 of the *Lei Básica.*

[16] Cap VII of the Basic Law; cap VII of the *Lei Básica*; see also EC Ip, *Law and Justice in Hong Kong* (2nd edn, Sweet & Maxwell 2016) 381–408.

[17] F Lin, 'Foreign Relations' in B Clift, J Johnson and KM Lim (eds), *Halsbury's Laws of Hong Kong Volume 30* (2nd edn, LexisNexis 2012) 177, 198.

[18] Z Sun, 'International Legal Personality of the Hong Kong Special Administrative Region' (2008) 7 ChineseJIL 339, 340.

This article will address two questions: Why would the People's Republic of China grant the foreign relations competences typical of a sovereign to its two Special Administrative Regions? What legal principles delimit the foreign relations competences and responsibilities of China from those of Hong Kong and Macau? As the first publication to systematically compare the foreign relations law and practice of Hong Kong and Macau, it sets an analytical framework that may serve for future studies in subnational foreign relations law, whilst also contributing to the literature of comparative law. And this article is particularly timely in the light of China's phenomenal emergence as a global power over the past two decades.[19] It is organized as follows. The second section traces the origins and development of foreign affairs competences in Hong Kong and how they spilled over into Macau in the final phases of Portuguese rule. The third section analyses the foreign relations provisions in the constitutions of both Regions and how they are implemented in practice. China has co-opted Macau in its diplomatic strategy, whilst leaving Hong Kong's foreign relations potential untapped, despite its manifold established international connections. The fourth section discusses the implications of the cases of the Chinese Special Administrative Regions on comparative subnational foreign relations law and sums up the principal findings of this article.

II. ORIGINS AND DEVELOPMENT

During the First Opium War (1839–42), the British founded what was to become Hong Kong on one of the 260 islands lying off the coast of China bordering the north end of the South China Sea, which nominally belonged to the Cantonese County of Bao'an. In 1842 by the Treaty of Nanking the Emperor Daoguang ceded to the British Crown in perpetuity the territory by then already known as Hong Kong, so named by the British after one of the island's 20 settlements. Queen Victoria established it a Crown colony one year later, to be administered as a commercial, diplomatic, and military outpost.[20] Its territory soon expanded to cover Kowloon Peninsula and Stonecutters Island to the north, and then the entire landmass and surrounding islands to the south of the Shenzhen River after, respectively, the First Convention of Peking 1860 and Second Convention of Peking 1898.

The rise of Hong Kong on the international stage followed the entrenchment of a convention of the Imperial Government to defer matters of political judgment to the Crown colony. The norms governing Hong Kong's foreign affairs were uncodified and depended largely on constitutional conventions and international decisions, rather than hard-and-fast constitutional rules. For instance, no bill enacted by the Government of Hong Kong was disallowed by Whitehall after 1913;[21] moreover, Imperial Orders in Council and Acts of Parliament affecting the colony were often drafted in the City of Victoria and merely rubber-stamped in the City of Westminster.[22] In 1932 the British

[19] See AY So and YW Chu, *The Global Rise of China* (Polity 2015).

[20] See GB Endacott, *Government and People in Hong Kong 1841–1962: A Constitutional History* (Hong Kong University Press 1964).

[21] See NJ Miners, *The Government and Politics of Hong Kong* (4th edn, Hong Kong University Press 1986).

[22] See P Wesley-Smith, 'The Present Constitution of Hong Kong' in P Wesley-Smith and AHY Chen, (eds), *The Basic Law and Hong Kong's Future* (Butterworths 1988) 5.

Empire Economic Conference held in Ottawa conferred on Hong Kong the right to special trade and tariff status in the Commonwealth.[23] After the Second World War, Hong Kong began to depend heavily on international trade.[24] In 1947 the Colony became an associate member of the United Nations Economic Commission for Asia and the Far East. In 1958 it was granted independence from the United Kingdom in finance and taxation.[25] As British commercial interests in Hong Kong declined, colonial officials morphed into 'champions of Hong Kong for its own sake' vis-à-vis London and Beijing.[26] In 1966 the colony was able to appoint an official attached to the British embassy in Brussels who specialized in trade relations with the European Economic Community; three years later it became a full member of the Asian Development Bank and the Asian Productivity Organization.[27] Its peculiar status as a 'quasi-state'[28] in the international arena was reinforced by Whitehall's growing acceptance that permission need not be asked every time dependencies sought to attend international meetings or network with foreign officials.[29] By the 1980s Whitehall diplomats occasionally found adversaries in Hong Kong officials in international fora, even though many of the latter were themselves of British origin.[30]

In the late 1940s Mao Zedong and Zhou Enlai had decided to leave Hong Kong alone for strategic and economic reasons, viewing it as an outpost for China to collect global information that could not otherwise be obtained and to develop informal trade relations with Taiwan.[31] The Communist regime treated the British authorities in Hong Kong as legitimate for all practical purposes, recognizing the validity of treaties between the Crown colony and the rest of the world, and acknowledging the United Kingdom's right to offer consular protection to its residents.[32] Nevertheless, in 1972, having supplanted the Republic of China (Taiwan) in the United Nations, the People's Republic wasted no time in prevailing upon that body to remove Hong Kong and Macau from the list of non-self-governing territories awaiting self-determination under Chapter XI of the United Nations Charter. In all of this, neither Beijing nor the United Nations paid attention to the views of the people of either territory.[33]

[23] LF Goodstadt, *Uneasy Partners: The Conflict between Public Interest and Private Profit in Hong Kong* (Hong Kong University Press 2005) 64–9.

[24] AJ Youngson, *Hong Kong Economic Growth and Policy* (OUP 1982) 112.

[25] H Kuan, 'Political Stability and Change in Hong Kong' (1979) IX International Journal of Sociology 121.

[26] D Duncanson, 'Hong Kong as a Crown Colony' in J Dome and Y Shaw (eds), *Hong Kong: A Chinese and International Concern* (Westview Press 1988) 11.

[27] K Rear, 'The Law of the Constitution' in K Hopkins (ed), *Hong Kong: The Industrial Colony* (OUP 1971) 339, 370.

[28] BSJ Weng, 'Mainland China, Taiwan, and Hong Kong as International Actors' in GA Postiglione and JTH Tang (eds), *Hong Kong's Reunion with China* (Hong Kong University Press 1997) 43; JCY Lee and G Chan, 'Hong Kong's Changing International Relations Strategy' in B Leung and J Cheng (eds), *Hong Kong SAR: In Pursuit of Domestic and International Order* (The Chinese University Press 1997) 177, 183.

[29] I Hendry and S Dickson, *British Overseas Territories Law* (Hart Publishing 2011) 158–9.

[30] Goodstadt (n 23) 65.

[31] S Shen, 'Navigating the Grey Area: Hong Kong's External Relations under the Tsang Administration' in JYS Cheng (ed), *The Second Chief Executive of Hong Kong SAR: Evaluating the Tsang Years 2005–2012* (City University Press 2013) 469, 471.

[32] A Dicks, 'Treaty, Grant, Usage or Sufferance? Some Legal Aspects of the Status of Hong Kong' (1983) 95 The China Quarterly 427, 439.

[33] Y Ghai, 'Hong Kong's Autonomy: Dialects of Powers and Institutions' in Y Ghai and S Woodman (eds), *Practising Self-Government: A Comparative Study if Autonomous Regions*

Even so, in December 1984 the Sino-British Joint Declaration on the Question of Hong Kong provided *inter alia* that the Territory, after its 1997 transfer to China, 'may establish mutually beneficial economic relations with the United Kingdom and other countries, whose economic interests in Hong Kong will be given due regard[34] … [and may] on its own maintain and develop economic and cultural relations and conclude relevant agreements with states, regions and relevant international organisations'.[35] To confer a separate identity on post-British Hong Kong was hardly groundbreaking, however; the Joint Declaration merely codified a decades-long reality recognized by all, including Beijing.[36]

The period from 1984 to 1997 witnessed an explosive growth in Hong Kong's foreign relations, with the tacit acquiescence of its outgoing and incoming sovereigns.[37] The Territory became a high contracting party to the General Agreement on Tariffs and Trade (GATT) in 1986.[38] In 1986 and 1990, respectively, Hong Kong imposed sanctions on South Africa and Iraq independently of the United Kingdom.[39] In 1992 it acceded as a full member to the Asia-Pacific Economic Cooperation (APEC) forum promoting free trade between 21 Pacific Rim countries, all of them sovereign States. In 1994, as a result of Hong Kong's zealous mediation of the Sino-American trade conflict through its diplomats in Washington, the United States renewed China's Most Favoured Nation status.[40] It even became a founding member of the World Trade Organization in 1995. As at 1997 Hong Kong was a member of 53 international organizations, compared to the incoming Sovereign, the People's Republic of China, which only belonged to 33.[41]

Like Hong Kong, Macau is located on the northern end of the South China Sea, bordering Guangdong (Canton) Province. Ming China acquiesced in the Portuguese occupation of Macau in 1557, after four decades of unofficial settlement,[42] but it was not until 1887 that Peking formally recognized the Portuguese right of 'perpetual occupation' in the Treaty of Friendship and Commerce.[43] On the one hand, this enclave over time developed a thoroughgoing multi-cultural identity that served as an ideal bridge between East and West, predating Hong Kong by several

(CUP 2013) 315, 320; J Crawford, *Brownlie's Principles of Public International Law* (8th edn, Oxford University Press 2012) 249.

[34] Art 3(9) of the Sino-British Joint Declaration on the Question of Hong Kong 1984.

[35] Art 3(12) ibid.

[36] J Crawford, *Rights in One Country: Hong Kong and China* (Faculty of Law, The University of Hong Kong 2005) 27.

[37] KR Nossal, 'Playing the International Card? The View from Australia, Canada, and the United States' in GA Postiglione and JTH Tang (eds), *Hong Kong's Reunion with China* (Hong Kong University Press 1997) 80.

[38] Y Wong, *Autonomy and Protection of Fundamental Rights in the Hong Kong SAR* (LexisNexis 2007) 41.

[39] K Richard, 'A High Degree of Ambiguity: Hong Kong as an International Actor after 1997' (1997) 10 *The Pacific Review* 84, 89.

[40] MS Neves, 'The External Relations of the Hong Kong Special Administrative Region' in R Ash, P Ferdinand, B Hook and R Porter (eds), *Hong Kong in Transition: The Handover Years* (St Martin's Press 2000) 271, 272.

[41] Lee and Chan (n 28) 183.

[42] JJ Chang, 'Settlement of the Macao Issue: Distinctive Features of Beijing's Negotiating Behavior' (1988) 20 CaseWestResJIntl L 253, 255–6.

[43] P Cardinal, 'Macau: Transformation of An Historic Autonomy' in Y Ghai and S Woodman (eds), *Practising Self-Government: A Comparative Study of Autonomous Regions* (CUP 2013) 383, 385.

centuries.[44] On the other hand, the Portuguese colonial authorities had an inconsequential role in foreign affairs throughout Macau's history. Decolonization in Africa and Timor in the twentieth century shut down the legal mechanisms by which Portugal had applied international treaties to its overseas dependencies.[45] Moreover, Macau's economy was far less international than Hong Kong's; with the decline of the military industry and conventional trade, the gambling industry, operated by local businessmen, dominated its economy throughout the twentieth century.[46] Portugal's Macau policy underwent a major change after the Carnation Revolution of 1974; unprecedentedly, the Constitution of the Portuguese Republic of 1976 omitted Macau, implicitly recognizing it as Chinese territory temporarily under Portuguese administration.[47] The *Estatuto Orgânico de Macau*, also ratified in 1976, nevertheless insisted that '[t]he powers to deal with matters relating to foreign relations, international agreements or conventions, and the powers to represent Macau' were to be vested in the Portuguese President, not the Governor.[48] As at 1981 Macau was party to only four international agreements, and a member of just one international body, the World Tourism Organisation, because of its thriving gambling sector.[49]

The People's Republic of China repeatedly refused to accept post-Revolution Portugal's offer to return Macau, apparently for fear that it might affect international confidence in Hong Kong's future. The resolution in 1984 of the question of Hong Kong's sovereignty naturally ushered in Macau's transition process, which culminated in the Sino-Portuguese Joint Declaration of 1987. In the teeth of the many differences between Macau's and Hong Kong's governing institutions, China decided to 'blindly' copy the legal framework of the future Hong Kong Special Administrative Region, including preserving the *status quo* of its foreign affairs competence, in its design of Macau's post-Portuguese constitution.[50] The upshot was that, whilst the Sino-British treaty reaffirmed and formalized Hong Kong's pre-existing international autonomy, the Sino-Portuguese one marked a radical break for Macau.[51]

In stark contrast to Hong Kong, Macau's paradiplomacy developed only after the Joint Declaration was concluded.[52] Portugal freely imitated the Hong Kong model, which would be written into the *Lei Básica*, involving Macau in many of the international organizations that Hong Kong was a member of, and acceding to multilateral treaties in domains like aviation, communications, consumer protection, customs, financial services, health, maritime matters, productivity standards, tourism, and workplace safety. Macau's entry into the International Maritime Organization in 1990 led to the establishment of an international shipping registry and strengthened its independence from Hong Kong in maritime matters.[53] In 1991 it became a member of GATT, and

[44] See S Zandonai, 'Global Diversity, Local Identity: Multicultural Practice in Macau' (2009) 18 Intercultural Communication Studies 37.

[45] SJ Henders, 'So What If It's Not a Gamble? Post-Westphalian Politics in Macau' (2001) 74 Pacific Affairs 342, 348.

[46] Z Hao, *Macau History and Society* (Hong Kong University Press 2011) 75–9.

[47] JAF Godinho, *Macau Business Law and Legal System* (LexisNexis 2007) 3.

[48] Mushkat (n 12) 332. [49] Henders (n 45) 347. [50] Cardinal (n 43) 408.

[51] Y Ghai, 'The Basic Law of the Special Administrative Region of Macau: Some Reflections' (2000) 49 ICLQ 183, 184.

[52] JC Matias, 'Macao, China and Portuguese Speaking Countries' in WY Yu and MK Chan (eds), *China's Macao Transformed: Challenge and Development in the 21st Century* (City University of Hong Kong Press 2014) 331, 333. [53] Henders (n 45) 356.

in 1995 a founding member of the WTO. Portugal's efforts to upgrade Macau's status in Brussels resulted in the European Union–Macau Trade and Cooperation Agreement of 1992.[54] Beijing acquiesced in this decision, for it helped to shore up the credibility of Macau's future under Chinese sovereignty. As at 1995, Macau was member of 27 international organizations.[55]

Hong Kong's economic success has always depended on its special international status and extensive international ties; its economy hinges on a nexus of global contacts and participation in intergovernmental organizations.[56] The expansion of its foreign relations competence in the British era was spontaneous, and resulted both from practical necessities and from obstacles that forced Whitehall to cede diplomatic powers to Hong Kong from time to time. No constitutional arrangement for it was found to work absent a significant devolution of foreign relations competence.[57] Hong Kong's international status and autonomy after the withdrawal of British rule was therefore a matter of concern to the international community.[58] The influence of the Hong Kong model permeated the Sino-Portuguese discussions. Mainland lawyers who had served on the Hong Kong Basic Law Drafting Committee also served on the *Lei Básica* Committee.[59] Despite the many dissimilarities between the paradiplomatic practices of Hong Kong and Macau, the *Lei Básica* turned out to be strikingly similar to the Basic Law.[60]

III. FOREIGN RELATIONS LAW AND PRACTICE

The Basic Law was supposedly enacted to conserve and expand Hong Kong's existing foreign relations competences, evolved incrementally as constitutional conventions and political practice, into the Chinese era. The drafters were seemingly aware that the former Crown colony's ability to handle its own foreign affairs had substantially contributed to its status as a free port, a free-standing customs territory, and an international financial centre.[61] Pursuant to the Basic Law and *Lei Básica*, 'foreign affairs' is under the jurisdiction of the Central People's Government, whereas 'external affairs' falls within the ambit of the Regions' autonomy.[62] The proposition that the Regions should enjoy all powers except those expressly reserved to the Chinese authorities was firmly rejected, however.[63]

The Constitution of the People's Republic of China, which is not enforceable in Hong Kong and Macau in any meaningful sense, recognizes no distinction between foreign and

[54] TH Cheng, 'Why New States Accept Old Obligations' (2011) 2011 IllinoisLRev 1, 14.

[55] G Yao, *Research on the Problems of Treaty Implementation in Macao* (Macau Polytechnic Institute 2011) 6 [in Chinese].

[56] LM Cummings and JTH Tang, 'The External Challenge of Hong Kong's Governance: Global Responsibility for a World City' in M Sing (ed), *Politics and Government in Hong Kong: Crisis under Chinese Sovereignty* (Routledge 2009) 176.

[57] Y Ghai, *Hong Kong's New Constitutional Order: The Resumption of Chinese Sovereignty and the Basic Law* (2nd edn, Hong Kong University Press 1999) 457.

[58] AHY Chen, 'Some Reflections on Hong Kong's Autonomy' (1994) 24 HKLJ 173, 179.

[59] Ghai (n 51) 184.

[60] See JR Krebs, 'One Country, Three Systems? Judicial Review in Macau after *Ng Ka Ling*' (2000) 10 Pacific Rim Law & Policy Journal 126.

[61] PY Lo, *The Hong Kong Basic Law* (LexisNexis 2011) 748.

[62] Art 13 of the Basic Law; Art 13 of the *Lei Básica.*

[63] D Gittings, *Introduction to the Hong Kong Basic Law* (Hong Kong University Press 2013) 65.

external affairs. The Preamble declares that 'China adheres to an independent foreign policy' and to the principles of 'mutual respect for sovereignty and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence in developing diplomatic relations'. Foreign affairs competences are allocated to several national organs.[64] The power 'to conduct foreign affairs and conclude treaties and agreements with foreign states' is vested in the Central People's Government.[65] The Standing Committee of the National People's Congress has power to 'decide on the ratification and abrogation of treaties and important agreements concluded with foreign states'[66] and on 'the appointment and recall of plenipotentiary representatives abroad'.[67] A Foreign Affairs Committee exists in the National People's Congress and its Standing Committee to scrutinize legislative proposals on foreign relations.[68] The President of the People's Republic receives foreign diplomatic representatives on behalf of the State, and is responsible for executing the Standing Committee's foreign relations decisions.[69] In practice, the exercise of foreign relations functions is centralized, for the Premier of the State Council, the Chairman of the Standing Committee, and the President all belong to the powerful and ultra-elite seven-member Standing Committee of the Communist Party's Politburo.

Under the Basic Law and *Lei Básica*, the Chief Executives[70] and Governments[71] of the Hong Kong and Macau Special Administrative Regions, may on their own, without the prior approval of the Central People's Government, engage in the following 'external affairs' activities: to 'maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organisations in the appropriate fields', including but not limited to 'the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields[72] … establish official or semi-official economic and trade missions in foreign countries[73] … [entertain] consular and other official missions established … by states which have formal diplomatic relations with the People's Republic of China[74] [and] participate in international organisations and conferences not limited to states … [including bodies] of which the People's Republic of China is not a member'.[75] The two charters oblige the Central People's Government to consult Hong Kong and Macau authorities before applying to the Regions treaties to which China is a party. Treaties which were in force before the resumption of sovereignty may continue to be implemented in the Regions regardless whether China is also a party to them or not.[76]

These provisions give the initial impression that 'foreign affairs' is confined to acts that can only be done by the sovereign, as becoming a full member of the United Nations;

[64] B Ling, 'The "Confused Topic" of Act of State under the Hong Kong Basic Law' (2013) 1 Chinese Journal of Comparative Law 84, 102.
[65] Art 89(9) of the Constitution of the People's Republic of China 1982.
[66] Art 67(14) of the Constitution of the People's Republic of China 1982. [67] Art 67(13) ibid.
[68] Art 70 ibid. [69] Art 81 ibid. [70] Art 48(9) of the Basic Law; Art 50(13) of the *Lei Básica.*
[71] Art 62(3) of the Basic Law; Art 64(3) of the *Lei Básica.*
[72] Art 151 of the Basic Law; Art 136 of the *Lei Básica.* The *Lei Básica* further mentions the field of 'science and technology'. [73] Art 156 of the Basic Law; Art 141 of the *Lei Básica.*
[74] Art 157 of the Basic Law; Art 142 of the *Lei Básica.*
[75] Art 152 of the Basic Law; Art 137 of the *Lei Básica.*
[76] Art 153 of the Basic Law; Art 138 of the *Lei Básica.*

whilst 'external affairs' denotes acts involving no issues of sovereignty.[77] Other Basic Law and *Lei Básica* provisions present a more complex picture. After obtaining the Central People's Government's authorization—which by convention is almost always granted—Hong Kong and Macau may conduct *de facto* diplomatic affairs:[78] issue passports and impose immigration controls,[79] conclude visa abolition agreements with foreign States,[80] make arrangements on air services (Hong Kong alone)[81] and reciprocal judicial assistance arrangements with foreign States,[82] and send representatives to 'participate in negotiations at the diplomatic level directly affecting the Region[s] [as] members of delegations of the Government of the People's Republic of China'.[83]

It is reasonable, even in the absence of any authoritative judicial or legislative pronouncement, to describe 'foreign affairs' in the context of the Regions as referring to a narrower class of activities that may be conducted by the sovereign alone, or 'high foreign policy' in the language of international relations; examples include State recognition; war, belligerency, and neutrality; territorial claims; and military alliances.[84] In the Chinese context, such activities can be understood as what State leaders have, over the past decade, consistently referred to as the so-called 'core national interests' (*hexin liyi*), viz conserving China's fundamental political system and national security by way of prolonging the rule of the Communist Party; safeguarding territorial integrity and State sovereignty; and maintaining international conditions for China's domestic and international economic development through guaranteeing access to economic resources such as raw materials, sea lines of communication, and so on.[85] Admittedly, the law as it currently stands does not confer on 'foreign affairs' a precise and unambiguous definition, such that it is, analogously, more akin to the dark matter in the universe that has not been observed directly but can be discerned from its significance over the physical reality.[86]

Hong Kong and Macau have both remained internationally active in the exercise of their 'external affairs' powers since the resumption of Chinese sovereignty. Hong Kong's Chief Executive continues to attend the annual APEC meetings as a full member, side by side with the Presidents of the United States, Russia and China, and the Prime Ministers of Australia, Japan and New Zealand. The Macau Chief Executive routinely visits European Union (EU) and lusophone countries: in 2010 Fernando Chui met with Portuguese President Aníbal Cavaco Silva and Prime Minister José Sócrates in his first overseas visit as Chief Executive. As at 2016, Hong Kong maintained permanent missions in Brussels, Geneva, London, New York and

[77] S Shen, 'Hong Kong's Sub-Sovereign Status and Its External Relations' in P Sevastik (ed), *Aspects of Sovereignty: Sino-Swedish Reflections* (Martinus Nijhoff 2013) 101, 112.

[78] CL Lim and R Mushkat, 'External Affairs' in JMM Chan and CL Lim (eds), *Law of the Hong Kong Constitution* (Sweet & Maxwell 2011) 81.

[79] Art 154 of the Basic Law; Art 139 of the *Lei Básica.*

[80] Art 155 of the Basic Law; Art 140 of the *Lei Básica.*

[81] Art 133 of the Basic Law.

[82] Art 96 of the Basic Law; Art 94 of the *Lei Básica.*

[83] Art 150 of the Basic Law; Art 135 of the *Lei Básica.*

[84] R Mushkat, 'Foreign, External, and Defence Affairs' in P Wesley-Smith and AHY Chen (eds), *The Basic Law and Hong Kong's Future* (Butterworths 1988) 248, 252.

[85] T Heath and B Lin, 'The Chinese Dream: Strategic and Policy Priorities of the People's Republic' in S Kistler (ed), *China, Inside and Out: A Collection of Essays on Foreign and Domestic Policy in the Xi Jinping Era* (RAND Corporation 2015) 4–5.

[86] See EL Rubin, 'Executive Action: Its History, Its Dilemmas, and Its Potential Remedies' (2016) 8 Journal of Legal Analysis 1, 12

Washington, amongst other strategic capitals; Macau likewise maintained permanent delegations to the EU and WTO. As at 2012, again, 90 States had representatives in Macau.[87] The influx of United States capital into Macau's gaming industry throughout the 2000s has greatly increased Macau's importance in Sino-American relations.[88] The Regions' separate treaty systems have also made much progress, and received substantial recognition from the international community:[89] as at 2012, Macau had signed 66 bilateral treaties;[90] Hong Kong had concluded 219 such agreements as at 2013.[91]

In particular, Hong Kong has in its own right concluded and maintained extradition and mutual legal assistance treaties with Australia, New Zealand, Canada, the United Kingdom, the United States, and major European States.[92] China has only rarely second-guessed the former British dependency's extradition decisions; it apparently refrained from intervening in or commenting on the US–Hong Kong negotiations over the fate of National Security Agency whistle-blower Edward Snowden, who unexpectedly showed up in the Region in 2013.[93] What is more, the ongoing investiture conflict between Beijing and the Catholic Church over episcopal appointments on the mainland has not spilled over into either Region. Even after the resumption of Chinese sovereignty, the Holy See has always been able to freely appoint the bishops of Hong Kong and Macau.[94]

Nearly two decades of development since the handover point to one overall trend: law, including the delicate distinction between 'foreign affairs' and 'external affairs', is not the controlling factor when political stakes are the highest. Generally speaking, China has proactively incorporated Macau into its diplomatic strategy, indirectly strengthening the latter's paradiplomacy,[95] whilst Hong Kong's potential in this regard is largely left unexplored, such that the former British dependency is left to its own devices in external affairs, subject to sporadic brakes from Beijing.

China initially was unsympathetic to the colonial legacy of Portuguese Macau. Beijing pre-empted Lisbon's plan to bestow associate observer status on Macau in the *Comunidade de Paises de Lingua Portuguesa*, founded only in 1996.[96] Nonetheless, the years following the reversion in 1999 have witnessed an aggressive restoration, by China and the Macau government, of the Region's Portuguese and colonial identity, for obvious political and economic reasons;[97] which is associated with China's renewed

[87] Matias (n 52) 333.

[88] Y Hao and J Wang, 'Introduction' in Y Hao and J Wang (eds), *Macao and U.S.-China Relations* (Lexington Books 2011) 1, 8. The involvement of the Banco Delta Asia in North Korea's money laundering scandal highlighted Macau's tacit but substantial role in Sino-American relations, see Y Hou, 'A Chinese Perspective of Macao and Sino-U.S. Relations: A Case Study of the Banco Delta Asia Affair' in Hao and Wang ibid 183.

[89] WP Lung, 'Application and Conclusion of Treaties in the Hong Kong Special Administrative Region of the People's Republic of China: Sixteen Years of Practice' (2013) 12 ChineseJIL 589, 612.

[90] Matias (n 52) 334.

[91] Lung (n 89) 607.

[92] Y Ren, 'Hong Kong in the Eyes of the International Community' in JYS Cheng (ed), *The Hong Kong Special Administrative Region in Its First Decade* (City University of Hong Kong 2007) 305, 320.

[93] MD Kielsgard and KGK Ip, 'Hong Kong's Failure to Extradite Snowden: More than just a Technical Defect' (2014) 13 Richmond Journal of Global Law & Business 49, 52–3.

[94] SK Tok, *Managing China's Sovereignty in Hong Kong and Taiwan* (Palgrave Macmillan 2013) 119.

[95] Matias (n 52) 337.

[96] Henders (n 45) 358.

[97] WM Lam, 'Promoting Hybridity: The Politics of the New Macau Identity' (2010) 203 The China Quarterly 656, 674.

drive to deepen diplomatic relations with Europe, Africa and Latin America as an important alternative to its complex bilateral relationship with the United States.[98] In October 2003 the Permanent Secretariat of a Forum for Economic and Commercial Cooperation between the People's Republic of China and Portuguese-Speaking Countries (including Portugal, Brazil, Cape Verde, Guinea Bissau, Angola, Mozambique, and East Timor, with a combined population of over 200 million spread across four continents) was established in Macau. Then, in 2004 and 2007 Macau organized the First and Second China and Portuguese-Speaking Countries Airports Conference.[99] In 2006 Macau hosted the Lusophony Games, fielding the only team from a non-sovereign dominion. During the third Ministerial Conference in Macau in November 2010, Chinese premier Wen Jiabao announced a US$1 billion development fund to the lusophone countries.[100] The 2013 Ministerial Conference discussed the establishment of a Sino-Lusophone Conventions and Exhibitions Centre in Macau.

The Macau Forum, largely a by-product of the friendly relations between Lisbon and Beijing (in contrast to the bitter Sino-British negotiations), continues to confer on the Region the role of a special platform for bridging China and the lusophone world.[101] For its part, Macau has leveraged its prominence in China's international economic relations to diversify its economy (notwithstanding its success with the gaming industry) through important international meetings such as the World Tourism Organization's ministerial roundtable and the Global Consultations Regional Meeting for Asia and the Pacific on International Protection for Refugees.[102] To this end, a high-ranking specialist foreign relations agency known as the Protocol, Public Relations and External Affairs Office, which has no equivalent in Hong Kong, was established in 2012. Emphasizing Macau's status as a 'cultural city' was considered the key to increasing tourism.[103]

Hong Kong is a nodal international financial centre and, through the United Kingdom, a former Commonwealth member; it could have functioned as a laboratory for China to test diplomatic initiatives and as an advisor on relations with the Anglophone world.[104] This role has not played out in China's relations with the United States, or even the Commonwealth, in a way comparable to Macau's contribution to Sino-lusophone relations. This is explicable by several international factors. It was business communities, not Hong Kong, that were the prime movers of ten investment, merger and share participation deals in the United Kingdom, with a value of more than US$8 billion, and of US$18.1 billion of British direct investment in China in 2012.[105] The implementation of the Joint Declaration was never a major issue between the United Kingdom and China after 1997, despite recurrent controversies about the narrowing of Hong Kong's autonomy.[106] The former British dependency had no visible involvement

[98] M Lanteigne, *Chinese Foreign Policy: An Introduction* (2nd edn, Routledge 2013) 144.
[99] Lam (n 97) 671.
[100] Matias (n 52) 347.
[101] CA Mendes, 'Macau in China's Relations with the Lusophone World' (2014) 57 Revista Brasileira Política Internacional 225, 226.
[102] Hao and Wang (n 88) 2.
[103] CH Huang, JR Tsaur, CH Yang, 'Does World Heritage List Really Induce More Tourists? Evidence from Macau' (2012) 33 Tourism Management 1450, 1452.
[104] Shanghai Institutes for International Studies, *A Consultancy Study on China's Foreign Policy and Hong Kong's Position in Regional Developments* (SIIS 2009).
[105] R Sanders, 'The Commonwealth and China: Upholding Values, Containing the Dragon?' (2013) 102 The Round Table: The Commonwealth Journal of International Affairs 223, 230.
[106] See CL Lim, 'Britain's Treaty Rights in Hong Kong' (2015) 131 LQR 348.

in the recent warming of Sino-British relations that saw high-profile State visits to the United Kingdom by Premier Li Keqiang and President Xi Jinping in 2014 and 2015, respectively. Unlike their lusophone counterparts, members of the Commonwealth—so diverse in terms of wealth and regime type—overwhelmingly prefer to engage with China individually and bilaterally in pursuit of the maximum benefit they can achieve.[107]

Beijing's persistent reluctance to incorporate Hong Kong into its foreign policy may spring from domestic political factors as well. Admittedly, there has always existed an inherent tension between the liberal and Westernized identity of Hong Kong and the authoritarian agenda of China.[108] Government plans for integration, patriotic and nationalist propaganda, and the influx of mainland property buyers, immigrants, and tourists only serve to inflame the budding 'Hong Konger' identity.[109] The erosion of the Party-State's commitment to Hong Kong's internationally guaranteed autonomy ignites protests by the community, which provokes still further interference from the centre.[110] It was widely speculated that China's sudden decision to shift the venue of the APEC financial ministers' February 2014 meeting from Hong Kong to Beijing, the kind of move one APEC official described as 'rare', was to retaliate the Region for the blazoning Occupy Central with Love and Peace civil disobedience movement, which threatened 10,000 protestors who would paralyse traffic in the busy Central district if Beijing refused to abandon vetting of Chief Executive candidates in future elections.[111] Four months later, the State Council in Beijing released a highly controversial White Paper, which decreed that China's own 'sovereignty, security and development interests' are to be paramount in Hong Kong.[112] Conflict between the Region and its sovereign escalated even more when an estimated 1.2 million people out of a total population of 7.2 million joined the so-called 'Umbrella Revolution' which occupied busy streets in three districts for 79 days between September and December 2014, in defiance of riot police and public order laws.[113] In April 2015 it was announced that Hong Kong's application to become a member of the China-led Asian Infrastructure Investment Bank (AIIB) was unsuccessful; the Region was nowhere on the final list of 57 AIIB founding members.

Given China's passivity, Hong Kong has to depend in its foreign relations on its traditional strengths as an international financial and maritime centre. It accepted the Group of Seven's (G7′s) invitation in 1999 to join the Financial Stability Forum (FSF) alongside Australia, Singapore, Switzerland and the Netherlands—exactly ten years

[107] Sanders (n 105) 231.

[108] MS Flaherty, 'Hong Kong Fifteen Years after the Handover: One Country, Which Direction?' (2013) 51 Columbia Journal of Transnational Law 275.

[109] S Yuen, 'Under the Shadow of China: Beijing's Policy towards Hong Kong and Taiwan in Comparative Perspective' (2014) 2 China Perspectives 69, 76; see also EC Ip, 'The High Court of the People: Popular Constitutionalism in Hong Kong under Chinese Sovereignty' (2014) 36 Law & Policy 314.

[110] N Ma, 'The Rise of "Anti-China" Sentiments in Hong Kong and the 2012 Legislative Council Elections' (2015) 15 China Review 39, 61.

[111] S Lau, T Cheung and Z Hong, 'Key APEC Meeting Switched from Hong Kong to Beijing' *South China Morning Post* (25 February 2014).

[112] Information Office of the State Council of the People's Republic of China, *The Practice of "One Country, Two Systems" Policy in the Hong Kong Special Administrative Region* (Foreign Language Press 2014) 46–7.

[113] See VT Hui, 'Hong Kong's Umbrella Movement: The Protests and Beyond' (2015) 26 Journal of Democracy 111.

prior to China's own accession to the FSF's successor, the Financial Stability Board. In the period surrounding the 11 September 2001 attacks, Hong Kong chaired the 29-member multilateral Financial Action Task Force, generating eight special recommendations for destroying terrorist financial networks, even though international security is, strictly speaking, 'foreign affairs' in Basic Law parlance; since then, the Region has engaged in the US-led financial war against terrorism, regularly instructing financial institutions how to find terrorist assets.[114] Officials of post-British Hong Kong have served in various leading posts in the World Trade Organization (WTO), including Chairman of the WTO General Council.[115] In 2009, delegates from 63 countries assembled in the Region under the auspices of the International Maritime Organization, to sign the Convention for the Safe and Environmentally Sound Recycling of Ships, now commonly known as the Hong Kong Convention. In 2010 Chief Executive Donald Tsang and Russian President Dmitry Medvedev exchanged official visits, which eventually led to the listing of the Russian mining conglomerate RUSAL on the Hong Kong Stock Exchange.[116]

Hong Kong's paradiplomacy has been a subject of intense political contestation.[117] Take for example the 12-hour Manila hostage crisis on 23 August 2014, which was broadcast live and ended up with eight Hong Kong tourists killed and another three seriously injured. The ineffective negotiation strategy of the Filipino police with the hijacker, a former policeman, was extensively criticized by citizen and expert alike.[118] Shortly prior to the shootings, the Chief Executive had unsuccessfully attempted to contact Filipino President Benigno Aquino III to ask for guarantees of the safety of Hong Kong tourists. Tsang then wrote an official letter to Aquino, urging the Philippines to uncover the truth behind the hijacking, which the Filipino head of State found diplomatically 'insulting' even though Hong Kong and the Philippines are equal members of APEC, and the crisis imperilled tourists' safety, a matter which falls within the competence of the Region according to the Basic Law.[119] Public opinion was generally on the side of Tsang's active stance, yet certain pro-Beijing political figures still censured the Government for 'usurping China's sovereignty'.[120] Whilst Beijing pragmatically affirmed Tsang's decisions afterwards, the incident seems to imply that not a few of the leaders within the establishment tend to conceptualize all foreign relations as outside the external affairs jurisdiction of the Region's government.[121]

Another example revealed that China's foreign policy positions lie inside a core set of preferences which Beijing is apparently willing to pursue at all costs.[122] In a binding Interpretation of the Basic Law which overturned the former British dependency's

[114] Shen (n 31) 475–6.

[115] LM Cummings and JTH Tang, 'The External Challenge of Hong Kong's Governance: Global Responsibility for a World City' in M Sing (ed), *Politics and Government in Hong Kong: Crisis under Chinese Sovereignty* (Routledge 2009) 176, 183.

[116] Shen (n 31) 480.

[117] See Richard (n 39) 88.

[118] A Lai, 'Taking the Hong Kong Tour Bus Hostage Tragedy in Manila to the ICJ? Developing a Framework for Choosing International Dispute Settlement Mechanisms' (2011) 45 International Lawyer 673, 679.

[119] Shen (n 31) 484–5.

[120] WW Chan, 'Paradiplomacy and its Constraints in a Quasi-Federal System – A Case Study of Hong Kong SAR and Its Implications to Chinese Foreign Policy' paper prepared for the biennial International Conference on Public Policy, Milan, Italy (4 July 2015) 10.

[121] Shen (n 31) 494.

[122] See EC Ip, 'Constitutional Competition between the Hong Kong Court of Final Appeal and the Chinese National People's Congress Standing Committee: A Game Theory Perspective' (2014) 39 Law & Social Inquiry 824.

decades-long policy of restrictive State immunity, the Standing Committee of the National People's Congress proclaimed that 'as the rules or policies on state immunity fall within diplomatic affairs in the realm of the foreign affairs of the state, the Central People's Government has the power to determine the rules or policies of the People's Republic of China on state immunity to be given effect to uniformly in the territory of the People's Republic of China'.[123] This Interpretation was issued in the wake of the Court of Final Appeal's controversial decision in *Democratic Republic of Congo and others v FG Hemisphere Associates (No 1)*.[124] China's plans for economic and political influence in Africa might be complicated in various ways had the Court decided against the Democratic Republic of the Congo's claim for absolute immunity in the Hong Kong courts.[125] Indeed, the Chinese Ministry of Foreign Affairs, in an earlier move unprecedented even in mainland China,[126] had pre-emptively warned the Court in an official letter that '[i]f Hong Kong were to adopt a regime of state immunity which is inconsistent with the position of the [Chinese] State, it will undoubtedly prejudice the sovereignty of China and have a long-term impact and serious prejudice to the overall interests of China [as well as] tarnish the international image of China'.[127]

Macau's relatively harmonious relationship with Beijing by no means suggests that the latter has consistently refrained from meddling with issues properly considered the 'external affairs' of that Region. The Macau government neglected to limit the height of three proposed office and residential towers that would have blotted out, from the harbour and from the city, the view of Guia Lighthouse, built by the Portuguese in the nineteenth century and listed in 2005 as a United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Site. In 2007 UNESCO expressed dissatisfaction and warned Macau that it might delist the site. Acutely attuned to the necessity of safeguarding and maximizing China's global soft power on the eve of the 2008 Beijing Olympics, the central authorities stepped in and 'leaned' on the Macau officials until they reset the height limits for the buildings in question.[128]

IV. DISCUSSION AND CONCLUSION

The systemic advent of subnational entities in international affairs is no longer a phenomenon confined only to federal States.[129] The long-standing 'national fixation'[130] of contemporary foreign relations law scholarship, which omits from its purview internal, vertical, differences in the practice of foreign relations, is a

[123] Interpretation of Paragraph 1, Article 13 and Article 19 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress 2011.

[124] *Democratic Republic of Congo and others v FG Hemisphere Associates (No 1)* (2011) HKCFAR 95. [125] Lanteigne (n 98) 12. [126] Ling (n 64) 108.

[127] *Democratic Republic of Congo and others v FG Hemisphere Associates (No 1)* (2011) HKCFAR 95, 252. Despite this rhetoric, China has in the past agreed to multilateral conventions that suspend absolute state immunity in light of pragmatic needs, see CH Wu, '"One Country, Two State Immunity Doctrines": A Pluralistic Depiction of the Congo Case' (2014) 9 National Taiwan University Law Review 197, 201. [128] Chan (n 9) lxxxviii.

[129] MA e Barros 2010, 'Outlooks for the Legal Framing of Paradiplomacy: The Case of Brazil' (2010) 7 Federal Governance 39, 39.

[130] See EL Gibson, *Boundary Control: Subnational Authoritarianism in Federal Democracies* (Cambridge University Press 2012) 11.

theoretical and methodological problem that needs to be overcome. The time has come for jurists to study comparative subnational foreign relations law, which provides substates with an institutional framework to organize their relations with the rest of the world. This article proposes that subnational foreign relations law is essentially about identifying and explaining variations in the vertical allocation of foreign affairs competences amongst different levels of the State. It has brought this inquiry to bear on the cases of Hong Kong and Macau, two high-profile subnational actors under the sovereignty of China, an increasingly influential and ambitious global player.

These two jurisdictions may present some anomalies, but there is no reason not to deploy the generalized two-part analytical framework proposed herein to analyse subnational foreign relations law in other parts of the world, such as the provinces of Canada, states of the United States, autonomous communities of Spain, *Länder* of Germany, republics of the Russian Federation, the overseas territories of the British Crown, and so on.[131] In so doing the researcher must go beyond formal legal documents to appreciate how variations in substates' domestic politics, relationships with the central State, and economic conditions translate into variations in subnational foreign relations law. Subnational entities, after all, are a heterogeneous species: not all of them are involved in paradiplomacy in the same way, and many do not take part in the development of foreign relations law. China's own Autonomous Regions—Guangxi, Inner Mongolia, Ningxia, Tibet, and Xinjiang—for instance, have been dubbed as 'sham federacies' that do not act externally in ways comparable to Hong Kong and Macau.[132]

This article has yielded interesting, if not also counter-intuitive, answers to the two research questions raised at the outset. First, despite their superficial historical and political similarities, subnational foreign relations law in Hong Kong and Macau originated under rather dissimilar circumstances. Hong Kong's wide-ranging external competences did not stem from any grand design; rather, it was the incremental outcome of its spontaneous practical economic needs as a rapidly growing international financial hub, combined with the decline of British imperial influence and interest in the Far East. Such competences were readily affirmed by a China that was eager to reclaim sovereignty over a prosperous Hong Kong. By contrast, the external affairs powers of modern Macau, which never had a sophisticated paradiplomatic portfolio prior to the Sino-Portuguese negotiations of the 1980s, *did* result from a grand design, albeit one inspired by the Hong Kong experience, without much reflection on the peculiarities of the Macanese experience, against the background of China's inexperience in administering Westernalized, cosmopolitan, Special Administrative Regions.

Secondly, the Regions possess distinct paradigms of comparative subnational foreign relations law, notwithstanding the striking resemblances in their external relations competences and constitutional documents. The Basic Law and *Lei Básica* purport to propound an exquisite but malleable distinction between 'foreign affairs' *qua* high statecraft and 'external affairs' *qua* all domains not impinging on sovereignty

[131] AS Kuznetsov, *Theory and Practice of Paradiplomacy: Subnational Governments in International Affairs* (Routledge 2015) 2; RB Ahdieh, 'Foreign Affairs, International Law, and the New Federalism: Lessons from Coordination' (2008) 73 MoLRev 1185, 1187.

[132] DA Rezvani, *Surpassing the Sovereign State: The Wealth, Self-Rule, and Security Advantages of Partially Independent Territories* (Oxford University Press, 2014) 201–2.

questions; conserving and buttressing the traditional areas of paradiplomacy of Hong Kong, if not Macau. That said, the distribution of foreign relations practice in practice was shaped mostly by both domestic politics and China's international diplomatic strategy of the day. Whilst Macau, though less experienced in paradiplomacy, has been actively absorbed into Beijing's foreign policy, much of Hong Kong's external affairs potential has remained underutilized by China. This divergence, as suggested by this article, may be explicable on the basis of ideological differences and deterioration of trust between Hong Kong and mainland China. At least in the cases of the Chinese Special Administrative Regions, subnational foreign relations law always reflect, and cannot be understood apart, from the political configuration of the sovereign.