The Delineation of Treaty-Making Powers between the Central Government of the People’s Republic of China and the Special Administrative Region of Hong Kong

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I Introduction

This article investigates treaty-making by the People’s Republic of China (China) and its Special Administrative Region of Hong Kong (HKSAR) with a focus on the delineation of treaty-making powers between the Central Government and the Region.¹ Though China is a unitary state,² the Region of Hong Kong enjoys far-reaching autonomy that allows it to maintain its capitalist system

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² Given that the Central Government does not exercise jurisdiction over the territory of Taiwan, China is also a divided state. Björn Ahl, “Taiwan”, in 9 *The Max Planck Encyclopedia of Public International Law* 749 (Rüdiger Wolfrum ed., 2012).
and own institutions, independent judicial authority and a legal system that is separate from Mainland China. The autonomy of the HKSAR includes the power to conclude certain international agreements on its own. This study of treaty-making powers takes a doctrinal approach. It analyses Chinese and HKSAR legislation including scholarly views and the relevant treaty-making practice.

Competences and procedures of treaty-making are crucial factors of a state's treaty-making practice. The modalities of participation of state organs in the treaty-making procedure determine the domestic effects of international treaties. Legislative approval of a treaty can be regarded as a precondition of the validity or applicability of treaty norms under municipal law. It often depends on the state organ, which approves the conclusion of a treaty, if or where the treaty is published and how a treaty is ranked within the domestic hierarchy of norms. In Mainland China, treaties which are approved by the Standing Committee of the National People's Congress (NPC) are attached to the approval decision and published in the NPC Standing Committee's Official Gazette. Such treaties have the rank of national statutes.

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