

**Portugal and the Settlement of the Macao
Question, 1984-1999:
Pragmatism in International Negotiations**

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Abstract

Portugal and the Settlement of the Macau Question, 1984-1999: Pragmatism in International Negotiations

This thesis examines the manner in which the Portuguese Government formulated and implemented its negotiating strategy for the settlement of the Macau question with the People's Republic of China. The analysis is supported by theories of international negotiations.

In addition to providing a detailed account of Portugal's negotiating strategy, the study highlights the impact that the Sino-British negotiations on Hong Kong had on the Sino-Portuguese negotiations. It also argues that the Portuguese side was mostly reactive: for domestic reasons, a key objective was to ensure that Macau's treatment was not worse than Hong Kong's, and in particular to ensure that Macau's transfer happened after Hong Kong.

The thesis begins by examining the political background to the Macau question and the impact of the Hong Kong question on this. It then addresses the 1984-1987 Sino-Portuguese negotiations, which resulted in the signature of the "Joint Declaration of the Government of the Portuguese Republic and the Government of the People's Republic of China on the Question of Macau". Finally the thesis analyses important issues in the Sino-Portuguese negotiations during the 1988-1999 transition period, which ended with the transfer of Portuguese administration of Macau to China.

Two types of issue are considered which clearly demonstrate the tensions in the Sino-Portuguese relations and show the position of the Portuguese side during the transition period: routine matters which were present in every Joint Liaison Group meeting, namely the policies of localisation, and more delicate issues. This includes (1) the arguments over the applicability of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights to Macau; (2) the dispute over the construction of the Macau International Airport; and, (3) the conflict over the Orient Foundation.

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I am also very grateful to the various officials of the Portuguese and Macau governments who granted me so much of their time and offered so many valuable comments on this project. They must, perforce, remain nameless. A wide range of interviews were conducted with them in Lisbon in the course of this research, and I was granted access to a considerable amount of confidential documents.

Due to the sensitivity of the subject matter, much of this material is unattributable. However, the lists of the principal interviews and confidential documents used in this research have been attached as Appendixes for the attention of the examiners only and these will be removed before the dissertation is deposited.

List of Abbreviations

| | |
|-------|---|
| CAM | Society of the International Airport of Macau |
| CCP | Chinese Communist Party |
| CDS | Central Democrat Christian Party |
| CGA | Portugal's Retirement Fund |
| EEC | European Economic Community |
| EU | European Community |
| GTJ | Office for Juridical Translation |
| HKSAR | Hong Kong Special Administrative Region |
| JLG | Joint Liaison Group |
| LG | Land Group |
| MFA | Armed Forces Movement |
| MSAR | Macau Special Administrative Region |
| NATO | North Atlantic Treaty Organisation |

| | |
|------|---|
| NPC | National People's Congress |
| PRC | People's Republic of China |
| PRD | Democrat Revolutionary Party |
| PS | Socialist Party |
| PSD | Liberal Social-Democrat Party |
| STDM | Sociedade de Turismo e Diversões de Macau |
| UK | United Kingdom |
| UN | United Nations |

Chapter 1 - Introduction

1.1. Introduction

This thesis examines how the Portuguese government negotiated the settlement of the Macau question with the People's Republic of China (PRC). It focuses on the period between 1984 and 1999. Although Sino-Portuguese formal negotiations only started in 1986, it was in 1984 that the Chinese leadership gave Portugal a signal that the issue was ripe to be settled, setting the launch of the pre-negotial stage. Unlike Britain that is still trying to involve itself with Hong Kong, after 1999, Macau has arguably been erased from the Portuguese political agenda.

Portugal and China were interested in sitting at the negotiating table: both used Macau as a political showcase. For the Portuguese government it was the opportunity to show that the centre-right-wing PSD (Liberal Social-Democrat Party) could do better than the left-wing government, which had decolonised Portuguese Africa and abandoned Timor hurriedly after the 1974 Carnations Revolution. For the PRC, Macau had an essential role in the policy of national reunification: it was expected to be an example of the applicability of the 'one country, two systems' concept to the case of Taiwan.

An interesting issue which has been raised by this study concerns the impact that the Sino-British negotiations on Hong Kong had on the Sino-Portuguese negotiations. Hong Kong's reversion to Mainland China seems to be the only case comparable with Macau. The comparison of the British and Portuguese priorities in their enclaves and of their negotiation strategies towards the PRC sheds light on

Macau's process of negotiation. It is argued that the Portuguese side key objective was to ensure that Macau's treatment was not worse than Hong Kong's. A key element to this was to ensure that Macau's transfer happened after Hong Kong.

The thesis uses a dynamic level of analysis. Being a study of the foreign policy of a state in a specific period, the focal point is at the state level, in the process of negotiation. But the level of analysis is also outside the state: there are some external variables – such as the position of the PRC – that influenced the Portuguese government's behaviour and had a strong impact in Portugal's internal decision making process. Decision-making conceptual schemes and models are extremely useful for this study, particularly negotiation models. Being Portugal a small and weak power and China a great (at least regional) power, the Portuguese-Chinese negotiation on Macau's reversion was an example of asymmetrical negotiation. A model of asymmetrical international bargaining is thus essential to analyse whether the outcomes of the negotiations were positive or negative for Portugal.

1.2. Literature Survey

This is a survey in Portuguese, English, Spanish and French on the Sino-Portuguese negotiations for the settlement of the Macau question. The findings of this survey are that, in contrast to Hong Kong, Macau is a relatively under-studied issue. There is a considerable amount of literature on Macau but it typically refers to the early period of the Portuguese settlement, particularly to the 19th century. This literature is only used in the thesis to provide background for the Sino-

Portuguese relations. On the Sino-Portuguese negotiations and on Macau's transition, there is not a comprehensive book-length study which provides satisfactory analysis. The studies presented below only partially focus these issues, and therefore are used in a selective way.

The best study for the background of the Sino-Portuguese relations is António Saldanha's *Estudos sobre as Relações Luso Chinesas* [Studies on Sino-Portuguese Relations], which covers the period from the Portuguese settlement of Macau to the 1970s.¹ Probably the best specialist on Macau Treaties, in this academic work António Saldanha gives exhaustive detail and extensive footnotes and references. Saldanha adopts a mixture of juridical, international relations and historical approaches and provides a useful insight into the background of Sino-Portuguese relations.

From the Chinese perspective, there are two interesting studies on Macau's historical background. *Estudos sobre a Instalação dos Portugueses em Macau* [Studies on the Portuguese settlement in Macau], by Fok Fai Cheong, focuses on the 16th and 17th centuries.² *Segredos da Sobrevivência* [Secrets of Survival], by Wu Zhiliang, interestingly divides Sino-Portuguese relations into seven periods, according to the *de facto* sovereignty that Portugal and China had over Macau. It starts with the beginning of the Portuguese settlement in Macau and finishes with the post-transition period.³ Wu's biggest contribution is the balanced use of both Chinese and Western sources, thus achieving a more consensual account which is

¹ Saldanha, António Vasconcelos de, *Estudos sobre as Relações Luso-Chinesas*, ISCSP and ICM, Lisbon 1996.

² Fok Fai Cheong, *Estudos sobre a Instalação dos Portugueses em Macau*, Gradiva, Lisboa, 1996.

³ Wu Zhiliang, *Segredos da Sobrevivência – História Política de Macau*, Associação de Educação de Adultos de Macau, Macau, 1999.

unusual in studies of Macau. The book, however, tends to be descriptive rather than analytical and largely focuses on the period before the 1974 Portuguese revolution.

On the Macau negotiations and transition there are only these two books in English and four in Portuguese. The most comprehensive book on the Sino-Portuguese relations over Macau during the second half of the 20th century is Moisés Fernandes' *Sinopse de Macau nas Relações Luso-Chinesas – 1945-1995* [Synopsis of Macau in Sino-Portuguese Relations].⁴ Moisés Fernandes makes a very important contribution to this subject. He focuses on the period from January 1945, when Macau was bombed during the Pacific war, to December 1995. The last years of the Portuguese administration are not included in this work because the book was finished in 1998 (although for political reasons it was only published after the Macau handover).

The book was conceived as an extended chronology of the Sino-Portuguese relations during those fifty years, and includes many original documents and photographs. It is mainly based in archival work: Fernandes analyses in detail all the documents available in the Portuguese archives referring to the 1945-1995 period. He conducted part of his research in archives and libraries of the United States and Canada, and also looked at some Chinese material (mainly from Taiwan). The *Sinopse* is useful as a very good reference book on Macau, but it is not a good academic assessment as the analysis is limited. The otherwise very

⁴ Fernandes, Moisés Silva, *Sinopse de Macau nas Relações Luso-Chinesas – 1945-1995*, Fundação Oriente, Lisbon, 2000.

good study by Moisés Fernandes is let down by the fact that it does not address the conflicts over Macau that existed within Portugal during the negotiations.

Besides his main work, Moisés Fernandes has also written many articles on Macau and Sino-Portuguese relations, in which he expressed his thoughts more openly.⁵ These articles focus on Macau's internal circumstances and provide an invaluable account to aid understanding of Sino-Portuguese relations. However, Fernandes concentrates on the period before the establishment of formal bilateral relations between Portugal and China in 1979. Thus, he does not fill the striking need of studies of the Macau negotiations and transition process.

Another author on Macau in Sino-Portuguese relations is Fernando Lima, a journalist and former adviser of Prime Minister Cavaco Silva who occupied important posts in the Macau administration. His two-volume study *Macau: As Duas Transições* [Macau: The Two Transitions], published by the Macau Foundation, is mainly based on Portuguese sources (from Lisbon and Macau), which were carefully used in order to convey the official version of events.⁶

⁵ Moisés Silva Fernandes' work on Macau includes: "A iniciativa gorada de Franco Nogueira para o estabelecimento de relações diplomáticas entre Portugal e a China Continental em 1964" [Franco Nogueira's Failed Attempt to Establish Diplomatic Relations Between Portugal and Mainland China in 1964], *Administração / Xíngzhèng*, Vol.15, No.56, June 2002; "Macau e os reflexos do maoísmo, 1949-1979" [Macau and Maoism, 1949-1979], *Encontros*, No.5, 1st Semester 2000; "Portugal, Macau e a China – confluência de interesses" [Portugal, Macau and China: Confluence of Interests], *História*, New Series, Year 22, No.21, January 2000; "Macau nas relações sino-portuguesas, 1949-1979" [Macau in Sino-Portuguese Relations, 1949-1979], *Administração / Xíngzhèng*, Vol.12, No.46, December 1999; "Enquadramento das relações luso-chinesas entre 1949 e 1966" [Framework of Portuguese-Chinese Relations Between 1949 and 1966], *Administração / Xíngzhèng*, Vol.11, No.40, June 1998; and "O comportamento português sobre a transição política e a integração regional de Macau na região do rio das Pérolas" [Portuguese Behavior Towards the Political Transition and the Regional Integration of Macau in the Pearl River Region], *Administração / Xíngzhèng*, Vol.10, No.36, July 1997.

⁶ Lima, Fernando, *Macau: As Duas Transições*, vol.1 and 2, Fundação Macau 1999, Macau, 1999.

The first volume starts in 1947 with the impact of the Chinese civil war and the victory of the Communists in Macau and describes the major ups and downs in the life of the Territory. It ends with the controversial visit of President Ramalho Eanes to Beijing in 1985, which launched the Sino-Portuguese negotiations on the settlement of the Macau question. The second volume focuses on the details of the negotiations, finishing with the signature of the Sino-Portuguese Joint Declaration on the Macau Question.

Both volumes have a useful (although somewhat confusing) chronology but the selection of the documents attached could be more interesting, especially considering the interesting and unpublished material the author certainly had access to. Written by a privileged observer, *Macau: As Duas Transições* was expected to provide an insightful analysis and to shed some light on the settlement of the Macau question. Instead, the biggest contribution of Lima's "politically correct" narrative is the impressive amount of information that the author was able to hold together in the two books. A third volume on the Macau transition is yet to be published.

The final period of the Macau transition are analyzed in detail by José Pedro Castanheira, in *Macau: Os Últimos Cem Dias do Império* [Macau: The Last One Hundred Days of the Empire], who gives in his journalistic style a narrative account full of detail of the life in Macau in every single day from 11 September to 20 December 1999.⁷

⁷ Castanheira, José Pedro, *Macau: Os Últimos Cem Dias do Império*, Publicações Dom Quixote e Livros do Oriente, Lisbon, 2000.

A recent approach on the Macau transition is Herbert Yee's *Macau in Transition*, which gives an invaluable account of the Macau political system and of the attitude of its citizens toward the transition.⁸ *Macau in Transition* is mainly a study of Macau's political culture and prospects for democratization. As the analysis focuses on Macau, rather than Lisbon or Beijing, only specific sections of the book are relevant for this thesis. Yee provides primary information on the localization of Macau's civil service, although the other politics of localization are not analyzed in such detail, and Yee provides a very interesting comparison of Sino-Portuguese and Sino-British relations during the transitions of Macau and Hong Kong. He interestingly argues that Macau's long-term interests and citizens came out as losers in the interactions between Beijing and Lisbon.

Another study that focuses more on Macau's internal issues than on Sino-Portuguese relations is *Political Development in Macau*, by Lo Shiu Hing.⁹ The book provides an interesting account of the government and politics of Macau, and the chapters on the Macau civil service are particularly relevant for this thesis' case study of the policies of localization. However, Sino-Portuguese negotiations are only directly approached in the beginning of chapter one.

Boaventura Santos, *Macau, O Pequeníssimo Dragão* [Macau, The Very Small Dragon] is an innovative sociological analysis of the Chinese society of Macau.¹⁰ Only the first two chapters of the book are directly relevant to this thesis. The first

⁸ Herbert Yee, *Macau in Transition: From Colony to Autonomous Region*, Palgrave, London, 2001.

⁹ Lo, Shiu Hing, *Political Development in Macau*, The Chinese University Press, Hong Kong, 1995.

¹⁰ Santos, Boaventura de Sousa, *Macau, O Pequeníssimo Dragão*, Edições Afrontamento, Lisbon, 1998.

chapter frames the reversion of the Portuguese sovereignty to China and the second chapter deals with the Macau transition process. This book presents some new ideas on the strategy of the Portuguese government to Macau, but its original contribution is in a subject that is out of the scope of this thesis.

In conclusion, the Sino-Portuguese negotiations have not to date received a great deal of scholarly attention, especially in comparison to the work that exists in Hong Kong. Even in Portugal, there was more information on the scandals of the Macau administration than on the negotiations itself. The settlement of the Macau question is only partially approached in some of the works mentioned above. Despite the relevance of the issue, the studies on the strategy of the Portuguese government for the Macau negotiations and transition process are practically inexistent.

1.3. Method and Original Contribution

It is argued here that the Sino-Portuguese negotiations over Macau are an overlooked issue. This thesis is an attempt to fill that gap. Original material has been used throughout, making it original in comparison to the works mentioned above. Key individuals from the Portuguese side involved in the negotiations provided off the record interviews and confidential material which has been analysed and assessed. The use of new material will hopefully shed light on how the Portuguese side negotiated the Macau question with China, from 1984 up to the transfer of sovereignty in 1999.

This study is not an attempt to construct a new model or to provide a case study for testing conceptual schemes. It is also not an attempt to analyse in detail the processes and machinery of Portuguese and Chinese foreign policy-making. What it intends to do is to analyse the way in which the Portuguese government formulated and implemented their Macau policy in much greater detail than any previous studies on this subject. At a theoretical level, this study highlights the importance of asymmetrical bargaining, an area where negotiation theories have not been developed adequately. The domestic context within which the Portuguese policy-makers operated provided the major framework of analysis throughout the thesis.

The principal source of data upon which this study is based is archival and interview research. These methods were the best to analyse the Portuguese negotiating strategy with China and to prove that the Portuguese side was mainly reactive, i.e. it rarely took the initiative in the negotiations and typically responded to a Chinese led agenda. Many interviews were conducted, most of which are informal and secret. Due to the sensitivity of the subject in Portugal, the quotations of the interviews could not be acknowledged formally in this work. I was also given access to confidential material by Portuguese politicians and diplomats who were involved in the Sino-Portuguese negotiations and in the transition process. I spent extensive time analysing these revealing documents. Once again I am not able to identify my sources, but the examiners have the benefit of a full list of interviewees and documents in the understanding that this material remains private.

The analysis of the Sino-Portuguese negotiations is divided into two different periods: before and after the signature of the Joint Declaration on the Macau question in 1987. For the analysis of the 1984-1987 stage, a formula-detail approach is used, as the different stages of the classic negotiating process (pre-negotiation, formula and details) are easily identified in the Sino-Portuguese negotiations. For the 1988-1999 transition process, the thesis presents a selection of case studies, namely the issues of the transition in which there were more Portuguese and Chinese interests at stake. The use of case studies came out as the best method to highlight the tension between Portugal and China and to show very clearly what the aims of the Portuguese side were.

The analysis of these case studies mainly uses the proceedings of the meetings of the Sino-Portuguese Joint Liaison Group (JLG), one of the formal devices stipulated in the Joint Declaration to settle the issues of the transition period. Although some Land Group meetings were particularly relevant – namely the ones that discussed the concession of the land to build the Macau International Airport – the most important issues were discussed within the JLG. The thesis considers the JLG's formal and informal meetings, with formal meaning a full meeting of the Joint Liaison Group and informal meaning a heads of delegations meeting.

The thesis considers two different levels of diplomacy: high level diplomacy and routine level diplomacy. The meetings between the Portuguese and Chinese delegations took place at the routine level, but often contentious matters appeared and had to be sorted out during heads of state meetings – high level diplomacy.

Throughout the thesis, all quotations are from Portuguese documents translated by the author, unless stated otherwise.

1.4. Theory and Ideas

1.4.1. Negotiation

Diplomacy is “the communication between officials designed to promote foreign policy either by formal agreement or tacit adjustment,” and its main purpose is “to enable states to secure the objective of their foreign policies without resort to force, propaganda, or law.”¹¹ Negotiation, the most important function of diplomacy, is the “discussion between officially designated representatives designed to achieve the formal agreement of their governments to the way forward on an issue that is either of shared concern or in dispute between them.”¹² “Diplomatic negotiation consists of a process of communication between states seeking to arrive at a mutually acceptable outcome on some issue or issues of shared concern.”¹³

Considering negotiation one of the basic decision-making processes, William Zartman studies how divergent viewpoints can be combined in order to produce “a single, joint, agreeable outcome.”¹⁴ In his analytical study of the process of finding a common agreement, Zartman uses limitation and convergence

¹¹ Berridge, G.R., *Diplomacy: Theory and Practice*, second ed., Palgrave, London, 2002, p.1.

¹² *Ibid.*, p.27.

¹³ Cohen, Raymond, *Negotiating Across Cultures: Communication Obstacles in International Diplomacy*, United States Institute of Peace Press, Washington, 1995, p.7.

¹⁴ Zartman, I. William, “The Political Analysis of Negotiation: How Who gets What and When”, *World Politics*, 26, April 1974, p.385; Zartman, *The Politics of Trade Negotiations*, p.203; Zartman, I. William, “Negotiation as a Joint Decision-Making Process”, *Journal of Conflict Resolution*, Vol. 21, No. 4, December 1977, p.623.

approaches: the first analyses how an unlimited field of alternatives are reduced to a unique combination that is acceptable to all parties, while the second analyses how the initial positions brought into convergence.¹⁵

The initial infinite field of alternatives may be limited in four ways: promise or prediction (making one alternative appear more attractive than others); threat or warning (making one alternative appear less attractive than others); commitment or obligation (making one alternative appear to be already chosen); and fait accompli or simple incapacity (making some alternatives appear to be already eliminated).¹⁶ Through the process of limiting alternatives each side tries to convince the other that its possibilities are more advantageous than the others' and more advantageous than no agreement at all.¹⁷

According to Zartman, the concession/convergence approach "views negotiation as a learning process in which the parties react to each other's concession behaviour."¹⁸ Convergence may be achieved through five ways: simple coincidence of initial positions; concession (one party gives in to the other); counter-concessions (a concession on another matter made in return of the concession of the other party); compromise (both parties give in); and understanding (implementing an ambiguity).¹⁹ The convergence approach deals more with the tactical process than with the substance of the debate, showing which party made more concessions and the impact of one side's shifts in the

¹⁵ Zartman, *The Politics of Trade Negotiations*, pp.211-12.

¹⁶ *Ibid.*, pp.207-10.

¹⁷ *Ibid.*, p.211.

¹⁸ Zartman, "Negotiation as a Joint Decision-Making Process", *op.cit.*, p.625.

¹⁹ Zartman, *The Politics of Trade Negotiations*, *op.cit.*, pp.212-14.

other's moves. When not combined with the alternative limitation approach it may give a false impression of the negotiation process.²⁰

Zartman considers that the concession/convergence theory, among other problems, lacks correspondence with reality²¹ and suffers from substantive incoherence.²² Besides, this pattern usually occurs after the adoption of a formula, and even the concession/convergence behaviour is better understood within the framework of formula and detail.²³ Considering negotiation a matter of finding a formula and then searching for its implementation through working out the details, rather than increasing concessions for converging on a point, Zartman considers formula/detail the most typical and important pattern of negotiation.²⁴

In his study of negotiations as a form of international dispute settlement, Merrills combines limitation and convergence approaches. On one hand, he says that for the success of a negotiation, "the parties must believe that the benefits of an agreement outweigh the losses,"²⁵ which is the base of the pattern of limiting alternatives. On another hand, focusing on the element of give and take he conceives the negotiation process as, "a matter of exchanging proposals and counter-proposals in an attempt to arrive to an agreement from which both sides can derive a measure of satisfaction."²⁶

²⁰ *Ibid.*, p.212.

²¹ Zartman, "Negotiation as a Joint Decision-Making Process", *op.cit.*, p.628.

²² *Ibid.*, p.632.

²³ Zartman, "Negotiation as a Joint Decision-Making Process", *op.cit.*, pp.629 and 635.

²⁴ *Ibid.*, pp.629, 632 and 634-35.

²⁵ Merrills, *International Dispute Settlement*, London, Sweet & Maxwell, 1984, p.12.

²⁶ *Ibid.*, p.15.

Different authors propose different organising devices for the negotiation process.²⁷ Three stages are usually acknowledged: a prenegotiation stage, the negotiation itself, and post-negotiation stage. Peter Berton suggests a further division of the negotiation stage into a phase of assessment, a middle phase of bargaining and concession-making, and a final phase of closure.²⁸

Zartman defines pre-negotiation, or the “diagnostic stage” that precedes negotiation, as “the span of time and activity in which the parties move from conflicting unilateral solutions for a mutual problem to a joint search for cooperative multilateral or joint solutions,” or the process of “arriving at and in convincing the other party to arrive at the conclusion that some joint solution is possible.”²⁹ Raymond Cohen considers that this definition “covers everything and nothing”. Cohen restricts pre-negotiation to “the preliminary contacts, direct or indirect, initiated to prepare for a negotiation that the parties have already agreed to undertake.”³⁰

Zartman argues that prenegotiation is a pre-condition of the negotiation process, “without which the negotiation would not have taken place”, as it is “a purposive period of transition that enables parties to move from conflicting perceptions and behaviours to co-operative perceptions and behaviours”.³¹ Prenegotiation is usually triggered by an event or change in conditions in the relationship between

²⁷ Cohen, *op. cit.*.

²⁸ Berton, Peter, “Culture-Communication-Negotiation: Japan, China and the Soviet Union/Russia”, in *International Comparative Studies of Negotiating Behavior*, International Research Center for Japanese Studies, Kyoto, March 1998, p.192.

²⁹ Zartman, “Prenegotiation: Phases and Functions”, in Stein, Janice Gross, ed, *Getting to the Table, The Processes of International Prenegotiation*, The Johns Hopkins University Press, Baltimore, 1989, pp.3and 4.

³⁰ Cohen, *op. cit.*, p.50.

³¹ Zartman, “Prenegotiation: Phases and Functions”, *op. cit.*, p.7.

the parties, such as the aftermath of a crisis or the attempt to prevent a crisis.³² Its main function is to prepare the transition between the conflict and conciliation processes, through temporary mechanisms that provide for the change itself, such as the temporary suspension of conflict activities and the building of trust. Zartman identifies other six functions of prenegotiation:

(1) to reduce and make clearer the extent of the risks associated with co-operation; (2) to assess the costs of concession and agreement and to assess the costs of failure; (3) to create "requietement", a belief in the reciprocity of concessions; (4) to build domestic support and replace a winning mentality for a conciliatory one; (5) to select the participants to an agreement, when it is not possible to include all the parties involved; and (6) to set the parameters to find a formula, eliminating alternatives until arriving to one solution.³³

The pre-negotiation stage includes a big amount of negotiations, as the parties must agree on the advantage of negotiating, on the agenda of the talks and on questions of procedure.³⁴ The parties first have to accept the existence of a stalemate and that a negotiated settlement may be better for all concerned.³⁵ After committing to negotiate, the parties "each side defines the problem and develops negotiation strategies, including how to arrange the venue, agenda, and rules in one's favour. ... Controlling the venue and the agenda provides great advantages"³⁶. They then agree on a framework for the negotiations and on the items of the talks and the order in which they will appear.³⁷

³² Stein, *op. cit.*, pp.239-40.

³³ Zartman, "Prenegotiation: Phases and Functions", *op. cit.*, pp.6-14.

³⁴ Berridge, *op. cit.*, p.29.

³⁵ *Ibid.*, p.30.

³⁶ Berton, *op. cit.*, p.193.

³⁷ Berridge, *op. cit.*, pp.35-36.

In terms of procedure, the parties must agree on the format of the negotiations, i.e., if they will be direct or indirect (if mediation is used) or, when more than 2 parties are involved, if there will be parallel bilateral discussions or a multilateral conference, or a combination of the two. Second, they must agree in the venue, which can take place in neutral ground, "halfway" or alternating/rotating home venues. For practical considerations and reasons of prestige, states prefer to hold the negotiation at home. Third, the parties need to agree on the level, composition and size of the delegations, namely if the talks should be held at a ministerial or merely official level, usually a higher level meaning more priority and rapid progress. Finally, the parties have to agree on the possible existence of a deadline for concluding the talks.³⁸

The pre-negotiation phase between Portugal and China took place from November 1984 to June 1986 and, as chapter 3 shows, the main issues were that negotiations would have the format of bilateral discussions, the talks would take place in Beijing, and the delegations of the two sides would be composed of 6 members each. During this stage, the Chinese negotiators also tried to impose the Hong Kong model as a precedent to the Macau negotiations, and the Portuguese were willing to accept it.

Once the prenegotiation stage is concluded, the parties have to find a formula and add the details. The formula may be found immediately by the negotiators or may

³⁸ *Ibid.*, pp.35-36, 38, 40 and 41-42 for the all paragraph.

be gradually built through a “step-by-step” or “indirect approach”, depending on the complexity of the negotiations.³⁹

More complicated is the details stage. It involves bigger teams of negotiators, which can lead to disagreements within the negotiating teams, and specialists, usually individuals of lower authority that need to refer back for guidance, causing delays in the negotiations. It is during this stage that the parties concentrate on the definition of terms, and some definitions may prove more advantageous than others. And as it is the last stage of the negotiations, the negotiators may try to balance the formula in their favour in order to get a desirable outcome.⁴⁰

Berridge considers two methods of making concessions. The parties can compromise on individual issues or can compromise in one issue in order to get concessions on another one, depending on the circumstances and the style of the negotiators.⁴¹ Merrills analyses different forms of negotiations and ways of surpassing deadlocks. He says that although bilateral negotiations are usually held through ‘diplomatic channels’, using the states’ foreign offices or diplomatic representatives, there are other forms of negotiations: the creation of a ‘joint commission’ with an equal number of representatives of both parties to solve a recurrent problem or if the situation requires continuous supervision; the holding of ‘summit discussions’ between heads of state or foreign ministers, what usually happens after the occurrence of a great deal of conventional negotiation and the

³⁹ *Ibid.*, pp.47-48.

⁴⁰ *Ibid.*, pp.50-51.

⁴¹ *Ibid.*, pp.52-53.

persistence of an impasse; and the appeal to international organisations.⁴² Merrills also presents procedural solutions for deadlocked negotiations on the substantive aspects: parties may refer the dispute to arbitration; split the dispute; compromise without prejudicing important principles (they may agree to differ on what may appear to be a major obstacle); compensate the less-favoured party in the agreement with the control of details; ensure that negotiations are not jeopardized by the demands of the media.⁴³

According to Merrills' model, the Portuguese-Chinese negotiations on Macau were held through 'normal diplomatic channels', carried out by diplomatic delegations of both countries. 'Mixed commissions' were created both with the purpose of solving recurrent problems and assure continuous supervision: a joint working group of three Portuguese and three Chinese representatives was created during the third plenary meeting when negotiations arrived at a standstill; a Sino-Portuguese joint liaison group was created to supervise Macau's transition after the signature of the Joint Declaration. High level meetings (meetings at the head of state level) were held twice during the Macau negotiations and resulted in serious 'turning points'.⁴⁴

Portugal and the People's Republic of China compromised without raising the issue of sovereignty – the formula of 'Chinese territory under Portuguese administration' was never questioned – and agreed to differ in the major obstacle of the nationality issue of the Macanese – each government stated its position in a memorandum annexed to the final accord. The PRC compensated Portugal – the

⁴² Merrills, *op. cit.*, pp.8-10.

⁴³ *Ibid.*, pp.12-15.

⁴⁴ For 'turning points' in the negotiation process see William Habeeb, below.

less-favoured side in the Macau transfer of administration – with concessions in the details of the negotiations – namely in the question of the date of the hand-over. Both sides avoided excessive publicity in the negotiation process, although the Portuguese government was strongly criticised by its domestic media, mainly because of the absence of a parliamentary debate. This is an interesting contrast with the UK where parliament was more heavily involved

The three stages of negotiations – pre-negotiations, formula and details – are studied in more detail below, and applied through the thesis to the Sino-Portuguese negotiations on the Macau question.

1.4.2. Asymmetrical Bargaining

Relations between states are expected to be symmetric but influential asymmetries between the parties often occur.⁴⁵ Studies on weak state-strong state negotiations, i.e., “negotiations in which the power resources and capabilities of the two actors are unequal” are relatively rare.⁴⁶ Besides, traditional theories of power assume that “power implies benefits in international bargaining,” and that the stronger state wins over the weaker state.⁴⁷ This is not always the case, as strength may be a matter of perception and power is situational.⁴⁸ “Power is not all in determining

⁴⁵ Young, Oran R. (ed.), *Bargaining: Formal Theories of Negotiation*, Urbana, University of Illinois Press, 1975, p.398. Young treats asymmetries as neglected structural factors in bargaining situations.

⁴⁶ Habeeb, William Mark, *Power and Tactics in International Negotiation – How Weak Nations Bargain with Strong Nations*, London, Johns Hopkins University Press, 1988, p.1.

⁴⁷ Kivimäki, Timo, “Distribution of Benefits in Bargaining between a Superpower and a Developing Country – A Study of Negotiation Processes between the United States and Indonesia,” *Commentationes Scientiarum Socialium*, 45, 1993, p.10.

⁴⁸ Starkey, Brigid, Mark A. Boyer and Jonathan Wilkenfeld, *Negotiating a Complex World*, Rowman & Littlefield Publishers, Oxford, 1999, pp.37-38.

the outcome of negotiation. The structural dilemma: “whereby a weak negotiate with strong and gain favourable (even asymmetrically favourable) outcomes.”⁴⁹

A close analysis of Zartman’s limiting alternatives pairs – promise/prediction, threat/warning, commitment/obligation, and *fait accompli*/simple incapacity – provides some insights in the weak and strong states’ negotiating strategies. Since strong states have goods to deliver and weak states can only offer gratification created by the negotiations, strong states tend to use promise and threat while weak states use prediction and warning. The use of the third pair depends on the demands: strong states can use commitments more successfully but can also afford to hide behind them while weak states may impose moral obligations on the strong. On the last pair, the strong state may act contrary to the expectations and appeal to simple incapacity to refuse the weak state’s demands, while the weak may practice *fait accompli*.⁵⁰

In terms of convergence, weak state-strong state negotiations typically involve the concessions and counter-concessions pattern; alternatively, some coincidences may move them towards a common solution (for example when the strong state needs agreement more than the weak).⁵¹

Zartman challenges the traditional conception of power by suggesting that “the weak in fact do have ways of finding strength in negotiations, or at least, have

⁴⁹ Zartman, I. William, “Justice in Negotiation”, in *International Comparative Studies of Negotiating Behavior*, International Research Center for Japanese Studies, Kyoto, March 1998, p.15.

⁵⁰ Zartman, *The Politics of Trade Negotiations*, *op. cit.*, pp.224-25.

⁵¹ *Ibid.*, p.226.

ways of turning their weakness to their advantage.”⁵² Zartman argues that weak states have the power of raising the point and provoke an encounter, of putting forward their needs (moral power), and the power of agreeing or deny agreement - their signature is essential to solve the problem or achieving material benefits. Moreover, since they have nothing to loose, they can always boycott tactically (at least in theory) by breaking off talks.⁵³ However, Zartman acknowledges that his conclusions are not the result of an analysis of typical weak state-strong state confrontations. In his case study (trade negotiations between Africa and the European Economic Community) the negotiations were of extension-innovation type, friendly, with no military pressure and with a commitment to success, but not time limit.⁵⁴

William Habeeb’s analysis of how weak nations negotiate with strong ones, an insightful development of Zartman and Berman’s work,⁵⁵ examines the Panama Canal negotiations, the U.S.-Spanish base negotiations and the Anglo-Icelandic Cod Wars, concluding that “weaker states have won many of their objectives in negotiation with stronger states.”⁵⁶ As in Zartman’s work, Habeeb’s case studies focus in negotiations between weak states and strong liberal democracies (not authoritarian regimes) and negotiations between friends sharing values and interests (and not adversaries), jeopardizing the generalisation of the model into a framework of negotiations between weak and strong states. But in contrast to Zartman, Habeeb does not seem to acknowledge these limitations. However, by

⁵² *Ibid.*, p.223.

⁵³ *Ibid.*, pp.227-28.

⁵⁴ *Ibid.*, pp.223-24.

⁵⁵ See Zartman, I. William and BERMAN Maureen R., *The Practical Negotiator*, New Haven, Yale University Press, 1982.

⁵⁶ Habeeb, *Power and Tactics*, *op. cit.*, p.i.

relating the outcomes of negotiations to the 'issue-specific structural power' – “an actor's capabilities and position vis-à-vis another actor in terms of a specific mutual issue”⁵⁷ – Habeeb sheds some light into the factors that may moderate the power imbalance between a weak and a stronger actor.

As with Zartman, Habeeb assumes that power is “relative and situational”: “Powerful states may turn out to be weak in a given confrontation with seemingly weaker states.”⁵⁸ Thus, the other subcomponent of the structural component of power, the 'aggregate structural power' – “an actor's resources, capabilities, and position vis-à-vis the external world as a whole” – proves insufficient to analyse international negotiation.⁵⁹ The 'issue specific structural power' is influenced by alternatives – “each actor's ability to gain its preferred outcomes from a relationship other than that with the opposing actor” – commitment – “the extent and degree to which an actor desires and/or needs its preferred outcome” – and control – “the degree to which one side can unilaterally achieve its preferred outcome despite the costs involved in doing so.”⁶⁰

The level of commitment of an actor may strengthen or weaken his power, although commitment may vary throughout the negotiation with the issues that are on the table.⁶¹

In theory a stronger power prevails over a weaker power but a weak power may obtain certain concessions from a great power. It was generally expected that

⁵⁷ *Ibid.*, p.19.

⁵⁸ *Ibid.*, p.8 and Zartman, *The Politics of Trade Negotiations*, *op. cit.*, p.5.

⁵⁹ Habeeb, *op. cit.*, pp.17-18.

⁶⁰ *Ibid.*, pp.21-22.

⁶¹ Starkey, *op. cit.*, pp.40-41.

Portugal would struggle to achieve key objectives in the negotiations over Macau's reversion to China. This thesis argues that Portugal, a small and weak power, did manage to obtain some important concessions from the People's Republic of China, a great (regional) power. This indicates that small powers do have a certain influence on the outcome of the negotiations and may obtain certain concessions from stronger powers. The fact that Portugal has relatively little international influence does not mean that it is an insignificant state: it has privileged relations with Portuguese-speaking countries, for example.⁶² And the Chinese leaders, although expecting to be treated with the respect for being a great power, always professed a belief in equality and fair play in the negotiations.⁶³

This thesis argues that a weak power may obtain concessions from a strong power for two main reasons: (1) the weaker power may have a veto power; (2) the stronger power may commit faux pas. The Portuguese government had a veto that it could have used during the negotiations with China: to abandon Macau. If the Portuguese left Macau before the end of the negotiations and did not respect a date settled by the two countries, the CCP's policy of national reunification would be seriously damaged and the application of the 'one country, two systems' model to Taiwan would become more problematic. The PRC wanted to avoid this at all costs and would make concessions to the Portuguese government because of this potential veto.

Moreover, this thesis contends that China committed an error of judgment by underestimating Portugal. Due to the asymmetrical power relations the PRC was

⁶² Yee, *Macau in Transition*, *op. cit.* p.3.

⁶³ Solomon, Richard H., *Chinese Political Negotiating Behavior, 1967-1984*, RAND, Santa Monica, 1995, p.16.

convinced that after having negotiated the Hong Kong reversion Macau would be an easy target. But the Portuguese government did not concede some of its positions, pushing China to more intermediate decisions and to some concessions (see below). Another mistake was the auto-imposition before the CCP Central Committee of a date for the reversion of the territory (the end of the 20th century). Knowing that China was under internal pressure to finish negotiations, Portugal put issues on the negotiating table that the Chinese government had no time to manoeuvre against.

The outcome of the negotiations shows two major concessions by the Chinese government. The first one regards the date of the Macau hand-over. The PRC wanted it to be simultaneous with the Hong Kong hand-over, whereas Portugal preferred to keep Macau until the twenty-first century, possibly until 2007, date of the 450th anniversary of the Portuguese presence in Macau. The Portuguese government could not get all it hoped for; the PRC had committed itself to get Macau back before the end of the twentieth century. But, Portugal achieved its ultimate aim: the Hong Kong and Macau hand-over were two-and-a-half years apart, and not simultaneous. China made another concession within the nationality issue. The PRC agreed to respect Portuguese passports – albeit redescribed as ‘Portuguese travel documents’ – carried by the residents of Macau.

1.4.3.Chinese-Style Negotiation

This section argues that there is a common negotiating pattern among Chinese negotiators. Although this thesis focus on the Portuguese side of the Macau negotiations, studies on Chinese-style negotiation prove invaluable to the analysis

of the Sino-Portuguese negotiation process. The Portuguese negotiators followed the common Western negotiating pattern and often considered the Chinese behaviour as “unexpected” or “inappropriate.” The results of the interviews conducted for this study suggest that the Portuguese officials were not at ease with the Chinese negotiating behaviour and this arguably limited the implementation of Portugal’s objectives for the negotiations.

Therefore, in addition to general theories of negotiation, the thesis uses studies on cross-cultural negotiation, which argue that people’s perception of reality is influenced by the values of their culture, “a system of widely accepted beliefs and assumptions that are transmitted from one generation to the next through a learning process”.⁶⁴ China’s approach to international negotiations is based in her culture and history, namely in the tradition of the imperial tribute system, although it was also influenced by her Marxist-Leninist background and by the Western diplomatic practice.⁶⁵

Generalists as William Zartman and Maureen Berman, although accepting that the negotiator’s behaviour is shaped by his or her national culture, consider negotiation as a universal process that takes place within the framework of an international diplomatic culture.⁶⁶ Raymond Cohen finds two weaknesses in this argument: first, it does not take into account “the intercultural chemistry that

⁶⁴ Faure, Guy Olivier, “Cultural Aspects of international Negotiation”, in *International Comparative Studies of Negotiating Behavior*, International Research Center for Japanese Studies, Kyoto, March 1998, p.156.

⁶⁵ Berton, *op. cit.*, p.185, and Solomon, *op. cit.*, pp.ix and 146.

⁶⁶ Zartman, and Berman, *op. cit.*, p. 224-29.

occurs when a culture gap opens up between the parties”; second, it does not acknowledge that diplomats are indeed influenced by their national culture.⁶⁷

Cohen complains against “the assumption that there is a single, universal paradigm of negotiation and that cross-national differences are stylistic and superficial” and argues that there are two different paradigms of negotiation: a “low-context” paradigm and a “high-context” paradigm. The low-context paradigm, associated with the United States negotiating style, is predominantly verbal and explicit. The high-context paradigm, associated with interdependent and collectivist societies, is characterised by a non-verbal, implicit style of communication to avoid confrontation. While low-context negotiators are problem-oriented, high context negotiators are relationship oriented: instead of considering the problem in isolation, they focus in securing the relationship between the parties in the long-term. They worry with issues of symbolism, status, face and shame, and chose protecting their dignity over competition and confrontation.⁶⁸

Cohen suggests that Chinese negotiators use the high-context negotiating paradigm: more than worrying about short-term issues and benefits, they have a long-term vision of relationships.⁶⁹ Their “culture of compromises and harmonizing relationships” is adverse to the confrontational behaviour implicit in the negotiation process.⁷⁰ Chinese-style negotiation is a “managed progression of well-defined stages” in which Richard Solomon distinguishes four consequential

⁶⁷ Cohen, *op. cit.*, p.17.

⁶⁸ *Ibid.*, pp.153-154, 51 and 62 for the all paragraph.

⁶⁹ *Ibid.*, pp.53 and 87.

⁷⁰ Goh, Bee Chen, *Negotiating with the Chinese*, Dartmouth, Aldershot et al, 1996, p.86.

phases in the Chinese political negotiation process: (1) the opening moves; (2) the period of assessment; (3) the end game; and (4) implementation.⁷¹

During the opening moves, or prenegotiation stage, the Chinese negotiator aims at starting a relationship with a “friendly” counterpart official creating a sense of “friendship” and “obligation”, at establishing a favourable agenda, and at gaining commitment to certain principles.⁷² Chinese negotiators in this view are extremely skilled in establishing a favourable agenda and imposing their terms for the negotiations.⁷³ They pressure the adversary to talk first: when negotiations take place in Beijing, they ask the “guests” to reveal their views first, but if talks take place somewhere else they only talk after the “hosts”.⁷⁴ They mask their views until the other side has committed to its position, except if they want to establish principles or limits for the talks.⁷⁵

Chinese-style negotiation includes another level of bargaining other than the manifest level about concrete agreements: there is a latent level at which the Chinese officials try to establish webs of sentiment.⁷⁶ Following China’s Confucian political tradition, Chinese negotiators, instead of conducting legalist negotiations, develop relationship games – “the games of *guanxi*” – with sympathetic foreign officials.⁷⁷ Friendship is sharing *guanxi*, “a special relationship individuals have with each other in which each can make unlimited

⁷¹ Solomon, *op. cit.*, pp. ix-x.

⁷² *Ibid.*, p.x.

⁷³ *Ibid.*, pp.xiii and 144.

⁷⁴ Berton, *op. cit.*, p. 196.

⁷⁵ Pye, Lucian W., *Chinese Negotiating Style: Commercial Approaches and Cultural Principles*, Quorum Books, New York et al, Quorum Books, New York, 1992, p.43; and Solomon, *op. cit.*, p.61-2, note 21.

⁷⁶ Pye, *op. cit.*, p.99.

⁷⁷ Solomon, *op. cit.*, p.x.

demands in the other,” which bounds the counterpart to give a positive response to any requirements of his “friends”.⁷⁸ Chinese negotiators often try to manipulate what they call their “old friends”, officials who have previously been involved in negotiations with China.⁷⁹

Cohen argues that high-context cultures need to use the pre-negotiation stage “to set perimeters ... on the configuration of the final outcome.”⁸⁰ They believe that negotiation is a zero-sum game, in which there must be a winner and a loser, and loosing is a problem of “face”.⁸¹ For face-related reasons, Chinese negotiators establish a set of irreducible principles as a precondition to negotiate, and when negotiations start, they believe that the adversary accepted those pre-conditions.⁸²

Solomon suggests that Chinese often take a “principled stand”: they stick to their original position, rather than moving from an initially exaggerated solution.⁸³ They first seek agreement on general principles and only then discuss the details within the framework of those principles.⁸⁴ Chinese negotiators do not accept a negative answer from an adversary and constantly recall their original proposals for reconsideration, repeating the same arguments and the same words.⁸⁵ To avoid deadlocks, they often chose a reserve position on their originally stated principles and reach a partial agreement on resolvable issues, leaving open the possibility of reaching a fuller agreement in the future.⁸⁶ They are “meticulous record keepers”,

⁷⁸ Pye, *op. cit.*, p.101.

⁷⁹ Berton, *op. cit.*, p. 199.

⁸⁰ Cohen, *op. cit.*, p. 62.

⁸¹ Pye, *op. cit.*, p. 81.

⁸² Cohen, *op. cit.*, pp.57-58.

⁸³ Solomon, *op. cit.*, pp.4-5 and 57.

⁸⁴ Pye, *op. cit.*, p.51.

⁸⁵ *Ibid.*, p. 85.

⁸⁶ Solomon, *op. cit.*, pp.81-82.

referring to the past exchanges to vindicate their original position, although Solomon suggests they often distort the record of official exchanges to favour their interests.⁸⁷

Chinese officials are highly organized and prepare very well on the issues of the talks, speaking with caution and with a common voice.⁸⁸ They have a rigid political and bureaucratic discipline: higher Chinese officials are more willing to make concessions and lower officials have less flexibility. Pye argues that because higher officials are not involved during the main part of the negotiation process, and as the communication system within China's bureaucracy is deficient,⁸⁹ negotiating with the Chinese demands time and patience.

The second phase of the Chinese negotiation process is the period of assessment, in which the Chinese negotiator analyses his interlocutor's views, flexibility and patience, and make the adversary appear as the supplicant party, with minimal control over the negotiation process.⁹⁰ He draws out the foreign adversary into a dependent position through the use of facilitating maneuvers, such as conducting the negotiations on Chinese territory and offering a high level of hospitality, often used to raise pressures on the adversary.⁹¹ Chinese negotiators carefully organize all the formalities of the negotiations. They use sightseeing trips and banquet talk with senior foreign negotiators, often separated from their specialized advisers, to

⁸⁷ *Ibid.*, pp.113, 126 and 33.

⁸⁸ *Ibid.*, pp. ix and 35.

⁸⁹ Pye, *op. cit.*, pp.80 and 44.

⁹⁰ Solomon, *op. cit.*, pp.xi-xii.

⁹¹ *Ibid.*, pp.65, 67 and 94.

establish personal relationships with them and to entice them to accommodate to the Chinese position.⁹²

Presenting themselves as the injured party, Chinese negotiators are known for blaming the adversary for the unsolved problems.⁹³ Other pressure tactics include the use of the press and of political provocations to publicly set a discussion agenda and to restrain the adversary's negotiating position, setting the limits to China's flexibility: making a public declaration sends a signal that Chinese negotiators are definitive on the issue.⁹⁴ They also appeal to the fact that they cannot disappoint a billion countrymen.⁹⁵

The third phase of Chinese negotiations is the closure or end game. Chinese negotiators are extremely efficient in controlling the timing of the negotiation process, pacing the talks in a way that forces the adversary to make decisions under time pressure.⁹⁶ In contrast, even when facing a deadline, the Chinese negotiators show no hurry in concluding the negotiations and only make relevant concessions at the very last moment.⁹⁷ Once they decide that they have tested the adversary's flexibility to the limits and want to formalize the agreement, Chinese negotiators send a clear signal to quickly conclude the negotiations. They may create an apparent deadlock and then involve a high authority in the negotiations

⁹² *Ibid.*, pp.18, 27, 31 and 97.

⁹³ *Ibid.*, pp.116-7.

⁹⁴ *Ibid.*, pp.101, 104 and 107.

⁹⁵ *Ibid.*, pp.98.

⁹⁶ Pye, *op. cit.*, p. 84.

⁹⁷ Berton, *op. cit.*, p. 196.

to harmonize positions very close to (or even after) the deadline, usually pressing for new concessions.⁹⁸

The Chinese traditionally distrust formal treaties and prefer the flexibility of language of joint press statements, communiqués, or joint declarations. They value ethical and moralist principles over legal considerations, believing that “good *guanxi* and a strong sense of shared interest are the most reliable guarantors of a political agreement.”⁹⁹ During the implementation phase, or post-negotiation, Chinese negotiators press for a “strict implementation” of the agreement, although they sometimes fail to do so.¹⁰⁰ They are hardly satisfied with an agreement, and often ask for further revisions and for additional demands after the agreement was formalized.¹⁰¹ Solomon suggests a common pattern of negotiations with the Chinese:

“It occurs after a protracted period of exchanges, it almost invariably comes at the eleventh hour of some deadline that is part of the structure of the negotiating context, and it usually involves the intervention of a senior Chinese political figure who will either cut the knot of an apparent deadlock or bless an agreement the negotiators have constructed.”¹⁰²

In conclusion, Chinese-style negotiation is a highly methodical and organised process that demands patience and flexibility from the counterpart. As Chinese negotiators are able to hide their emotions on the progress of the talks, there is a permanent element of surprise, and the counterpart officials are never fully aware of China’s priorities and can hardly predict the final Chinese positions.¹⁰³

⁹⁸ Solomon, *op. cit.*, pp.129-30, 133-35 and xii-xiii.

⁹⁹ Pye, *op. cit.*, 1992, p.23, and Solomon, *op. cit.*, pp.136-37.

¹⁰⁰ Solomon, *op. cit.*, pp.137-8.

¹⁰¹ Berton, *op. cit.*, p.197, and Solomon, *op. cit.*, p.144.

¹⁰² Solomon, *op. cit.*, p.136.

¹⁰³ Pye, *op. cit.*, pp.43 and 91.

1.5. Structure and Organisation of the Thesis

Chapter two provides the political background to the Macau question. It begins with a discussion of the Portuguese settlement in Macau from the 16th century until the establishment of Sino-Portuguese relations in 1979 and argues that Macau was one of the obstacles that delayed the establishment of diplomatic relations between Portugal and the People's Republic of China. The 1979 agreement was very important as it established the principles for future negotiations: the two governments defined for the first time their position on the Macau question, agreeing to not unilaterally change the status quo and that the question would only be settled through negotiation. The chapter argues that the Portuguese were very confused about Macau and did not develop a strategy for the settlement of the question until the mid-1980s.

Chapter three looks at the early period of the Sino-Portuguese negotiations for the settlement of the Macau question. The pre-negotiation stage started in 1984 and formal talks ended in 1987 with the signature of the Sino-Portuguese Joint Declaration on the Question of Macau. The chapter compares the Sino-Portuguese negotiations to the Sino-British negotiations and argues that a key objective of the Portuguese side was to ensure that Macau's treatment was not worse than Hong Kong's. When China put the Macau question on the table, Portuguese diplomacy was confused and chaotic and had no significant expertise on Macau, making it very difficult for the Portuguese government to delineate a coherent strategy for the negotiations.

The most contentious issues of the negotiations were the setting of the date for the transfer of the Portuguese administration to the PRC and the future nationality of the Macau inhabitants. The Chinese government wanted a simultaneous handover for Hong Kong and Macau, and in any case would accept that the Macau transfer took place after the end of the twentieth century. The Portuguese side favoured a later date for the transfer of sovereignty. Another problematic issue was the future nationality of the Macau citizens holding Portuguese passports. The Portuguese government wanted to give them dual nationality while China wanted them to keep Chinese nationality only.

Chapters four and five look at the so-called Macau transition, which took place between the entry into force of the Sino-Portuguese Joint Declaration in 1988 and the Macau handover in 1999. The two chapters focus on the issues that better illustrate how Portugal's domestic political context affected the Portuguese strategy and the outcome of the negotiations with China for the transfer of Macau's sovereignty. Chapter four considers the permanent issues of the transition and chapter five concentrates on problematic and delicate matters. The Portuguese and Chinese delegations negotiated many other questions within the Joint Liaison Group that are not analysed in detail in this work.

Chapter four first elaborates on the Portuguese domestic context and presents the Sino-Portuguese Joint Liaison Group and the Land Group, the two joint commissions created according to the Joint Declaration for the implementation of the agreement. The chapter then analyses the three permanent and more discussed issues of the transition period, as the functioning of the administration after the

handover depended of the solution of these issues: 1) the localisation of language; 2) the localisation of the civil service; and 3) the localisation of law.

The three localisations were inter-related with each other. The localisation of the civil service consisted in replacing Portuguese functionaries by local staff in the Macau administration. This could not be done without the localisation of the Chinese language in the civil service and at the legislative and judicial levels, as most of the local staff did not have a good command of Portuguese. The localisation of the law consisted in transforming into local laws the Portuguese laws that were in force in Macau, as all colonial legislation would become void after 1999. The “three big issues”, as they were known, were considered very important by both sides and were carefully negotiated.

The chapter argues that jurisdiction over the Macau question in Portugal was greatly complicated by conflicts over responsibility for negotiating with China. The key implications of this were that Portugal could not define a unique strategy, and the delegation to the Joint Liaison Group received contradictory orders to the ones given to the Governor. The chapter argues that the Portuguese administration left behind insufficiently prepared local staff, that the Portuguese government could have obtained a dual nationality statute for Macau’s citizens, and that Portugal could have negotiated a better deal regarding the pension fund. Regarding the localisation of the language, the Portuguese government could have negotiated better the statute of the Portuguese language post-1999, instead of considering it as a “lost case”.

Chapter five analyses other sensitive issues of the transition period: 1) the inclusion in the Macau Basic Law of the provisions of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights; 2) the construction of the Macau International Airport; and 3) the issue of the Orient Foundation (Fundação Oriente).

The chapter highlights several negotiating mistakes on the Portuguese side. It argues that the Portuguese delegation should have negotiated the extension of the Covenants to Macau during the Joint Declaration negotiations, as Britain did with Hong Kong, instead of leaving it for the transition period. Regarding the Orient Foundation, the chapter argues that the delay in agreeing to discuss the issue and in taking a position on the matter cost Portugal the hardening of the Chinese position and a loss of negotiating power. The construction of the airport was the better-negotiated issue by the Portuguese part, which used the Tiananmen incident to extract important concessions.

The conclusion argues that Portugal, being a small/weak country with a tangled political bureaucracy, defined a low-key and non-conflictual strategy for Macau, allowing China to control the pace of the Sino-Portuguese negotiations. The definition of this consensual strategy was in part the result of Portugal's domestic political context, as the divisions among the political leaders and the poorly prepared diplomats resulted in a lack of resolve to get the best benefits for Macau and for Portugal. Portugal assumed positions that limited the possibilities of imposing on China a Portuguese strategic purpose for Macau, and this purpose was therefore very limited: to ensure that Macau's treatment was not worse than

Hong Kong's. Despite all this, Portugal had some negotiating advantages – such as the interest of the PRC in settling the question through a negotiation process, both for international reasons and for avoiding any adverse affect on their plans for Taiwan – and managed to extract some concessions in the negotiation process.

Chapter 2 - The Macau Question and the Establishment of the Sino-Portuguese Relations

2.1. Introduction

The following sections focus on the two main factors that explain the attitude of Portuguese people and the Portuguese leadership toward Macau: the fragility of the Portuguese presence in Macau and the traumatic experience of the violent decolonisation violent decolonisation in Africa. The fact that the Portuguese negotiators perceived that they were negotiating from a weaker position and the importance attributed in Portugal to a honourable withdrawal from Macau were arguably the main causes that contributed the Portuguese low-key strategy during the negotiations with China and to the passivity of the Portuguese side during the transition period.¹

The Portuguese established themselves in Macau in the sixteenth century and stayed there by sufferance for more then four centuries. From the end of the nineteenth century until the signature of the Joint Declaration in 1987, at the centre of the Sino-Portuguese relations was the so-called “Macau question”: Portugal and China accepted the concept of a community with political and juridical autonomy from its original territory, and defined which jurisdiction rights each country had over Macau.² This chapter presents the background to the situation of the Sino-Portuguese relations in the 1980s, when the negotiations for the settlement of the Macau question were launched. In addition to providing a

¹ Santos, Boaventura de Sousa and Gomes, Conceição, *Macau, o Pequeníssimo Dragão*, Edições Afrontamento, Lisbon, 1988, p.492.

² Saldanha, António Vasconcelos de, *Estudos sobre as Relações Luso-Chinesas*, ISCSP and ICM, Lisbon, 1996, pp.52-53.

detailed account of Portugal and China moves regarding Macau, the chapter highlights the domestic situation in Portugal and the impact that the chaotic precedents of Portuguese decolonisation in Africa had on the Portuguese approach to the Macau question.

From the Portuguese settlement in Macau until the signature of the Sino-Portuguese Joint Declaration in 1987, the relations between Portugal and China went through different stages. During the first three centuries of Portuguese administration, Portugal conformed to the rules imposed by China. Macau remained a tacit agreement based up on mutual interests and Portugal and China did not feel the need to sit at the negotiating table to sign a formal agreement. There were no treaties or any kind of jurisdiction in which the Portuguese could hold to justify their presence in Macau. Macau was not considered Portuguese territory: it was simply a Sino-Portuguese mutual understanding based in interests.

Governor Ferreira do Amaral broke this consensus with China by forcibly imposing new rules, consolidated in the first treaty with China in 1862. This treaty, however, was never ratified and in 1887 the two countries signed the Lisbon Protocol and the Treaty of Friendship and Trade, which gave Portugal the same privileges and immunities that the other foreign countries enjoyed in China. The official diplomatic channels between the two countries were abandoned in 1949 with the establishment of the People's Republic of China, and with it began another phase of Sino-Portuguese relations. As the Portuguese right-wing regime

did not recognise the PRC, Portugal and China held *de facto* diplomatic relations using some Macau Chinese as intermediates.³

Both Portugal and China saw advantages in the maintenance of the status quo in Macau. For the Portuguese authoritarian regime, Macau had a symbolic relevance: to maintain the myth of the empire. Portuguese colonialism, based in a politico-administrative imperialism deprived of economic interests, used Macau to remind the Portuguese people of Portugal's past world-leading role. China was interested in the maintenance of Macau's dubious status as Portugal was a small country and showed some subservience for administering the territory. Macau was *de jure* administered by Portugal but was *de facto* controlled by China, which used the territory for its own purposes.⁴ For many years Macau was a communication door with the West: an important commercial outpost, Macau not only allowed the entrance of goods to China but also purchased almost everything from China, being a valuable source of foreign exchange.⁵ During the Korean War (1950-1953), the People's Republic of China used Macau to break the blockade imposed by the West.⁶

By 1974 changes within Portugal's political system led to a traumatic decolonisation in Africa. The new Portuguese regime withdrew from Africa and Timor and was not interested in keeping Macau, but for various reasons the

³ *Ibid.* pp.17-23.

⁴ Fernandes, Moisés, "Portugal, Macau e a China – confluência de interesses", *História*, New Series, Year 22, No.21, January 2000, pp.58 and 67.

⁵ Conceição, *Macau entre Dois Tratados com a China, 1862-1887*, Macau, ICM, 1988, p.175.

⁶ Fernandes, Moisés Silva, *Sinopse de Macau nas Relações Luso-Chinesas, 1945-1995*, Lisbon, Fundação Oriente, 2000, p.121.

People's Republic of China wanted to maintain the status quo.⁷ In 1979 the new Portuguese regime established diplomatic relations with the PRC and signed a secret agreement accepting China's sovereignty over Macau. In the *Acta Secreta* (Secret Memorandum), signed simultaneously with the joint communiqué that established the bilateral relations, Portugal accepted that Macau was a "Chinese territory under Portuguese administration" and gave China the guarantee of negotiating the Macau issue when the PRC considered it appropriate.

In conclusion, since the beginning of the Portuguese settlement in Macau until the transfer of administration in 1999, Portugal and China shared sovereignty over the territory. During the first two centuries of the Portuguese settlement, China's sovereign powers were barely affected, but in 1783 Portugal declared the right of sovereignty over Macau. The two countries equally shared sovereignty until 1849, when Governor Ferreira do Amaral imposed *de facto* Portuguese sovereignty over the territory leaving China with few powers. This prevailed until the promulgation of the Organic Statute of Macau in 1976, which defined Macau's status as Chinese territory under Portuguese administration, allowing China to regain some of her sovereign powers over the territory until the signature of the Sino-Portuguese Joint Declaration. During the transition period (1988-1999) the two countries shared again a degree of sovereignty over Macau.⁸

⁷ Fernandes, Moisés, "Portugal, Macau e a China – confluência de interesses", *História*, New Series, Year 22, No.21, January 2000, p.67.

⁸ Wu Zhiliang, *op.cit.*, pp.18-20.

2.2. The Political Background to the Macau Question

This section outlines the origins of Portuguese interest in Macau and explains the reasons why Portugal gained control over the territory. It suggests that there was always a degree of ambiguity of the status of the territory that was not resolved until the late nineteenth century. Nonetheless, the status of Macau was never as clear as that of British rule over Hong Kong.

Portuguese sailors arrived to the Zhu (Pearl) River estuary in 1513 and tried since then to establish trade with China. A Portuguese mission was finally allowed to meet the Chinese emperor in Beijing in 1520, but it was doomed to failure: the emperor felt insulted by the letter of the Portuguese king, which treated him as an equal. After the collapse of a second unsuccessful attempt to establish trade relations with China in 1522 – the Portuguese fleet was attacked by Chinese armed forces – the Portuguese king suspended official missions to China. But the trade between the Portuguese and the Chinese merchants continued to flourish.⁹

When the Ming dynasty cut-off trade with Japan in 1523, smuggling between the Portuguese sailors and the Japanese traders and pirates was widely accepted (and welcomed) by some Chinese merchants and pirates. The Portuguese were the intermediary that sold Chinese silk to the Japanese and Japanese silver and copper to the Chinese. The goods brought by the Portuguese from Southeast Asia (namely spices and amber) were also greatly appreciated by the Chinese. The Chinese local authorities had their share of this lucrative trade so they were easily

⁹ For this paragraph see: *ibid.* chapter 1; Oliveira, Fernando C., *500 Anos de Contactos Luso-Chineses*, Lisbon, Público and Fundação Oriente, 1998, chapter 3, 4 and 5.

corrupted and pretended not noticing the development of the illegal maritime trade.¹⁰

Initially the commercial transactions took place in the open sea but gradually some little islands in the Zhu River delta were occupied by the Portuguese and attracted traders. Because of its excellent geographic situation, Macau was elected as the favourite enclave. It was not occupied by force though: In 1553, the mandarin in charge of Macau allowed the Portuguese to build provisory tents to keep and exchange the merchandises. They were expected to destroy the tents before going to sea, at the end of the trading season – November to May. In 1557, however, the Portuguese started building houses in wood and stone with the building materials that the other traders brought them. It was the beginning of the Portuguese settlement in Macau.¹¹

Macau soon evolved from a community of traders to a politically organised society. Formally depending on the viceroy of India (Goa), Macau adopted in 1583 a municipal government with a peculiar administrative model, the Senate Council, later called the Loyal Senate.¹² Unlike other Portuguese towns and possessions, the Senate did not pay *foro do chão* (ground-rent) to the Portuguese King but to the local Chinese authorities. Since 1573 the Portuguese inhabitants of

¹⁰ *Ibid.*

¹¹ There is some academic dispute about the date of the definitive settlement of the Portuguese in Macau. Dai Yixuan argues that both 1553 (presented by the Chinese sources) and 1557 (acknowledged by the Portuguese sources) are acceptable dates for the settlement of the Portuguese in Macau, since the first one refers to their first arrival in the enclave and the second concerns the building of the houses, as a sign of the permanent settlement. However, the Portuguese administration chose 1955 to celebrate the 400 years of the Portuguese settlement in Macau (the celebrations were cancelled by the PRC). Dai Yixuan, *Anotações Correctivas da Crónica de Folangji da História Oficial dos Ming*, Beijing, Editora de Ciências Sociais da China, 1984, p.69, quoted in Wu Zhiliang, *op. cit.*, p. 45. For this last paragraph see *Ibid.*, pp.45-47.

¹² Pereira, Francisco G., *Portugal A China e a "Questão de Macau"*, Macau, Instituto Português do Oriente, 1995, pp.17-19.

Macau had converted the money used to bribe the Chinese officials into an annual rent of 500 taels (Chinese silver weight) plus the annual custom dues of 20,000 taels.¹³

Following this, the Chinese government built the *Porta do Cerco* (Barrier Gate), a garrisoned wall along the isthmus where Chinese troops controlled the flow of people and goods across the border.¹⁴ The payment of the annual rent and the boundary delimitation showed both the Portuguese vassalage to the Ming dynasty and the China's tacit recognition of Macau's *de facto* foreign occupation. In 1688, the Chinese had a customhouse built in Macau, which enlarged the influence of the mandarin to detriment of the Governor.¹⁵ Thus, although there was a gradual regularisation of the Portuguese presence in Macau, there was not a change in the actual "legal" or formal status of the Portuguese presence.

In 1783 the Portuguese administration reacted to the Chinese progressive advances in Macau. The *Providências Régias* (Regal Providences) declared that Portugal had an unquestionable right of sovereignty over Macau and intended to reinforce the Portuguese jurisdiction in the territory. The Governor's authority was strengthened while the influence of the Senate – which often had a subservient attitude regarding the Chinese authorities – was limited; it was decided to build a Portuguese customhouse against the will of the Senate; the bishop recently appointed to Beijing was charged with promoting Portuguese

¹³ Wu Zhiliang, *op. cit.*, p.74.

¹⁴ Gonçalves, Arnaldo, "Macau, Timor and the Indian territories in the Portuguese decolonisation process", unpublished paper, Contemporary Portuguese Politics and Historic Research Centre, University of Dundee, 11-14 September 2000, p.18.

¹⁵ Santos, Boaventura de S. and Gomes Conceição, *Macau – O Pequentíssimo Dragão*, Porto, Edições Afrontamento, 1998, pp.31-32.

interests in Macau in the Chinese court. The Portuguese Constitution of 1822 also confirmed that Macau was a constituent part of the Portuguese territory.¹⁶

In the second half of the 19th century the other foreign powers with interests in China pressured both sides to clarify the status of Macau. The weakness of China and the relative decline of Portugal forced them to accept this external imposition. The so-called first “opium war” (1839-1842) broke China’s isolation and set a precedent for China’s negotiations with foreign countries.¹⁷ With the Treaty of Nanking (1842) and the cession of Hong Kong to the British Crown, Macau Governor Ferreira do Amaral took the opportunity to declare in 1849 *de facto* Portuguese sovereignty over Macau. The Chinese mandarin of Macau lost its functions, later abandoning the enclave, and Macau was declared a free port and the Chinese custom-house was abolished.¹⁸

In 1862 Portugal signed the first *Tratado de Amizade e Comércio entre a China e Portugal* (Treaty of Friendship and Trade between China and Portugal). Although this treaty defined Macau’s political and juridical statute, it did not mention the issue of Portuguese sovereignty, and China never agreed with its ratification.¹⁹ The non-ratification of the Treaty of 1862 became an opportunity for Portugal to negotiate a better agreement. Pushed by Britain, China negotiated with Portugal Macau’s co-operation to control the smuggling of opium; in exchange, Portugal

¹⁶ Pereira, *op. cit.* pp. 29-31, for the last paragraph.

¹⁷ Conceição, *Macau entre Dois Tratados com a China, 1862-1887*, Macau, ICM, 1988, p.174.

¹⁸ “Informação de serviço, confidencial, sobre as ‘relações de Portugal com a China e situação em Macau’”, Lisbon, 9 August 1976, PAA M.1165, Diplomatic Historical Archives, Ministry of Foreign Affairs.

¹⁹ Conceição, *op.cit.* p.45.

demanded a new treaty in which China made a formal recognition of the Portuguese (limited) sovereignty.²⁰

China recognised the “perpetual occupation and government of Macau and its dependencies by Portugal” in article 2 of the Preliminary Lisbon Protocol of 1887, reiterated in article 2 of the *Tratado de Amizade e Comércio* (Treaty of Friendship and Trade) signed in Beijing in 1 December 1887 and ratified on 28 April 1888. The Treaty of 1887 recognised Portuguese sovereignty, helped to maintain the status quo in Macau, and gave Portugal the same privileges that the other foreign countries enjoyed in China. However, it did not solve the problem of the definition of Macau’s borders.²¹

At the beginning of the twentieth century, both Portugal and China adopted republican regimes: the Portuguese Republic was founded in 1910 and the Republic of China in 1911. The strong nationalist movements in China questioned the validity of the Treaty of 1887 and the mandarins of Beijing and Guangzhou maintained the same rigid position that Macau was Chinese territory occupied by the Portuguese.²² Sino-Portuguese relations were contentious due to the urgent question of the limits (borders) of Macau: China wanted to put an end to the extraterritorial Portuguese ambition and Portugal was interested in maintaining the status quo.²³ The Nationalist government’s foreign policy aimed at put an end to China’s occupation and, after long discussions, in 1928 signed with Portugal

²⁰ Silveira, Jorge Noronha e, *Subsídios para a História do Direito Constitucional de Macau (1820-1974)*, IPO, Macau, p.30, and Pereira, *op.cit.* p. 54.

²¹ Wu, *op.cit.* pp.229 and 237-38.

²² Saldanha, *Estudos sobre...*, p. 21, and Pereira, Francisco G., *Portugal A China e a “Questão de Macau”*, Macau, Instituto Português do Oriente, 1995, p.50.

²³ Wu, *op.cit.* pp.246 and 254-55.

the Treaty of Nanjing, which abolished Portuguese consular jurisdiction in Chinese territory.²⁴

Through the 1920s and 1930s, after a long period of foreign control over territory that had been conceded by China, most of China's foreign concessions were returned to her. The European imperial powers had long aspired to set foot in Chinese territory – especially after the Portuguese established themselves in Macau in 1557 – and China's defeat in the first opium war provided the ground to force China to concede to them extra-territorial rights (exempting them from Chinese justice) and treaty ports (where they controlled the administration).

The lease of several Chinese territories through these “unequal treaties”,²⁵ as China has called them, provided Britain, France, Germany, Russia, Japan and the United States with privileged military and commercial positions within China.²⁶ Britain clearly led the scene until the First World War: it had the Crown colony of Hong Kong and had concessions at Xiamen, Jinjiang, Jiujiang, Hankou and Tianjing. Furthermore, Britain dominated the International Settlement of Shanghai and had the entire Yangzi valley as a sphere of influence.²⁷

²⁴ *Ibid.* pp.259-264.

²⁵ The term “unequal treaties”, used since the 1920's by the Kuomintang and by the PRC after 1949, was not the result of a doctrinal elaboration, but rather a general category in which China included all treaties and conventions containing, among others “clauses relative to consular jurisdiction, unilateral clauses of most favoured nation, cessions or territorial leases”, i.e., “all the treaties concluded by China over the 19th and early 20th centuries.” Both Nationalist and Communist China maintained the position that all unequal treaties should be abolished. Saldanha, António Vasconcelos de, “Some Aspects of the ‘Macau Question’ and its Reflex in Sino-Portuguese Relations within the United Nations”, *Portuguese Review of International and Community Institutions*, ISCSP, Lisbon, 1996, pp.203-3 and 205-6.

²⁶ Davis, Clarence B. and Gowen, Robert J., “The British at Weihaiwei: A Case Study in the Irrationality of Empire”, *Historian*, Fall 2000, Vol.63, Issue 1, p.87.

²⁷ Fung, Edmund S.K., *The Diplomacy of Imperial Retreat: Britain's South China Policy, 1924-1931*, Hong Kong, Oxford University Press, 1991, p.2.

Soon after the First World War and at the Versailles conference in 1919, China claimed in vain the abolition of the privileges that the treaty system had given to the foreign powers.²⁸ Although China self-consciously entered “international society” in 1918-1920, (as understood by the “English School” of international relations) by accepting international rules and norms,²⁹ she soon found that the success in treaty revision lay in bilateral negotiation.³⁰ The Chinese claims for the retrocession of the foreign concessions were strengthened by the anti-imperialist Chinese nationalist revolution in 1923-1928 against “the domestic and foreign enemies of the Chinese people”.³¹

Due to Britain’s powerful position, British imperialism became a prime target. Anti-British agitation affected Shanghai and the Yangtze region in particular, but a strike was also organized in the foreign concession of Xiamen and Hong Kong was boycotted from July 1925 to October 1926. The movement aimed to put an end to China’s foreign political and economic domination.³² The turning point was the peaceful retrocession of the Hankou concession to China.³³

The currents of Chinese nationalism also arrived in the British colony of Weihaiwei in the 1920s. Weihaiwei had been leased to Britain by China in 1898, along with the New Territories of Hong Kong, but it ended up being of minor

²⁸ *Ibid.*, p.14.

²⁹ Zhang Yongjin, *China in the International System, 1918-20*, London, Macmillan, 1991, in Kirby, William C., “The Internationalization of China: Foreign Relations At Home and Abroad in the Republican Era”, *The China Quarterly*, June 1997, Issue 150, p.443.

³⁰ Kirby, *op. cit.*, p.443.

³¹ Fung, Edmund, *op. cit.*, p.30.

³² See *Ibid.* pp.35-44.

³³ Kirby, *op. cit.* pp.440-441.

importance to the British.³⁴ Although the two leaseholds were practically identical, Britain was much more committed to the New Territories than it was to Weihaiwei. While the inhabitants of the New Territories were naturalised as British subjects, those of Weihaiwei remained Chinese citizens. Being part of the Crown colony of Hong Kong, Britain wanted for the New Territories a better statute than for Weihaiwei.³⁵

The only purpose of the Weihaiwei lease had been to constitute a naval base to maintain the supremacy of the British vis-à-vis other foreign powers in China at a time when Russia had occupied Port Arthur and Dairen and the Germans Kiaochow Bay. The lease was to expire when Russia left Port Arthur, but Britain managed to stay on Weihaiwei after Russia was forced to give up Port Arthur to the Japanese following her defeat in the 1904-1905 war.³⁶ After a protracted negotiation process, the rendition of Weihaiwei took place in 1930, at a time when the British were glad to leave to avoid the development of an anti-British movement in a colony that had ceased to be of any importance.³⁷

China did not recognise any difference of principle over its foreign concessions: they were all the result of unequal treaties and due to return to China's sovereignty. China recovered, through negotiations, many of her foreign

³⁴ Six years after the British leasehold of Weihaiwei the Colonial Office and the Foreign Office already debated its retrocession to China. The British found Weihaiwei to be militarily worthless and too poor to prosper economically. Thanks to its exceptional climate, it ended up being used mainly as a summer retreat for the British navy and expatriates. See for example Miners, N.J., Foreword to Atwell, Pamela, *British Mandarins and Chinese Reformers: The British Administration of Weihaiwei (1898-1930) and the Territory's Return to the Chinese Rule*, Hong Kong, Oxford University Press, 1985, ix; Davis, Clarence B. and Gowen, Robert J., *op. cit.*, pp.90-91; Strauss, Julia C., *Strong Institutions in Weak Polities: State Building in Republican China 1927-1940*, New York, Oxford University Press, 1998, p.158.

³⁵ Miners, N.J., Foreword to ATWELL, *op. cit.*, p.ix.

³⁶ *Ibid.*, p.vii-x.

³⁷ Strauss, *op. cit.* p.160.

concessions in early 1930s.³⁸ Hong Kong and Macau did not escape this logic of retrocession, although they remained under colonial authority. With the capitulation of Japan in 1945, China requested Portugal end consular extraterritoriality, i.e., “the extension of the jurisdiction of a state behind its borders, implying the existence of certain rights, privileges and immunities enjoyed by the citizens or subjects of a state within the limits of other state, exempt from local jurisdiction and exclusively subjected to the laws and judicial administration of the respective state.”³⁹

In 1947 Portugal and China signed a treaty by exchange of notes “for the relinquishment by Portugal of its rights relating to consular jurisdiction in China.”⁴⁰ This treaty marked the end of extraterritoriality for all foreign countries in China.⁴¹ After three years of negotiations, China was forced to abandon a clause related to the Macau question in order to obtain Portugal’s agreement that “the Portuguese citizens are subject to the law and jurisdiction of Chinese courts”. Thus, the notes did not mention the status of Macau.⁴² China temporarily abandoned its claims over Macau mainly due to the beginning of the civil war between Nationalists and Communists.⁴³

The victory of the Chinese Communist Party (CCP) put an end to the Chinese civil war and the People’s Republic of China (PRC) was established on 1 October

³⁸ Kirby, *op. cit.* pp.440-441.

³⁹ Saldanha, *Estudos sobre...*, p.200.

⁴⁰ “Exchange of Notes Between China and Portugal for the Relinquishment by Portugal of its Rights Relating to the Consular Jurisdiction in China and the Adjustment of Certain Other Matters”, reproduced in Fernandes, *Sinopse...*, pp.528-9.

⁴¹ Wu, *op.cit.* pp.305-311.

⁴² Fernandes, *Sinopse...*, p.45.

⁴³ Fernandes, “Portugal, Macau e a China”..., p.58.



1949. Although the PRC was an avowedly anti-imperialist and anti-colonialist regime, before the mid-1970s the PRC did not claim the return of Macau and Hong Kong to China, and assumed a moderate position to maintain the status quo of the two enclaves.⁴⁴ This decision was based in economic and practical reasons: by allowing Macau and Hong Kong to remain neutral territories, the PRC was able to break the blockade imposed by the West while keeping some distance from the Soviet Union.⁴⁵ China used Macau as an important centre to import and store western strategic material used by the Maoist regime.⁴⁶

The Chinese communist regime made two attempts to establish diplomatic relations with Portugal, one on 1 October 1949, after the establishment of the PRC, and the other in 1954, in the aftermath of Geneva Conference, but António Salazar's authoritarian regime strongly opposed it. In 1950, four NATO members (the United Kingdom, Norway, Denmark and the Netherlands) recognised the PRC, but the stubbornness of the Portuguese dictator allied with strong pressures within the regime and from the United States prevented this from happening.⁴⁷

At the same time, the PRC did not apply strong pressure to establish relations with Portugal because China effectively controlled Macau. The CCP co-opted the traditional associations in Macau and was able to influence Macau's politics and economy. It used the enclave to obtain Western strategic material during the blockade on China during the Korean War and to teach Portuguese language and

⁴⁴ Fernandes, Moisés Silva, "Macau nas Relações Sino-Portuguesas, 1949-1979", *Administração*, no.46, Vol.XII, 1999, pp.998 and 1002.

⁴⁵ Wu, *op.cit.* p.313.

⁴⁶ Fernandes, "Portugal, Macau e a China"..., p.58.

⁴⁷ Fernandes, "Macau nas Relações Sino-Portuguesas"..., pp.989-91, and *Sinopse*..., p.xxii.

culture to Chinese officials used to influence the liberation movements in the Portuguese Africa.⁴⁸

Although Portugal and the PRC did not have relations *de jure*, they had good relations *de facto* and the stability afforded by China after the establishment of the PRC in 1949 had positive effects in Macau. The link between Portugal and the PRC before the establishment of diplomatic relations in 1979 was made through the Chinese elite of Macau. The Portuguese government used political co-optation to bring local elements to the administrative structure in Macau: emissaries that exchanged the information between Portugal and China. These intermediaries were the *de facto* rulers of Macau and had total control of the governors and Portuguese administrations. As the Portuguese government did not control Macau, it was forced to contract and negotiate with the elite of Macau.⁴⁹

Pedro José Lobo, chief of Macau Economic Services and one of the most powerful men in Macau was greatly respected by the Portuguese dictator, António Salazar. Pedro Lobo controlled the concession of the gold trade in Macau (the main source of Macanese income in the 1950s and 1960s) along with his assessor Roque Choi, Y.C. Liang and Ho Yin, head of the Macau Chinese Chamber of Commerce and owner of the Tai Fung exchange office and the *Tái Chông Pou* daily paper. Among the members of the Chinese elite in Macau, which the PRC liked to call *red capitalist compatriots*, the messengers favoured by China were O Lon, director of the Jinghu hospital, and Carlos Basto, attached-commissary of the

⁴⁸ Fernandes, "Macau nas Relações Sino-Portuguesas"..., pp.993-95 and 997.

⁴⁹ Interview with Professor Moisés Silva Fernandes, 18 and 20 December 2001.

Chinese maritime custom-house in the Lapa island, a Chinese speaker known as incorruptible.⁵⁰

Despite the apparently good Sino-Portuguese relations, China considered the Portuguese presence illegitimate, and Macau remained with a dubious statute. The Chinese official position on Macau at the time was that: 1) the Lisbon Protocol of 1887 as an unequal treaty that had lost its validity; 2) Macau's territorial status was one of "perpetual occupation", differing from "situations of annexation, concession or lease"; 3) it was a "question pending" inherited from the past, which "should be settled peacefully through negotiations and that, pending a settlement, the status quo should be maintained."⁵¹

Various incidents proved the fragility of the Portuguese administration and revealed the social conflicts between the Portuguese and Chinese populations. In 1952 there were serious confrontations at the "Porta do Cerco" (Barrier Gate) between the Portuguese and Chinese troops on guard.⁵² In 1955 the PRC forced the Portuguese authorities in Macau to cancel the celebration of the 4th centenary of Portuguese presence in the territory. At the time, the PRC made the first public declaration on Macau, warning the Portuguese authorities that China would not accept much longer the occupation of the enclave.⁵³

⁵⁰ These intermediaries were entrusted the most sensitive issues. For e.g. in 1949 Carlos Basto was chosen to transmit the PRC's intentions over Macau: the maintenance of the *status quo*. Shanghai would be invaded but not Macau. Fernandes, *Sinopse...*, p.xii-xvii.

⁵¹ Editorial published in the People's Diary, 8 March 1963, in Saldanha, "Some Aspects of the 'Macau Question'". . . ., pp.196-97.

⁵² Cunha, Silva, *O Ultramar, a Nação e o "25 de Abril"*, Coimbra, Atlântida Editora, 1977, p.247.

⁵³ *Rénmín rìbào*, 26 October 1955, in FERNANDES, Moisés Silva, "Macau nas Relações Sino-Portuguesas, 1949-1979", *Administração*, no.46, Vol.XII, 1999, p.1000.

The most unstable period for Macau took place during the Cultural Revolution especially in 1966. The peak of the unrest became known by the Portuguese speaking population of Macau as '1,2,3', since it took place on 3 December (in Chinese 12, 3). The Portuguese administration embargoed the building of a 'patriotic' (communist) school on Taipa Island, which led to a violent confrontation between the Macau police and the Chinese Maoists, to the point of forcing the administration to declare martial law.⁵⁴ From these events the international press drew the conclusion that the Portuguese government wanted to surrender Macau to China, but the reality was somewhat different.

Salazar decided that Governor Nobre de Carvalho should accept all the necessary humiliations in order to keep Macau. Carvalho was forced to sign a 'twofold agreement': one with the 'people of Macau' and another one with the Guangdong authorities. These agreements imposed strict limits on the powers of the governor and the representatives of Beijing gained more influence and control in the territory.⁵⁵ The agreements were very embarrassing to Portugal as they were published in the Macau and Hong Kong press. One of the conditions that China imposed was the exhaustive fulfilment of a note published by the Macau government in 1963, in which

"the Macau Government has made clear that it will not tolerate subversive activities towards China based from Macau. Anyone found implicated in these activities will be prosecuted and handed over to the Chinese People's Republic authorities."⁵⁶

⁵⁴ Fernandes, *Sinopse...*, p.247-48.

⁵⁵ "Informação de serviço, confidencial, sobre as 'relações de Portugal com a China e situação em Macau'", Lisbon, 9 August 1976, PAA M.1165, Diplomatic Historical Archives, Ministry of Foreign Affairs.

⁵⁶ South China Morning Post, 19 September 1963.

Thereafter, despite the international criticism, the Portuguese administration handed to China the individuals from the Republic of China on Taiwan knowing that they might be executed. The 1,2,3 had irreversible consequences for Macau: Portugal recognised *de facto* Macau as a Chinese territory, marking the end of the Portuguese sovereignty over Macau. It is arguable that the Portuguese government could have threatened to leave Macau and get a better deal with China, as Mao's regime intended to maintain the status quo: soon after "1,2,3," China declared that Taiwan was the priority, and only after recovering Taiwan would the PRC claim Macau and Hong Kong.⁵⁷

Fearing further problems in Macau, in 1972 Portugal voted in favour of the admission of the PRC to the United Nations (UN). Nevertheless, China continued to oppose Portuguese colonial policy and to support the liberation movements in other Portuguese colonies, and made several public declarations against Portuguese colonialism.⁵⁸ Soon after joining the United Nations, China declared that the settlement of the question of Macau and Hong Kong was "entirely within China's sovereignty right". Being the result of unequal treaties imposed on China, they did not "fall under the ordinary category of 'colonial Territories'" and should be removed from the UN list of colonial territories.⁵⁹ This was granted to China at the meeting of the Special Committee on Decolonization on 17 May 1972.⁶⁰

⁵⁷ *Jornal do Brasil*, 11 December 1966, in Fernandes, "Macau nas Relações Sino-Portuguesas"..., p.1001.

⁵⁸ Saldanha, "Some Aspects of the 'Macau Question'"..., pp. 169 and 176-77.

⁵⁹ A/AC.109/396 of 8 March 1972, UNGA A/AC.109/L.795 of 15 May 1972 and FO371/175931.

⁶⁰ JAYAWICKRAMA, Nihal, "The Right of Self-Determination", proceedings from a seminar on the Basic Law, held at the University of Hong Kong, 5 May 1990, p.92.

The advantages China extracted from the removal of Hong Kong and Macau from the UN list of 'colonial Territories' were two-fold: doctrinal and pragmatic. In ideological terms, the PRC was able to reiterate in the international arena her position on the unequal treaties and on Macau: 1) the guarantee of perpetual occupation that China gave to Portugal in the 1887 Protocol was the result of inequality imposed by imperialism, and was therefore void; 2) Macau's territorial status was one of "Chinese territory 'occupied' by the Portuguese authorities"; 3) China had the right to the exercise of full sovereignty in Macau, as the Portuguese presence in the territory depended exclusively on China's will. At the same time, China silenced the accusations, particularly from the Soviet Union, on the contradictions of her colonial policy, which at the same time supported the Third World liberation movements and allowed the presence of the colonies of Hong Kong and Macau in China's doorstep.⁶¹

From a practical point of view, the PRC prepared the path for the re-integration of the two enclaves in China, depriving them of mechanisms that could lead to a process of self-determination. By avoiding their internationalisation, China circumscribed the settlement of the two issues to the scope of Sino-British and Sino-Portuguese bilateral relations, with no interference from third countries. The PRC secured the maintenance of the status quo of the Hong Kong and Macau questions until their settlement through bilateral negotiations, "when the time is ripe".⁶²

⁶¹ Saldanha, "Some Aspects of the 'Macau Question'", pp.199-200, 209-10 and 214-215, for the all paragraph.

⁶² *Ibid.*

The Portuguese Foreign Minister concluded that the Macau question was not to be settled within the UN, and “decided not to take any action. Besides, a Chinese intermediary warned the Macau governor that it was desirable that Portugal did not make “any statement about the declaration quoted, and much less try to refute it”.⁶³ Ideologically, Portugal agreed with China that Macau should not be in the UN list of colonial territories, not because it considered it part of Chinese territory as the PRC did, but because it regarded it as a Portuguese Overseas Province in which the UN had no right of intervention.⁶⁴ For strategic reasons, Britain also accepted the removal of Hong Kong from the list of colonial territories, although stating that this would not affect its legal status. Soon after that, China and Britain exchanged ambassadors and established full diplomatic relations.⁶⁵

2.3. Portuguese Withdrawal from Empire

The traumatic experience of the Portuguese withdrawal from the rest of her modern empire is vital to understand the way the Portuguese leaders conducted negotiations with China over Macau. The process was very traumatic and many Portuguese felt terribly ashamed by the way the left-wing government had ‘abandoned Africa’. This trauma, still very alive in the collective memory, had far-reaching effects on the way the centre-right government negotiated with China the transfer of Portuguese administration of Macau. The right wing tried to avoid

⁶³ Telegram from the Macau Governor to the Overseas Minister, 16 March 1972, POI 566, UN Mission, and Off. PAA 1392, 20 April 1972, Diplomatic Historical Archives, Ministry of Foreign Affairs, in *ibid.*, pp.209-12.

⁶⁴ *Ibid.* pp.189-190 and 214.

⁶⁵ Jayawickrama, *op.cit.* p.92.

at all costs other “traumatic experiences” and carefully presented the results of the Portuguese-Chinese negotiations as the best that could have been obtained.

This section provides a background to the passivity of Portugal’s population and leadership towards Macau during the Sino-Portuguese negotiations and the transition period. First, it presents Portugal’s colonial model and ideological approach to her colonies. Second, it analyses why the Portuguese authoritarian regime maintained its colonial policy regardless of the European decolonisation movement after the Second World War. Third, it examines how the new democratic regime withdrew from all the colonies except Macau in the aftermath of the 1974 revolution.

Portugal had the oldest European empire, dating from the fifteenth century. The commercial empire in the Orient collapsed at the beginning of the seventeenth century but left in the imagination of politicians and colonial ideologues nostalgia for the discoveries and for the Portuguese world-leading role. Besides, from this period, Portugal kept small remnants of empire in India, Timor and Macau. The second imperial construction was in Brazil and lasted until 1822, even if Portugal maintained its influence there until the economic recession of the 1930s. The third empire was centred in Africa – Angola, Mozambique, Guinea-Bissau, Cape Verde, São Tomé and Príncipe. It had become moribund in the nineteenth century but Portugal revived her claims in Africa during the scramble period at the end of the century.⁶⁶

⁶⁶ See Clarence-Smith’s classification of the three Portuguese empires in Clarence-Smith, Gervase, *The Third Portuguese Empire 1825-1975*, Manchester University Press, Manchester, 1985, pp.1-2 and 187. For Brazil see also *Ibid.*, p.14.

A colony is “a domination imposed by an external political power ... with a tendency to subordinate the resources and institutions of the dependent region to the interests of the political power and the ethnical or cultural dominant group”⁶⁷ and decolonisation refers to the “measures intended eventually to terminate formal political control over colonial territories and to replace it by some new relationship”.⁶⁸ Colonialism was based on a doctrine of civilization and racial supremacy:⁶⁹ the assumption of white superiority allowed the colonial powers to base their empires in racial discrimination, with “inferiority of the natives” as the moral justification.⁷⁰ All European powers argued that they were superior and more advanced than their colonies, and claimed that it was ‘the white man’s burden’ to help those ‘inferior’ peoples to achieve a higher level of development.

In the inter-war years, the lesser European colonial powers followed either the British conception of autonomy or the French notion of assimilation.⁷¹ *Assimilation* derived from the common belief in France that the ‘natives’ would assimilate French culture and language until they became French citizens and were ultimately represented in the French parliament.⁷² France claimed to have a

⁶⁷ Lara, António de Sousa, *Colonização Moderna e Descolonização*, ISCSIP, Lisbon, 2000, p. 14.

⁶⁸ Hargreaves, John, *Decolonization in Africa*, 2nd ed., Longman, London, 1996, p.xvii.

⁶⁹ Jackson, Robert, “The Weight of Ideas in Decolonization: Normative Change in International Relations” in Goldstein, Judith and Keohane, Robert, *Ideas and Foreign Policy*, Cornell University Press, Ithaca, 1993, p.119.

⁷⁰ Wilson, Henry S., *African Decolonization*, Edward Arnold, London, 1994, p.12.

⁷¹ Ansprenger, Franz, *The Dissolution of the Colonial Empires*, Routledge, London, 1989, p.106.

⁷² Thompson, Kenneth W. and Macridis, Roy C., “The Comparative Study of Foreign Policy”, in Macridis, Roy C. (ed.), *Foreign Policy in World Politics*, Prentice-Hall, Inc., Englewood Cliffs, New Jersey, 4th edition, 1972, p.27.

special *mission civilisatrice*: a mission to civilize the indigenous peoples, too primitive to rule themselves but capable of being uplifted.⁷³

Britain conceived their empire with more devolution and was more unwilling to interfere in local affairs, while France would suffer stronger effects with decolonisation, and therefore, was more predisposed to fight for its colonies.⁷⁴

The French government moved towards more equality but never resigned from centralisation. The British government anticipated greater devolution and assumption of responsibility for local affairs.⁷⁵ Unlike France, Britain saw its empire as temporary, colonies would 'grow to maturity' and seek independence.⁷⁶

The British government did not intend to transform the colonial subjects into British citizens but to help them to become capable of ruling themselves,⁷⁷ even if it is arguable that those paternalistic policies could actually perpetuate the colonies' dependence on external trade and finance.⁷⁸

When António de Oliveira Salazar took over as Portuguese prime minister in July 1932 and its *Estado Novo* (New State) established new goals for the overseas policy, it became clear that Portugal followed the French colonial model of the beginning of the twentieth century.⁷⁹ The Portuguese colonial system was characterised by political centralisation, administrative autonomy and cultural

⁷³ Conklin, Alice L., *A Mission to Civilize – The Republican Idea of empire in France and West Africa, 1895-1930*, Stanford University Press, Stanford, 1997, p.1.

⁷⁴ Chamberlain, Muriel E., *European Decolonisation in the Twentieth Century*, Longman Companions to History, Longman, London, 1998, p.150.

⁷⁵ *Ibid.* pp.41-42.

⁷⁶ *Ibid.* p.43.

⁷⁷ Jackson, Robert, *Quasi-States: Sovereignty, International Relations and the Third World*, Cambridge University Press, Cambridge, 1990, pp.83-85.

⁷⁸ Hargreaves, *op. cit.*, p.249.

⁷⁹ Ansprenger, Franz, *The Dissolution of the Colonial Empires*, Routledge, London, 1989, pp.113-14.

assimilation,⁸⁰ which transformed the 'natives' into Portuguese citizens with the same duties and rights of all citizens.⁸¹ As with the French government, the Portuguese government announced it had a special relationship with its colonies and centred in the metropolis the government of the empire, which tended to be authoritarian.⁸² The *Acto Colonial* (Colonial Act) published in 1930 aimed at unifying and centralising the administration of the colonies, establishing a regime of 'moderate autonomy'.⁸³

After the Second World War, there was a major movement of withdrawal from empire and by the late 1960's the majority of the European colonies had achieved independence.⁸⁴ Multiple causes have been presented for the abolition of colonialism: the declining military power and economic disinterest of the European powers in their possessions after the two World Wars; the rise of two superpowers supporting the colonial leaders; a strong public opinion calling for more development towards the colonies.⁸⁵ The norms underlying the notion of sovereignty also changed and colonialism became seen as an injury to the dignity and autonomy of the colonial peoples and a means for their economic exploitation and political oppression.⁸⁶ The 1960 General Assembly "Declaration on the Granting of Independence to Colonial Countries and Peoples" proclaimed the

⁸⁰ Moreira, Adriano, *Política Ultramarina*, Ministério do Ultramar, Lisbon, 1956, p.295.

⁸¹ Clarence-Smith, *op.cit.* p.138.

⁸² Darwin, John, *Britain and Decolonisation*, Macmillan, London, 1988, p.334.

⁸³ Ansprenger, *op. cit.*, p.114, and MOREIRA, *Op. cit.*, pp.271-75.

⁸⁴ Darwin, *op.cit.* p.334.

⁸⁵ Jackson, "The Weight of Ideas"... *op. cit.*, p.128.

⁸⁶ Jackson, *Quasi-states...*, *op. cit.*, pp.83-85.

right of all the peoples for self-determination and condemned all kind of pretexts that delayed independence.⁸⁷

Unlike the British, the Portuguese government did not see the dissolution from the empire as the price of remaining a great power after the Second World War, but the opposite. It was precisely in the empire that the Portuguese drew strength.⁸⁸ Being an authoritarian power that had remained neutral during the war, Portugal was affected neither by the new international norms nor by the physical need of changing its empire. Its participation in the Marshall plan, even with some hesitations, the maintenance of the Portuguese-British alliance, and its acceptance as a member of NATO – thanks to the use of Azores as an air base to the Allies during and after the war – assured the Portuguese government international recognition.⁸⁹

Different explanations have been given to Portugal's reluctance to decolonise along with the other European powers. Some argue that, as a weak capitalist country, Portugal was driven by the search for markets and for foreign change to fight the balance of payments crisis. The colonies were preferential markets and a supplier of cheap raw materials, allowing Portugal to create and to save foreign exchange.⁹⁰ Being a "backward, politically isolated and marginalized metropolitan economy" Portugal could only exploit its African resources through direct control and could not afford neo-colonialism.⁹¹

⁸⁷ *Ibid.*, p.124.

⁸⁸ Darwin, *op. cit.*, p.334.

⁸⁹ Wilson, Henry, *op. cit.*, p.74.

⁹⁰ Clarence-Smith, *op. cit.*, pp.vii and 15-16.

⁹¹ Hobsbawm, Eric, *Age of Extremes*, Abacus, London, 1995, p.221.

Others consider that the notion of Portugal's backwardness in relation to the colonies is an exaggeration. The Portuguese government would have been probably more capable of exercising neo-colonial influence in the colonies if it had decolonised before the war.⁹² Besides, the colonies' economic relevance had declined. In the 1950s and 1960s Portugal started to invest more in Europe and France was more attractive to its emigrants than Africa.⁹³ With the massive exodus to Europe – mainly France – and the renewed emigration to the Americas the empire lost its relevance in terms of emigration⁹⁴ despite the official attempts to promote emigration to Africa. The same happened with the commercial links: the empire was a burden to public finances and an obstacle to Portuguese integration in Europe. Without withdrawing from the colonies Portugal would not be allowed to join the European Economic Community and was kept out of other Third World markets in Africa and Middle East.⁹⁵ By the early 1970s the majority of Portuguese exports and imports were from and to Europe and not with the colonies, and the major contributors of hard cash were tourists and the Portuguese diaspora in Paris.⁹⁶

Theories of economic dependence on Africa also underestimate the psychological role of the colonies in authoritarian Portugal. Unlike Britain and Belgium, Portugal did not use the colonies mainly for the purpose of feeding raw materials to industry but for reasons of prestige, and while Britain and Belgium hesitated little about ending their empires, France and Portugal, where large economic

⁹² Clarence-Smith, *op. cit.*, pp.192-93.

⁹³ Hargreaves, *op. cit.*, pp.228-29.

⁹⁴ Clarence-Smith, *op. cit.*, p.214.

⁹⁵ *Ibid.* 219 and 202.

⁹⁶ Porch, Douglas, *The Portuguese Armed Forces and the Revolution*, Croom Helm, London, 1977, pp.12-13.

interests where not at stake, fought for years.⁹⁷ As Clarence-Smith says, “the [Portuguese colonial] war was fought to preserve the regime rather than to save the economy.”⁹⁸ The *Estado Novo* commitment to the empire was more political than economic. Keeping the colonies provided evidence for Portugal’s previous power in the world; and these were big psychological obstacles for Portuguese decolonisation.⁹⁹

Salazar used nationalism and the myth of imperial greatness to keep together the different classes and political forces which had placed him in power.¹⁰⁰ By combining the colonial question with nationalism he achieved an impressive mobilization of the masses and consolidated his grip on power. The Portuguese believed in his ideology of a “single Portugal” (composed by mainland and colonies) and the democratic opposition did not dare to debate the colonial question before the end of the 1960s.

In the international arena, namely in the UN, the *Estado Novo* justified Portuguese colonialism by distinguishing it from the economically motivated British and Belgians, saying that Portugal was not driven either by mere material interests and racial segregation but for its universalist mission.¹⁰¹ Portugal’s “missionary colonialism” aimed at civilizing the natives – not at controlling their territory, as did the “colonialism of the vital space” – and should be seen by the international

⁹⁷ Douglas Porch refers to “an inverse relationship between large-scale economic penetration of a colony and the willingness of the colonial power to fight it out with the local maquisards.” *Ibid.* pp.9, 11 and 13.

⁹⁸ Clarence-Smith, *op. cit.*, pp.192-93.

⁹⁹ Hargreaves, *Op. cit.*, p.229.

¹⁰⁰ Clarence-Smith, *op. cit.*, pp.vii and 15-16.

¹⁰¹ Anderson, “Portugal and the End of Ultra Colonialism”, *New Left Review*, London, 1975, p.72, in Porch, *op.cit.* p.12.

community as a duty towards the colonial peoples.¹⁰² To prove that Portugal's unique civilizing mission towards the building of the only "successful multiracial civilization" was a process that "never had anything to do with... imperialism,"¹⁰³ the *Estado Novo* seized upon Brazilian sociologist Gilberto Freyre's 'lusotropical' theories:

"Because the Portuguese were exceptional among European imperialists in being non-racist, their colonisation of tropical territories was characterized by racial egalitarianism in both legislation and informal human interaction."¹⁰⁴

The term *lusotropicology*, i.e. the Portuguese effort to integrate the colonial natives in a new complex of civilization,¹⁰⁵ was originally conceived to describe the special relationship developed by the Portuguese and the natives in Brazil through the assimilation of new elements, notably through the crossing of races.¹⁰⁶

The ideologues of the *Estado Novo* later seized the concept for propaganda with regard to all Portuguese possessions.¹⁰⁷ Salazar's racial propaganda claimed that the social mobility allowed by *lusotropicology* made it a democratic concept of the equality of the humankind,¹⁰⁸ shown by the existence of *mestiços* (people of mixed race).¹⁰⁹ However, the demographic results of the mixed Portuguese-African blood in the colonies were too small to demonstrate that this 'racially

¹⁰² Moreira, *op. cit.*, pp.35-36 and 69.

¹⁰³ General Assembly Official Records, 16th Session, 1025th Plenary Meeting, 4 October 1961, paragraph 256, and Wohlgemuth, Patricia, "The Portuguese Territories and the United Nations", *International Conciliation*, N°545, Nov. 1963, pp.24-25.

¹⁰⁴ Wilson, Henry S., *African Decolonization*, Edward Arnold, London, 1994, p.ix.

¹⁰⁵ Freyre, Gilberto, *O Luso e o Trópico*, Lisbon, 1961, p.13. Freyre argues, "...no other European was ever so intense and symbiotic in its constancies in different tropical areas"; The Portuguese people have a "deeper, more intimate, more constant, more emphatic" experience and knowledge of the tropics than any other European coloniser of the warm lands. Freyre, Gilberto, *Portuguese Integration in the Tropics*, Lisbon, 1961, pp.41 and 39.

¹⁰⁶ Moreira, *op. cit.*, pp.126-27.

¹⁰⁷ Wilson, *op. cit.*, p.74.

¹⁰⁸ Ansprenger, *op. cit.*, p.268.

¹⁰⁹ Porch, *op. cit.*, p.21.

blind' doctrine in practice ever took place¹¹⁰ and the claim for racial toleration and miscegenation in the tropics did not avoid discrimination on the ground.¹¹¹

The *Acto Colonial* of 1951 abolished the expression "colonial empire" to avoid the growing international antipathy towards the empires, and renamed the colonies as "overseas provinces", reiterating the principle of national unity and the ideal of assimilation of the 'natives'.¹¹² As the propaganda of the authoritarian regime liked to say, Portugal and the overseas provinces constituted a single political entity. There was a strong ideology of imperial greatness¹¹³ and the belief that the overseas empire was to remain Portuguese forever.¹¹⁴

Even if little was altered, the new terminology allowed the Portuguese government in 1956 to reply to the United Nations Secretary-General that Portugal "does not administer Territories which fall under the category indicated by Article 73."¹¹⁵ The 'Declaration Regarding Non-Self Governing Territories' – Chapter XI of the UN Charter – pushed the administering powers to develop 'self-government' and 'free political institutions' in their colonies.¹¹⁶ But the Portuguese government considered Chapter XI inapplicable: "[Portugal] is, and always has been, a unitary state, regardless of the relative geographic situation of its various provinces".¹¹⁷

¹¹⁰ Ansprenger, *op. cit.*, p.268.

¹¹¹ Clarence-Smith, *op. cit.*, pp.179-80.

¹¹² Moreira, *op. cit.*, pp.284-290.

¹¹³ Wilson, *op. cit.*, p.180-81.

¹¹⁴ Ansprenger, *op. cit.*, p.268.

¹¹⁵ Letter of 8 Nov.1956 (A/C.4/331, 20 Nov.1956, para.2), quoted in Wohlgemuth, *op. cit.*, pp.9, 10.

¹¹⁶ Wohlgemuth, *op. cit.*, p.7.

¹¹⁷ General Assembly Official Records: 11th Session, 656th Plenary Meeting, 20 February 1957, paragraph 73.

The gradual destabilization in the Portuguese dependencies only became detectable in the 1960s, becoming acute in the 1970s.¹¹⁸ Nationalist agitation in Asia and Africa were spreading into the Portuguese colonies despite the *Estado Novo* efforts to isolate them. The regime never considered the possibility of decolonising and holding democratic elections or even of negotiating the nomination of the future leaders of liberation movements.¹¹⁹

In 1961 India invaded Goa and overwhelmed the tiny Portuguese garrison very quickly and almost without resistance, bringing into question the feasibility of colonial defence. At the same time France was withdrawing from Africa leaving the Portuguese without defence in the international arena. With the Portuguese integration in NATO, 'Atlantic' norms and tactics increasingly influenced the archaic Portuguese military caste.¹²⁰ Some Portuguese generals tried to force Salazar into retirement but they failed and were replaced by others charged of initiating the war against the guerrilla attacks in the African possessions.¹²¹

The unexpected replacement of Salazar by Marcelo Caetano in 1968 created illusions of a reform that never took place. General António de Spínola, appointed as commander-in-chief of Guinea-Bissau in the late 1960s, soon understood that the war could not be won by military means and tried in vain to convince Caetano to negotiate with the guerrillas. In February 1974 Spínola published the book

¹¹⁸ Holland, R.F., *European Decolonization 1918-1981: An Introductory Survey*, Macmillan, London, 1985, p.153.

¹¹⁹ Clarence-Smith, *op. cit.*, pp.179 and 185.

¹²⁰ Anderson, Perry, "Portugal and the End of Ultra Colonialism", *The New Left Review*, No.17, London, 1962, p.109, in Porch, *op. cit.*, p.37. For the last sentences see also *ibid.* pp.35-37.

¹²¹ Gonçalves, Arnaldo, "Macau, Timor and the Indian territories in the Portuguese decolonisation process", unpublished paper, Contemporary Portuguese Politics and Historic Research Centre, University of Dundee, 11-14 September 2000, pp.9-13.

Portugal e o Futuro (Portugal and the Future) suggesting the existence of political alternatives to the colonial war, such as the constitution of a Portuguese-speaking federation with some autonomy for the colonies. On 25 April the MFA (Armed Forces Movement) under General Spínola and General Costa Gomes leadership rebelled against Caetano. This *coup d'état*, originated in the revolt against the colonial war, was highly supported by the masses and became known as the *Revolução dos Cravos* (Revolution of Carnations).¹²²

The MFA leaders, and the Portuguese public opinion, expected that the collapse of the authoritarian regime would necessarily lead to the end of the empire, and not to Spínola's idea of a sort of Commonwealth. Spínola was forced to promulgate Law 7/74 of 26 July 1974 allowing the independence of the colonies. In September, he resigned from the presidency and was replaced by Costa Gomes. In 1975 the sovereignty of the colonies was transferred to the African guerrilla movements, since this was a condition for them to accept the cease-fire.¹²³

In conclusion, the Portuguese decolonisation process was primarily a result of political and economic developments in Portugal rather than of its colonies' liberation movements.¹²⁴ There was political and psychological exhaustion of the Portuguese population because there was no solution for the war. The captains and their men refused to keep fighting in Africa. As expected, the Portuguese defeat in Africa was political, and not military. There was a political negotiation with the elites that took charge in the colonies. In Mozambique, Guinea, Cape Verde and São Tomé the Portuguese government transferred power to the

¹²² *Ibid.*, pp.9-13.

¹²³ *Ibid.*, pp.13-15.

¹²⁴ Hargreaves, *op. cit.*, pp.228-29.

dominant guerrilla group, but in Angola the three competing movements started a civil war and Timor was annexed by Indonesia.

Economically, it is difficult to analyse separately the impact of decolonisation in Portugal as it was accompanied by a change of regime, but the effects were less severe than it is usually suggested: the economic crisis that followed the process was mostly due to the world recession; there was a huge reduction in defence spending; imports from the colonies were almost totally suspended, freeing the Portuguese manufacturers and importers of the obligation to buy colonial produce, while exports to the colonies continued.¹²⁵ The main economic impact was on the colonies: in the rush of the decolonisation process Portugal deprived the industry of the newly independent states from technicians, skilled management, equipment and protected markets.¹²⁶

Socially, the impact of almost one million of African refugees in the ruined Portuguese economy with an underemployed population had bitter effects.¹²⁷ They were greatly discriminated by the Portuguese population, which blamed them as the source of Portugal's problems. Moreover, the returned white settlers asked the government for compensation for the possessions they left behind.

After granting independence to all the African colonies and abandoning Timor, the new Portuguese democratic regime renounced colonialism and had no interest in keeping Macau. Macau had lost the only purpose that it had for the authoritarian regime: to maintain the myth of the empire. At a time of withdrawal

¹²⁵ Clarence-Smith, *op. cit.*, pp.219-121.

¹²⁶ Porch, *op. cit.*, pp.120-121.

¹²⁷ Porch, *op. cit.*, pp.120-121.

there was no logic in keeping Macau. The Portuguese government withdrew all the military forces from Macau leaving to the local police the task of keeping the internal order: the Independent Territorial Command composed by roughly one thousand soldiers was abolished and replaced by the Macau Security Forces, mainly composed of civilians.¹²⁸

On the Chinese side, in the mid-1970s China was interested in maintaining the status quo in Macau for three different reasons. First, the PRC had many internal problems and the CCP had to concentrate on those and could not focus on Macau. Both Mao and Zhou Enlai were in poor health by 1975 and there was considerable uncertainty as to the future direction of China after they died. The rest of the leadership was divided and the lead to considerable conservatism. Second, the PRC had its doors closed and needed to keep Hong Kong and Macau as intermediaries to the outside world and as sources of investment and foreign currency.

Third, to recover Macau at that time did not fit in the Chinese larger plan for national reunification with Hong Kong and Taiwan¹²⁹ and would raise questions of Beijing's intentions in Hong Kong, possibly damaging China.¹³⁰ The important issue was Taiwan, and China only wanted to deal with Hong Kong and Macau when she had the capacity to negotiate with Taiwan. The CCP's rhetoric was very revolutionary and anti-colonialist but its policy was often pragmatic: it favoured Portugal's decolonisation in Africa but not in Macau.

¹²⁸ "Informação de serviço, confidencial, sobre as 'relações de Portugal com a China e situação em Macau'", Lisbon, 9 August 1976, PAA M.1165, Diplomatic Historical Archives, Ministry of Foreign Affairs, and Fernandes, *Sinopse...*, pp.346-47.

¹²⁹ *Hong Kong Standard*, 10 June 1999.

¹³⁰ *Expresso*, caderno especial Macau 1, 25 November 1995, pp.27-28.

In October 1974 Almeida Santos, Portuguese Minister of Inter-territorial Coordination, went on an official trip to Macau and the Chinese local elite “stated publicly the specificity of the Macau status, which was to be solved in due time by the two governments.”¹³¹ Since then, Portugal had no economic interests in Macau. There was no investment there, and teaching the Portuguese language and culture was not a priority.¹³² The fact that Macau was irrelevant for the Portuguese economy influenced the 1980s Sino-Portuguese negotiations, as economist Prime Minister Cavaco Silva showed a complete lack of interest in the issue, leaving it for President Mário Soares.

2.4. The Establishment of the Sino-Portuguese Relations

As said earlier in this chapter, soon after the People’s Republic of China was founded in 1949 the Chinese communist regime made several attempts to establish diplomatic relations with Portugal, which faced strong opposition from the Portuguese authoritarian regime. Inconclusive moves towards the Portuguese recognition of the PRC were made again before the invasion of Goa in 1961, when the French government decided to recognize the PRC in 1963, and in early 1964.¹³³ For ideological reasons, Salazar refused to recognise the PRC.

After the 1974 revolution, the new Portuguese regime was willing to establish contacts with China and discuss the Macau question. In August 1976 the

¹³¹ “Informação de Serviço, confidencial, sobre as ‘relações diplomáticas entre Portugal e a República Popular da China: passos para o seu estabelecimento’”, Lisbon, 20 October 1975, PAA M. 1165, Diplomatic Historical Archives, Ministry of Foreign Affairs.

¹³² Fernandes, Moisés, “O comportamento português sobre a transição política e a integração regional de Macau na região do rio das Pérolas”, *Administração / Xíngzhèng*, Vol.10, No.36, July 1997, p.531.

¹³³ Saldanha, “Some Aspects of the ‘Macau Question’”, pp.156-160.

Portuguese Prime Minister Mário Soares presented to the parliament his Cabinet's programme, which called for the normalisation of relations with China.¹³⁴ However, on the Chinese side there was uncertainty in the senior leadership and absence of a clear plan for national reunification. The retrocession of Macau would necessarily involve some kind of negotiations and at that time the PRC was not interested in negotiations. There was much greater ambiguity over the sovereign status of Macau following the demonstrations in 1966. In 1974 China was the only sovereign power in Macau, and the one that would decide the calendar for the settlement.

China presented other obstacles for the establishment of relations with Portugal. The PRC was waiting for the accomplishment of other important conditions such as the conclusion of the Portuguese decolonisation process and the definition of Portugal's position in the international scene.¹³⁵ China feared a Portuguese reversal to colonialism and decided to wait until the Organization of African Unity lifted the interdiction imposed on the African countries to resume relations with Portugal.¹³⁶

Beijing criticised the rush in which Moscow resumed relations with Portugal and considered that the Portuguese decolonisation process was favouring the Soviet Union, China's prime enemy at the time.¹³⁷ The beginning of an Angolan bloody civil war in which the Soviet Union actively supported one of the factions while

¹³⁴ Fernandes, *Sinopse...*, p.350.

¹³⁵ Martins, António Coimbra, *Esperanças de Abril*, Lisbon, Perspectivas & realidades, 1981, p.433.

¹³⁶ "Informação de Serviço, confidencial, sobre as 'relações diplomáticas entre Portugal e a República Popular da China: passos para o seu estabelecimento'", Lisbon, 20 October 1975, PAA M. 1165, Diplomatic Historical Archives, Ministry of Foreign Affairs.

¹³⁷ *Ibid.*

China had stopped all the military help to the liberation movements, contributed to the enlargement of the Soviet sphere of influence in Africa.¹³⁸

In addition, the PRC worried about Soviet influence within the Portuguese internal revolutionary process and was unwilling to resume relations with the Portuguese communists.¹³⁹ The Chinese Government did not have enough information about the Portuguese left-wing to judge the substance of the change of regime and to see that communists had only took power as part of the regular change of government after the coup d'état. Only in 1979, with the formation of the *Aliança Democrática* (Democratic Alliance) as a counterbalance to the communists, would China realise that the Soviet Union did not have any impact in the Portuguese political scene. The Portuguese candidature to the European Economic Community (EEC) in 1977 was another indicator to reassure China of Portugal's integration within Western Europe.¹⁴⁰

The first clear signal that the new Portuguese regime was willing to establish relations with China was the diplomatic communication that the Portuguese Ministry of Foreign Affairs sent to the press on 6 January 1975. In this note, the new Portuguese regime declared its will to establish diplomatic relations with all the countries, namely China, and made two important declarations. First, it considered the government of the People's Republic of China as "the sole legitimate representative of the Chinese people", and that Taiwan was "an integral part" of Chinese territory. Second, "Macau could be the object of negotiations

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ Martins, António Coimbra, *Esperanças de Abril*, Lisbon, Perspectivas & realidades, 1981, p.436.

when both Governments considered appropriate” and in the meantime the Portuguese government was responsible “for the rigorous respect of the rights of the Chinese citizens of Macau.”¹⁴¹

These two concessions made by the Portuguese government without obtaining any counterpart from China other than the establishment of diplomatic relations suggest that for Portugal it was far more important to have good relations with the PRC than to keep sovereignty over Macau. The Portuguese government did not want to dispute with China the sovereignty of Macau, and did not want Macau to be an obstacle to the resumption of relations. There is a statement regarding Taiwan because the fact that Taiwan had an embassy in Lisbon and a consulate in Timor prevented Portugal from resuming diplomatic relations with the PRC.¹⁴² In this diplomatic communication the new Portuguese regime revealed for the first time the position that Portugal would adopt in all the negotiations regarding the settlement of the Macau question: indifference and absence of a well-planned and defined strategy. The Portuguese government should not have publicly made those unilateral concessions without obtaining counterparts for Macau.¹⁴³

The Chinese reaction to the Portuguese note was less than enthusiastic. On 13 January the Chinese Foreign Ministry welcomed the communication but stated “... on the question of Macau there is still some distance between the attitude of

¹⁴¹ Communication to the Press, Press Services of the Ministry of Foreign Affairs, Lisbon, 6 January, 1975, Diplomatic Historical Archives, Ministry of Foreign Affairs, and *Diário de Notícias*, 9 January 1987.

¹⁴² “Informação de serviço, confidencial, sobre as ‘relações de Portugal com a China e situação em Macau’”, Lisbon, 9 August 1976, PAA M.1165, Diplomatic Historical Archives, Ministry of Foreign Affairs.

¹⁴³ Fernandes, Moisés Silva, “A Normalização das Relações Luso-Chinesas e a Questão da Retrocessão de Macau à China Continental, 1974-1979”, *Administração*, Vol.16, No.61, September 2003, p.17.

the Portuguese Government and the consistent position of the Chinese Government.”¹⁴⁴ Because Macau was an “integral part” of Chinese territory, it was not supposed to be the object of negotiations with a foreign power. As Zhou Enlai had said in a reception to African Ambassadors in 1973, “some day” China would “liberate” Macau from the Portuguese.¹⁴⁵ Macau was Chinese territory: there would be no decolonisation in Macau. The PRC considered to be sovereign over Macau and therefore did not consider a transfer of sovereignty, later using the formula “transfer of administration”.

Nevertheless, there were some signs that China was willing to resume relations as soon as Portugal entered the right path. Shortly after the 6 January note, the Chinese Ambassador in Budapest communicated to the Portuguese Ambassador that the resumption of Portuguese-Chinese diplomatic relations would take place soon, and the Chargé d’Affaires of the Yugoslav Embassy in Lisbon informed the Portuguese Ministry of Foreign Affairs that, despite the divergences regarding Macau, the Chinese government was pleased about the Portuguese note and was only waiting for the Organization of African Unity to lift the interdiction imposed on the African countries to resume relations with Portugal.¹⁴⁶

In February the Chinese Ambassador in Paris, Zeng Tao, told the Portuguese Ambassador, Coimbra Martins, that conditions to the resumption of bilateral relations had been achieved and that he would consult his Government on the

¹⁴⁴ “China Welcomes Portuguese Government Statement: Yugoslav Report”, TANJUG, Beijing, 13 January 1975, in *Summary of World Broadcasts*, 15 January 1975, FE/4804/A1/1.

¹⁴⁵ “Informação de serviço, confidencial, sobre as ‘relações de Portugal com a China e situação em Macau’”, Lisbon, 9 August 1976, PAA M.1165, Diplomatic Historical Archives, Ministry of Foreign Affairs.

¹⁴⁶ Fernandes, *Sinopse...*, p.340.

subject.¹⁴⁷ In Rome the Chinese Ambassador also showed the Portuguese Ambassador the willingness to resume relations.¹⁴⁸ These positive signs were however contradicted by some less promising statements: in June the Chinese Ambassador in Prague said to the Sudanese Ambassador that China would not resume relations with Portugal while the “Portuguese Communist Party puppet of Moscow” kept its preponderance,¹⁴⁹ and Zeng Tao became vague when enquired by Coimbra Martins about the delay in the negotiations.¹⁵⁰

Only in August 1975 did informal talks between Portugal and China began in Paris. The French capital had become a privileged European negotiation place with China since 1964, when General De Gaulle recognised the PRC.¹⁵¹ Besides, Coimbra Martins was invested as Ambassador in Paris soon after the publication of the Portuguese note of 6 January and he was close to Mário Soares, Foreign Minister, who had published that note. These were strong indicators for Zeng Tao, which developed cordial relations with Coimbra Martins. The talks focused on the establishment of diplomatic relations between Portugal and the PRC and on Macau’s statute.

In the meantime, the Organic Statute of Macau, after being submitted to one month of public debate, had its final version approved by the Council of the

¹⁴⁷ “Aerograma cifrado nº120 do embaixador de Portugal em Paris, António Coimbra Martins” Lisbon, 13 February 1975, PAA M. 1165, Diplomatic Historical Archives, Ministry of Foreign Affairs.

¹⁴⁸ Fernandes, *Sinopse...*, p.341.

¹⁴⁹ “Telex nº49 recebido da embaixada de Portugal em Praga”, Lisbon, 17 June 1975, PAA M. 1165, Diplomatic Historical Archives, Ministry of Foreign Affairs.

¹⁵⁰ Fernandes, *Sinopse...*, p.343.

¹⁵¹ “Informação de Serviço, confidencial, sobre as ‘relações diplomáticas entre Portugal e a República Popular da China: passos para o seu estabelecimento’”, Lisbon, 20 October 1975, PAA M. 1165, Diplomatic Historical Archives, Ministry of Foreign Affairs.

Revolution in Lisbon on 6 January 1976 and came into force on 17 February.¹⁵²

The Organic Statute stipulated the new political system of Macau, giving a high degree of autonomy to the territory and concentrating in the Governor almost all the powers.¹⁵³ As in the note of 6 January 1975, in the Organic Statute Portugal did not discuss the sovereignty of Macau with China: Macau was Chinese territory under Portuguese administration.

The new Portuguese Constitution of 25 April 1976 confirmed the paragraph on Macau of the Organic Statute: Macau was Chinese territory under Portuguese administration. Prime Minister Mota Pinto wanted to remove from the Constitution the fragments that remained from the Portuguese empire and that were under the tutelage of the President, i.e., Macau and Timor. The Constitution did not include Macau as a Portuguese territory, considering it instead a “territory under Portuguese administration”; Portugal was constituted by the mainland and the islands of Azores and Madeira.¹⁵⁴ The Organic Statute and the Constitution gave some stability to Macau at a time of great political uncertainty in Portugal. Lisbon gave the Macau administration some autonomy, namely the capacity to make decisions regarding investments.¹⁵⁵

While Portugal was making these moves the PRC was facing internal changes. One of the reasons that may explain why was China not willing to establish relations with Portugal after the note of 6 January 1975 was the succession crisis in the Chinese leadership, during which no major initiative was undertaken. The

¹⁵² *Estatuto Orgânico de Macau*, Lei 1/76, 17 February 1976, and Fernandes, *Sinopse...*, p.344.

¹⁵³ *Ibid.*, p.348.

¹⁵⁴ Articles 5º and 306º, *Constituição da República Portuguesa*, Coimbra, Atlântida Editora, 1976.

¹⁵⁵ Interview with General Garcia Leandro, Macau Governor from 1974 to 1979, Lisbon, 25 July 2002.

most important leaders died, such as Zhou Enlai in 1976, and the Gang of Four¹⁵⁶ radicalised China's politics. When Mao Zedong, leader of the Chinese Communist Party, died in September 1976, Hua Guofeng became his successor and the Gang of Four and other Maoists radicals were arrested. In 1977 Deng Xiaoping was rehabilitated for all the positions he held before being dismissed in 1976, reassuming the post of Deputy Prime Minister.¹⁵⁷ This rehabilitation of purged party leaders made the Chinese government become more pragmatic than ideological.¹⁵⁸

It was the end of the radical and revolutionary era of the gerontocracy in China and the rise of Deng, a very pragmatic leader who placed nationalist aims above Marxist, or Maoist preconceptions. In a period of leadership disputes between conservative groups and radicals reform groups, he manages a political equilibrium and reinvents the Chinese position. The PRC could rely on its good relations with America and Europe to achieve the internal reforms and social improvements needed to face the CCP loss of legitimacy and to keep it in power. Deng Xiaoping implemented China's open-door policy – “economic opening up to the capitalist world”¹⁵⁹ – which made Hong Kong more valuable and Macau redundant as a place of illicit trade. Trade could be now made directly with the exterior and Macau lost its role as intermediary between an isolated China and the West.

¹⁵⁶ The Gang of Four was constituted by Jiang Qing (ex-wife of Mao Zedong), Wang Hongwen, Zhang Chunqiao and Yao Wenyuan. FERNANDES, *Sinopse de Macau*, pp.347-355.

¹⁵⁷ Fernandes, *Sinopse...*, p.354.

¹⁵⁸ Fairbank, John King, and Goldman, Merle, *China: a New History*, Bknap Press, Harvard, 1998, pp.404-5 and 407.

¹⁵⁹ Kemenade, Willem Van, *China, Hong Kong, Taiwan, Inc.*, London, Abacus, 1999, p.75.

Deng was thus prepared to think about the Macau reversion in the long term, but it would take some time before the strategy was totally delineated. Medeiros Ferreira, Portuguese Minister of Foreign Affairs at the time, sounded the Chinese Ambassador in New York in 1976 and 1977 about the establishment of bilateral relations and the type of questions asked by the Ambassador made him conclude that the Chinese leaders were hesitant about what to do with Macau; moreover, China did not want to resume diplomatic relations with Portugal before defining its strategy towards Macau.¹⁶⁰

In January 1978, after three years of informal meetings between the delegates of both countries, the PRC finally proposed to open formal negotiations with Portugal in Paris. Zeng Tao had been nominated director of the Xinhua (New China News Agency) in Beijing, accelerating the establishment of the Xinhua delegation in Lisbon, which would occur in March. It was the new Chinese Ambassador, Han Kehua, who communicated Coimbra Martins that his Government suggested the launch of official negotiations in Paris for the establishment of diplomatic relations between Portugal and China at the Ambassadorial level.¹⁶¹

As soon as the conversations for the establishment of diplomatic relations began the Chinese part had approached Macau as a preceding question.¹⁶² The PRC wanted to safeguard its position of principle in the issue: the principle of its sovereignty over the territory; Portugal demanded the recognition of the weight of

¹⁶⁰ *Ponto Final*, 5 February, 1999, quoted in Fernandes, *Sinopse...*, p.355.

¹⁶¹ Martins, *op.cit.*, pp.434-36, for the last paragraph.

¹⁶² *Ibid.*, p.456.

history for reasons of national dignity.¹⁶³ Both sides were pragmatic and willing to compromise, agreeing that Macau was “a problem left over from history”; Portugal did not oppose the Chinese principle and China acknowledged the historical fact:¹⁶⁴ Macau was part of the Chinese territory and administered by the Portuguese. The two countries agreed to not unilaterally change the status quo and that the only way to settle the question would be through negotiation. After this understanding was reached, conversations towards the establishment of diplomatic relations could be pursued without any kind of constraints, as if Macau did not exist.¹⁶⁵

From January to June 1978, formal conversations took place between the two Ambassadors and negotiations were basically concluded. For the first time Han Kehua agreed to go to the Portuguese embassy on Portugal’s National Day, 10 June. This is quite relevant: before, the Chinese ambassador would only meet the Portuguese diplomats when no representatives of other countries were present.¹⁶⁶ The signature of the Joint Communiqué was, however, cancelled at the last minute and delayed for more than seven months for Portuguese internal reasons: on 14 June, at a Cabinet meeting, the minister Basílio Horta objected on patriotic grounds to the agreement on Macau as it stood.¹⁶⁷ Horta belonged to the CDS, the right-wing party, which did not want to give away the empire as the left-wing did. As a consequence, the Cabinet approved a secret political directive giving specific instructions to ambassador Coimbra Martins:

¹⁶³ Lima, Fernando, *Macau: As Duas Transições*, vol.1, Fundação Macau, Macau, 1999, p.533.

¹⁶⁴ Martins, *Esperanças de Abril*, p.456.

¹⁶⁵ *Ibid.*, p.456.

¹⁶⁶ *Ibid.*, p.434.

¹⁶⁷ Fernandes, *Sinopse...*, p.359.

“the Portuguese Constitution does not include Macau in Portuguese territory; it merely considers it under Portuguese administration. The Portuguese Government considers that the end of the Portuguese administration of the territory of Macau could be an object of negotiations between the People’s Republic of China and Portugal, when both Governments consider it appropriate. Meanwhile, the Portuguese Government assumes the responsibility for the rigorous respect of the rights of the Chinese citizens residents in Macau. The Portuguese Government also assures the Chinese Government that it will not allow the use of this territory under its administration for the practice of acts hostile to the People’s Republic of China.”¹⁶⁸

However, the opportunity to establish diplomatic relations was lost. The coalition Cabinet collapsed and Portugal’s internal political crisis led to three different governments in one year: the first provisional government was led by Mário Soares, the second by Nobre da Costa and the third by Mota Pinto. Meanwhile, Coimbra Martins waited in Paris for the definition of the Portuguese policy regarding the resumption of diplomatic relations with the PRC. When Mota Pinto took over as the new Prime Minister he decided to proceed with the negotiations.¹⁶⁹

After new conversations between Coimbra Martins and Han Kehua, the Portuguese and Chinese Governments agreed that the signature of the Joint Communiqué should be made in the Portuguese embassy in Paris on 10 January 1979. On the previous day, however, the Portuguese Foreign Affairs Ministry asked for minor changes in the text of the agreement on Macau, and the ceremony was postponed.¹⁷⁰ These symbolic changes were in fact an excuse that Prime Minister Mota Pinto used to delay the negotiations, fearing a domestic reaction to an agreement on Macau. As Basílio Horta, Pinto adopted a nationalist position, fearing accusations of giving Macau to China as the left wing had abandoned Africa. The battles between the different political parties and personalities and the

¹⁶⁸ *Diário de Notícias*, 9 January 1987.

¹⁶⁹ “Programa do IV Governo Constitucional”, *Diário da Assembleia da República*, 2ª série, nº13, 5 December 1978, p.227.

¹⁷⁰ Martins, *op.cit.*, pp.440-43.

lack of a common strategy for the settlement of the Macau question would persist in later negotiations.

On 8 February 1979, the Joint Communiqué on the establishment of diplomatic relations between China and Portugal was finally signed. The two sides agreed to exchange Ambassadors within three months and to hold diplomatic relations according to “the principles of mutual respect for the sovereignty and territorial integrity, of mutual non-intervention in internal affairs, of equality and reciprocal affairs.” Portugal recognised the Government of the PRC as “the only legal Government of China, and Taiwan as an integral part of the People’s Republic of China”.¹⁷¹ Furthermore, As the Chinese Foreign Minister Wu Xueqian reported to the Fifth National People’s Congress,

“While negotiating the establishment of diplomatic ties, the two Governments reached a mutual understanding on the Macau issue, confirming that Macau was Chinese territory and deciding that the time and details for returning Macau to China would be settled between the two Governments at an appropriate time.”¹⁷²

Although it had been the most delicate issue of the negotiations, there was no direct or indirect reference to the Macau question on the official Joint Communiqué other than the mention of the principle of “sovereignty and territorial integrity”.¹⁷³ The declarations regarding Macau were printed in a memorandum signed by Coimbra Martins and Han Kehua along with the Joint Communiqué but which the two parts decided to keep secret alleging the maintenance of Hong Kong stability. However, it was by Portuguese suggestion

¹⁷¹ “Comunicado Conjunto do Governo da República Popular da China e do Governo da República Portuguesa sobre o Estabelecimento de Relações Diplomáticas entre a China e Portugal”, Paris, 8 February 1979, Serviço de Informação do Ministério dos Negócios Estrangeiros, Lisbon, Diplomatic Historical Archives, Ministry of Foreign Affairs.

¹⁷² “Chinese Foreign Minister Reports on Macau Accord to Fifth NPC Session”, Xinhua News Agency, Beijing, 2 April 1987, in *Summary of World Broadcasts*, 4 April 1987, FE/8534/C1/1-4.

¹⁷³ Lima, *op.cit.*, p.533.

that the issue was totally omitted in the Joint Communiqué, and the Prime Minister Mota Pinto, when questioned by the press briefly said that the Macau statute would remain unchanged.¹⁷⁴ For the above-mentioned reasons, Pinto decided to go secret and avoid any domestic criticism.

The *Acta Secreta* (Secret Memorandum), as it soon became known in the press, was in fact an agreement between two states establishing reciprocal obligations and rights assumed by both parts but the word “memorandum” was used instead of “agreement” to minimize its importance.¹⁷⁵ The *Acta* mostly followed the instructions given to Coimbra Martins by the Portuguese Cabinet on 14 June 1978.¹⁷⁶ It has two paragraphs, one is a declaration of Han Kehua in representation of his Government and the other is a statement of Coimbra Martins, through which the Portuguese Government agreed in principle with the position of the Chinese Government. The Chinese declaration defines the PRC position on the statute of Macau:

“1-Macau is part of the Chinese territory and will be returned to China. The question of the date and the modalities of the reversion can be solved through negotiations in the future, when both Governments consider appropriate. 2-Before the reversion, the Portuguese authorities of Macau must respect and protect the rights and legitimate interests of the Chinese inhabitants.”¹⁷⁷

As with the diplomatic communication of 6 January 1975, with the signature of the *Acta Secreta* Portugal made a concession in which the only counterpart was the establishment of diplomatic relations with China. This was the second moment in which the Portuguese democratic regime did not consider the definition of a strategy for the settlement of the Macau question. This time, this negligence had

¹⁷⁴ *Ibid.*, p.535.

¹⁷⁵ *Expresso*, 10 January 1987.

¹⁷⁶ Lima, *op.cit.*, p.535.

¹⁷⁷ *Diário de Notícias*, 9 January 1987.

far reaching consequences for the future of Macau. While in 1975 China criticised Portugal's reference to Macau, in 1979 the PRC welcomed the Portuguese declarations and obtained agreement on her principles and position, which would be used as a pre-condition for later negotiations. More than a contradiction in China's foreign policy, the sudden Chinese interest in discussing the Macau question was, as said above, the result of the evolution of the domestic context both in Portugal and in the PRC.

The above-cited parts of the *Acta Secreta* were only released in 1987, after the signature of the Sino-Portuguese Joint Declaration on the Macau question. The Portuguese Cabinet published parts of the document, calling it *Acta das Conversações* (Talks Memorandum). Some argue that there were further Chinese considerations about the international situation, in particularly the Soviet Union, which were not released when parts of the *Acta* were published in 1987: the Portuguese authorities must not tolerate that "the Soviet Union, Taiwan's authorities or other political forces use Macau to hold activities prejudicial to the People's Republic of China".¹⁷⁸ According to this argument, these considerations made the Portuguese government hesitate about making the whole document public, even if the PRC had already ceased to classify the Soviet Union as "the most dangerous superpower and the first enemy of the peoples".¹⁷⁹

During the 1984-1987 negotiations with China, the policy of secrecy of the *Acta Secreta* originated much controversy and some embarrassment among the governing classes: some key political leaders had never accessed to it and some

¹⁷⁸ Silva, Anibal Cavaco, *Autobiografia Política*, Temas e Debates, Lisbon, 2002, p.212.

¹⁷⁹ *Expresso*, 10 January 1987.

doubted its very existence. In the end of 1986 and in early 1987, the Macau Governor Pinto Machado frequently admitted to the press his ignorance on the subject and that the *Acta* had never come to his hands.¹⁸⁰ The MP Adriano Moreira was the first to raise publicly the question of the *Acta*.¹⁸¹ On 20 October 1986, nearly four months after the beginning of the Portuguese-Chinese negotiations, he asked the Government and his parliamentary group made in vain an application asking for the disclosure of the text.¹⁸² The CDS MPs requested that the agreement on Macau signed between Portugal and China was presented in the parliament for ratification. To this request the government replied ignoring any agreement regarding Macau.¹⁸³

Later, former President Ramalho Eanes brought the subject to discussion again by confirming the existence of the *Acta*, saying that it was in the archives of the Prime Minister's office.¹⁸⁴ Cavaco Silva refuted this in a letter saying that it was not in the archives of his office and was still missing.¹⁸⁵ Eanes considered "surrealist" the fact that the whereabouts of the *Acta* remained unknown, it being "the negotiation base of all the process of transfer of the Portuguese administration of the territory of Macau to the People's Republic of China".¹⁸⁶ In early 1987 a former Minister of Foreign Affairs, André Gonçalves Pereira, suggested that the minutes would not be in the Cabinet but in the Ministry of Foreign Affairs: he had received them in hand by the former Minister in 1981 and

¹⁸⁰ *Diário de Notícias*, 26 and 31 December 1986 and 4 January 1987.

¹⁸¹ *Expresso*, 10 January 1987.

¹⁸² Fernandes, *Sinopse...*, p.411.

¹⁸³ Silva, *op.cit.*, p.212.

¹⁸⁴ *Diário de Notícias*, 26 de Dezembro de 1986.

¹⁸⁵ *Diário de Notícias*, 3 January 1987.

¹⁸⁶ *Diário de Notícias*, 4 January 1987.

had handed them to his successor in 1982, a common practice with all important documents.¹⁸⁷

The *Acta* was finally found at the Ministry of Foreign Affairs and read by the Prime Minister at the State Council meeting on 6 January 1987. Two days later, the Cabinet released a communiqué to elucidate the other politicians, the public opinion and the press on the Portuguese policy regarding China and Macau.¹⁸⁸ Prime Minister Cavaco Silva was interested to distinguish himself from the responsibilities assumed by the previous governments, and after consulting Soares decided to publish the communiqué.¹⁸⁹ By partially revealing the text of the memorandum, which had remained secret for “reasons of continuity of the higher interests of the State, respecting the positions of secrecy assumed for all the Governments since 1979 and the will of the People’s Republic of China”,¹⁹⁰ the Government for the first time recognised in public its very existence.

2.5. Conclusion

This chapter provided a background for the analysis of the Portuguese strategy during the negotiations with China for the settlement of the Macau question. It focused on the factors that explain Portugal’s passivity regarding Macau and the absence of a national strategy for the Sino-Portuguese negotiations. This was due to two main reasons. First, the Portuguese presence in Macau was very precarious. From the Portuguese settlement in Macau in the 16th century to the establishment

¹⁸⁷ *Diário de Notícias*, 3 January 1987.

¹⁸⁸ Fernandes, *Sinopse...*, p.419.

¹⁸⁹ Silva, *op.cit.*, p.212.

¹⁹⁰ *Diário de Notícias*, 9 January 1987.

of diplomatic relations with the PRC in 1979, Portugal shared with China sovereignty over the territory. The Sino-Portuguese relations evolved through different stages and the fragility of the Portuguese presence in Macau was more acute during the more unstable periods of the territory, namely after the sensitive events of the Cultural Revolution in 1966-1967, when Portugal lost *de facto* sovereignty over Macau. Nevertheless, Portugal's authoritarian regime wanted to maintain Portuguese administration in the territory for symbolic reasons.

Second, the trauma that the mid-1970s Portuguese decolonisation process left in the imaginary of the population demanded a passive withdrawal from Macau. More than the economic and social consequences of decolonisation, the Portuguese population resented the left-wing for the shame of abandoning the empire in the aftermath of the 1974 democratic revolution. The centre and right-wing politicians were not interested in adopting unpopular measures that could lead to accusations of abandoning Macau. At a time of great political instability, the use of Macau for domestic political consumption led to delays in the establishment of diplomatic relations with the PRC and to the absence of a common national strategy for Macau.

For China, Macau never ceased to be Chinese territory and its retrocession would take place when the alteration of the status quo brought her some advantage. Macau had an important role to play in the Chinese policy of national reunification, and the PRC wanted to use it as a showcase for Taiwan. In 1972, soon after being admitted to the United Nations, the PRC managed to remove Macau from the category of colonial territories, preparing the re-integration of

Macau to China and depriving the territory of an eventual process of self-determination. The PRC had a revolutionary policy but was very pragmatic and although supported the Third World movements against colonialism was interested in maintaining the status quo in Macau. Macau was not a colony but Chinese territory and the Macau question would be settled through negotiation “when time is ripe”.

After the 1974 revolution in Portugal, the new democratic regime was more interested in establish diplomatic relations with the PRC than in maintaining (or arguably recovering) sovereignty over Macau. The negotiations for the establishment of Sino-Portuguese diplomatic relations were a long and sinuous process due to both countries’ unstable domestic situations. The new Portuguese regime did not want Macau to be an obstacle to the establishment of relations with China and on 6 January 1975 publicly announced two unilateral concessions: Portugal considered that the PRC was sole representative of the Chinese people, Taiwan being part of China, and that “Macau could be the object of negotiations when both Governments considered appropriate”.

These unilateral concessions reflect the Portuguese strategy of “pure cooperation” with China: to get China’s approval for the establishment of diplomatic relations, the Portuguese government eliminated all the issues in which it could obtain Chinese concessions, even renouncing its most important positions.¹⁹¹ With the establishment of Sino-Portuguese relations on 8 February 1979, Portugal reiterated these concessions in the *Acta Secreta*, the memorandum signed by the

¹⁹¹ “As Relações entre Portugal e a RPC: Análise da Estratégia Portuguesa, 1975-1978”, GEP/DE/1/78, Lisbon, Diplomatic Historical Archives, Ministry of Foreign Affairs, pp.112-114.

Portuguese and Chinese ambassadors in Paris along with the Joint Communiqué for the establishment of diplomatic relations but which both governments had decided to keep secret. The Portuguese government agreed that Macau was Chinese territory and would be returned to China when both governments considered appropriate. The negotiations were, therefore, very advantageous for the PRC.

While negotiating the *Acta Secreta*, the Portuguese government could have obtained some political counterparts to Macau in exchange for the maintenance of the status quo: it was China, not Portugal, who was interested in keeping the Portuguese administration in Macau. A close analysis of the process suggests that the *Acta* deeply limited the Portuguese government during the 1984-1987 negotiations: there was not much left to negotiate if Portugal had already promised to hand over Macau to China. Once the Chinese leaders considered that the time was ripe for negotiating the Macau question, they constantly referred to the existence of an agreement. At that time, the lack of coordination among the Portuguese leaders was so serious that some of them ignored the existence of the *Acta*. The difficulties faced by the Portuguese state in defining a common strategy for Macau are analysed with more depth in the next chapter.

Chapter 3 - The Sino-Portuguese Negotiations (1984-1987)

3.1. Introduction

This chapter examines the Portuguese strategy for the settlement of the Macau question with the People's Republic of China during the 1984-1987 Sino-Portuguese negotiations. Along with the Joint Communiqué for the establishment of diplomatic relations in 1979, Portugal signed with the People's Republic of China a secret memorandum agreeing that Macau was Chinese territory and would be returned to China when both governments considered appropriate. For the reasons already presented, the PRC found it more convenient to maintain the status quo with regard to Macau. However, from the early 1980s onwards, China started to send signals that time was coming to settle the Macau question.

The following section presents an overview of the Hong Kong negotiations, which arguably stimulated China's interest in settling the Macau question. The third section deals with the Sino-Portuguese prenegotiation activity that started in November 1984 with Li Xiannian's visit to Portugal and ended in June 1986 with the first plenary meeting of the Portuguese and Chinese delegations, which set the basis for the process of negotiation. The fourth section of the chapter analyses the formula for the settlement of the Macau question that was decided between the second plenary meeting in September 1986, and the signature of the Joint Declaration in April 1987. The fifth section analyses details of the negotiations, i.e., the offers and demands made by Portugal and the PRC, the concessions that both made and obtained, and the convergence that eventually brought the

negotiation process to an end. Finally, the chapter analyses the significance of the Macau Joint Declaration.

The first signal came in June 1982, when Deng Xiaoping stated that China was sovereign over Hong Kong and Macau and that these territories would be re-integrated in China within a few years, under the banner of “one country, two systems”. In 1983, the Chinese ambassador in Lisbon claimed that the Macau statute had already been negotiated in the *Acta Secreta*, and this was a clear signal that the PRC was willing to start negotiations.¹ After agreeing the Joint Declaration on Hong Kong with Great Britain in 1984, China indicated that the time was ripe to settle the Macau question.

For political reasons, China made the most of the existing similarities between Hong Kong and Macau. Regardless of the historical differences, both territories were Chinese “lost” territories and due to revert to the Mainland and become Special Administrative Regions of the PRC. Their inhabitants were denied the right to self-determination and were excluded from the negotiations. China framed the retrocession of Hong Kong and Macau under the formula “one country two systems”, in order to extract perfect showcases for the reintegration of Taiwan. Therefore, the PRC conducted the Macau negotiations following the same model of the Hong Kong negotiations and signed with Portugal a very similar agreement to the one signed with Great Britain.²

¹ Fernandes, Moisés Silva, *Sinopse de Macau nas Relações Luso-Chinesas, 1945-1995*, Lisbon, Fundação Oriente, 2000, pp.381 and 385.

² Yee, Herbert S., *Macau in Transition – From Colony to Autonomous Region*, Palgrave, London, 2001, p.3.

There were, however, striking contrasts between the two negotiation processes, due to several factors. One was the fact that Hong Kong and Macau had different historical backgrounds and legal status, and therefore Britain and Portugal perceived the legitimacy of Chinese claims differently. Hong Kong was unambiguously the result of the unequal treaties era and the three Hong Kong treaties gave to the British government grounds to negotiate with China: there was a portion of Chinese territory that under international law, as understood in the West, belonged to the British crown. The Portuguese government could not negotiate on these terms because Macau had a more ambiguous status: there was only one treaty (the Treaty of Peking, 1887) in which China formally recognised Portugal's sovereignty over the territory, and it was never ratified. Macau was rather a case of shared sovereignty, the result of a special understanding and correlations of interests.³

Besides differing in their origin, the two settlements experienced distinct types of colonialism. The British colonialists were economically driven and developed in Hong Kong a network of investment, assured the prosperity of the industrial sector and controlled the banking system. In contrast, the Portuguese politico-administrative imperialism, deprived of economic interests and investment in the region, used Macau as a reminder of Portugal's past world-leading role. The Portuguese administration did not invest in a cultural policy for Macau and the Portuguese language, despite being the official language, was not spoken by the Chinese population.

³ Pereira, Francisco G., *Portugal A China e a "Questão de Macau"*, Macau, Instituto Português do Oriente, 1995, pp.11 and 20.

Macau was, therefore, less valuable to Portugal than Hong Kong was to Great Britain and its retrocession was expected with less anxiety by China, who had more interests in Hong Kong. Moreover, being a financial centre Hong Kong enjoyed an international status that Macau did not have; there was far more international pressure during the Hong Kong negotiations. The power relations between Portugal and the PRC and between Britain and the PRC were also different: there was a greater asymmetry of power between Portugal and the PRC than between the United Kingdom and China. Despite being smaller in terms of area and population, Britain was regarded as more developed than China and had an equal (or higher) international status.⁴

As a consequence, the strategies adopted by Lisbon and London during the negotiations with China were also different. Being a middle to great power, Great Britain adopted a logic of confrontation, controlled the rhythm of the negotiations with China and took some initiatives, such as attempting to change the local political structures in Hong Kong. The Portuguese government negotiated from a more submissive position, and allowed China to define the agenda for the negotiations, and avoided sensitive issues, using the conflictual Sino-British relations to extract some concessions from China.⁵

Portugal and China settled the Macau question through negotiations, resulting in the signature of the Sino-Portuguese Joint Declaration on the Question of Macau in April 1987. The Sino-Portuguese negotiation process took place from 1984 to 1987: the pre-negotiation stage started with President Li Xiannian's visit to

⁴ Yee, *op. cit.*, pp.3-5.

⁵ Santos, Boaventura de S. and Gomes Conceição, *Macau – O Pequeníssimo Dragão*, Porto, Edições Afrontamento, 1998, p.492.

Lisbon in November 1984, returned by President Ramalho Eanes in May 1985, and formal negotiations took place between June 1986 and March 1987. The most sensitive subjects of the negotiation process were the setting of the date for the transfer of the Portuguese administration to the PRC and the future nationality of the Macau inhabitants.

The dissensions were mainly due to the existence of different preconceptions of the two sides: while the Chinese side wanted to apply to Macau the model already agreed in the Sino-British accord for Hong Kong, favouring a simultaneous handover, the Portuguese side argued that the Hong Kong model should be shaped for Macau by the experience acquired with Hong Kong and by Macau's own specificities. Contrary to what happened with Britain in Hong Kong, the Portuguese administration in Macau was not limited in time by the expiring of any treaty with China, and the Portuguese negotiators favoured a broader transition period. Although imposing the end of the 20th century as a non-negotiable deadline, the PRC showed some flexibility and the two countries agreed on 19 December 1999 for the date of the handover. The Portuguese leaders perceived this as a major concession.

The nationality issue involved the Chinese citizens of Macau that had a Portuguese passport. In the view of the Portuguese leaders, these citizens should be given dual nationality after the Macau handover, but this was not legal under the Chinese Nationality Law. The Chinese leaders wanted all ethnic Chinese citizens of Macau to renounce Portuguese nationality and keep Chinese nationality only. The two countries did not achieve consensus and chose to

express their position in two different memoranda annexed to the Joint Declaration. The nationality issue was further negotiated by the Joint Liaison Group, after the signature of the agreement.

3.2. The Hong Kong Model

After winning the Opium War, Britain forced China to sign the Treaty of Nanking on 29 August 1842, surrendering Hong Kong and opening five other treaty ports. When the treaty was ratified, by 26 June 1843, Hong Kong was declared a crown colony. The Kowloon peninsula was added to the colony by the Convention of Peking in October 1860 and the New Territories were leased for 99 year in a convention signed in Peking in 9 June 1898.

The British colony of Hong Kong had been formed in three different stages. First, the Emperor of China had ceded the island of Hong Kong in perpetuity to the British Queen in August 1842. In 1843 a supplement to the treaty – the Treaty of Humen – made concessions on extraterritoriality, exempting foreigners from the laws of China.⁶ The island of Hong Kong and its dependencies were constituted as the Colony of Hong Kong by Letters Patent issued by Queen Victoria on 5 April 1843.⁷

The territory of the colony was extended twice. The first extension took place after the second Anglo-Chinese war. The Convention of Peace and Friendship signed at Peking on 24 October 1860 formally ratified the Treaty of Tianjin,

⁶ Segal, Gerald, *The Fate of Hong Kong*, Simon & Schuster, London, 1993, pp.10-11.

⁷ Jayawickrama, Nihal, "The Right of Self-Determination", proceedings from a seminar on the Basic Law, held at the University of Hong Kong, 5 May 1990, p.90.

signed in 1857, opening further eleven treaty ports to foreigners and allowing them to travel anywhere in China with a passport.⁸ Besides, the township of Kowloon and Stonecutters Island was ceded to the British Queen to be held as a dependency of the colony of Hong Kong. The 'Convention Respecting an Extension of the Hong Kong Territory', signed in Peking on 9 June 1898, added another 350 square miles of Chinese mainland and 235 islands to the colony of Hong Kong in the form of a 99-year lease.⁹

The British did not seek a permanent cession of territory but merely a lease to avoid accusations of beginning the break up of China.¹⁰ On the Chinese side, the rationale was to minimize China's losses, so it was quickly agreed that the New Territories should be leased for a specific period only. China's main achievement was the retention of its jurisdiction in the 'walled city of Kowloon', which was not really a city but a Chinese military fort. Britain was so secure of its preponderance that these reservations were not perceived as harmful to British interests.¹¹

By Royal Order in Council of 20 October 1898, the newly leased territories were declared to be "side and parcel of Her Majesty's Colony of Hong Kong", ignoring any claim of the existence of a lease.¹² Thereafter, the British authorities behaved as if their rights over the New Territories were co-extensive with their rights in Hong Kong. When China asked for the end of all territorial leases at the

⁸ Segal, *op. cit.*, pp.14-15.

⁹ Jayawickrama, *op. cit.*, p.90.

¹⁰ Wesley-Smith, Peter, *Unequal Treaty 1898-1997*, Revised Edition, Oxford University Press, Hong Kong, 1998, p.58.

¹¹ Tsang, Steve, *Hong Kong, An Appointment with China*, I.B. Tauris, London, 1997, pp.7-11.

¹² Jayawickrama, *op. cit.*, p.90.

Washington Conference, 1921-1922, Britain asserted that the New Territories were contiguous to the colony of Hong Kong and therefore were different from the other leaseholds. Weihaiwei reversed to China in 1930 but the New Territories would remain British until the end of the lease.¹³

During the Pacific War, Hong Kong remained under Japanese occupation from 1941 to 1945. After Japan's defeat, China intended to liberate Hong Kong but it was Britain who managed to accept the Japanese surrender and restored it as a Crown colony in 1946. Despite the Chinese Nationalist agitation calling for the recovery of Hong Kong, the Chinese government declared that the Hong Kong issue would be settled in the future through friendly negotiations between the two countries. With the establishment of the PRC in 1949, China's Hong Kong policy remained basically unchanged. In the early 1950s, due to the Korean War the enclave became invaluable to China, which used it to divide Britain from the United States and to break the embargoes the West imposed on China, thus acquiring strategic materials, and foreign exchange.¹⁴

By the late 1970s, investors in Hong Kong were anxious to know what would happen after the expiration of the New Territories lease in 30 June 1997.¹⁵ The reservoirs and utilities of Hong Kong were located in the leased territory, which represented 92 per cent of the all Hong Kong and was absolutely vital to the survival of the enclave. If Britain did not manage to keep the New Territories, Hong Kong Island and Kowloon would become less valuable. However, the British feared that confronting China was not a solution, as they would face in

¹³ Wesley-Smith, *op. cit.*, pp.272 and 229-231.

¹⁴ Tsang, *op. cit.*, pp.33-34, 53-54, 62-63, 71 and 79 for the all paragraph.

¹⁵ Kemenade, Willem Van, *China, Hong Kong, Taiwan, Inc.*, London, Abacus, 1999, p.75.

Hong Kong a shortage of food and water supplies, a flood of refugees, and an overwhelming Chinese military force.¹⁶

The *Acta Secreta* that Portugal and China signed on 8 February 1979 made the Foreign Office wonder on the impact that the formula “Chinese territory under Portuguese administration” could have in the New Territories.¹⁷ As a consequence, it was decided that the British Governor Sir Murray MacLehose should sound out Deng Xiaoping during his visit to Beijing in March 1979. At that time Deng said that the capitalist system would prevail in Hong Kong and that “investors should put their hearts at ease”, but he did not specify which political solution would be adopted. The Chinese leaders were not prepared to talk about Hong Kong’s future at this point, concentrating their attention in China’s main objective: Taiwan. In September 1981 they announced a nine-point plan for the reunification of Taiwan with the mainland: Taiwan would become a special administrative region with a high degree of autonomy, maintaining its economic and social systems.¹⁸

However, Deng Xiaoping soon realised that the reunification of Taiwan would not be possible in the short term, due to Taipei’s unreceptiveness and to the lack of American support. Despite being the main goal in China’s reunification policy, Taiwan lost priority: the reunification of Hong Kong with the mainland could serve as a model, providing a precedent for Taiwan. Beijing reversed its strategy of avoiding the Hong Kong issue and started to speak very openly using all kind of intermediaries to inform London of its intentions: to resume sovereignty in

¹⁶ Cradock, Percy, *Experiences of China*, London, John Murray, 1999, pp.177-78 and 162.

¹⁷ Pereira, *op. cit.* p.70.

¹⁸ Cradock, *op. cit.*, pp.163, 166-67 and 169 for the all paragraph.

1997 without jeopardizing Hong Kong's prosperity.¹⁹ In June 1982, Deng stated in an audience to twelve personalities of Hong Kong and Macau:

(1) Both territories belonged to China and were subject to Chinese sovereignty; (2) China did not recognise any validity to the unequal treaties of the past; (3) the reunification of the two territories would be made soon under the concept one country, two systems, which allowed them to maintain their economic systems.²⁰

The Chinese government argued that, at the time that the Convention of Peking of 1898, the Convention of Peking of 1860 and the Treaty of Nanking of 1842 were signed, Britain and China were not in a position of equal bargaining. Therefore, China did not accept the validity of these unequal treaties, holding that treaties founded on inequality should not bind states.²¹ However, China realized that for Britain these were valid treaties, and therefore the British government would honor the 1997 deadline, unless there were negotiations on the issue.²² In fact, Britain's position was that the Sino-British treaties were valid and subject to international recognition,²³ as modern international law did not consider an unequal treaty as invalid.²⁴ In public international law no 'balance' or 'equality' of treaty obligations is required: treaties cannot be classified "according to the equality in the bargaining power of the parties and the benefits and burdens created by the treaty itself."²⁵

¹⁹ *Ibid.*, pp.169-171. See Robert Cottrell, *The End of Hong Kong*.

²⁰ Fernandes, *Sinopse...*, p.381.

²¹ Wesley-Smith, *op.cit.*, p.4 and Lam, Jermain T.M., "Sino-British Relations over Hong Kong during the Final Phase of Political Transition", *International Studies*, 34, 4, 1997, p.427.

²² Cradock, *op.cit.*, p.162.

²³ Lam, *op.cit.*, p.427.

²⁴ Wesley-Smith, *op.cit.*, pp.3, 4 and 298.

²⁵ Ress, Georg, "The Hong Kong Agreement and Its Impact on International Law", in DOMES Jürgen and Shaw Yu-ming (eds), *Hong Kong, A Chinese and International Concern*, Boulder, Westview Press, 1988, p.133.

Meanwhile, the British leaders had become too involved in the Falklands War to think of a strategy regarding Hong Kong before the visit of the British Prime Minister, Margaret Thatcher, to Beijing, in September 1982.²⁶ Some argue that Britain's victory in the Falklands gave Thatcher the illusion of being in a dominant position for negotiating with China,²⁷ but the Chinese made clear that there was nothing to negotiate: the U.K. was left with the role of 'cooperating' with the resumption of Chinese sovereignty and administration over the all enclave.²⁸

Deng Xiaoping, in an abrasive meeting with Margaret Thatcher, made clear that China would recover sovereignty of Hong Kong in 1997²⁹ while the British Prime Minister argued that the Hong Kong treaties were valid under international law and there was thus a basis for negotiation. In the communiqué presented to the press, Britain and China agreed to hold "talks through diplomatic channels with the common aim of maintaining the stability and prosperity of Hong Kong."³⁰

Afterwards it proved difficult to initiate talks at all: only in July 1983 were obstacles surpassed and could negotiations begin.³¹ On 26 September 1984, after twenty-two plenary meetings between the British and Chinese delegations, the Sino-British Joint Declaration on the Question of Hong Kong was initialled in Beijing by the British Ambassador Sir Richard Evans and by the Chinese Vice Foreign Minister Zhou Nan. The Standing Committee of the Sixth NPC Congress

²⁶ Cradock, *op.cit.*, pp.172-173.

²⁷ Domenach, Jean-Luc, "Hong Kong : O Fim de Uma Colónia", *Política Internacional*, no.14, vol.1, Spring-Summer 1997, p.12.

²⁸ Kemenade, *op.cit.*, p.77.

²⁹ Cradock, *op.cit.*, p.180.

³⁰ Kemenade, *op.cit.*, pp.77-78.

³¹ Cradock, *op. cit.* pp.183-186.

endorsed the Joint Declaration on 14 November and the British Parliament approved it in early December. On 19 December the British and Chinese Prime Ministers, Margaret Thatcher and Zhao Ziyang, signed the document at Beijing's Great Hall of the People. Zhao praised Thatcher for her "vision and statesmanship" during the Sino-British negotiations and for her "significant and praiseworthy contribution to the satisfactory settlement of the Hong Kong question".³²

The Sino-British negotiations over Hong Kong's reversion and the Sino-British Joint Declaration led to strong press speculation on Macau's future. To moderate its impact, in October 1984 Deng Xiaoping stated that the Macau question could be kept aside for up to eight years and that the essential thing at the time was to maintain the stability and prosperity of Macau and Hong Kong.³³ There were doubts among the Portuguese political elite of what China wanted to do with Macau: some suspected that China would recover Macau, while others argued that, after recovering Hong Kong, China would be more interested in keeping Macau as an open door to the West. The uncertainty of when would the negotiations would take place contributed to the disinterest of the Portuguese foreign ministry in defining a strategy and preparing the diplomats for the future negotiations.³⁴

³² *Beijing Review*, 24 December 1984 for the all paragraph.

³³ "Deng Xiaoping Says Macau Problem Can Be 'Kept Aside'", *Wen Wei Po*, Hong Kong, 7 October 1984, in *Summary of World Broadcasts*, 10 October 1984, FE/7770/A3/2 and 3.

³⁴ Interview A.

3.3. Getting to the Table

Soon after the negotiations over the Hong Kong's reversion were concluded it was clear that Macau, and not Taiwan, was the second (possible) priority in the PRC's reunification policy. During the late stages of the Sino-British negotiations Chinese leaders had shown a growing interest in discussing Macau's future with Portuguese leaders,³⁵ and in November 1984 the Chinese President Li Xiannian made an official trip to Lisbon to exchange views with the Portuguese President Ramalho Eanes.

During the visit, Foreign Minister Wu Xueqian referred to the *Acta Secreta* in a press conference, saying that in 1979, when both governments established formal relations, the Portuguese government recognised that Macau was part of the Chinese territory.³⁶ In the *Acta Secreta*, which was analysed with more depth in the previous chapter, the Portuguese government agreed to return Macau to China when both governments considered appropriate. The fact that the Chinese leaders referred to the *Acta* in 1984 was a clear signal that the PRC was willing to start negotiations.

Another reference to the *Acta* was made in February 1985: Li Xiannian declared in a meeting with the Governor of Macau Almeida e Costa that the question of Macau would be easily solved through negotiations because the principles of the agreement had already been established in 1979.³⁷ In March 1985 the Hong Kong paper *Guang jiao jing* published information about the existence of a Chinese

³⁵ Gama, Jaime, *Política Externa Portuguesa, 1983-1985*, Lisboa, Ministério dos Negócios Estrangeiros, 1985, pp.291-92.

³⁶ Fernandes, *Sinopse...*, p.399.

³⁷ *Ibid.* p.400.

provisional plan on the Macau reunification process that pleaded for a 'simultaneous solution' of the questions of Macau and Hong Kong in 1997. The paper also announced that this was to be discussed in May during the Portuguese presidential visit to Beijing.³⁸

On 21 May 1985, President Ramalho Eanes returned President Li's visit and went to Beijing. Although the question of Macau was not officially on the agenda, the Portuguese leaders were not surprised that the PRC raised the issue when Ramalho Eanes arrived in Beijing.³⁹ After all the above-mentioned signals, the Portuguese leaders suspected that China would raise the Macau question during the visit, and were divided on whether the President should cancel the visit or not. The ones that were in favour said that the Macau question should be settled through negotiations and that it was advantageous for Portugal to initiate talks. The arguments against the visit were that Ramalho Eanes, being close to the end of his second mandate, should not engage the Portuguese state, as the new President could have a different orientation.

In the end, the President decided that his visit would not be cancelled. The President did not assemble the State Council nor consult the parliament: in Portugal the President was sovereign to take political decisions, as long as the government did not oppose.⁴⁰ Mário Soares claims that he was not consulted,

³⁸ *Ibid.* p.401.

³⁹ Gama, *op. cit.*, pp.291-92.

⁴⁰ Interview B.

although Eanes affirms to have discussed the visit (and the Macau question) with the Prime Minister.⁴¹

This was another crucial moment in which the Portuguese leaders failed to define a clear strategy for negotiating over Macau, apart from two general objectives. First, they wanted a negotiation process in which the two states had mutual respect: they feared that China planned for Macau another kind of solution than the one for Hong Kong, that diminished Portugal in the international community and that compromised the Portuguese leaders in the domestic arena. Second, the starting date and conditions of this negotiation process were to be decided between the two sides.⁴²

During the preparation of the visit, the Chinese embassy in Lisbon announced that Macau was not on the agenda of the meeting, that there was absolutely no question regarding Macau, and suggested a more general topic: Sino-Portuguese bilateral relations.⁴³ However, on the eve of Ramalho Eanes' trip, the Portuguese ambassador in Beijing was called to the Chinese Foreign Ministry and was informed that the Macau question was going to be on the agenda. It was too late for ambassador Costa Lobo to inform the President of the Chinese intentions, as he was already on the plane. When arrived at the airport, President Eanes and Foreign Minister Jaime Gama were respectively accompanied by the Chinese

⁴¹ *Ponto Final*, 28 May 1999.

⁴² Interview B.

⁴³ *Ibid.*

President and Foreign Minister to different cars, and Ambassador Costa Lobo had no opportunity to inform them beforehand.⁴⁴

By giving this information 24 hours before Eanes' arrival, China officially informed Portugal that Macau would be on the agenda but at the same time assured that the President would not receive that information and would be taken by surprise upon his arrival. This ingenious tactic reassured China that the President would not return to Portugal without signing the joint communiqué.

Knowing that the Macau question was going to be in the agenda anyway, President Eanes decided to be the one to raise the issue with the Chinese, and not the other way round, for two reasons: to respect the protocol, according to which the guests always speak first, and to raise the issue on his own terms.⁴⁵ During their meeting on 22 May 1985, Chinese Prime Minister Zhao Ziyang told the Portuguese President "that the time for settling this issue was ripe".⁴⁶ Ramalho Eanes showed receptivity to initiate talks with China, as long as the interests of the PRC, Portugal and Macau were preserved. Portugal would respect the 1979 agreement on Macau regardless of the expected replacement of some of the Portuguese political personalities (a presidential election would take place on March 1986).⁴⁷

The Portuguese President's willingness to cooperate gave Zhao Ziyang grounds to suggest a plan for Macau reversion, following the "one country, two systems"

⁴⁴ Interview A.

⁴⁵ Interviews C and A.

⁴⁶ "Chinese Foreign Minister Reports on Macau Accord to Fifth NPC Session", Xinhua News Agency, Beijing, 2 April 1987, in *Summary of World Broadcasts*, 4 April 1987, FE/8534/C1/1-4.

⁴⁷ *Expresso*, 30 August 1986.

formula adopted for Hong Kong: its social and economic system and its main laws would remain unchanged and its administration would be carried on by its inhabitants. Zhao suggested that Sino-Portuguese negotiations started in the beginning of 1986 and considered “to be desirable to observe the pertinent model defined in the ambit of the accord on Hong Kong, in the same manner as to emphasise that the stability of Macau had everything to gain with the acceptance of the concomitance of the deadlines established there”: the PRC recovery of sovereignty over Macau “could happen simultaneously with the date anticipated for the recovery of sovereignty over Hong Kong.”⁴⁸

The day after the presidential meeting, Jaime Gama and Wu Xueqian, Portuguese and Chinese Ministers of Foreign Affairs, published a joint communiqué in which “both sides agreed in starting, in the near future, talks through diplomatic channels for the settlement of the Macau question.”⁴⁹ Eanes said in the press conference that since 1979 China and Portugal had absolutely no disputes in their bilateral relations and had the same aims regarding Macau, i.e., to maintain the stability and development of the territory. He added that the Macau issue was put on the negotiating table by the Chinese but that the Portuguese had anticipated the topic during Li Xiannian’s visit to Lisbon.⁵⁰

On his return home, the Portuguese President was criticised for starting the process of Macau reversion to China as he could have avoided making the first visit of a Portuguese head of state to China, given that it was predictable that the

⁴⁸ *Expresso*, 30 August 1986, for the last paragraph.

⁴⁹ “China and Portugal Agree to Discuss Macau”, Xinhua News Agency, Beijing, 23 May 1985, in *Summary of World Broadcasts*, 24 May 1985, FE/7959/A1/1-2.

⁵⁰ *Jornal de Notícias*, 24 de Maio de 1985.

Chinese leaders wanted to discuss Macau's future.⁵¹ But a refusal from Ramalho Eanes would have made no sense and would not have changed China's position. The Chinese leaders had long ago decided what to do with Macau and after having concluded the Hong Kong negotiation process with Britain they would not delay the Macau issue for much longer.

Moreover, the joint communiqué merely accomplished the *Acta Secreta* signed by the Ambassador Coimbra Martins in Paris on 8 February 1979, which bound Portugal to engage in talks with the PRC about Macau's transfer of sovereignty when both governments considered it appropriate. Eanes' refusal to go to Beijing would have irritated China and make Portugal lose negotiating power.

As happened through all the negotiations with China, the Macau question was basically being used in domestic political fights. President Ramalho Eanes was mainly criticised by Prime Minister Mário Soares, with whom he had significant political differences. To defend himself from the accusations Eanes assembled the State Council on 7 June 1985 and argued that Mário Soares had been involved during the whole process:⁵² in 1975, Soares was the Foreign Minister who published the note making two unilateral concessions to China; the establishment of diplomatic relations and the *Acta Secreta* were negotiated during Soares' government; and the joint communiqué was signed in Beijing by Jaime Gama, Soares' Foreign Minister.

⁵¹ *Expresso*, 30 August 1986.

⁵² Interview C.

After the President's return from Beijing, the Foreign Ministry was in panic to prepare the strategy for the negotiations,⁵³ and negotiated with China the framework for the negotiations.⁵⁴ In September 1985 the Portuguese and Chinese Ministers of Foreign Affairs met at the UN General Assembly and agreed to launch the negotiations on Macau soon after Portugal's legislative elections in October. The new Social-Democrat government, headed by Prime Minister Cavaco Silva, declared to be "prepared to start preliminary talks with the PRC about the future of the territory." In January 1986 the Chinese leaders informed the Portuguese Ambassador in Beijing that China was ready to start negotiations.⁵⁵

Negotiations did not start before the Portuguese presidential election in March 1986. Although the Prime Minister was competent on foreign policy, according to the Portuguese Constitution the administration of Macau was to be supervised by both the Government and the President.⁵⁶ When previous Prime Minister Mário Soares took over as Portuguese President, China's representatives were invited to the ceremony and tried to push the Portuguese Government to open negotiations. Vice Foreign Minister Zhou Nan, who had been the head of the Chinese delegation for the Sino-British negotiations about Hong Kong, was already confirmed as leader of the Chinese delegation to the negotiations on Macau.

During the event, Zhou Nan warned Cavaco Silva: "the Macau question affects the national feelings of the Chinese people and is very sensitive to China," to

⁵³ Interview D.

⁵⁴ Interview C.

⁵⁵ Silva, Aníbal Cavaco, *Autobiografia Política*, Lisbon, Temas e Debates, 2002, pp.203- 4 for the all paragraph.

⁵⁶ Macau's double tutelage system is analyzed with greater detail in the next chapter.

which Cavaco replied that the Portuguese government and the President needed two months to analyse the question. It was decided that processual negotiations would start in late May.⁵⁷ Moreover, Portugal had become too involved in the presidential election of March 1986 to give much thought to the negotiations over Macau, when few Portuguese economic interests were at stake.⁵⁸ One week later, one of Beijing's favoured intermediaries transmitted Cavaco Silva China's position on Macau:

"(1) the Chinese community in Macau did not want Portuguese party conflicts to affect the territory; (2) Ma Man Kei and himself [Roque Choi] are loyal people and are available to bring messages to the Chinese authorities if the Portuguese Government finds it convenient; (3) they will tell China that the Macau question should be settled through negotiations on equal terms and not through impositions, because both Portugal and China's dignity should be respected; (4) unlike the United Kingdom regarding Hong Kong, Portugal did not have strong material interests in Macau and the end of a leasing of territories was not under discussion."⁵⁹

After the meeting, Cavaco concluded that China was truly interested in settling the question through negotiation and that Portugal could get Macau a better deal than the one Britain managed to Hong Kong. He resolved with the Minister of Foreign Affairs Pires de Miranda (and the President agreed) that Portugal's aims for the negotiations should be:

"to assure an ordered transfer of the administration and to safeguard the stability and economic and social development of Macau; to protect the rights and guarantees of the residents in the territory; to preserve the Portuguese cultural presence; to develop relations of friendship and cooperation with the PRC and strengthen Portugal's projection in the Far East."⁶⁰

Apart from these general points, the objectives of the Portuguese side for the first round of the negotiations, were: to avoid that Beijing became the only formal location of the talks; to use the principle of the non-discrimination, obtaining for

⁵⁷ Silva, *op. cit.*, p.205.

⁵⁸ *South China Morning Post*, 6 January 1986, in FERNANDES, Moisés Silva, *Sinopse de Macau nas Relações Luso-Chinesas, 1945-1995*, Lisbon, Fundação Oriente, 2000, p.408.

⁵⁹ Silva, *op. cit.*, p.205.

⁶⁰ *Ibid.*, pp.205-6.

Macau the same benefits of the Hong Kong agreement; to avoid the definition of the global scheme for the talks; and to get the Chinese delegates to reveal the totality of their positions, in order to evaluate China's intentions.⁶¹ Prime Minister Cavaco Silva wanted the negotiators to get "the Chinese side to reveal, formally or informally, the totality of its proposals without assuming any compromise."⁶²

The Portuguese delegation arrived at the Sino-Portuguese talks without adopting a strategy for Macau's future with the justification that the first meeting would be mainly a methodological discussion, setting the basis for the future process of negotiation.⁶³ In contrast, the PRC announced its official policy regarding the negotiations one month before the talks started.⁶⁴

3.4. The Search for a Formula

The first Sino-Portuguese plenary meeting, to discuss practical details of the talks, took place in Beijing on 30 June and 1 July 1986. The Portuguese delegation was headed by Ambassador Rui Medina, an experienced diplomat who had led the Portuguese delegation in the United Nations, and included: Nuno Loreno, the Portuguese Consul in Hong Kong; Henriques de Jesus, previous Macau under-secretary for the economy; Carlos Gaspar, a presidential adviser who kept Mário Soares entirely informed of the negotiations; João de Deus Ramos, a diplomat, member of the inter-ministerial commission on Macau in the Foreign Ministry in Lisbon; João Ascensão, an administrative member of the staff from the

⁶¹ Document 1, paragraph 6.

⁶² Silva, *op. cit.* p.206.

⁶³ Miranda, Pedro Pires de, *Política Externa Portuguesa, 1985-1987*, Lisbon, Ministério dos Negócios Estrangeiros, 1987, pp.192-193.

⁶⁴ Fernandes, *Sinopse...*, p.410.

Portuguese Mission in the United Nations; and Neto Valério, Portuguese ambassador in Beijing, as an adviser.⁶⁵ Portugal wanted to have a delegate of the governor in the negotiations but, considering Macau Chinese territory, the PRC did not accept a representative from Macau.⁶⁶

Chinese Vice Foreign Minister Zhou Nan led the Chinese delegation, as he had done in the Hong Kong negotiations, that was composed by: Ke Zhengping, delegate of the National People's Congress; Shao Tianren, judicial adviser in the Foreign Ministry; Ke Zhaisuo, director of the Hong Kong and Macau Office in the Foreign Ministry; Chu Hua, department director in the Hong Kong and Macau Office in the State Council; Zhao Jihua, sub-director of the Hong Kong and Macau Office in the Foreign Ministry.⁶⁷ Zhou Nan and Rui Medina knew each other from the UN, where Zhou Nan was very respected, and some suggest that Medina was not at ease with him, making too many concessions during the negotiations.⁶⁸

The Chinese presented the Portuguese delegation with a thick dossier containing the PRC official position⁶⁹ and the basic policies for Macau to be included in the agreement. They clearly intended to adapt the solutions agreed with Britain regarding Hong Kong to Macau. The Portuguese leaders were aware of the advantages and disadvantages of the Hong Kong precedent. On the one hand, this limited the outcome of the Macau negotiations and that the only thing left was to

⁶⁵ Document 1, paragraph 4.

⁶⁶ Interview D.

⁶⁷ Document 1, paragraph 5.

⁶⁸ Interview E.

⁶⁹ Fernandes, *Sinopse...*, p.410.

make the most of the solutions adopted to Hong Kong.⁷⁰ On the other hand, if the point of departure was already the Hong Kong agreement, the Portuguese side could probably extract more concessions.⁷¹ After pressing to the limits the principle of non-discrimination regarding Hong Kong, in the second and third rounds the Portuguese delegates started to invoke the principle of the specificity, using Macau's specificities to obtain advantages, and presented counter-proposals to the Chinese texts.⁷²

The second plenary meeting took place on 9 and 10 September 1986, signalling strong differences of opinion between the Portuguese and Chinese delegations regarding the date for the Macau hand-over and the nationality question.⁷³ The Chinese delegates presented the draft of two annexes to the Joint Declaration: one on the PRC's basic policies regarding Macau and the other on the functioning of the two joint working groups for the transitional period.⁷⁴ They expected the Portuguese negotiators to sign their version of the Macau transfer agreement, and were very upset when Portugal rejected it and presented a counterproposal in the third plenary meeting, on 21 and 22 October 1986.⁷⁵

The Portuguese counterproposal, agreed between Prime Minister Cavaco Silva and President Mário Soares, first agreed with the general outline proposed by the Chinese delegation:

"the delay in the period of the transfer of the administration; the prevision of a period of transition under full Portuguese administration; the guarantee of a subsequent period of fifty years in which

⁷⁰ Silva, *op. cit.* pp. 206-7.

⁷¹ Interview F.

⁷² Document 1, paragraphs 13, 35 and 16.

⁷³ Fernandes, *Sinopse...*, p.410.

⁷⁴ Silva, *op. cit.* p.207.

⁷⁵ Interview G.

the social and economic systems and the way of living, the rights and liberties of the inhabitants of the Special Administrative Region of Macau would remain unchanged, without applying the socialist policies and systems.”

Second, it made comments and suggested reformulations to the drafts of the Joint Declaration and of the first annex that had been delivered by the Chinese side. Then, the Portuguese delegation asked about the exact meaning in the Chinese draft of the terms ‘local inhabitants’ and ‘inhabitants with Portuguese blood ties’.⁷⁶

This third round was more abrasive, and negotiations came to a standstill. A joint working group of three Portuguese and three Chinese representatives was created to solve the impasse.⁷⁷ João de Deus Ramos, delegate of the Ministry of Foreign Affairs, headed the Portuguese side that also included Carlos Gaspar, the President’s political adviser, and Henriques de Jesus, the Prime Minister’s representative. The leader of the Chinese side was Zhao Jihua, Deputy Director of the Hong Kong and Macau Office in the Ministry of Foreign Affairs.⁷⁸ The working group was expected “to discuss and revise all draft agreements and documents that had been worked out during the talks”.⁷⁹

The Chinese leaders aimed at a quick solution of the Macau question to get the agreement ratified in the National People’s Congress in April 1987, before the 13th CCP Congress in September.⁸⁰ The signature of the Joint Declaration would prove the viability of Deng Xiaoping’s “one country, two systems” formula and

⁷⁶ Silva, *op. cit.*, p.207 for the last paragraph.

⁷⁷ Fernandes, *Sinopse...*, p.411.

⁷⁸ *Ibid.*, p.414.

⁷⁹ “Chinese Foreign Minister Reports on Macau Accord to Fifth NPC Session”, Xinhua News Agency, Beijing, 2 April 1987, in *Summary of World Broadcasts*, 4 April 1987, FE/8534/C1/1-4.

⁸⁰ Silva, *op.cit.*, p.206.

his open-door policy, strengthening the leader's position at a time of domestic instability in the PRC. However, the Portuguese leaders were not interested in a bad agreement, and had no rush to conclude the negotiations.⁸¹

China wanted to solve the problematic issues with the Portuguese leaders before the following plenary meeting of the two delegations in Beijing. With this purpose, Zhou Nan made an official visit to Portugal on 17 to 22 November, accompanied by Zhao Jihua and Han Zhaokang from the Ministry of Foreign Affairs.⁸² Initially, Zhou Nan's visit may have been interpreted merely as a courtesy or a diplomatic compensation for the absence of negotiation rounds held in Lisbon, but it clearly turned into something more substantial,⁸³ and was integrated in the negotiation process.

The Portuguese leaders perceived this visit as a victory, since during the Hong Kong negotiations the Chinese delegation had required that all the meetings took place in Beijing.⁸⁴ They seized the opportunity to strengthen Portugal's negotiating position, to the extent of causing sudden modifications to the official program of the visit.⁸⁵ Instead of putting the more important and sensitive issues on the negotiating table during the third plenary meeting in October, the Portuguese strategy was to confront Zhou Nan with those issues during his visit to Lisbon.

⁸¹ Chang, Jaw-ling, "Settlement of the Macao Issue: Distinctive Features of Beijing's Negotiating Behavior", *Case Western Reserve Journal of International Law*, vol.20, no.1, Winter 1988, pp.267-69.

⁸² Fernandes, *op. cit.*, p.412.

⁸³ *Expresso*, 22 November 1986.

⁸⁴ See Silva, *op. cit.*, p.207.

⁸⁵ *Expresso*, 22 November 1986.

3.5. Details of the Negotiations

During Zhou Nan's official visit to Portugal in November 1986, the head of the Chinese delegation discussed with the Portuguese leaders the most sensitive issues of the negotiations: the dates for initialising and signing the Joint Declaration; the date for the entrance into functions of the Joint Liaison Group and its localisation, which Portugal feared that China could use to interfere in the administration of Macau during the transition period; the date for the transfer of the administration of the territory; and the nationality of around 80,000 Chinese citizens with Portuguese nationality in Macau, which Portugal did not intend to abandon.⁸⁶

On the subject of the Joint Liaison Group, Zhou Nan said that China would accept the Portuguese position: the group would meet in turns in Beijing, Lisbon and Macau, and would settle in Macau only one year after the signature of the agreement.⁸⁷ However, the other two issues were great sources of dissension.

The date for the transfer of the Portuguese administration to the PRC was the most sensitive issue. As quoted in the previous section, Prime Minister Zhao Ziyang told President Ramalho Eanes, during their meeting on 22 May 1985, that it was desirable that the resumption of Chinese sovereignty over Macau and Hong Kong took place simultaneously. The Chinese leaders seemed deeply engaged in persuading the Portuguese side to accept a simultaneous reversion of the two territories and were keen in publicising their position in selected newspapers.

⁸⁶ Silva, *op. cit.*, p.208.

⁸⁷ Silva, *op. cit.*, p.208.

One of the traditional pressure tactics applied by the Chinese leaders during the Sino-Portuguese negotiations was the use of the press to publicise their intentions, treating the Portuguese government as a member of the audience to restrain its negotiating position. On 16 March 1985, even before the launch of the negotiations, a Hong Kong paper announced the existence of a Chinese provisional plan known among the government as the 'simultaneous solution', indicating a simultaneous reunification of Macau and Hong Kong in 1997.⁸⁸

The Portuguese government strongly objected to the Chinese suggestion of a British and Portuguese simultaneous withdrawal and to the integration of Macau in the Hong Kong Special Administrative Region or in the adjacent Zhuhai Special Economic Zone. They argued that Macau and Hong Kong were different entities and therefore a different date should be set and a different SAR should be created. Besides, Macau was not as developed as Hong Kong and it was a more complex issue, harder to settle.⁸⁹

Knowing that Zhou Nan wanted to return to Beijing with this issue resolved, Cavaco Silva, Pires de Miranda and Mário Soares decided that this would not happen: instead, they tried to find out which was the last acceptable day that China would accept for the handover.⁹⁰ At this stage of the negotiations, there was a perfect articulation between the Prime Minister, the Foreign Minister and the President.⁹¹ First, Zhou Nan met Pires de Miranda without achieving consensus regarding the date. Then, he met Cavaco Silva and was visibly upset when the

⁸⁸ Fernandes, *Sinopse...*, p.401.

⁸⁹ *Ibid.*, p.424.

⁹⁰ Silva, *op. cit.*, pp.208-9.

⁹¹ Interview G.

Prime Minister suggested a longer transition period than the one desired by the PRC. He expected that the Prime Minister was the one to make the concession regarding the date, and was very surprised when he realised that Cavaco was in consonance with Pires de Miranda.⁹²

Zhou Nan reminded the Portuguese Prime Minister that China was a superpower with one billion people, but Cavaco simply recalled the importance of friendship and cooperation in the negotiations and asked him to consider the advantage of a larger transition period to the stability of Macau – Portugal could finish the infrastructure projects in progress and prepare a calm transition.⁹³ Later, Zhou Nan met Mário Soares in a session behind close doors that was expected to last half an hour and lasted two hours; afterwards he avoided the appointment he had made with the press, claiming that he was short of time.⁹⁴ Zhou Nan did not expect the President to deal with specific issues such as the date.⁹⁵ The President was inflexible and did not make any concessions.⁹⁶

Afterwards, President Soares convened a working session with Cavaco Silva and Pires de Miranda on the negotiations with Zhou Nan, focusing on the date of the hand-over. The Prime Minister and the Foreign Minister's position was that China would not accept the Portuguese administration of Macau after the end of 1999 and that, being this a major issue to the PRC, negotiations would be deadlocked until agreement on the date was reached. Pires de Miranda recalled that when the Sino-British negotiations on Hong Kong arrived at a standstill Britain was forced

⁹² Interview F.

⁹³ Silva, *op. cit.*, pp.208-9.

⁹⁴ *Expresso*, 22 November 1986.

⁹⁵ Interview F.

⁹⁶ Silva, *op. cit.*, p.209.

to make concessions. But the President was not convinced that the end of the century was the deadline. It was decided that Pires de Miranda would suggest to Zhou Nan that it was still possible to reach agreement before the end of April and that both sides should analyse carefully each other proposals.⁹⁷

The unexpected meeting between Zhou Nan and Pires de Miranda cancelled Zhou's tour programme for the afternoon.⁹⁸ The press speculated that during the meeting, Zhou Nan threatened to annex Macau if Portugal did not accept to handover the territory before the year 2000, but the spokesman of the Portuguese Ministry of Foreign Affairs denied any ultimatum of annexation, declaring that negotiations were being held in an environment of mutual respect.⁹⁹ In his autobiography, the Prime Minister Cavaco Silva confirmed that Zhou Nan was tough and threatened the Minister of Foreign Affairs with the unilateral resolution of the question, suggesting that Chinese flexibility in other areas of the negotiations depended on the resolution of the date issue.¹⁰⁰

The Chinese threat of annexation had a strong impact among the Portuguese leaders. The Portuguese leaders worked in perfect coordination and held several meetings to chose the approach to Zhou's proposals, but the President was much more incisive than the Prime Minister or the Minister of Foreign Affairs.¹⁰¹ He met with Zhou Nan and asked him to justify the declarations he had made to Pires de Miranda.¹⁰² The meeting was extremely important to stress Portugal's

⁹⁷ *Ibid.*, for the last paragraph.

⁹⁸ *Expresso*, 22 November 1986.

⁹⁹ *Diário de Notícias*, 10 January 1987.

¹⁰⁰ Silva, *op. cit.*, pp.209-10.

¹⁰¹ *Expresso*, 22 November 1986.

¹⁰² Fernandes, *Sinopse...*, p.412.

determination regarding the main issues under negotiation. Soares personality was very important to respond to Zhou Nan's threat: When Zhou said his famous sentence that he was responsible for one billion Chinese, Soares replied that he was responsible for 10 million Portuguese.¹⁰³

After these events, Zhou Nan and his entourage made a tour to the North of Portugal with Pinto Machado, the Macau Governor and avoided the press, saying that both sides had agreed to keep the details secret. Nevertheless, in a television interview he said that the Portuguese Government must understand that China aspired to national reunification before the end of the twentieth century.¹⁰⁴ The second stage of Zhou's visit started with his return to Lisbon. While the first stage had made much damage, in the second stage he had a conciliatory conversation with Soares, in which there was confluence of interests. The Chinese leaders did not want any problems with Portugal because of Taiwan.¹⁰⁵

After Zhou Nan's visit to Lisbon, on 8 December, the Sino-Portuguese working group, created during the third plenary meeting, met but did not achieve a breakthrough on the issue of the date.¹⁰⁶ The Portuguese counterproposal to the agreement was examined but the Chinese side made clear that comments on the other points would not be made before the formal communication of the date for the transfer of the administration.¹⁰⁷ To the speculations of the Hong Kong press about the divergences between Portugal and China over the date of Macau's

¹⁰³ Interview H.

¹⁰⁴ *O Tempo*, 8 January 1987 and "China Optimistic About Quick Solution of Macau Issue", Lisbon, Xinhua, 23 November 1986, in *Summary of World Broadcasts*, 25 November 1986, FE/8425/A1/2.

¹⁰⁵ Interview H.

¹⁰⁶ Interview E.

¹⁰⁷ Silva, *op. cit.*, 209-10.

reversion, the Chinese leaders replied that they would recover Macau before the year 2000.¹⁰⁸ “The question of the date for Macau’s reintegration was already clearly explained by the Vice Foreign Minister, Zhou Nan” and the Chinese people would not agree that it surpassed the year 2000.¹⁰⁹

The Chinese leaders were even more upset with the circulation of articles in the Portuguese press suggesting that the later Macau’s retrocession took place the better. On 28 December appeared in the press an opinion article of socialist MP António Barreto, a close adviser to Mário Soares, suggesting the years 2007 or 2017 for the handover, signalling the 450th or 500th anniversary of the Portuguese presence in Macau.¹¹⁰ These authors were fiercely criticised by the *Aomen Ribao*, China’s official mouthpiece in Macau:

“this kind of interference in the process of negotiation is a huge impudence. If they think that the consideration that China have displayed regarding Portugal’s interests is a demonstration of weakness...they are deeply wrong.”¹¹¹

The Chinese side did not understand that Barreto’s article expressed a personal rather a state opinion, the Chinese government published two days after a formal diplomatic communication saying that “it was a determinant and firm position of the Chinese government and people to recover Macau before the year 2000”.¹¹² The Chinese position, which the Portuguese government had known through secret negotiations, was thus made official.¹¹³ The Portuguese leaders were

¹⁰⁸ “China Seeks Return of Macau Before 2000”, Beijing, 31 December 1986, in *Summary of World Broadcasts*, 1 January 1987, FE/8454/i.

¹⁰⁹ *O Tempo*, 8 de Janeiro de 1987.

¹¹⁰ *Diário de Notícias*, 28 December 1986.

¹¹¹ *O Tempo*, 8 de Janeiro de 1987.

¹¹² Silva, *op. cit.*, p.210.

¹¹³ *Ibid.*.

conscious that the Chinese were very upset and that they had to decide on their final position on the more problematic issues of the talks.

The Portuguese negotiators perceived that the year 2000 was an unsurpassable deadline for the Chinese delegates. First, in 1984 Deng Xiaoping had indicated that the Macau question would be solved before that.¹¹⁴ Second, as the ultimate aim of the Chinese government was Taiwan, China wanted to implement a dynamics in the reunification process that was not compatible with such long processes: two years between the two handovers was manageable, but nine years was too long, as many things could happen in Hong Kong.¹¹⁵ Besides, a long period between the Hong Kong and the Macau handovers could have negative effects in Macau: the new government of Hong Kong could create problems for the Portuguese administration in Macau.¹¹⁶

The Portuguese negotiators realised that the costs to press the Chinese for a date after the year 2000 were bigger than any possible rewards obtained.¹¹⁷ China said that all the concessions made up to that point of the negotiations were cancelled until the date issue was settled, and Portugal wanted to safeguard other interests: to have a Portuguese bank (Banco Nacional Ultramarino) responsible for the production of Macau's banknotes; the preservation of the statute of the Catholic church in Macau; and the location of the JLG's meetings. China wanted them to take place in Macau to better control the administration, but Portugal wanted the

¹¹⁴ "Deng Xiaoping Says Macau Problem Can Be 'Kept Aside'", *Wen Wei Po*, Hong Kong, 7 October 1984, in *Summary of World Broadcasts*, 10 October 1984, FE/7770/A3/2 and 3.

¹¹⁵ Interview I.

¹¹⁶ Interview J.

¹¹⁷ Interview I.

administration to be as independent as possible and claimed that some meetings should take place in Lisbon and Beijing.¹¹⁸

The Prime Minister believed that “Portugal should present a date proposal before the following round of negotiations to avoid fruitless tensions and to get in return China’s flexibility regarding other matters under discussion.” Remaining in Macau after the year 2000 could lead to the breakdown of the negotiations and to a Chinese unilateral declaration about Macau.¹¹⁹ Portugal had accepted in the *Acta Secreta* and in the Portuguese Constitution that Macau was Chinese territory, and it made no sense to delay the date of the handover. One senior participant in the negotiations suggested that Portugal did not have anything to gain in staying a couple more years in Macau: it would be bad for the relations with China and after the transfer China would quickly remove all traces of the Portuguese presence in the territory.¹²⁰

However, President Soares insisted that the handover should be in 2003 or 2007, the two dates appointed for the 450 anniversary of the official Portuguese settlement in Macau. Some argue that Soares insisted that the handover was after 2003 because the gambling contract in Macau was valid until 2002.¹²¹ The circumstances of the signature of this contract deserve some attention, although this issue is analysed in more detail in chapter five. On 25 September 1986, Carlos Monjardino, Macau under-secretary for economics, finances and tourism, threatened with a possible unilateral withdrawal from Macau: “We will withdraw

¹¹⁸ Interview F.

¹¹⁹ Silva, *op. cit.*, p.211.

¹²⁰ Interview F.

¹²¹ Interview E.

early if we are not happy about the way things go. We have nothing to lose, and we don't want to lose face... like the British kicked out of Hong Kong.”¹²²

This threat had immediate consequences, as for already mentioned reasons China wanted to avoid this at all costs. Four days later, the STDM (Society of Tourism and Diversions of Macau) obtained the monopoly of the gambling industry until 2002, and in exchange agreed to give a certain amount of money to a foundation – the Orient Foundation presided over by Carlos Monjardino.¹²³ Monjardino, as most of the Portuguese administration in Macau at the time, was very close to Mário Soares and to the Socialist Party, and this may explain Soares' reluctance to accept an earlier date for the handover.¹²⁴

The Prime Minister, the Foreign Minister and the President assembled on 3 January 1987, and on 6 January 1986 the President convoked the State Council,¹²⁵ to achieve an inter-institutional consensus on the Sino-Portuguese negotiations.¹²⁶ This State Council meeting, crucial to a breakthrough in the negotiations, was characterised by a strong disagreement between previous President Ramalho Eanes and Prime Minister Cavaco Silva on the subject of the *Acta Secreta*.¹²⁷ These disagreements deserve some consideration, as they help to explain the difficulties that the Portuguese leaders had in presenting a united position in the

¹²² *Far Eastern Economic Review*, 25 September 1986.

¹²³ Document 2, p.25.

¹²⁴ Interview E.

¹²⁵ Silva, *op. cit.*, p.211.

¹²⁶ Fernandes, *Sinopse...*, p.418.

¹²⁷ *Expresso*, 10 January 1987.

negotiations, although it seems that the Chinese did not react significantly to this controversy.¹²⁸

At the time of the negotiations, a political party from the opposition complained in the parliament that Portugal and China had signed a secret agreement in 1979 that had not been ratified by the parliament and therefore was not valid, and asked for the submission of the agreement for ratification. As the *Acta* was a memorandum and not an agreement, Prime Minister Cavaco Silva concluded that the *Acta* did not require ratification. Meanwhile, the controversy had assumed huge proportions in the press and Cavaco, fearing its impact on public opinion, wanted to show that he was not responsible for this agreement. He had maintained the *Acta* secret to respect the position of the previous governments, but at this time he informed President Soares that he would reveal the *Acta* in the State Council, and Soares did not oppose this.¹²⁹

During the State Council meeting, Silva also presented other documents relevant to Sino-Portuguese relations, mainly regarding the negotiations in Paris for the establishment of diplomatic relations with China in 1979, such as the Joint Communiqué on the resumption of diplomatic relations and the proposal of the then Prime Minister Mota Pinto of four amendments to this agreement, from which the Chinese side only accepted three.¹³⁰ Two days after the meeting, the presidency of the Cabinet released a communiqué to elucidate the other

¹²⁸ Interview F.

¹²⁹ *Ibid.*, for the last paragraph.

¹³⁰ *Diário de Notícias*, 7 January 1987.

politicians, the public opinion and the press on the Portuguese policy regarding China and Macau.¹³¹

The communiqué reviewed Sino-Portuguese relations post-1974 and quoted the most relevant documents, namely the unilateral statement of the Portuguese Ministry of Foreign Affairs sent to press on 6 January 1975 stating that the new Portuguese regime wanted to establish diplomatic relations with the PRC; the secret political directive approved on 14 June 1978 by the Portuguese Cabinet giving Ambassador Coimbra Martins specific instructions on the negotiations with China; and part of the first paragraph of the secret memorandum.¹³²

The communiqué also mentioned Eanes' responsibility on the Sino-Portuguese negotiations on Macau, quoting the communiqué signed in Beijing in 1985 in which both countries "agreed to enter into talks through diplomatic channels, in the near future, to settle the question of Macau".¹³³ The negotiations, which had started in 1986, had developed within a "friendly environment". The Cabinet also recalled that although the Government was in charge of Portuguese foreign policy, in the case of Macau (and Timor) "the Portuguese Constitution points to a co-responsibility of the President and the Government."¹³⁴ Prime Minister Cavaco Silva did not want to be accused for the responsibilities assumed by the previous governments.¹³⁵

¹³¹ Fernandes, *Sinopse...*, p.419.

¹³² *Diário de Notícias*, 9 January 1987. For a closer analysis of the mentioned documents see chapter two.

¹³³ *Expresso*, 10 January 1987 and *Diário de Notícias*, 9 January 1987.

¹³⁴ *Diário de Notícias*, 9 January 1987.

¹³⁵ Silva, *op. cit.*, p.212.

At the end of the 6 January 1986 State Council meeting, President Soares made a statement on the process of negotiation: there was a consensus over the Portuguese strategy to the negotiations, and that the only request regarding the date for the transfer of the administration of Macau was that it occurred after the Hong Kong hand-over. In the meeting, it was determined that the Portuguese decision on the date would be communicated through a special envoy rather than by the head of the Portuguese delegation or by the Portuguese ambassador in Beijing, as “a sign of the importance that Portugal attached to the relations with China.”¹³⁶

On January 1987, the Portuguese Secretary of State for Foreign Affairs and Cooperation Azevedo Soares visited Beijing to communicate the Portuguese position on the date of Macau’s transition.¹³⁷ He also gave a verbal message from Cavaco Silva¹³⁸ and “was instructed to stress that the decision regarding the date had been taken after an important meeting of the Council of State and that the Portuguese government wanted the already appointed working group to prepare the texts of the agreement restarted immediately its tasks.”¹³⁹

All the State Council members knew that China would not accept a date after the year 2000, and the date was not a vital issue for Portugal. However, it was decided that Azevedo Soares would insist on a wider transition period to get Chinese counterparts, and he had no instructions to cede.¹⁴⁰ Nevertheless, he returned to Portugal saying that the limit was 31 December 1999 and that, for practical

¹³⁶ *Ibid.*, pp.211-12 and 215.

¹³⁷ Fernandes, *Sinopse...*, p.420.

¹³⁸ *Diário de Notícias*, 26 January 1987.

¹³⁹ Silva, *op. cit.*, p.215.

¹⁴⁰ Interview H.

reasons, Zhou Nan suggested that the handover took place some days before – due to Christmas and New Year, and because if the handover took place on 31 December 1999 the Joint Liaison Group could not meet to solve any remaining problems, as its functions should cease on 1 January 2000.¹⁴¹

On his return to Lisbon, Azevedo Soares stated that a fourth plenary meeting would take place and that many issues remained open, namely the date for the hand-over.¹⁴² Pires de Miranda confirmed that “all the questions would only be closed with the signature of the agreement.”¹⁴³ Nevertheless, there was a significant progress on talks and Portugal even got some improvement in China’s initial positions.¹⁴⁴ On 16 February the joint working group met to finish the texts of the agreement. On 14 March the Portuguese and Chinese Ministries of Foreign Affairs issued a joint communiqué announcing simultaneously the decision of holding the fourth plenary meeting that would take place in Beijing from 18 to 23 March 1987.¹⁴⁵

The date having been settled, the nationality of the citizens holding Portuguese passports became the most important question of the negotiations.¹⁴⁶ The Portuguese negotiators raised the nationality question during the second round of the negotiations and always related to with the issue of the date. In the last round, what was at stake was whether the memoranda on the nationality issue that had been negotiated were signed or not. The Portuguese said that they would only sign

¹⁴¹ Document 1, paragraph 19. [confidential]

¹⁴² *Diário de Notícias*, 26 January 1987.

¹⁴³ *Diário de Notícias*, 30 January 1987.

¹⁴⁴ Silva, *op. cit.*, p.215.

¹⁴⁵ Fernandes, *Sinopse...*, pp.423-24.

¹⁴⁶ *Diário de Notícias*, 20 March 1987.

the Joint Declaration in April if the Chinese accepted the memoranda on nationality.¹⁴⁷

The disagreement between Portugal and China on the nationality of the Chinese citizens of Macau holding Portuguese passports before the transfer of the administration derived from the fact that China's conception of nationality was based on an ethnical criteria while Portugal's attribution of Portuguese nationality was territorial. For China, nationality was not a political but a formal problem, as it was humiliating to have ethnic Chinese citizens preferring Portuguese nationality to Chinese nationality.¹⁴⁸ The Chinese Nationality Law attributed Chinese nationality to "every person born in China whose parents are Chinese nationals or one of the parents is Chinese national".¹⁴⁹ Portuguese Nationality Law attributed Portuguese nationality to the "children of Portuguese father and Portuguese mother born in Portuguese territory or in territory under Portuguese administration."¹⁵⁰

The articulation of these two positions would result in the attribution of dual Portuguese and Chinese nationality to a large sector of the Macau inhabitants, namely the Macanese.¹⁵¹ As "the PRC does not recognise dual nationality to any Chinese national,"¹⁵² Chinese negotiators proposed that those with Portuguese and

¹⁴⁷ Interview G.

¹⁴⁸ Interview K.

¹⁴⁹ Nationality Law of the People's Republic of China, 10 September 1980, article 4th, in document

1.

¹⁵⁰ Nationality Law of the Portuguese Republic, n^o 37/81, 3 October 1981, article 1st, in document

1.

¹⁵¹ Macanese are usually considered: people of Chinese and Portuguese mixed blood; children of Chinese father and mother born in Macau when the above legislation was in force; people of mixed blood born in Macau.

¹⁵² Nationality Law of the People's Republic of China, 10 September 1980, article 3rd, in document

1.

Chinese nationality in which the Portuguese nationality was based in the *jus soli* – on the fact that the person was born in Portuguese territory and not in consanguinity – should have the right to chose.¹⁵³ The Portuguese side strongly rejected this proposal as Portugal only had one type of nationality and did not make a distinction on the source of the nationality, and the right of choice would create instability and could increase the registration of ethnic Chinese as Portuguese nationals.¹⁵⁴

The Portuguese position was that the citizens that had the nationalities of the two countries could renounce to one of them if they wanted to. As a consequence, some citizens could have both Portuguese and Chinese passports, as long as the Portuguese passport was obtained before the end of the Portuguese administration.¹⁵⁵ The Portuguese government argued that this approach safeguarded Macau's stability and that a restrictive position could lead many people to abandon Macau, endangering the preservation of the Portuguese presence after the transfer of the administration.¹⁵⁶

The British government was concerned that Portugal obtained a more advantageous statute for the Macau Chinese holding Portuguese passports than they had obtained for the Hong Kong ethnic Chinese holding British citizenship. In Hong Kong, the inhabitants that in the British Nationality Act of 30 October 1981 had the status of "British Dependent Territories Citizenship" passed to be merely holders of the "British Overseas Citizenship." They obtained passports

¹⁵³ Document 1, paragraphs 47-50.

¹⁵⁴ *Ibid.*, paragraphs 50-52.

¹⁵⁵ *Ibid.*

¹⁵⁶ Silva, *op. cit.*, p.208.

with less status and international recognition,¹⁵⁷ as they only give access to “British consular services and protection in third countries,” and did not grant the right of entry and abode in the United Kingdom.¹⁵⁸ As the Chinese Hong Kong inhabitants did not hold a full British passport, the British did not worry to discuss the nationality issue after the transition.¹⁵⁹

The Portuguese negotiators were not interested in this arrangement allegedly for legal reasons: they could not deny Portuguese nationality to those who already had it,¹⁶⁰ and could not accept anything that was illegal under the Portuguese Nationality Law.¹⁶¹ The parliament would hardly approve alterations in the Law, as it would be a great source of instability.¹⁶²

The British government did not appreciate the Portuguese “permissiveness” that could lead to the immigration of ethnic Chinese from Macau to the United Kingdom, due to the European laws.¹⁶³ Besides applying many pressures at the bilateral level, Britain raised the issue in the European Economic Community (not formally, but through messages) complaining that the Portuguese administration distributed passports very easily and was contributing to raise the number of citizens with right of entry and free transit within the EEC.¹⁶⁴ Portuguese nationality law was particularly generous (namely with regard to the former

¹⁵⁷ Document 1, paragraph 116.

¹⁵⁸ Chang, *op. cit.*, p.264.

¹⁵⁹ Interview F.

¹⁶⁰ Interview D.

¹⁶¹ Interview F.

¹⁶² Chang, *op. cit.*, p.265.

¹⁶³ Silva, *op. cit.*, p.216.

¹⁶⁴ Interview F.

Portuguese colonies in Africa), and Portugal had no advantage to multilateralise the issue, and therefore did not press China to sign dual nationality treaties.¹⁶⁵

The Portuguese and Chinese delegations did not achieve a consensus in all the issues regarding nationality, so their different positions were written in two different memoranda, exchanged during the initialisation of the Joint Declaration. Portugal found this a satisfactory solution as the memorandum implemented the typical mechanism of double nationality.¹⁶⁶ Although the Chinese Nationality Law excluded the possibility of dual nationality, through the memoranda Portugal was able to safeguard the integral application of the Portuguese legislation on citizenship and passports.¹⁶⁷

Portuguese passport holders on the day of the hand-over, including the ethnic Chinese, were given the right of abode. They could use the Portuguese passport – which China called ‘Portuguese travel documents’ – outside China and Macau, even if the inhabitants that had Chinese nationality under Chinese law could not invoke being Portuguese citizens within Chinese territory.¹⁶⁸ It is arguable that it was China who extracted benefits from the dual nationality, as Portugal was not interested in having too many Chinese in Lisbon. However, the Portuguese government considered that the best way to avoid a mass exodus of Chinese from Macau before the handover was to give them the guarantee that they could remain with a Portuguese passport.

¹⁶⁵ Interview H.

¹⁶⁶ *Ibid.*

¹⁶⁷ Document 1, paragraph 116.

¹⁶⁸ Silva, *op. cit.*, p.216.

The nationality issue was only definitively settled by the Foreign Ministry and by the Joint Liaison Group in the final stage of Cavaco Silva's government.¹⁶⁹ The memorandum signed with the Macau Joint Declaration did not refer to the descendants of those with Portuguese nationality. The alteration in the Portuguese Nationality Law of 1981 predicted the *jus sanguinis*: children of Portuguese passport's holders were Portuguese and had the right to hold Portuguese passports, even if born outside of Macau. The Portuguese delegation in the JLG tried to improve the status of the Portuguese descendants, but the Chinese used this opportunity to request lists of the Chinese that held Portuguese passports.¹⁷⁰

The aims of Portugal and China at this final stage of the process of negotiation were few but far-reaching: the Chinese Government wanted to avoid a crisis that would have consequences on the other analogous cases in view – namely Taiwan; Portugal wanted to secure the dignity of the Portuguese state, to safeguard the Macau citizens with Portuguese nationality, and to avoid the extinction of the Portuguese vestiges in Macau.¹⁷¹ As said before, Portugal had not formally accepted an exact date for the transfer of administration until the last round, and used this to drag the negotiations and to obtain concessions from China.¹⁷² The Chinese negotiators were limited by the deadline imposed by their leaders: the Joint Declaration must be signed on time to be ratified in the National People's

¹⁶⁹ Interview F.

¹⁷⁰ Interview H.

¹⁷¹ *Diário de Notícias*, 18 March 1987.

¹⁷² Interview H.

Congress in April 1987, so that the 13th CCP Congress in September could announce the reunification of Hong Kong and Macau.¹⁷³

The last round of the negotiations, that took place from 18 to 23 March 1987, had two phases, as the delegations held two meetings and had time for reflection between them. During the first, the Portuguese delegates used the issue of the date to obtain Chinese concessions:¹⁷⁴ the freedom of religion and belief of the inhabitants of Macau and the statute of the Catholic Church in the territory; the protection of Macau's cultural relics; and the continuation of the *Banco Nacional Ultramarino* responsibility for the production of Macau's banknotes (although China did not directly refer to this issue in the Joint Declaration).¹⁷⁵

The nationality and the pensions fund (examined in more detail in the following chapter) were settled in the second stage of the last round.¹⁷⁶ While the plenary meeting was taking place in Beijing, the Portuguese State Council assembled on 21 March 1987 to analyse the terms and approve the final version of the Joint Declaration and to assure the respect for the Portuguese passports.¹⁷⁷ The only doubts raised in the State Council regarded the nationality issue. The Portuguese Communist Party questioned the protection offered by the Portuguese government to the ethnic Chinese Macau citizens fearing their massive emigration to Portugal, to which the Prime Minister replied that attributing them Portuguese consular

¹⁷³ Silva, *op. cit.*, p.206.

¹⁷⁴ Interview H.

¹⁷⁵ Silva, *op. cit.*, pp.216-217.

¹⁷⁶ Interview H.

¹⁷⁷ Fernandes, *Sinopse...*, p.425.

protection abroad and the liberty of travelling from and to Macau at anytime was the best way to avoid an exodus from Macau.¹⁷⁸

Prime Minister Cavaco Silva presented to the State Councillors the main lines of the agreement stressing that China would recover sovereignty over Macau on 20 December 1999 and the territory would become a Special Administrative Region with a high degree of autonomy and independent executive, legislative and judicial powers, being the respect of the rights and personal liberties of its inhabitants assured and the use of Portuguese language in governmental instances could be used along with the Chinese.¹⁷⁹

The final communiqué of the fourth plenary meeting declared that the Sino-Portuguese Joint Declaration would be initialled on 26 March by the heads of the two delegations.¹⁸⁰ On that day, Rui Medina and Zhou Nan, initialled in Beijing the “Joint Declaration of the Government of the Portuguese Republic and the Government of the People’s Republic of China on the Question of Macau” and two annexes: “Elaboration by the Government of the People’s Republic of China of its basic policies regarding Macau” and “Arrangements for the transitional period”. While initialling the accord, the Portuguese and Chinese Governments also exchanged memoranda on the question of passports for the Portuguese citizens of Macau. The text of the agreement was made public on the same day.¹⁸¹

¹⁷⁸ Silva, *op. cit.*, p.218.

¹⁷⁹ *Ibid.*, p.217.

¹⁸⁰ Fernandes, *Sinopse...*, p.425.

¹⁸¹ “Chinese Foreign Minister Reports on Macau Accord to Fifth NPC Session”, Xinhua News Agency, Beijing, 2 April 1987, in *Summary of World Broadcasts*, 4 April 1987, FE/8534/C1/1-4.

The Joint Declaration was signed on 13 April 1987 by the Portuguese and Chinese Prime Ministers, in a ceremony that Cavaco Silva described as “solemn and very honourable”. The Chinese government did not want to have the Macanese officially represented in the ceremony: from the 50 personalities of Macau and Hong Kong invited by China only two were Macanese – the president of the Legislative Assembly, Carlos d’Assunção, and the lawyer and writer Henrique de Senna Fernandes. Governor Pinto Machado was invited only in the quality of adviser of the Portuguese State Council, and Carlos Monjardino and Mário Cordeiro, Macau Under-Secretaries, were merely nominal guests of the Portuguese government.¹⁸²

This absence of the Macanese, not only during the negotiations but also in the ceremony of the signature of the agreement, caused considerable resentment. Although it was China who did not accept the inclusion of the Macanese in the process, the truth is that Portugal did not consider this a key issue in the negotiations. The Portuguese side probably considered that this would endanger the strategic purpose of non-confrontational negotiations, as the Chinese negotiators constantly reiterated the principle that they would not accept representatives from Macau in the negotiations.

3.6. The Agreement

The Sino-Portuguese Joint Declaration on the Macau question was the guarantee assumed before the Macau people and the international community that the

¹⁸² Fernandes, *Sinopse...*, p.429.

territory would have a high degree of autonomy, would be ruled by “local inhabitants” and that its socio-cultural identity and traditions would be protected.¹⁸³ By signing the Declaration, Portugal and the PRC engaged in defending the autonomy and specificity of Macau and in maintaining its institutions and laws, such as rights and privileges, its economic and social system and its way of living.

A few hours before the initialisation of the Sino-Portuguese Joint Declaration in Beijing, Cavaco Silva addressed the Portuguese people in Lisbon in a communication about “Macau’s future”. He evoked the role of Macau as an encounter of the Portuguese/Occidental and Chinese/Oriental cultures since the beginning of the sixteenth century, and alluded to Sino-Portuguese relations since the establishment of diplomatic relations in 1979, mainly referring to the negotiations on Macau reversion. The communication stated that the negotiations had been “long and sometimes hard” but that overall Portugal took into consideration China’s interest and China respected Portugal’s objectives: “to assure an ordered transfer of the territory and to safeguard, in the medium and long term, the legitimate interests and expectations of the citizens of Macau”; “to reinforce the Portuguese presence in the region”; and “to develop its relations with China”.¹⁸⁴

After summarizing the main lines of the Sino-Portuguese Joint Declaration, Cavaco Silva reiterated that the Portuguese side had attained all the proposed objectives: the agreement guaranteed the Portuguese presence in Macau until the

¹⁸³ Joint Declaration of the Government of the PRC and the Government of the Republic of Portugal on the Question of Macau, paragraph 2.

¹⁸⁴ *Diário de Notícias*, 26 March 1987 for the all paragraph.

year 2000 and the maintenance of the system in force until 2050; and there were conditions to reinforce Portugal's presence in Macau and its projection in the Orient. For Portugal it had been an honourable negotiation, lead by the Prime Minister in consonance with the President – who according to the Constitution had special powers regarding Macau – with integrity and a strong sense of state, safeguarding Portuguese interests.¹⁸⁵

In terms of domestic policy, Cavaco Silva's communication could not come at a better time. Two days before, an opposition party (the PRD, headed by previous President Ramalho Eanes) had announced the proposal of a motion of censure to the government opening an internal political crisis, which the Prime Minister intentionally ignored stressing that he would sign the Joint Declaration in Beijing in April.¹⁸⁶ On 3 April 1987 the parliament accepted the motion of censure and the government was dismissed. The internal political crisis did not affect the negotiations with China. Despite the fall of the Government on 3 April, President Mário Soares allowed Prime Minister Cavaco Silva to go to Beijing in the plenitude of his powers, avoiding any delays in the signature of the Joint Declaration.¹⁸⁷

Public opinion was mainly impressed by the consensus that the agreement had achieved: for once all the political parties expressed a coincident opinion and praised the Joint Declaration. It was believed that the Macau question had been treated with a rare sense of state: the President, the Government and the political parties had worked as a whole and the interest of the whole rose above the interest

¹⁸⁵ *Ibid.*

¹⁸⁶ Silva, *op. cit.*, p.218.

¹⁸⁷ *Expresso*, 17 April 1987.

of the sides, strengthening Portugal's negotiating position.¹⁸⁸ Treating Macau as a national issue, the Prime Minister and the President sought advice from the State Council and consulted the political parties that were not represented there:¹⁸⁹ on 16 and 17 March 1987, ten days before the initialisation of the accord, the Prime Minister personally informed the delegations of the different political parties about the content of the negotiations.¹⁹⁰

Portuguese public opinion generally accepted the secrecy of the negotiations as "justifiable, both from the Portuguese and the Chinese side, with the necessity of the good progress of the negotiations and the maintenance of the stability in Macau."¹⁹¹ However, the press criticised the strict policy of confidentiality regarding the negotiations, namely the absence of a parliamentary debate in Lisbon¹⁹² and the non-consultation of the Macanese during the process of negotiation; the Macanese argue that they had no say in the matter and that the future was negotiated behind their backs.¹⁹³ Mário Soares argued that the defence of the national interest required some discretion on some areas of the Sino-Portuguese negotiations, which could not be exposed to excessive publicity.¹⁹⁴

Other criticisms were made to the Portuguese delegation, for being "penetrated with methodological vices that politically affected her and had an influence upon the negotiation"¹⁹⁵ and for negotiating in nine months what Britain negotiated in

¹⁸⁸ *Ibid.*

¹⁸⁹ *Diário de Notícias*, 9 March 1987.

¹⁹⁰ Fernandes, *Sinopse...*, p.424.

¹⁹¹ *Diário de Notícias*, 11 April 1987.

¹⁹² *Diário de Notícias*, 28 December 1986. See also *Diário de Notícias* 28 January 1987.

¹⁹³ *Diário de Notícias*, 11 April 1987.

¹⁹⁴ *Diário de Notícias*, 9 March 1987.

¹⁹⁵ *Seminário*, 19 December 1987.

two years.¹⁹⁶ The Portuguese leaders, however, considered the Sino-Portuguese Joint Declaration “very positive,” indeed better than the Hong Kong agreement.¹⁹⁷ They argued that they had obtained for Macau more concessions than Britain obtained for Hong Kong: more freedoms (namely religious) and guarantees, and the respect for the Portuguese passports (Britain did not want to give passports in Hong Kong). The annex to the Macau Joint Declaration, contrary to the Hong Kong’s, had the structure of a constitution, and would result in the Basic Law.¹⁹⁸ The starting positions of the two territories were also relatively different: Macau already had elections before the negotiations and its Joint Declaration merely maintained the existent political system, while the Hong Kong agreement aimed to create a more advanced situation than the existing one.¹⁹⁹

Some also wondered if thirteen years was “enough time for the creation of structures able to safeguard the interests of the Macanese and to preserve Portuguese culture in that region of the Far East.”²⁰⁰ According to Cavaco Silva, 20 December 1999 was an acceptable date for Portugal, with a transition period of 13 years and with the transfer of the administration two and a half years after the Hong Kong’s hand-over.²⁰¹ Macau Governor Pinto Machado agreed that 1999 was compatible with the necessary adjustments to be made for safeguarding the interests of the people of Macau during the transfer of administration.²⁰²

¹⁹⁶ *Diário de Notícias*, 11 April 1987.

¹⁹⁷ Silva, *op. cit.*, p.217.

¹⁹⁸ Interview G.

¹⁹⁹ Interview F.

²⁰⁰ *Diário de Notícias*, 11 April 1987.

²⁰¹ Silva, *op. cit.*, p.215.

²⁰² *Diário de Notícias*, 20 March 1987.

A few days after signing the Joint Declaration in Beijing on 13 April 1987, Cavaco Silva made the first visit of a Portuguese Prime Minister to Macau and explained the recently signed agreement to the population. He perceived that the population welcomed the Joint Declaration and recognised that the Portuguese government had achieved the best possible agreement. The Prime Minister stressed that the Portuguese leaders had done their best to protect the interests of the Macau citizens and to create conditions for the stability and progress of Macau during the transition period. The citizens that were Portuguese under Portuguese law could remain Portuguese after 1999 and the civil servants could keep their jobs and would be given their pensions. Besides, the Prime Minister recalled that China assured to respect the agreement.²⁰³

Foreign Minister Pires de Miranda confirmed that Portugal had achieved the proposed objectives and considered the Joint Declaration as a worthy agreement without parallel in post-1974 Portuguese history, an example of “how the superior national interests are efficaciously served in the external front when there is sense of State, collaboration between the sovereignty organs, clear political definition of the ends to attain and operational capacity on the side of the diplomatic agents.”²⁰⁴

Above all, the Portuguese leaders had managed an honourable withdrawal from Macau, compensating for the traumatising memories of the African decolonisation.

The Joint Declaration was also greatly applauded by the Chinese leaders and by the Chinese press. Zhou Nan, Chinese Vice Foreign Minister, stated that the

²⁰³ Silva, *op. cit.*, pp.227-28.

²⁰⁴ Miranda, *op. cit.*, p.162.

resolution of the question of Macau was an important step towards the goal of completing national reunification before the end of the twentieth century.²⁰⁵ The contentment expressed by the Chinese leaders and the presence of Deng Xiaoping and Li Xiannian in the ceremony of the signature of the Macau Joint Declaration confirmed the importance of the agreement in the Chinese policy of national reunification.²⁰⁶

Foreign Minister and state councillor Wu Xueqian presented to the National People's Congress a report on the Sino-Portuguese Joint Declaration.²⁰⁷ Wu briefed the NPC deputies on various issues such as: the origin of the Macau issue and China's basic principles and policies on Macau; the process of Sino-Portuguese negotiations; and the explanation of several questions concerning the accord.²⁰⁸

According to Wu's report, for China the basic principles for solving the Macau issue were: to recover Macau and resume exercise of sovereignty before the year 2000; to maintain Macau's stability and development; to set up a special administrative region in Macau and continue to maintain the capitalist system for 50 years. China's basic policies regarding Macau (second section of the Joint Declaration) "which embody China's sovereignty over Macau, will be conducive to maintaining the long-term development and stability of Macau. They take into

²⁰⁵ *Diário de Notícias*, 27 March 1987.

²⁰⁶ Silva, *op. cit.*, p.220.

²⁰⁷ *Beijing Review*, 13 April 1987.

²⁰⁸ "Chinese Foreign Minister Reports on Macau Accord to Fifth NPC Session", Xinhua News Agency, Beijing, 2 April 1987, in *Summary of World Broadcasts*, 4 April 1987, FE/8534/C1/1-4.

consideration the identical and similar points between Macau and Hong Kong, as well as the specific differences between them”, Wu said.²⁰⁹

During their meeting before the ceremony of the signature of the Joint Declaration, Deng Xiaoping guaranteed Cavaco Silva that China would totally respect the agreement and that the capitalist system would remain in Macau beyond the transition period.²¹⁰ Premier Zhao Ziyang pledged to delegates from Hong Kong and Macau who were attending the Fifth Session of the NPC that China would observe the Hong Kong and Macau Joint Declarations and their annexes, would not harm the prosperity and stability of both territories, which were beneficial to China, and would not combat the bourgeois liberalisation there.²¹¹

3.7. Conclusion

This chapter argued that the Hong Kong negotiations not only stimulated China’s interest in settling the Macau question but also were used, both by Portugal and China, as a model for the Macau negotiations. The Portuguese side not only demanded for Macau the concessions that Britain obtained from China but also chose a cooperation strategy and was less keen on announcing ruptures as Britain, leading China to have a more flexible behaviour regarding Macau.

The typical Chinese negotiating methods and tactics analysed in chapter one were particularly noticeable during the negotiations presented in this chapter. An

²⁰⁹ *Ibid.*

²¹⁰ Silva, *op. cit.*, p.221.

²¹¹ *Beijing Review*, 13 April 1987.

example of this was during the Portuguese Presidential visit to Beijing in 1985, when the Portuguese side was informed that the Macau question would be on the agenda after the Portuguese President was already on the plane to Beijing. Nevertheless, the Portuguese President was receptive to the Chinese proposal of starting negotiations as Portugal had already promised to handover Macau in the *Acta Secreta* signed in 1979. On one hand, this previous concession highly limited the Portuguese strategy for the negotiations. On the other hand, it safeguarded smooth negotiations, which was one of the key Portuguese objectives.

During the Sino-Portuguese negotiations there were noticeable disagreements among the Portuguese leaders, namely regarding the issue of the date. The details of the negotiations highlighted the consequences that Macau's double tutelage system had on the negotiations, and the impact that the personality of President Mário Soares had on the Chinese concessions. This will be further developed in the next chapter.

The Joint Declaration on Macau was not a comprehensive agreement, and left many issues to be negotiated before the transfer of the Portuguese administration to China in 1999. In 1989, the Tiananmen incident removed from power some of the Chinese leadership that had signed the Joint Declaration, most importantly the progressive Zhao Ziyang. The new Chinese leaders had a different philosophy, but they maintained China's global strategy. The Portuguese strategy for the so-called transition period is analysed in the next two chapters.

Chapter 4 - The Permanent Issues of the Transition Period: The Problems of “Localisation” (1988-1999)

4.1. Introduction

The transfer of the Macau administration from Portugal to China was prepared during the so-called transition period. It started in 15 January 1988, when the Sino-Portuguese Joint Declaration came into force, and ended in 19 December 1999, the last day of the Portuguese administration in Macau. During this period, the Portuguese Government remained solely responsible for the administration of Macau and its powers remained unchanged, with the exception of some land issues.

Although the Joint Declaration clearly defined Portuguese responsibility in the administration of the territory until the hand-over, it also obliged the Chinese government to cooperate in the promotion of Macau's economic development and social stability. The agreement stipulated that the transfer of administration should be done within a framework of continuity, so the Portuguese and Chinese governments had to work in close cooperation to guarantee Macau political, economic and social stability during the transition.

The transition was a very complex period for Macau and for Sino-Portuguese bilateral relations. It required the articulation of positions not only between the Portuguese and Chinese governments but also between Portugal's central authorities and the Portuguese administration in Macau. The Portuguese side

feared that the process would not be conducted smoothly and without crisis. For Portugal it was essential to achieve consensus over China: it was the only guarantee that the measures adopted by the Macau administration would be respected in the long term.

The Joint Declaration defined the framework and institutional devices within which talks on the transition issues took place: the Sino-Portuguese Joint Liaison Group and the Sino-Portuguese Land Group. However, if these joint commissions failed to settle a particular issue it would be tackled directly by the Portuguese and the Chinese governments.

The first section of this chapter provides the context for the analysis of how the Portuguese government conducted negotiations with China during the Macau transition period. It provides an account of and explores the domestic political context in which the Portuguese strategy was defined, examining the personalities and views of those Portuguese policy-makers who were responsible for formulating the Portuguese strategy during between 1988 and 1999. It then introduces the different Portuguese and Chinese views on the Joint Liaison Group and Land Group.

The second section analyses how Portugal negotiated with the People's Republic of China the three inter-related issues that were permanently discussed in the JLG until the end of the transition period: 1) the localisation of language; 2) the localisation of the civil service; and 3) the localisation of law. For their importance, the three localisations were called "the three big issues" and were put on the agenda of every JLG meeting.

4.2. Setting the Scene

4.2.1. Macau's double tutelage system

This section argues that jurisdiction over the Macau question in Portugal was greatly complicated by conflicts over responsibility for negotiating with China. The key implications of this, as outlined in detail below, were that the leaders' personal style played a strong role in the definition of the Portuguese strategy for the transition period. The way the process was conducted mainly depended on the local political context, i.e., the political party and the personality of the leaders in charge. In cases of political cohabitation the personalities of the key leaders were extremely important to whether the issue was handled in cooperation or in direct confrontation.

Portugal's semi-presidential system attributes to the President and the Prime Minister different and specific functions in the Portuguese decision-making process. The Prime Minister controls the Ministry of Foreign Affairs and is in charge of Portugal's foreign policy. The Sino-Portuguese bilateral relations were therefore the government's responsibility. However, Macau was a very special case within the Portuguese political system because the territory was under tutelage of the President. According to the Portuguese Constitution, the political system of the territory was stipulated in the Organic Statute of Macau (*Estatuto Orgânico de Macau*). The Organic Statute had been elaborated in Lisbon at a time of great governmental instability and therefore stipulated that the Governor, the

centre of the political power in Macau, derived from the President and not from the government.¹

The Governor and the under-secretaries were appointed, invested and dismissed by the President of the Republic, and the Governor was politically accountable to the President.² The Governor was the personal choice of the President, who usually invited a friend or political ally to the post, dismissing the previous Governor.³ The Portuguese President also had responsibility for Macau's external security and had powers to dissolve Macau's Legislative Assembly and to determine when the courts should be invested in the plenitude and exclusivity of jurisdiction.⁴

Thus, the Macau Organic Statute invested the Portuguese President, and not the Prime Minister and the government, with authority over the territory. However, as the government was in charge of the negotiations with China, the Portuguese delegations to the Sino-Portuguese Joint Liaison Group and to the Land Group received instructions from the Foreign Minister. Between the meetings of the Joint Liaison Group, the Foreign Ministry consulted the Prime Minister, not the President.⁵ As the Macau Governor received orders from the President and was not obliged to consult the Prime Minister, there were often clashes in Macau between the Governor and the members of the JLG.

¹ Constitution of the Portuguese Republic, 1976, Article 306th, and posterior constitutional revisions of 1982, 1989, 1992 and 1997, Article 292th, and Organic Statute of Macau, Law no.1/76, 17 February 1976, revised by Law no.53/79 of 14 September 1979, Law no.13/90 of 10 May 1990 and Law no.23-A/96 of 29 July 1996. For more details on the Organic Statute of Macau, please refer to Chapter 2.

² Organic Statute of Macau, Law no.23-A/96 of 29 July 1996, Article 7th and 20th.

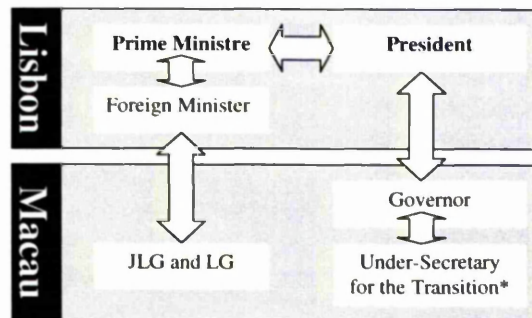
³ Yee, Herbert S., *Macau in Transition – From Colony to Autonomous Region*, Palgrave, London, 2001, pp.22-23.

⁴ Organic Statute of Macau, Law no.23-A/96 of 29 July 1996, Articles 25th, 72nd and 12th.

⁵ Interview P.

This was aggravated by the fact that the Portuguese delegation only stayed in Macau during the JLG meetings, being much more attached to the Portuguese government than to the Macau administration. The divisions over responsibility for the negotiations in Portugal were so significant that under the Melancia administration (July 1987 to April 1991) there were two leading negotiators: the head of the JLG, Simões Coelho (1988-1989) and Pedro Catarino (1990-1992), representing the Portuguese government, and the under-secretary for the transition, João de Deus Ramos, representing the Macau Governor.⁶

Figure 4.1: Macau Double Tutelage System



* This post was created by Governor Melancia and abolished by Governor Rocha Vieira. In the Rocha Vieira administration it was mainly the under-secretary for justice that handled the issues of the transition, arguably leading to some delays in the localization of the Law.

As illustrated in figure 4.1, the Prime Minister appointed the head of the JLG while the Governor derived authority from the President. The President implemented his strategy for the Macau administration through the Governor, although he could influence the negotiations with China through the Presidential delegate in the Portuguese delegation of the JLG. A direct consequence of this was the existence in Lisbon of two simultaneous strategies for Macau: a presidential strategy for the Macau administration and a governmental strategy for the negotiations with China.

⁶ Interview I.

It was easier to achieve consensus if the President and the Prime Minister belonged to the same party, because at times of cohabitation they tended to use the issue to score domestic political points. When the Presidency and the government were controlled by different political parties and had conflicting objectives, they engaged in “parallel diplomacy,” following different paths.⁷ This was the case with the issue of the date for the Macau handover in the final stage of the Sino-Portuguese negotiations, as argued in chapter 3, although at the time the leaders were still able to present a united front at the negotiating table. During the transition period, however, the dissensions between the key leaders –namely in the issue of the Orient Foundation analysed in detail in the following chapter – diminished Portugal’s negotiating power.

In 1994, Prime Minister Cavaco Silva tried to transfer the tutelage of Macau from the President to the government, as it was mainly a foreign policy issue,⁸ but the Chinese informally showed disapproval. China was concerned that Macau was being transferred to a less important level in the Portuguese semi-presidential system, and the Chinese ambassador in Lisbon stated that the PRC would not accept that the responsibilities of Macau diminished from the President to the Prime Minister. Given that China’s opinion was very important at that time, the proposal was rejected by the Portuguese Parliament with the argument that it made no sense to remove power from the President after the signature of the Joint Declaration.⁹

⁷ *Ponto Final*, 28 May 1999.

⁸ Fernandes, Moisés Silva, *Sinopse de Macau nas Relações Luso-Chinesas – 1945-1995*, Fundação Oriente, Lisbon, 2000, p.493.

⁹ Interviews H, J and L.

Figure 4.2: The Portuguese decision-makers of the transition period (approximate dates):

| Year | LG* | JLG* | Foreign Minister | PM | PR | Governor | | | |
|------|--------------------|----------------|------------------------|--------------------------|-----------------------|-------------------------|--------------|-------------|-----------|
| 1988 | João de Deus Ramos | Simões | Deus Pinheiro (PSD) | Cavaco Silva (PSD) | Mário Soares (PS) | Carlos Melancia (PS) | Cohabitation | | |
| 1989 | | Coelho | | | | | | | |
| 1990 | | Pedro | | | | | | | |
| 1991 | | Catarino | | | | | | | |
| 1992 | | Andresen | Durão Barroso (PSD) | António Guterres (PS) | Jorge Sampaio (PS) | Vieira (PSD) | | Cooperation | |
| 1993 | | | | | | | | | Guimarães |
| 1994 | | | | | | | | | |
| 1995 | | Jorge Ritto | Jaime Gama (PS) | | | | | | |
| 1996 | | Santana Carlos | | | | | | | |
| 1997 | | | | | | | | | |
| 1998 | | | | | | | | | |
| 1999 | | | | | | | | | |

*Head of the Portuguese Delegation.

As suggested in figure 4.2, it is useful to divide the analysis of the transition into two main periods: the period of Social Democrat Party (PSD) and Social Party (PS) cohabitation, from 1988 to 1995, and the years of Socialist cooperation, from 1995 to 1999.

Until 1995, the Portuguese domestic scenario was apparently the same as the 1986-1987 negotiating years: Prime Minister Aníbal Cavaco Silva and President Mário Soares were from different political parties and cohabited over the Macau question. However, during the transition period their divergent opinions became evident and arguably the Chinese side took advantage of their lack of coordination. After 1995/96 the problem disappeared because Prime Minister

António Guterres and President Jorge Sampaio belonged to the same political party and cooperation was easier.¹⁰

As highlighted in figure 4.2, the Portuguese strategy during the PSD/PS cohabitation period (1988-1994) can be analysed in two parts, one from 1988 to 1990 and the other from 1991 to 1994. Until 1991 Prime Minister Cavaco Silva and President Mário Soares maintained broadly the same approach towards the Macau question that they had adopted in 1986: Soares was highly interventionist while Cavaco Silva continued to assume a low profile. As seen in the previous chapter, President Mário Soares played a crucial role during the Sino-Portuguese early negotiations. In the Portuguese semi-presidential system Presidential power, while being largely ceremonial, can grow according to the personal style of the President. Mário Soares had a preponderant role in Portuguese foreign policy because he was “Mário Soares”, a charismatic man with political experience and a personal status that gave him influential power.

Cavaco Silva was the new head of the Social Democrat Party (PSD) and won two unprecedented consecutive parliamentary majorities, being Portuguese Prime Minister from 1985 to 1995. An economist with no experience in foreign policy, Cavaco Silva tended to leave the Macau question, which did not have any impact in the Portuguese economy, to the President. In contrast, Mário Soares, President of the Republic from 1986 to 1996, had a great interest and experience in foreign policy, particularly regarding the Macau question. Having re-established the Socialist Party (PS) in Portugal in 1973, Soares was Prime Minister from 1976 to

¹⁰ Interview Q.

1978 and from 1983 to 1985, in a governing coalition with the PSD. He was simultaneously Foreign Minister from 1977 to 1978 and negotiated the resumption of Portuguese-Chinese bilateral relations.

Until 1991 the strategy of the Portuguese administration in Macau reflected the ideas/interests of President Mário Soares. The strategy was implemented by Carlos Melancia, whom Soares appointed and invested as Macau Governor in 1987. But the Portuguese media soon accused the Melancia's administration of being too loose, lacking probity and transparency. By the end of 1990 the scandals in the Macau administration had assumed enormous proportions and Governor Melancia was involved in a major corruption scandal, forcing President Soares to dismiss him.

At the same time, the Chinese side raised the issue of the Orient Foundation in the JLG's meetings. According to the Chinese authorities, the Orient Foundation was misusing in Lisbon money that belonged to Macau. The President of the Foundation, Carlos Monjardino, had been in charge of the Macau administration in 1987 and was close to Soares and the Socialist Party.¹¹

Before he was involved in any of the scandals, President Mário Soares completely changed his strategy for Macau and assumed a low profile. The appointment of General Rocha Vieira as Macau Governor in 1991 was the turning point. Contrary to the previous governors, he did not represent Soares personal preference but was a convenient choice. First, being a General, he should be able to restore order in

¹¹ Carlos Monjardino was the Under-Secretary for Economics, Finances and Tourism in 1987, and was appointed by President Soares as Acting Governor during the absences of the Governor. The issue of the Orient Foundation is analysed in detail in Chapter 5.

Macau and put an end to all the scandals. Second, Rocha Vieira was close enough to Cavaco Silva to allow the Prime Minister to be in charge of the Macau question. The appointment of a Social Democrat instead of a Socialist governor allowed Soares to 'abandon' the Macau question before the scandals affected him. Different sources confirmed that unlike Carlos Melancia, who was "the man of the President", Rocha Vieira was the result of the PS/PSD cohabitation.¹²

One observer commented that thereafter, President Soares showed an almost complete lack of interest in Macau and left the issue to the Foreign Ministry.¹³ In contrast to the previous Governors, Rocha Vieira received orders from the Prime Minister: the President would not interfere unless there was a problem. However, Cavaco Silva did not seem very keen in dealing with the question because the principal posts of the Macau administration were occupied by Socialists.¹⁴ The lack of interest of the President and the Prime Minister on Macau gave an enormous power to the Governor.

From his appointment in 1991 to the change of government in 1995, although consulting the President and the Prime Minister, it was the Governor who defined the strategy of the Macau administration and discussed the issues directly with the head of the JLG.¹⁵ Rocha Vieira lost his dominance during the 1995-1999 period of socialist cooperation (see figure 5.2). Both Prime Minister António Guterres and President Jorge Sampaio, belonged to the Socialist Party and worked in more synchrony than the previous leaders.

¹² Various interviews, namely I, M, N and O.

¹³ Interview B.

¹⁴ Interview M.

¹⁵ Interview M and N.

The new Foreign Minister Jaime Gama had long been involved in the Macau question – as shown in chapter 3, he signed the joint communiqué for the launch of the Sino-Portuguese negotiations in 1985. Until the handover, the Foreign Minister was the personality who had a strong impact in the definition of Portuguese strategy and did not approve of the decision-making power of the Governor. President Sampaio tried to have an active voice and claimed that the Portuguese strategy was conceived in permanent articulation with the Governor,¹⁶ but he could not avoid the conflicts that this situation created between Jaime Gama and Rocha Vieira. Nevertheless, Rocha Vieira did not attempt to block the implementation of the Foreign Ministry's policy.¹⁷

Besides resenting the increasing intervention of the Foreign Ministry in the Macau administration, Governor Rocha Vieira criticised the fact that Lisbon rushed to reach agreement in every issue with the Chinese side.¹⁸ The new leaders in Lisbon wanted to bring a quick end to the Macau question, while Rocha Vieira argued that no agreement was better than a bad agreement.¹⁹

4.2.2. The Portuguese strategy for the transition

One of the consequences of the double tutelage system was the parallel existence of a presidential strategy for the Macau administration and of a governmental strategy for negotiations with China. This section examines the strategy of the Macau administration during the transition period as it constrained the Foreign Ministry's positions in the JLG meetings. As argued above, the most relevant

¹⁶ Sampaio, Jorge, *Portugueses*, Vol. IV, Imprensa Nacional-Casa da Moeda, Lisbon, 2000, p.403.

¹⁷ Interviews J and O.

¹⁸ Interview M.

¹⁹ Interviews M and N.

personalities in the definition of this strategy were: President Mário Soares from 1988 to 1990, Governor Rocha Vieira from 1991 to 1995, and President Jorge Sampaio from 1996 to 1999. The strategy of the Foreign Ministry and the government for the negotiations with China during the transition is analysed in the second part of this chapter and in chapter 5.

At the beginning of the transition period, the strategy of the Macau administration was mainly shaped by President Mário Soares. According to the President, Macau was important to Portugal for three reasons: 1) it was economically self-sufficient and presented economic benefits that could be used by potential Portuguese investors; 2) it was important for the Portuguese foreign policy in Asia; and 3) it was a privileged centre of diffusion of the Portuguese language and culture.²⁰

The Governors that Soares chose to appoint reflected the evolution of his approach to the Macau question. During the Joint Declaration negotiations, Governor Pinto Machado, a former Professor at the Medical School, was asked to support the objectives of the Portuguese side in Macau, such as the preservation of the Portuguese language and of the Portuguese cultural heritage, and the implementation of a state of law. In the beginning of the transition period, Governor Carlos Melancia, a civil engineer, had another priority: to implement in Macau the President's new infrastructures oriented approach.²¹ In 1991, due to Melancia's corruption scandals and the problems of the Orient Foundation,

²⁰ Soares, Mário, *Intervenções 4*, Imprensa Nacional Casa da Moeda, Lisbon, 1990, p.406.

²¹ Interview H.

Soares' strategy changed dramatically and General Rocha Vieira was appointed to restore the order in Macau.²²

The President was careful enough to consistently speak of the need for a "consensual" national strategy in order to get national support for the implementation of policy in Macau. He attached importance to the implementation of all the decision-making bodies, the political parties, the social partners, the universities and the interested personalities in order to avoid artificial political controversies over the Macau question. The Portuguese should see Macau as a "national question": "Nothing would be worse to Portugal than having the last years of our Administration perturbed by issues between the Portuguese, around material interests lacking the national dimension."²³

In March 1989 President Soares visited Macau and reiterated the need of a State position on Macau, saying that Macau should be considered by the Portuguese as "a true national question": "it should not be politicised nor reducible to the interests of the groups that operate there".²⁴ By asking Vice-Prime Minister Eurico de Melo to accompany him, Soares clearly intended to show solidarity and convergence of purposes between the Presidency and the Government on the Macau question. He said that as in everything that concerned the national interest, institutional solidarity on the Macau question was essential: Melo's presence

²² Interview M.

²³ Soares, Mário, *Intervenções 3*, Imprensa Nacional Casa da Moeda, Lisbon, 1989, p.29.

²⁴ Soares, *Intervenções 4...*, p.405.

“made visible ... the unity of the Portuguese State regarding the essential questions” and showed that “Macau represented a great national objective.”²⁵

In October 1993 President Soares made another official visit to Macau accompanied by two members of the Portuguese Parliament, one belonging to the Government’s party and the other to the major opposition party, showing the support of the different sovereignty bodies to the Governor.²⁶ During the visit Mário Soares reiterated the main strategic orientations for Macau during the transition period: to observe the spirit of the Sino-Portuguese Joint Declaration and to maintain Macau’s political and social stability.

In May 1990 the President presented at the Macau Mission (Missão de Macau) in Lisbon an elaborated speech on the Macau question. Macau had to be faced at all state levels as one of Portugal’s priorities, along with the European integration, African cooperation and the Portuguese-Brazilian relations. Macau was a “national design” and the transition period should be seen as a “new era” in Portugal-China relations and not as the withdrawal from the last piece of the Empire: “We are not closing a door: we are trying to switch on a light”.²⁷

Portugal-Macau cooperation was not limited to the transition period and should develop after that. The main objective of the Portuguese administration was to create conditions for the existence of Macau as a “strategically relevant reality after 1999, highlighting its specific position in the Zhu River Estuary and its

²⁵ *Ibid.*, pp.407 and 43.

²⁶ Soares, Mário, *Intervenções 8*, Imprensa Nacional Casa da Moeda, Lisbon, 1994, p.77.

²⁷ Soares, Mário, *Macau: Uma Responsabilidade Histórica – Discurso de Sua Excelência o Presidente da República Dr. Mário Soares*, Missão de Macau em Lisboa, Lisbon, 22 May 1990, p.10.

relative weight in the global framework of the relations of the People's Republic of China with the exterior."²⁸ The development of Portugal-China relations and the preservation of the Portuguese presence in the East depended on the achievement of that major objective.

Mário Soares believed that the Macau population, the PRC and Portugal were all interested that the Portuguese administration invested in Macau's development and that this convergence of interests would result in a common strategic orientation. This strategy should have two basic concerns: stability and progress. According to the Joint Declaration Portugal was responsible to provide the conditions for Macau's economic and political stability, particularly during the transition period. Besides, stability helped to create conditions for the development process and attracted investment. For President Soares the biggest Portuguese card was the fulfilment of Portugal's own liabilities in order to be able to demand China to fulfil them as well.²⁹

The President clearly had an infrastructure-focused strategy for Macau. The Macau administration developed an economic plan with two phases. The first phase was a five years investment plan to implement essential infrastructure to reduce Macau's dependence upon Hong Kong for transport and communication, including Macau International Airport, the Ká-Hó Port and the new Taipa Bridge. The second phase was intended to create conditions for the maximization of the previous infrastructural investment, namely through the diversification of the sources of public revenue (mainly dependent on the gambling industry), the

²⁸ *Ibid.*, pp.3-4.

²⁹ *Ibid.* p.5 and Soares, Mário, *Intervenções 5*, Imprensa Nacional Casa da Moeda, Lisbon, 1991, p.440.

redefinition of the industrial structure of the enclave and the development of a strong and competitive services sector.³⁰

Soares recognised some constraints to the implementation of his strategy: Macau had significant structural vulnerabilities; the territory did not have close ties with Portugal; Portugal had limited economic and human resources for implementing the strategy for the transition period; and time was scarce to put in practice policies that had been neglected for years. Until 1999 the Portuguese administration had to build the bases for a different future for Macau and time could not be wasted with fruitless discussions and narrow-minded controversies: “The dignity of the state and the defence of the permanent national interests were at stake.”³¹

The Portuguese aim was to assure Macau’s singularity within the PRC, through the statute of a special administrative region: to survive Macau had to remain a place of encounter of different cultures, languages and religions. It was vital to implement a coherent development policy in Macau, characterised by the so-called “great infrastructures” but also by the progress and well-being of the Macau population. A line of coherence and continuity to attract investors accompanied this development policy and was adopted by all the Governors appointed by President Soares.³²

Governor Carlos Melancia implemented Soares’ economic development strategy for Macau and the priority of his administration was to give the territory

³⁰ Soares, *Macau...*, pp.6-8.

³¹ *Ibid.*, p.10.

³² Soares, *Intervenções 8...*, pp.77-78 and 76.

infrastructures, such as the airport and the harbour, which could guarantee its autonomy after the transition. When Rocha Vieira was appointed Governor, he continued this development policy. Rocha Vieira considered that there were four main strategic points at stake during the transition period:

1) to consolidate the political and judicial system, supporting political pluralism, the separation of powers and the Western concept of human rights; 2) to consolidate the conditions for Macau autonomy, giving the territory infrastructure and international connexions, namely with Europe, allowing it to have its own role in China's economic modernization process; 3) to develop a good relationship with China through the respect and implementation of the Joint Declaration; 4) to protect the interests of the Macau population.³³

According to Governor Rocha Vieira, although the Chinese authorities publicly declared to share those purposes, they interpreted them differently and often questioned the sincerity of Portugal's intentions. Rocha Vieira considered that this was mainly due to the ambiguity of the "one country, two systems" formula. On the one hand, the Chinese authorities wanted to show the world that they could accomplish this programme, which was also very useful to open its economy to foreign investment. On the other hand, they needed to assert their authority and wanted to avoid any instability up to the end of the transition.³⁴

The Chinese authorities were suspicious of the Macau political and judicial system. The "one country, two systems" formula did not allow them to criticise it openly, but they expressed their doubts to the deputies of the Macau Legislature. The key question was the effectiveness of the Macau system of rights and guaranties. China tried to prove that the specificities of Macau did not assure the regular functioning of that system. Rocha Vieira even suggested that the Chinese

³³ Document 3.

³⁴ *Ibid.*

authorities promoted insecurity in Macau to support their arguments and justify the dismantling of the system of rights and guaranties after December 1999.³⁵

The creation of conditions for Macau's autonomy also faced constraints. Rocha Vieira was aware that although the Chinese authorities were pragmatic enough to see the development of Macau as advantageous to China, after 1999 Macau should not expect a favoured treatment and would have to face the competition of the other cities of the Zhu River estuary.³⁶

The development of a good relationship with China was particularly sensitive because neither China nor Portugal wanted to appear responsible for any conflict or deviation to those stipulated in the Joint Declaration. Rocha Vieira argued in the State Council meeting that the Portuguese strategy of developing a good relationship with China only made sense if Portugal maintained an effective power in shaping China's international image. A major Portuguese aim was thus to preserve that power. The bigger the Portuguese vulnerabilities regarding the Chinese criticisms – in questions such as the Orient Foundation and the nationality issue – the less power Portugal had.³⁷

In 1996 Jorge Sampaio was elected President of the Republic and developed his own strategy for Macau: to project Macau's regional and international position as a modern city, with its own stable institutions subordinated to the primacy of law,

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

to settle its economy in solid foundations and guarantee the security and the well being of its community, with the respect of their rights, liberties and guarantees.³⁸

According to President Jorge Sampaio, the Portuguese aims for the transition period were of three kinds. First, to promote Macau development, economic prosperity and security, and to leave the enclave with important infrastructure ensuring its future as a modern centre of tourism and services and the running of its economy according to the local specificities. Second, to consolidate Macau's political and judicial institutions and to create institutional conditions to guarantee, at least for the following fifty years, the preservation of its autonomous government and social and cultural identity, as a place of encounter of peoples and cultures This was vital to the future preservation of Macau's singular role, which would distinguish Macau from the other Chinese administrative regions. Third, to make both Portuguese and Chinese official languages of the Territory and to generalise the bilingualism in the Macau administration, to localise the staff in the Administration, and to declare the full judicial autonomy of the territory.³⁹

The Macau administration was aware that the transition period was too short to cover the inactivity that had characterised the Portuguese rule for the past twenty years. There was no social structure on which to build the transition policies. It was hard to get short- term results from the investment in higher education and in the training of local functionaries. Besides, the last years of the transitional period were considered "lost" in psychological terms: after 1997 the evolution of the

³⁸ Sampaio, *Portugueses*, Vol. IV..., p.433.

³⁹ SAMPAIO, Jorge, *Portugueses*, Vol. I, Imprensa Nacional-Casa da Moeda, Lisbon, 1997, p.347 and Vol. IV, 2000, pp.404 and 414.

Hong Kong transition would have a bigger impact on Macau than any policies of the Portuguese administration. The transition period was also too short to consolidate the economic development strategy. There was time to build the airport and the other big projects but there was not much time to create conditions for their lucrativeness.⁴⁰

Moreover, the Macau administration faced strong pressure made through the Chinese press in Macau, permanently criticising the Portuguese administration and reiterating the positions of the Chinese delegation in the JLG. China also used intermediaries to influence the Governor. In the JLG the Chinese side constantly pushed the negotiations of the “three big issues” to a more radical and accelerated rhythm, and forced the introduction of new points in the agenda insisting in their treatment during the talks.⁴¹

4.2.3. The Joint Liaison Group and the Land Group

The Sino-Portuguese Joint Liaison Group (JLG) and the Sino-Portuguese Land Group (LG) were the formal mechanisms chosen by the Joint Declaration for the implementation of the agreement. Both the Portuguese and the Chinese side respected the decisions of these joint commissions and the proceedings of the meetings had legal force. However, the two countries often held different interpretations of the power and functions of the two groups, leading to some conflicting views during the meetings.

⁴⁰ Document 4.

⁴¹ *Ibid.*

The Sino-Portuguese Joint Liaison Group was established on 15 January 1988, when the Sino-Portuguese Joint Declaration entered into force, and continued its work until 1 January 2000. According to the Joint Declaration, it was “an organ of liaison, consultation and exchange of information between the two governments” and had four functions:

1) to conduct consultations on the implementation of the Joint Declaration and its Annexes; 2) to exchange information and conduct consultations on matters relating to the transfer of government of Macau in 1999; 3) to conduct consultations on actions to be taken by the two governments to enable the Macau Special Administrative Region to maintain and develop external economic, cultural and other relations; 4) and to exchange information and conduct consultations on other subjects as may be agreed by the two sides.⁴²

The Portuguese side used the JLG for different purposes: to clarify specific issues; to inform the Chinese delegation on the progress achieved in different areas; and to reach agreement or find an acceptable solution for both sides regarding specific problems.⁴³

The Joint Liaison Group’s meetings during the first year of the transition period took place alternatively in Lisbon, Beijing and Macau. Afterwards, the Liaison Office of the group was established in Macau and the meetings in Lisbon and in Beijing were always followed by a meeting in Macau. The rotating meetings opened doors for the use of bilateral diplomacy when negotiations stalled within the JLG: while in Beijing, the Portuguese side would try to resolve issues directly with representatives of the Chinese government while the Chinese side used the meetings in Lisbon and Macau to put pressure on the Portuguese authorities. Although the Joint Declaration aimed at eliminating from the scope of Sino-Portuguese bilateral relations all the problems related to the administration and

⁴² Sino-Portuguese Joint Declaration on the Question of Macau, Annex II, Section I.

⁴³ Document 5.

transfer of sovereignty of Macau, it stipulated that matters in which there was disagreement in the JLG or in the LG should be referred to the two governments for solution through consultations.⁴⁴

The Portuguese and Chinese delegations of the JLG had five members each, the leader being of ambassadorial rank, and experts and supporting staff were designated when required. The Portuguese delegation had three diplomats: the head, the deputy head, and the counsellor of the Portuguese embassy in Beijing. The other two Portuguese members were personal choices of the President and the Prime Minister, although this was not officially stipulated. The head of the Portuguese delegation was based in Lisbon: the only Portuguese member of the JLG that resided in Macau was the deputy head, who was also the head of the Portuguese delegation in the Land Group and chief of the Liaison Office in Macau. In contrast, all the members of the Chinese delegation were based in Macau, with the exception of the counsellor of the Chinese embassy in Lisbon.

Although the Chinese side often insisted on a stronger Portuguese presence in the Liaison Office in Macau to solve pending issues in between the JLG meetings, Portugal feared that this would lead the Chinese side to put even more pressure on the Macau administration. The Chinese side tended to use the JLG to subject to her approval all the issues with a possible impact on the future Administrative Region, arguing that all the issues that would have an impact after 1999 should be subject to previous consultations, otherwise they would not be recognised by China. The Portuguese side did not accept this principle, arguing that according to

⁴⁴ Sino-Portuguese Joint Declaration on the Question of Macau, Annex II, Sections I and II.

the Joint Declaration the JLG “shall not interfere in the administration of Macau nor shall it have any supervisory role over that administration.”⁴⁵ Portugal was responsible for the Macau administration until 1999 and China had no right to interfere.

Apart from a few exceptionally problematic meetings, there were few significant arguments within the JLG because both sides had different negotiating parameters. The Chinese delegates did not have decision-making power and were forced to consult their superiors to know how to proceed. This deprived both sides of the ability to make decisions during the meetings and the Chinese only returned an answer in the following meeting, even regarding the most urgent matters. The Chinese were the ones to set the rhythm and the distance between the meetings.⁴⁶ The Chinese delegates did not have the same flexibility as the Portuguese delegates and could not take any decisions: they analysed everything very carefully and constantly reported to their superiors.⁴⁷

The Portuguese decision-making process was more straightforward than the Chinese, as the Portuguese delegation received instructions directly from the government. The Chinese delegation received instructions from the Macau Office in the Foreign Ministry, from the Macau Office in the State Council, from the President and from the Prime Minister. They did not have one interlocutor, but had to consult all these elements that sometimes had divergent opinions. The

⁴⁵ Sino-Portuguese Joint Declaration on the Question of Macau, Annex II, Section I.

⁴⁶ Interview R.

⁴⁷ Interview I.

Chinese delegates referred to their authorities regarding the smallest detail. This slowed down the communications considerably.⁴⁸

In case of delays in communicating a decision, the Chinese delegation never informed the Portuguese of whose decision were they waiting for. On the contrary, if the delays were caused by the Portuguese side, the Chinese were told in which stage was the Portuguese decision-making process. One Portuguese negotiator commented that some members of the delegation were too friendly with the Chinese and told them too much.⁴⁹ This was probably due to the lack of experience that the Portuguese delegates had in negotiating with the Chinese. The members of the Portuguese delegation were not well-prepared and changed too often to gain expertise on the Macau question. In contrast, the Chinese delegation knew Macau and were very well prepared.⁵⁰

The only restrictions imposed by the Joint Declaration on the Portuguese administration for the transition period regarded the land of the territory: she could grant new leases of land until 19 December 2049 but they were limited to 20 hectares a year, although the Land Group could examine any change in the above-mentioned quota, and had to share all the resulting incomes with the future government of the Macau Special Administrative Region.⁵¹ The LG could analyse and decide about the alteration of that limit and the Chinese side had veto power in this issue. The only card left for the Portuguese side on this issue was to clarify

⁴⁸ Interview P.

⁴⁹ Interview R.

⁵⁰ Interview N.

⁵¹ Sino-Portuguese Joint Declaration on the Question of Macau, Annex II, Section II.

the reasons behind the proposals and state the damage caused by the Chinese position to Macau development.⁵²

The Sino-Portuguese Land Group was established on 15 January 1988 and ceased its functions on 19 December 1999, and had its Liaison Office in Macau. The Portuguese and Chinese delegations of the Land Group had three members each. The leader of the Portuguese delegation was the deputy of the JLG and the other two members were usually staff of the Macau administration proposed by the Governor.

The Portuguese and Chinese authorities had very different views of the functions of the Land Group. According to the Joint Declaration the LG was “an organ for handling land leases in Macau and related matters on behalf of the two governments.”⁵³ The generic terms of this text seemed to give the Land Group powers to replace the Portuguese authorities or at least to involve itself in the process of granting land leases. As there were many subjects related to the contracts of granting land leases, this could authorise the Land Group to interfere in many other issues. The Chinese authorities thus argued that the Land Group had the right to interfere in the handling of land leases and not simply act as a monitoring organ. The Portuguese argued that the Joint Declaration did not support the Chinese position. The above definition, the only text that helped the Chinese argument, was written in generic terms and the specification of the Land Group functions appeared in the following paragraph:⁵⁴

⁵² Document 6, pp.3-4.

⁵³ Sino-Portuguese Joint Declaration on the Question of Macau, Annex II, Section II, paragraph 2.

⁵⁴ Document 6, pp.3-4.

1) to conduct consultations on the implementation of Section II of Annex II of the Joint Declaration; 2) to monitor the amount and terms of land granted; 3) to monitor the division and use of income from land granted; 4) to examine proposals of the Portuguese Macau Government drawing on the Macau Special Administrative Region Government's share of income from land; 5) to make recommendations to the Chinese side on these proposals for decision.⁵⁵

The Portuguese argument was that the restrictive enumeration of the Joint Declaration was intended to enumerate specifically all the issues to be treated by the LG and did not authorise the inclusion of other functions. The above paragraph began with "the functions of the Land Group shall be:" meaning that its functions were those and not others, which would happen if words as "namely" or "especially" were used. By stating that those were *the* functions of the LG and not using any word that could lead us to conclude that these are only *some* of its functions, the Joint Declaration indicated that the LG *only* has the above-mentioned functions. Only the Macau administration was competent to make contract granting land leases and the LG could not replace the Macau authorities in deciding whether to grant land leases or not. Apart from the alteration of the limit of 20 hectares, the LG did not have any decision function: it had consultation and monitoring functions and could only make recommendations. Thus, the strategy of the Portuguese side was:

"to give all the explanations required by the Chinese side on the contracts celebrated by the Macau government, to refuse uncompromisingly the emission of statements in the Land Group aiming at conditioning the activity of the Macau government or that transform it into offender for the decisions taken."⁵⁶

More political Land Group issues were negotiated by the Joint Liaison Group, such as the discussion of the annual land concession plan and the construction of Macau International Airport. There were prerogatives of the sovereignty of the

⁵⁵ Sino-Portuguese Joint Declaration on the Question of Macau, Annex II, Section II, paragraph 3.

⁵⁶ Document 7, pp.3-4.

two countries – such as the revision of the Organic Statute of Macau and the elaboration of the Basic Law – that could not be issues of formal deliberations of the Groups, but they were the object of informal exchange of views between the two delegations:⁵⁷

Some of the issues discussed in the JLG meetings include: Macau's participation in international organisations and agreements; the establishment of a Centre of Software of the United Nations University in Macau; direct cultural exchange between Macau and the PRC; exchange of juridical entities between Macau and China; the quotation of the Pataca (Macau's currency) within China; the regulation on the entrance, permanence and settlement in Macau; the new legislation on the identity cards; the settlement of the Portuguese Consulate issue in Macau after 1999; and the construction of a major port and industrial park.

The thesis focuses on the more relevant questions discussed during the Joint Liaison Group meetings. Chapter five analyses the sensitive issues of the transition period: 1) the inclusion in the Macau Basic Law of the provisions of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights; 2) the construction of the Macau International Airport; and 3) the issue of the Orient Foundation. The issues that were object of permanent discussion in the JLG, the so-called three localisations, are examined next.

⁵⁷ Document 5, p.2.

4.3. The Permanent Issues of the Transition Period: The Problems of “Localisation”

The localisation of the language, the localisation of the civil service and the localisation of the law were a direct consequence of the transfer of the Macau administration. As the good functioning of the administration after the hand-over depended on the solutions found for these three localisations, they were known as “the three big issues”. The Chinese side tended to reduce these three issues into one because progress in one localisation implied and depended on progress on the other two.⁵⁸ Despite the different points of view, Portugal and China were both strongly committed to achieve progress on those questions. A joint working group was created and divided into three sub-groups to deal with the three questions.

4.3.1. The Localisation of the Civil Service

The localisation of the civil service was closely related to the two other “big issues” of the transition period and both Portugal and China agreed that it was the basis of the politics of localisation. For the Chinese side, the localisation of the civil service was the most important of all three localizations because once the Chinese occupied the higher ranks in the Macau administration the Chinese language would immediately be used and the replacement of Portuguese for Chinese juridical staff would promote the localisation of the law.⁵⁹ The

⁵⁸ Yee, *op. cit.*, p.41.

⁵⁹ *Ibid.*, p.41.

Portuguese side aimed at using the localisation of the civil service to reduce the Chinese interference in post-1999 Macau.⁶⁰

The localisation of the civil service included two main aspects: the increase of local civil servants in the Macau administration and the reintegration of the Portuguese expatriates in the Portuguese Republic.

The increase of local civil servants in the Macau administration

The increase of local civil servants was related to three issues: 1) the planning of the localization of the civil service until 1999, namely of the chief/director ranks; 2) the nationality issue; and 3) the recognition of educational qualifications.

The localisation of the civil service was differently perceived by the Chinese and the Portuguese sides. The Chinese authorities (and Macau's Chinese population) tended to interpret localization as "Sinification": "the promotion and recruitment of local Chinese residents to higher positions in the civil service", arguing that the "localisation should accurately reflect the ethnic composition of Macau's citizens". Some Macanese, Portuguese-Chinese or Portuguese-Asian mixed-blood, wanted to be promoted after the withdrawal of Portuguese expatriates and identified localization as "Macanization": "promotion priority should be given to bilingual Macanese".⁶¹

Portugal was mainly concerned with the preservation of its cultural heritage in Macau after 1999 and was eager to integrate the Macanese, the best guardians of the Portuguese culture, in Macau's civil service. Contrary to the local Chinese, the

⁶⁰ Lo, Shiu Hing, *Political Development in Macau*, The Chinese University Press, Hong Kong, 1995, p.166.

⁶¹ Yee, *op. cit.*, p.42.

Macanese could choose between Chinese and Portuguese nationality after 1999, but should they choose to remain Portuguese citizens they would be excluded from leadership posts in Macau.⁶²

Nevertheless, the Portuguese administration tended to adopt a mixed interpretation of “Sinification” and “Macanization”: “recruitment and promotion of civil servants should be based on qualification and merit only, regardless of race and nationality.”⁶³ Due to these different interpretations, the localisation of the Macau civil service became a diplomatic issue between the two sides.⁶⁴

The Chinese side wanted a gradual increase in the number of Chinese functionaries in the middle and high posts of the Macau administration; Portugal did not want this ethnic discrimination of the other locals, namely the Macanese. This was related to the nationality question and to the issue of the Resident Identity Cards: the citizens who did not choose Chinese nationality had the status of permanent resident, being discriminated and banned access from principal public posts.

China favoured a general plan of localisation especially of the middle and high rank civil servants and wanted the Portuguese to elaborate a list of the civil servants. The Chinese delegates in the JLG frequently asked for details of the director and chief ranks civil servants – namely their distribution by service, local of birth, nationality, educational qualifications, posts, and knowledge of

⁶² *Ibid.* pp.55 and 49.

⁶³ *Ibid.* p.42.

⁶⁴ Lo, *op. cit.*, p.166.

Portuguese and Chinese⁶⁵ – and criticized Portugal for the slow pace of the localisation and for taking too long to promote local Chinese to higher ranks.⁶⁶

The Chinese delegation in the JLG considered that the local inhabitants should correspond in the same percentage to the middle and high rank civil servants.⁶⁷

They argued that, because 97% of the Macau population was Chinese they had necessarily to occupy equally or similar percentage of middle and high positions in the future Macau administration.⁶⁸ This Chinese negotiating strategy aimed at obtaining at the very least a more representative bureaucracy and in accelerating the pace of localization in Macau.⁶⁹

The Portuguese position was that the Chinese discrimination based in race or nationality to the public positions would lead not to a true localisation but to a pure “Sinification” of three quarters or of the totality of civil servants.⁷⁰ The Sino-Portuguese Joint Declaration dismissed the Chinese theory of percentage and proportionality to nominate Chinese nationals to middle and high rank posts:

“After the establishment of the Macau Special Administrative Region, public servants, (including police) of Chinese nationality and Portuguese and other foreign nationalities previously serving in Macau may all remain in employment... The Macau Special Administrative Region may appoint Portuguese and other foreign nationals previously serving in the public service in Macau or currently holding Permanent Identity Cards of the Macau Special Administrative Region to public posts (except certain principal official posts). ... The appointment and promotion of public servants shall be on the basis of qualifications, experience and ability.”⁷¹

For the Portuguese delegates, the Chinese criterion of localisation was based in racial, ethnic, linguistic or nationality discrimination that had nothing to do with

⁶⁵ Document 8.

⁶⁶ Yee, *op. cit.*, p.42.

⁶⁷ Document 9.

⁶⁸ *Tribuna de Macau*, 14 December 1991.

⁶⁹ Lo, *op. cit.*, p.156.

⁷⁰ *Tribuna de Macau*, 14 December 1991.

⁷¹ Sino-Portuguese Joint Declaration on the Macau Question, Annex one, paragraphs V and VI.

experience and qualifications of Macau's civil service.⁷² They argued that the local Chinese usually had low educational level and language proficiency⁷³ and that promotion of local staff to chief and director ranks should follow the criteria of qualification.⁷⁴

As happened with the other leadership positions of the Macau administration, such as the governor and the under-secretaries, the upper ranks of Macau's civil service were usually filled through political appointments. The temporary and commissioned appointments favoured the Portuguese expatriates and led to few openings at the director level for the local Chinese or Macanese and to the absence of leadership training programmes for local civil servants. The recruitment for permanent staff set written examinations only in Portuguese excluding the majority of local Chinese. Besides, prior to 1989 the Portuguese administration did not recognize degrees from universities from non-Portuguese language regions, stopping much young local talent for entering the civil service.⁷⁵

During the early years of the transition, the Chinese delegation in the JLG constantly criticised the increase in numbers of the civil servants in the administration, namely Portuguese expatriates, regardless of the needs of Macau's bureaucracy.⁷⁶ According to them, this resulted in the creation of new positions to accommodate friends, to the overlapping of services and to the drastic inflation of

⁷² *Tribuna de Macau*, 14 December 1991.

⁷³ Yee, *op. cit.*, p.42.

⁷⁴ Document 10, p.5.

⁷⁵ Yee, *op. cit.*, pp.42-46 and 52 for the all paragraph.

⁷⁶ Lo, *op. cit.*, p.164.

the governmental posts, which affected the efficiency and increased the financial expenses of the administration and delayed the localisation.⁷⁷

The Portuguese delegates argued that the rapid increase of staff in the administration was rather a consequence of the integration of new local civil servants and would be compensated by the re-integration of some of the staff in Portugal's bureaucracy. The contracted local civil servants would progressively replace the vacant positions left by the Portuguese expatriates, reducing the number of temporary appointments.⁷⁸

Willing to accelerate the pace of the localisation, the Chinese side pressed for the recognition of academic qualifications of local people who did not have a Portuguese education and the reduction of educational requirements for the local bureaucrats, namely the proficiency in Portuguese language.⁷⁹ Agreeing in the importance of training local civil servants, in 1988 the Macau administration transformed the University of Macau (previously called University of East Asia) into a public university and implemented reforms to avoid the brain drain of local talent.⁸⁰ In 1993, the Macau administration established a new regime of recognition of educational qualifications obtained outside Macau and in the unofficial education systems existing in Macau.⁸¹

Despite these efforts, the Portuguese side implemented Macau's localisation policies at a much slower rhythm than Hong Kong, and by the end of the

⁷⁷ Document 9.

⁷⁸ Document 11, p.6.

⁷⁹ Lo, *op. cit.*, pp.156 and 158.

⁸⁰ Yee, *op. cit.*, p.52.

⁸¹ Decree no. 39/93/M, 26 July 1993.

transition period Macau was left with a young and inexperienced team of civil servants and a mediocre bureaucracy.⁸²

The integration of Macau civil servants in the Portuguese Republic

The Chinese delegates wanted a clear definition of the civil servants that would remain in the Macau administration: only after the Portuguese expatriates left could the local Chinese and Macanese aspire to fill vacant positions in the upper administrative ranks.⁸³

Portugal wanted to guarantee a place in the Republic's civil service to those Portuguese functionaries that opted to stay in Macau after 1999 in case they decided to be reintegrated in Portugal.⁸⁴ However, the Chinese delegates in the Joint Liaison Group did not accept the double-binding system: civil servants could under no circumstance have a double juridical statute and could not be responsible to two different governments. The civil servants could choose between retirement, continuing to exercise functions in Macau as predicted in the Joint Declaration, or returning to Portugal.⁸⁵

The Chinese position on this issue was that the Portuguese civil servants that opted to stay in Macau after the handover could not remain civil servants of the Portuguese Republic; the civil servants integrated in Portugal's civil service would be dismissed by the government of the future Special Administrative

⁸² Lo, *op. cit.*, p.161 and Edmonds, Richard Louis, and Yee, Herbert S., "Macau: From Portuguese Autonomous Territory to Chinese Special Administrative Region", *The China Quarterly*, no.160, December 1999, p.813.

⁸³ Yee, *op. cit.*, p.47.

⁸⁴ Document 12.

⁸⁵ Document 13.

Region in 1999. The government of the future SAR would not accept that Portugal attributed a dual status.⁸⁶

The integration of Macau civil servants in the Portuguese Republic was related with the issue of the pension fund for Macau's civil servants. The Portuguese side wanted the Macau Special Administrative Region to pay the pensions of all Macau civil servants, except for those that were reintegrated in Lisbon before 1999. The issue was cause of great dissension in the Joint Liaison Group. There were three types of situations: 1) the civil servants that stayed in Macau after the handover; 2) the civil servants that integrated Portugal's bureaucracy before the handover; and 3) the civil servants that retired before the end of the Portuguese administration.⁸⁷

Consensus was reached in the first two situations. The future Macau Special Administrative Region was responsible to pay the pensions to the civil servants that stayed in Macau, while the pensions of the civil servants reintegrated in Portugal were transferred to Portugal's Retirement Fund (*Caixa Geral de Aposentações – C.G.A.*). The Sino-Portuguese dissensions referred to the civil servants that retired before the end of the Portuguese administration: Portugal argued that these pensions should be paid by the Macau Special Administrative Region, but China did not accept this.⁸⁸

The Chinese position was that the pensions of the functionaries that retired before the end of the Portuguese administration were Portugal's responsibility. Portugal

⁸⁶ *Ibid.*

⁸⁷ Interview H.

⁸⁸ *Ibid.*

argued that because they were Macau's civil servants, their pensions should be paid by Macau. The Portuguese delegation did not manage to push the Chinese delegation to accept the total payment of the pensions for Macau.⁸⁹ The responsibilities of the pension fund of the Macau SAR were divided and Portugal was bound to contribute.⁹⁰ The Portuguese government agreed with the transfer to Portugal's C.G.A. of the responsibility for the payment of the pensions of the civil servants that retired before 19 December 1999.⁹¹

In February 1994, the Macau Government issued a decree authorising the civil servants to early retirement or to leave the civil service by paying a financial compensation, with the transfer of responsibilities to the C.G.A.. Macau civil servants could opt before 24 May 1994 between: joining Portugal's Civil Service after 1999; retiring, with the transfer of responsibilities to the C.G.A.; leave the civil service under pecuniary compensation; or remaining in Macau's civil service.⁹²

This was a huge burden for Portugal's pension fund and the Portuguese negotiators could have negotiated the issue more carefully: Portugal should have created a fund with the money of Macau to pay those civil servants.

4.3.2. The Localisation of the Language

The global plan for the localisation of the civil service was directly related with the generalisation of the bilingualism within the Macau administration. The

⁸⁹ Interview P.

⁹⁰ Interview H.

⁹¹ Decree no. 357/93, 14 October 1993, in document 11, p.20.

⁹² Decree no. 14/94/M, 23 February 1994, in document 11, pp.20-22.

Chinese side expected that the official statute of the Chinese language would increase the number of Chinese in Macau's bureaucracy and that the translation of Portuguese laws would put an end to the Portuguese and Macanese control of Macau's judiciary.⁹³

In Macau coexisted a language spoken by the majority of the population and a language of reference used in the Civil Service, in the legislative process and in courts. This was typical of colonial situations in which the lawmakers and law enforcers did not know the language used by the majority of the addressees of the norms.⁹⁴ During more than four centuries of occupation, Portugal had not succeeded in generalising the use of the Portuguese language in Macau.

The Chinese side claimed that the Chinese language should be equal of status to Portuguese during the transition period. After long delaying the issue, the Portuguese side realized that the officialization of the Chinese language during the transition period was the best way to safeguard and valorise the Portuguese language and culture in Macau after 1999.⁹⁵ Portugal should have negotiated this during the Joint Declaration talks; it was a tactical mistake to overlook the issue and accept the vague Chinese declaration: "In addition to Chinese, Portuguese may also be used in organs of government and in the legislature and the courts in the Macau Special Administrative Region."⁹⁶

Portugal saw the attribution of official status to the Portuguese language as an assurance of the stability of Macau's juridical system beyond 1999. It also

⁹³ Lo, *op. cit.*, p.156.

⁹⁴ Document 14, pp.1-2.

⁹⁵ Document 15, p.3.

⁹⁶ Sino-Portuguese Joint Declaration on the Macau Question, paragraph 2 (5).

safeguarded the possibility of Portugal-Macau juridical cooperation and allowed the Macau courts and administration to appeal to Portuguese jurisprudence and doctrine.⁹⁷ The Portuguese side even expected that the structures and methodologies for juridical translation developed to translate into Chinese the Portuguese law, would be the base for a system of bilingual juridical production, or at least for the translation into Portuguese of normative acts originally produced in Chinese.⁹⁸

By April 1991, Portugal and China finally reached agreement and signed a memorandum of talks on the statute of the Portuguese and Chinese languages in Macau. The Portuguese side agreed to publish before the end of 1991 legislation conferring the Chinese language an official statute identical and with the same legal force of the Portuguese language. That legislation should include information on the conditions to implement the Chinese language in the Macau administrative, legislative and judicial sectors as rapidly and gradually as possible. In exchange, the Portuguese side obtained the guarantee in Macau Basic Law that the Portuguese language would remain official after 1999: "Besides the Chinese language, the Portuguese language can be used in the administrative, legislative and judicial bodies of the Macau Special Administrative Region. The Portuguese language is also an official language."⁹⁹

⁹⁷ Document 16, p.5.

⁹⁸ *Ibid.* p.6. The difference between the juridical translation and the bilingual juridical production is that the bilingual production consists in a dynamic process aiming at making impossible the distinction between the original text and the translation. In *Ibid.*, p.14.

⁹⁹ In July 1991 the draft of the Macau Basic Law included this paragraph in chapter I, article 9. Document 17.

At the minute Portugal assumed a two-level engagement: 1) one regarding the political principle, related to the exercise of sovereignty; 2) and the other regarding the implementation in the field. At the political level, the Portuguese government decreed that: "In Macau the Chinese language has official status and has the same legal force as the Portuguese language."¹⁰⁰ At the implementation level, it was up to Macau's governmental bodies to assure that, "in conformity with the local reality, the official status of the Chinese language was gradually and progressively implemented in the administrative, legislative and judicial domains."¹⁰¹

The localisation of the language in the civil service

The Macau administration wanted to show the Chinese side "the political will to create all the necessary conditions for the effective implementation of the agreement on the official statute of the Chinese language,"¹⁰² and gradually adopted measures to extend the official use of the Chinese language.¹⁰³ These measures intended: to improve the quality of the training of interpreters-translators creating courses of a higher academic level, to intensify the diffusion of the Chinese language through the existence of more modular courses of different levels and lengths, and to support the Sino-Portuguese education.¹⁰⁴ The

¹⁰⁰ Decree no. 455/91, *Diário da República*, I Série A, n.º 301, 2º suplemento, 31 December 1991.

¹⁰¹ Decree no. 455/91, *Diário da República*, I Série A, n.º 301, 2º suplemento, 31 December 1991.

¹⁰² Document 18.

¹⁰³ In February 1992, the Governor created a Linguistics Commission (*Comissão de Acompanhamento da Situação Linguística de Macau*), an organ of direct support to the Governor, presided by the Governor and composed by other twenty-three elements from within and outside the Administration, to monitor the official use of the Chinese language and to discuss the problems resulting of the linguistic situation of Macau. Despatch no. 16/GM/92, *Official Bulletin of Macau*, no. 8, 24 February 1992. The Governor also asked the Direcção dos Serviços de Assuntos Chineses to propose measures to the enlargement of the use of the Chinese language in the public services of the administration, facilitating the access of the majority of the population to the administrative system. Despatch no. 106/GM/91, *Official Bulletin of Macau*, 27 May 1991.

¹⁰⁴ Document 18.

administration also adopted specific measures to train local bilingual staff in order to achieve a wider use of both languages:¹⁰⁵ the creation of a team to assess the plans for the generalization of bilingualism and linguistic training in the administration;¹⁰⁶ the assessment of the linguistic situation of the civil service and the presentation of linguistic training plans according to the needs of every civil service; the creation of special scholarships for training and professional improvement of the civil servants.¹⁰⁷

From 1987 to 1995 the number of Macau's civil servants that had a good or fair command of written Portuguese decreased 4.6 per cent, as a result of the departure of several hundred Macanese who chose early retirement or to leave the civil service as part of the integration plan and of the Chinese lack of interest in learning Portuguese. On the other hand, those who had a good or fair command of Mandarin increased 15.5 percent, and the bilingual civil servants (those who had a good or fair command of written Portuguese and Chinese) increased 5.8 per cent.¹⁰⁸

Despite all these measures, the official recognition of the Chinese language had little practical influence on the status of Portuguese as the working language of the Macau administration for two reasons. First, all official and legal documents were in Portuguese and due to the shortage of translators only important policy announcements and decrees were translated into Chinese. Second, the

¹⁰⁵ Document 11, p.19.

¹⁰⁶ Despatch 30/GM/94, *Official Bulletin of Macau – Series I*, 30 May 1994.

¹⁰⁷ Despatches no. 46/GM/94 and 47/GM/94, *Official Bulletin of Macau – Series I*, 25 July 1994, and Decree no. 174/94/M, *Official Bulletin of Macau – Series I*, 8 August 1994.

¹⁰⁸ Yee, *op. cit.*, p.58.

Portuguese and the Macanese, who could not read nor write Chinese, occupied the chief positions in the administration.¹⁰⁹

The localisation of the language at the legislative level

Although the official recognition of the Chinese language had repercussions over all the Macau administration, the more delicate issues laid on the legislative and judicial levels. The achievement of a situation of legislative bilingualism was a complex process in Macau due to some adverse starting points. First, the lack of bilingual jurists: the majority of the judicial community did not command written Chinese and only a minority commanded spoken Chinese (Cantonese), and just a few technical staff of Chinese origin commanded Portuguese. The population also had a very poor command of the juridical organisation in force.¹¹⁰

Second, the need to attribute official value to the translation of legal texts made imperative the clarification of the translator's competence; the number of interpreters-translators was insufficient and they usually had a deficient training base and lack of specialized training. Third, the translations were made by different entities with no guarantee of terminological and stylistic uniformity in technical-judicial terms and were usually made without juridical support. Fourth, the legislative bilingualism required the establishment of criteria for the solution of possible divergences of sense or interpretation between the Portuguese and Chinese versions of the texts.¹¹¹

¹⁰⁹ *Ibid.*, p.57.

¹¹⁰ Documents 19 and 14, p.3.

¹¹¹ *Ibid.*

The process of legislative bilingualism in Macau evolved through three different phases. Before the Organic Statute of Macau entered into force, the majority of the Macau legislation was produced in Portugal and only the laws that directly affected the Chinese community were translated. From 1976 to 1989, the legislation produced in Portugal decreased and the legislation produced in Macau increased, but there were still a limited number of legislative translations.¹¹² With the signature of the Sino-Portuguese Joint Declaration in 1987, predicting an autonomous judicial system for Macau was characterised by the legislative and judicial bilingualism, the translation of the laws became one of the priority tasks of the transition period.¹¹³

In 1989, a decree declared obligatory the publishing of a Chinese translation of all legislative or legal diplomas, but “in case of doubt, the text in the Portuguese language prevails upon the translation of the text in the Chinese language.”¹¹⁴ The Chinese version had thus a merely informative character. The lack of centralization in the elaboration of the Chinese version of the laws facilitated the increase in the number of translated texts but impeded the Portuguese and Chinese versions from having equal value. Due to the diversity of editing styles of the texts in Chinese and to the lack of uniformity in the translation of technical terms, the versions in the Chinese language could not be invoked with the identical authenticity to the Portuguese versions.¹¹⁵

¹¹² Document 14, p.4.

¹¹³ Document 16, pp.3 and 6-7.

¹¹⁴ Decree no. 11/89/M, 20 February 1989, in document 14, p.4.

¹¹⁵ Document 16, pp.9-10.

The implementation of the official statute of the Chinese language involved the attribution of identical legal value to the Portuguese and the Chinese versions of the diplomas edited by the Macau administration. The authenticity of both versions required the settlement of a fixed Chinese version for the technical-juridical terms of the Portuguese law and of a Chinese linguistic and stylistic pattern to give coherence to the legislative texts, and the prevision of rules in case of divergence between the interpretation or the sense of law resulting of the two versions.¹¹⁶

The Office for the Juridical Translation (*Gabinete para a Tradução Jurídica – GTJ*) aimed at “creating conditions for the existence of official versions in the Chinese language of the normative acts in force invoked with the same rigour and juridical security of the versions in Portuguese language.”¹¹⁷ In 1991 the GTJ had seven translation teams, each composed of a jurist of Portuguese training, a jurist of Chinese training, an interpreter-translator and a scholar.¹¹⁸

Although the localisation of the Chinese language in Macau’s legislation was a rather consensual issue in the Joint Liaison Group meetings, it consisted in a slow process that demanded much Sino-Portuguese cooperation.

The localisation of the language at the judicial level

The slowest and more complex process of the implementation of the Chinese language with official statute was at the judicial level. Priority was given to the training of bilingual jurists, to the translation of the laws and to the gradual use of

¹¹⁶ Document 14, p.8.

¹¹⁷ Document 20.

¹¹⁸ Document 16, p.17.

Chinese in the courts, both orally and in the documents.¹¹⁹ Macau had to be governed by its own people also in the legal sector, so the magistrates were gradually localized to work in synchrony with the community that they served.¹²⁰

The legislative and judiciary autonomy of the territory depended on the existence of professionals of law and of a local juridical culture.¹²¹ The strategy of the GTJ was to train translators who held a great knowledge of the law in force in Macau. Priority was thus given to the recruitment of local personnel with university training or attending law courses.¹²²

The political, economic and social autonomy of Macau presumed that its population knew the diplomas that were the base of the juridical system in force. The translation of the laws into Chinese had to follow criteria of technical and juridical quality and of terminological uniformity to assure the invocation of the Portuguese and Chinese versions of the legal texts with the same juridical security. Priority was given to the translation of the structural norms and diplomas of the Macau juridical system: the Constitution of the Portuguese Republic, the Organic Statute of Macau, the Law of the Bases of the Judicial Organisation of Macau, and the five “major codes”.¹²³

¹¹⁹ *Ibid.*, p.33.

¹²⁰ SAMPAIO, Jorge, *Portugueses*, vol. I, Imprensa Nacional Casa da Moeda, Lisbon, 1997, pp.359-362.

¹²¹ Document 16, pp.36-37.

¹²² Document 20.

¹²³ Document 16, p.19.

4.3.3. The Localisation of the Law

The localisation of the law was a complex process that included different aspects such as: 1) the transformation of laws of Portuguese origin into local laws; 2) the classification of the laws in force by subjects (penal law, commercial law, civil law, procedural penal law, procedural civil law and administrative law) and by types of diplomas; 3) the law reform, which consisted in revising, updating and adapting the Macau legislation to the local situation. Other aspects of the localisation of the law, analysed in the previous section, were the translation into Chinese of all the existing laws and the forming of bilingual jurists.

The need to update the Macau judicial system during the transition period was a consequence of the demands of the Joint Declaration and of the inertia that had characterised the life of the Territory. By 1988 the Macau judicial organization was mainly the original from Portugal and only accessible in Portuguese: Macau had a District Court with appeal to the High Court of Justice in Lisbon; there was an insignificant number of local people working in the civil service; Portuguese was the only official language and few laws had Chinese versions.¹²⁴

There were two major sources of Macau's laws: Portuguese laws and local laws. The Portuguese laws emanated from the Portuguese Republic (Parliament and Government) and were either laws specifically made for Macau or national laws extended to Macau through publication in the Official Bulletin of Macau. The local laws were the ones created by Macau's bodies with legislative competence, i.e., the legislature and the Governor.¹²⁵ After 1976, with the entrance into force of

¹²⁴ Sampaio, Jorge, *Portugueses*, vol. IV, Imprensa Nacional Casa da Moeda, Lisbon, 2000, p.404.

¹²⁵ Yee, *op. cit.*, p.59.

the Macau Organic Statute, the production of local legislation increased, balancing the amount of laws created by the Republic. The interrelated use of both the Portuguese and the local laws made it difficult to determine which was the origin of the law in force in Macau.

As the Sino-Portuguese Joint Declaration stated that “the laws currently in force in Macau will remain basically unchanged,”¹²⁶ the Portuguese authorities in Macau were of the opinion that those laws would remain “basically unchanged” during the fifty years transition, regardless of their origin. But by 1989-1990 the Chinese authorities made clear to the Macau government that only the local laws would be respected. Members of the juridical department of Xinhua News Agency privately repeated to the coordinator of the Macau Legislative Office that the Chinese interpretation of “laws in force in Macau” only referred to the legal laws which emanated from the bodies of the territory.¹²⁷

In the JLG the Chinese side also insisted on the need to localise the laws, suggesting that all the “colonial” legislation would become void after 1999. If the Portuguese side wanted the Macau Special Administrative Region to adopt those laws, they had to pass through a process of localisation to become Macau laws. Initially, the Portuguese side interpreted the Chinese version as a mere negotiating strategy or as a tactic to accelerate Macau’s legal reforms and to intervene in the legislative process. But the perseverance of the Chinese authorities led the Macau

¹²⁶ Sino-Portuguese Joint Declaration on the Question of Macau, no.2 (4).

¹²⁷ Document 22, pp.4-5.

administration to consider the possible existence of similar procedures regarding Hong Kong.¹²⁸

The administration concluded that China had a similar approach to Hong Kong and that the British and Hong Kong authorities had created a negative precedent. Both the Sino-Portuguese Joint Declaration on Macau and the Sino-British Joint Declaration on Hong Kong stipulated the permanence of the laws in force in the enclaves after the hand-over but the two agreements used different techniques to define the nature and origin of the laws that would remain in force. The Sino-British Joint Declaration limited the acts to remain in force and the non-localised laws would not be automatically maintained. In the Sino-Portuguese Joint Declaration there was not a restrictive enumeration of the normative acts – all the normative acts were generically considered – thus the norms to remain in force did not need localisation.¹²⁹ According to Annex I, Paragraph II, of the Sino-British Joint Declaration,

“After the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong (i.e., the common law, rules of equity, ordinances, subordinate legislation and customary law) shall be maintained, save for whatever therein may contravene the Basic Law or subject to any amendment by the Hong Kong Special Administrative Region legislature.”

There was no reference to the British Acts of Parliament extended to Hong Kong, such as the Letters Patent, Royal Instructions and the Orders in Council and there was not a residual category for non-localised normative acts. Thus, the laws originated in the United Kingdom would not remain in force in Hong Kong. In the Sino-British Joint Declaration Britain accepted the principle of the localisation of the laws emanating from British legislative bodies. The British side was thus

¹²⁸ *Ibid.*, pp.4-5.

¹²⁹ *Ibid.*, p.32.

obliged to localise several laws, leading to a vast programme of localisation, for which Britain engaged with China in informal talks.¹³⁰ On the other hand, Annex I, Paragraph III, of the Sino-Portuguese Joint Declaration stipulated that:

“After the establishment of the Macau Special Administrative Region, the laws, decrees, administrative regulations and other normative acts previously in force in Macau shall be maintained save for whatever therein may contravene the Basic Law or subject to any amendment by the Macau Special Administrative Region legislature.”

The Portuguese interpretation of this statement was that all normative acts existing in Macau before the transfer of the Administration would remain in force, including both the acts originating in Macau and the acts emanating from the Portuguese Republic and extended to Macau. As an international treaty, the Sino-Portuguese Joint Declaration did not stipulate the obligatoriness of localising the laws in Macau’s legal structure.¹³¹

In juridical terms the Portuguese side could thus claim that the Joint Declaration was clear enough on the needlessness of localising the laws and that there was no ground for further discussion. However, the risk of prevalence of the Chinese version could result in the loss of the most significant part of Macau’s legal structure, damaging the interests and rights of Macau’s citizens, the security of the legal traffic, and ending any possibilities of preserving a legal structure of Portuguese origin in the Far East. And for the Portuguese authorities and for the Portuguese administration in Macau this was an objective of “the highest priority.”¹³²

¹³⁰ *Ibid.*, pp. 30 and 37-40.

¹³¹ *Ibid.*, pp. 14 and 35-36.

¹³² *Ibid.*, pp. 7-9.

Portugal wanted to keep the juridical system of Portuguese origin as an effective social system in the Chinese language, confirming Macau's autonomy, namely towards Zhuhai and Hong Kong.¹³³ The Portuguese side perceived the localisation of the law as the main legacy that Portugal could leave in Macau.¹³⁴ Macau's market economy and social stability were meaningless if not translated into local laws that guaranteed the rights, liberties and guarantees of the residents after 1999.¹³⁵ It was absolutely necessary to translate in local laws the rights, liberties and guarantees recognised in the Organic Statute of Macau, as well as the extension of the International Covenants to Macau.¹³⁶

Thus, for political reasons the Portuguese side opted to establish with the Chinese side the terms in which Macau's legal structure would effectively be preserved, through the localisation of the most relevant laws of the enclave. The Portuguese position was that although the Joint Declaration did not require the localisation of Macau laws of Portuguese origin, this would benefit Macau's legal modernisation and adaptation, and therefore Portugal was willing to hold private talks with China on the plans of localization and adaptation of the laws in force. According to this position, the talks should always include experts from the Macau government and follow the Hong Kong model.¹³⁷

The Chinese side expected to be consulted in advance or at least informed by the Portuguese side on the elaboration of new laws affecting the long-term interests of Macau citizens, to avoid the compulsory revision in case they contravene the

¹³³ Document 14, p.17.

¹³⁴ Document 16, pp.36-37.

¹³⁵ Sampaio, *Portugueses*, vol. I..., pp.352-53.

¹³⁶ *Ibid.*, pp.359-362. For the extension of the International Covenants to Macau see Chapter 5.

¹³⁷ Document 22, pp.52-55.

Basic Law;¹³⁸ and wanted the Portuguese side to submit drafts on the localisation of the laws and reach consensus within the JLG before publishing them in the Macau government bulletin.¹³⁹ The Chinese side insisted in the principle of previous consultation: Portugal should submit to the Joint Liaison Group all the legislation for approval, so that it remained binding after the hand-over; but the Portuguese side did not accept this principle.

The Portuguese laws that were in force in Macau and that did not contravene the Basic Law could be legally transformed into local laws through a process of localisation, thus constituting the legal system of the Macau Special Administrative Region, ensuring a smooth and stable transition. The urge for discarding the laws with colonial features forced the Portuguese side to rapidly alter codes and laws less acceptable.¹⁴⁰ The law reform consisted of re-approving the obsolete legal codes and adapting them to the local needs. The most relevant legislation was inserted in specific legal codes, namely the “major codes”.

Priority was given to the major codes that regulated the main aspects of the lives of Macau’s inhabitants: the criminal code, the civil code, and the commercial code.¹⁴¹ Some of these codes were made in the late nineteenth century or early twentieth centuries. They were obsolete in content, did not reflect Macau’s social reality, and had lost validity with the revision of the Organic Statute of Macau.¹⁴² For example, while in Portugal the criminal code of 1982 had already been revised several times, in Macau the criminal code in force dated from 1886 and its

¹³⁸ Document 9.

¹³⁹ *China Daily*, 28 December 1994.

¹⁴⁰ *O Comércio de Macau*, 31 August 1991.

¹⁴¹ Document 21.

¹⁴² *Ou Mun*, 30 September 1991.

limitations had been surpassed by the production of detached legislation since the 1970s.¹⁴³ Another priority was to revise the code of criminal procedure and the code of civil procedure in order to guarantee the good functioning of the courts. This would leave Macau with an autonomous judicial organisation and an efficient justice.¹⁴⁴

The Portuguese strategy for updating Macau's legal system was to keep untouched the Portuguese source of the Macau law while adapting it to the local and regional realities. There was a permanent collaboration with the Chinese side, namely within the JLG, to guarantee that the judicial structure would remain unchanged in the following fifty years.¹⁴⁵ The Chinese delegates were also very interested in this collaboration and rushed the Portuguese side to finish the codes so that they had time to make suggestions.¹⁴⁶ Before producing a new law, the Portuguese side showed the Chinese translation to their counterpart and negotiated the points of disagreement. The aim of the Portuguese negotiators was that the laws would remain in force after the handover, contrary to what happened in Hong Kong.¹⁴⁷

The Portuguese side also aimed at leaving Macau with an autonomous judicial system. They considered that only with an independent judicial power and autonomous institutions could Macau maintain its lifestyle, as predicted in the Joint Declaration. Portugal wanted to leave in Macau an independent judicial power that guaranteed the primacy of the law, and created conditions for the

¹⁴³ *O Comércio de Macau*, 31 August 1991.

¹⁴⁴ Document 21.

¹⁴⁵ Sampaio, *Portugueses*, vol. IV, ..., pp. 405 and 427-28.

¹⁴⁶ Interview P.

¹⁴⁷ Interview B.

effective independence of the magistratures, which should enjoy a statute of total independence and should not be permeable to any illegitimate interference.¹⁴⁸

In 1990 the Portuguese parliament, by proposal of Macau's Legislature, consigned in the Organic Statute of Macau the judicial autonomy of the territory and the Law of Bases of the Macau Judicial Organisation ensured Macau's singularity and established the contents and limits of that autonomy.¹⁴⁹ The majority of the Macau legislative competences that still remained in the Portuguese Parliament were transferred to the local government bodies – the Governor and the Legislative Assembly – which were given competence to legislate in terms of judicial order and to establish the regime of the courts.¹⁵⁰ The High Court of Justice was established and the local instances were given specific functioning rules and exclusive jurisdiction in the majority of the matters on trial, granting Macau a high judicial autonomy.¹⁵¹

Macau's double tutelage system did not have an apparent impact in the manner the Portuguese delegation negotiated the three localisations in the JLG, as this issue generated consensus among the Portugal's political elite. However, the outdated situation of Macau's juridical system in the beginning of the transition shows the absence of a Portuguese strategy for Macau. As a consequence, the localisation absorbed much of the efforts of the Portuguese administration during the transition, which ended neglecting other areas that could safeguard the Portuguese presence in Macau after 1999.

¹⁴⁸ Sampaio, *Portugueses*, vol. I, ..., pp.359-362.

¹⁴⁹ Law no. 112/91, 29 August 1991.

¹⁵⁰ Sampaio, *Portugueses*, vol. I..., pp.359-362.

¹⁵¹ *Ibid.*, p.351.

4.4. Conclusion

This chapter analysed the impact of Macau's double tutelage system in the definition of the Portuguese strategy for Macau during the transition period. The diffusion of power between the President and the Prime Minister over Macau allowed the existence of a presidential strategy for the Macau administration along with the governmental strategy for the negotiations with China. This "parallel diplomacy" was particularly evident during the first years of the transition, as the President and the Prime Minister belonged to different political parties. With the political changes of the mid-1990s, the period of political cohabitation was replaced by one of socialist cooperation and there was a major shift in the handling of the Macau issue.

It is argued that the absence of a Portuguese common strategy for the negotiations diminished Portugal's negotiating power with China. This was most noticeable in the more problematic issues of the transition, namely the Orient Foundation, analysed in detail in the next chapter, as it did not have an apparent impact in the manner the Portuguese delegation negotiated the three localisations in the JLG. For the Portuguese side, the objectives of the localisation were the continued promotion of Macau's economic and social development, stability and security, and "the existence in 19 December 1999 of one administration that would work fully and without disruption on 20 December 1999."¹⁵²

The problems resulting from the localisation process were on the agenda of all Joint Liaison Group plenary meetings and the Chinese side clearly wanted the

¹⁵² Document 10, p.3.

process to evolve at a faster pace. The most controversial localisation was the civil service, as Portugal strongly rejected China's ethnic criterion for the high posts of the administration. The Chinese side constantly claimed the need for a plan of the localisation of Macau's civil service during the transition period, and that the localisation should be representative: the majority of the population was Chinese and should be represented in the right proportion in the middle and high ranks of the civil service.¹⁵³

The Portuguese strategy of remaining a strong presence in the territory until the handover delayed the localisation of Chinese civil servants and the use of Chinese language in Macau's bureaucracy. As a result, by 1999, Macau was left with a mediocre bureaucracy, vulnerable to China's influence and unlikely to maintain the Portuguese cultural presence after the handover.¹⁵⁴ While negotiating the localisation of the Chinese language, Portugal secured the official status of the Portuguese language after 1999, which arguably should have been negotiated before the signature of the Joint Declaration. The status of the Portuguese language was one of the major Portuguese objectives for the transition period as Portugal was mostly interested in the visibility of the Portuguese presence and culture in Macau after the transfer of the administration to China.¹⁵⁵

Another objective of the Portuguese side was the establishment of an autonomous judicial order defined by the local government bodies, to give Macau competence in terms of judicial organization.¹⁵⁶ Portugal considered the law as the best

¹⁵³ Document 8.

¹⁵⁴ Edmonds and Yee, *op. cit.*, p.813.

¹⁵⁵ Sampaio, *Portugueses*, vol. IV..., p.435.

¹⁵⁶ Sampaio, *Portugueses*, vol. I..., p.351.

guarantee for the maintenance of Macau's identity, and aimed at consolidating Macau's politico-administrative autonomy and judicial system. While editing, in Portuguese and Chinese, Macau's disciplinary codes, Portugal consulted the Chinese delegation in the JLG. Although not formally accepting the principle of preliminary consultation of the Chinese side, the Portuguese side was subordinated to the diplomatic consensus: "one went as far as the consensus allowed. To go beyond it, in a unilateral way, would be of no use."¹⁵⁷ Portugal feared that after 1999 China would discard the legislation that she did not approve.

After the signature of the Sino-Portuguese Joint Declaration, the Portuguese Foreign Ministry defined two tasks for the Portuguese delegation in the Joint Liaison Group: 1) to support the institutions created to protect the Portuguese presence in the future Macau Special Administrative Region; 2) and to avoid that differences within the JLG being made public, to safeguard Sino-Portuguese relations.¹⁵⁸ The Portuguese side feared that the settlement of sensitive issues through diplomatic channels could affect the friendly Sino-Portuguese bilateral relations.¹⁵⁹ As argued in the previous chapters, this low profile strategy was mainly a consequence of the perception in the Portuguese delegation that Portugal was negotiating from a weaker position, and the importance attributed in Portugal

¹⁵⁷ Sampaio, *Portugueses*, vol. IV..., *op.cit.*, pp. 443, 405 and 427-28.

¹⁵⁸ Document 1, paragraph 120.

¹⁵⁹ Document 1, paragraph 129.

to an honourable withdrawal from Macau to compensate the traumatic decolonisation process of the mid-1970s.¹⁶⁰

This Portuguese strategy of bilateral cooperation contrasted with the contentious Sino-British relations over Hong Kong, avoiding much uncertainty in the territory.¹⁶¹ The Sino-Portuguese friendly relations over Macau and acquiescence with the PRC prevented the Portugal of implementing democratic reforms as Britain did in Hong Kong. Contrary to Britain in Hong Kong, the Portuguese sought, more than Macau's political autonomy from China, its economic autonomy from Zhuhai and Hong Kong. This explains the infrastructure driven strategy of the Macau administration during the transition period.¹⁶²

¹⁶⁰ Santos, Boaventura de Sousa and Gomes, Conceição, *Macau, o Pequeníssimo Dragão*, Edições Afrontamento, Lisbon, 1988, p.492.

¹⁶¹ Lo, *op. cit.*, p. 251.

¹⁶² Lo, *op. cit.*, p. 249 and interview E.

Chapter 5 - Covenants, Construction and Possible Corruption: Other Delicate Issues of The Transition Period (1988-1999)

5.1. Introduction

As was argued in the previous chapter, the Portuguese side was mainly passive and reactive during the transition period. This was visible in the convergence of official speeches on Sino-Portuguese relations, on the fact that the Chinese led the negotiation process, and in the absence of a strong leadership in Macau capable of mobilizing the society, which remain ambivalent regarding the transition.¹

This chapter continues the analysis of the Portuguese strategy during the transition period, focusing on the three of the most sensitive issues: 1) the inclusion in the Macau Basic Law of the provisions of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights; 2) the construction of the Macau International Airport; and 3) the issue of the Orient Foundation. These cases represent examples of common Sino-Portuguese interests, a case of predominantly Portuguese interest, and one of predominantly Chinese interest, allowing an analysis of the implementation of the Portuguese strategy in different scenarios.

The issue of the International Covenants highlights the weaknesses of the early Sino-Portuguese negotiations and the omissions from the Joint Declaration. Although China was also interested in extending the Covenants to Macau, the

¹ Santos, Boaventura de Sousa and Gomes, Conceição, *Macau, o Pequeníssimo Dragão*, Edições Afrontamento, Lisbon, 1988, p.501.

Portuguese delegation could have saved energies for other issues if Portugal had not overlooked the issue in 1987.

The importance given by the Portuguese side to the construction of the Macau International Airport reflects the infrastructure-driven approach of the Macau administration during the transition. Apart from the creation of a politico-administrative organisation and judicial institutions analysed in the previous chapter, the strategy of the Macau administration focused on the future economic viability of Macau. The administration aimed at implementing in Macau a system of infrastructural change, vital to the economic development of the territory and to maintain its own identity.²

The issue of the Orient Foundation suggests that the diffusion of power between the Portuguese President and Prime Minister over Macau resulted in the absence of a common strategy for the negotiations and the loss of negotiating power with China. This was particularly true during the first years of the transition, as there were serious disagreements between the Socialist President and Social Democrat Prime Minister regarding Macau.³ From 1995 onwards, the socialist cooperation allowed the Portuguese side to reach consensus with China on the issue of the Foundation.

These issues are very sensitive in Portugal and have not been object of much analysis. Therefore, this chapter is mainly based on restricted material.

² Sampaio, Jorge, *Portugueses*, Vol. IV, Imprensa Nacional-Casa da Moeda, Lisbon, 2000, pp. 424 and 442.

³ Interview C.

5.2. The International Covenants

The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were adopted by the UN on 16 December 1966. Although these Covenants were signed by the Portuguese parliament in 1976 and ratified in 1978, they were never published in the Official Bulletin of Macau. Thus, their applicability to Macau was unclear and there was no reference to them in the Sino-Portuguese Joint Declaration. In contrast, those covenants had been extended to Hong Kong when Britain signed them in 1976 and there was an express reference to them in the Sino-British Joint Declaration, and consequently in the Hong Kong Basic Law.⁴

Although the majority of Portuguese legal experts considered that the Covenants were applicable to Macau because their clauses referred not only to the signatory states but also to the territories under their jurisdiction, the Portuguese government wanted to dissipate any Chinese doubts.⁵ The Portuguese side wanted to clarify the issue in the Joint Liaison Group, leaving no place for ambiguity.⁶ The Chinese delegation considered the issue as delicate and sensitive and wanted to keep it under maximum secrecy: views should therefore be exchanged at a restricted level, namely at the JLG's informal meetings.⁷ The Portuguese side was warned to be prudent and not present the issue to the Portuguese parliament before agreement was reached, in order to avoid unnecessary controversies.⁸

⁴ Document 23, p.8.

⁵ Document 2, p.31.

⁶ Document 24.

⁷ Document 26, p.1.

⁸ Document 25, p.6.

The Portuguese objective was to clarify the applicability of the Covenants to Macau and to guarantee them after 1999, introducing in Macau's Basic Law clauses identical to the Hong Kong Basic Law. The Portuguese arguments were that China had no grounds to treat Macau as secondary to Hong Kong and that public opinion would resent it if that happened, and it was an excellent opportunity for China to show openness regarding a problem that was closely observed by the international community. A Chinese benevolent and positive attitude would bring China more prestige and would have a great impact in its international image, and would help the Portuguese government to exert a moderated influence in international instances and in European Economic Community.⁹

The Portuguese side wanted to find a formula on the applicability of the Covenants to Macau and stressed that this did not conflict with Macau's political situation or the norms established in the Sino-Portuguese Joint Declaration. The Covenants' references to universal suffrage and to the right to self-determination did not apply to Macau, and therefore did not clash with Macau's politico-administrative system defined by the Sino-Portuguese Joint Declaration. Moreover, Portugal had not made the optional declaration, foreseen in article 41 of the International Covenant on Civil and Political Rights, to accept the legitimacy of the complaints presented by the member states of the Human Rights Committee.¹⁰

⁹ Document 23, pp.8-9.

¹⁰ Document 23, pp.9-11.

The Chinese position was that Hong Kong was a totally different case because the Covenants were already in force there when the Sino-British Joint Declaration was signed, so they were referred in this agreement and in the Hong Kong Basic Law. In Macau, the Portuguese side did not made any reference to the Covenants, so there was no reference to them in the draft of Macau's Basic Law.¹¹ Although the Portuguese side argued that the difference between the two Joint Declarations was due to mere formal (and not substantive) reasons, the Chinese considered that there was not merely a difference of policies but a difference of local realities.¹²

Besides, the British government had expressed various exclusions when ratifying the Covenants, and the Portuguese government had not. Therefore, the applicability of the Covenants to Macau depended on its publication in the Official Bulletin of Macau and on the promulgation of legislation in Macau establishing the adequate reservations, being absolutely vital the reaching of consensus beforehand within the JLG.¹³ The Portuguese side argued that there was no need to maintain the same exclusions that Britain had made regarding Hong Kong and proposed a generic safety clause to exclude the issues of the self-determination and the universal suffrage.¹⁴

By the 14th JLG's plenary meeting, in July 1992, China agreed to the extension of the two Covenants to Macau with certain conditions. Most of the contents of the Covenants could be applied to Macau and corresponded to the needs of Macau's economic development and to the spirit of the Joint Declaration and did not

¹¹ Document 2, p.32.

¹² Document 25, p.5.

¹³ Document 27, p.5.

¹⁴ Document 28, p.2.

contradict the Basic Law. However, Portugal had to state that the clauses regarding the right to self-determination, universal suffrage, and the movement of foreigners did not apply to Macau. Portugal also had to declare that the application of the Covenants' clauses referring to the civil rights and to the liberties did not endanger the implementation of the Joint Declaration and corresponded to Macau's statute, and that Macau would elaborate specific legislation to the implementation of the clauses of the two Covenants.¹⁵

In November 1992, during JLG's 15th Plenary meeting the two sides formally confirmed the agreement regarding the applicability to Macau of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights.¹⁶ Macau Basic Law included a clause stipulating that "the provisions of the International Covenants shall remain in force and shall be implemented through the laws of the Macau Special Administrative Region."¹⁷

It is quite puzzling that the Portuguese side had completely ignored this issue during the Joint Declaration negotiations and then raised it during the first years of the transition period, insisting upon its urgency due to the state of progress of the Basic Law. Portugal perhaps should have negotiated this before signing the Joint Declaration, as Britain did with the extension of the Covenants to Hong Kong. By overlooking the subject at the Joint Declaration talks, Portugal risked China's total refusal to consider it during the transition. China's willingness to exercise flexibility over this made Portugal more vulnerable to Chinese pressure

¹⁵ Document 28, pp.2-3 for the whole paragraph.

¹⁶ Press Release on JLG's 15th Plenary Meeting, Beijing, 12 November 1992.

¹⁷ Basic Law of the Macau Special Administrative Region, chapter III, paragraph 40.

to raise issues that were not in the JLG agenda, such as the Orient Foundation. The Chinese were interested in extending the applicability of the Covenants to Macau, and therefore it was the first issue to be negotiated, agreement was reached immediately in 1992.¹⁸

5.3. The Macau International Airport

This section provides an example where the Portuguese side was diplomatically astute and was able to exploit China's diplomatic weakness following the Tiananmen Incident in 1989 to achieve important concessions. This was markedly different from the more dogmatic position of the British government, which did not refrain from criticising the action of the Chinese government, regardless of the impact that this would have on Sino-British relations.¹⁹

The issue of the airport and of the air traffic agreement was one with clear Portuguese interests. The Portuguese side wanted to reach agreement so badly that they often suggested treating the issue at a higher level when no progress was made in the JLG. The Portuguese administration faced difficulties with the construction of the Macau International Airport from the very beginning. According to a member of the Portuguese delegation during the two years of the airport negotiations the Portuguese side was never sure if the Chinese wanted the airport or not.²⁰

¹⁸ Interview B.

¹⁹ Lo, Shiu Hing, *Political Development in Macau*, The Chinese University Press, Hong Kong, 1995, p.24.

²⁰ Interview R.

Taking advantage of Macau's favourable environment for investment, the Portuguese administration's development policy included the construction of a new harbour, a new bridge and an airport.²¹ The Portuguese side considered the construction of the Macau International Airport one of the more important and complex problems of the transition period.²² Although the Chinese officials publicly supported the project, they constantly used technical difficulties in order to delay the construction of the airport and the conclusion of the air traffic agreements.

The Portuguese side repeatedly argued that the difficulties raised by the Chinese side had a very negative impact on the planning of those projects and could raise doubts in the minds of the investors. The airport would bring great prosperity and development to Macau, establishing conditions to aid Macau's autonomy. Otherwise, after 1999 the Macau SAR would not be recognised as a genuinely autonomous entity and would not be distinguished from neighbouring Zhuhai.²³

However, Zhuhai's own airport was built before Macau's. Unlike Macau, where a complex system of piles and land fill had to be considered due to the lack of spare land, Zhuhai had enough space for the airport and therefore the works were much cheaper than in Macau. Zhuhai put strong pressure in Beijing in order to have the international status attributed to its own airport raising all kind of objections, such as denying the supply of sand to the construction of the Macau airport and protesting against the noise pollution.²⁴ The Portuguese side informally asked the

²¹ Document 29, pp.2-3.

²² Document 30, p.4.

²³ Document 29, pp.2-3.

²⁴ Interview L.

Chinese side not to grant the international status at Zhuhai airport, but the Chinese never gave a positive answer (although in the end the Zhuhai airport did not get international status).²⁵

The construction of the Macau International Airport required China's authorisation for the use of the air space and the extension of the annual limit of 20 hectares of granted land predicted in the Sino-Portuguese Joint Declaration. As the Portuguese delegation in the Land Group was struggling to get an extension of this limit, the Tiananmen Incident occurred in Beijing on 4 June 1989 and China was isolated from the Western world.

The Portuguese leaders decided to seize this opportunity to achieve a breakthrough in the JLG's negotiations. Opposite to the British, the Portuguese side did not suspend the negotiations for tactical reasons: unlike Britain, Portugal got China's goodwill and concessions over the airport. While in Hong Kong the Sino-British JLG would not add anything to the final product, in Macau everything had to be built from the beginning and the Portuguese delegation in the JLG could not waste the few years left, otherwise the delays would be irremediable.²⁶

Britain suspended the Sino-British JLG's negotiations and China feared that Portugal would suit. During an informal meeting between the heads of the two delegations to discuss the Portuguese position regarding Tiananmen, the Chinese side stated its willingness to make concessions over the airport if the Portuguese

²⁵ Interview P.

²⁶ Interview I.

side did not suspend the negotiations. The Portuguese side accepted the proposal although demanded further conditions:

1) the Chinese side had to retreat from the front line and to adopt a position of low profile and could not impose any conditions on the Portuguese Administration; 2) the next JLG's meeting would still be on 31 July but would take place in Lisbon and not in Macau as expected, to avoid demonstrations; 3) a more neutral wording would be used in the joint communiqué – “spirit of openness” instead of “spirit of cordiality”.²⁷

After the meeting, the head of the Portuguese delegation of the Land Group obtained the formalization of China's concession of 194 hectares for the construction of the artificial island for the airport.²⁸

The Portuguese side believed that a visit of a Portuguese leader to Beijing after Tiananmen was a key negotiating advantage which Portugal should not waste, despite the potential criticism that it might raise among the international community. The issue was carefully considered in Lisbon by President Mário Soares and Prime Minister Aníbal Cavaco Silva, in one of the rare occasions that they sat at the same table to discuss the Macau question.²⁹ The President and the Prime Minister were worried with the alignment with the Western position, as the European Union had decided that the Presidents and Prime Ministers of the member states should not go the PRC after the Tiananmen incident.³⁰ Therefore, both Mário Soares and Cavaco Silva agreed that it was better to send Governor Melancia to Beijing.³¹

In early October 1989 Carlos Melancia visited Beijing under the justification that it was the responsibility of the Portuguese state, and not to the Governor of

²⁷ Interview I.

²⁸ Interview I.

²⁹ Interview L.

³⁰ Interview I.

³¹ Interview L.

Macau, to take position on the Tiananmen incident. The Chinese leaders were desperate to resume relations with the Western world and received Governor Melancia with the honours of a head of state – Melancia was the only Governor of Macau to be received by Prime Minister Li Peng. During their meeting, Melancia tried to convince Li Peng of the advantages of the construction of the Macau International Airport, aiming at achieving some progress over the airport issue.

First, the airport was a viable project: it could be used for direct flights to Taiwan (which the PRC for political reasons was not able to have), guaranteeing a minimum flow of traffic. Second, the Macau airport could be used as a complementary airport to the region's other big airports, such as the Hong Kong airport, allowing a better distribution of the air cargoes, thus being highly beneficial to the region. Hong Kong had a saturated airport and for security reasons did not allow night flights, while Macau would offer a 24-hour service. Besides, although projected to make an international airport, it could be used as a domestic airport after 1999 if China wanted so.³²

Third, and more importantly, the airport would be the guarantee of Macau's autonomy. Governor Melancia argued that if the Chinese authorities did not help the Portuguese side to achieve important infrastructures that were needed in Macau, he would conclude that they were not interested in guaranteeing Macau's autonomy.³³

The official ceremony for the beginning of the airport's works finally took place in December 1989. However, many technical problems arose thereafter, mainly

³² Document 31, p.1.

³³ Interview L.

regarding noise pollution and the supply of sand for the land fill needed to build the airport.³⁴ Within one year the negotiations regarding the airport stalled in the Joint Liaison Group. Although reassuring that the JLG would remain the main place to deal with the airport, the Portuguese authorities raised the issue at the highest diplomatic level to reinforce its importance and to show that it should be given special treatment.³⁵ The issue was considered most urgent for the Portuguese side: it was very important for Macau that the airport was finished in early 1995, at least two years before the new airport of Hong Kong, otherwise its profit and competitiveness could be jeopardised.³⁶

The Portuguese side asked the Chinese side for a positive approach to the airport in three different levels: at the political level, China should reiterate its support for the project; at the technical level, the pending matters should be sorted; and at the financial level, a stronger engagement in the project was crucial.³⁷ Although not vital in financial terms, bigger Chinese involvement, however symbolic, would be an important political indicator and would have positive psychological effects.³⁸ The investors of the airport feared the lack of Chinese support and the PRC's open political support was essential.³⁹

By December 1991 the airport had become the biggest issue of the JLG's meetings. The old problems of noise pollution and sand supply for the land fill persisted, but also new doubts mainly regarding the financial aspects emerged on

³⁴ Document 32, p.3.

³⁵ Document 33, p.2.

³⁶ Document 34, pp.6-7.

³⁷ Document 35, p.3.

³⁸ Document 36, p.9.

³⁹ Document 34, p.5.

the Chinese side – and Prime Minister Li Peng said this directly to the Macau Governor.⁴⁰ The Chinese side seemed particularly worried about the administration, the control and the financing of the airport, especially which costs would be supported by the government of Macau, and who would be liable for the payment of a possible loan.⁴¹ The Chinese authorities feared that the financial expenses of the project had impact after 1999 and were suspicious that the works of the airport were adjudicated to different consortiums.⁴²

The Portuguese side argued that it would be very difficult for a single consortium to accept the complete building contract of such an immense project. The company in charge of the construction of the airport was CAM (*Sociedade do Aeroporto Internacional de Macau*), a private company with participation of the government of Macau founded in 1989. After building the airport, CAM would be responsible for its management under a government concession. CAM would be controlled by the Macau Administration, and after 1999 by the Macau SAR government.⁴³ The management of the airport was defined in CAM's Statutes, which predicted that the government of Macau had the right of veto because it owned one third of CAM's capital stock.⁴⁴ Owning one third of the capital stocks, it should support one third of the costs and was responsible for over one third of the possibly contracted loans.⁴⁵

⁴⁰ Document 37, p.13.

⁴¹ Document 38, pp.7-8.

⁴² Document 37, p.14.

⁴³ Document 30, pp.5-6.

⁴⁴ Document 22, p.3.

⁴⁵ Document 30, pp.5-6.

Another important shareholder of the company was STDM (Sociedade de Turismo e Diversões de Macau), the company that managed Macau's casino industry. The remaining shares were held by Mainland Chinese and local businesses and institutions. However, the Chinese authorities wanted the future Macau SAR government to be CAM's majority shareholder in order to have the legal right of total control over the airport.⁴⁶

By 1992 the Macau Administration only had 47% of the CAM and with the private investments the Portuguese side thought that it would be very difficult to hold the majority of the capital stock. The Chinese side informally informed one member of the Portuguese administration that one of the private companies that held 5% of CAM was willing to sell its share. After buying this share the Administration of Macau held 51%. Afterwards the banks immediately lent CAM the money requested to finish the airport with the consent of the Macau Administration and the financial problems were solved.⁴⁷

In February 1992 Prime Minister Li Peng made a visit to Lisbon, which both sides considered an important step in the two countries bilateral relations, with positive effects for Macau and the transition period.⁴⁸ In his meeting with the Portuguese Prime Minister, Li Peng stated that the Chinese government fully supported the project of the airport but highlighted three points: the works of the airport should

⁴⁶ Interview B.

⁴⁷ Interview B.

⁴⁸ Document 39, p.1.

be concluded as soon as possible; the airport should be lucrative; and it should not leave the future Macau SAR in debt.⁴⁹

Li Peng asked for definitive answers regarding various aspects of the airport. First, the Chinese authorities wanted a clear definition of the total cost of the project and whether the Portuguese side had found reliable financing sources for it. Second, Li Peng asked for a scientific decision on whether the works of the airport should use a system of piles foundations or land fill, taking into account the factors of cost, time, economic profitability and technical security. Third, the Chinese Premier enquired on the economic profitability of the project and whether it would be profitable or make a loss. The fourth concern regarded the management of the airport: how would the government of Macau control the airport.⁵⁰

The works of the airport started in February 1992 before a decision was taken on whether piles or an land fill would be used.⁵¹ Initially the Portuguese side considered a hybrid project of piles and land fill, but later the use of piles of great diameter and depth was considered to bring technical difficulties and the use of the land fill method was preferred. Besides being more desirable in technical terms, the use of the land fill alone would have a smaller cost, while the use of a hybrid system would increase the cost of the project.⁵² In any case, to abandon the piles project CAM needed sand and more money to do the land fill. The Mayor of Zhuhai finally agreed to give the sand to the works of the airport.

⁴⁹ Document 39, p.7.

⁵⁰ Document 39, p.7.

⁵¹ Document 39, p.8.

⁵² Document 26, pp.2-4.

There were also disagreements regarding the air traffic issue. The Portuguese position was that the airport was a large project and it was important to inspire the investors with confidence.⁵³ As the opening of the airport was expected by late 1993 or early 1994, the air traffic agreements with all the interested countries had to be made in the beginning of 1991.⁵⁴ As their effects went beyond 1999, the air traffic agreements would be submitted to the JLG's approval, so the Portuguese side wanted the prior approval of a scheme of agreement to work as a negotiating base of those agreements.⁵⁵

In March 1990 the Portuguese side gave the Chinese side a project agreement on the air traffic issue.⁵⁶ The technical problems regarding the airport project, namely the noise pollution, were overcome in Beijing in 1991, but the Chinese side said it needed more time to study the Portuguese proposal on the air traffic scheme of agreement.⁵⁷ The Portuguese side soon realised that the issue of the air traffic agreement would only progress when the airport issue was totally clarified.⁵⁸

While waiting for the Chinese opinion, the Macau administration made contacts with several countries to initiate talks on the air traffic agreement, namely with the United States.⁵⁹ However, the head of the Chinese delegation was absolutely intransigent, saying that he had received clear instructions from Beijing that Macau could not negotiate agreements with third countries before accord was reached within the JLG. If the Portuguese side proceeded against this, it would have

⁵³ Document 40, p.1.

⁵⁴ Document 41, p.3.

⁵⁵ Document 40, p.2.

⁵⁶ Document 42, p.9.

⁵⁷ Document 40, p.3.

⁵⁸ Document 37, p.6.

⁵⁹ Document 40, p.2.

to assume the consequences.⁶⁰ It was very complicated to pre-define a scheme agreement because it could affect aspects such as the sovereignty of the air space.⁶¹

The Portuguese side counter-argued that the exploratory talks would focus on private and commercial aspects, such as the conditions under which the airlines would work in Macau, and that this did not conflict with the PRC's right of sovereignty. The control of the airspace, which was Chinese's exclusive responsibility, and the connexions with the PRC would not be negotiated.⁶² The preliminary talks on the air traffic agreements were vital to the physical and commercial definition of the airport project. Besides, cancelling the talks with Washington would jeopardize the credibility of the government of Macau and of the airport project.⁶³ The Portuguese side also assured the PRC that the talks would not result in any compromise – the experts had no mandate nor authority to sign or to negotiate any agreement – and that a low profile would be assumed in the contacts with the press.⁶⁴

Showing some flexibility, the Chinese negotiators accepted the exploratory talks to assess the airlines' interest in Macau, as long as they were circumscribed to commercial and private aspects. They reiterated China's position that Macau could not negotiate nor sign air agreements with any country before Portugal and China agreed on the scheme arrangement. Due to the urgency of the matter, the Portuguese side wanted a joint working group to reach agreement on the air traffic

⁶⁰ Document 30, p.11.

⁶¹ Document 43, p.10.

⁶² Document 30, p.10.

⁶³ Document 44, pp.1-2.

⁶⁴ Document 43, p.11.

issue as soon as possible, but the Chinese side considered that conditions were not ripe for the constitution of that group and argued that the absence of that group did not affect the progress of the airport work.⁶⁵

The Portuguese side was extremely worried with the delays imposed by the Chinese at a stage in which the second phase of the construction of the airport was already starting (land fills followed by the construction of the runway). Although considering the exploratory talks on the air traffic issue important, the Portuguese side argued that there would be no progress until the airlines were informed under which traffic conditions they would operate. The airport could not open before the airlines knew the rights of air traffic resulting from the air traffic agreements. CAM needed to have a plan of the interested airlines, and the banks that financed the airport needed to have guarantees of its profitability.⁶⁶

For the Chinese side, a working group on the issue was directly related with the progress of the building works of the airport, and China only gave the green light for the creation of the group when CAM signed the contract to build the runway, confirming the use of the land fill method.⁶⁷ But even then, the Chinese side waited for the complete clarification on the financial aspects of the airport before agreeing on the technical details of the group, such as the composition of the Chinese delegation.⁶⁸ China feared that the costs of the airport would become a burden to the PRC after 1999 and that the government of the Macau Special

⁶⁵ Document 2, pp.22 and 24.

⁶⁶ Document 2, pp.21 and 23.

⁶⁷ Document 45, pp.8-9.

⁶⁸ Document 46, p.3.

Administrative Region would not be able to control the airport and the air space if contracts were signed with private companies.

The Portuguese negotiators reassured the Chinese that the financial framework of the airport was well defined and that it was vital to start immediately to attract customers before they addressed themselves to other airports.⁶⁹ The president of CAM also warned that if the issue were not promptly solved, Macau would lose opportunities to Hong Kong.⁷⁰ The Macau International Airport finally opened for commercial operations in November 1995.

As shown in the previous chapter, the Portuguese administration had an infrastructure-oriented strategy for Macau. The Portuguese side believed that the construction of the Macau International Airport was one of the most important steps towards the autonomy of the territory. Therefore, the Portuguese officials not only insisted at negotiating the issue at the Joint Liaison Group but also discussed it at a higher level. The fact that Portugal broke the alignment with the other EEC countries to obtain Chinese concessions following the Tiananmen Incident in 1989 suggests that the construction of the airport was a key objective of the Portuguese strategy for Macau.

Understanding that the airport was a key objective for the Portuguese side, China used it to obtain concessions in other issues, namely the Orient Foundation. The Chinese side delayed progress on the negotiations of the airport and air traffic agreements using all kind of arguments. By November 1992 the Chinese side started to relate the issue of the airport with the financial reserves that the

⁶⁹ Document 47, p.3.

⁷⁰ Document 28, p.4.

Portuguese Administration would leave in Macau after 1999, saying that it would be very difficult for the Chinese government to make a decision in the airport problems without knowing the amount of financial reserves left in Macau in 1999.⁷¹ Britain had agreed with China to leave financial reserves in Hong Kong, but the Portuguese side insisted that the only reserves left over in Macau were on the Land Fund, and did not agree to discuss this issue.

5.4. The Orient Foundation

The Chinese officials distrusted the Portuguese financial management of Macau and were deeply suspicious of the use of the Orient Foundation's financial resources.⁷² The Orient Foundation (*Fundação Oriente*) was created based on clause 21 of the gambling concession contract signed in 29 September 1986 between the Macau administration and the STDM (*Sociedade de Turismo e Diversões de Macau*), the company headed by Stanley Ho that managed the local casinos in Macau. The administration granted STDM a monopoly over the gambling industry in Macau and the STDM agreed to give a certain amount of money to create a foundation with the money of Macau to be used in Macau.⁷³

At the time, Macau's Governor Pinto Machado, an honest and honourable professor in Oporto's Medical school, was as usual the result of a political choice of the President – he had been one of the campaign managers for the Presidential campaign. However, Governor Pinto Machado did not have the required profile

⁷¹ Document 48, p.2.

⁷² Lo, *op. cit.*, p.27.

⁷³ Document 2, p.25.

for the post and faced a combination of events that further weakened his authority. Pinto Machado made the transition in Macau between the policies of President Ramalho Eanes and those of President Mário Soares, and he was the first civil governor, marking the “demilitarisation of the government, which in Macau was equivalent to a change of regime.”⁷⁴

Simultaneous with the Governor’s loss of influence there was a decentralisation of the administration and the under-secretaries (*secretários-adjuntos*) gained preponderance. As some of the under-secretaries had been appointed by President Soares and others had been chosen by Governor Pinto Machado, they were soon categorised as “the under-secretaries of the President” and “the under-Secretaries of the Governor”, representing different factions and lobbies. Pinto Machado later regretted having accepted a hybrid team whose internal conflicts damaged his administration and forced him to resign after thirteen months.⁷⁵

Governor Pinto Machado also regretted not opposing the appointment of Carlos Monjardino, Under-Secretary for Economics, Finances and Tourism, as Acting Governor. Monjardino was close to President Soares, who appointed him as Acting Governor during the absences of the Governor, being one of the strongest men in the Administration. The institutionalisation of this post⁷⁶ created the image of a Vice-Governor and placed Monjardino above the other Under-Secretaries, making him number two in the administration. He negotiated in the name of Macau the gambling contract with the STDM just before the signature of the

⁷⁴ Declarations of Carlos Monjardino to the *Expresso*, 29 March 1991.

⁷⁵ *Expresso*, 29 March 1991.

⁷⁶ Before, the Acting Governor was a momentary choice and all the under-secretaries had the same statute.

Sino-Portuguese Joint Declaration and became chairman of the foundation created from the profits of local casinos. This foundation was called the Orient Foundation and registered in Lisbon in 1988.

In June 1991, the Chinese side raised the issue for the first time, referring to the criticism that had recently appeared in the press regarding the use that the Orient Foundation was making of its funds.⁷⁷ The sums the STDM attributed to the Foundation were very significant: an initial fund of 400 million patacas – later changed to 312 million patacas – and from 1987 an annual contribution of the equivalent amount to 5 per cent of its annual net profit.⁷⁸

Most of the funds and investment capitals of the Foundation were not in Macau but in Lisbon, and China criticised their lack of transparency, as suspected that they were used by the Socialist Party.⁷⁹ The Chinese side claimed that the capital of the Foundation was supposed to be used in the interest of Macau, in activities that promoted Macau's economic development and social stability or the development of the Sino-Portuguese relations.⁸⁰

The Orient Foundation soon became one of the most delicate issues of the Joint Liaison Group's meetings. The Portuguese delegation tried to keep such an embarrassing issue at the informal level and refused to include the issue in the agenda of the JLG's meetings, as according to the Portuguese law, the Orient

⁷⁷ Document 38, p.7.

⁷⁸ In 1989 this amount changed to 1.6 per cent of STDM's gross revenue. Document 2, p.25. In 1988 the Orient Foundation had a capital of 300 million patacas – the equivalent to 37 million US dollars – and the annual contributions of STDM exceeded 200 million patacas. In Yee, Herbert S., *Macau in Transition – From Colony to Autonomous Region*, Palgrave, London, 2001, note 45, p.173.

⁷⁹ Yee, *op. cit.*, pp.27-28.

⁸⁰ Document 49, p.8.

Foundation was a private and independent institution that held public activities.⁸¹ However, the Chinese side insisted that it was analysed in plenary meetings, even if the number of attendants was reduced to the members of the two delegations and the interpreters.⁸² The Chinese negotiators refused to discuss the issue directly with Carlos Monjardino and insisted that the Orient Foundation was included in the JLG's agenda.⁸³

The Portuguese side was well aware of the dubious nature of the Foundation's procedures:

"its funds were one of the counterparts for the maintenance of the exclusive exploration of gambling. Therefore it was not a generous gift but a payment for a privilege obtained by a specific trading company. Thus, the Foundation could not be considered something private ... and had to be for the use of Macau, in close relation and cooperation with Portugal."⁸⁴

Although many Portuguese leaders were against the embarrassing situation created by the Orient Foundation, the official position was that it was a private organisation that did not depend on the Portuguese government.⁸⁵ Being a private association which activity respected its own statutes, the Foundation was outside the jurisdiction of the Portuguese government, which had no right of intervention. Furthermore, the Orient Foundation had been constituted before the signature of

⁸¹ Document 49, pp.7-8.

⁸² As a counterpart, the Portuguese side demanded that the issue of the International Covenants was also treated in the plenary meetings. Document 54, p.1.

⁸³ Yee, *op. cit.*, p.12.

⁸⁴ Declarations of Governor Pinto Machado to the *Expresso*, 22 August 1987.

⁸⁵ Document 44, pp.5-6.

the Joint Declaration, and therefore, could not be subject of negotiation within the JLG.⁸⁶

The Chinese side strongly refuted these arguments. First, the constitutive contract of the Orient Foundation was an act of the government of Macau, which used its powers to transfer Macau's money to a private Portuguese institution damaging the interests of the Territory. The contract was between the STDM and the government of Macau – not Carlos Monjardino – and the money belonged to the STDM and to the government.⁸⁷

The STDM had agreed to offer funds for the creation of a foundation as one of the obligations to get a monopoly over the gambling industry, so the Portuguese side could not argue that the Orient Foundation was created as a gift resulting from the STDM's free-will that had nothing to do with the gambling contract: those funds should be financial resources exclusively at the service of Macau. By artificially creating the private nature of the Orient Foundation, the Macau administration renounced the power of control and did not defend the interests of Macau, leaving the territory with the obligation of offering money without being consulted.⁸⁸

Therefore, the Orient Foundation could not be considered a private institution and the government of Macau had the right of inspection. The Chinese side argued it had the right of involvement in the issue because it affected Macau's long-term interests and the exit of Macau's money from the Territory was unacceptable.⁸⁹

The STDM's profits attributed to the foundation should be used within and not

⁸⁶ Document 50, p.3.

⁸⁷ Document 2, p.25, and Document 49, p.8.

⁸⁸ Document 51, p.2.

⁸⁹ Document 2, p.25, and Document 49, p.8.

outside Macau and the current practice did not correspond to the spirit of the Joint Declaration nor to the interests of Macau's local residents.⁹⁰ The Joint Declaration stated that the MSAR would use its financial resources for its own purposes, and this should guide the solution for the issue of the Orient Foundation.⁹¹

Second, to give a big amount of Macau's financial resources to the Orient Foundation, which Macau could not control, did not protect the interests of the Territory. The gambling concession contract had been signed in the eve of the signature of the Joint Declaration; the paragraphs of the contract referring to the Orient Foundation did not define Macau as its area of action neither determined its relationship with the government of Macau; the president of the Orient Foundation was at the time the representative of the government of Macau.

Third, the Chinese government only recognised the Macau administration in the Joint Declaration and the administration needed to reach consensus with China on the important decisions taken before that.⁹² Besides, the gambling contract was in force until 2001 and the Chinese side claimed to have the right to interfere in contracts signed by the Macau Government that went beyond 1999.⁹³ Therefore, the Orient Foundation was an unavoidable issue and the Chinese side demanded serious consultations within the JLG, in order to find a solution that was beneficial to Macau.⁹⁴

⁹⁰ Document 34, p.2.

⁹¹ Document 51, p.5.

⁹² Document 51, p.2.

⁹³ Document 44, pp.5-6.

⁹⁴ Document 51, p.5.

Confronted by the fact that the Chinese negotiators did not drop the issue nor soften their position, questioning the legality of the acts practiced in the past by the Portuguese administration, the Portuguese delegation had two options: to wait for the Chinese side to proceed to the following step and accept the consequences, or to go ahead of the Chinese side and present the Portuguese position on the matter.⁹⁵ The delays in taking position on the issue created within the Chinese delegation the perception that the Portuguese negotiators did not want to solve the issue in a responsible manner.⁹⁶

For China, the key point was not to discuss whether it was a public or private Foundation but to know if the capital of the Foundation was being used in the interest of Macau, as most of the funds and investment capitals of the foundation were not in the territory.⁹⁷ The Chinese delegates also questioned the Portuguese position on the fact that the constitutive contract of the Orient Foundation was valid beyond 1999 and the terms of this contract, which according to them contained some illegalities.⁹⁸ To obtain Portugal's goodwill, the Chinese negotiators adopted a constructive attitude and showed some flexibility regarding issues of Portuguese interest, such as the airport and the air traffic agreement, and exercised mild pressure on issues of their interest, such as localisation and the Orient Foundation.⁹⁹

⁹⁵ Document 52.

⁹⁶ Document 53, pp.1-3.

⁹⁷ Document 49, pp.7-8.

⁹⁸ Document 34, pp.2-3.

⁹⁹ Document 36, pp.8-10.

The base of the dissensions on the Orient Foundation was the STDM.¹⁰⁰ For a certain group of people in Portugal, namely Carlos Monjardino, the later the issue was negotiated the better, as meanwhile the Orient Foundation kept receiving the STDM contributions. For China, the issue should be negotiated immediately to limit the amount money to be drained from Macau.¹⁰¹ In 1994-1995 Monjardino realised that the strategy of delaying the negotiations would not work for much longer and negotiated with the banks the advance payment of STDM's contributions until 1996. He then tried to do so until 1999 but China reacted and declared that from 1 January 1996 the Orient Foundation would not receive any more money.¹⁰²

The Joint Liaison Group did not reach consensus on the Orient Foundation and the issue was only settled at the highest level, i.e., during the meeting between President Mário Soares and President Jiang Zemin in Beijing in April 1995.¹⁰³ The Chinese officials finally accepted that the gambling contract remained valid until 2001, as they were interested in maintaining the lucrative casino industry as a source of revenue for the future MSAR.¹⁰⁴ From January 1996 onwards, the annual contribution that according to the gambling contract the STDM must transfer to a foundation, was made to the Development and Co-operation Foundation of Macau (*Fundação para o Desenvolvimento e Cooperação de Macau*), inaugurated in May 1998.¹⁰⁵ Stanley Ho continued to give money from

¹⁰⁰ Lo, *op. cit.*, p.50, note 42.

¹⁰¹ Interview P.

¹⁰² Interview M.

¹⁰³ Yee, *op.cit.*, p.12.

¹⁰⁴ Interview P.

¹⁰⁵ Yee, *op.cit.*, p.12. The Development and Co-operation Foundation of Macau financed the creation of the Jorge Álvares Foundation in Portugal (*Fundação Jorge Álvares*), to be headed by

STDM's profits to the Orient Foundation,¹⁰⁶ and although this was made privately and at a non-official level, it arguably reduced the amount of money given to the administration.¹⁰⁷

The way the negotiations of the Orient Foundation were closed comprised the biggest concession made by the Portuguese side during the transition period. The new foundation was created for China's benefit, not in the Portuguese interest, as the contributions received by the STDM were to be used by China. This concession had big consequences for Macau, which was left without any institution that assured a connection with Portugal. Portugal could have obtained earlier a better agreement with better conditions. After closing the issue of the Orient Foundation, the Portuguese negotiators were left without any financial card to use in the negotiations. They could have used the Orient Foundation to obtain concessions in the other issues, as China was willing to give counterparts for closing the negotiations on the Foundation.¹⁰⁸ prejudicar

5.5. Conclusion

The transfer of the Portuguese administration to the People's Republic of China on 19 December 1999 was negotiated during the so-called transition period. During this period, the Portuguese administration defined a strategy of accelerated

Governor Rocha Vieira after the handover. This led to an incident which destroyed Rocha Vieira's political ambitions as a potential candidate of the PSD for the Presidential campaign, as he was accused of intending to use the Jorge Álvares Foundation for his own interests, and as President Sampaio (PS) and Foreign Minister Jaime Gama (PS) delayed the process of legalizing the Foundation.

¹⁰⁶ Lo, *op. cit.*, p.49, note 42.

¹⁰⁷ Interview M.

¹⁰⁸ Interview M for the whole paragraph.

economic and social development through the implementation of a system of infrastructures, such as the International Airport, essential to reinforce the conditions for Macau's autonomy.

Thus, Portuguese side was particularly interested in the construction of the airport and used China's diplomatic weakness following the Tiananmen Incident in 1989 to achieve important concessions. The fact that Macau and Lisbon reached consensus on the importance of the construction of the airport made the airport one of the best negotiated issues of the transition. This suggests that, although being a highly asymmetrical negotiation, Portugal could have obtained more concessions if there was consensus among its political elite.

The strategy of the Portuguese government was to support the Macau administration in order to guarantee the stability of the territory, and to anticipate causes of dissension and avoid potential crisis in the relations with China.¹⁰⁹ As a result of the Portuguese strategy of a smooth transition and of maximization of Portugal's presence in Macau until the transfer of administration, the Portuguese negotiators focused on the impact that the solutions to the different issues would have before 1999 and not after that, and after the handover Macau seemed to be forgotten in Portugal.¹¹⁰

The Portuguese Foreign Ministry, especially during the period of socialist cooperation towards the end of the transition, rushed towards agreement, arguing that China was more powerful and should not be irritated or there would be no agreement at all. This strategy of subordination to China was noticeable in the

¹⁰⁹ Sampaio, *op. cit.*, pp. 438 and 442.

¹¹⁰ Santos, *op. cit.*, p.501.

JLG meetings: when consensus was not achieved, the Portuguese negotiators still wanted to show progress on the joint communiqué. Another frequent mistake of the Portuguese negotiators was to make concessions in one issue expecting to obtain counterparts in another issue, regardless of the fact that the Chinese side always refused to do that, and said that each issue should be treated separately.¹¹¹

The first years of the transition were characterised by the existence of a parallel presidential strategy along with the governmental one, as there were big dissensions between Social Democrat Prime Minister Cavaco Silva and President Mário Soares, from the Socialist Party. As a consequence, Portugal lost negotiating power in more delicate questions, mainly the problematic issue of the Orient Foundation, in which the “parallel diplomacy” of the Prime Minister and President was more noticeable. With the change of government in 1995 and the new President in 1996, the socialist cooperation allowed the long delayed solution for issues such as the Orient Foundation, in which socialist interests were at stake.

The manner in which the Portuguese delegation negotiated the Orient Foundation reflected the constraints that Macau’s double tutelage system imposed to the Portuguese negotiators. Initially the reaction of the Portuguese side was to avoid and dismiss the issue and talk as little as possible on the Orient Foundation, claiming that it was a useful non-profit organisation that spent most of its revenues in Macau, and that the activities that it developed in Portugal were related with Macau. The delay in agreeing to discuss the issue and in taking a position on the matter cost Portugal the hardening of the Chinese position and the

¹¹¹ Interview M.

loss of negotiating power. During the JLG meetings, the Chinese delegation refused to negotiate other issues before the Orient Foundation and used this vulnerability of the Portuguese side to obtain concessions.¹¹²

The Chinese suspicion that the Portuguese administration squeezed Macau's public finance also resulted in strong demands for the establishment of a fiscal reserve for the future Special Administrative Region, similar to what happened in Hong Kong.¹¹³ However, contrary to the Hong Kong agreement, the Macau Joint Declaration did not stipulate the need for a fiscal reserve and the Portuguese delegation did not accept this.¹¹⁴ They skilfully avoided the issue, arguing that Macau was backward and needed a big investment in infrastructure, and this was not compatible with reserves.¹¹⁵

The most delicate issue on the eve of the hand-over was the settlement of Chinese military forces in Macau, which the Portuguese considered as an insult to their dignity. Unlike the Hong Kong Joint Declaration, the Macau agreement did not make specific reference to the entrance of Chinese military forces in Macau. Macau had a different system from Hong Kong, and had no Portuguese military forces since the Portuguese Revolution of 1974. Facing the Chinese decision of sending the military forces to Macau a few days before the hand-over, the Portuguese President threatened with his absence in the ceremony. This would endanger the Chinese aims of showing the international community and Taiwan a peaceful and smooth handover in Macau.

¹¹² Interview K.

¹¹³ Lo, *op. cit.*, p.28.

¹¹⁴ Interview O.

¹¹⁵ Interview P.

Being a very serious issue, the entrance of the forces in Macau was discussed through the diplomatic channels in Beijing and in Lisbon, not in the JLG. In the end of October 1999, a few weeks before the handover, President Jiang Zemin visited Portugal to insist on the presence of President Sampaio in the ceremony.¹¹⁶ During the visit, Jiang Zemin declared to Sampaio China's right of defence over Macau included the settlement of military forces in the territory.¹¹⁷ In the end, a breakthrough was achieved as the Portuguese were able to control the entry of the troops before the exit of the Portuguese President after the ceremony. In Hong Kong the Chinese military forces entered before the end of the British sovereignty.¹¹⁸ For China's great relief, Sampaio accepted to go to ceremony.

¹¹⁶ Interview I.

¹¹⁷ *Diário de Notícias*, 27 October 1999.

¹¹⁸ Interview C.

Chapter 6 - Concluding Remarks

6.1. Introduction

This thesis analyses the Portuguese government's approach to the settlement of the Macau question during the 1984-87 negotiations and during the 1988-1999 transition period. Although the main actor of the Sino-Portuguese negotiations and of the Macau transition was the People's Republic of China, the thesis focuses its analysis on the Portuguese perspective, as it is a study of Portuguese foreign policy and the aim is to conclude how the Portuguese side dealt with the question. The thesis argues that the divisions among the political leaders and the poorly prepared diplomats resulted in a lack of resolve to get the best benefits for Macau and for Portugal. As the Portuguese side did not have a consensual strategy for Macau, China was able to control the pace of the negotiations.

I chose this subject because I was puzzled by the scarce literature on the Portuguese negotiating strategy for the settlement of the Macau question. Although Macau did not prompt the same level of international concern as Hong Kong, at least in Portugal it was expected to have encouraged the appearance of more analysis on how Portugal conducted the negotiations with China and the Macau transition process. Impressively enough, contrary to the African colonies and Timor that still leave marks in the memory of the Portuguese people, after the handover Macau seems to be regarded as unimportant in Portugal – and this can perhaps be seen as an argument for a non-traumatic transition. This thesis aims to fill the gap in scholarship on this topic. The new material used in this work –

interviews with the Portuguese officials involved in the negotiations and confidential documents previously unavailable to researchers – will hopefully shed some light on the issue and bring some new perspectives into the subject. The first phase of the Sino-Portuguese negotiations to the settlement of the Macau question took place between 1984 and 1987 and culminated with the signature of the Joint Declaration. This agreement formally defined Macau's future with unprecedented precision in its long history: during the following fifty years Macau would keep under a special autonomous status with regard to its institutions, laws, economic model and living style.¹

The second phase was the so-called transition period, which involved Sino-Portuguese consultations over the transfer of the Macau administration in 1999. From 1999 to 2049, the success of this model of “negotiated transition” will be tested in the Macau Special Administrative Region.² Portugal aimed at leaving Macau with consolidated institutions, a modern administration and a consistent juridical framework. As predicted in the Joint Declaration, the rights, liberties and guarantees of the Macau people were codified in internal laws and by the application to Macau of the main international covenants of rights, confirmed in the Joint Liaison Group meetings.³ Portugal's withdrawal from Macau in 1999 was not a case of decolonisation, as the inhabitants of the territory were denied the right to self-determination; the withdrawal was conceived through a process of negotiation between Portugal and the People's Republic of China. Contrary to the post-Second World War decolonisation movement, withdrawal from fragments of

¹ Sampaio, Jorge, *Portugueses*, Vol. IV, Imprensa Nacional-Casa da Moeda, Lisbon, 2000, p.434.

² Carlos, António Santana, “Macau – O Modelo da Transição”, *A Presença Portuguesa no Pacífico - Forum Macau*, ISCSP, Lisbon, 1999, p.174.

³ Sampaio, *op. cit.*, p.434.

the empire in the 1980s and 1990s was inconceivable without the granting of civil rights to its inhabitants. In this new international context, the People's Republic of China was willing to make concessions: the separation between the PRC and the Macau Special Administrative Region is not only economic but also political and constitutional – the Basic Law is indeed a constitution – and Macau obtained a high degree of autonomy, except in the areas of defence and foreign policy.

Psychologically, in Portugal the Macau negotiations were perceived as part of the decolonisation process. The difference was that the African decolonisation took place in a very critical period for Portugal, while during the Macau negotiations Portugal had a better international position, such as being a member of the European Community, and would not accept for Macau less than Britain obtained for Hong Kong.⁴ The chief objective for the Portuguese government was to leave Macau with dignity to reduce the trauma left by the African decolonisation.⁵

6.2. Findings

6.2.1. The Portuguese strategy

The Portuguese state, after the 1974 democratic revolution, did not define a clear strategic objective for Macau, i.e., what Portugal wanted from Macau and for Macau. Probably for foreign policy reasons, Portugal assumed international political positions that seriously limited the possibilities of imposing on China a Portuguese strategic purpose for Macau.⁶ This was the case with the Portuguese

⁴ Interview G.

⁵ Interview F.

⁶ Interview T.

diplomatic communication of 6 January 1975, in which the Foreign Ministry stated that the government of the People's Republic of China was "the sole legitimate representative of the Chinese people" and that Taiwan was "an integral part" of Chinese territory, and that "Macau could be object of negotiations when both Governments considered appropriate."⁷

The Organic Statute of Macau and the Portuguese Constitution of 1976 reiterated that "Macau was Chinese territory under Portuguese administration."⁸ The Portuguese government made further concessions with the signature of the *Acta Secreta* in 1979, in exchange for the establishment of diplomatic relations with the PRC: "Macau is part of the Chinese territory and will be returned to China ... through negotiations in the future, when both Governments consider appropriate."⁹ As a consequence, when the PRC decided to activate the process during President Ramalho Eanes' visit to Beijing in 1985, the definition of the Portuguese strategy was limited by the fact that Portugal had already promised to return Macau.

The Portuguese strategic purpose for the Sino-Portuguese negotiations was therefore very limited: the Macau question should be settled through negotiations, which should not be inferior to the Hong Kong negotiations, and the starting date and conditions of the talks should be decided between the two countries. Internally, it was desirable for Portugal to present a united position towards the PRC, namely the cooperation of the President and the government in the

⁷ Communication to the Press, Press Services of the Ministry of Foreign Affairs, Lisbon, 6 January, 1975, Diplomatic Historical Archives, Ministry of Foreign Affairs.

⁸ Articles 5° and 306°, *Constituição da República Portuguesa*, Coimbra, Atlântida Editora, 1976.

⁹ *Diário de Notícias*, 9 January 1987.

definition and execution of a strategy for Macau and in the appointment and exoneration of the governor.¹⁰

This thesis argues that Portugal's domestic political context and bureaucracy had a direct and indirect impact in the definition and implementation of the Portuguese strategy. The objective is to explain why did Portugal preferred low-key and non-conflictual negotiations rather than fighting for their interests, why was Macau so unimportant to Portugal, and how, despite all this, did Portugal still managed to extract some concessions in the negotiation process.

An analysis of the manner by which the Portuguese state negotiated with the People's Republic of China the settlement of the Macau question between 1984 and 1999 suggests that the Portuguese political context had an impact the outcome of the negotiations. The Portuguese strategy for the negotiations with China was influenced by two main factors: the Portuguese inefficient bureaucratic routine and Macau's double tutelage system.

The inefficiency of the Portuguese bureaucratic routine was noticeable at different stages of the negotiations. The Portuguese Foreign Ministry did not seriously prepare diplomats for specific issues or regions and they were usually moved to a completely different country when they were about to learn the requirements of their post. The result was the absence of experienced and prepared negotiators and lacked a specialised department on Macau.

¹⁰ Interview T.

In the aftermath of the Sino-British negotiations in 1984, although the PRC sent several signals indicating that Macau would follow Hong Kong in the Chinese reunification policy, the Portuguese Foreign Ministry did not prepare a strategy for Macau. In 1985, after Portugal signed with China the joint communiqué agreeing to start talks on Macau in a near future, there was total panic at the Portuguese Foreign Ministry: there was not a single diplomat fluent in Chinese and probably only one had studied deeply Macau political background.¹¹

During the transition period, from 1988 to 1999, most of the diplomats that had gained some experience through the Sino-Portuguese negotiation process were sent somewhere else. The Portuguese delegation in the Joint Liaison Group changed almost every meeting. This factor contributed to the long-standing absence in Lisbon of a pre-defined strategy for Macau. The strategy was mainly marked by the personality of the Governor and the only common line to all the recent governors seemed to be the development of infrastructures and services in Macau.

The political changes in Lisbon also influenced the definition of Portugal's strategy during the negotiations. Both the Prime Minister and the President had power over Macau, which could easily lead to the existence of two conflicting strategies within the Portuguese state. The strategy of the Macau administration reflected the presidential ideas and evolved each time the President appointed a new Governor, while the Prime Minister and the Foreign Minister defined the Government's position for the negotiations with China.

¹¹ Interview D.

The personality and the interests of who was in charge of these two posts were thus absolutely vital for the manner in which Portugal negotiated the Macau question. During most of the Sino-Portuguese negotiations, the Prime Minister and the President belonged to different political parties and had different views on the issue, making the definition of a single and coherent Portuguese strategy in the negotiations difficult.

In early negotiations the divisions were not so clear as in the transition period because Prime Minister Cavaco Silva did not want to get involved. President Mário Soares (Socialist) tended to impose his strategy as Prime Minister (Social-Democrat) Cavaco Silva assumed a low profile. Macau was a very delicate issue for the Prime Minister, aware of the traumatic effects that the humiliating decolonisation in Africa and the Indonesian occupation of East Timor in late 1975 left on the Portuguese society, demanding a honourable solution of the Macau question.¹² Being an economist, the Prime Minister probably concluded that, as Portugal had no commercial interests at stake in Macau or in China, the Macau question was thus a minor issue in his first years as Prime Minister. Besides, in Portugal the prestige of the Prime Minister did not come from foreign policy, but from domestic matters.

Considering that the personality of the negotiators has an impact in the outcome of the negotiations, it is relevant to add that Mário Soares contributed to shape the Sino-Portuguese negotiation as he was involved in the whole process: in 1975, he was the Foreign Minister who published the note making two unilateral

¹² Silva, Aníbal Cavaco, pp.203-4.

concessions to China; in 1978, the negotiations for the establishment of diplomatic relations and for the signature of the *Acta Secreta* were made under his government; in 1985, the joint communiqué for initiating negotiations on Macau with China was signed by Foreign Minister Socialist Jaime Gama, Soares' right-hand man; and the negotiations only started in 1986 after Soares took over as Portuguese President and gave China the green light.

In the 1984-1987 Sino-Portuguese negotiations, there was a good articulation between the President and the Prime Minister and Macau's double tutelage system was not a cause of conflict, although the existence of a presidential "parallel diplomacy" along with the strategy of the government was noticeable. At a certain stage of the negotiations, the objectives of the President were very different from the aims of the government, namely regarding the date of the handover.¹³

From 1988 to 1991 President Soares continued to define the Portuguese strategy to Macau, and although strongly disagreeing, Prime Minister Cavaco Silva did not oppose Soares. However, by 1991, corruption scandals regarding the construction of the airport and Governor Carlos Melancia, and the investments of the Orient Foundation were exposed, and President Soares made a very clear political decision: he completely changed his interventionist strategy and named General Rocha Vieira, closer to the Prime Minister than to himself, the new Governor. Soares wanted to step back and did not want to interfere in Macau negotiations, telling Rocha Vieira to discuss matters with the Prime Minister Cavaco Silva. From 1991 to 1995, the Prime Minister and the diplomats of the Foreign Ministry

¹³ Interview D.

conceived the strategy for the negotiations in which the Governor played a key role, by dealing directly with the JLG.

After 1995-96, both the new Prime Minister Guterres and the new President Sampaio were from the Socialist Party. They easily coordinated efforts and the Foreign Ministry, particularly the Foreign Minister Gama, gained a stronger role in the definition of Portugal's strategy. The attempts of Governor Rocha Vieira to keep his decision-making role in Macau caused many conflicts with the Foreign Minister Jaime Gama. On behalf of a smooth transition, the Governor adopted a low profile.

Despite all these divergences among the political elite, there was a common line in the Portuguese approach to the negotiations, confirmed in most of the interviews while undertaking this research: (1) to extract the maximum benefits from the Hong Kong model while adapting it to Macau's own specificities, pressing for a later handover and for a different text from the Hong Kong's agreement, namely on the nationality issue; (2) the future MSAR should liaise directly with Beijing and not Guangdong; and (3) to preserve its autonomy to maintain a good relationship with China. They also seem to agree that the Joint Declaration on the Macau Question was the best possible agreement at the time.

During the transition, the Portuguese aim was to negotiate in the Joint Liaison Group the orderly transfer of Macau administration and a reliable environment for Macau's economic and social progress and the Portuguese interests in Macau.¹⁴ The Portuguese administration adapted Macau's civil service and trained local

¹⁴ Document 5, p.2.

staff, and provided Macau with all the adequate institutions to guarantee its politico-administrative autonomy and the preservation of its identity and specificities. Both the Portuguese and the Chinese language were given official statute and bilingualism was generalised in the administration.¹⁵

6.2.2. The Portuguese negotiating advantages

The Portuguese officials perceived that the key Portuguese advantages in the negotiations with the PRC were that the Chinese authorities were not interested in taking any unilateral action in Macau but in settling the question through a negotiation process, both for international reasons and for avoiding any adverse affect on their plans for Taiwan.

The PRC was being integrated in the economic and political international system and was particularly aware of her international image and did not want the world's public opinion to observe a failure in the negotiations. The Chinese leaders were willing to show fair play and pass the image that the PRC was a sensible country, being widely known that they could easily occupy Macau if they wanted to. Being a weak and small power, Portugal had the advantage to highlight the Chinese self-containment image in the international scene. China's criticisms of the capitalist hegemony and third-world interventionism did not allow her to humiliate Portugal.¹⁶

Besides, given that Taiwan was the ultimate goal of China's national reunification policy, the Chinese leaders had to treat Portugal with fair play and make some

¹⁵ Sampaio, *op. cit.*, p.444.

¹⁶ Ramos, João de Deus, "As Relações Luso-Chinesas e a Declaração Conjunta de 1987", *A Presença Portuguesa no Pacífico - Forum Macau*, ISCSP, Lisbon, 1999, p.153.

concessions in order to convince Taiwan of the viability of the “one country, two systems” formula. However, the Portuguese officials were aware that, to take advantage of this negotiating card, Portugal could not lose its influence in China’s international image and had to avoid that the Chinese negotiators taking advantage of its vulnerabilities – as was the case with the Orient Foundation during the transition period.

A Portuguese unilateral withdrawal from Macau before negotiations were concluded would both damage China’s international image and would prevent Macau from serving as a case model for Taiwan. Although the Portuguese negotiators never threatened unilateral withdrawal at the negotiations table, they were aware that they had this veto and used it in private to irritate the Chinese negotiators and obtain concessions. Some members of the Portuguese delegation also found that the Chinese felt particularly insulted when the Portuguese called them “imperialists”, as they were very upset to being called what they accused the others.¹⁷

The Portuguese side made public the threat of unilateral withdrawal twice. In 1985, before the start of formal Sino-Portuguese negotiations, Governor Almeida e Costa is quoted as having said:

“Must we go to the negotiating table to take Chinese orders because China is such a powerful country? After 500 years of colonial rule, we are tired. Maybe we cannot wait for 12 years. We can leave within one or two years.”¹⁸

¹⁷ Interview D.

¹⁸ *Far Eastern Economic Review*, 22 August 1985.

In 25 September 1986, during the most contentious stage of the negotiations, over the issue of the date of the handover, Carlos Monjardino, Macau Under-Secretary for Economics, Finances and Tourism, declared:

“We will withdraw early if we are not happy about the way things go. We have nothing to lose, and we don’t want to lose face... like the British kicked out of Hong Kong.”¹⁹

Some negotiators argue that Monjardino’s declaration to the press brought him personal advantages – the Orient Foundation – but did not affect the negotiations because he was close to the President and not to the government and therefore, the Chinese considered this as a “wrong signal” by the Portuguese side.²⁰ However, others consider that this was a signal for the Chinese: if they rushed to control the Macau administration, Portugal would react; and in Macau, this led to the appearance of many articles on Portuguese colonialism, and the neighborhood associations and working-class unions put pressure on the Portuguese administration.²¹

Many Portuguese officials considered that the unilateral withdrawal from Macau was a “non-admissible negotiating strategy.” Portugal should never abandon the territory by its own decision as this would work against Portuguese interests, similarly to the abandonment of Timor in 1975: it would damage Portugal’s international image, not China. Some even believed that the Portuguese withdrawal from Macau would not affect Taiwan, as this was China’s internal problem; if the Portuguese left Macau it was because they wanted to.

¹⁹ *Far Eastern Economic Review*, 25 September 1986.

²⁰ Interview D.

²¹ Interview H.

Furthermore, this decision would only be a source of problems, as China would arrive earlier in Macau.²²

There were also doubts among some Portuguese officials about the true intentions of China's threats to annex Macau whenever the Portuguese delegation said unpleasant things. Most believed that it was very unlikely that the Chinese authorities would invade Macau but that there were many unpleasant things they could do in the territory – such as causing incidents like the ones that occurred during the Cultural Revolution.²³ They used other means of pressure when there were problems in the negotiations, such as delaying other negotiations that were taking place with the Macau administration – as seen in chapter 5, the negotiation of the air traffic agreement was long delayed because the issue of the airport.²⁴

The Portuguese officials seemed to agree that with the Hong Kong precedent Portugal obtained two more negotiating advantages, despite the disadvantages resulting from the two years of experience of the Chinese officials during the Sino-British negotiations.²⁵ First, the Portuguese side demanded for Macau the concessions that Britain obtained from China and learned from the Hong Kong's mistakes. The Chinese proposal of the Macau Joint Declaration was a copy of the Hong Kong agreement. The Chinese leaders expected that, being Portugal a small power, would be happy to obtain the same as Britain, and underestimated the Portuguese will to have the best possible agreement and the Portuguese ability to negotiate – which resulted in some public tensions and in a long gap between the

²² Interview F.

²³ Interview G

²⁴ Catarino I.

²⁵ Document 1, paragraph 111.

first three plenary meetings and the last one.²⁶ The Portuguese officials considered that, being the starting point already as good as the Hong Kong agreement, they could negotiate better for Macau, although respecting certain limits, as the British put pressure on the Portuguese, namely on the passport issue.²⁷

Second, the fact that Britain confronted China while Portugal chose a cooperative strategy and was not so keen in announcing ruptures as Britain, led China to have a more flexible behaviour regarding Macau. The Portuguese officials believed that, even if they wanted to, they had no power to enter into a confrontation strategy and therefore adopted a strategy of cooperation. The Sino-Portuguese negotiations on the settlement of the Macau question were relatively smooth, in contrast with the Sino-British negotiations over Hong Kong. China wanted to give the image of treating the big Britain and small Portugal the same way, because Taiwan was the ultimate objective of the reunification.

Besides, some have suggested that the Portuguese position was closer to China than the British side. The British wanted Hong Kong to be independent from Beijing, while Portugal feared that China wanted to integrate Macau in Zhuhai and wanted Macau to have autonomy regarding Guangzhou and Hong Kong; for that, Macau had to have a close and direct link to Beijing.²⁸

Although the Macau and Hong Kong Joint Declarations were equivalent regarding the final results, the Portuguese and British strategies were different. For Britain, the main objective was to maintain the capitalist system in Hong Kong, while for

²⁶ Ramos, *op. cit.*, p.152.

²⁷ Interview F.

²⁸ Interview E.

Portugal the economic aspect was already negotiated by Britain, and only had to be incorporated to the Macau agreement; Portugal was more interested in negotiating the continuity of the law and culture.²⁹

The fact that Britain had more negotiating power than Portugal became more evident during the transition period: the British used a confrontation strategy not only at the level of diplomatic relations but also at the governor level. Macau already had an elected Legislative Assembly, and only had to consolidate it, while Hong Kong did not have one, and the British tried to create one. The two countries had different levels of power and therefore followed different tactics.³⁰ Because China was a strong state could be generous to a country that was much smaller, assuming a “friendly” approach, different from the one with Britain.

Despite the different political, economic and social weight of the two territories, Portugal obtained the same advantages for Macau that Britain obtained to Hong Kong. The Hong Kong agreement consolidated an already existent situation, while the Macau agreement introduced possibilities for progress. Besides the common realities, the agreement considered Macau’s special realities: questions of sovereignty and nationality: date after Hong Kong, protection of economic and cultural interests, creation of a category of Portuguese nationals, among the Chinese nationals and the foreign.³¹

Another factor that contributed to harmonious Sino-Portuguese negotiations was the absence of contentious problems in the Sino-Portuguese friendly relations and

²⁹ Interview G.

³⁰ Interview H.

³¹ Document 1, paragraphs 111-114.

that the two countries negotiated in good faith and were serious in their proposals, even if privately Portugal used the threat to suspend talks and withdrawal from Macau. The fact that the Portuguese government had already declared in the Portuguese Constitution that Macau was Chinese territory and conceded considerable autonomy to the territory in the Organic Statute of Macau, and the fact that the Portuguese presence in Macau was indeed very weak, also facilitated the negotiations with China.³²

Besides, being part of the European Economic Community, Portugal represented a door for Chinese dialogue with Europe – after the Tiananmen incident the EEC allowed Britain and Portugal to keep normal relations with China because of the Hong Kong and Macau negotiations. The good relationship between the Macau and the Hong Kong governments – despite the British pressure due to the nationality issue – was also positive for the negotiations. Finally, in the late 1990s Macau experienced great economic prosperity, which allowed the building of many infrastructure projects, contributing to Macau's autonomy.

6.2.3. The Portuguese faux-pas

One of the reasons why the Sino-Portuguese negotiation process was less complicated and painful than the Sino-British one was the low professionalism of the negotiations, as the Portuguese negotiators were not adequately prepared.³³ In the words of one of the Portuguese negotiators, the Portuguese preparation was “rushed and superficial” as it did not carefully consider past Sino-Portuguese

³² Carlos, *op. cit.*, p.162.

³³ Interview I.

relations, Chinese foreign policy and the Hong Kong case.³⁴ The deficient preparation of the Portuguese negotiators led Portugal to lose negotiating power. Broadly speaking, as the PRC had too much at stake in the negotiations, Portugal could have obtained more concessions, for example by taking advantage of the pre-Tiananmen internal troubles that China was facing at that time.

In contrast, the Chinese delegates were very well prepared and knew Macau very well. While the Chinese delegation to the JLG only changed members when it was absolutely necessary and was based in Macau, the Portuguese delegation was constantly changing and was located in Lisbon. The Chinese delegation had to do a great deal of consultations within the internal political structure before taking any position in the negotiations. This was a complex and sometimes long process, but they did not tell the Portuguese delegations in which stage of the process they were. The Portuguese delegations tended to be much more transparent, losing negotiating power. Besides, the articulation between the Governor and the leader of the Portuguese delegation in the JLG was sometimes conflictual: the Governor negotiated issues that had implications for the future of the Macau SAR, and some of the issues negotiated by the JLG interfered with the Portuguese administration.

As Portugal did not have a well-defined policy and precise aims, the Foreign Ministry often rushed towards agreement, which was not always positive for the Portuguese side. When the JLG did not achieve any results during the meetings, the Portuguese delegation still wanted to show some progress in the press communiqué. Some Portuguese diplomats did not take hard positions and rushed

³⁴ Ramos, *op. cit.*, p.152.

to close the dossiers fearing that a powerful China would suspend the negotiations and that agreement would not be achieved. This showed how badly informed they were: Portugal should have regarded this as China's problem. Both before and after the Joint Declaration, China was the one who was under time pressure and would be forced to make last-minute concessions. For Portugal, it would have been better to have not negotiated issues than badly negotiated issues.

Some failures in the Macau Joint Declaration would have repercussions in the negotiations during the transition period. One of the actions of the JLG was to compensate the omissions in the Joint Declaration.³⁵ First, while the Hong Kong Joint Declaration states that the Hong Kong SAR is responsible for paying the pensions regardless of whether the retirement took place before or after the handover, the Macau Declaration merely mentions that the pensions paid to the civil servants that retire after 1999 cannot be lower to the amount paid before. The Portuguese delegation in the JLG then had to negotiate the issue of the pension fund, which was quite contentious.³⁶

Second, contrary to the Hong Kong Joint Declaration, the Macau agreement made no reference to the applicability of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights to Macau, as they were not in force in the territory at the time. The issue was later negotiated in the Joint Liaison Group.

Third, unlike the Sino-British agreement, which states that the PRC's military forces "shall not interfere in the internal affairs of the Hong Kong Special

³⁵ Carlos, *op. cit.*, p.171.

³⁶ Carlos, *op. cit.*, p.165.

Administrative Region” and that Beijing is responsible for the payment of these costs,³⁷ there was no reference to military forces in the Macau Joint Declaration, creating serious dissensions between Portugal and China before the Macau handover. Another issue that was overlooked during the Sino-Portuguese negotiations was the official statute of the Portuguese language after 1999, which was also negotiated in the JLG and included in Macau’s Basic Law.³⁸

The low profile strategy adopted by the Portuguese officials, in which the main concern was to avoid conflicts, although resulting in apparently successful negotiations with China, allowed the Chinese side to define the agenda.³⁹ It is arguable that the nationality issue was a minor problem for the Portuguese government, used mainly to distract the incapacity of the government to make pressure on issues that were really important.

Portugal failed to protect the interests of the Portuguese presence in Macau: the bureaucracy was left with few qualified people related to the Portuguese system and the places were filled with civil servants trained by Beijing; the Macanese should have been more supported and should have been attributed high posts in the administration; very few Portuguese chose to stay in the territory after 1999; the Portuguese school was a weak solution; the Portuguese language was a lost cause.

³⁷ Joint Declaration of the People’s Republic of China and the Government of the United Kingdom of Great Britain and Northern Ireland on the Question of Hong Kong, Annex I, paragraph XII.

³⁸ Interview I.

³⁹ Santos, Boaventura de Sousa and Gomes, Conceição, *Macau, o Pequeníssimo Dragão*, Edições Afrontamento, Lisbon, 1988, p.492.

6.3. Implications

6.3.1. The Chinese negotiating methods and tactics

From a theoretical perspective, the Sino-Portuguese negotiations during 1984-1987 highlight the traditional characteristics of Chinese-style negotiation. The Portuguese officials were aware that the Chinese negotiators used specific methods of negotiation and pressure tactics, which was facilitated by the fact that negotiations took place in Beijing. The Portuguese aimed at identifying the weaknesses of these methods and tactics and turn them against the Chinese interests.

The first Chinese negotiating method identified by the Portuguese side was that the Chinese negotiators prepared the negotiations in great detail. As a consequence, the Portuguese side became more prudent. Another disadvantage of this method for China was that it made the Chinese negotiators lose face in case of any deficiency in preparation. Another traditional Chinese method was to hide from the public line any sources of dissension. This brought some advantages for the Portuguese side: China had to obtain formulas sufficiently acceptable for producing a joint communiqué, so the discussion focused in a consensual document produced by the two delegations, and not in a text with the Chinese position.

A third method was that negotiations followed Chinese previous declarations of principle: the Chinese negotiators first seek agreement on general principles and

only then discuss the details within the framework of those principles.⁴⁰ Moreover, the Chinese negotiators did not act before knowing completely the true aims and flexibility of the Portuguese position. When the Portuguese side finally agreed in a issue, they immediately seek additional advantages.

Among the Chinese pressure tactics, the Portuguese officials identified the use of personal relations to obtain information. The Chinese negotiators organised trips for the Portuguese delegation after the meetings, not only to obtain compromises or concessions on the more sensitive issues, later used to reinforce their moral legitimacy – this included accusations of the “historical humiliations” and “unequal treaties” – but also show public negotiating consensus. Another tactic was the manipulation of the facts: the Chinese negotiators used the documentation and the press to influence the negotiations, and insisted in the systematic use of an interpreter, despite the inaccuracy resulting of quick translation.⁴¹

The Chinese tactic that had more consequences in the Sino-Portuguese negotiations was the use of deadlines. After dragging the negotiations for a long time, the Chinese side suddenly invoked something that may work as a deadline and insisted on the advantages for the Portuguese side to accept it, pressing to precipitated decisions. There were two main examples of this. First, the Chinese government demanded that Macau must be reintegrated in Mainland China before the end of the 20th century. Second, negotiations had to be concluded before April 1987, so that the agreement could be ratified in the National People’s Congress

⁴⁰ Pye, Lucian W., *Chinese Negotiating Style: Commercial Approaches and Cultural Principles*, Quorum Books, New York et al, Quorum Books, New York, 1992, p.51.

⁴¹ Document 1, paragraphs 23-32 and 37-38.

and entered into force before the 13th Chinese Communist Party congress in September 1987.

Towards the end of the negotiations, the Chinese negotiators were in a very delicate position due to the deadlines self-imposed by China. They had received very strict instructions that limited them and left them no alternative but to conclude a quick agreement, forcing them to make concessions. The Chinese negotiators knew that there had to be a difference between the Hong Kong and the Macau handovers, but made it seem a huge concession and pressed for a simultaneous handover.⁴² The Portuguese negotiators used the date issue to drag the negotiations and to obtain counterparts from the Chinese, and only in the last days of the negotiations did Portugal formally agree with the Chinese proposal. The date for the transfer of the administration was the biggest victory for the Portuguese side, as the alterations to the Hong Kong model were minimal.⁴³

Aware of these Chinese negotiating methods and tactics, the Portuguese side defined a strategy based on the “principle of the equality” of the two sides – what China considered as “unequal treaties” should not be replaced by an agreement that was unequal for the Portuguese side. Besides, in the beginning of the negotiations Portugal invoked the “principle of non-discrimination” – Macau should obtain the same benefits as Hong Kong – and from the second round onwards invoked the “principle of the specificity” – the future situation of Macau should not be less advantageous than the actual regime of the territory. The

⁴² Interview H.

⁴³ Interview I.

Portuguese side perceived that this resulted in advantages for the Macau agreement over the Hong Kong's.⁴⁴

6.3.2. Asymmetrical Bargaining

The Sino-Portuguese negotiations on the settlement of the Macau question were asymmetrical negotiations, the PRC being the stronger player. The Portuguese negotiators faced a very unequal negotiation due to the huge asymmetry of power between Portugal and China. For China, the negotiations were over the critical objective of the recovery of national territory, which made the Chinese delegation approach negotiations with a special sensitivity and rigidity. The Chinese government never accepted the 'three-legged stool', and negotiations were strictly bilateral: China knew Macau's opinion better than Portugal.

The Portuguese officials were aware that they were negotiating with a great power, and therefore from a weaker position,⁴⁵ and that there were limits for the concessions they would obtain from China.⁴⁶ They perceived that unless the issue was settled through a collective decision of the United Nations, Portugal had no power in the negotiations.⁴⁷ For the Portuguese side, one of the chief interests was the dignity of the negotiation process and a honourable withdrawal. For the Portuguese centre and right-wing leaders it was absolutely vital to avoid the mistakes committed by the left-wing during the hasty decolonisation of the

⁴⁴ Document 1, paragraphs 33-36.

⁴⁵ Silva, Anibal Cavaco, pp.203-4.

⁴⁶ Interview G.

⁴⁷ Interview S.

African colonies in 1975, whose traumas were remembered vividly by the Portuguese population.⁴⁸

The Sino-Portuguese negotiations suggest how complex it is for a small/weak country with a tangled political bureaucracy to define a strategy, aims, and alternative scenarios. For a small country, negotiations with a great power require a lot of preparation in order to keep a high level of interventions during the talks.⁴⁹

It also demands the understanding of the true will of the great power, to conclude whether the issue is vital for the other part, whether it is a question of principle that they consider non-negotiable or whether there is place for bargaining. Even in issues that are not vital for them, the Chinese made threats – they made 12 ultimatums during the negotiations – and, after concluding that the Portuguese side resisted, they found a solution to save face.⁵⁰

For the Chinese negotiators, such an asymmetric negotiation also caused some concern: as Portugal was a small country, they had to respect its dignity.⁵¹ Besides, a weak partner sometimes adopts totally unexpected positions, as was the case on the issue of the date for the handover: the Prime Minister and the Foreign Ministry accepted the year 2000 while the President insisted on a later date. The lack of a common strategy within the Portuguese state, although making Portugal lose some negotiating power, was extremely confusing to the Chinese officials,

⁴⁸ *Expresso*, 30 August 1986.

⁴⁹ Interview E.

⁵⁰ Interview I.

⁵¹ Interview F.

who could not distinguish which of the two leaders had more power, often complaining that they received “wrong signals.”⁵²

Portugal had some negotiating advantages, such as the power of unilateral withdrawal from Macau, and obtained concessions, namely on the date of the handover and on the nationality of Macau’s citizens. During the transition period, the Portuguese negotiators obtained concessions in the construction of the big infrastructure, namely the airport, and in the nationality and localisation issues,⁵³ although the thesis argues that they could have done better.

The negotiations reflect the political development of a country: While in advanced societies, where important interests are at stake, the business class criticises the politicians, in relatively unsophisticated Portugal the civil society makes no pressure and is not consulted. Contrary to Hong Kong, in Macau there was no debate of the Joint Declaration or consultation of the people, although arguably Portugal had no legitimacy to negotiate in the name of the people of Macau.

In conclusion the way in which the Portuguese leaders formulated and implemented their strategy for the negotiations with China has been explained in much greater detail than in any previous studies on this subject. An interesting issue raised in this study concerns China’s and Portugal’s pragmatism in the settlement of the Macau question, especially if compared with Britain’s more dogmatic position on Hong Kong. At a theoretical level, this study has highlighted the importance of the Chinese negotiating tactics. Although the

⁵² Interview D.

⁵³ Yee, Herbert S., *Macau in Transition – From Colony to Autonomous Region*, Palgrave, London, 2001, p.154.

analysis focus on how the Portuguese side negotiated and the Chinese strategy is out of the scope of this work, the cases of the thesis draw attention to the typical model of Chinese negotiations.

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