Governing Glocalisation: A View from the MACAU S.A.R. (China)

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ABSTRACT
Governance and globalization can be understood as evolutionary interpretations of the concepts of globalization and government. Their evolution appears to be driven by changes caused by important technological innovations that have taken place throughout the twentieth century notably in the transport sector and in information and communication technologies. In their combined usage, glocalization and governance appear thus to provide an interesting conceptual challenge to the traditional understanding of how we were, we are, and how we are going to be governing our societies. It is in the quest for the appropriate governance model, that the value of their combined usage shall be assessed. In this context, it is warranted to ask about the extent to which challenges encountered on both levels may be the same but merely differ in their interpretation from location to location. This is understood to include the question whether the existing global governance system must be deemed inadequate because both levels still either operate separately or display an inclination towards a top-down approach neglecting a bottom-up approach. This question will be exemplified in a brief presentation of the system and governance challenges of the Macau Special Administrative Region (S.A.R.) of the People’s Republic of China (PRC) and is meant to offer a basis for future discussion and novel thoughts on the political and legal framework for the future.

Categories and Subject Descriptors
Governance, International Law

General Terms
Governance, Law and Order

Keywords
Governance, Glocalization, Legal Reform, Creative Economy, International Law, Macau S.A.R., Global Legal Order

1. INTRODUCTION
The world of today is undergoing an unprecedented pace of change. Furthermore, change, or no less than the perception thereof, appears to be still accelerating. For this reason “change” has been described as a dominant factor in present societies and as being “constant, continuous, and inevitable”. In trying to cope with this trend of ever faster change, old concepts become interpreted in a different light or evolve into new ones. Two such concepts are the ones of “governance” and “glocalization”. To begin with, the concept of governance derives from the ancient Greek verb κυβερνάω (kubernao) and means “to steer”. It therefore marks a more dynamic interpretation of the concept of government as the dominant notion to refer to the administration of the affairs of states or the world as a whole. “Glocalization”, on the other hand, is an oxymoron and carries an apparent contradiction in terms created by the deliberate blend of the global with the local level. It was originally derived from the Japanese concept “dochakaka”, which denoted the adaptation of farming techniques to local conditions. Later it became known by virtue of global business strategies that were more sensitive to local differences as summarized in the slogan “think globally, act locally”. In this quality it may be considered a more sophisticated concept than the one of globalization. However, it is questionable why the value of greater sensitivity towards the local level displayed by the business community has not yet been met with the same attention in the political realm.

Against this backdrop of greater attention to local and cultural differences in the economic realm, it is therefore time to inquire into the possible benefits that greater attention to the local level may bring to the political realm at the global level or to the so-called “global governance debate”. More concretely, it is necessary to address the conceptual challenges that may derive from a simultaneous consideration of the local and the global level as advocated by the concept of glocalization and its more

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dynamic reading as mandated by the concept of governance.5 Deriving from the apparent contradiction enclosed in the concept of glocalization, we may hence ask what the world as a whole and the small fragments, in which the world is politically and legally divided, may have in common and to what extent their modes of governance may relate to each other. It is evident in the present organization of the world that there exists indeed a large number of such small territories, which are equally spread over the all continents, oceans and regions of the world. A large number of small island states, city or micro states, or other local territories and other political entities fall under such definition. These territories and polities are often organized in distinct political, legal or constitutional structures and may have numerous and equally distinct internal and international relations with larger states, regional blocks, and international organizations. There are, for instance, many small island states, such of which are UN Members and some are not.6 There are those territories which are part of the constitutional system of larger states, such as Hawaii (United States), Tasmania (Australia), or Sardinia (Italy). There are also territories which are part of regional organizations as illustrated in the case of the oversea departments and the oversea territories of the European Union, such as the Ille de la Réunion to which the provisions of the European Treaties apply and other to which it does not, such as the Faroe Islands.7 Finally, there are also small states which are sovereign, such as the Vatican City, Liechtenstein, Singapore, or Mauritius to list but a few. Other similar territories may have a varying degree of constitutionally guaranteed autonomy, such as Greenland (Denmark), Curaçao, Hong Kong or Macau.

The latter, Macau, is a small “island” located in the South China Sea, which as the status of a Special Administrative Region of the People’s Republic of China (PRC). A brief presentation of Macau including references to some of its basic legal, economic, political, cultural and related defining features shall thus provide the model case of a small polity to be compared or contrasted with bigger polities. To this end, this article starts with a brief clarification on the conceptual challenges deriving from the combined usage of the concepts of governance and glocalization as will be illustrated in the parallels between continental drift and paradigm shift. Both refer to forces of change, which shall then be held accountable for the present trend to gradually refine or even replace the concept of globalization by the one of glocalization. A justification for this terminological correction shall hence be provided by a brief presentation of the basic political and legal features of the Macau S.A.R. and some of its most important policy challenges. Finally, these experiences will provide the basis for the conclusions on the value of the concept of “glocalization” or “glocal governance” for the present governance debate and its quest for the best modes of governance for tackling of the global changes that the future brings.

2. ON CONTINENTAL DRIFT AND PARADIGM SHIFT

Changes A Conceptual Clarification: are created by motion in our perception, which often have the ancillary effect of blurring formerly clearly established lines of distinction even where they were drawn between apparently antagonistic concepts. This is epitomized in the motion picture, which did to still photography what governance can do to government. In connection with the tension provide by glocisation, it is at the conceptual level and from a geographical point of view that this world, which we call “Planet Earth”, can be described as an island. More precisely, it is an island in a sense that it is a limited area that is isolated from the rest of the universe. This is also reflected in the etymological origin of the term “island”, found in the Latin term “insula” or the Italian term “isola”, which practically denote a smaller part that has become “isolated” from a bigger part. In this sense, the evolution of language followed geography because, as argued by Alfred Wegener, approximately 250 millions years ago, Planet Earth was also an island made of one big landmass surrounded by water, the so-called “Urkontinent (supercontinent)” or “Pangea”.8 Only with the passing of time and changes incurred by the forces of plate tectonics, Pangea slowly but yet constantly drifted apart, leaving us with today’s world map made of several continents and thousands of islands.

From the perspective of the inhabitants of these islands, whether small or large, the isolation is felt by an apparently definite boundary marked by water that separates them from the inhabitants of other territories. For the planet and from the perspective of humanity as a whole this isolation was described by Immanuel Kant in the following words:

Nature has enclosed them [the nations] altogether within definite boundaries, in virtue of the spherical form of their abode as a globus terraqueus [...].9

Thus while an island is apparently limited by its circular form, the planet is so by way of its spherical form. From a more dynamic perspective though, that duly takes into account the phenomenon of change, the definiteness of the isolation is only relative as continents shift, islands form, grow or submerge. In accordance with this change, humanity has been constantly

6 See e.g. the Alliance of Small Island States (AOSIS) is a coalition of small island and low-lying coastal countries which has a membership of 42 States and observers of which 37 are members of the United Nations; see AOSIS Homepage, available at: http://www.sidsnet.org/aosis/about.html.
8See Alfred Wegener, Die Entstehung der Kontinente und Ozeane (Braunschweig: Vieweg, 1915).
learning how to transcend borders be it by boat, by aircraft or by other means. Based on the so-called “acceleration of history” experienced throughout the past century,10 we may therefore ask today what this geographical phenomenon may tell us about the political organization of the world as a whole and each of its many single constituents separately and vice versa. Figuratively, it means to inquire to what extent the forces that cause the continental shift to change the geographical shape of the surface of this planet can be compared to the conceptual reasons which initiated the paradigm shift that is illustrated by the terminological shift from globalization to glocalization.

3. GOVERNANCE IN THE 21ST CENTURY: FROM GLOBALIZATION TO GLOCALIZATION

Paradoxically, it is while the continents are further drifting apart that there are various developments taking place that foster an ever growing interconnectedness and interdependence among the peoples in the world. It is similar to the paradox elaborated on by Jeremy Rifkin, when he describes the history of the universe as shifting from a perfect state toward decay and chaos, while our notion of history follows the opposite course, that is to say, from a ‘state of chaos to a ‘progressively’ more ordered world’.11 The apparently parallel developments, both caused by and causing further changes, are creating new challenges to the traditional modes of perception, and consequently, also to the ways we were used to organize the affairs of the world community. These developments were long analyzed or commented on under the concept of globalization. Gradually, these new challenges have become more aptly summarized under the notion of “global governance”, which has derived from the common consideration of “globalization” and “governance”.12 The term “global governance” can be understood as to refer to a debate covering a wide array of policies that are crucial to the efficient organization of global affairs in the rapidly changing world of today.13 The so-called “global governance debate” encompasses a great variety of policy areas in addition to the traditional issues of the maintenance of international peace and security at the global level.14 In particular, it is being used for related policy areas, which range from health and food security via culture to environmental protection, as well as from finance, international trade and global competition law via human rights to sustainable development.15 This enumeration being far from complete, global governance also tries to respond to the repeated challenges imposed notably by the ever faster advent of new technologies and their global impact, ranging from the large spectrum of outer space, via cyberspace to the smallest units at the nano level.16 In short, it covers a wide set of problems of what is deemed to bear global relevance.

In line with the challenges deriving from the rapidly changing environment, the encounter of globalization with governance, however, had the effect of blurring the lines between previously well-established distinctions, such as those of public and private, municipal and international law, or politics and economics.17 It

13 Note that, etymologically, “governance” derives from the ancient Greek verb κυβερνάω (kubernao) and means “to steer” which implies that something is in motion as otherwise it means to stand idle, stagnate or eventually decline.

interconnects various themes and transcends local, national, regional and international boundaries to attain a global dimension. Here in particular the role of private individuals under international law gains special significance. Similarly, the emerging role of global civil society is slowly being taken into greater account. This gradual change in perspective is also advocating the use of the adjective “global” instead of “international” in connection with “governance”, especially when it is invoked in a legal context. Global governance also brings different scientific branches and disciplines together by slowly corresponding to new phenomena and so-called “cross-sectional issues” which diagonally cut through previously well-established disciplinary boundaries. In the legal realm, it meets with the concepts of constitutionalization or constitutionalism and strongly relies on the methods used by comparative law.

Equally, trying to cope with challenges to legitimacy and democratic principles of global rule, global governance experiments with well-established concepts, such as the nation state and sovereignty, and proposes new forms of government in an era of globalization. It even discusses possibilities to proceed without the concepts of “state” or “government”. The search for new forms of government also indicates the gradual acknowledgement of the changing conditions in the political and economic arena and the new challenges it poses.


See e.g. Theodor Schilling, On the Constitutionalization of General International Law, Jean Monnet Working Paper
governance is closely linked to the concept of sustainable development, which received wider recognition following the 1992 Rio Declaration on Environment and Development.\(^{29}\) Sustainable development is frequently defined as a development that meets “the needs of the present without compromising the ability of future generations to meet their own needs.”\(^{30}\) In this regard, the Plan of Implementation of the World Summit on Sustainable Development can also be read to call for greater coherence in global law and policy making by way of more consistently integrating different policy goals, such as those of economic, social cultural and political development as well as of environmental protection.\(^{31}\) It also requires an enhanced inter-institutional coordination between international organizations based, for instance, on principles of comity\(^{32}\) or both vertical and horizontal subsidiarity.\(^{33}\) The same plan also cites an important aspect of the global governance debate the inclusion of the local level into the global debate, when it states as follows:

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Good governance within each country and at the international level is essential for sustainable development.\(^{34}\)

Governtance, therefore, not only introduces a dynamic element following the emergence of a more accelerated perception but equally calls for a global model of multilevel governance.\(^{35}\) Such multilevel governance model is understood to cover the local, national, regional as well as global authorities. In search for a model of multilevel governance it is therefore important to not only top-down implement globally negotiated solutions but to also allow the inverse to happen, namely a bottom-up approach which efficiently communicates the local experiences to the global level and perhaps even provides a source of inspiration to the organization of the global governance system. This kind of approach, it is submitted, is best captured by the concept of “glocalization”. Even though the concept was originally derived from the context of farming in Japan as outlined before and was later applied to global business strategies, it is becoming more frequently used in political contexts. Its increasing use can be seen from its application to different themes of governance problems in Asia.\(^{36}\) It has, however, also found its way in various contexts to other regions, such as Europe, North America and Africa.\(^{37}\) As one concrete example, it shall be used as the conceptual framework for the case of the Macau Special Administrative Region.

\(^{34}\)See Plan of Implementation of the World Summit on Sustainable Development and 2005 World Summit Outcome, supra note 31.


4. THE MACAU SPECIAL ADMINISTRATIVE REGION (MACAU S.A.R.)

4.1 GENERAL OVERVIEW

The Macau Special Administrative Region is situated on the Southeast coast of China and the western shore of the Pearl River, not far away from the Hong Kong Special Administrative Region. In its present configuration, it is a Peninsula connected to Mainland China and via three bridges to the two connected islands of Taipa and Coloane. Several centuries ago, Macau was described as having been constituted of three separate islands of which Macau was the closest to the Mainland and most likely only connected via a narrow isthmus (Fig. 1).

Hence, Macau has considerably grown throughout the past century due to land reclamation from the sea and sedimentation by the Pearl River (Fig. 2). In numbers, the total land area in the Macau S.A.R. rose from 23.8 km² in 1999 to 29.7 km² in 2010. The territory is currently inhabited by an estimated population of 549,500.

The precise origin of the name “Macau” (or “Macao”) is not entirely known but appears to have been coined by way of communication between the Chinese and the Portuguese. In the combined linguistic origin of the name lies perhaps the key to the current understanding of Macau as a place where “East meets West”.

This understanding has been formed and can be traced back to its history of the oldest and longest European settlement on the China coast. After almost 450 years of Portuguese administration following its establishment in 1557, Macau was reverted to Chinese sovereignty that took effect on December 20, 1999 as it was agreed upon between Portugal and the PRC in a joint declaration signed in 1987. In line with the principle of “one

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44 See the Joint Declaration of the Government of the People’s Republic of China and the Government of the Republic of Portugal on the Question of Macau, signed in Beijing on April 13, 1987 (MJD); an English version is available at:
country, two systems”, the PRC declared in the said document that upon resumption of Chinese sovereignty, Macau will – like in the case of Hong Kong in 1997 – be established as a Special Administrative Region under the authority of the PRC but with a high degree of autonomy. The precise degree of this autonomy and basic policies, which are to remain unaltered for a period of 50 years, i.e. until December 19, 2049, are laid down in the Basic Law of the Macau S.A.R., which was adopted by the Eighth National People’s Congress on March 31, 1993 and entered into force on December 20, 1999.7


The present legal status of Macau is hence the outcome of a long and intense historical process, which was shaped not only by China, Portugal, Europe and Hong Kong but equally by various internal and external as well as local and global forces. This process has not only shaped the inhabitants and residents of Macau but was equally shaped by them and the many visitors passing through its ports. At present, the Sino-Portuguese Declaration and the Macau Basic Law (MBL) are the central legal texts establishing its current status and system of governance. The Basic Law was adopted based on Art. 31 of the Constitution of the People’s Republic of China, which allows for the establishment of special administrative regions. In nine chapters and several annexes, the Basic Law sets forth the basic outlines of the Macau political and legal system and structure.

The Preamble of the Basic Law mentions that the PRC has established the Macau S.A.R. as an inalienable part of the PRC with a view of “upholding national unity and territorial integrity, contributing to social stability and economic development, and taking account of its history and realities”. De iure, it is thus a “local administrative region of the People’s Republic of China, which shall enjoy a high degree of autonomy and come directly under the Central People’s Government”. Under this autonomy, the Macau S.A.R. has a wide range of local and even external competences, with the important exceptions of foreign affairs and defence, which are exercised by the Central People’s Government. However, in matters “directly affecting the region” the Macau S.A.R. has external powers and may participate in negotiations at the diplomatic level. By using the name “Macau, China”, the Macau S.A.R. is also entitled to “maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organizations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural, science and technology, and sports fields”. For example, Macau is a signatory of numerous other international treaties and by the same token numerous countries or regional organizations have established consular missions in Macau or in Hong Kong to Macau.

Under the local autonomous competencies, Macau is responsible inter alia for the maintenance of public order and within the range of the Law it is also vested with the related executive, legislative powers as well as an independent judicial power including that of final adjudication, which is exercised by the Court of Final Appeal. The judicial system is structured courts of first instance (administrative, civil, and criminal), intermediate courts and the Court of Final Appeal.


Macau Basic Law (MBL), supra note 47.

Art. 12 MBL, supra note 47.

Art. 13-14 MBL; supra note 47.

Art. 135 MBL; supra note 47.

Art. 136 MBL; supra note 47.

For a list of the multilateral treaties to which Macau is a member, see the Macau Government’s homepage, “Tratados Multilaterais Aplicáveis na RAEM”, available at: http://www.dsrjdi.ccrj.gov.mo/pt/tratadospt.asp.

According to a Governmental Webpage which was last updated in 2006, 2 countries have set up Consulates General in Macau (Portugal and Philippines), 10 countries appointed honorary consuls, and 58 countries have extended the coverage of their consulates general or honorary consulates in Hong Kong to include Macau; see Macao SAR Government Portal, “External Relations”, available at: http://www.gov.mo/egi/Portal/rkw/public/view/showcomp.jsp?id=InfoShowTemp&docid=ce3739f9e5909cf8f6fcf0503aa0266.

Art. 14, 15, and 19 MBL; supra note 47.

Art. 82-94 MBL; supra note 47.
final adjudication, however, only applies to the exercise of judicial powers lying within the autonomy of the region. The power of interpretation of the Basic Law itself is vested in the Standing Committee of the National People’s Congress (NPC). In the case that Macau courts need to interpret provisions of the Basic Law which concern affairs falling in the responsibility of the Central People’s Government, the courts are obliged to seek an interpretation of the relevant provisions from the Standing Committee of the National People’s Congress through the Court of Final Appeal of the Region. As an important cornerstone of the Macau judicial system and as a direct manifestation of the principle of continuity, the Basic Law contains a catalogue of fundamental rights and duties of Macau residents. The death penalty is abolished since 1870 in Macau and its prohibition is not explicitly mentioned in the Basic Law but only laid down in the Macau Criminal Code. A possible reintroduction (at least for the time period covered by the Basic Law) is, however, unlikely due to a political understanding between Portugal and China in this respect.

In terms of its political structure, Macau is headed and represented by the Chief Executive who is appointed (or removed) by the Central People’s Government based on local consultations for a term of office of five years and may be re-appointed once. The Chief Executive not only represents the region but has also considerable legal and political powers akin to those of a head of state. He may also dissolve the Legislative Assembly and nominates the members of the Executive Council that are meant to assist him/her.

There is also a Commission against Corruption and a Commissioner of Audit, whose heads are accountable to the Chief Executive. The Chief Executive is also the Head of the Government of Macau, who is assisted by several general secretariats, directorates of services, as well as departments and divisions. The general secretariats are similar to ministries and currently there are five of them established, which are called “Administration and Justice”, “Economy and Finance”, “Security”, “Social Affairs and Culture”, and “Transport and Public Works”. This organizational structure also largely reflects the main governance tasks of the Government of Macau, which are the following:

1. To formulate and implement policies;
2. To conduct administrative affairs;
3. To conduct external affairs as authorized by the Central People's Government under this Law;
4. To draw up and introduce budgets and final accounts;
5. To introduce bills and motions and to draft administrative regulations; and
6. To designate officials to sit in on the meetings of the Legislative Council to hear opinions or speak on behalf of the government.

The Government is accountable to the Legislative Assembly, which is composed of permanent residents of Macau and is usually elected for a term of for years. However, only the majority of the members of the Legislative Assembly is elected, whereas the remaining part is appointed. It is headed by a President and Vice-President who are both elected from its members and preside over the meetings and other administrative tasks. The Legislative Assembly handles the typical tasks of any legislature, among which are legislative and budgetary powers, to hear and handle complaints from citizens, and to debate issues of public interest. At an even lower level of governance, the Basic Law foresees the establishment of “municipal organizations”, which, however, are not vested with

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60 Art. 143 MBL; supra note 47. This legal tool is similar to the jurisdiction of the European Court of Justice (ECJ) to give so-called “preliminary rulings” (Art. 267 TFEU).


62 Art. 24-43 MBL; supra note 47.


64 See Jorge A.F. Godinho, Macau Business Law and Legal System (Hong Kong: Lexis, 2007) at 28-29.

65 Art. 15, 45, 47, and 48 MBL and Annex I; supra note 47.

66 Art. 50 MBL; supra note 47.
political power but provide various services in fields such as culture, recreation and environmental sanitation.\textsuperscript{75}

Furthermore, the Basic Law contains two important chapters which deal with the “Economy” and with “Culture and Social Affairs”.\textsuperscript{76} The provisions on the economy address a series of issues which shall guarantee both continuity and harmony between the basic economic system in place before and after the handover. These issues include in particular the question of ownership of property,\textsuperscript{77} and financial and fiscal autonomy.\textsuperscript{78} In this regard, it is interesting to mention that the Basic Law enshrines – what in German is called “Schuldenbremse (a brake on debts)” –\textsuperscript{79} the principle of keeping expenditure within the limits of revenues in drawing up its budget that is to say to “achieve a fiscal balance, avoid deficits and keep the budget commensurate with the growth rate of its gross domestic product”.\textsuperscript{80} The Basic Law also guarantees the continuous circulation and free convertibility of the “Macao Pataca” (MOP) as the region’s legal tender.\textsuperscript{81} The MOP is tied to the Hong Kong Dollar (HK$)\textsuperscript{82} and thus, also indirectly to the US Dollar (US$), as HK$ is pegged with the US$.\textsuperscript{83} Furthermore, it is laid down that Macau shall maintain the status of a free port and shall not impose any tariffs unless otherwise prescribed by law.\textsuperscript{84} Macau is also a separate customs territory and, in connection with the external powers mentioned before,\textsuperscript{85} hence a separate member of the World Trade Organization (WTO).\textsuperscript{86} The remaining provisions guarantee the Macau S.A.R.’s autonomy of economic policymaking in connection with the related areas of labour law, commerce and industry, shipping, civil aviation, tourism and recreation, and the environment.\textsuperscript{87}

The Chapter on “Culture and Social Affairs” addresses a wider set of policy areas, which include notably the formulation of education policies and the administration of the educational system.\textsuperscript{88} The Basic Law also guarantees the continuous operation of existing educational institutions as well as their autonomy as well as teaching and academic freedom.\textsuperscript{89} The remaining provisions under this heading guarantee the Government’s autonomy to adopt policies in the areas of medical care and health, science and technology, culture (including literature, art, broadcasting, film and television programs), the press and publications, and professional training.\textsuperscript{90} In this context, it reiterates with regard to religious organizations the fundamental freedom of religion listed in the citizens’ rights catalogue.\textsuperscript{91} The same applies to social policies and the social welfare system, which shall be improved in “the light of the economic conditions and social needs”.\textsuperscript{92}

Finally, following the aforementioned chapters on “External Relations” and the “Interpretation and Amendment of the Basic Law”, a chapter containing some supplementary provisions plus the related Annexes, Decisions and Appendix conclude the scope of the Macau Basic Law.

4.3 The Basic Governance Challenges in the Macau S.A.R.

As derives from the political structure established by the Macau Basic Law, the governance challenge of the Macau S.A.R. appear to be similar to those of municipal, provincial, and national governments as well as to those of regional and global organizations. This assumption shall be assessed by the conceptual framework established by the following four but mutually related challenges which in one way or the other emerge in the context of Macau: As the first challenge, it includes the difficult task to balance the different interests among citizens as much as those between the individual citizen vis-à-vis those of the society as a whole. A second challenge is to mitigate possible conflicts and derive synergy effects between economic policies on the one hand and other related as well as cultural and social policies on the other. Third, it is the search for finding the optimal combination of external and internal affairs.

\textsuperscript{75} Art. 95 and 96 MBL; supra note 47.
\textsuperscript{76} Art. 103-120 and Art. 121-134 MBL; supra note 47.
\textsuperscript{77} Art. 103 MBL; supra note 47. On the question of property before and after the handover in 1999, see e.g. Tong Io Cheng, “Between Harmony and Turbulence: The Evolution of Macau Land Law in the “Colonial” and the “Post Colonial” Context” (2010) 3 Juridikum 287.
\textsuperscript{78} Art. 104-107 MBL; supra note 47
\textsuperscript{80} Art. 105 MBL; supra note 47
\textsuperscript{81} Art. 108 and 109 MBL; supra note 47
\textsuperscript{82} Under a so-called “Linked Exchange Rate System” the exchange rate between the HKD and the MOP is fixed at rate of HKD1 to MOP 1.03. The Government has authorized two commercial banks (the Banco Nacional Ultramarino, S.A. and the Bank of China (Macau) Limited) to issue banknotes in Macao; see Monetary Authority of Macau, “Currency in Circulation in Macao”, available at: http://www.amcm.gov.mo/currency/Currency.htm.
\textsuperscript{83} Since 2005 the Hong Kong Monetary Authority (HKMA) follows a convertibility undertaking to buy US dollars from licensed banks at a fixed exchange rate of US$ 1=HK$ 7.85; see Hong Kong Monetary Authority (HKMA), “Currency Board System”, available at: http://www.info.gov.hk/hkma/eng/currency/link_ex/index.htm.
\textsuperscript{84} Art. 110 MBL; supra note 47.
\textsuperscript{85} Art. 136 MBL; supra note 47.
\textsuperscript{86} Note that Macau is like the Hong Kong S.A.R. (China) a founding member of the WTO created on Jan. 1, 1995. The PRC and Chinese Taipei joined the WTO as a member on December 11, 2001 and January 1, 2002 respectively.
\textsuperscript{87} Art. 114-119 MBL; supra note 47.
\textsuperscript{88} Art. 121 MBL; supra note 47.
\textsuperscript{89} Art 122 MBL; supra note 47.
\textsuperscript{90} Art. 123-127, and 129 MBL; supra note 47.
\textsuperscript{91} Art. 34 and 128 MBL; supra note 47.
\textsuperscript{92} Art. 130 MBL; supra note 47.
within the respective Government’s powers, which poses another important challenge. Last but not least, it is the formulation of policy goals, which are structured along short-, medium-, and long term goals but at the same time considerate of the path dependency based on the historical past.

Applied to Macau this means in particular to consider the following aspects. In terms of the governance challenges with regard to Macau citizens, it means to take account of the cultural, linguistic, and religious diversity of its population against the backdrop of its equally rich historical legacy. In this regard, the most recent challenges of the decolonization and retrocession of Macau to the PRC and the transfer from Portuguese to Chinese administration as well as the recovery from the 1997-98 Asian financial crisis as well as the 2008 global financial crisis, have grossly been tackled successfully. From a legal perspective it is the Basic Law of Macau that provides an adequate “constitutional” basis for the governance of the region in the decades to come as well as until the year 2049 and possibly beyond. With regard to the past and future of Macau (and Hong Kong) and in particular the time period after the expiry of the 50 years period, a quote by Deng Xiaoping in line with the “one country, two systems” principle is perhaps revelatory when he is reported to have said:

As a matter of fact, 50 years is only a vivid way of putting it. Even after 50 years our policy will not change either. That is, for the first 50 years it cannot be changed, and for the second there will be no need to change it. So this is not just idle talk.

Returning to the present, the current success is, for instance, visible in the preservation of Macau’s rich cultural heritage, the historic centre of which has become inscribed in UNESCO’s world cultural heritage list in 2005 and has been described as follows:

With its historic street, residential, religious and public Portuguese and Chinese buildings, the historic centre of Macao provides a unique testimony to the meeting of aesthetic, cultural, architectural and technological influences from East and West. The site also contains a fortress and a lighthouse, the oldest in China.

The preservation of Macau’s rich cultural heritage has been combined with the overall economic development of the region especially in the drastic rise of the gaming industry and the booming revenues it generates as one of the world’s most competitive gaming locations. For instance, the gaming statistics published by the Macau Gaming Inspection and Coordination Bureau indicate that the total amount of gaming revenues in Macau soared from MOP 47,134 (US$ 5.8) billion in 2005 to MOP 120,383 (US$ 14.9) billion in 2009 to reach MOP 189,588 (US$ 23.6) billion in 2010. These data help to explain the present overall unemployment rate of 2.8%, and per capita GDP of MOP 304,211 (US$ 37,883) in 2009. These data equally point out several difficulties that lie ahead. Most of all, it must be considered that economic data, such as notably per capita GDP statistics do neither say much about the distribution of the wealth that has been generated in a fiscal year nor do they automatically give a reliable picture of the quality of life in a given economy. In fact it has recently been noted by prominent economists that “if inequality increases enough relative to the increase in average per capital GDP, most people can be worse off even though average income is increasing.” For these reasons, statistical data alone cannot be used as the sole basis for policy decisions. Therefore, policies pursuing the goal of a fair distribution of wealth and well-being through trade and investment must be pursued not only locally but also regionally in Greater China.

Among general economic problems, a concrete difficulty of Macau is the need to diversify its economy away from a “single market economy” and strong reliance on the gaming industry. Macau is primarily a services-based economy, where “gaming and related tourism services constitute the core of the economy with gross gaming receipts accounting for 49% of GDP in 2005 and direct taxes on gaming providing 75% of government revenue in 2006”. An important step in this direction was the


100 See e.g. Sau-san Chan, Leading Issues of the Macau Economy (Macau: Macau Foundation, 2000).

signing of the Mainland and Macao Closer Economic Partnership Arrangement (CEPA) on October 17, 2003, which is aimed at promoting the joint economic prosperity and development of the Mainland and Macau through the liberalization of goods and services trade as well as investment.102

In this regard, however, much more needs to be done to overcome the risks linked to the vulnerability of Macau’s single market services based economy. In economic terms, diversification, however, cannot proceed in the direction of a total substitution of all or a major goods or services imported. The policy of import substitution tied with economic protectionism has proven fatal in the past.103 As a consequence, diversification must proceed by a careful consideration of the economic principle of the comparative advantage, as formulated by Adam Smith and David Ricardo, which basically states that economies should specialise in what they can do best and engage in trade. The two theories of import substitution and comparative advantage, however, are not necessarily in opposition to each other but provide the parameters for a country’s search for the formulation of a coherent commercial policy.

In this respect, the more appropriate step for Macau is to develop its economy further in the direction of what has been termed the “experience economy”.104 The experience economy marks the next stage following the service economy, after the successful transformation from an agrarian to an industrial economy.105 According to the experience economy, businesses not only offer goods and services alone but coupled with a rich experience and memorable sensations created within the customer.106 The concept of the experience economy is also closely linked with those of the “knowledge-based economy”107 and “creative economy”, which are also closely tied to the concepts of the so-called “cultural industries” or “creative industries.108 In this respect, it appears warranted for Macau to expand its gaming industry to the cultural or creative industries as well as other related industries such as health care and new technologies in order to provide the visitor with a unique and memorable experience. Facing new competition in the region (notably from Singapore), this may also help to attract tourists other than those interested in gaming. To be more concrete, it means that based on its current strength Macau rather improves and expands its current industries to related areas, rather than try to create an entire novel industrial branch, such as an internationally competitive car or aviation industry. For instance, none of the casinos currently offer the visitor (and in particular minors) cinemas, bookshops and other cultural services different from gaming.

With regard to this shift, the present Government of Macau has pledged to pursue such strategies under the concept of the so-called “Sunshine Government and Scientific Policy-Making”.109 Under this heading, the Government promised to realize the following objectives:

We will put people first, heed public opinion, and maintain clean administration as well as the rule of law, to promote adequate diversification of the economy and build an inclusive and harmonious society.110

In particular, the objective of an “adequate diversification” is understood as to comprise of the development of local tourism resources, the strengthening of Macau’s economic advantages, the development of regional cooperation, and the implementation of scientific policy-making in line with the concept of sunshine governance.111 Interesting to note is also the pledge to “look ahead without losing track of the present”,112 to which – in line with the conceptual challenges deriving from the concept of “glocalisation” and its underlying paradigm – only the legacy of the past could have been added. Notably with regard to the past, the mention of regional cooperation is important and clearly a priority in view of the “one country, two (or three or several) systems” principle.113 However, it should be accompanied by an active role in global relations, such as notably building on its historical and cultural links with the European Union and Iusophic countries in South America, Africa, and Asia. In this regard, Macau’s past has provided its population with the required skills to transcend borders and boundaries and to serve as a meeting point not only for East and West but also North and South.

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105 See Pine & Gilmore, supra note 104, at 5-15.

106 See Pine & Gilmore, supra note 104, at 12.


109 See the Policy Address for the Fiscal Year 2011 of the Macao Special Administrative Region (MSAR) of the People’s Republic of China, delivered by the Chief Executive, Mr. Fernando Chui Sai On, on November 16, 2010, at 6, and 43-48; available at: http://www2.ges.gov.mo/policy/download/en2011_policy.pdf.

110 See Policy Address, supra note 109, at 12.

111 See Policy Address, supra note 69, at 32-48.

112 See Policy Address, supra note 109, at 48-53.

113 For a discussion of some of these challenges, see e.g. Beatrice Leung, “Has the Chinese Focus on Hong Kong Led to the Neglect of Macau?” (1999) 26 Asian Affairs 11-25; and R.D. Cremer, “Hong Kong, Macau, and the People’s Republic of China: A David and Goliath Relationship?” (1991) 18 Asian Affairs 153-166.
South. This is well exemplified in the constructive way in which Macau (and Hong Kong) assists the PRC in relations to the mentioned countries. In this regard, the Government’s spirit and direction of the policies appears to be wise. At least in words, it also seems to have moved on from what has been described shortly after the handover as a political structure that has been “built on colonial foundations of strong executives, bureaucratic dominated systems, top down administration, the dominance of the business community and co-optation of local groups”. These objectives in mind, it remains to be seen to what extent the policies will be implemented and with what success. Their realization will depend on a great variety of factors, which are closely related to the political and legal structure of the Macau S.A.R.

In politico-legal terms, however, the regulation of the creative (or knowledge-based) economy in the age of the information society is faced with a strong degree of complexity. In this respect, it is advocated here that their successful regulation requires less the adoption of new policies or related regulatory acts and legal texts but rather the fostering of a set of coherent policies based on a consistent and flexible legal system that is consistent in itself. This is because only a consistent system will provide the appropriate basis for the rapid formulation and implementation of coherent policies.

5. CONCLUSION

“Glocalization” is an oxymoron and denotes a deliberate blend of the global with the local level. “Governance”, on the other hand, marks a shift of the focus from institutional structure of governments to the act of governing in the sense of the administration of the affairs of various polities. The emergence of both concepts appears to have been caused by the trend of an acceleration of change (or at least the perception thereof). Both concepts have been combined in the context of the present article in order to assess their overall potential for the fostering of the global governance debate. In other words, it tried to provide the basis for the discussion of the question whether the political realm should develop a similar degree of sensitivity towards the local level in the design of global political and legal structures and institutions that the economic realm has shown in the formulation of global business strategies. This question was sought using the example of the complex blend of geographical, historical, cultural, political, economic and legal factors that determined the present situation of the Macau Special Administrative Region of the People’s Republic of China (PRC).

In this respect, the example of Macau first and foremost confirms the acceleration of change and how different challenges are becoming more closely intertwined in an increasingly complex process of governance through law and policy making. As the methodological framework for both the conceptual and practical challenges encountered in this process there were four principal themes chosen. These challenges are best summarized by the problems of how to balance the needs and interests of the individual vis-à-vis those of the collective, how to adapt the internal to the external organization of the powers of representation, how to mutually adjust political and for economic policies and, finally, how to reconcile the past and the future in the present day decision making and long term planning.

In this regard, it can argued that the description of the legal and political structure of the Macau S.A.R. and discussion of its central challenges may, in conceptual terms, be taken as a source of inspiration for those found at the national, supranational or global level. Generally, the better inclusion of the experiences at the local level is warranted by the fact that they are closer to the local culture and, most of all, to the individual citizens and their peculiar needs. More importantly, however, it is the inclusion of the local element in the global debate that provides an important conceptual challenge at the level of the mind, from which constructive results at the practical level with a view of achieving a sustainable development for everyone and the world as a whole may derive. Applied to the search for better modes of government in the 21st century, this conceptual challenge provided by the concepts “governance” and “glocalization” eventually calls for a more holistic way of thinking, which notably takes into account both its antagonistic constituents at the same time. Applied to glocalization, this means to understand that the predominant conception underlying the present international legal order was born out of the experiences of medieval small city states. In a holistic sense, this means to not reverse the trend today and impose the global structures on the local levels. Instead, it means to use this information and the sum of experiences from the past and balance them carefully with the information available at the present for the formulation of a

114 See also Werner Breitung, Overcoming Borders Living With Borders: Macao and the Integration with China (Macau: Instituto Cultural, 2007).
vision for the future. In this respect, a holistic approach to governance may be found in attempts to improve the communication between the local and the global and the individual and collective in a mutually equal way. To give but one example, at the present it is the political elite around the world that has availed itself of the use of new technologies, such as television, to instantly communicate with each individual citizen, whereas there is no equivalent tool in place yet, which would allow the sum of individual citizens to instantly voice their concerns and pass their messages to their political representatives. The absence of such bottom-up communication tool may explain the rising problem of various (destructive) forms of internet activism and an increasing alienation of citizens from their governments. Various forms of e-governance are just one important step in this direction but must be met particular by an adequate amendment of the legal rights and remedies available to private individuals in a future global legal framework. These are just two concrete examples but many more constructive ideas may emerge from a combined look at the local and at the global level from the dynamic perspective of governance.

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