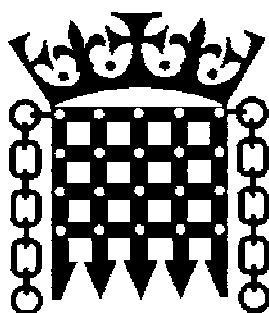


# **Hong Kong and Democracy**

**Research Paper 94/44**

**10 March 1994**



Hong Kong's Legislative Council has passed Governor Patten's Bill on the less controversial aspects of his preparations for local and legislative elections in 1994 and 1995. The Bill was introduced in the absence of agreement from China, the first time such a matter had been dealt with in this way since the UK and China began to work together towards the handover of sovereignty in 1997. This paper traces the course of events in recent months and considers reactions to them.

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## I Introduction

Following the publication of Mr Patten's original *Electoral Provisions (Miscellaneous Amendments) Bill* (Dep 8975), incorporating his October 1992 proposals on democracy in Hong Kong, the UK and China embarked on a new series of talks on the package in April 1993. The Bill did not go before the Legislative Council (LegCo), in deference to the talks, and LegCo subsequently voted down a proposal by one of its members to hold a referendum in the colony on the proposals. The delineation of Hong Kong's future political structure was thus returned to an intergovernmental context.

There were 17 rounds of talks lasting over 160 hours in all, but they yielded progress only on minor issues. After the 17th round had ended in November 1993, it appeared that the talks had reached an impasse and, citing a need to legislate in time for the local elections in 1994, Mr Patten published draft legislation (the *Electoral Provisions [Miscellaneous Amendments] No 2 Bill*) on 10 December 1993 for introduction to LegCo on 15 December 1993.

This covered the so-called 'straightforward issues' of voting age, voting method and the abolition of appointed membership in the District Boards and Municipal Councils, issues which did not constitute the main focus of Chinese objections and on some of which a common position had been reached during the talks.

However, as China had repeatedly warned, it objected to this introduction of the Bill, insisting that a firm and detailed agreement should be reached between the two sovereign states before such a step were taken. Chinese language was not as strong as during the autumn of 1992 when the proposals were first issued, but it was made clear that a legislature not resulting from an agreed process would be dismantled when China resumed sovereignty. Preparations for the handover continued in its Preliminary Work Committee (PWC) and some commentators felt that continuing practical advances in Chinese influence might come to undermine the relevance of the Hong Kong legislative process in any case.

LegCo passed the Bill unamended on 24 February 1994, by a vote of 48 to 5, with 2 abstentions.

Relations between the UK and China are the subject of a current Foreign Affairs Committee inquiry. Several volumes of Minutes of Evidence have been published as HC 842 1992/93 and HC 37 1993/94. Partly with this wider inquiry in mind, the current paper is restricted in scope to developments and debates over the preparations for the elections and does not tackle issues such as bilateral trade.

## II The 17 Rounds

### A. Introduction

The talks took place in Beijing and the British side was led initially by Ambassador to China Sir Robin McLaren, latterly by Mr Christopher Hum, Assistant Under Secretary at the Foreign and Commonwealth Office; Foreign Vice-Minister Jiang Enzhu led for the Chinese. The first round of talks was held from 22 to 24 April 1993 and the last from 26 to 27 November 1993<sup>1</sup>. It was hoped that an agreement could be reached in time for the two Foreign Ministers to announce at their biannual meeting on 1 October 1993; Mr Patten could then introduce a bill based on a joint position at the earliest opportunity, and LegCo could be expected to pass it with little or no amendment. This did not happen.

### B. Compromises

In the course of the summer rounds the UK offered two compromises. In broad terms, the number of voters enfranchised under the new functional constituencies could be reduced from a projected 2.7 million to around one third that number, using real organisations rather than general categories of worker as their basis, and the Election Committee for the 1995 elections could be composed according to a four-sector model similar (though not identical) to that intended by China for the 1999 elections and reduced - as China wanted - from 800 to 600 members. Mr Patten's proposal had been for an Election Committee drawing 'all or most of its members from the directly-elected District Boards' (*Our Next Five Years. The Agenda for Hong Kong*, 7 October 1992, para 146), whereas China favoured a composition in which members would be unelected and drawn from four categories: professions; industry, commerce and finance; labour, religious and other groups; and former and current political figures. These compromise offers were not accepted by the Chinese, who sought a still lower figure for the functional voters and who wished to see the Election Committee appointed rather than elected.

Mr Patten, in his annual address to the opening session of LegCo on 6 October 1993 (*Hong Kong: Today's Success, Tomorrow's Challenges*), declining to give any further details of what remained confidential proposals, stressed that these compromises were conditional on what he would consider to be 'a satisfactory overall agreement' and 'acceptable arrangements for the "through train"', the continuance in office after 1997 of legislators elected in 1995 (para 165). He went on to make clear that such an agreement would need to 'remain ... true to the principle that election arrangements in Hong Kong should be fair, open and acceptable to the

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<sup>1</sup> A full account, from HMG's point of view, of the 17 rounds, including detail on the negotiating positions of the two sides, is available in the White Paper, *Representative Government in Hong Kong* (Cm 2432, February 1994).

community' (para 167). No such agreement was reached in the talks.

### C. Negative Signs

On the contrary, China appeared to harden its position by republishing a 1982 policy statement by Deng Xiaoping, entitled *Our basic position on the Hong Kong question*. The talk was originally given at a meeting with Prime Minister Thatcher and was reproduced on the front pages of Beijing newspapers on 24 September 1993; the Chinese Embassy in London released the text as a press release on 2 October 1993. Stressing China's commitment to a resumption of sovereignty in 1997, to the preservation of Hong Kong's basic way of life and to bilateral discussions to define the logistics of the transfer, the statement also considered the impact on public opinion of an impending reversion to Chinese control. 'If serious disturbances occurred in Hong Kong during the transition period', it said, '... the Chinese Government would then be compelled to reconsider the timing and manner of the takeover'. This was widely interpreted as a threat of an early resumption of sovereignty, by force if necessary. What would constitute 'serious disturbances' was not defined, although the statement did go on to say:

"I am worried there may be major disturbances in this period [1982-1997], man-made disturbances. These could be created not just by foreigners, chiefly Britons, but also by Chinese. It is very easy to create disturbances. This is precisely the problem our consultations will be designed to solve".

The republication of the statement at this stage seemed to suggest that the 'disturbances' might not be restricted simply to problems of public order, and even that the passage by LegCo of the legislation proposed by Mr. Patten might be viewed in such terms by the Chinese Government. However, the Joint Declaration<sup>2</sup> supersedes any comments made by political leaders before its adoption in 1984 and constrains any actions undertaken thereafter; in any case, China will take control of the territory by agreement in three and a half years' time. It thus seems unlikely that China would seek to assume sovereignty prior to 1997. Release of the statement at this time was more likely intended to take some of the play away from the UK, which appears to China to be attempting to set an agenda from a position of receding power, and to warn of the likely increase in activities of 'shadow' organs upholding China's interests in the colony should Mr Patten's proposals be implemented in their original form.

Although some might consider it contrary to the undertaking in the Joint Declaration (para 4)

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<sup>2</sup>The full title is the *Sino-British Joint Declaration on the Question of Hong Kong* (Cmnd. 9543).

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that China 'will give its cooperation' to the UK administration of Hong Kong up to 1997, a Chinese Foreign Ministry spokesman explained the republication of Deng's policy statement on the grounds that it was 'highly far-sighted and completely correct', adding that it 'had proved to be of great importance and realistic significance for the smooth transition of power in Hong Kong in 1997' (BBC *Summary of World Broadcasts*, 25 September 1993).

Indications of the frustration felt by either side with the approach of the other in the talks also became apparent at this time. In his October 1993 address to LegCo, Mr Patten argued that he would have to have an agreement in place in 'weeks rather than months' if he were to have sufficient time to pass the necessary legislation to implement it before the local elections in 1994 (para 169). This was cited by Foreign Vice-Minister Jiang Enzhu as 'yet another obstacle' to the negotiations (*Daily Telegraph*, 12 October 1993). Mr Jiang went on to suggest that the collapse of the talks would not be 'extraordinary', a comment which provoked Mr Patten to question China's commitment to the talks process. Leaving the 13th round of talks, Sir Robin McLaren declared himself dissatisfied with the lack of progress and concerned that the Chinese side might not be taking cooperation as seriously as the British.

### D. Separation of Issues

However, these negative signs seemed to be superseded when a more positive development came which gave fresh impetus to the negotiation process.

In his address to LegCo (para 170), the Governor had ruled out a proposal by Chinese Foreign Minister Qian Qichen to separate discussion of the District Board elections in 1994 from that of the Municipal Council and LegCo elections in 1995. However, in mid-October 1993, members of the Liberal Party, which is opposed to the wholesale adoption of Mr Patten's reforms, returned from meetings with Mr Qian and with Lu Ping, Head of China's Hong Kong and Macau Affairs Office, to tell the Governor that China was prepared to be more flexible and more positive about reaching an agreement if the talks could focus first on arrangements for the District Board elections. Mr Patten accepted the idea of separating some elements for early discussion, but the split employed was not strictly between the two sets of elections.

The package of 'straightforward issues', (sometimes called 'simple', 'non-controversial' or 'non-contentious' issues) related to the UK desire to see a lowering of the voting age for all elections from 21 to 18 in line with British and mainland Chinese practice, the use of single seat, single vote constituencies for all elections, the abolition of appointed membership on the District Boards and Municipal Councils and China's desire to allow deputies to its People's Congresses to stand for election in Hong Kong. Mr Patten continued to warn that he did not believe the discussions could go on indefinitely and that time would have to be left for

consideration of the remainder of the arrangements for the LegCo elections, principally the functional constituencies and the Election Committee, which he called an 'incredibly complicated business' (*Times*, 16 October 1993). Nevertheless, subsequent rounds of talks focused on the 'straightforward' issues and thus offered to advance both the prospects for the local elections, in their entirety, and those for the legislative elections, in part.

## **E. Stalemate**

Optimism over this apparent breakthrough was short-lived, for by late November 1993 the brief impetus had come to a halt. Efforts were underway to agree the wording of a draft Memorandum of Understanding on the 'straightforward issues', but China would not agree at this stage to the single seat, single vote system for the LegCo elections, and wanted to see a return of appointees in local government after 1997 (the UK was prepared to see the Hong Kong SAR decide this matter itself) (Cm 2432, *Representative Government in Hong Kong*, February 1994, the 'White Paper'). An additional major point of disagreement was the question of objective criteria for the 'through train'. The UK wanted to find some clear-cut way of ensuring that legislators elected in 1995 could continue in office after 1997 and proposed an oath of allegiance to the Hong Kong SAR which would include a pledge to uphold the Basic Law. China argued that satisfactory electoral arrangements should be agreed first and was also unable to accept the substance of the draft oaths put forward.

The 17th round of talks ended on 27 November 1993, without agreement, without any apparent hope of agreement and without a date being set for a further round. The British side did offer to hold a further round, but this was dismissed by the Chinese as a public relations move. Christopher Hum, who had replaced Sir Robin McLaren owing to the latter's ill health, returned to London for consultations. Speculation arose that a possibly terminal decline in the Sino-British relationship over Hong Kong had begun. This may or may not prove to be the case, but a difficult passage clearly lay ahead. Mr Patten announced his intention to introduce legislation on the 'straightforward issues', claiming that 'we're not walking away from the negotiating table. What we're doing is walking firmly in the direction of our responsibility, and that we'll continue to do' (*Daily Telegraph*, 29 November 1993).

## **III The 'Straightforward Issues' Bill: HMG's view**

Announcing the intended legislation to the House of Commons on 6 December 1993, Mr Hurd gave an account of HMG's policy and attitudes to the debate over Hong Kong's future electoral arrangements.



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The Bill, he said, would embody three proposals. The first was the lowering of the voting age from 21 to 18 for all three sets of elections, a proposal accepted by the Chinese in the course of the 17 rounds; the second was the use of single seat, single vote constituencies, which the Chinese accepted in the case of the local elections but objected to in the case of the elections to LegCo; and the third was the abolition of appointed membership in the District Boards and Municipal Councils, again a point on which the two sides did not reach agreement. Throughout, the Foreign Secretary stressed the time factor as a major consideration in the decision to introduce legislation without China's consent:

"We made it plain from the outset that the talks cannot continue indefinitely and that it must be for the Legislative Council to consider and pass the necessary legislation. This will take time. Some 48 constitutional and electoral instruments in Hong Kong are affected and may need amendment. All the primary legislation needs to be in place by July 1994. Some of the more important measures need to be on the statute book by February.

When time began to press, we therefore explored fully the possibility of an interim agreement, which would enable us to get on with legislation on the more urgent issues, and gain a little more time to resolve the remainder with the Chinese.

I explained to the Chinese Foreign Minister in New York on 1 October that this aim would not be achieved by an interim package limited only to the elections in 1994 - the district board and municipal council elections. To deal with all the more urgent issues, an interim package needs to include the voting age and the voting method for all three sets of elections, and the abolition of appointed membership in the district boards and municipal councils.

The Chinese side evidently had no difficulty in principle with an interim package covering some of the 1994 LegCo issues. The Chinese accepted our proposal that the voting age should be lowered to 18 for all three elections. They also seem to have had no difficulty of principle with our proposal that the voting method should be single seat, single vote. They accepted that this should apply to the district board and municipal council elections. But they refused to accept as part of this possible interim package that the single seat, single vote method should apply to the Legislative Council.

We and the Governor believe that there are compelling reasons

for including this proposal on the voting method in the interim package. In practical terms, it would otherwise be necessary to legislate twice on the voting system, using up legislative time which will be in short supply next year.

The single seat, single vote system enjoys widespread support in the Legislative Council. If we had accepted the Chinese position and introduced legislation to apply this voting method to the district boards and municipal councils only, the Council might have extended the measure to apply to the elections to its own body, since we know that it is in favour of that. That would have led straight back to further difficulties with the Chinese Government. We would not have saved time: we would have wasted it.

Despite our best efforts, it has not been possible to reach agreement on this issue. The question of abolishing appointed members also remains unsolved. Time has now run out for pursuing these points. The Governor has therefore announced that he will publish draft legislation on the 10th of this month, for introduction on the 15th of this month. That will allow work to begin straight away in a Bills Committee of the Legislative Council.

The proposals on which the Governor intends to legislate this month are largely uncontroversial in Hong Kong. We had thought that they were uncontroversial with China. On a number of them, it was possible to reach a common view in the talks. In those cases, the legislation will reflect that. The Governor is not at this stage legislating on the main issues which remain in dispute - the functional constituencies, the composition of the election committee, and objective criteria for the through train."

(HC Deb, 6 December 1993, cc19-20)

This account stresses the complexity of the issues and draws attention to the inability of the two sides to reach agreement on matters of detail within a certain timescale. The context in which the talks took place includes other issues as well, however, which are more of the nature of points of principle. Mr Hurd touched on this near the beginning of his statement:

"But the underlying question is simple: will we bequeath to Hong Kong an open and democratic system offering the

electorate a genuine choice, or will we settle for a system based on small electorates open to manipulation and corruption?"

(HC Deb, 6 December 1993, c19)

The principled objection from China seems to be that the British proposals imply a greater influence for representative democracy in Hong Kong than was anticipated in Beijing when the Joint Declaration was negotiated.

## **IV Critical Views of the British Government's Policy**

Criticisms of British Government policy on the elections in Hong Kong have surfaced on the floor of the House of Commons, in evidence to the Foreign Affairs Committee and in the press. These criticisms can be divided very roughly into four.

### **A. 'What has gone wrong; surely the relationship with China could be managed better than this?'**

Responding to the Foreign Secretary's statement, Dr Cunningham stressed the Opposition's support for the October 1992 proposals, but posed the question,

"Given that the Joint Declaration accepts the evolution of democracy and that it is enshrined in the Basic Law enacted by the People's Republic of China, the central question in response to the right hon. Gentleman's statement is, what on earth has gone wrong?"

(HC Deb 6 December 1993, c21).

He wondered whether it was the case

"that these discussions got off on the wrong foot in October 1992, and that Her Majesty's Government has been unable to recover the situation since then?" (c22).

Mr Hurd's response was a modest admonition of the Chinese side:

"The bulk of the right hon. Gentleman's questions should be addressed to the Government in Peking." (c22).

He went on to stress China's failure to put forward alternative proposals, in line with the general argument that some sort of arrangements for the elections prior to 1997 needed to be put in place and that the current deadlock was as much a result of China not indicating what form it *would* like to see these arrangements take as it was of the UK's proposal of a form which China *would not* like to see them take.

A more extreme view was taken by the *Financial Times*' Hong Kong correspondent, Simon Holberton, who effectively questioned China's sincerity over the negotiation process. 'It is far from clear ...', he argued, 'if China really wants an agreement on the political transition of Hong Kong' (29 November 1993). What has gone wrong on this view is that the UK has pursued negotiations as a route towards an agreement, while China has pursued them as a means of delaying or even preventing an agreement. At its most cynical this view might be taken to imply that China sought a pretence to withdraw cooperation from the transition process, leaving HMG an unwitting accessory in October 1992. However, China has itself accused the British side of lacking sincerity, although HMG has repeatedly left itself open to resumed negotiations and made clear its preference for an agreed position on the major issues of the functional constituencies and the Election Committee. It may be that there is a genuine gap between the conception of a reasonable compromise held by each side, and speculative critiques of motivation could be viewed as unconstructive.

**B. 'The Joint Declaration and Basic Law provide as sound a framework for Hong Kong's future freedom as it is feasible to secure; to antagonise China in this way endangers Hong Kong's future.'**

In evidence to the Foreign Affairs Committee, former Ambassador to China and negotiator of the Joint Declaration Sir Percy Cradock argued that the policy of pushing ahead with legislation despite Chinese opposition

is doing, and will do, much more harm to Hong Kong than the alternative policy of cooperation with China on the best terms we can get. Moreover ... it will leave Hong Kong in the end worse off than when the policy was launched.

(HC 37-iii 1993/94 p119)

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He argued that the Joint Declaration (the 'sheet anchor of the colony', p121) and the Basic Law provide a commitment by China to a gradual democratisation which is 'worth a great deal' (p122). He went on:

"their record to date has been that they have not broken any bit of the Joint Declaration and I believe they will go ahead and honour the Basic Law and the political settlement as it was up to 1990" (p122).

However, he saw a direct threat to this commitment:

"by doing what we seem now to be doing, that is going for confrontation and unilateral legislation, we shall harm democracy, the rule of law and the attributes of a free and open society in Hong Kong ... If we act unilaterally we give them every pretext for doing so themselves" (p121).

The prospect of China dismantling a largely democratic LegCo, restructuring the judiciary and exerting undue pressure during the 1995 elections, he felt, lent the current policy a self-defeating quality. Broadly in agreement with this position, George Walden MP expressed the following opinion in a *Daily Telegraph* article:

"As a result of our actions it is probable that the Chinese communists will be that much more repressive than they would have been anyway"

and he concluded:

"I would just like to be convinced that our policy is directed to the welfare of the people of Hong Kong, and not to our own moral vanity" (25 February 1994).

Sir Percy's argument has been criticised from three angles.

Mr Patten has made the point repeatedly that while the Joint Declaration and the Basic Law are fundamental documents, neither specifies in detail the arrangements for the 1994 and 1995 elections. "The principle of a growing degree of democracy", he wrote in the *Spectator* (15 January 1994):

"is already agreed with China, and set out in the Basic Law ...  
What we are in effect debating is whether or not the agreed  
process of democratisation should be credible and fair."

In his view, the adoption of smaller functional constituencies and of twin member, single vote constituencies would reduce electorates to a size which would leave them open to pressure or inducements. The Conclusion to the White Paper makes the following remarks on small electorates:

"Such arrangements could be manipulated and would not, in the view of Her Majesty's Government and the Hong Kong Government, guarantee elected institutions likely to reflect in undistorted form the interests of the people they represent."  
(Para 81)

Thus, while stressing its respect for the importance of the Joint Declaration and the Basic Law, HMG does not consider them sufficient guidance to go ahead with elections without further legislation. Indeed, Mr Patten wrote in his *Spectator* article and Mr Hurd argued in his December statement that the UK has responsibilities to Hong Kong, incorporated in the Joint Declaration, which it is seeking to uphold through its current policy. HMG regards itself as bound by treaty obligations to ensure a 'high degree of autonomy' for Hong Kong after 1997 (Joint Declaration, Article 3[2]) and sees the pursuit of legislation on the electoral arrangements as fulfilling those obligations.

A second line of argument concerns the question of unilateral action. Sir Percy, like the Chinese, has placed much emphasis on the UK's pursuit of a unilateral line. He appears to mean by this a line not agreed with by the Chinese. However, HMG has stressed its involvement in long negotiations with China, the 17 rounds being, on this account, the latest stage in a process dating back to Prime Minister Thatcher's visit to Beijing in 1982. In its view, the legislation may be opposed by China, but it is not the result of a unilateral process. Mr Patten expanded on these points at length in his evidence to the Foreign Affairs Committee on 20 January 1994 (HC 37-vi, pp198-9).

This leads to the third point. Sir Percy's preference for a 'settlement on the best terms we can get' (p122) has been criticised as amounting to defeatism, conceding in advance to China the right to define the outcome of any negotiations on the electoral system. Hugo Young argued in the *Guardian* (15 January 1994) that the diplomats opposed to Mr Patten 'take their cue from Beijing as an inexorable force that cannot be resisted'. Sir Percy's response to this is to deny that 'a compromise or an agreement on a point is lying flat on your face and being defeated' (HC 37-iii 1993/94, p123). However, the argument against this position is that if

negotiations are entered with a declared bottom line of not antagonising the other party too much and if that other party is willing to show signs of being antagonised in the extreme at the mere suggestion of relatively modest proposals, then that other party has indeed been offered an effective veto.

### **C. 'Democracy has played little part in Hong Kong's past prosperity and is less necessary to its future than a healthy relationship with China'.**

The business community in particular has voiced concern at the possible impact on Hong Kong's economic future of a continuing rift with China and the point is often made that Hong Kong's current prosperity has been built on a history of colonial, largely undemocratic rule. The point being made here is that if democracy was unnecessary in the past, why should it be necessary in the future? HMG's response is partly to stress that the process of democratisation is an agreed one between the UK and China and not in itself a point of dispute. Mr Hurd pointed out in his statement that 'one country, two systems' is a Dengist concept and that democratisation is already enshrined in the Joint Declaration and the Basic Law (c23). The Foreign Secretary also went on to argue that there was until comparatively recently no great support for democracy in Hong Kong. Historically, there were concerns that democracy might lead to polarisation of the community between supporters of the mainland communists and the Kuomintang nationalists, and that the introduction of such a system would be a provocation to the Chinese. It was only after the events in Tiananmen Square in 1989 that democracy activists managed to build really widespread popular support in the colony. It could be argued that Hong Kong has been protected in the colonial period by the ultimate accountability of officials and Ministers to a democratic parliament and that its needs will be different when ultimate responsibility passes to the Chinese Government. In particular, concern has arisen over the prospects for human rights and freedom of political expression. The *Far Eastern Economic Review* has argued that

"Hong Kong's legal code is full of harsh restrictions muted by Britain's traditional disinclination to invoke them ... , but ripe for abuse by a China that has not yet learned how to keep its hands off" (3 February 1994).

HMG has also stressed its belief in the relationship between credible legal and governmental systems and economic success. Investor confidence can only be assured in a context of clearly functioning laws, the argument goes, and the localised corruption which is increasingly a problem in China's mixed system of economic freedom and bureaucratic government will be a threat to Hong Kong unless the legislature is unambiguously accountable. Mr Patten argued to the Foreign Affairs Committee that the credibility of the judiciary which enforces laws rests on the credibility of the legislature which enacts them, and he asked:

"what future would [flawed arrangements for the elections] promise for international investors in Hong Kong, who base themselves there in their thousands because they value and appreciate Hong Kong's rule of law? I do not see how you can possibly guarantee the rule of law in Hong Kong if the arrangements for the election of its legislative body are fundamentally flawed" (pp191-2).

There have been threats by China that the bilateral trade relationship might suffer if the Electoral Provisions bills were passed in a form to which it had not consented. Mr Patten's response has been to claim that any form of discrimination against British goods would damage China's efforts to join GATT and that such action would in any case harm the Chinese economy more than the British, since China has a trading surplus with the UK. As to Hong Kong itself, the Governor has done all he can to talk up the 'golden egg' and cast doubt on China's seriousness in such threats:

"Hong Kong should be able to play a similar role for China at the beginning of the next century to that played by New York for the United States at the opening of this one. It is set to be the merchant bank and the business centre for the region; if, that is, China learns to trust Hong Kong and not to treat it with truculent suspicion" (*Spectator*, 15 January 1994).

The charge against the current UK policy is that it does nothing to enhance that trust.

The views of members of the business community have been questioned by those who regard them as little more than opportunists with poor regard for the political aspirations of the general public. Hugo Young described them in virulent terms: 'their attitude', he wrote, 'is as two-faced as their judgement is fickle' (*Guardian*, 15 January 1994). The charge is that the business community regards the transfer of sovereignty as essentially a transfer of ownership, a business transaction, and equates its own profit with social good.

#### **D. 'The UK is in breach of its international agreements on Hong Kong and seeks an extension of influence after 1997.'**

At the most general level, China is concerned that the UK has breached bilateral agreements and seeks to extend its influence over Hong Kong beyond 1997. Sir Percy Cradock summed up this position in his evidence to the Foreign Affairs Committee. "The Chinese", he said,



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"fear democracy. They are deeply afraid of it because they see it as a virus which will spread into their own territory ... They certainly fear it in Hong Kong because they see it as an attempt by the British to go back on the provisions of the Joint Declaration and make Hong Kong more independent than we had signed up to at that time" (p122).

The claim that the UK is in breach of the Joint Declaration has been made throughout the dispute which began in October 1992. It was denied by Foreign Office and independent lawyers in evidence to the Foreign Affairs Committee (HC 842-ii 1992/93) and, naturally, has been consistently denied by HMG and Mr Patten. The current argument seems to be that the provision in Annex II to the Joint Declaration has been breached that in the second half of the transitional period there 'will be need for closer cooperation, which will therefore be intensified during that period'. However, Annex II relates to the Joint Liaison Group, a specific organ of the relationship, rather than to the relationship as a whole. The question as to which party has failed to cooperate is also, of course, a central point of dispute.

On the issue of extending UK influence, the counter-argument has been put forward that the successful functioning of Hong Kong's future electoral arrangements is not just a British interest. Mr Hurd argued it thus:

"It is in the interests of China, Britain and, above all, Hong Kong for Hong Kong to retain its character - which, as all who visit it will know, is capitalist. Recently, in the past decade or so - there has been an increasing and justified demand in Hong Kong for democratic institutions" (c23).

The fact remains that China clearly does feel vulnerable to the impact of a strong democracy on its southern economic zones, which are already capitalist in nature. The shadow of the massacre in Tiananmen Square looms large over the Hong Kong issue: not only did it firm up support for democracy in Hong Kong and concentrate the minds of British politicians as to the efficacy of the arrangements set out in the Joint Declaration and the Basic Law, but the protests which followed it in Hong Kong caused alarm in China that a fully autonomous Hong Kong might present an uncontrollable locus of dissidence. With possible régime changes imminent in an already regionalising China, the capacity of this economic centre to extend political influence over neighbouring provinces may be real and in China's eyes a threat to the wider stability of the state.

## V Next Moves

As the electoral timetable moves on, it is arguable that debates on the rights and wrongs of past policies become less significant. What then are the next likely moves over Hong Kong?

### A. Legislation

Mr Patten has emphasised that it is LegCo, not the UK Government, which is charged with making laws for Hong Kong; China denies the primacy of LegCo, but does not specify how it would see a UK-China agreement translating into practice without its consent.

On 24 February 1994, after a ten-hour debate, LegCo passed the Bill on the 'straightforward issues'. The debate was characterised as 'intense' (*Independent*, 24 February 1994) and 'uncharacteristically robust' (*Financial Times*, 24 February 1994), suggesting that the result, though clear, was not a foregone conclusion. The next day Mr Patten published legislation on the more fundamental issues of the functional constituencies and the Election Committee which will be debated from 9 March 1994. China said that the UK had now closed the door on further discussions completely and reiterated that it will dismantle all elective bodies in Hong Kong after 1997. The BBC *Summary of World Broadcasts* quoted a Chinese Foreign Ministry spokesman thus:

"this fully shows that the British side does not have sincerity to solve the question through cooperation with the Chinese side and is bent on moving further on this erroneous path. The door of negotiation has been closed by the British side".  
(25 February 1994)

In another report of the same day, it quoted the Hong Kong and Macao Affairs Office thus:

"as component parts of the British political body administering Hong Kong, the last British-Hong Kong district boards, the two municipal polls and the Legislative Council will definitely be terminated together with the end of the British administration of Hong Kong".

Consequent to the passage of the first Bill, work will begin probably in April to draw up

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voting lists; proceedings on the second Bill are expected to be completed, whether successful or not, by July 1994.

The timing of the second Bill was taken by many as a signal that HMG had given up any hope of further negotiations with China. It had intended the period of debate in LegCo on the first Bill as an opportunity for possible bilateral discussion on the more serious issues; pressure of time was now cited as the reason for the immediate introduction of draft legislation on those issues. However, it seems very unlikely that if China made renewed, serious offers of talks they could be ignored, especially given the impact on LegCo's voting pattern that such a move might have.

LegCo has roughly equal numbers of those committed to the democracy cause, including the 12 members from the United Democrats of Hong Kong (UDHK) led by Martin Lee, and those more sympathetic to the Chinese position, mostly representatives of the business community, such as those from the Cooperative Resources Centre and the allied Liberal Party of Allen Lee. The floating members from both directly elected and functional constituencies hold the key to the passage of the second Bill. They are likely to come under great pressure from China and from the Hong Kong business community. They will vote in the knowledge of China's stated intention to dismantle any body resulting from a system based on Mr Patten's proposals. The Bill they will vote on contains a version of those proposals embodying their original form, the compromises offered during the 17 rounds having been withdrawn.

If the Bill is passed unamended or is amended in a way which is acceptable to the Governor, the elections are likely to go ahead, but in a context of extreme opposition from China. Whether this will take the form of a public rhetorical onslaught to undermine the cause of the democratic candidates, or will simply involve repetitions of the intention to dismantle the legislature in 1997 is uncertain. If the Bill is defeated or amended in a way which is unacceptable to the Governor, he will be left in a difficult position. It is conceivable that a revised version of the legislation might be introduced, perhaps including the summer compromises, or that an amendment to this effect might be accepted if defeat on the original Bill seemed inevitable. If a revised Bill were also defeated, or were not introduced for fear of defeat, it might be necessary for some sort of Executive action to be taken.

### **B. What if LegCo Rejects?**

Hong Kong's constitution, the Letters Patent and Royal Instructions, contains a full set of reserve powers for the Crown. Article XIII of the Letters Patent reserves the right to disallow any law enacted in Hong Kong, while Article IX reserves the opposite right:

"We do also reserve to Ourselves, Our heirs and successors, Our and their undoubted right, with the advice of Our or their Privy Council, to make all such laws as may appear necessary for the peace, order, and good government of the Colony".

(Reproduced in *The Government and Politics of Hong Kong*, Miners, N, 5th ed., 1991, pp248-53)

Equally, under the *Emergency Regulations Ordinance (Cap 241)*,

"On any occasion which the Governor in Council may consider to be an occasion of emergency or public danger he may make any regulations whatsoever he may consider desirable in the public interest".

(Miners, p57)

HMG has given little indication of its intentions in the case of rejection. The use of either of these procedures would produce the paradox of an undemocratic imposition of democratic practices and might be expected to leave considerable tension between the Governor and his legislature in the remaining years of British sovereignty and to undermine his authority.

The constitutional position on LegCo's role is uncertain. Clearly, from HMG's point of view, LegCo's support is desirable. But, leaving aside the use of reserve powers, is it essential? Miners describes the situation thus:

"the Hong Kong Legislative Council does not 'make' laws; it normally endorses and formally ratifies (and only rarely challenges and significantly amends) decisions that have already been taken elsewhere in the Secretariat" (p123).

Article VII (1) of the Letters Patent reads:

"The Governor, by and with the advice and consent of the Legislative Council, may make laws for the peace, order, and good government of the Colony."

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It is the Governor who makes the laws, on this formal understanding, and LegCo which consents to them. In the past, legislation has generally been fashioned to allow consensus before its introduction to LegCo: the withholding of consent has not been a realistic prospect. In the current situation this has not been possible, leaving open the question of consent being withheld. It is not expressly stated, however, that LegCo has the right to veto legislation favoured by the Executive.

The clearest indication of HMG's policy on this matter is given in the concluding paragraph of the White Paper:

"Constitutionally, the Legislative Council has the responsibility to pass legislation for the 1994 and 1995 elections. It will have before it the Hong Kong Government's Bill, as well as other ideas that have emerged in the community, and in the context of talks with the Chinese side, in the past 16 months. Her Majesty's Government and the Governor have said repeatedly that they do not wish to go further, or less far, than the people of Hong Kong wish them to go. We are confident that the Legislative Council, in discharging its heavy responsibility, will take full account of the wishes of Hong Kong people" (Para 88).

Mr Patten has made clear his concern that whatever draft legislation he proposes should have at least a reasonable chance of success in LegCo (eg, HC 37-vi 1993/94, p193), and without the support of the people of Hong Kong and their representatives HMG's position would lose an important part of its rationale. With that support there is perhaps greater credence for the Governor's argument that:

"if we have put some panes of glass in the windows, and China decides that she wants to smash them after 1997, as China's first act of sovereignty, that will need some explaining, both in the community in Hong Kong and more generally internationally" (p194).

### C. Amendment

A more realistic prospect than rejection of the Bill is its passage in amended form. It is possible that the presentation of an unexpurgated version of the October 1992 proposals is intended to allow legislators to introduce amendments embodying the compromises offered

during the 17 rounds. There is a danger that Mr Patten's position - too radical for sympathisers with China, yet too cautious for the UDHK - could leave him without core support in LegCo. The introduction of the more radical version of his proposals, at the same time as the publication of the compromises once offered to China in the White Paper, may allow amendment in LegCo in the direction of caution and thus secure the broad consensus for which the Governor hopes. It might also present a small chance of tempering Chinese reaction: Mr Patten would have concrete support for his argument that LegCo is not a threat to China, but a mature and pragmatic body.

#### D. After 1997

The *Financial Times*, commenting on the introduction of draft legislation, argued:

"it seems naïve of Mr Patten to have imagined that he could persuade China, by a public demonstration, to accept more than it would in private talks ... [but] ... at least this way he is giving Hong Kong people the chance to experience two years of relative democracy, if they so choose, and to leave China's rulers with the responsibility of dismantling it in view of the world, if *they* so choose" (25 February 1994).

This supports the Governor's position that in three years' time, faced with a functioning democratic system, China is unlikely to carry out its threats directly - international pressure and the administrative problems of replacing completely the government and civil service of a stable society would force a more tolerant approach. Some have argued that this is lent credence by the importance to China of improved relations with Taiwan (*Daily Telegraph*, 25 February 1994). The Tiananmen Square massacre, which prompted such concern in Hong Kong, also led to a cooling of relations with Taiwan, and interrupted efforts to move towards some sort of rapprochement and possibly eventual reunification. A badly handled resumption of sovereignty over Hong Kong might have a similar impact on the renewed moves towards cooperation and integration which have been in evidence over the last three years.

It may seem 'indefensibly reckless', in Sir Percy Cradock's phrase, to stake Hong Kong's future on a strategy of bluff and double-bluff with China, and certainly to place too much emphasis on the Taiwan issue or on possible régime changes in China would be an unwise basis for policy, but Mr Patten's position goes further than such optimism. China may indeed carry out its threats to replace LegCo and other bodies after all, but in the Governor's view:

"that China may act against Hong Kong's interests (and its own) in the future cannot be a persuasive argument for us to do the same today" (*Spectator*, 15 January 1994)

a view echoed by the *Times*' maxim that 'some protection is better than none' (21 January 1994). The counter-argument is that if that protection itself provokes China to react against even the limited democracy provided for in the Joint Declaration and Basic Law then a net loss for the people of Hong Kong will result.

One suggestion to reduce the risks for Hong Kong of the current strategy, which is to a large extent based if not on bluff, at least on readings of future behaviour more than of current rhetoric, is to extend the British citizenship scheme for Hong Kong. With the registration of 50,000 principal applicants and their dependents as British citizens entering its second phase, only around 13,000 places remain to be allocated. The first phase was oversubscribed in the main 'general occupational class' and it is unlikely that demand for British passports will be fully met under the terms of the 1990 Act<sup>3</sup>. In a letter to the *Times*, LegCo member Emily Lau quoted favourably from that newspaper's earlier editorial, that

"Britain has only one sure defence to offer Hong Kong's people: the safety net of British passports" (27 January 1994).

However, a *Summary of World Broadcasts* report of 29 November 1993 reiterated China's rejection of the passport scheme and its view that:

"Britain cannot provide consular protection to these Chinese citizens in the Hong Kong Special Administrative Region (SAR) or other parts of China, and these Chinese citizens will not be able to use 'British citizen passports' to enter and leave the Hong Kong SAR or other parts of China."

A Private Member's Bill, starting in the House of Lords, and reaching the House of Commons for its first reading on 14 February 1994, deals with a related issue. Lord Bonham-Carter's *British Nationality (Hong Kong) Bill* deals with the ethnic minorities in Hong Kong who will not have Chinese citizenship, nor full rights of British citizenship after 1997. If passed, it would confer British citizenship on the minorities, instead of the current provision for them

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<sup>3</sup>The details of the Act are set out in Library Background Paper 247, *The British Citizenship Scheme for Hong Kong*, of April 1990. Current information on the progress of the scheme, including figures, is given in HC 195 1993/94, *Third Annual Report of the Governor of Hong Kong ... under the British Nationality (Hong Kong) Act 1990*, 24 February 1994.

to have British National (Overseas) status. The Second Reading debate was held on 13 December 1993 (HL Deb cc1204-20); the Bill received its First Reading in the House of Commons on 14 February 1994, being sponsored by Mr Robert Maclennan MP, and is due for Second Reading pending progress on other Private Member's Bills.

## **VI Conclusion**

Hong Kong's political system has entered its new phase already. LegCo is asked to debate and decide on important aspects of its future workings and in so doing to choose between antagonism with China, a snub to the UK or some middle path which the Executive can be expected to sell to China as a demonstration of maturity and the willingness to compromise. Individual legislators will consider their future prospects under Chinese sovereignty as well as their conscience and competing views of the common good; LegCo as a whole must take account of its possible extinction. Whatever the outcome in formal terms, a newly confident political tenor has come to characterise debate in Hong Kong.

The British and Chinese positions seem irreconcilable at the moment, but in the period leading up to July 1997 changes may come. It was only two years after Tiananmen Square that the two signed their Memorandum of Understanding on the airport scheme, at the time an apparent breakthrough in relations. While many have pointed out the potential costs to Hong Kong of the dispute with China, there would also be costs to China of insensitive behaviour in Hong Kong. Yet for the moment, with neither side convinced that the other has acted in good faith, with LegCo only beginning its proceedings on the Second Bill and with Chinese reaction likely to remain muted until nearer the completion of those proceedings in July, immediate changes do not seem likely.



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## Sources

The background to the current differences between the UK and China over Hong Kong, including details of Mr Patten's proposals and other relevant documents, is discussed in Research Paper 93/47, *Hong Kong: Derailment or Diversion?*, of 2 April 1993.

Other useful sources include:

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