

Hong Kong: The Final Stages

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This Paper is designed to provide information of interest as the period of British responsibility for Hong Kong approaches its end. It rehearses some of the history of the triangular relationship between the UK, China and Hong Kong, and includes some related documentation.

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Introduction

Hong Kong's origins as a territory under British administration date from a period when Great Britain projected military and commercial power around the globe, while the Chinese state was feeble and backward by the standards of the day. The imminent reversion of Hong Kong to China will take place in a very different period. Asia is economically ascendant and the techniques of 19th century empire building are no longer acceptable. One aspect of the divergent interests which set the Europeans and Chinese at odds has been overcome, so that the value placed on Hong Kong's potential as a free trade area is shared, and this is seen by many as the safest guarantee of Hong Kong's future. At the same time, important differences have arisen relating to political rights. Overall, the British attitude to Hong Kong has shifted from one restricted to economics to one which also incorporates concern for the people of Hong Kong. The Chinese attitude continues to take a nationalist character, being preoccupied with the consolidation of its statehood and power.

I Origins of Hong Kong¹

The territory of Hong Kong which is currently administered by the UK comprises three parts. Hong Kong island was ceded to Great Britain by the Treaty of Nanking, as part of the settlement of the First Opium War in 1842. The catalyst for this conflict was the British desire to pursue more freely the lucrative and damaging export trade in opium to China, but the settlement was an important stage in the wider process of forcing the opening of China to free foreign trade, and was followed by concessions to other Western powers. A small area at the tip of the Kowloon peninsula, along with Stonecutter's Island, was ceded to Great Britain in the First Convention of Peking, following its victory in the Second Opium War of 1858-60. Great Britain secured a further concession, this time in the form of a lease, following the defeat of China in the war with Japan of 1894-95. Other powers sought concessions at this time of weakness for China, and the British saw an opportunity to satisfy the demand of Hong Kong opinion for additional territory, largely for the purpose of defence. The New Territories were leased for 99 years under the Second Convention of Peking, of 1898, and were incorporated into the smaller existing colony.

The loss of face involved in the 'unequal treaties' had a major impact in China. The loss of territory, the submission to force, the obligation to trade with foreigners on their terms and the social impact of the opium trade all contributed to a sentiment of national humiliation, at a time when the old imperial order was under question and disorder was gathering. Whereas other portions of territory were gradually recovered, including another British enclave at

¹ This section draws on *The Government and Politics of Hong Kong*, N Miners, 5th ed (updated impression), 1995, and *City on the Rocks*, K Rafferty, revd ed, 1991.

Weihaiwei, Hong Kong, capitalist, colonised and latterly flourishing, retained a powerful symbolic force in nationalist and later communist iconography.

At various points China attempted either to disrupt Hong Kong or to open discussions on its return. It is possible that the return of the New Territories alone may have been open to discussion had the Nationalists prevailed in the Chinese Civil War. The victory of Mao's Communists removed this possibility and there were years of great tension, especially during the Korean War. Nevertheless, the Communists made no serious effort to retake Hong Kong by force and the tiny capitalist entrepôt and the enormous communist motherland remained balanced in a curious symbiosis. Hong Kong depended on China for raw materials, including foodstuffs and water; China depended on Hong Kong for foreign currency, which it received via remittances from relatives across the border and indirect trade.

The Communists, however, did make clear their continuing concern at British political control over Hong Kong. They refused to recognise the validity of the unequal treaties and declared Hong Kong, with nearby Portuguese Macao, to be occupied Chinese territory. China now disputed the notion that the two were colonies and, without formally abrogating the treaties, which may have forced a British response, nevertheless asserted a right to resume the full exercise of sovereignty when the time was 'ripe'.² The 99-year lease and the cessions in perpetuity were thus no longer accepted; nor was the notion that the United Kingdom had sovereignty over Hong Kong. Perhaps in an unstated reciprocity for China's purely symbolic resistance to British rule, no moves were made to develop democratic forms in Hong Kong: it was not prepared for internal self-government and independence was never considered, even at the time that the rest of the Empire was being dismantled.³

Under these understandings and arrangements, Hong Kong developed at a remarkable rate. When the British took over the territory it was a modest fishing settlement occasionally used by foreign ships. For much of the earlier period of British rule, it was predominantly used as a convenient site for anchorage and repair of ships and as a trading post free from the restrictions imposed elsewhere by the Chinese authorities. During World War II there was a traumatic period of Japanese occupation, leading to considerable destruction of the infrastructure as well as brutalisation of the population. However, once the Japanese had been removed the colony was rejuvenated and began the development into its modern form. The fall of Shanghai to the Communists created an opportunity for an alternative commercial centre. Hong Kong's population steeped with a huge influx of refugees fleeing the Civil War on the mainland. This new group came from an established entrepreneurial culture, with no heritage of democracy: they were happy to work hard under the colonial system and build a

² On admission to the Chinese seat in the UN General Assembly in 1972, the PRC's Permanent Representative (and later Foreign Minister) Huang Hua requested the removal of Hong Kong from the list of territories considered by the Committee on Decolonisation, spelling out this new position on sovereignty.

³ There were additional reasons for the reluctance to develop democratic forms, including a concern that the Communists might contest elections and perhaps gain influence in the territory.

thriving economy in their new island home, regardless of social barriers which were still in evidence although less rigid than they had been before the War. The modern cultural identity of Hong Kong developed around the interaction of these south Chinese and the expatriate patrician class in a context characterised by the optimism and novelty of a new world society, but without the spirit of political independence found in other such cases. In time, the old class and racial order was transformed into a social system based on financial status. As in many small societies, some pursuits took an almost compulsive grip, such as the horse racing at Happy Valley race track. Another of these was the drive to wealth. During the 1960s and 1970s Hong Kong had the highest overall rate of economic growth in the world. Today it has a higher GDP *per capita* than the UK. The entrepreneurial skills of its people were one factor in shaping the success of Hong Kong, and the stable political and legal environment is widely cited as another.

II Discussions Over Return

By the late 1970s questions had arisen in London over how the expiry of the lease on the New Territories should be approached. In retrospect it is possible to see that China had never relinquished its claim to retrieve Hong Kong and had seen 1997 as the most opportune moment to achieve this: a variety of fairly explicit hints had been given. However, at the time, there was a feeling in some quarters that this outcome might be avoided. Some felt that the notion of returning Hong Kong to China was false, since it did not really exist other than as a patch of land before the British administration. There was some discussion of the idea that China's non-recognition of the unequal treaties could serve as a pretext for ignoring the expiry date for the lease, since that date was as invalid as the rest of the treaties in China's eyes. Some felt that the mutual benefits of the *status quo* might encourage China to allow an extension to the lease, and much local opinion favoured either this or a restoration of full sovereignty to China combined with continuing British administration, under some special treaty arrangement.

Concern over the impact which uncertainty might have on confidence in Hong Kong led the British Government to seek clarification from China over its intentions.⁴ As the UK still regarded the treaties as valid, it would have little grounds on which to argue against a Chinese attempt to exert sovereignty over the New Territories after the expiry of the lease, unless prior arrangements were made. Further, the three areas which made up Hong Kong were regarded as indivisible: China did not recognise the treaties which differentiated between them (two as cessions in perpetuity, one as a lease), and it was not considered feasible to distinguish clearly between them now that land reclamation had taken place, nor to administer Kowloon and Hong Kong Island separately from the much larger New Territories. The future of the whole of modern Hong Kong became a matter of doubt.

⁴ In particular, land leases and mortgages were considered vulnerable to uncertainty over the future.

In September 1982 Prime Minister Margaret Thatcher met China's leader Deng Xiaoping in Beijing and put forward the position that the existing treaties could not be abrogated, although they might be varied to take account of changing circumstances. Opinions differ as to whether this firmness in the face of China's disregard of the treaties provoked a more obdurate response from China, or whether it simply brought to a head issues which had to be tackled at some point.

The two sides did not seem to have fully defined positions before these talks, but in the following period hopes were eroded that British control could be extended after 1997. China made it clear that it would not accept any continued British involvement, and Hong Kong's vulnerability to mainland pressure compromised the extent to which a British Government could resist this notion.⁵ China's new constitution of 1982 allowed for the creation of Special Administrative Regions,⁶ a device which was introduced with Taiwan in mind but which also served as a counter to the arguments in favour of continued British involvement in the administration of Hong Kong, as it seemed to offer the possibility of considerable autonomy for a Hong Kong under Chinese rule.

Talks aimed at negotiating a settlement of Hong Kong's future began in July 1983 and reached a conclusion in the Joint Declaration⁷ which was signed in Beijing by Mrs Thatcher and Chinese Prime Minister Zhao Ziyang on 19 December 1984. These negotiations were between the two state Governments, and those officials in the British delegation who were connected with Hong Kong in some way were regarded by the Chinese as representatives of the British Government, not of Hong Kong.

III Joint Declaration

The Joint Declaration declares that Hong Kong will be 'restored' to the People's Republic of China with effect from 1 July 1997 and that China will 'resume the exercise of sovereignty' from that date.⁸ Hong Kong will be known as the Hong Kong Special Administrative Region (SAR) and will 'enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government'.⁹ The Hong Kong SAR is to continue to have a capitalist economy and to enjoy existing rights and freedoms, and its basic lifestyle is to remain unchanged. These provisions of Article 3 of the Joint Declaration,

⁵ It is often noted that Hong Kong relies on the mainland for its supply of water.

⁶ *Constitution of the People's Republic of China*, 4 December 1982, Article 31.

⁷ *Sino-British Joint Declaration on the Question of Hong Kong*, Cmnd 9543, 19 December 1984, reproduced in Appendix 1.

⁸ Articles 1 and 2.

⁹ Article 3 (2).

concerning the manner of running the Hong Kong SAR, will remain unchanged for a period of fifty years.

The seventh National People's Congress of the People's Republic adopted a Basic Law for Hong Kong on 4 April 1990, which implements the provisions of the Joint Declaration in Chinese law and elaborates a constitutional basis for the Hong Kong SAR.¹⁰

The Joint Declaration was the single most important agreement concerning the future of Hong Kong, but it fitted into a larger process of negotiation and discussion which still continues. There were the negotiations leading up to the signing of the Joint Declaration, and that agreement set up a Joint Liaison Group to work on more detailed issues connected with its implementation. The Joint Liaison Group is due to continue in existence until 1 January 2000. There have been *ad hoc* Ministerial contacts, including the visits of Mrs Thatcher and others by Mr Major, as Prime Minister, and by Sir Geoffrey Howe. A Land Commission and an Airport Committee are each charged with more detailed tasks. Since 1991 regular, twice-yearly meetings have taken place between the respective Foreign Secretaries, and there were special talks in 1993 aimed at resolving the dispute over proposed changes to the electoral system.

IV Sino-British Relations

The relationship between the UK and China over Hong Kong has inevitably been linked to the broader relationship between the two, although the British Government has made efforts in recent years to distinguish between these areas. It seeks to stress the wider relationship, particularly in economic terms, but Beijing approaches Hong Kong as one of its absolute priorities in foreign policy. The British Government stresses the wider relationship partly in an effort to set Hong Kong in a more positive context and partly in order to advance long term trading interests. It is not alone, of course, in this effort to distinguish economic and political objectives in relation to China. It is regarded as unwise to allow the often difficult relationship over Hong Kong to sour relations in the commercial field. China does not always seem to accept this, occasionally warning of dire consequences for commerce unless greater flexibility is shown over Hong Kong, although it is unclear to what extent this might translate into practice.

The UK blurred this distinction in 1989, however, when the suppression of protests in and around Beijing's Tiananmen Square, which resulted in the killings of unarmed civilians, provoked immense anxiety and anger in Hong Kong. Fears grew over the adequacy of the

¹⁰ *The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, adopted 4 April 1990. The text can be made available on request from the International Affairs and Defence Section of the Library.

Joint Declaration as a protection of Hong Kong's way of life, and the British Government responded in a variety of ways. These included the introduction of the passport scheme, under which 50,000 Hong Kong household heads, plus dependents, were to be granted full British citizenship, the decision to build the new international airport, the effort to reach agreement with China on limited increases in the level of democratic participation in the choice of political representatives, and the introduction of a Bill of Rights.

A crisis was reached in the Sino-British relationship following the announcement in October 1992 by the new Governor of Hong Kong, Chris Patten, of proposals for the development of Hong Kong's political institutions, which China felt exceeded the provisions of the Joint Declaration and contravened the Basic Law.¹¹ Relations between London and Beijing deteriorated sharply, and Chinese officials extended a range of personal insults to Mr Patten. The Chinese Government indicated that it might not feel bound to respect all the provisions of the Joint Declaration, as a result of what it regarded as the UK's breach of that treaty. Some commentators argued that China is unlikely to disregard relevant international agreements entirely, as this would do nothing to improve its image abroad; others found support for their sense of apprehension that Beijing might find it hard to resist the temptation to use its influence on the territory to create conditions similar to those existing elsewhere in the People's Republic.

Since the later part of 1995 the two Governments seem to have found a way of working together more constructively. The relationship is still delicate, but the shared interest in Hong Kong's continued economic success underpins a more amenable approach. Agreements were reached in June 1995 on the composition of the Court of Final Appeal and the financing of the airport construction project. There followed a series of ministerial visits and meetings, in which efforts were made to create a more constructive working relationship. Mr Rifkind visited Beijing in January 1996, Mr Major and his counterpart Li Peng met in Bangkok in February 1996 and the two Foreign Secretaries met in The Hague in April 1996. There were no outstanding breakthroughs on these occasions, but it appeared that the shape of a new relationship was starting to appear. Mr Rifkind raised a number of sensitive issues with the Chinese, including Hong Kong and human rights, but was met with a relatively calm response, albeit a negative one. At the same time, there was a sense in which progress on Hong Kong was treated as part of the more general progress on cooperation and on trade and investment, rather than as something external to the remainder of the relationship. In particular there was a stated belief that the UK's capacity to influence China over Hong Kong did not extend to the use of coercive measures, other than the notion of mobilising

¹¹ This period was discussed in two Library Papers, *Hong Kong: Derailment or Diversion?*, Research Paper 93/47, 2 April 1993, and *Hong Kong and Democracy*, Research Paper 94/44, 10 March 1994. The British Government set out its position in the 'White Paper', *Representative Government in Hong Kong*, Cm 2432, February 1994, and the Chinese Government set out its position in a document entitled, *Facts about a few Important Aspects of Sino-British Talks on 1994/95 Electoral Arrangements in Hong Kong*, 28 February 1994. The Foreign Affairs Committee also discussed these issues in its report entitled, *Relations Between the United Kingdom and China in the Period Up To and Beyond 1997*, HC 37 1993-94, 23 March 1994.

international opinion should China's behaviour towards Hong Kong take a malign form after the handover.

Mr Heseltine visited China earlier this year, leading a trade mission. This was accompanied by much warmer language from the Chinese leadership than has been evident in recent years, and some commentators questioned whether Mr Heseltine had addressed adequately China's human rights record.¹² He described his visit as 'extremely constructive' and said that it confirmed his belief that 'China and the United Kingdom have an identity of interest in the continued success of Hong Kong after July 1997'.¹³ Chinese President Jiang Zemin commented that 'recently bilateral relations have shown a momentum for improving under joint efforts, which the Chinese side is glad to see'.¹⁴ During discussions with Vice-Premier Li Lanqing, Mr Heseltine made clear the Government's support for China's early entry to the World Trade Organisation, a move which has support from Hong Kong.

Some analysts continue to read breakthroughs or catastrophes into every day's news on the Sino-British relationship over Hong Kong. However, it appears that a phase has been entered in which moderate progress is made on practical issues, while friction will continue to break out on occasion and concerns will remain over the larger issues of Hong Kong's future.

V Outstanding Issues

After all the negotiations and positioning, what are the main outstanding sources of concern, and what security does the UK bequeath Hong Kong?

A. Human Rights

Human rights legislation in Hong Kong has a relatively shallow history, and its people have not enjoyed the same rights of access to international human rights regimes as have those of other British colonies. According to one author, writing in 1991, Hong Kong was 'deliberately placed outside the emerging international human rights regime', through the post-War years, in his view to avoid antagonising China.¹⁵

¹² Eg, *Independent*, 23 May 1996.

¹³ *Summary of World Broadcasts*, 27 May 1996.

¹⁴ *Summary of World Broadcasts*, 25 May 1996.

¹⁵ 'The Bill of Rights', N Jayawickrama, in *Human Rights in Hong Kong*, ed R Wacks, 1992, p64.

This changed with the Joint Declaration, which included a reference to the application of the International Covenants on human rights in an annex,¹⁶ and following the killings in Tiananmen Square in 1989, which prompted the introduction of a Bill of Rights.

1. BORO

The Bill of Rights Ordinance, known as the BORO¹⁷, reflects the provisions of the International Covenant on Civil and Political Rights, effectively making them justiciable before Hong Kong's courts, and has primacy over other legislation. The Hong Kong Government has repealed or amended ordinances which conflict with the BORO, mostly reserve powers of a colonial nature. Seldom used, these allowed sweeping emergency powers, and there were fears that they might provide a basis for abuse under a less benign administration.¹⁸

However, the success of these moves has been brought into question by suggestions from China that it may neglect or rescind the BORO and will not accept the obligations arising from the application of the International Covenants in Hong Kong, to which China itself is not a party.

2. China's Commitments

Chapter XIII of Annex I of the Joint Declaration states that:

the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force.

Article 39 of the Basic Law reflects this commitment and ramifies it by the addition of the phrase 'and shall be implemented through the laws of the Hong Kong Special Administrative Region'. It continues with a second paragraph:

the rights and freedoms enjoyed by Hong Kong residents shall not be restricted unless prescribed by law. But such restrictions shall not contravene the provisions of the preceding paragraph of this Article.

¹⁶ The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, both of 1966.

¹⁷ *The Hong Kong Bill of Rights Ordinance 1991*, Ordinance No 59 of 1991, reproduced in Appendix 2.

¹⁸ Indeed, the existence of such provisions in colonies which have become independent has sometimes formed the basis for repressive government in those countries.

The British Government views this as an obligation to retain the International Covenants, with all that that entails.

The International Covenant on Economic, Social and Cultural Rights tends to deal with general social objectives, and the British Government has not been alone in feeling that its provisions could not be reflected in specific laws. However, the International Covenant on Civil and Political Rights has been taken in Hong Kong to entail certain legal measures in order to uphold its provisions, hence the BORO and its primacy over conflicting laws.

China's officials concerned with Hong Kong matters have indicated that they may not continue to recognise the primacy of the BORO after 1997. In October 1995 a Sub-Group of the Preliminary Working Committee proposed to Beijing that certain parts of the BORO should be repealed and that six other Ordinances which had been amended to reach compatibility with it should be restored to their original form.¹⁹ These would include, *inter alia*, powers of censorship and requirements that permission be sought before public meetings were held of more than 30 people. No final decision has been taken on this matter by the Legal Sub-Group of the Preliminary Working Committee.

It appears that this policy of reversing the liberalisation which the British and Hong Kong Governments have clearly introduced in an effort to protect Hong Kong's citizens against Beijing, derives from the highest levels of the Chinese Government. The *Independent* of 8 November 1995 reported that the decision originated with the Hong Kong Committee, which includes President Jiang Zemin, Prime Minister Li Peng, Foreign Minister Qian Qichen and senior officials dealing directly with Hong Kong.

It is the view of the British and Hong Kong Governments that the obligation on China to uphold the International Covenant on Civil and Political Rights in Hong Kong entails an obligation under Article 40 of that Covenant

to submit reports on the measures they have adopted which give effect to the rights recognised herein and on the progress made in the enjoyment of those rights.

This would entail China making reports on the situation in Hong Kong periodically or as requested by the UN Human Rights Committee and then undergoing scrutiny by the Committee on its record. These reports are made formally at the request of the Human Rights Committee, the UN body established under the Covenant to oversee its implementation, but

¹⁹ Questions have been raised as to whether the BORO is fully entrenched. Wacks argues that the BORO 'is arguably susceptible to repeal or amendment, expressly or impliedly, by subsequent law. But the ICCPR is effectively entrenched as far as future legislation is concerned. ... Hong Kong's Letters Patent were amended on 8 June 1991 to achieve this effect'. 'Introduction', in *Human Rights in Hong Kong*, ed R Wacks, 1992, p2.

since the early 1980s the Committee has set down a general principle that periodic reports should be made every five years. However, this is without prejudice to the right of the Committee to request *ad hoc* reports at other times. The Human Rights Committee publishes its consideration of the reports in its annual report to the General Assembly, which then forms the basis for a debate in the Assembly.

In October 1995 the Human Rights Committee considered the Fourth Periodic Report of the UK in respect of Hong Kong, and it requested a supplementary report in May 1996. A Chairman's Statement at that time expressed the Committee's endorsement of the view that the Joint Declaration made it clear that the Covenant, including the reporting obligation, should continue to apply in the Hong Kong SAR.

China is not a party to the International Covenant on Civil and Political Rights and has not confirmed that it will continue to apply the Covenant in Hong Kong, nor that it will respect the reporting obligations of Article 40.

3. Freedom of Speech

The freedom of the media is regarded by some as an important right which may be in jeopardy. Mr Patten has expressed concern over the dangers of self-censorship in the media, most recently in a speech to the Asia-Pacific Broadcasting Union on 6 November 1996. The text distributed to the meeting spoke of 'worries ... that self-censorship may be creeping into our editorial offices well before 1997' and argued that

it would be a shame if editors and owners, in anticipation of imagined pressures after 1997, were to set off down the slippery slope of second-guessing which bits of content to remove in the hope of avoiding the possibility of pressure to do so.²⁰

China's Foreign Minister Qian Qichen caused alarm in an interview with the *Asian Wall Street Journal* on 16 October 1996, when he stated that the media in the Hong Kong SAR

can put forward criticism, but not rumours or lies. Nor can they put forward personal attacks on the Chinese leaders.

He also argued that

²⁰ *Agence France Presse International*, 6 November 1996.

in future, Hong Kong should not hold those political activities which directly interfere in the affairs of the mainland of China.²¹

This was taken as a reference to the annual commemorations in Hong Kong of those who died around Tiananmen Square in 1989 and to protests which have been held in support of dissidents in China.

There was a strong reaction to this interview. Amnesty International complained that,

by giving their clearest warning to date that they will not tolerate commemorations in Hong Kong of the Beijing massacre, the Chinese authorities appear to be playing a game of intimidation.

These comments appear to reflect a decision in Beijing to raise the political stakes in relation to human rights issues, and tighten the limits of Hong Kong's autonomy in this area.²²

During the most recent Queen's Speech Debate Mr Rifkind indicated the British Government's concern:

freedom of the press and freedom of assembly are guaranteed by the Joint Declaration and by the Basic Law. No mention has been made of the restrictions suggested by the Chinese Foreign Minister in his reported remarks. We have urged the Chinese Government at the highest level to clarify the remarks, as it is important that they should reassure the people of Hong Kong in this sensitive area.²³

In a subsequent speech to the Preparatory Committee, the body set up by China to prepare for the advent of the Hong Kong SAR administration, Mr Qian attempted to give reassurance that his remarks were merely a statement of the existing provisions of the Basic Law. He pointed out that this guarantees freedoms of speech, assembly and so on, and puts them in a framework of law. There may be an ambiguity in this notion as to the extent to which freedoms should be upheld, or entrenched, by law, and the extent to which they are constrained by law. At a more general level this may be expressed as an ambiguity as to whether rights are **supported by** or **subject to** a legal framework. Mr Qian laid emphasis on the need to balance freedom of action against the prohibitions on sedition, subversion and the like, and he argued:

²¹ *Agence France Presse International*, 16 October 1996.

²² *South China Morning Post*, reproduced in *Asia Intelligence News*, 20 October 1996.

²³ HC Deb 24 October 1996, c141.

press freedom is certainly protected by law but I don't think starting rumours or launching personal attacks would be a brand of press freedom too.²⁴

He went on to argue that although Hong Kong's law did not explicitly prohibit spreading rumours and personal attacks, neither did it explicitly protect these acts.

B. Citizenship²⁵

An important part of the debate over the provision of security to Hong Kong has centred on British citizenship and the right of abode in the UK. There are different categories of British nationality which apply to sectors of Hong Kong's population, but in general only British citizens have right of abode in the UK.

The main purpose of the *British Nationality (Hong Kong) Act 1990* was to give British citizenship and therefore the right of abode in the UK to 50,000 selected key people in Hong Kong and their dependents. It gives the Home Secretary the power to register as British citizens, by 30 June 1997, up to 50,000 Hong Kong residents recommended by the Governor. This recommendation is based on a selection scheme which allows for four classes of people, each class with its own quota.

This scheme was largely provoked by the events in Tiananmen Square in 1989 and was introduced under the *British Nationality (Hong Kong) Act 1990*. It was aimed at providing reassurance to key groups of workers and people in sensitive situations, and thus at inhibiting the prospect of a 'brain drain' from Hong Kong ahead of 1997 by those seeking to qualify for citizenship in third countries through naturalisation. There was no suggestion that Hong Kong residents were desperate to leave, but simply that they might seek an alternative right of abode as a form of insurance against the uncertainties of life after 1997.²⁶

At the end of 1995 a total of 128,392 persons, comprising 48,336 principal beneficiaries and their 80,056 dependants had been registered under the scheme.²⁷

Apart from those who have acquired British citizenship in this way, there are other groups of British nationals.

²⁴ *South China Morning Post*, reproduced in *Asia Intelligence News*, 3 November 1996. The full text of Mr Qian's speech is reproduced in Appendix 5.

²⁵ This section has been written with the kind assistance of Jane Fiddick.

²⁶ The British nationality scheme has been heavily oversubscribed: its progress is detailed in annual reports from the Governor, the latest, for 1995-1996, being published as HC 594 (1995/96).

²⁷ *Annual Report on Hong Kong 1995*, Cm 3143, March 1996, para 41.

There are around 20,000 people in Hong Kong who have British citizenship by virtue of having been born in the UK or having parents who were born there. These are mostly expatriate civil servants and businessmen and their families.

Under the *British Nationality Act 1981*, the majority of those who on 31 December 1982 were citizens of the UK and colonies and had a connection with a dependent territory by birth or descent became British Dependent Territories Citizens (BDTC). The majority of Hong Kong Chinese, over 3m, had this status from 1 January 1983. BDTCs have the right to reside in the territory with which they have connections in accordance with its immigration laws, but the right arises by virtue of the individual personal connection with the territory, not because the holder is a BDTC. If BDTCs can qualify under the immigration rules to be able to stay legally in the UK for five years and have been free of time limits on stay for the final year, they can become entitled to register as British citizens.

The *Hong Kong (British Nationals) Order 1986* (SI 1986/948) provides that persons who are BDTCs by virtue of a connection with Hong Kong are entitled to register as British Nationals (Overseas) (BN(O)) to reflect the fact that after 1997 Hong Kong will no longer be a dependent territory. Such persons do not become BN(O)s automatically: they have had to apply for this status and have done so in line with cut-off points, based on year of birth, which were introduced to prevent a last minute rush of applications. Under the *Hong Kong (British Nationality) (Amendment) Order 1993* (SI 1993/1795) a series of dates up to 31 March 1997 was introduced for this purpose. Any BDTC in Hong Kong who fails to register as a BN(O) will become a British Overseas Citizen (BOC) by operation of law, if he or she would otherwise be stateless. Neither status confers any right of abode anywhere and neither is transmissible, but the holder is entitled to a UK passport.²⁸ This does not guarantee admission to the UK, but does afford consular protection in third countries. China has accepted the fact that third countries may recognise the BN(O) passport, but stresses that it is no more than a travel document and that consular protection may not be offered to BN(O) passport holders in Hong Kong or any other part of China.

In a speech in Hong Kong on 4 March 1996 the Prime Minister confirmed that there were no plans to introduce visas for BN(O) holders of British passports to come as visitors to the UK. He added that holders of Hong Kong SAR passports would not need visas for visits to the UK after 30 June 1997 and pointed out that this would be an improvement for people in Hong Kong who hold Certificates of Identity and who require visas at present. The Hong Kong SAR Government will be authorised to issue SAR passports to all Chinese nationals who have right of abode in Hong Kong. People admitted as visitors to the UK are allowed to remain for up to six months: there is no provision under the rules for extension of leave in this capacity and neither can they switch to any other status which might lead to settlement,

²⁸ Two generations of children of BN(O)s will be able to acquire BOC status if they would otherwise be stateless.

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except on the basis of marriage to a person settled in the UK. They are prohibited from working, and will not be given leave to enter unless they can show that they, and any dependants, will be maintained and accommodated without recourse to public funds and that they can meet the cost of their return or onward journey.

The notion has been mooted that all BDTCs should be granted British citizenship, implying right of abode in the UK. The Hong Kong Government supports this idea, and Mr Patten has reiterated it, for instance on a BBC radio programme in the summer of 1995. The Legislative Council has also made clear its support, and the most prominent advocate of the proposition has been independent LegCo member Emily Lau. The British Government refuses to countenance such a move and the Chinese Government expresses extreme hostility to the idea.

Mr Patten argued that to grant right of abode to more than 3m Hong Kong people, by virtue of changing the status of BDTCs to that of British citizens, would not imply that the UK would have to absorb 3m immigrants, any more than the theoretical right to freedom of movement within the European Economic Area²⁹ implies that the entire population of Germany is likely to come and live in the UK. The Government argued that the 1990 scheme was debated by Parliament, approved then and has not been overtaken since by events necessitating its revision or expansion. China objects to the prospect of almost the entire population of one of its most important cities having foreign citizenship and right of abode overseas. By contrast, the citizens of Macau, the nearby Portuguese territory also to revert to China shortly, have all been granted the right to Portuguese citizenship, and with it, under European law, the right of free movement within the EEA.

There are two other, much smaller, groups of people. In July 1996 Royal Assent was given to the *Hong Kong (War Wives and Widows) Act 1996*, which deals with the 20 or so surviving widows and wives of local Hong Kong men who fought against the Japanese occupation during World War II. The fate of this small number of elderly individuals was an emotive symbol of British attitudes to those who had served the Empire in an earlier age and had survived into a different world. For many years a campaign was mounted to allow them British citizenship as an *ex gratia* gesture: the Home Office resisted this on the grounds that there was no precedent under which it could be done and that it might encourage similar claims from other special groups. However, Mr Major announced during his March 1996 visit that citizenship would be granted, and a scheme was outlined in the Bill, which was passed after mostly formal, and some very briefly debated, stages. The Home Secretary had written in 1994 to the women then identified, promising that they could come to the UK to settle, provided they had not remarried. Those in receipt of this letter, and others since discovered to whom a similar letter would also be sent, were now given the additional entitlement to register as British citizens, again provided they had not remarried and they still lived in Hong Kong.

²⁹ The EEA comprises the EU plus three of the members of EFTA, Norway, Iceland and Liechtenstein.

There is also a small ethnic minority community in Hong Kong, made up of around 7,000 people mostly of Indian and Pakistani descent, most of whom will hold only BN(O) passports after 1997. Those who do not will automatically become BOCs, but as mentioned above, this confers right of abode neither in the overseas (former) colony concerned nor in the UK. There are provisions in the Basic Law which confer on these people right of abode in the Hong Kong SAR if they do not have such a right elsewhere. However, concerns have been expressed that the minorities, whether BN(O)s or BOCs, and in particular their children, may risk becoming stateless in the future. The British Government has again been urged to grant citizenship to these people,³⁰ but has refused to do so, arguing that nobody will become stateless on 1 July 1997 and that as between the provision for the minorities to receive a form of British passport and the provision for them to retain right of abode in Hong Kong, there is no clear threat to their position. An assurance has been given that solely British members of the ethnic minorities will have guaranteed rights of settlement in the UK should they come under pressure to leave Hong Kong.³¹

C. Legislature

1. No through train?

The most important part of China's reaction to the electoral reforms introduced by Mr Patten was its decision to abolish the existing Legislative Council, and other tiers of representative government, after midnight on 30 June 1997 and replace it with an unelected body. The present LegCo was elected in full in September 1995, through a mixture of direct and indirect elections. Its continuation was to have been the basis of the 'through train' notion, ensuring continuity for Hong Kong, as the dates of elections to LegCo would not coincide with that of the handover. Now, instead of the existing LegCo serving for two years after the creation of the Hong Kong SAR, a new Provisional Legislature will be established by China to serve out the remainder of the term, and this is likely to begin operating before the handover as a parallel organ to the current LegCo.³² It is possible that members of the current LegCo could be invited to serve on the Provisional Legislature, but there are doubts as to the continued membership of democratic activists such as members of Martin Lee's Democratic Party, the largest elected group in Hong Kong.

There are also concerns over the suggestion that officials may have to indicate their loyalty to this body if they wish to continue in the public service after 30 June 1997. It has remained

³⁰ According to the *Times* of 10 November 1996, a letter was sent to representatives of the minorities from Buckingham Palace which they claim indicated that the Queen felt concern over the issue and had passed on her views to the Home Secretary.

³¹ See eg Mr Hanley, HC Deb 30 October 1996, c642. Misgivings over their position were expressed for instance by Baroness Blackstone, HL Deb 28 October 1996, c120.

³² Members of this body will be chosen by the Selection Committee for the Chief Executive, discussed below.

unclear exactly what form this will take, but many consider it invidious for civil servants to have to make such a display of changed loyalties, especially since their current Government is so openly opposed to the Provisional Legislature.

Legislative continuity through the handover period was regarded by the British side as one of the most important features of the package of measures designed to assure Hong Kong's future. The neglect of this principle by China has led to great concern, as expressed by Mr Rifkind during the Queen's Speech Debate:

China must show that Hong Kong will be run by the people of Hong Kong, and that can be achieved only if the legislature comprises those who have been freely and openly elected by the people of Hong Kong. Neither the Joint Declaration nor the Basic Law makes mention of a provisional legislature, and China must explain how any such arrangement would be compatible with either.³³

2. The Last LegCo

The September 1995 elections were held under the revised system introduced as a result of Mr Patten's 1992 proposals, which provoked China's extremely negative reaction. 20 of the 60 LegCo seats were directly elected from geographical constituencies and the remainder were elected from functional constituencies (trades, professions etc) and an electoral college composed of local councillors. No seats were appointed or *ex officio*.

The largest single total in the new LegCo was for independent candidates, of which 20 were elected. The largest party was the Democratic Party, which secured 19 seats, 16 of them from geographical constituencies. The Liberal Party, which represents business interests, won 10 seats; the Beijing-sponsored Democratic Alliance for the Betterment of Hong Kong (DAB) took six seats, two geographical and four from the functional constituencies. The Association for Democracy and People's Livelihood (pro-democracy) took four seats and the Federation of Trade Unions one. The turnout was 36%, which is a respectable figure by local standards.

There were some notable individual results. Martin Lee, the leading democracy activist and a target of Chinese invective, won his seat with 80% of the vote, while independent democrat Emily Lau secured the highest numerical vote in the geographical constituencies. The founder and Chairman of DAB, Tsang Yok-sing, was defeated, although Allen Lee, the leader of the Liberal Party, won a directly elected seat for the first time. The representative of the functional constituency for the legal profession was Margaret Ng, a prominent opponent of the agreement between the UK and China over the Court of Final Appeal.

³³ HC Deb 24 October 1996, c141.

China reacted to the elections by reiterating its intention to abolish LegCo and replace it with an appointed body in July 1997. This well-established position was publicised by Beijing's New China News Agency in the colony on the day of the poll. However, China had clearly adopted a twin strategy of opposing the elections in principle but seeking to secure influence in LegCo through them in practice. The *Guardian* gave the following comment on this strategy:

After engaging itself, albeit indirectly, in a democratic election campaign like never before, China confronts a humiliating result - a resounding victory for its most vociferous critics. It must decide whether to teach Hong Kong a lesson or to accept the lesson given by Hong Kong voters.³⁴

The General Secretary of DAB suggested that Hong Kong would have to 'pay for' its support for democratic candidates, while official Chinese sources described the result as 'unfair' and 'unreasonable'. One newspaper quoted a 1987 statement by Deng Xiaoping criticising the idea of democracy for Hong Kong.

There were unattributed comments to the effect that the Hong Kong Government would have liked to have seen a stronger performance from DAB and its allies. The feeling was that a balanced LegCo in which China had a strong voice might stand some chance of avoiding the abolition which Beijing threatens. It was suggested that China might symbolically abolish LegCo, but then reappoint the bulk of its members to a new body. This hope now appears slim, but there remains in some quarters a feeling that China will be unable to ride roughshod over a popularly elected body which has functioned effectively for two years at the time of the handover. Even the business community might be reluctant to accept the dismantling of such an institution, and it may not serve China's purpose to dispense arbitrarily with experienced and popular legislators in all cases.

An interesting feature of Hong Kong's maturing political system is the complexity of positions. This is sometimes obscured in British media coverage, which tends to focus on broad 'democrats vs pro-Beijing' characterisations. This is certainly an important divide, but there are many other sub-divisions. The large number of independents is a key factor, and attests to the lively nature of civil society in Hong Kong, arguably one of its best defences against oppression; the Liberal Party seems to be well-established now and shows the willingness of business to fight its corner in a democratic forum; and the election of a trade unionist, running on a platform of loyalty to China and improvements in workers' rights, shows a contrast with the more conservative approach of DAB, which supports Chinese Communist Party rule but shows little interest in broadly 'socialist' issues, particularly any which involve Government spending.

³⁴ 19 September 1995.

The elections seemed to catch a mood of local assertiveness and desire for democratic representation, but the extent to which their effect will be consistent with this mood remains open to doubt.

D. Court of Final Appeal

The Court of Final Appeal will assume the responsibilities currently held by the Privy Council after the reversion to China. Democracy activists have complained of potential dangers in the form of the Court of Final Appeal, which was agreed between the UK and China in June 1995.³⁵

They had hoped that the Court would be operative before the handover and that it would be allowed to invite a number of foreign judges to sit on it. The agreement reached was for a Court which would come into being on 1 July 1997 and have access to just one foreign judge. More significantly, it was noted that the Court will not have jurisdiction over 'acts of state', a term introduced but not defined in the Basic Law. This was felt to leave Beijing a measure of latitude in its dealings with the territory, since the Court could be overruled on grounds of emergency or state security.

The Hong Kong Government stressed that the Basic Law is a piece of Chinese legislation over which it has no control and which inevitably would set the context for any agreement reached and any institution established. It also argued that the need to establish the Court before 1997 was less important than the need to agree on its form before that date, and that the way was now open for LegCo to debate the details of the Court and put in place the necessary legislation for it, thus avoiding a legal vacuum which China's appointed representatives would be free to fill after the handover.

E. Chief Executive

The Chief Executive of the Hong Kong SAR will be elected on 11 December 1996 by a Selection Committee of 400. This Committee is composed of 340 members elected by China's Preparatory Committee, 34 chosen by Hong Kong members of the Chinese People's Political Consultative Conference and the 26 Hong Kong deputies to the National People's Congress. All are permanent Hong Kong residents. The Selection Committee is due to hold

³⁵ Reproduced in Appendix 3.

its first plenary session on 15 November 1996; it will choose the Chief Executive on 11 December and the members of the Provisional Legislature on 21 December 1996.³⁶

The selection process has been criticised by advocates of democracy in Hong Kong, who would prefer a popular election for the Chief Executive. The appearance of a representative element in the Selection Committee may mask a fairly direct process of appointment from Beijing, but it is possible to argue that this is no less accountable a method than the procedure for appointing British Governors. At the same time, the Chief Executive is seen as playing a crucial role not simply in running the administration, but also in defending Hong Kong's institutions and their autonomy from Beijing. It has sometimes been the case in the past that the Hong Kong Government has found itself negotiating against the interests of the British Government (for instance on trade agreements and tariffs, particularly on textiles), but there has been little sense that this would antagonise the UK into a wider hostility. It may be understandable that genuine concerns arise over the scope which a Chinese appointee will allow himself in displeasing Beijing. At the same time, the Chief Executive, in particular the first one, will need to address the issue of public confidence in the new arrangements.

There were 31 applications for the post of Chief Executive, which were considered by the Chairman and Vice-Chairmen of the Preparatory Committee, who then named eight as qualified applicants. Those selected by at least 50 members of the Selection Committee will be announced as candidates. The eight are To Sum, Simon Li Fook Sean, Peter KC Woo, Yu Hon Biu, Au Yuk Lun, Tung Chee-hwa, Ti Liang Yang and Choi Ching Kui. Mr Tung is a shipping magnate who is believed to be favoured by Beijing. Some have expressed concern over his links with China, since his businesses were rescued with mainland financial support when on the point of collapse in the 1980s. His main rivals appear to include (Sir) Ti Liang, who resigned as Chief Justice of Hong Kong to become a candidate, dropping the use of his knighthood in the process. He has criticised the BORO and associated legislation in the past, but has also expressed doubts as to whether the operation of the Provisional Legislature before the handover date will be legal under Hong Kong's laws, although he does accept its role after the handover, and has indicated a measure of support for the freedom of the press and the need to uphold the autonomy of the Hong Kong SAR. Mr Li, a retired High Court Judge, and Mr Woo, another businessman, are also prominent candidates. Opinion polls indicate consistently that the most popular choice in the territory would have been Anson Chan, the current Chief Secretary, but she declined to put her name forward. Mr Tung has indicated that he would like to retain Mrs Chan's services should he become Chief Executive.

³⁶ *China Daily*, reproduced in *Asia Intelligence News*, 4 November 1996.

VI Conclusion

Hong Kong's location at the eastern side of the Pearl River estuary has prompted a jewellery metaphor much loved by restaurateurs and headline writers, casting Hong Kong as a small but very valuable thing. Others have presented the territory as a golden egg, rich yet vulnerable. In its earliest days the steep granites of Hong Kong island and the humid climate did not seem to indicate that a great city would be built there. A contemporary *Times* correspondent wrote:

A worse situation could not have been selected for trade, and that is the reason why the Chinese have so readily ceded it.³⁷

Lord Palmerston echoed this sentiment with his dismissive description of 'a barren Island with hardly a House upon it'.³⁸ A modern writer has explained the transition thus:

the only resource Hong Kong has in abundance is its people, hard-working, hungry to improve themselves and become rich. This is what has really driven Hong Kong over the past forty years.³⁹

Most would add the stability of government and the consistency of law as an important ground in which this endeavour was able to take root and flourish.

It is possible to regard Hong Kong's development as inextricably linked to situations involving the mainland. The opium trade and free trade in general, the civil war, the embargo during the Korean War which boosted Hong Kong's role as a link with the outside world, the Cultural Revolution, the introduction of the Special Economic Zones in the southern coastal belt of China, the killings around Tiananmen Square, all had important impacts on Hong Kong. Soon Hong Kong will be even more closely bound in with China. Its pragmatists see this as another phase in the ongoing relationship. Others fear that the contrasting experiences of the last 150 years have introduced profound contradictions which may be resolved to Hong Kong's detriment.

Throughout, the process of recovering Hong Kong has been modelled on a hypothetical means of achieving unity between the People's Republic of China and the Republic of China in Taiwan. 'One country, two systems' and the SAR concept were both devised with Taiwan in mind. In many ways, China's handling of the recovery of Hong Kong will be seen as a test

³⁷ *Times*, 13 April 1841, cited in Rafferty, op cit, p15.

³⁸ *Ibid*, p14.

³⁹ *Ibid*, p18.

of its likely behaviour to Taiwan should reunification ever proceed. The Taiwan relationship may prove crucial to Hong Kong's future, and already Taiwanese leaders have begun to indicate their support for the autonomy and freedoms envisaged in the Joint Declaration and the Basic Law.

Perhaps the most important factor will be Hong Kong's impact on China and its role in China's economy and relations with the outside world. If

China may be seen as being in the process of a deep historical change of gigantic proportions from being essentially an inward looking continental country to an outward looking maritime one,⁴⁰

then Hong Kong's future may remain, like its past, intimately associated with China's opening to the world.

PB/JML

⁴⁰ *Hong Kong: China's Challenge*, M Yahuda, 1996, p6.

Appendix 1

**JOINT DECLARATION OF THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND
AND
THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA
ON THE QUESTION OF HONG KONG**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China have reviewed with satisfaction the friendly relations existing between the two Governments and peoples in recent years and agreed that a proper negotiated settlement of the question of Hong Kong, which is left over from the past, is conducive to the maintenance of the prosperity and stability of Hong Kong and to the further strengthening and development of the relations between the two countries on a new basis. To this end, they have, after talks between the delegations of the two Governments, agreed to declare as follows:

1. The Government of the People's Republic of China declares that to recover the Hong Kong area (including Hong Kong Island, Kowloon and the New Territories, hereinafter referred to as Hong Kong) is the common aspiration of the entire Chinese people, and that it has decided to resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997.
2. The Government of the United Kingdom declares that it will restore Hong Kong to the People's Republic of China with effect from 1 July 1997.
3. The Government of the People's Republic of China declares that the basic policies of the People's Republic of China regarding Hong Kong are as follows:
 - (1) Upholding national unity and territorial integrity and taking account of the history of Hong Kong and its realities, the People's Republic of China has decided to establish, in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, a Hong Kong Special Administrative Region upon resuming the exercise of sovereignty over Hong Kong.
 - (2) The Hong Kong Special Administrative Region will be directly under the authority of the Central People's Government of the People's Republic of China. The Hong Kong Special Administrative Region will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government.

- (3) The Hong Kong Special Administrative Region will be vested with executive, legislative and independent judicial power, including that of final adjudication. The laws currently in force in Hong Kong will remain basically unchanged.
- (4) The Government of the Hong Kong Special Administrative Region will be composed of local inhabitants. The chief executive will be appointed by the Central People's Government on the basis of the results of elections or consultations to be held locally. Principal officials will be nominated by the chief executive of the Hong Kong Special Administrative Region for appointment by the Central People's Government. Chinese and foreign nationals previously working in the public and police services in the government departments of Hong Kong may remain in employment. British and other foreign nationals may also be employed to serve as advisers or hold certain public posts in government departments of the Hong Kong Special Administrative Region.
- (5) The current social and economic systems in Hong Kong will remain unchanged, and so will the life-style. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the Hong Kong Special Administrative Region. Private property, ownership of enterprises, legitimate right of inheritance and foreign investment will be protected by law.
- (6) The Hong Kong Special Administrative Region will retain the status of a free port and a separate customs territory.
- (7) The Hong Kong Special Administrative Region will retain the status of an international financial centre, and its markets for foreign exchange, gold, securities and futures will continue. There will be free flow of capital. The Hong Kong dollar will continue to circulate and remain freely convertible.
- (8) The Hong Kong Special Administrative Region will have independent finances. The Central People's Government will not levy taxes on the Hong Kong Special Administrative Region.
- (9) The Hong Kong Special Administrative Region may establish mutually beneficial economic relations with the United Kingdom and other countries, whose economic interests in Hong Kong will be given due regard.
- (10) Using the name of 'Hong Kong, China', the Hong Kong Special Administrative Region may on its own maintain and develop economic and cultural relations and conclude relevant agreements with states, regions and relevant international organisations.

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The Government of the Hong Kong Special Administrative Region may on its own issue travel documents for entry into and exit from Hong Kong.

- (11) The maintenance of public order in the Honk Kong Special Administrative Region will be the responsibility of the Government of the Hong Kong Special Administrative Region.
- (12) The above-stated basic policies of the People's Republic of China regarding Hong Kong and the elaboration of them in Annex I to this Joint Declaration will be stipulated, in a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, by the National People's Congress of the People's Republic of China, and they will remain unchanged for 50 years.

4. The Government of the United Kingdom and the Government of the People's Republic of China declare that, during the transitional period between the date of the entry into force of this Joint Declaration and 30 June 1997, the Government of the United Kingdom will be responsible for the administration of Hong Kong with the object of maintaining and preserving its economic prosperity and social stability; and that the Government of the People's Republic of China will give its cooperation in this connection.

5. The Government of the United Kingdom and the Government of the People's Republic of China declare that, in order to ensure a smooth transfer of government in 1997, and with a view to the effective implementation of this Joint Declaration, a Sino-British Joint Liaison Group will be set up when this Joint Declaration enters into force; and that it will be established and will function in accordance with the provisions of Annex II to this Joint Declaration.

6. The Government of the United Kingdom and the Government of the People's Republic of China declare that land leases in Hong Kong and other related matters will be dealt with in accordance with the provisions of Annex III to this Joint Declaration.

7. The Government of the United Kingdom and the Government of the People's Republic of China agree to implement the preceding declarations and the Annexes to this Joint Declaration.

8. This Joint Declaration is subject to ratification and shall enter into force on the date of the exchange of instruments of ratification, which shall take place in Beijing before 30 June 1985. This Joint Declaration and its Annexes shall be equally binding.

Done in duplicate at Beijing on
texts being equally authentic.

1984 in the English and Chinese languages, both

For the
Government of the United Kingdom
of Great Britain and Northern Ireland

For the
Government of the
People's Republic of China

Appendix 2

Hong Kong Bill of Rights

An Ordinance to provide for the incorporation into the law of Hong Kong of provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong; and for ancillary and connected matters.

[8 June 1991]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I PRELIMINARY

1. Short title and commencement

- (1) This Ordinance may be cited as the Hong Kong Bill of Rights Ordinance 1991.
- (2) This Ordinance shall come into operation on 8 June 1991.

2. Interpretation

- (1) In this Ordinance, unless the context otherwise requires "article" means an article of the Bill of Rights;

"Bill of Rights" means the Hong Kong Bill of Rights set out in Part II;

"commencement date" means the date on which this Ordinance comes into operation;

"legislation" means legislation that can be amended by an Ordinance

"pre-existing legislation" means legislation enacted before the commencement date.
- (2) "The Bill of Rights is subject to Part III.
- (3) In interpreting and applying this Ordinance, regard shall be had to the fact that the purpose of this Ordinance is to provide for the incorporation into the law of Hong Kong of provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong, and for ancillary and connected matters.

- (4) Nothing in this Ordinance shall be interpreted as implying for the Government or any authority, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized in the Bill of Rights or at their limitation to a greater extent than is provided for in the Bill.
- (5) There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in Hong Kong pursuant to law, conventions, regulations or custom on the pretext that the Bill of Rights does not recognize such rights or that it recognizes them to a lesser extent.
- (6) A heading to any article does not have any legislative effect and does not in any way vary, limit or extend the meaning of the article.

3. Effect on pre-existing legislation

- (1) All pre-existing legislation that admits of a construction consistent with this Ordinance shall be given such a construction.
- (2) All pre-existing legislation that does not admit of a construction consistent with this Ordinance is, to the extent of the inconsistency, repealed.

4. Interpretation of subsequent legislation

All legislation enacted on or after the commencement date shall, to the extent that it admits of such a construction, be construed so as to be consistent with the International Covenant on Civil and Political Rights as applied to Hong Kong.

5. Public emergencies

- (1) In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, measures may be taken derogating from the Bill of Rights to the extent strictly required by the exigencies of the situation, but these measures shall be taken in accordance with law.
- (2) No measure shall be taken under subsection (1) that-
 - (a) is inconsistent with any obligation under international law that applies to Hong Kong (other than an obligation under the International Covenant on Civil and Political Rights);
 - (b) involves discrimination solely on the ground of race, colour, sex, language, religion or social origin; or
 - (c) derogates from articles 2, 3, 4(1) and (2), 7, 12, 13 and 15.

6. Remedies for contravention of Bill of Rights

- (1) A court or tribunal-
 - (a) in proceedings within its jurisdiction in an action for breach of this Ordinance; and
 - (b) in other proceedings within its jurisdiction in which a violation or threatened violation of the Bill of Rights is relevant, may grant such remedy or relief, or make such order, in respect of such a breach, violation or threatened violation as it has power to grant or make in those proceedings and as it considers appropriate and just in the circumstances.
- (2) No proceedings shall be held to be outside the jurisdiction of any court or tribunal on the ground that they relate to the Bill of Rights.

7. Binding effect of Ordinance

- (1) This Ordinance binds only-
 - (a) the Government and all public authorities; and
 - (b) any person acting on behalf of the Government or a public authority.
- (2) In this section "person" includes any body of persons, corporate or unincorporate.

**PART II
THE HONG KONG BILL OF RIGHTS**

8. Hong Kong Bill of Rights

The Hong Kong Bill of Rights is as follows.

**Article 1
Entitlement to rights without distinction**

- (1) The rights recognized in this Bill of Rights shall be enjoyed without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.
- (2) Men and women shall have an equal right to the enjoyment of all civil and political rights set forth in this Bill of Rights.

Article 2
Right to life

- (1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
- (2) Sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of this Bill of Rights and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.
- (3) When deprivation of life constitutes the crime of genocide, nothing in this article shall authorize the derogation in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
- (4) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
- (5) Sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women.
- (6) Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment in Hong Kong.

Article 3
**No torture or inhuman treatment and
no experimentation without consent**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 4
No slavery or servitude

- (1) No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
- (2) No one shall be held in servitude.

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- (3) (a) No one shall be required to perform forced or compulsory labour.
- (b) For the purpose of this paragraph the term "forced or compulsory labour" shall not include-
- (i) any work or service normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - (ii) any service of a military character and, where conscientious objection is recognized, any national service required by law of conscientious objectors;
 - (iii) any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - (iv) any work or service which forms part of normal civil obligations.

Article 5 **Liberty and security of person**

- (1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
- (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
- (3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
- (4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. (5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 6 **Rights of persons deprived of their liberty**

- (1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
- (2)
 - (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.
 - (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
- (3) The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 7

No imprisonment for breach of contract

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 8

Liberty of movement

- (1) Everyone lawfully within Hong Kong shall, within Hong Kong, have the right to liberty of movement and freedom to choose his residence.
- (2) Everyone shall be free to leave Hong Kong.
- (3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in this Bill of Rights.
- (4) No one who has the right of abode in Hong Kong shall be arbitrarily deprived of the right to enter Hong Kong.

Article 9

Restrictions on expulsion from Hong Kong

A person who does not have the right of abode in Hong Kong but who is lawfully in Hong Kong may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 10
Equality before courts and right
to fair and public hearing

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

Article 11
Rights of persons charged with or
convicted of criminal offence

- (1) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
- (2) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality-
 - (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) to be tried without undue delay;
 - (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;

- (g) not to be compelled to testify against himself or to confess guilt.
- (3) In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
- (4) Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
- (5) When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
- (6) No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of Hong Kong.

Article 12

No retrospective criminal offences or penalties

- (1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under Hong Kong or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
- (2) Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 13

Right to recognition as person before law

Everyone shall have the right to recognition everywhere as a person before the law.

Article 14

**Protection of privacy, family, home,
correspondence, honour and reputation**

- (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
- (2) Everyone has the right to the protection of the law against such interference or attacks.

Article 15
Freedom of thought, conscience and religion

- (1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
- (2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
- (3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
- (4) The liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions shall be respected.

Article 16
Freedom of opinion and expression

- (1) Everyone shall have the right to hold opinions without interference.
- (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- (3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary-
 - (a) for respect of the rights or reputations of others; or
 - (b) for the protection of national security or of public order (ordre public), or of public health or morals.

Article 17
Right of peaceful assembly

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right, other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 18
Freedom of association

- (1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
- (2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
- (3) Nothing in this article authorizes legislative measures to be taken which would prejudice, or the law to be applied in such a manner as to prejudice, the guarantees provided for in the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize as it applies to Hong Kong.

Article 19
Rights in respect of marriage and family

- (1) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
- (2) The right of men and women of marriageable age to marry and to found a family shall be recognized.
- (3) No marriage shall be entered into without the free and full consent of the intending spouses.
- (4) Spouses shall have equal rights and responsibilities as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 20
Rights of children

- (1) Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
- (2) Every child shall be registered immediately after birth and shall have a name.

Article 21
Right to participate in public life

Every permanent resident shall have the right and the opportunity, without any of the distinctions mentioned in article 1(1) and without unreasonable restrictions-

- (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) to have access, on general terms of equality, to public service in Hong Kong.

Article 22
Equality before and equal protection of law

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 23
Rights of minorities

Persons belonging to ethnic, religious or linguistic minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

**PART III
EXCEPTIONS AND SAVINGS**

9. Armed forces and persons detained in penal establishments

Members of and persons serving with the armed forces of the government responsible for the foreign affairs of Hong Kong and persons lawfully detained in penal establishments of whatever character are subject to such restrictions as may from time to time be authorized by law for the preservation of service and custodial discipline.

10. Juveniles under detention

Where at any time there is a lack of suitable prison facilities or where the mixing of adults and juveniles is mutually beneficial, article 6(2)(b) and (3) does not require juveniles who are detained to be accommodated separately from adults.

11. Immigration legislation

As regards persons not having the right to enter and remain in Hong Kong, this Ordinance does not affect any immigration legislation governing entry into, stay in and departure from Hong Kong, or the application of any such legislation.

12. Persons not having the right of abode

Article 9 does not confer a right of review in respect of a decision to deport a person not having the right of abode in Hong Kong or a right to be represented for this purpose before the competent authority.

13. Executive and Legislative Councils

Article 21 does not require the establishment of an elected Executive or Legislative Council in Hong Kong.

14. Temporary savings

- (1) For a period of 1 year beginning on the commencement date, this Ordinance is subject to the Ordinances listed in the Schedule.
- (2) This Ordinance does not affect-
 - (a) any act done (including any act done in the exercise of a discretion); or

- (b) any omission authorized or required, or occurring in the exercise of a discretion, before the first anniversary of the commencement date, under or by any Ordinance listed in the Schedule.
- (3) The Legislative Council may before the first anniversary of the commencement date by resolution amend this section for all or any of the following purposes-
 - (a) to provide that, for a period of 1 year beginning on the first anniversary of the commencement date, this Ordinance is subject to such of the Ordinances listed in the Schedule as are specified in the amendment;
 - (b) to provide that this Ordinance does not affect-
 - (i) any act done (including any act done in the exercise of a discretion); or
 - (ii) any omission authorized or required, or occurring in the exercise of a discretion, before the second anniversary of the commencement date, under or by any Ordinance listed in the Schedule that is specified in the amendment; and
 - (c) to repeal this subsection.
- (4) In this section, a reference to an Ordinance includes a reference to any subsidiary legislation made under that Ordinance.
- (5) This section operates notwithstanding section 3.

SCHEDULE
PROVISIONS TO WHICH SECTION 14(1)AND(2) APPLIES

Immigration Ordinance (Cap. 115)
Societies Ordinance (Cap. 151)
Crimes Ordinance (Cap. 200)
Prevention of Bribery Ordinance (Cap. 201)
Independent Commission Against Corruption Ordinance (Cap. 204)
Police Force Ordinance (Cap. 232)

Appendix 3

Agreement Between the British and Chinese Sides on the Question of the Court of Final Appeal in Hong Kong

After full consultations, the two sides of the Sino-British Joint Liaison Group have reached the following agreement on the question of the Court of Final Appeal in Hong Kong:

1. The British side agrees to amend the Court of Final Appeal Bill on the basis of the eight suggestions published by the Political Affairs Sub-group of the Preliminary Working Committee of the Preparatory Committee of the Hong Kong Special Administrative Region on 16 May 1995.
2. The Chinese side agrees to the British side amending the Court of Final Appeal Bill to make it clear that section 83P of the Criminal Procedure Ordinance applies in a case where an appeal has been heard and determined by the Court of Final Appeal, and that there is therefore no need for further legislative or other provisions in relation to the power to inquire into the constitutionality of laws or to provide for post- verdict remedial mechanisms.
3. The British side agrees to amend the Court of Final Appeal Bill to include the formulation of "acts of state" in Article 19 of the Basic Law and to provide that the Court of Final Appeal Ordinance shall not come into operation before 30 June 1997.
4. The Chinese side agrees that, after the Chinese and British sides reach this agreement, the legislative procedures for the Court of Final Appeal Bill, on which the two sides have reached a consensus through consultation, will be taken forward immediately to enable them to be completed as soon as possible before the end of July 1995. The Chinese side will adopt a positive attitude in this regard.
5. The Chinese and British sides agree that the team designate of the Hong Kong Special Administrative Region shall, with the British side (including relevant Hong Kong Government departments) participating in the process and providing its assistance, be responsible for the preparation for the establishment of the Court of Final Appeal on 1 July 1997 in accordance with the Basic Law and consistent with the provisions of the Court of Final Appeal Ordinance.

Senior British Representative
Sino-British Joint Liaison Group

Senior Chinese Representative
Sino-British Liaison Group

9 June 1995
End/Friday, June 9, 1995

Appendix 4

Agreed Minute of the Sino-British Joint Liaison Group on the Handover Ceremony for Hong Kong

The British and Chinese sides in the Joint Liaison Group have discussed arrangements for a handover ceremony for Hong Kong to be held jointly by the British and Chinese Governments around midnight on 30 June 1997 (hereinafter referred to as 'the Ceremony'). The two sides have reached consensus on a number of key issues, as follows:

General Principles

- (1) A solemn and dignified ceremony will be held jointly by the two Governments around midnight on 30 June 1997 in Hong Kong.
- (2) The Ceremony will mark the British Government's restoration of Hong Kong to China and the Chinese Government's recovery of Hong Kong, resumption of the exercise of sovereignty over Hong Kong and establishment of a Hong Kong Special Administrative Region, as provided for under the Sino-British Joint Declaration on the Question of Hong Kong. The Ceremony will also cover the transfer of defence responsibilities.

Specific Arrangements

On the basis of the above-mentioned principles, the two sides consider that the following specific arrangements will apply:

- (1) The Ceremony will be held in the Grand Foyer of the new Extension to the Hong Kong Convention and Exhibition Centre.
- (2) The Ceremony will be presided over by senior representatives of Britain and China, with military honour guards and military bands of the two states present. The Ceremony will include a formal salute by the military honour guards and speeches by the senior representatives of the two sides. Following these, immediately before midnight, the British national anthem will be played as the Union and Hong Kong Flags are lowered. Immediately after midnight, the Chinese national anthem will be played as the national Flag of the People's Republic of China and the regional Flag of the Hong Kong Special Administrative Region are raised. Appropriate arrangements will be made for dignified and ceremonial departure of the British civilian and military representatives following the Ceremony.
- (3) The Ceremony will be witnessed by guests from Britain, China and Hong Kong and guests from overseas, including high-level representatives from countries and international organisations to be invited by the British and Chinese sides.

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(4) British, Chinese, local and international media will be welcome to attend and report freely on the Ceremony and will be provided with appropriate facilities including a Press and Broadcasting Centre. Hong Kong's normal media accreditation and pooling procedures for major events, based on internationally accepted practice, will be applied. British and Chinese officials will discuss the media requirements further within the framework of normal internationally accepted practice.

(5) The Hong Kong Police will be responsible for planning and implementing arrangements for the security of the Ceremony and of all those participating in or observing it. The British and Chinese sides will fully discuss the security requirements.

The two sides have agreed to continue discussions in the Sino-British Joint Liaison Group with a view to reaching early agreement on the detailed arrangements for the Ceremony.

Signed by the Senior British Representative and Senior Chinese Representative of the Sino-British Joint Liaison Group, 1996

Appendix 5

Media Sources

Economist, 2 November 1996.

Both China and Britain say the new chief executive is meant to be a doughty champion for Hong Kong's institutions - able to make decisions without looking over his shoulder. But in reality it looks as though he may end up as just one more supplicant to the government in Beijing.

Scotsman, 25 October 1996.

Quotes Chris Patten, 24 October 1996, Edinburgh: 'There is enormous face for China in showing that Hong Kong can do even better under Chinese sovereignty than it has done under British colonial administration'.

Independent, 3 October 1996.

The China sympathisers, led by our former ambassador to Peking, Sir Percy Cradock, argue that Patten's obstinacy has forced Peking to become more obdurate. In other words, the Chinese would have taken a more liberal approach to a post-British Hong Kong if we had not insisted on rubbing their noses in the dangerous concept of democracy. We doubt it. The transition would have been fraught with dangers in either case. But the presence of a vocal and active democratic movement in Hong Kong - little of which existed before - should help to persuade Peking to respect Hong Kong's radically different history and political culture. These differences are understandably threatening to the Communist gerontocracy, but also vitally important to them. In the end, Peking's own best political and economic interests are served by a successful Hong Kong, and this must be a Hong Kong that remains united with the Western world although reconnected to China.

Andrew Higgins, *Guardian*, 29 June 1996.

After eight years, [Tony Yan's] team of 23 translators and 35 bilingual lawyers has completed Chinese drafts of every Hong Kong law and is rushing to get them approved before the clock strikes midnight. A thick glossary of English and Chinese legal terms has also been produced.

Not included, however, is a concept that many fear could play an important part in Hong Kong life after 1997: subversion. Hong Kong's future charter, the Beijing-drafted Basic Law, lists subversion as a crime. But, said Mr Yan: "This concept does not exist in Common Law. There was no need for us to find a translation." That task will have to wait until July 1 next year.

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Philip Stephens, *Financial Times*, 18 September 1996.

Britain wants to avoid a final stain on its ... record of colonial disengagement. Thus it must pretend its guarantees to the people of Hong Kong will long outlast its departure. China sees the handover as a precursor for the eventual return of Taiwan. That demands a certain respect for the letter, if not the spirit, of its obligations. And Hong Kong needs the confidence of international investors.

...

But to imagine [Hong Kong] will be governed as in the past is to defy the logic of the transfer of sovereignty. It is to pretend that the values of a distant, usually beneficent, colonial administration are shared by a totalitarian regime wedded to the theory if not the practice of communism.

...

Optimists will tell you that Hong Kong may be the catalyst for dramatic change in China itself. The present political regime in Beijing cannot withstand the pace of economic change. Maybe. Others ask what is there to worry about as long as Hong Kong remains the best place to do business in China. Fair enough. But let us not kid ourselves that nothing will change.

The Times, 3 October 1996.

Benchmarks for Hong Kong: Firm words which will need to be backed by legal action.

Chris Patten's annual policy speech yesterday was the last to be made by a British Governor of Hong Kong. Inevitably, it was something of a report card on the four years since he arrived, with a characteristically vigorous defence of the reforms that have buttressed political and administrative accountability and improved Hong Kong's quality of life. But its tone was anything but valedictory.

The Governor was out to emphasise Britain's continuing political, moral and financial interest in Hong Kong after it reverts to Chinese sovereignty next July - and to lay down 16 'benchmarks' by which people will judge whether China is abiding by its treaty commitment to leave Hong Kong to manage its own affairs.

The administrative report card measures up well against Mr Patten's pledges of four years ago. Then, he said that without losing its competitive edge, Hong Kong could clean up its environment and provide the social safety nets that would make it a more compassionate place. He has been proved right. Spurred by cuts in income and business taxes, Hong Kong has grown fast enough to finance heavy public investment in education, health and welfare, housing, community policing and anti-pollution measures, while still increasing its reserves by a quarter, to around Pounds 27 billion next year. Politically, Peking's criticisms of Mr Patten have obscured facts with which Peking must soon contend. Habits of democratic debate have rapidly taken root; and Mr Patten's carefully circumscribed political reforms have consistently been supported by two thirds of Hong Kong's people. Mr Patten's benchmarks for post-1997 Hong Kong neatly encompass the reasons why Peking fears Hong Kong as a

source of unacceptable political pressures. They include probity in public life, executive autonomy, a meritocratic civil service, financial independence, a 'fairly and openly elected' legislature and freedom of the press, opinion and rights of assembly, including vigils and demonstrations. Such a list will irritate powerful Hong Kong businessmen who are confident that they have privileged channels to Peking. But it has much in common, as Mr Patten remarks, with changing political expectations throughout South-East Asia. And in Hong Kong itself, his list has wide popular endorsement.

One powerful reason is that China is not trusted, as Britain largely has been, to respect the most basic principles of the rule of law. Hong Kong Chinese, looking nervously at the corruption, crime and arbitrary laws across the soon-to-be-dotted line that divides them from China proper, well understand the connection between political accountability and Hong Kong's future prosperity. That is why, as Mr Patten observes, China's determination to sweep away Hong Kong's first wholly-elected Legislative Council and replace it by a non-elected 'provisional' legislature 'lies at the heart of wider doubts about the future of pluralism and freedom in Hong Kong'. China intends to set up this provisional body even before the handover, an act that as Mr Patten implied yesterday would violate the Sino-British Joint Declaration on Hong Kong. Mr Patten says that the Hong Kong Government will have nothing to do with China's creation. Peking will not worry about that, however. He should go further. Britain should actively pursue the issue through international legal channels, thus demonstrating that for Britain and Hong Kong, the Patten benchmarks are firmly related to respect for treaty obligations. The sooner this is clear, the better. China is unlikely to respect the Joint Declaration after July 1997 if Britain fails to challenge a breach while it still governs Hong Kong.'

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The Daily Telegraph, 23 October 1996.

How Chris Patten is betraying us: The Governor - like British ministers - is kow-towing to Beijing, and the people of Hong Kong will pay the price, says Martin Lee.

By MARTIN LEE

TO GREAT fanfare, Malcolm Rifkind, the Foreign Secretary, and Qian Qichen, the Chinese Foreign Minister, this month announced an agreement on a joint handover ceremony to mark the transfer of Hong Kong's sovereignty from Britain to China at midnight on June 30, 1997.

The deal ended years of diplomatic wrangling over the send-off ceremony and was hailed by British officials, in London and Hong Kong, who are now busily discussing flags, national anthems and whether or not the Prince of Wales will attend. But from the Hong Kong people's point of view, there will be little to celebrate.

The agreement on the handover ceremony serves only to obscure the fact that Hong Kong's most critical problems are being swept under the carpet. While Britain is negotiating the finer points of guest lists and venues, Hong Kong people are in a last-ditch battle to keep alive their elected institutions, rule of law and freedoms. When the 1984 Joint Declaration was

signed by Britain and China, the treaty was registered at the UN and applauded around the world. Its key promises were that Hong Kong people would have an elected legislature, an accountable government and an independent judiciary. Chinese leaders pledged not to interfere in Hong Kong affairs, and that its freedoms and way of life would continue for at least 50 years under the 'one country, two systems' policy. But instead of maintaining the broad economic, political and civil freedoms that Hong Kong's 6.3 million citizens now enjoy, China's plans after 1997 can be summed up in a single word: control. Although Hong Kong has not had a democratic system of government for most of its colonial history, it has none the less had all the benefits of democracy - economic freedom, property rights and a free flow of information. Most importantly, it has also had the rule of law, guaranteeing due process, a level playing field, and the equality of all before the law. Jiang Zemin, the Chinese Premier, recently reiterated China's determination to sweep away Hong Kong's elected legislature and replace it with one appointed by Beijing. More than any other action by China, the decision to abolish Hong Kong's legislature - elected to a four-year term last September - will set in motion a chain of events likely to destroy the foundation of Hong Kong's free and prosperous society. With a hand-picked legislature to do its bidding, China has pledged to emasculate Hong Kong's Bill of Rights, and to resurrect draconian colonial laws restricting press freedom and freedom of assembly and expression. The rule of law has two essential requirements: an independent judiciary and good laws. Once Hong Kong's elected Legislative Council is replaced by an appointed one, we can no longer rely on our legislature to pass laws to protect basic human rights. Instead, the new appointed legislature will pass repressive laws as directed by Beijing. No matter how independent our judges may continue to be, they will have to apply the law as they find it. The demise of our elected legislature will mean nothing less than the end of the rule of law as we know it.

Hong Kong has been told by senior Chinese leaders that Beijing will change not only the legislature, but also the laws, and that China's new rubber-stamp forum will be set up as early as December this year. This leaves no prospect for real elections for at least two years - if ever again.

So, what is the British Government going to do to avert the destruction of our legislature? The answer is: nothing. The Prime Minister, Mr Rifkind and Chris Patten, the Governor, have a minimum obligation to tell China and the world - before it is too late - that an appointed legislature violates the Joint Declaration, and that Britain will challenge Beijing in either the UN's International Court of Justice or the High Court of Hong Kong. Mr Major said in Hong Kong early this year that 'if there were any suggestion of a breach of the Joint Declaration, we would have a duty to pursue every legal and other avenue available to us'. But by refusing to state the obvious, the British Government is in effect giving China the green light to do away with our elected institutions. Certainly, Chinese leaders have interpreted Britain's silence on this key point as acquiescence. Thus far, the Labour Party has not formulated its policy on Hong Kong. But as Labour is likely to be in power at the time of the transfer of sovereignty, it must urgently address the impending abolition of Hong Kong's legislature, and decide whether it wants to inherit the situation as it stands.

In the end, history will judge Hong Kong's transfer of sovereignty not by the fireworks, dignitaries or the grandeur of the handover ceremony, but by the institutions left behind to enable us to preserve Hong Kong's rule of law, freedoms and way of life. Martin C. M. Lee, QC, is chairman of Hong Kong's largest party, the Democratic Party, and an elected Legislative Councillor

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BBC Summary of World Broadcasts - 10 October 1996

HONG KONG

Governor's speech a "fresh public joke"

Text of Hong Kong newspaper 'Ta Kung Pao' editorial entitled: "Provisional legislature must be set up as scheduled "

The procedures for the formation of a provisional legislature were adopted by the plenary session of the Preparatory Committee [PC] a few days ago. This serves to tell Patten once again: No matter how "firm" his stance against the provisional legislature, the legislative body, which will only function in the initial period of the Special Administrative Region [SAR] will be certainly set up late this year as scheduled.

Setting up a provisional legislature is the only way out left by the British side, and an inevitable result of the "through train" being undermined by Patten. It has taken over two years to go through the process comprising putting forward the plan to set up a provisional legislature, the decision taken by the PC to set up the legislature and the adoption of procedures for the formation of the legislature by the PC, so the setting up of the body has a sound legal basis, the plan has been adequately deliberated and carefully conceived, and prudent procedures have been worked out. We are convinced that the provisional legislature elected by the representative Selection Committee in accordance with relevant regulations laid down by the PC will be acceptable to the majority of the Hong Kong people.

In fact, we do not need to say anything more about the provisional legislature and it is okay to go ahead with the preparation for the setting up of the body as required by the PC, because the Chinese side has spoken many times about the reason for the provisional legislature, its legal basis, and its importance to guaranteeing the normal operation of the SAR. But Patten devoted a large part of his last policy address to playing down the provisional legislature, further misleading Hong Kong people, so it is necessary for us to take up our pen to clarify some facts.

Once the SAR is set up, there should be a legislature to enact laws which are indispensable for normal government operations, and to carry out other relevant tasks. All this must be undertaken by a provisional legislature. But Patten said such a body is wholly unnecessary, because "some of its alleged tasks have been, or are being, dealt with through other channels". He did not say clearly what the "channels" are, but everyone is clear he refers to the

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legislative council he favours. How Hong Kong laws will be enacted and amended after 30th June 1997 is entirely something within Chinese sovereignty and cannot be "dealt with" by the British Hong Kong Legislative Council. Patten's assertion that the provisional legislature is wholly unnecessary precisely reflects his consistent attempts to interfere in China's internal affairs.

The Chinese side has repeatedly said that the provisional legislature will only enact laws indispensable for the normal functioning of the SAR government in the initial period, and that these laws will not come into force before 1st July 1997. VicePremier Qian Qichen reiterated this a few days ago. So the setting up of the provisional legislature and its operation will in no way affect British rule, nor will it "affect social stability" as claimed by Patten. On the contrary, setting up a provisional legislature and allowing it to function before 1997 is aimed precisely at guaranteeing the normal operation of the SAR and social stability after 1997. If a provisional legislature was not set up, there would be a legislative vacuum. This is really something we do not expect.

It is not true there are no factors affecting Hong Kong's social stability. These factors come from the British pursuing an incorrect policy towards China, and a few Chinese who follow the incorrect policy. Several years ago, Patten persisted in carrying out his "three violations" constitutional reform package, provoked confrontation, and encouraged and supported anti-Chinese forces in creating trouble, so he is the source of factors affecting Hong Kong's social stability. Patten is continuing to provoke disputes, opposing the PC's decision and arrangements concerning the setting up of a provisional legislature, and interfering with the process of preparing the establishment of the SAR. If someone can be said to have "affected social stability", it is none other than Patten himself.

In his policy address, Patten said any laws that emerged from a provisional legislature would inevitably be vulnerable to subsequent legal challenge in the courts. He also said he will not help the provisional legislature withstand legal challenges. Does this not amount to encouraging some people to oppose laws enacted by the provisional legislature? Does this not aim to undermine Hong Kong's future social stability? The overwhelming majority of Hong Kong people, who have tempered themselves over the last few years, can certainly distinguish right from wrong and remove interferences.

The provisional legislature will be set up according to the Basic Law, the National People's Congress' resolutions on the formation of the first SAR government and the legislature, and the PC's decision on establishing a Hong Kong SAR provisional legislature. It will be a legislature for the SAR in the period from 1st July 1997 to 30th June 1998. The laws to be enacted by the body according to legal procedures and the decisions made by it on wending or abolishing laws are all legal and must be enforced resolutely. Any Hong Kong resident who hopes to aintain the rule of law and preserve long-term prosperity and stability will not challenge the laws enacted by the provisional legislature, but rather will discharge his duty to abide by the laws in force in the SAR as required by the Basic Law.

Patten is free to say he will have nothing to do with the provisional legislature, but he seems to have overestimated himself by asking the future chief executive not to cooperate with the provisional legislature. The Basic Law clearly states that the SAR government must abide by the law and be accountable to the legislative council of the region: It shall implement laws passed by the council and already in force; it shall present regular policy addresses to the

council; and so on. How can one imagine that the chief executive leading the SAR government will confront the legislature? We have every reason to believe that the first chief executive will cooperate fully with the provisional legislature and be accountable to the legislature. Patten's remarks have only served as a fresh public joke.

Source: 'Ta Kung Pao', Hong Kong, in Chinese 8 Oct 96 pA2

11 October 1996

US consul-general in Hong Kong discusses relations with China and Hong Kong policy

Text of report by Hong Kong newspaper 'Wen Wei Po'

On a visit to the 'Wen Wei Po' office yesterday [9th October], Richard Boucher, the newly appointed US consul-general in Hong Kong, expressed his views on Sino-US relations and Hong Kong's future.

He held that: Sino-US relations have developed fairly well over the past few months. In particular, after the just-concluded foreign ministerial meeting during the United Nations General Assembly, both sides understood the importance of seeking common ground and carrying out some concrete tasks. On the question of Hong Kong's future, Boucher said that recently China had handled certain Hong Kong issues quite well and made definite decisions on many important transitional issues. He indicated that although the United States holds different views on certain issues, he has a more optimistic view on Hong Kong than he did before arriving in the territory to take office.

Boucher pointed out: American businessmen have a considerable investment in mainland China, in which Hong Kong plays a very important role. If Hong Kong's prosperity and stability are maintained after 1997, it is believed that US capital will continue to be injected into Hong Kong and the mainland, and Hong Kong will also continue to be an international financial centre. He added that implementing the principle of "Hong Kong people ruling Hong Kong" is of paramount importance to Hong Kong's future. Hong Kong's current success is primarily due to the government's non-interference policy, and this has also been stated clearly in both the Sino-British Joint Declaration and the Basic Law.

In addition, Boucher also spoke on the World Bank conference to be held in Hong Kong in October next year, at which time bank heads from various countries and the elite of the international press will gather in Hong Kong. They are all looking forward to seeing Hong Kong three months after its return to China.

Accompanying the US consul-general was Norma Harris, deputy chief of the US Information Service in Hong Kong. Chang Yunfeng, president of 'Wen Wei Po' and other people in charge received the guests warmly and had a friendly conversation with them. Chang Yunfeng briefed the visitors on this newspaper's history and current development.

Source: 'Wen Wei Po', Hong Kong, in Chinese 10 Oct 96 pal

17 October 1996

Chinese official Lu Ping on Provisional Legislature, Human Rights Ordinance

Text of "Special Dispatch" entitled "Lu Ping calls on Hong Kong people to look realistically at Provisional Legislature", as published by Hong Kong newspaper 'Ming Pao'

In Beijing yesterday [14th October], Lu Ping, director of the State Council's Hong Kong and Macao Affairs Office, told visiting representatives of the Hong Kong Law Society frankly that the Chinese side also considered the issue of the Provisional Legislature [PL] a "very difficult one" and felt very sorry about it, but he called on Hong Kong people, as well as Hong Kong legal circles, to take a pragmatic approach to the issue of the PL.

Lu stressed that there was a practical need to set up the PL and that without it there would be a legal vacuum in Hong Kong and the first legislature could not be formed either. He also promised that the PL would not put on a rival show to that of the present Hong Kong Legislative Council.

He repeatedly called on Hong Kong people to try as far as possible to take a "realistic" approach to the issue of the PL.

Lu pointed out: The PL has three major tasks: first, to handle the nationality and elections issues; second, to work out the right of abode and entry regulations; and third, to solve the appointment of judges to the Court of Final Appeal.

After the Hong Kong Law Society's representatives told Lu Ping that Hong Kong people question the legal basis for setting up the PL, the latter reaffirmed that the PL is a "product" forced upon the Chinese side by the British side. Some years ago the Chinese side tried to discuss this issue with the British Hong Kong government through various channels but failed to reach an agreement. For this reason, the Chinese side also feels very sorry about the PL issue.

During the meeting the law society's representatives asked the Chinese side to shelve temporarily the proposal to resurrect the six ordinances amended or deleted after the Human Rights Ordinance came into force. The law society held that the situation has been fine since the ordinance took effect four years ago. For this reason, the society held that questions relating to the Human Rights Ordinance should be left to the first legislature or the special administrative region government to be referred to the courts for decision.

Lu responded, however, that the Human Rights Ordinance is a "very troublesome" issue. He said frankly that Hong Kong has absolutely no need for the Human Rights Ordinance because the Basic Law already contains the concepts laid down in the Human Rights Ordinance.

But he also conceded that the greatest problem about the Human Rights Ordinance lies in Articles 3 and 4, which give the ordinance a right transcending that of the Basic Law in explaining previous and future ordinances.

Source: 'Ming Pao', Hong Kong, in Chinese 15 Oct 96 pA 7

19 October 1996

Chinese spokesman on freedom of speech, the press in Hong Kong

Excerpt from report by the Chinese news agency Zhongguo Xinwen She

Beijing, 17th October: In answering a relevant question by reporters this afternoon, Shen Guofang spokesman for the Foreign Ministry, stressed: According to the Basic Law, Hong Kong people can enjoy full freedom of speech, freedom of press and freedom of publishing in Hong Kong after 1997. Of course, these freedoms should be within the scope of the law.

Shen Guofang noted: China's policy of practising one country, two systems and of Hong Kong ruled by Hong Kong people remained unchanged. With effect from 1st July 1997, all activities in Hong Kong must comply with the stipulations in the law.

This spokesman said: After 1997, the motherland will practise the socialist system, whereas Hong Kong will practise the capitalist system; this should be like "well water does not intrude into river water". Except for national defence and foreign affairs, the Chinese government will not interfere in any activities of the government of the Hong Kong Special Administrative Region. Of course, Hong Kong should not meddle in the affairs of the motherland either...

Source: Zhongguo Xinwen She news agency, Beijing, in Chinese 1412 gmt 17 Oct 96

Xinhua Hong Kong official on Chinese foreign minister's press freedoms comments

Text of report entitled "Zheng Guoxiong explains freedom of press", as published by Hong Kong newspaper 'Ta Kung Pao'

In view of the fact that some media have reported the views of Qian Qichen, vice-premier and foreign minister, on Hong Kong's press freedom after 1997, in answering reporters' questions on the issue yesterday (17th October), Zheng Guoxiong, deputy director of the Hong Kong branch of Xinhua news agency, stated. All journalists who have professional integrity and ethics must despise the conduct of spreading rumours and fabricating stories. At the same time, they must not favour acts of using the media to launch personal attacks on others. This and freedom of the press are two completely different things.

While attending a banquet commemorating the 70th anniversary of the founding of the New Territories' Heung Yee Kuk yesterday, Zheng Guoxiong pointed out: The Chinese government's guiding principle on solving the Hong Kong issue is very clear: Implementing

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"one country, two systems". In other words, the mainland pursues a socialist system, whereas Hong Kong pursues a capitalist system. After the reversion of Hong Kong to the motherland in 1997, under the leadership of the central government, the mainland and Hong Kong will implement two different systems. Their mutual relations will be characterized by mutual respect and mutual non-interference.

He stressed: "I believe that this fully conforms with the common interests and common aspirations of the people of the whole country, including Hong Kong compatriots. Those who wholeheartedly wish for the success of one country, two systems and the maintenance of Hong Kong's prosperity and stability do not favour the mainland's interference in affairs which should be handled by the Hong Kong Special Administrative Region [SAR] through the high degree of autonomy. They do not favour Hong Kong's interference in mainland affairs either, let alone actions taken by some people to oppose the central government. "

He added: In the future, all matters will be handled according to the relevant stipulations of the Basic Law. Through its own independent legislation, the SAR government will work out explicit stipulations on banning activities of splitting the motherland and subverting the central government. Therefore, everything should be handled according to law. In the future, laws will stipulate which activities are permitted and which are not.

Reporters asked: Did the media misinterpret Qian Qichen's remarks? Zheng Guoxiong said: "A conclusion can be drawn after making analysis and comparison. Through comparison, I believe that all of you will be clear about what Qian Qichen said, and the original meaning of his remarks as well. To me, journalists who have professional integrity and ethics will despise the conduct of spreading rumour and fabricating stories. In the meantime, we do not agree with using the media to launch personal attacks on others. This and freedom of the press are two completely different matters. I believe that it is not difficult for journalists who have professional integrity and ethics to distinguish right from wrong. "

Source: 'Ta Kung Pao', Hang Kong, in Chinese 18 Oct 96 pa2

1 November 1996

China detains two Democratic Party members at border

Text of report by Hong Kong radio

Chinese officials have reportedly detained two Democratic Party members at the Sha Tau Kok border crossing point. They are Urban Councillor Chan Kwok-leung and District Board member Andrew Tou [phonetic]. Rebecca Chan reports:

[Chan] The two men tried to cross into China with another Democratic Party member, Tsui Pak-tai [phonetic], and a member of the Association for Democracy and People's Livelihood, Eric Wong, who is also a district affairs adviser to China. They have planned to travel to Beijing to protest against the setting up of the Selection Committee. In a telephone interview with RTHK, Mr Wong said he and Mr Tsui were allowed to enter China. The other two were detained in a room at the crossing point. He said he was allowed to keep a banner.

The customs official confiscated a petition addressed to the Preparatory Committee and its chairman Qian Qichen. A Chinese customs officer at Sha Tau Kok said he knew nothing about such an incident.

Source: Hong Kong RTHK Radio Four in English 0500 gmt 31 Oct 96

4 November 1996

Chinese foreign minister's closing speech: stresses adherence to law

"Text" of speech by Qian Qichen, vice-premier of the Chinese State Council, foreign minister and chairman of the Preparatory Committee of the Hong Kong Special Administrative Region (HKSAR) at the closing session of the sixth plenary session of the Preparatory Committee on 2nd November 1996, as carried by Xinhua news agency

Beijing, 2nd November: Vice-chairmen and members of the Preparatory Committee: The results of the election of members of the Selection Committee of the first HKSAR government have just been announced, and the 400 members of the Selection Committee have all been elected. On behalf of the Preparatory Committee, I extend my heartfelt congratulations to all elected members of the Selection Committee.

The birth of the Selection Committee is important event in the process of establishing the HKSAR. We have likened the Selection Committee to the dragon head of the entire work of establishing the HKSAR. Within the next two months, the first chief executive of the HKSAR and members of the Provisional Legislative Council will be elected by the Selection Committee. The 400 Selection Committee members are shouldering a heavy historical responsibility. I hope they will successfully carry out the heavy responsibility entrusted on them by the state and measure up to the expectations of the six million people of Hong Kong, and will elect a first chief executive who will be able to implement unwaveringly the policy of one country, two systems, and who has a sense of responsibility in ensuring Hong Kong's stable transition and long-term stability and prosperity; and will elect a provisional legislative organ that will be able to play an important role in the initial stage of the establishment of the HKSAR. We completely believe that the Selection Committee will definitely be able to accomplish this heavy historical task.

Becoming a Selection Committee member is undoubtedly honourable. At the same time, we should realize that whether the Selection Committee can smoothly accomplish the task of establishing the HKSAR is inseparable from the support and participation of the vast numbers of the people of Hong Kong. Therefore, I also would like to thank people of all sectors of Hong Kong for their support for the Preparatory Committee. Many of those who enthusiastically enrolled themselves as candidates for the Selection Committee but did not fulfil their wishes have made good contributions to Hong Kong. These people, as candidates for the members of the Selection Committee, were unable to become members of the committee due to the limited number of seats of the committee; but their patriotism and love for Hong Kong and their spirit of participation are commendable.

As everyone knows, since Sino-British talks began in 1982, the Chinese government has always handled the Hong Kong issue following the principle of 'one country, two systems.'

Not long ago, when I was interviewed by a reporter of the 'Asian Wall Street Journal', I said that some activities conducted in Hong Kong after 1st July 1997 must be in line with the principle of one country, two systems, and the Basic Law. Reports about my remarks have drawn attention from some people who mistakenly think that I said something new. In fact, articles and provisions concerning this issue are fully and clearly stipulated in the Basic Law. Articles and provisions on the rights and freedom which Hong Kong residents will enjoy are all included in chapter three of the Basic Law. These rights and freedoms include the freedom of speech, press and publication; the freedom of association, assembling, parading and demonstration; the right to organize and participate in trade unions and to stage strikes, as well as the freedom of doing so; the freedom of faith; and the right that personal freedom must not be infringed upon. These rights and freedoms of Hong Kong residents of course will be protected according to the law. At the same time, Article 23 of Chapter Two of the Basic Law clearly stipulates: The HKSAR should enact laws on its own to prohibit any activities involving betraying or splitting the country, provoking insurrection, subverting the central people's government, and stealing state secrets; to prohibit foreign political organizations and groups from conducting political activities in the HKSAR; and to prohibit political organizations and groups of the HKSAR from establishing ties with foreign political organizations and groups. Are these articles and provisions of the Basic Law self-contradictory? Of course not. Only if we completely understand the Basic Law can we fully implement it. In other words, everything should be done according to the law. Everyone will enjoy the rights and freedoms guaranteed by the law and, at the same time, their behaviour should be kept within the bounds of the law. The law I mentioned here refers to the law of Hong Kong.

Freedom of the press of course should be protected by the law. I do not think that spreading rumours and personal attack are also a kind of freedom of the press. The law does not contain stipulations prohibiting spreading rumours and personal attack, neither does it contain stipulations protecting spreading rumours and personal attack. Besides, there are objective criteria for judging right and wrong; all trades and professions should be subject to generally-recognized professional ethics.

Chapter two of the Basic Law includes special and specific articles governing issues concerning relations between the central government and the HKSAR after China regains its sovereignty over Hong Kong. All departments of the central government, and all provinces, autonomous regions and municipalities will not interfere in Hong Kong's affairs, which are to be managed by Hong Kong itself. All people going to Hong Kong, including troops stationed there, should abide by Hong Kong's law. Similarly, Hong Kong people going to the mainland should abide by the law of the mainland. Neither side should use their own system and law as the criteria for measuring or imposing demands on the other side; in particular they should not interfere in the other side's internal affairs. This is what we mentioned before - well water and river water should leave each other alone.

China's regaining sovereignty over Hong Kong is a momentous event of washing out the hundred-yearlong humiliation of the entire Chinese nation. Our motherland's prosperity and being wealthy and strong, and Hong Kong's long-term stability and prosperity are the common wish of all Chinese people, including our Hong Kong compatriots. Looking into the future, we are full of confidence. I hope all members of the Preparatory Committee will keep working hard and make further contributions to the great cause of ushering in Hong Kong's return.

Source: Xinhua news agency, Beijing, in Chinese for Hong Kong 1714 gmt 2 Nov 96
6 November 1996

Chinese vice-premier discusses Hong Kong with British prime minister

Text of report by Xinhua news agency

London, 4th November: British Prime Minister John Major and visiting Chinese Vice-Premier Li Lanqing have promised that China and Britain would make joint efforts in a bid to ensure a smooth transfer of government in Hong Kong next year. During talks with Major at the Downing Street this afternoon, Li said that the Chinese and British governments have recently reached agreement on some specific issues on Hong Kong, paving the way for a smooth transition and transfer of government in Hong Kong.

However, with formal handover only some 200 days away, the Chinese government is making various preparations in an effort to achieve a smooth and successful handover, Li said. The Chinese Vice-Premier, who arrived here Friday [1st November] for a seven-day official visit to Britain, expressed the hope that Britain and China should make greater efforts and further bilateral cooperation to ensure a smooth transfer of government in Hong Kong, which is beneficial to both sides.

Major said that the British government would cooperate with the Chinese government on the issue of Hong Kong to achieve a smooth handover and maintain a long-standing prosperity and development of Hong Kong. The British Prime Minister promised that the British government and the Hong Kong government were determined to cooperate with the new chief executive of Hong Kong. On bilateral economic and trade cooperation, Li expressed satisfaction over the healthy development of Sino-British trade relations, saying that there was great potential to be developed in future bilateral trade cooperation.

Major said that he was pleased to see that more and more British businessmen would increase their investment in China and he hoped that Chinese businessmen would come to invest in Britain in the future.

Source: Xinhua news agency, Beijing, in English 2355 gmt 4 Nov 96

References⁴¹

Official Documents, 1996

Hong Kong: Transition. Address by the Governor to opening of 1996/97 Session of LegCo, 2 October 1996.

British Nationality (Hong Kong) Act 1990. Fifth annual report of the Governor of Hong Kong to the Home Secretary for 1995/96. HC 594 1995/96, 23 July 1996.

Annual Report on Hong Kong for 1995. Cm 3143, 20 March 1996.

House of Commons Library Papers on Hong Kong

30 October 1996

Hong Kong Economic and Trade Office Bill. Library Research Paper 96/96.

P Bowers,

International Affairs and Defence Section.

16 November 1995

Hong Kong (Overseas Public Servants) Bill. Library Research Paper 95/112.

P Bowers,

International Affairs and Defence Section.

26 April 1995

Hong Kong: The current issues. Library Research Paper 95/52.

P Bowers,

International Affairs and Defence Section

10 March 1994

Hong Kong & democracy. Research Paper 94/44.

P Bowers,

International Affairs and Defence Section

2 April 1993

Hong Kong: Derailment or Diversion? Library Research Paper 93/47.

P Bowers,

International Affairs and Defence Section.

⁴¹ Prepared with the kind assistance of Christine Fretten.

12 December 1991
Hong Kong. Library Research Note 91/65.
P Bowers,
International Affairs and Defence Section.

25 July 1991
Hong Kong. Library Research Note 91/43.
A Regan,
International Affairs and Defence Section.

27 April 1990
Hong Kong between Britain & China. 2nd revised edition. Library Research Note 90/22.
(Supplements & updates Background Paper 228).
S Young,
International Affairs and Defence Section.

18 April 1990
The British citizenship scheme for Hong Kong. Library Background Paper 247. (Supersedes
Research Note 458 & provides background to British Nationality [Hong Kong] Bill 1989/90).
J Fiddick,
Home Affairs Section.

18 December 1989
Vietnamese boat people in Hong Kong. (Revised edition). Research Note 487.
S Young,
International Affairs and Defence Section.

13 July 1988
Hong Kong 1988. Library Research Note 409.
International Affairs Section.

15 January 1985
Hong Kong Bill. Library Research Note 205 (Addendum to Research Note 205: The Future
of Hong Kong).
International Affairs Section.

3 December 1984
The Future of Hong Kong, Library Research Note 205 (Replaces No 161).
International Affairs Section.

Primary Legislation on Hong Kong since 1979

Hong Kong (War Wives and Widows) Act 1996. Royal Assent 18 July 1996.
CAP 41 1996.

Hong Hong (Overseas Public Servants) Act 1996. Royal Assent 29 February 1996.
CAP 2 1996.

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British Nationality (Hong Kong) Act 1990. Royal Assent 26 July 1990.
CAP 34 1990.

Hong Kong Act 1985. Royal Assent 4 April 1985.
CAP 15 1985.

Select Committee Reports on Hong Kong 1992 to date

13 March 1996

Foreign Affairs Select Committee
Hong Kong, Taiwan and SE Asia.
Minutes of evidence.
HC 298-i 1995/96

23 March 1994

Foreign Affairs Select Committee
Relations between the UK and China up to and beyond 1997.
Foreign Affairs Select Committee first report in 2 volumes with proceedings, evidence (previously HC 37i-vii 1993/94 and HC 842i and ii 1992/93) and appendices.
HC 37 1993/94

12 March 1992

Trade and Industry Select Committee
Trade with Hong Kong, China & Taiwan.
Trade & Industry Select Committee third special report with proceedings, evidence (HC 231 i-iii not printed separately) & memoranda.
HC 231 1991/92

11 July 1990

Foreign Affairs Select Committee
Hong Kong.
Minutes of evidence.
HC 551-i 1989/90

13 December 1989

Foreign Affairs Select Committee
Winter Supplementary Estimates 1989-1990. Hong Kong. Vietnamese boat people. Minutes of evidence (Reprinted in HC 233, FCO/ODA Expenditure 1990/91).
HC 58-ii 1989/90

28 June 1989

Foreign Affairs Select Committee
Hong Kong.
Foreign Affairs Select Committee second report in 2 vols with proceedings, evidence & appendices, (evidence previously HC 281 i-xiii).
HC 281 1988/89

11 July 1985

Trade and Industry Select Committee

Trade with China.

Trade & Industry Select Committee third report with proceedings, evidence (previously HC 335 i-vi), & appendices. Vol 1: Report & proceedings.

HC 509 1984/85

16 April 1985

Home Affairs Select Committee

Refugees & asylum with special reference to the Vietnamese

Home Affairs Select Committee third report with proceedings, evidence (previously HC 72 i-v) & appendices (in 2 vols) (Vol I - report & proceedings; Vol II - evidence & appendices).

HC 72 I-II 1984/85

17 January 1985

Home Affairs Select Committee

Chinese community in Britain.

Home Affairs Select Committee second report with proceedings, evidence (previously HC 371 1982/83 & HC 279 1983/84) & appendices. In 3 volumes (Part 1 of 8).

HC 102 I-III 1984/85

30 March 1983

Defence Select Committee

British Forces Hong Kong.

Defence select committee second report with proceedings & part of evidence taken February 1983.

HC 176 1982/83

Selected Debates and Statements in the House of Commons

31 October 1996

Hong Kong Economic and Trade Office Bill. Second reading debate. Agreed to on question. Money resolution, committee stage, report stage and third reading (all formal). Passed.

284 c795-801

12 July 1996

Hong Kong (War Wives and Widows) (No 2) Bill (HL). Second reading and remaining stages (all formal). Passed.

281 c757

23 November 1995

Hong Kong (Overseas Public Servants) Bill. Second reading debate. Agreed to on question. Committed to a Standing Committee. Money resolution (formal).

267 c849-65

27 April 1995

Debate on a motion for the adjournment on developments in China and Hong Kong.

258 c993-1076

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6 December 1993

Statement on Hong Kong.
234 c19-31

18 October 1993

Adjournment debate on Vietnamese boat people.
230 c122-8

9 July 1993

Adjournment debate on ethnic minorities in Hong Kong.
228 c645-50

15 March 1993

Statement on Hong Kong. (Includes fact that Governor published draft electoral legislation proposals on 12 March - copy in Library as DEP 8975).
221 c21-33

19 April 1990

British Nationality (Hong Kong) Bill. Second reading debate. Agreed to on division (313 to 216). Motion that Bill be committed to a Committee of the Whole House negated on division (213 to 328). Bill committed to Standing Committee. Debate on a money resolution. Agreed to on question. (Correction to second reading division list at 171 c118)
170 c1566-644, 171 c118 (corrigendum);170 c1564-656

16 February 1990

Statement on constitutional developments in Hong Kong.
167 c579-89

20 December 1989

Statement on proposals to improve confidence in Hong Kong (includes announcement that full British citizenship will be granted to up to 50, 000 households).
164 c363-76

12 December 1989

Statement on the repatriation of Vietnamese boat people from Hong Kong.
163 c857-67

13 July 1989

Debate on a motion for the adjournment on China & Hong Kong
156 c1163-231

5 July 1989

Statement on Hong Kong following visit from 2 to 4 July.
156 c309-22

6 June 1989

Statement on violent suppression of peaceful student protests in Peking, China during May-June 1989.
154 c30-46

20 January 1988

Debate on a motion to take note of the White Paper on the Annual Report on Hong Kong (Cm 293)

125 c971-1018,1061

13 May 1986

Draft Hong Kong (British Nationality) Order 1986. Debate on a motion to approve. Agreed to on division (295 to 119).

97 c655-78

21 January 1985

Hong Kong Bill. Second reading debate. Agreed to on question & committed to a Committee of the Whole House.

71 c733-814

5 December 1984

Debate on a motion to approve the agreement with China on the future of Hong Kong (Cmnd 9352)

69 c389-472

25 October 1984

Statement on developments during the recess in the negotiations between the British & Chinese governments on the future of Hong Kong.

65 c819-28

Selected Debates in House of Lords

24 April 1996

Lords debate on motion to call attention to the situation in Hong Kong. Motion withdrawn.

571 c1190-227

18 May 1994

Lords debate on motion calling attention to matters affecting Hong Kong.

555 c247-318

24 January 1990

Lords debate on a motion to call attention to situation in Hong Kong.

514 c1102-38

21 June 1989

Lords debate on motion to call attention to problems facing Hong Kong & responsibilities of Govt in this matter.

509 c223-61

20 January 1986

Lords debate on a motion on the Hong Kong Act 1985: nationality provision.

470 c71-105

Research Paper 96/104

10 December 1984

Lords debate on a motion to approve the agreement with China on the future of Hong Kong (cmd 9352 and 9407).

458 c10-21,27-87

Recent Research Papers on related subjects include:

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