



Six-monthly Report on Hong Kong

January-June 2005

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
July 2005*

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FOREWORD

This is the seventeenth in a series of reports to Parliament on the implementation of the Sino-British Joint Declaration on the Question of Hong Kong. It covers the period from 1 January to 30 June 2005.

This was an important and eventful period for Hong Kong during which Donald Tsang, the former Chief Secretary, was elected Chief Executive following the resignation of C H Tung. Mr Tung played an historic role as the first Chief Executive of the Hong Kong SAR Government. We enjoyed close and productive working relations with his administration in taking forward our commitments under the Sino-British Joint Declaration. I wish him the best for the future.

C H Tung's resignation sparked a debate in Hong Kong on the length of term of the new Chief Executive - whether it should be for five years or the remainder of Mr Tung's term. We have covered in detail the events that led to the Standing Committee of the National People's Congress (NPC) Interpretation of the Basic Law which concluded that the new Chief Executive should serve out the remainder of the existing term. There were diverging views in Hong Kong on this issue. We appreciate that the power to interpret the Basic Law is vested in the Standing Committee of the NPC. However, this power to interpret the Basic Law needs to be balanced with demonstrating Hong Kong's judicial independence and high degree of autonomy.

Donald Tsang has a distinguished record in serving the people of Hong Kong over a long period and we are confident that he will continue to do so in his new post as Chief Executive. I look forward to working closely with him and his administration. We have no doubt that the relationship between Hong Kong and the UK will continue to flourish and develop.

We welcome the new Chief Executive's intention to introduce a programme of reform to make the Hong Kong government "more accessible, transparent and accountable" to its citizens, and to move steadily and purposefully towards "the ultimate objective of universal suffrage".

Underlining our close relations one of the first overseas visits by my colleague Ian Pearson, the new Minister for Trade and Foreign Affairs, was to Hong Kong at the beginning of July. He had very productive and useful discussions with the new Chief Executive and senior government officials, members of the Legislative Council and business leaders on a wide range of issues. The visit highlighted the depth and breadth of our bilateral engagement and our firm commitment to Hong Kong's continued stability and prosperity.

Looking to the future it is apt that Hong Kong, one of the greatest trading cities in the world and a staunch supporter of free trade, is hosting the WTO Ministerial meeting in December. I wish to thank the Hong Kong Government for all that it is doing to ensure the success of this very important meeting.

Our strong commitment to Hong Kong reflects not only our historic responsibilities but also our forward-looking relationship with an important partner in the region. We will continue to watch developments closely.

A handwritten signature in black ink, appearing to read "Jack Straw". The signature is fluid and cursive, with a large initial "J" and "S".

Jack Straw
Secretary of State
for Foreign and Commonwealth Affairs

SIX MONTHLY REPORT ON THE IMPLEMENTATION OF THE JOINT DECLARATION ON HONG KONG

INTRODUCTION

1. This series of six-monthly reports reflects the British Government's continuing interest in developments in Hong Kong and our commitment to the faithful implementation of the Sino-British Joint Declaration on Hong Kong. In this, the Chinese Government undertook that the Hong Kong Special Administrative Region (SAR) would enjoy a high degree of autonomy except in foreign and defence affairs, and that the continuation of Hong Kong's social and economic systems, lifestyles, rights and freedoms would be guaranteed. As a party to this international treaty the British Government continues issuing these reports to Parliament, which assess the success of those arrangements.

CONSTITUTIONAL DEVELOPMENT

2. In our recent reports we have commented in detail on Hong Kong's constitutional development and the Hong Kong SAR Government's progress towards the Basic Law's ultimate objective of elections by universal suffrage for the Legislative Council and the Chief Executive.
3. The Hong Kong SAR Government established a Task Force on Constitutional Development in January 2004 to consult the people of Hong Kong on reforms to the methods for electing the Chief Executive in 2007 and the Legislative Council in 2008.
4. In the January to June 2004 six-monthly Report we expressed our concern that the Decision of the Standing Committee of the National People's Congress (NPC) on 26 April, setting limits on the pace of constitutional developments in Hong Kong and ruling out the possibility of elections by universal suffrage in 2007 and 2008, seemed to us to erode the high degree of autonomy promised to Hong Kong in the Joint Declaration.
5. In his annual Policy Address, "Working Together for Economic Development and Social Harmony", to the Legislative Council on 12 January, the Chief Executive of the Hong Kong SAR Government, C H Tung, stated that, "**as long as we can maintain prosperity, stability and social harmony, our democratic constitutional system can develop at a faster pace. The ultimate aim of universal suffrage as set out in the Basic Law can be achieved at an early date.**"
6. The fifth and final report of the Task Force on Constitutional Development was due to issue in Spring 2005. However, following the resignation of the Chief Executive in March the publication of the report has been delayed, we understand, until Autumn 2005.

7. **The British Government will continue to follow this issue closely and looks forward to seeing the Task Force's proposals. We favour early progress towards the Basic Law's ultimate aim of universal suffrage. The British Government hopes that the Hong Kong SAR Government will take full account of the wishes of the people of Hong Kong.**

HONG KONG SAR GOVERNMENT

8. On 28 February, the Hong Kong SAR Chief Executive, C H Tung, was appointed as a delegate to the Chinese People's Political Consultative Committee (CPPCC). On 1 March the Financial Times published an article quoting a source in Beijing saying that C H Tung would resign as Chief Executive following his election as Vice-Chairman of the CPPCC at the third plenary meeting of the 10th National Committee in Beijing starting on 3 March. Media speculation quickly gathered momentum. The absence of denials by both the Central and Hong Kong Governments, seen by many commentators as unprecedented, further fuelled the speculation.
9. **On 10 March Mr Tung announced at a press conference that he had tendered his resignation as Chief Executive to the Central Government.** Mr Tung said that he was resigning on health grounds and that he had not been asked to resign by the Central Government.
10. On 12 March Mr Tung was elected a Vice-Chairman of the CPPCC. On the same day Premier Wen Jiabao announced at a meeting of the State Council that the Central People's Government had approved C H Tung's resignation as Chief Executive of Hong Kong. Premier Wen praised Mr Tung's performance during his term of office noting that "he had done a great deal of work implementing the principles of 'One Country, Two Systems'". Premier Wen said that the Central People's Government would "continue to firmly support **Hong Kong's high degree of autonomy** and fully support the Chief Executive and SAR Government to govern in accordance with the Basic Law and to promote the stability, prosperity and development of the SAR".
11. In accordance with the rules for succession set out in the Basic Law the Chief Secretary, Donald Tsang, temporarily assumed the duties of the Chief Executive. According to the Basic Law a new Chief Executive must be elected within six months.
12. At a press conference on 12 March Donald Tsang said that the most important task was to make arrangements for the election of a new Chief Executive. In accordance with the Chief Executive Election Ordinance, the election for Chief Executive would be conducted on 10 July. The existing 800 member Election Committee, which was elected for a five year term in 2000, would elect the new Chief Executive. **Mr Tsang announced that the new Chief Executive would serve two years to complete Mr Tung's term of office. He recognised that**

the issue of the term of the new Chief Executive had aroused considerable debate and controversy in Hong Kong.

13. The SAR Government's original position on the length of term of the Chief Executive was articulated in May 2004 when the Constitutional Affairs Secretary Stephen Lam, based on advice from the Secretary for Justice, told the Legislative Council that **"if a vacancy arises prematurely the Basic Law is clear that a new Chief Executive should be elected for a term of five years"**.
14. However, in a statement on 12 March the Secretary for Justice, Elsie Leung, said that she had revisited her original interpretation following discussions with mainland legal experts and drafters of the Basic Law. She concluded that the intention of the Basic Law was that the replacement Chief Executive should serve out the remainder of his predecessor's term of office because:
 - The mandate of the current Chief Executive Election Committee is to elect only the second term Chief Executive;
 - The April 2004 National People's Congress Standing Committee Decision states that an election will be held in 2007 to elect the third term Chief Executive; and,
 - The Chinese Constitution sets out similar practices for the succession of the leadership.
15. Elsie Leung said **"it was unfortunate that this issue was not adequately explored in the past.** Given that the issue concerns appointments to be made by the Central People's Government, the Hong Kong SAR Government should have considered the manner in which the central authorities view an appointment to fill an unexpected vacancy." The Secretary for Justice also said the Government would consider introducing a Bill into the Legislative Council as soon as practicable to amend the Chief Executive Election Ordinance.
16. On 14 March 24 pro-democracy legislators issued a statement accusing the Government of blatantly disregarding the rule of law and undermining "One Country, Two Systems" by deciding on a two-year term for the new Chief Executive. The statement said that the Basic Law clearly stated that a Chief Executive should serve for five years. The legislators argued that the only way to alter the law to allow the new Chief Executive to serve out only the remainder of the existing term was to amend the Basic Law. The group also said that they would oppose the Government's proposal to amend the Chief Executive Election Ordinance.
17. Speaking at a press conference at the end of the National People's Congress plenary session in Beijing on 14 March Premier Wen Jiabao said "the election of the new Chief Executive will proceed in strict accordance with the Basic Law and other laws in Hong Kong. **I believe people in Hong Kong are fully**

capable of running Hong Kong well. The Central Government is steadfast on the principle of ‘One Country, Two Systems’, and Hong Kong people administering Hong Kong and its high degree of autonomy”.

18. Many lawyers in Hong Kong disagreed with the Secretary for Justice’s interpretation and believed that the Basic Law clearly provided for a five-year term. A statement issued by the Hong Kong Bar Association on 17 March expressed disappointment that the Secretary for Justice’s statement on 12 March had acknowledged for the first time a preference for the mainland interpretative approach to the Basic Law.
19. In a statement issued on 18 March the Law Society of Hong Kong said that “the law is clear on this point. The Secretary for Justice has given undue weight to the views of mainland legal experts in framing her advice.” The Law Society considered that the proposal to amend the Election Ordinance to give effect to the views of the mainland did not settle the matter. The Society said that the amended Ordinance would be open to court challenge, on the grounds that it is inconsistent with Article 46 of the Basic Law. (Article 46 states: The term of office of the Chief Executive of the Hong Kong Special Administrative Region shall be five years. He or she may serve for not more than two consecutive terms.).
20. However the Basic Law Institute, a pro-Beijing non-governmental organisation, took the view that the role of the Central People's Government was to decide how long the Chief Executive should serve in accordance with the Basic Law.
21. In a radio interview on 20 March the Secretary for Justice, Elsie Leung, said the Government had not damaged the rule of law by adopting the mainland view and allowing the next Chief Executive to serve for two years instead of five. She said, “The position the government took in the past and the one it takes now were both based on respect for the rule of law and on the information then available to us. In the current situation, new arguments have recently emerged based in part on the early drafts of the Basic Law and documents that throw light on the discussions during the drafting process and recollection of those who took part in the drafting. Having considered those new arguments and information **I consider that our earlier position was incorrect. We must therefore admit our mistake.**”
22. The Chief Executive Election (Amendment) (Term Office of the Chief Executive) Bill was submitted to the Legislative Council for second reading on 6 April. The Bill amended the election ordinance to make clear that if the office of Chief Executive becomes vacant mid-term, the successor will serve out the remainder of the term, rather than serve a new five-year term.
23. Albert Chan, an independent legislator, announced on 6 April that he would submit an **application for judicial review to challenge the Government’s proposed amendment to the Chief Executive Election Bill**. This followed the application for another judicial review of the Government’s proposed

amendment submitted on 4 April by the President of the Grassroots Democratic Society, Carl Ching. A spokesman for the Acting Chief Executive said that the **Government respected people's rights to seek judicial review and that the Government would deal with the issue in accordance with legal procedures.**

24. Acting Chief Executive, Donald Tsang, announced to the Legislative Council on 6 April that the SAR Government had decided to submit a Report to the State Council of the Central People's Government. The Report would propose that the State Council make a request to the Standing Committee of the NPC to **interpret Article 53 of the Basic Law** concerning the term of office of the new Chief Executive. In his statement to the Legislative Council Mr Tsang said, "**a definitive interpretation of the Basic Law is the only way to ensure that elections for the new Chief Executive could take place within the timeframe set out by the Basic Law.**" Commenting on the judicial reviews that had been submitted to the courts, Mr Tsang said "if the interpretation by the Standing Committee of the NPC was sought through the judicial process, it is quite possible that we would not be able to elect a new Chief Executive in time on 10 July."
25. Mr Tsang explained that he would have preferred not to have had to seek an interpretation of the Basic Law: "I understand that although interpretation is a constitutional arrangement provided for in the Basic Law, many in the community still hope to avoid as far as possible seeking an interpretation to settle the matter. In the past seven years, we have had two interpretations. I fully understand the impact of interpretation on our residents and the community. **If only there were an option which could obviate the need to seek an interpretation and which could resolve the problem, I would have gladly adopted it. However, as I have said, we have yet to come across such an option to date.**"
26. Premier Wen Jiabao, speaking in India on 10 April, said, "after serious study, the State Council believes that asking the NPC Standing Committee to interpret certain provisions in the Basic Law is absolutely essential" and "an early interpretation is conducive to the election of the Chief Executive as well as the stability and prosperity of Hong Kong". On the same day a SAR Government spokesman welcomed the decision to interpret the Basic Law emphasising that "this would not damage 'One Country, Two Systems', 'Hong Kong people ruling Hong Kong' and 'a high degree of autonomy' and nor would it damage the rule of law on which Hong Kong's success is based".
27. On 12 April the National People's Congress Standing Committee's Deputy General Secretary, Qiao Xiaoyang, met 82 representatives from Hong Kong's legal sector, including the pro-democracy Article 45 Concern Group legislators, in Shenzhen to exchange views on the term of office of the new Chief Executive. Speaking at the beginning of the seminar Mr Qiao said "**the seminar was not meant to be a show or a window-dressing tactic, but to discuss the Basic Law in the hope of enhancing communication between**

the two sides and to resolve the conflict.” The Article 45 Concern Group submitted a letter to Mr Qiao urging the NPC Standing Committee to exercise restraint in using its power of interpretation and to establish a standing mechanism to examine the possible problems arising in the course of the implementation of the Basic Law.

28. A second round of talks were held in Shenzhen on 21 April with more than 200 representatives from various sectors in Hong Kong participating, including seven pro-democracy legislators. This was the largest group of democrats to visit the mainland since 1989 and included democrats who had previously been barred from visiting the mainland. Democratic Party Legislator, Fred Li, was given a 10-year home return permit to allow him to take part in the meeting. Democratic Party executive committee member Law Chi-Kwong was granted a single entry permit and independent Legislator Lau Chin-shek was also granted a ten-year home return permit. **We hope that those Legislators who have not been permitted to visit mainland China since 1989 will now be allowed to do so.**
29. On 13 April High Court Judge, Mr Justice Hartman, granted leave for Albert Chan's application for a judicial review to be heard on 10 and 11 May. Mr Hartman also indicated he was aware that an NPC Standing Committee interpretation in advance of the hearing **would constrain the courts in Hong Kong.**
30. An estimated 800 lawyers and supporters staged a silent protest march on 19 April to demonstrate their opposition to the government's decision to seek an interpretation of the Basic Law. A second protest march on 24 April, organised by the Civil Human Rights Front, attracted approximately 1500 people.
31. On 27 April the National People's Congress Standing Committee issued an Interpretation of Hong Kong's Basic Law. **The Interpretation stated that the term of office of Hong Kong's next Chief Executive should be two years.** The legal reasoning for the decision was based on the content of the April 2004 NPC Standing Committee "Decision" which stated that the third Chief Executive would be elected in 2007, and that the new Chief Executive elected to fill the vacancy left by the second Chief Executive should therefore only serve out the remainder of his predecessor's term of office, not a full five years. The Interpretation ruled only on the pre-2007 situation. In an explanation of the interpretation, the NPC Legislative Affairs Committee said that it expected that the tenure of a new Chief Executive returned in a mid-term election post-2007 would be decided under amended provisions on the method for selecting Chief Executives.
32. This was the third NPC Standing Committee interpretation of the Basic Law since the handover in 1997. **We recognise that the SAR Government did not seek lightly an interpretation of the Basic Law and was alive to the sensitivities of taking such a course. We consider that, in the best interests of Hong Kong's good governance, it is essential that any electoral process**

in Hong Kong should have a sound legal basis and that any uncertainties on legal points are clarified. It is also important for Hong Kong's stability and prosperity that constitutional processes are able to function properly, and according to the provisions of the Basic Law. We appreciate that power to interpret the Basic Law is vested in the Standing Committee of the NPC. However, given the importance of demonstrating Hong Kong's judicial independence and high degree of autonomy we consider that it would have been preferable for a referral to the NPC to have been the outcome of due process in the Hong Kong courts.

33. An SAR Government spokesman issued a statement welcoming the Interpretation which he said was necessary for effective governance in Hong Kong and had effectively settled the debate on the issue, removing uncertainties and ensuring the timely election of a new Chief Executive.
34. On 27 April the Article 45 Concern Group issued a statement: "That the NPCSC's interpretation is predictable does not make it any less regrettable. We share the profound disappointment of those who had hoped that the Hong Kong judicial process would be left to follow its natural course without being effectively pre-empted by an NPCSC Interpretation and that clear legal provision and legal reasoning would prevail over short term political expediency."
35. On 30 April Legislator Albert Chan **withdrew his application for a judicial review** on the tenure of the next Chief Executive. (The courts dismissed the judicial review submitted by Carl Ching on 20 April). Mr Chan said, "Although I think the ruling is not appropriate, there's no legal procedure which can overturn the Standing Committee's interpretation. That's why to continue dragging on the debate on a two or five-year term would not yield any result"
36. By-elections for the vacancies in the 800-member Election Committee were held on 1 May. The Hong Kong Electoral Affairs Commission announced that a total of 39 polling stations across Hong Kong had been opened for the 47, 000 registered voters to cast their ballots. Forty candidates contested 15 seats in nine Election Committee subsectors. There was a 15 percent turnout in the by-elections. (This compares to a 19% turnout for Election Committee by-elections in 2002.)
37. On 25 May, the Legislative Council passed the Chief Executive Election (Amendment) (Term Office of the Chief Executive) Bill (see paragraph 22). The final vote was 33 to 21, with one member abstaining. **The Secretary for Constitutional Affairs, Stephen Lam, said the amendment would make sure that a new Chief Executive could be returned lawfully and on time.** Mr Lam also said "This bill has clarified, put beyond doubt, that the new Chief Executive to be elected to fill the vacancy will serve the remainder of the term. There are other issues which we need to explore and which we need to deal with - for example whether a new Chief Executive elected could serve up to

seven years or 12 years. This is a matter which we need to explore in the months ahead, but it is not one which requires immediate resolution.”

38. On 25 May, immediately after the Legislative Council had passed the amended Chief Executive Election Bill, Donald Tsang, the acting Chief Executive and Chief Secretary, announced he had submitted his **resignation from the SAR Government to the State Council of the People’s Republic of China in order to run for the post of Chief Executive.**
39. Two Legislators had already announced their intention to stand for election as Chief Executive: Lee Wing-tat, Chairman of the Democratic Party, and Chim Pui-chung, an independent Legislator who represents the Financial Services Functional Constituency in the Legislative Council. Mr Lee said he was running for Chief Executive because “Many people want to have a say but feel the election has nothing to do with them because it is a small circle event. The Democratic Party will widen the small circle and give them room to speak out.” Mr Chim said he had decided to stand to prevent the next Chief Executive being selected unopposed.
40. The State Council of the People’s Republic of China formally approved Donald Tsang’s resignation on 2 June. In accordance with the Basic Law Henry Tang, the Financial Secretary, became Acting Chief Executive, and Michael Suen, Secretary for Housing, Planning and Lands, was appointed the Acting Chief Secretary.
41. Mr Tsang held a briefing session for the media on 2 June. Describing it as “the most important decision I have made in my life”, Mr Tsang said he would only be able to meet the challenge of the post if he could secure both the confidence of Beijing and the support and understanding of the entire Hong Kong community. Mr Tsang pledged to earn the trust of the Beijing government by faithfully implementing “One Country, Two Systems”, and adhering strictly to the Basic Law. **He also pledged to introduce a programme of reform to make the Hong Kong government “more accessible, transparent and accountable” to its citizens, and to move towards “the ultimate objective of universal suffrage”.**
42. The first round of the election for Chief Executive opened on 3 June. Between 3 and 16 June candidates in the election needed to gain the support of more than one hundred members of the Chief Executive Election Committee to run in the election on 10 July. Members of the Committee can only nominate one candidate. Nominations are public.
43. On 3 June, in his address to members of the Election Committee, Mr Tsang said that, if he was elected, he would build a **strong and efficient Government and build harmony and mutual respect in the community.** Mr Tsang promised to restore a strong executive-led government and said that in past years there has been too much attention focused on political conflicts, which has bogged down the administration's decision-making and policy implementation. To

strengthen government, he proposed to expand the roles of the Financial Secretary and the Chief Secretary, to restructure the Executive Council by opening up additional positions to legislators, political parties and community leaders, and to expand the public membership of a high-level advisory body on the territory's development. Mr Tsang also promised to help the unemployed through upgrading the skills of the jobless and by promoting the tourism and retail industries to create more jobs.

44. The nomination period for the Chief Executive Election closed on 16 June. The Returning Officer for the Chief Executive Election, Justice Carlyle Chu announced that, as Donald Tsang was the only candidate to secure the support of more than one hundred members of the Election Committee, he automatically became the Chief Executive-designate.
45. Mr Tsang secured nominations from 710 members of the Election Committee. His nearest rival, Chairman of the Democratic Party Lee Wing-tat received 51 nominations; and Chim Pui-chung, Legislator for the Financial Services Functional Constituency was promised 20. Mr Lee said that the "Democrats would work with the government under the principle of reinforcing communication, active participation and monitoring, and pushing democracy forward".
46. The State Council of the Central People's Government held a special meeting on 21 June to appoint Donald Tsang as Hong Kong's new Chief Executive. Premier Wen Jiabao signed the appointment decree at the plenary meeting. Mr Tsang assumed office of Chief Executive on 21 June. President Hu Jintao congratulated Mr Tsang after he had taken the oath office at the Great Hall of the People in Beijing on 24 June. President Hu said "**We will continue to unswervingly implement the basic policy of "One Country, Two Systems" and of letting Hong Kong people govern Hong Kong with a high degree of autonomy**". Mr Tsang pledged that he would work "whole-heartedly with Hong Kong people to face various challenges and overcome various difficulties to promote the prosperity and stability of Hong Kong and implement "One Country, Two systems" and "Hong Kong people governing Hong Kong."
47. At his first press conference as Chief Executive on 25 June Mr Tsang said that he saw the next two years as a **partnership project between himself and all the people of Hong Kong**. His action plan would focus on better governance, greater social harmony and stronger economic performance. Within the community he aimed to act quickly to restore Hong Kong people's spirit and confidence and to rebuild the trust between the government and the people. He also said that he intended to restructure the Executive Council and draw from the pool of talent from different sectors of the community.
48. On 30 June, the State Council in Beijing approved the appointment of Mr Rafael Hui as Chief Secretary. The Chief Executive said that Mr Hui has served in many posts of the administration during his 30 years in the civil service and is very familiar with government.

“ONE COUNTRY, TWO SYSTEMS”

49. In our last report we commented on the arrest by the Hong Kong police of **two mainland Public Security officers** for suspected loitering and possession of an offensive weapon. On 16 January the Security Bureau announced that following a seven-month investigation into the case there was insufficient evidence to prosecute. The Bureau said that the Department of Justice made the decision after careful consideration of all relevant information.
50. An estimated 15,000 people attended a candlelit vigil at Victoria Park on 21 January to **mourn the death of former Communist Party General Secretary Zhao Ziyang**. Szeto Wah, Chairman of the Hong Kong Alliance in Support of the Patriotic Democratic Movements in China which organised the candlelight vigil, said the turnout was testimony to the public’s respect for Mr Zhao and how invaluable freedom was since the city was the only place in China where people could openly mourn the former leader. He criticised the Hong Kong and Macao Office's Deputy Director Chen Zuo'er's remarks that it would contravene the Basic Law for the Legislative Council to mourn the former leader. Leader of the Frontier Party, Emily Lau, criticised Rita Fan, the President of the Legislative Council, over her decision not to allow pro-democracy members to observe a minute of silence over the death of the former premier. Ms Lau said “ Many people in Hong Kong have not forgotten that Mr Zhao signed the 1984 Sino-British Joint Declaration on the future of Hong Kong with the then British Prime Minister, Mrs Margaret Thatcher. The accord paved the way for Hong Kong’s reunification with China. Given that background, how can anyone say Mr Zhao's contribution to Hong Kong was insignificant? “
51. In our last report we commented on the **arrest of Alex Ho**, in Dongguan (Guandong Province), on 13 August for allegedly hiring a prostitute. Mr Ho, a District Councillor and prospective Democratic Party candidate in last September’s Legislative Council election was given a six-month custodial sentence without a trial which many commentators thought an unusually harsh sentence and which Amnesty International described as “unacceptable” Mr Ho, who continues to deny the charges, was released on 28 January and later resigned from the Democratic Party. He said, “my failure to handle the incident properly, has led to a great embarrassment and inconvenience to my colleagues”. Mr Ho has retained his seat as District Councillor for Kwun Tong District after narrowly winning a vote to expel him shortly before his release in Dongguan.
52. On 6 February the papers reported that the Central Government Liaison Office in Hong Kong had invited 10 pro-democracy legislators to attend its spring reception to be held on 22 February. Included in the group were the four legislators from the Article 45 Concern Group, and Sin Chung-kai and Fred Li of the Democratic Party. It was also reported that the Chairman and the two vice-Chairman of the Democratic Party were not included in the guest list.

53. Two District Councillors, who are members of the Democratic Party, have been given one-off home return permits to visit the Mainland. Both men, who are Deputy Chairmen in their Councils, had previously had their permits confiscated. Chan Ka-wai (Kowloon City District) and Tze Wing-ling (Wan Chai District) took part in a Hong Kong District Councillors' visit to Beijing, at the invitation of the Mainland authorities, from 13 to 17 May.

BASIC RIGHTS AND FREEDOMS

54. We have previously commented on the SAR Government's failure to meet its obligations under the **International Covenant on the Elimination of Racial Discrimination (ICERD)**. The SAR Government has committed to implement legislation prohibiting discrimination on the grounds of race in order to comply with Hong Kong's obligation under the International Covenant on the Elimination of Racial Discrimination. Public consultation on the proposed legislation ended on 8 February. The SAR Government intends to submit a draft bill before the end of 2005. **The British Government hopes that the views of all the community in Hong Kong will be taken into consideration and that legislation, which fully meets Hong Kong's obligations under the ICERD, will be implemented this year.**
55. We recorded in our last report the appointment of Raymond Tang as the new Chairman of the **Equal Opportunities Commission (EOC)**. On 19 April the SARG announced that the Acting Chief Executive, Donald Tsang, had replaced all members of the EOC Board, except the Chairman, with effect from 20 May. The previous Board members' contracts had expired. In a statement the SAR Government said, "The new membership has a good mix of expertise and is representative of the various sectors. We believe that they will work with the EOC to contribute towards a tolerant and harmonious society free of discrimination". The majority of newspapers welcomed the new appointments, in particular that of Mr Said Uddin, who is the first representative of an ethnic minority on the EOC.
56. Hong Kong is a signatory to the **International Covenant on Economic, Social and Cultural Rights (ICESCR)**. On April 27 to 29 Hong Kong Government delegates attended a hearing in Geneva as part of a Chinese Government team to determine progress in implementing the ICESCR. The UN Committee, in its concluding comments, welcomed the establishment of the Sexual Minorities Forum and the planned establishment of the Gender Identity and Sexual Orientation Unit within the Home Affairs Bureau. The Committee also welcomed the extensive efforts taken by the Hong Kong SAR, including sensitisation campaigns to combat prejudices and discrimination against persons with physical and mental disabilities.
57. However, the Committee also called on the SAR Government to **extend the protection afforded under the draft Race Discrimination legislation to internal migrants from the mainland**. They expressed concern that present

anti-discrimination legislation did not cover discrimination on the basis of sexual orientation and age. The Committee also expressed concern that the Equal Opportunities Commission did not have the broad remit of a human rights institution.

58. In past reports we covered the convictions of **16 Falun Gong** members for **public order offences** in August 2002, their subsequent appeal hearing in September 2003 and the unanimous decision by the Court of Appeal in November 2004 to overturn the convictions for public obstruction offences. Eight of the Falun Gong practitioners appealed to the Court of Final Appeal to overturn their charges of obstructing and assaulting a police officer in the execution of his duty. On 5 May the Court of Final Appeal overturned the convictions. The Court said that the police had no reasonable grounds to suspect that obstruction had occurred. The freedom to demonstrate peacefully was protected by the Basic Law. The original arrests, which were made during the protest on the grounds of “obstruction”, were unlawful. The court also held that if a citizen was unlawfully detained, they had the right to put up reasonable resistance. **The Secretary for Security, Ambrose Lee, said his Department were studying the judgement with the Justice Department and would draw up guidelines for officers to follow in exercising their duties.**
59. The *Epoch Times*, a newspaper linked to **Falun Gong**, announced it would cease publication on 13 May because its printing company in Hong Kong no longer wished to continue the service. A spokesperson for the *Epoch Times* said “the printing company considered our content sensitive, particularly our recent series ‘Nine Commentaries on the Communist Party’. It is afraid of political pressure from Beijing and worried that continued printing of our newspaper will have a negative impact on its business.” On 18 May the paper announced another printer in Hong Kong had agreed to print the paper for one month.
60. A number of newspapers reported on 31 May that **Ching Cheong, correspondent of Singapore's *Straits Times* and Hong Kong resident**, had been arrested in Guangzhou on 22 April. A Foreign Ministry Statement on 31 May announced that Ching Cheong was being held under house arrest for suspicion of providing intelligence to a foreign agency. Mak Yin-ting from the Hong Kong Journalists’ Association called on the central authorities to disclose any evidence they had to support the alleged charges.
61. The Chief Executive reported to the Legislative Council on 28 June that he had raised the issue with state leaders in Beijing the previous week. Mr Tsang said that the “Ching Cheong affair is something people in Hong Kong care about and as Chief Executive I am also concerned. I am very aware of the strong views of the media professionals.” Mr Tsang reiterated that Liao Hui, Director of the State Council’s Hong Kong and Macao Office had been “very positive” and pledged to follow the case with the relevant departments as soon as possible. Mr Tsang said “I believe the truth will come out very soon.” **Mr Ching is a British National (Overseas) passport holder and we have pressed the central authorities for information on the circumstances of his**

arrest and will continue to seek consular access as a matter of urgency, which so far has been denied.

62. On 4 June, tens of thousands of people gathered in Victoria Park for a **andlelit vigil to commemorate the 16th anniversary of the Tiananmen events**. The organiser of the event, the Hong Kong Alliance in Support of the Patriotic Democratic Movements in China, estimated 45,000 people participated although the police estimated the turnout was 22,000.

ECONOMY

63. Hong Kong's economy continued to recover strongly in the first half of 2005, with stronger than expected growth in real GDP of 6%; an increase of nearly 9% in total exports and in exports of services. The unemployment rate fell to a 41-month low of 5.9% for the three months to April 2005 as compared with 6.8% at the end of September 2004. The Consumer Price Index showed moderate growth of 0.4% in the first quarter.
64. In his Policy Address of 12 January 2005, the Chief Executive recognised the need to increase employment for low and unskilled workers, and established a special poverty commission, headed by the Financial Secretary, to alleviate poverty. He said that future investment would focus on key areas for new economic growth: the creative industries, urban renewal and attracting talent. The Chief Executive ruled out the introduction of a Goods and Services tax within his term of office.
65. The Financial Secretary unveiled the first fiscal surplus in five years in his budget speech delivered on 16 March 2005. The consolidated account in 2004-05 showed a surplus of HK\$12 billion, despite the original estimate of a deficit of HK\$43 billion. He forecast a budget deficit in 2005-06, returning to surplus in 2007-08. For the first time in 50 years, operating expenditure in 2004-05 dropped from the previous year, down to HK\$201 billion, in line with the Hong Kong SAR Government's aim of cutting operating expenditure to HK\$200 billion by 2008-09. The Financial Secretary also announced the abolition of estate duty and the intention to allow Hong Kong-based financial institutions to offer a wider and more sophisticated range of Renminbi services.
66. The Hong Kong stock exchange ranked first in Asia and third in the world in 2004 in terms of capital raised, with mainland enterprises accounting for 30% of total stock market capitalisation. On 23 June, the Bank of Communications became the first major mainland bank to list in Hong Kong.
67. On 18 May, the Hong Kong Monetary Authority (HKMA) announced three refinements to the operation of the Linked Exchange Rate System: (i) introduction of a strong-side Convertibility Undertaking to buy US dollars from licensed banks at 7.75; (ii) shifting of the existing weak-side Convertibility Undertaking from 7.80 to 7.85 (to be achieved in a gradual manner over five

weeks by moving 100 pips each week starting on 23 May until it reached 7.85 on 20 June); and (iii) possibility of conducting market operations by the HKMA consistent with Currency Board principles. This strategic move immediately reduced speculation and triggered a rise in local prime lending rate and saving rates.

68. The legally-contested listing of Link REIT (Hong Kong's first real estate investment trust) was covered in the last six-monthly report. The Court of Final Appeal will hear the case in July 2005.

ECONOMIC COOPERATION WITH THE MAINLAND

69. The Financial Secretary unveiled that under both phases I and II of the mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA), a total of 1,108 products had been granted tariff-free treatment. With the mainland's commitment on accession to the World Trade Organisation (WTO), about 95% of Hong Kong's domestic exports to the mainland are now entitled to such treatment. By the end of February, products with a total value of HK\$1.4 billion were exported tariff-free under the CEPA from Hong Kong to the mainland. The Hong Kong SAR Government expects 28,000 new jobs will be created in the first two years of implementing the CEPA since 1 January 2004. It also expects that the 18 service sectors will invest HK\$4.5 billion into Hong Kong in 2005, more than a three-fold increase compared with HK\$1 billion investment in 2004.
70. The State Council of the People's Republic of China approved on 17 February the expansion of the Individual Visit Scheme to Tianjin and Chongqing from 1 March. The move has increased the number of eligible mainland cities under the scheme to 34, from four when it was launched on 28 July 2003. This has increased the numbers of potential tourists coming to Hong Kong.

BILATERAL RELATIONS

Visits

71. Elsie Leung, Secretary for Justice, met the Lord Chancellor and the Attorney General during her visit to the UK from 24 to 27 January. Ms Leung was the guest of honour at a Hong Kong Association lunch, and in her keynote speech addressed the issue of the legal aspects in the implementation of "One Country, Two Systems". She said that **"the guarantees in Hong Kong's Basic Law are not empty promises and are enforceable through Hong Kong's fiercely independent judiciary."**
72. Arthur Li, Secretary for Education and Manpower, met Kim Howells, Minister of State at the Department for Education and Skills during his visit to the UK from 30 January to 4 February. The Secretary for the Hong Kong Civil Service,

Joseph Wong, visited the UK from 13 to 15 April. During his visit he met Andrew Turnbull, Secretary of the Cabinet and Head of the Home Civil Service.

73. John Tsang, Secretary for Commerce, Industry and Commerce, visited the UK on 6 May and met the Chief Executive of UK Trade and Investment, Sir Stephen Brown. Mr Tsang also addressed the Hong Kong Association on Hong Kong's expanding economic co-operation with the mainland.
74. In the other direction Jim Wallace, Deputy First Minister of Scotland and Minister for Enterprise and Lifelong Learning, visited Hong Kong from 27 to 29 January. The Minister met the Deputy Secretary for Commerce and Industry and, highlighting the close educational links between Hong Kong and Scotland, also had meetings with the Council for Academic Accreditation. Kim Howells also visited Hong Kong on 17 and 18 February when he met Arthur Li, academics and Chevening scholars. Other visitors included the Prime Minister's Economic Adviser and the Chairman of the Bar Council.

Trade and Inward Investment

75. Over the reporting period bilateral trade has continued at an increasingly high level. UK exports to Hong Kong from January to March 2005 amounted to £583.1 million, an increase of 1.3% over the same period of 2004. UK imports from Hong Kong from January to March 2005 were £1,372.1 million, an increase of 14.9%.
76. UK Trade and Investment (UKTI) has, during the reporting period, supported ten trade missions to Hong Kong and five British groups at international trade fairs and worked with some 300 British companies looking to develop their business in Hong Kong. UKTI has also continued to work with existing Hong Kong investors in the UK and in promoting the UK to new potential investors.

Education

77. Educational links between the UK and Hong Kong remain very strong. There are currently around **20,000** students from Hong Kong studying in universities, schools and colleges in the UK.
78. The British Government's Chevening Scholarship Scheme has operated in Hong Kong since 1996. This year **there are 37** Chevening scholars from Hong Kong in the UK, studying a wide range of courses. The generosity of Dr Li Ka-Shing (Chairman of Cheung Kong Holdings and Hutchison Whampoa Ltd), and Cambridge University, with a matching contribution from the Foreign and Commonwealth Office, has made this significant number of scholarships possible. In November 2003 Dr Li Ka-Shing pledged a further £2 million over three years, matched by the British Government under its Dorothy Hodgkin

Postgraduate Awards scheme, to support mainland and Hong Kong scholars in doctoral studies in the UK.

79. Hong Kong remains a major centre of activity for the British Council. The Council's Teaching Centre in Hong Kong provided courses to over **33,400** students a year. It is the Council's largest English-language teaching operation in the world. During **2004/5** it also administered **34,000** examinations and attracted **670,000 visitors to its website**. The British Consulate-General works closely with the British Council in promoting better awareness of the UK's educational and training credentials, its creativity, cultural diversity and recent achievements. Further information can be obtained from the British Council Hong Kong web site www.britishcouncil.org.hk.

BRITISH NATIONALS (OVERSEAS)

80. There are nearly 3.5 million British Nationals (Overseas), most of whom live in Hong Kong. The British Government remains fully committed to providing the highest standard of consular and passport services to the holders of the British National (Overseas) (BN(O)) passport. We continue to offer the same level of consular service to BN(O) passport holders in third countries as we do to other British Nationals and regularly remind all our overseas missions of their obligations towards BN(O)s. The Passport Section of the British Consulate-General in Hong Kong remains the largest passport issuing operation outside the UK.
81. Following the introduction of the European Union Residence Permit in 2003 the British Government implemented the United Kingdom Residence Permit (UKRP) Scheme for non-visa nationals wishing to stay in the UK for more than six months. The Scheme has been running successfully in Hong Kong for over a year, where - uniquely - BN(O)s can apply for UKRPs directly from a dedicated UKRP Section at the British Consulate General - free of charge. Nearly 5,000 gratis UKRPs have been issued to date, mainly to students.
82. We continue to work with other European countries and the European Commission to ensure that BN(O) passport holders enjoy the same access within Europe as SAR passport holders. The Foreign Secretary has written to the EU Commission to take this forward and we are working hard to secure early and positive progress.

CONCLUSION

83. **This has been a particularly eventful period in Hong Kong. At the end of it we assess that, notwithstanding the controversy surrounding the length of term of the new Chief Executive and the SAR Government's request for an Interpretation of the Basic Law, during this period "One Country, Two Systems" has generally worked well in practice and the rights and**

freedoms promised in the Joint Declaration and the Basic Law continue to be upheld.

84. The appointment of Donald Tsang as the new Chief Executive opens a new chapter in Hong Kong's development. We have been encouraged by his intention to introduce a programme of reform and hope that progress towards the Basic Law's ultimate aim of universal suffrage can be achieved at an early date. We hope that the Hong Kong SAR Government will take full account of the wishes of the people of Hong Kong.

85. **We believe the exercise of the high degree of autonomy promised in the Joint Declaration remains crucial to Hong Kong's continued success. We shall continue to follow developments closely and react appropriately to fulfil our obligations and to promote Hong Kong's continued prosperity and stability.**



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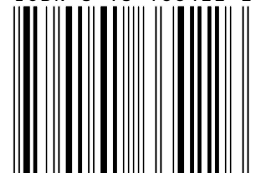
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