



# **Six-monthly Report on Hong Kong January-June 2003**

*Presented to Parliament  
By the Secretary of State for Foreign and Commonwealth Affairs  
By Command of Her Majesty  
July 2003*

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## FOREWORD

This is the thirteenth in a series of six-monthly 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 2003.

International interest focussed on Hong Kong in this period for two main reasons. Hong Kong was one of the areas hardest hit by the Severe Acute Respiratory Syndrome (SARS) virus. For several weeks the World Health Organisation and many countries advised against travelling to Hong Kong. The spread of SARS was eventually brought under control by determined action, including quarantines and strict checks at the airport. We pay tribute to the heroism and selflessness of healthcare workers in Hong Kong who battled against SARS. SARS is now under control and we are confident that the Hong Kong Special Administrative Region (SAR) Government will remain vigilant against future outbreaks.

The second issue of key interest was the SAR Government's draft national security legislation under Article 23 of the Basic Law. We have again covered this issue in some detail in this report. During this period the SAR Government made several significant improvements to the legislation in response to concerns raised in Hong Kong, and internationally, about the possible adverse effect on the basic rights and freedoms of the people of Hong Kong. However, strong concerns remained in both the local and international communities.

On 1 July, after the end of the period covered by this Report, an estimated 500,000 people, many of whom were specifically concerned about the legislation, protested against the SAR Government's policies. This clearly demonstrated the desire of Hong Kong people to retain the rights and freedoms they have long enjoyed. On 5 July the Chief Executive announced major changes to the legislation, including the deletion of the proposed provisions regarding the possible proscription of Hong Kong organisations subordinate to those proscribed in the Mainland on national security grounds; the introduction of a "public interest" defence for unlawful disclosure of certain official information; and the deletion of the proposed provisions conferring on the police extra emergency investigative powers. The proposed new provisions on proscription had been one of the major concerns for many in Hong Kong and the international community. They were the main focus of our third statement about the legislation, issued on 30 June, and replicated in full inside the Report. We welcome the fact that these provisions will now be removed.

At the time of writing, on 7 July, the Chief Executive had just announced that the passage of the legislation would be delayed to allow for further discussion in Hong Kong. We welcome this. We shall continue to follow developments closely.



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 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. This promised a high degree of autonomy for the Hong Kong Special Administrative Region (SAR) except in foreign and defence affairs, and guaranteed the continuation of Hong Kong's social and economic systems, lifestyles, rights and freedoms. These continuing reports assess the success of those arrangements.

### **“ONE COUNTRY, TWO SYSTEMS”**

2. In Beijing on 7 March Hu Jintao, then General Secretary of the Chinese Communist Party, said that the new central leadership would adhere to the established policies of the central government towards the Hong Kong and Macao Special Administrative Regions. At a joint panel discussion with Hong Kong and Macao members of the National Committee of the Chinese People's Political Consultative Conference (CPPCC) General Secretary Hu said: “we are resolved to work together with Hong Kong and Macao compatriots to push forward the great cause of ‘one country, two systems’, and we are also confident of it.”

3. On 17 March it was reported that the Chinese National People's Congress (NPC) standing committee was considering sending staff to Hong Kong to handle public complaints, primarily about the detention of Hong Kong people on the Mainland because of business disputes.

4. On 19 March Hu Jintao (now Chinese President) met the Hong Kong Special Administrative Region (SAR) Chief Executive, Tung Chee-hwa, in Beijing. President Hu told the Chief Executive that the newly elected central government would unswervingly observe the established policies and principles of previous governments and go all out to support the work of Tung and his government.

5. The State Council announced on 9 June that there had been a reshuffle in the Hong Kong-Macao Affairs Office (HKMAO), with Secretary and Head of Administration Department Zhou Bo being promoted to Vice Director. HKMAO Director Liao Hui now has three Vice Directors; Chen Zuo'er (Executive Vice Director); Xu Ze and Zhou Bo.

6. On 29 June, Chinese Premier Wen Jiabao paid his first visit to Hong Kong. He and Chief Executive CH Tung presided over the signing of the Closer Economic Partnership Arrangement (CEPA – see below for further details) and Premier Wen made a speech expressing his hopes about the opportunities the agreement would bring to Hong Kong's business community. During his three day stay, Premier Wen also met Principal Officials, business leaders, NPC delegates and health workers, and visited many different places. Premier Wen reiterated that the Central Government would unswervingly commit itself to the policies of “one country, two systems”, “Hong Kong people administering Hong Kong” and a high degree of autonomy and the Basic Law of Hong Kong. “This is the message I have come to convey,” he said, adding that “these set policies of the Central Government towards Hong Kong will not change.”

### **ARTICLE 23 OF THE BASIC LAW**

7. We covered in some detail in the last report the consultation period for the SAR Government's outline proposals for national security legislation to meet its obligations under Article 23 of the Basic Law. Article 23 states:

“The Hong Kong Special Administrative Region (HKSAR) shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People’s Government (CPG) or theft of state secrets, to prohibit foreign political organisations or bodies from conducting political activities in the Region, and to prohibit political organisations or bodies of the Region from establishing ties with foreign political organisations or bodies.”

8. On 13 January, at the ceremony to mark the opening of the Legal Year, the Chief Justice entered the debate on Article 23 by emphasising the importance of the rule of law: not just in relation to the enforcement and interpretation of laws but also in relation to the formulation and enactment of new laws. In response, the Secretary for Justice said that the role of the Department of Justice in the process was to ensure that any legislation was in line with human rights covenants; to provide information on relevant laws from other jurisdictions; and to provide advice on the way forward. She said that it was for the community and for the Legislative Council (LegCo) to decide upon the balance between the need to protect national security and the need to protect fundamental rights and freedoms.

9. Foreign Office Minister Bill Rammell MP paid his first visit to Hong Kong from 15-16 January and discussed Article 23, amongst other issues, with senior SAR Government figures including the Chief Secretary and the Secretaries for Justice and Security. He also discussed Article 23 in general terms with Chinese Assistant Foreign Minister Zhang Yesui in Beijing before arriving in Hong Kong.

10. On 28 January the SAR Government announced a series of amendments to its initial proposals. The main ones were:

- abandoning the proposal to create a new offence of possession of a seditious publication;
- amending the proposal to criminalise unauthorised disclosure of material obtained by unauthorised access: information would now have to be obtained by a specific criminal act, such as burglary or computer hacking, for it to be illegal;
- amending the provisions relating to the protection of information concerning relations between the SAR and the Chinese Central Authorities. The proposal was narrowed to make it an offence only if the information related to SAR matters for which the CPG has responsibility (ie appointments, foreign affairs and defence);
- abandoning the proposal to give extra-territorial coverage to the offence of treason;
- altering the wording of the proposed additional provisions on proscription so that these would apply only to organisations that were “subordinate” to, rather than “affiliated” to, Mainland organisations;
- guaranteeing that any communication to the SAR Government from the Mainland regarding a Mainland organisation that was proscribed on grounds of national security would be an “open decree”, rather than a private communication;
- removing the wording “threat of force”, so that “threats” were not treated the same as actual force;
- removing, from the offence of sedition, the phrase “resisting the CPG in its exercise of sovereignty over a part of China”;
- abandoning the proposal to make misprision of treason (i.e. failure to report an act of treason) a statutory offence;
- abolishing misprision of treason as a common law offence.

11. When announcing the changes, Chief Secretary Donald Tsang made it clear that, despite the continuing calls for a ‘white bill’ (a draft bill for public consultation prior to a ‘blue bill’ being tabled in the Legislative Council) there would be no further formal public consultation period. The Chief Secretary said that the SAR Government would continue to listen to views expressed by the community. The Chief Executive said “I have personally considered the proposals and discussed them with colleagues many times before taking a final decision. I have full confidence that after the law is enacted, the public will find that their freedoms, including the freedom of speech, press, procession and assembly, and so on which they currently enjoy, will remain fully protected.”

12. At the same time the SAR Government released a compendium of public views received during the consultation process. All responses were categorised as supporting, opposing, or unclear. The SAR Government claimed that 86% of organisations and 60% of individuals supported the proposals. This analysis was strongly disputed in some quarters. On 26 May, having studied the compendium of public views, academics released a study which rebutted the Government’s claim of overwhelming support for its position. They concluded: “a number of people agreed in principle the implementation of Article 23, as it is duly stipulated in the Basic Law, but found most proposals listed in the consultation document unacceptable”. They suggested that more attention should be paid to public opinion on the specific proposals.

13. The SAR Government tabled its draft National Security (Legislative Provisions) Bill on 14 February, in LegCo. This incorporated the changes announced earlier. The Bill was a complex piece of draft legislation, essentially amending three existing Ordinances (Crimes, Official Secrets and Societies). The changes to the legislation were warmly welcomed in Hong Kong although many considered that they did not go far enough. Initial reaction to the publication of the Bill was muted as people needed time to analyse the complex detail of the proposed legislation. There was disappointment that the wording in the Bill on the proscription of Hong Kong organisations that had ties with organisations banned in the Mainland on grounds of national security, remained fundamentally unchanged. The main concern was that this provision created a “link” between the legal system of the Mainland and that of Hong Kong. The only change was to refer to local organisations “subordinate” to those in the Mainland rather than “affiliated” to them. But this appeared, to many, to be defined so widely that it did not mean “subordinate” in the ordinary sense, but rather referred to any sort of connection or affiliation.

14. On 26 February the Bill had its first reading in LegCo, and a Bills Committee was formed to inspect the detail. 50 LegCo members out of a possible 59, a record, opted to join the Bills Committee. Ip Kwok-him (representative of the District Council Functional Constituency and member of the Democratic Alliance for the Betterment of Hong Kong (DAB)) was elected to the Chair.

15. On 27 March the UK was the first country to issue a detailed statement on the draft legislation. Mr Rammell said

We have continued to follow closely the Hong Kong Special Administrative Region (SAR) Government’s moves to introduce legislation to meet its obligations under Article 23 of the Basic Law. In our statements issued on 18 November we explained that, as a co-signatory to the Sino-British Joint Declaration on Hong Kong, we have a responsibility to ensure that the rights and freedoms enshrined in the Joint Declaration are maintained. Article 23 legislation is a very sensitive area as some of the key issues go to the heart of the “One Country, Two Systems” principle.

We have carefully studied the SAR Government’s draft legislation, published on 14 February. We note that the SAR Government has included in the draft legislation several changes to its initial proposals, in response to concerns expressed during

the consultation period. We welcome this demonstration of the SAR Government's willingness to take account of views expressed. These changes have met a number of the concerns expressed in Hong Kong about the proposals outlined in the consultation document. However, concerns still remain.

Principal among these are the provisions concerning the proscription of organisations endangering national security. We acknowledge that the SAR Government has tried to clarify its original proposals in the draft legislation. But many in Hong Kong and elsewhere are still concerned that what is proposed is an unnecessary addition to Hong Kong law and, in introducing into Hong Kong legislation linkages to mainland law, blurs the dividing line between the separate legal systems of the SAR and the Mainland, as laid out in the Joint Declaration and the Basic Law. They remain unhappy about these proposals and the rationale behind them, particularly why it is necessary to provide for the proscription of local organisations on the grounds that they are subordinate to prohibited mainland organisations. We share this concern and trust that the SAR Government will look very closely at these particular provisions and ensure that the final legislation is consistent with both the letter and the spirit of the Joint Declaration and the Basic Law. It is vital that Hong Kong's legal autonomy is not undermined in any way by this legislation.

We have also noted the concerns raised in Hong Kong about other aspects of the draft legislation. For instance, the SAR Government's decision not to apply extra-territoriality to the offence of treason has been welcomed but concerns have been expressed that extra-territoriality remains applied to the offences of sedition, subversion and secession. While the SAR Government's decision to drop the proposed new offence of possession of a seditious publication has been welcomed, some believe the offence of sedition is too broadly defined and could have a negative impact on freedom of expression. As sedition is essentially a crime of expression, this offence needs to be defined in a very tight way in order to be compatible with the principles of the Joint Declaration.

We welcome the fact that the SAR Government intends to write into the legislation that it should be interpreted, applied and enforced consistently with Article 39 of the Basic Law which stipulates, inter alia, 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 and shall be implemented through the laws of the Hong Kong SAR. In addition, we would expect the legislation itself to be compatible with the Covenants and not to infringe the human rights principles they enshrine.

The Bill has now been presented to the Legislative Council (LegCo). We note that the SAR Government has said that it will continue to listen to the views of the community on its legislative proposals. We trust they will take these into account. We will follow the progress of the Bill through LegCo. As we noted in the Foreign Secretary's recent report to Parliament, the way this issue is handled, and the legislation itself, will be seen by many as a key litmus test for the "One Country, Two Systems" principle. Some commentators have suggested that greater democracy in Hong Kong would provide a healthy check and balance on the Government's use of national security legislation. We have regularly made clear our hope that Hong Kong will make early progress towards the Basic Law's ultimate aim of universal suffrage, at a pace in line with the wishes of Hong Kong people.

We will continue to follow this issue closely.

16. A SAR Government spokesman responded that the proposed power of proscription was fully consistent with human rights guarantees under international covenants such as the International Covenant on Civil and Political Rights (ICCPR), and was necessary in order to enable Hong Kong to deal with organised crimes threatening national security. The spokesman went on to say that there was no extension of Mainland laws and concepts on national security to Hong Kong.



17. For a while, Hong Kong's political agenda was dominated by the outbreak of SARS (see below) and attention was diverted from Article 23. However, the Bills Committee continued their twice-weekly meetings throughout this period; and on 15 April and 2 May the European Union and US issued statements about the draft legislation, setting out concerns similar to our own.

18. On 3 and 6 June, the SAR Government announced that, as a result of discussions in the Bills Committee and submissions from various groups in society, it was proposing some committee stage amendments to the draft legislation. The main proposals included:

- tightening the wording of the offence of sedition to introduce the element of “likelihood”, so that a person could only commit the offence if he intentionally incited others to commit the specified crimes endangering the state, and when the crimes incited were likely to occur;
- extending the assurances provided in the Bill about the future interpretation, application and enforcement of the relevant provisions to state that these must be carried out in a manner consistent with Chapter III of the Basic Law (rather than just Article 39, as previously);
- empowering the Secretary for Security, rather than the Chief Justice, to make regulations governing special appeal arrangements. These regulations would be subject to vetting by the Legislative Council before coming into effect.

19. Again, these proposed amendments were welcomed but many still believed that they did not address some of the key issues, including the link with Mainland law created by the proposal on proscription, and the lack of a public interest defence.

20. In early June, Hong Kong newspapers carried comments by Chinese President Hu Jintao saying that the legislation would have beneficial effects on both national security and stability in Hong Kong. State Counsellor Tang Jiaxuan said that people should have confidence about Hong Kong's stability. He added that the criticisms of the proposals by some people and some foreign governments were “not tenable”.

21. The discussions in the Bills Committee highlighted the divisions within LegCo. Those members who were concerned by the proposed legislation and wanted to see it substantially amended were accused by others of filibustering, obfuscation and playing to the gallery, while those keen to see legislation passed were criticised for attempting to stifle debate and for failing to scrutinise the legislation properly. On 14 June, many of those legislators who had expressed concern at the proposals attended a conference at Hong Kong University to hear the views of international legal experts on the draft legislation. While they were at the conference, the remaining members of the Bills Committee finished the clause-by-clause analysis and – in a move which aroused controversy in Hong Kong – passed a motion saying that the discussion should not be reopened. Tensions rose further on 17 June when independent legislator Mak Kwok-fung was expelled from a joint panel meeting after he refused to retract a derogatory comment that he had made about the Secretary for Security.

22. During the Bills Committee stage there were three public hearings at which non-legislators could put forward their views on the draft bill. Each individual or organisation was given five minutes to express their views. Strong concerns were expressed in Hong Kong that there had not been enough time allowed for proper scrutiny of the legislation within LegCo and that non-legislators had not had sufficient opportunity to express their concerns.

23. As the SAR Government's desired July deadline for passing the legislation approached, interest in this issue heightened. The events held this June to mark the anniversary of the Tiananmen Square incident attracted greater numbers than usual amid

concerns that future events might be threatened by the Article 23 legislation. On 1 June the annual march organised by the Hong Kong Alliance in Support of the Patriotic Democratic Movement in China attracted an estimated 2,500 people (60 percent more than last year). On 4 June, the now traditional annual candlelight vigil took place in Victoria Park. Organisers estimated that 50,000 people attended – up 5,000 from last year – although police estimated the number to be 21,000 – up 3,000 from last year. Speeches quickly turned from the Tiananmen incident to Article 23 and many speakers urged participants to take part in a rally on 1 July to protest against the national security laws.

24. UK parliamentary interest in this issue continued throughout this period with a number of questions being asked in both Houses. In their Report on the Foreign Office's Human Rights Annual Report 2002, the Foreign Affairs Committee recommended that the Foreign Office "remain closely involved in the consultation process over the implementation of Article 23" and that the UK Government "must express any concerns it has about the human rights impact of the new law clearly and without hesitation to the Region's Government at every opportunity".

25. On 5 June, the US State Department issued a statement about the legislation during a visit to Washington by a group of legislators (including former leader of the Democratic Party, Martin Lee, who met Mr Rammell in London later that month). Subsequently, on 19 June the White House Press Secretary issued a statement which said that the United States had concerns that Article 23 legislation, as currently drafted, could harm local freedoms and autonomy over time and urged Hong Kong's Legislative Council to "adopt amendments to correct the shortcomings in the legislation". The Canadian Consulate General in Hong Kong and the EU also issued statements about the legislation later that month. On 25 June the US House of Representatives passed a resolution strongly condemning the legislation and "expressing support for freedom in Hong Kong". On 27 June a spokesman for the Chinese Foreign Ministry urged the US side to stop interfering in the internal affairs of China.

26. Although Article 23 states that the legislation is for the Hong Kong SAR to enact "on its own", the Foreign Secretary (in July last year) and Mr Rammell (in January) had previously discussed the issue in general terms with the Chinese Government. On 25 June, the Foreign Secretary raised Article 23 with the visiting Chinese Foreign Minister Li Zhaoxing.

27. On 30 June Mr Rammell issued a further statement about the legislation. He said:

Our interest in the draft National Security (Legislative Provisions) Bill stems from our position as a co-signatory to the Sino-British Joint Declaration on Hong Kong. The Joint Declaration promised that the Hong Kong Special Administrative Region (SAR) would enjoy a high degree of autonomy, except in foreign and defence affairs. It also promised that the SAR Government would maintain the rights and freedoms as provided for by the laws previously in force in Hong Kong, and the Declaration set out these basic rights and freedoms.

Since the handover we assess that these rights and freedoms have generally been maintained. When we have had concerns, we have raised them with the SAR Government, or with Beijing, as we have noted in our regular reports to Parliament. Overall we have been reassured that China has enabled Hong Kong to run its own affairs in line with the principles of the Joint Declaration and Basic Law.

Since my statement on 27 March we have continued to follow closely the debate in Hong Kong about the Bill and its passage through the Legislative Council. We acknowledge the unique situation the SAR Government faces.

We note that the SAR Government announced several proposed changes to the draft legislation on 3 and 6 June. We welcome this further demonstration of

willingness to take account of views expressed and to improve the wording of this sensitive piece of legislation.

We regret, however, that there has been no substantive change to the proposed provisions on the proscription of organisations, which have been the major cause for concern for many in Hong Kong and elsewhere. We note that the SAR Government already has powers to proscribe organisations on national security grounds.

The Joint Declaration and Basic Law provide for Hong Kong to have a legal system separate from that on the Mainland. However, the proposed new provisions on proscription blur the dividing line between the two autonomous legal systems by introducing into Hong Kong legislation linkages to mainland law. We share the view of many in Hong Kong that this is inconsistent with the “One Country, Two Systems” principle, which underlies the Joint Declaration. We have made this point to the SAR Government.

28. In response, a SAR Government spokesman said that the legislation was in full accord with the “One Country, Two Systems” principle and international human rights standards. The spokesman said that the power of proscription would only be exercised in accordance with Hong Kong laws and the ICCPR.

## **BASIC RIGHTS AND FREEDOMS**

29. In general, the basic rights and freedoms promised to the people of Hong Kong in the Joint Declaration and the Basic Law continued to be upheld during this period. Protests and demonstrations continued to take place, as we have already noted with regard to the Tiananmen Square incident anniversary events.

### **Falun Gong**

30. We have reported on Falun Gong issues in a number of previous reports. In February approximately 80, mainly Taiwanese, Falun Gong practitioners were refused entry to Hong Kong to attend a Falun Gong conference at the Sheraton hotel. However, over 500 other overseas practitioners did gain entry and joined a march in protest against Article 23 legislation. On 2 June the Hong Kong Association of Falun Dafa applied for leave to apply for judicial review of the Director of Immigration’s decision to refuse entry to the overseas practitioners.

31. In our previous report we noted that the Falun Gong practitioners found guilty of public order offences committed outside the Central Government Liaison Office in March 2002 had appealed against the verdicts and were awaiting a hearing on their appeal. The appeal will be heard on 2 September.

### **Public Order Offences**

32. Also in the previous report we noted that the Chinese Flag had been burnt following a protest outside the Hong Kong Conference Centre on National Day last October, when dignitaries were attending a flag-raising ceremony. On 20 March a political activist was given a three-month jail sentence suspended for two years after being found guilty of desecrating the national flag during this incident. The magistrate told Ng Kwok-hung that the flag represented the dignity of the Chinese people.

33. On 3 April the Independent Police Complaints Council rejected the result of an earlier Police investigation into the use of handcuffs to restrain a journalist following an operation on 25 April 2002 to clear Charter Garden of right-of-abode seekers, an incident we had also reported in an earlier report. A Senior Police Assistant Commissioner said the officer responsible would face disciplinary action.

## **Racial Discrimination**

34. We have closely followed the debate in Hong Kong about possible racial discrimination legislation since the UN Committee on the Elimination of Racial Discrimination (UNCERD) recommended in 2001 that the SAR Government adopt appropriate legislation on racial discrimination. During his visit to Hong Kong in January, Mr Rammell raised this issue with his SAR Government interlocutors, expressing his hope that such legislation would shortly be adopted.

35. In March a non-binding motion from legislator Audrey Eu calling for a law banning racial discrimination was passed unanimously with the leaders of all three major political parties expressing strong support. On 19 June, following press speculation, Secretary for Home Affairs Patrick Ho announced that an anti-racial discrimination bill would be tabled in the Legislative Council next year to protect the rights of ethnic minorities in Hong Kong. A public consultation exercise lasting up to three months would be conducted at the end of this year which would explore the ways in which the Government could legislate.

36. We welcome the SAR Government's decision to introduce legislation to meet the recommendations of the UN. We look forward to seeing the proposals in more detail. We would expect them to comply fully with Hong Kong's international obligations under the International Convention on the Elimination of Racial Discrimination (ICERD) and the ICCPR. The ICERD defines racial discrimination as meaning "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

## **Other issues**

37. Discussions continued on the possibility of imposing a tax on foreign domestic helpers, an issue noted in our previous report. A foreign maids' taskforce was set up in early January comprising officers from the police, the Economic Development and Labour Bureau and the Immigration and Labour departments to crack down on companies and recruitment agents who exploit foreign maids. On 8 January the Chief Executive confirmed, in his annual policy address, that the Government was considering imposing a tax on foreign domestic helpers.

38. On 21 February the President of the Philippines Senate, Franklin Drilon, visited Hong Kong and discussed the maids' pay issue with the Chief Executive, but failed to persuade him to change his mind. Protests continued and on 3 April the Court of First Instance granted leave for a judicial review of the SAR Government's decisions in this matter.

39. In June the Broadcasting Authority issued a public reprimand to radio presenter Albert Cheng King-hon, saying that two officials on his programme in April had been deprived of a right of reply. This reprimand produced a record number of complaints with some expressing fears for the freedom of expression in Hong Kong. The Broadcasting Authority issued a statement saying that it fully respected freedom of speech but that radio stations had to comply fully with the code of practice. The Authority decided not to reconsider its decision.

## CONSTITUTIONAL DEVELOPMENT

40. Many commentators in Hong Kong continued to link their concerns about the Article 23 proposals with the lack of full democracy in Hong Kong. Paragraph 7 of Annex I of the Basic Law states that: "If there is a need to amend the method of selecting the Chief Executive for the terms subsequent to the year 2007, such amendments must be made with the endorsement of a two-thirds majority of all the members of the Legislative Council and the consent of the Chief Executive, and they shall be reported to the Standing Committee of the National People's Congress for approval." On 19 February, Secretary for Constitutional Affairs Stephen Lam said that the Government would not wait until after 2007 to start the consultation on constitutional reform that they had promised to conduct. "To start legislative work in 2006" he said, "it is probable that the consultation work will be carried out between 2004 and 2005".

41. In May, following press speculation about the precise meaning of the above paragraph of the Basic Law (some have suggested that the Chinese language version is slightly more ambiguous), Mr Lam said that it was unclear whether the Basic Law allowed for the present system, under which the Chief Executive is voted in by a 800-strong election committee, to be changed to universal suffrage for the 2007 poll. He said that the SAR Government was still studying this issue.

42. On 21 May a non-binding motion in LegCo urging the administration to amend the Basic Law to speed up the pace of universal suffrage was defeated by 28 to 20. On 16 June, using a similar tactic to that in the Article 23 Bills Committee, pro-government legislators passed a LegCo motion which effectively banned further discussion in the current LegCo session on whether the Chief Executive should be directly elected in 2007. These legislators claimed it should be the SAR Government that determined when the issue was debated. Pro-democracy legislators complained that they were being gagged by the other members of LegCo. Shortly afterwards it was reported that political rivals had agreed not to restrict discussions on sensitive issues during debate in LegCo in the future. We welcome this: we had shared the concerns of many in Hong Kong that democratically elected legislators were being prevented from expressing their opinions by such tactics and note the negative effect that letting this kind of practice happen again would have.

43. The following day a LegCo panel announced that it was carrying out its own public consultation about the 2007 election of the Chief Executive. They asked for views on whether paragraph 7 of Annex I should be construed to include the third term of office of the Chief Executive commencing in 2007. The panel received over 300 submissions but the results have not yet been made public.

44. We will continue to follow the debate on constitutional reform closely. UK Ministers have regularly expressed to SAR Government interlocutors their hope that Hong Kong would make early progress towards the Basic Law's ultimate aims of the election of the Chief Executive and all members of the Legislative Government by universal suffrage. During his visit in January Mr Rammell reiterated this point, as he did in his 27 March statement about Article 23 legislation.

45. On 28 April the Electoral Affairs Commission announced that Principal Officials (i.e. the politically appointed heads of government bureaux) would be allowed, for the first time, to canvass for political parties in the next District Council election (subject to a one month consultation, the results of which have not yet been published). The election will take place on 23 November. The press secretary to Secretary for Constitutional Affairs Stephen Lam was quoted as saying that the code of conduct for Principal Officials would ensure that there would be no actual or potential conflict of interest with the government.



## HONG KONG SAR GOVERNMENT

46. The Chief Executive delivered the first Policy Address of his second term to LegCo on 8 January. This was the first time that the Policy Address had been delivered in January, rather than October, as the Chief Executive wanted to bring the main policy announcements closer to the time of the budget, delivered in March each year. In this Address the Chief Executive defined his major goals as solving Hong Kong's economic difficulties and moving towards a knowledge-based economy. He cited economic restructuring, integration with the Mainland, and reducing the deficit as key to solving the economic difficulties.

47. On 26 February the Chief Secretary published the SAR Government's Population Policy. Among the main features were the removal of restrictions on Mainland professionals coming to work in Hong Kong; a relaxation of immigration rules to attract more overseas investors; a major review of eligibility criteria for social security and healthcare benefits and confirmation of a HK\$400 a month levy on foreign domestic helpers.

48. As noted in previous reports, the Chief Executive's accountability system for Principal Officials was introduced on 1 July 2002. It was designed to make Principal Officials accountable for the policies of their bureaux and for their own actions. This system was put to the test in March. It transpired that Financial Secretary Antony Leung had purchased a luxury car shortly before announcing steep increases in the first registration tax on such cars in his March budget. On 10 March, following intense media attention, the Financial Secretary apparently offered his resignation to the Chief Executive. This was refused. The Chief Executive wrote a letter to the Financial Secretary stating that his actions amounted to "gross negligence" and a breach of the code of conduct for Principal Officials. The letter also said that his behaviour was "highly inappropriate". Both the resignation offer and the Chief Executive's letter were made public on 15 March. In a statement later that day, the Financial Secretary accepted the Chief Executive's criticism and apologised. On 17 March, a specially convened LegCo panel quizzed the Financial Secretary for over two hours on the affair. He said that he had been trying to keep his private and public life separate, that it was a negligent mistake due to the pressures in his life, and that he hoped to serve the community wholeheartedly and strenuously. The Financial Secretary later survived a no-confidence motion in LegCo on 7 May. The Independent Commission Against Corruption was tasked to investigate whether criminal activity had taken place. Their conclusions have not yet been announced.

49. On 14 May, following criticism of his handling of the SARS crisis and the general performance of his Government, the Chief Executive also faced a no-confidence motion in LegCo, which was defeated by 35 votes to 19. Legislators voted along party lines: members of the Democratic Alliance for the Betterment of Hong Kong (DAB), Liberal Party, Hong Kong Progressive Alliance (HKPA), and the Federation of Trade Unions (FTU) voted against the motion; members of the Democratic Party, the Confederation of Trade Unions (CTU) and the Frontier voted in favour. This was the first motion of no-confidence in the Chief Executive. He reacted, from a prepared statement, with strong criticism of pro-democracy legislators.

## LEGAL SYSTEM

50. At the ceremony on 13 January to mark the opening of the Legal Year, outgoing Chairman of the Bar Association, Alan Leong, criticised the Government for using the law for political ends since the handover. He alleged that the rule of law was repeatedly being questioned and that the SAR Government had sacrificed social harmony and judicial autonomy with the 1999 "reinterpretation" of the Basic Law during the right-of-abode saga (see our report of July 1999 – Cm 4415). Mr Leong said that in order to restore judicial autonomy, the SAR Government should undertake never to seek a

reinterpretation after the Court of Final Appeal had ruled. He said that it was the rule of law which made Hong Kong stand apart from the rest of China and that such values must prevail over any other considerations at all times.

51. In previous reports we have referred to the prospect of an agreement for the rendition of fugitive offenders between Hong Kong and the Mainland. This issue resurfaced in February after newspapers reported that suspects linked to the murder of a wealthy Hong Kong business man had been arrested in the Mainland. Agreement has yet to be reached on rendition. We continue to take a close interest in this important issue.

## **TERRORISM**

52. We mentioned in the previous report that three men had been arrested in Hong Kong for plotting to buy surface to air missiles, allegedly for Al Qaida. On 6 January it was reported that these men agreed to be extradited to the US, a move that was later endorsed by the Chief Executive.

53. On 1 February, the First Rule on 24 hour advance manifest filing became mandatory in Hong Kong. Under the rule, carriers are required to submit precise cargo information to the US customs service 24 hours before US-bound cargo is loaded onto vessels at foreign ports.

54. On 12 May, as foreshadowed in the previous report, the operation of the US-led Container Security Initiative (CSI) began in Hong Kong with US customs officials being stationed at Hong Kong's main container terminal. These officials work with their Hong Kong counterparts to identify high-risk containers, which are then screened before the ships leave port for the US.

55. In June, an International Monetary Fund (IMF) report commended Hong Kong's measures to combat money laundering and suspected terrorist financing, which largely met international standards, but said that controls on remittance agents and money changers were insufficient and recommended they be improved.

## **SEVERE ACUTE RESPIRATORY SYNDROME (SARS)**

56. In February, Hong Kong was hit by a previously unknown disease, a form of Atypical Pneumonia which subsequently became known as Severe Acute Respiratory Syndrome (SARS). The outbreak is thought to have originated from an "index patient" from the Mainland, Professor Liu Jianlun, who had treated patients with similar symptoms in Guangzhou (where the outbreak may have begun as early as last November). After becoming infected, he travelled to Hong Kong on 21 February to attend a wedding. He infected seven people at his hotel. SARS was then transmitted to the Prince of Wales Hospital in Shatin. A patient with a rare heart complaint became infected and passed it on to several of the medical staff who were studying his unusual condition. SARS then spread into the wider community.

57. The outbreak had serious economic consequences for Hong Kong (see below). It also highlighted communication problems between Hong Kong and the Mainland. It was difficult for the SAR Government to obtain reliable information about the magnitude of the problem in neighbouring Guangdong Province. Hong Kong officials seem to have been given little warning of its existence despite numerous cases appearing in Guangdong up to three months earlier. Given these problems the SAR Government handled the crisis well. Although they admitted that they were rather slow to react at the start of the outbreak because of the numerous imponderables involved, we note that within a few weeks of the "index case" being admitted to hospital a series of emergency measures had been implemented to prevent the disease from spreading: schools and universities were closed; people entering Hong Kong were required to fill out a health

declaration; and the Chief Executive announced that steps were being taken to establish a mechanism to enhance co-operation and communication between Hong Kong and the Guangdong and Central Authorities. Additionally, during that period, the source of the disease had been discovered; the virus had been identified; a quick diagnostic test had been developed; and treatment methods established. Further emergency measures were soon introduced: temperature checking at ports, airports and border crossing points; and the quarantine of those people who had been in “close contact” with SARS patients. Under the direction of the Chief Secretary’s “Team Clean”, the community stepped up efforts to improve cleanliness and hygiene.

58. On 23 June, Hong Kong was removed from the WHO’s list of areas with recent local transmission of SARS because 21 days had passed since the last case had been isolated. During the outbreak a total of 1,755 people had been infected and 296 had died.

## **ECONOMY**

59. Hong Kong’s first quarter economic results were encouraging, showing a stronger than expected growth in real GDP of 4.5%; an increase of 19.1% in total exports; and an increase of 12.2% in exports of services (all figures year on year in real terms). However, second quarter performance was influenced heavily by SARS.

60. The Financial Secretary’s March budget, which preceded the SARS outbreak in Hong Kong, focussed principally on revenue-raising measures designed to ease the fiscal deficit which amounts to HK\$61.7 billion (£4.75 billion) for the fiscal year 2002-3. He announced that marginal tax rates, bands and allowances would be restored to pre-1998 levels. In addition, standard tax rates on salaries and unincorporated businesses were to rise by 1% over the next two years and corporation tax would be increased by 1.5% in 2003/04. It was also proposed that civil servants’ salaries be cut by a further 6% by 2005, and that social security benefits should be reduced by 11.1% to take account of post-1998 deflation. Separately, the Executive Council proposed that the eligibility criteria for access to social security assistance should be tightened. These proposals were passed by LegCo on 27 June.

61. Reaction to the budget from the local business community was broadly positive, though there were calls for greater reductions in government expenditure. Businesses also asked for a rapid return to lower corporate taxation levels once the economic situation improved. The Financial Secretary said in March that he expected to achieve a balanced budget by 2006-7.

62. The outbreak of SARS in March had a severe impact on the Hong Kong economy. The tourism, retail, entertainment and catering sectors were particularly hard hit. In April, the Hang Seng Index fell to its lowest level since the Asian Financial Crisis, tourist arrivals fell by 65% and retail sales plummeted by 15.2% in value (all figures are year on year). The SAR Government halved its annual growth forecast from 3% to 1.5% and said that it expected to see a sharp fall in GDP growth in the second and third quarters of 2003. Unemployment for the three-month period March-May reached a record high of 8.3%. But the banking sector remains well capitalised and is not under any significant pressure despite the increasing number of homeowners in negative equity and personal bankruptcies.

63. On 23 April the SAR Government announced a HK\$11.8 billion (£907 million) financial relief package designed to reduce business costs, provide additional working capital to industries most affected by SARS, relieve the burden on the public and create short-term job and training opportunities. The Financial Secretary, who heads the Economic Relaunch Strategy Group, also announced long-term measures to revitalise the economy.



## **Economic integration with the Mainland**

64. Previous reports have referred to moves towards closer economic integration with the Mainland. In his Policy Address on 8 January, the Chief Executive highlighted closer economic co-operation with the Mainland as one of the three main ways to overcome Hong Kong's current economic difficulties. On 27 January border crossings between Hong Kong and the Mainland were introduced on a 24 hour basis for the first time for passenger traffic at the Lok Ma Chau boundary point. As noted earlier, as part of its Population Policy published on 26 February, the SAR Government also recommended a range of measures designed to make it easier for Mainland professionals to work in Hong Kong.

65. In previous reports we noted plans to co-locate Hong Kong and Mainland customs and immigration facilities at a new boundary control point. Security Bureau submitted a paper to LegCo on 6 May stating that, with the authorisation of the Central People's Government, a Hong Kong Management Area would be clearly earmarked within the co-located site, and would be managed by the Hong Kong SAR according to the laws of the SAR. Security Bureau notified LegCo of the need to introduce legislative amendments to define clearly the Hong Kong Management Area to be managed by the SAR and to extend the laws of the SAR to the Hong Kong Management Area.

66. According to the paper, the Mainland and Hong Kong sides will each conduct their own immigration and customs examinations according to their own laws and regulations, with a buffer area in between. The project is expected to be completed by the end of 2005.

67. On 29 June, Financial Secretary Antony Leung and Chinese Vice-Minister of Commerce An Min signed the Closer Economic Partnership Arrangement (CEPA). Under this arrangement, mainland authorities have agreed to eliminate import tariffs on approximately 270 types of Hong Kong-made goods (accounting for 60% of Hong Kong's exports to the mainland) from 1 January 2004. All other goods will have zero tariffs by 1 January 2006. The arrangement also opens up 17 service sectors, giving Hong Kong firms greater access to the mainland market, ahead of China's WTO timetable. With regard to trade and investment facilitation, the Mainland has committed to simplifying procedures and strengthening co-operation with Hong Kong on various areas through greater transparency, standards conformance and enhanced information exchange.

68. Only "Hong Kong Companies" can benefit from the agreement. To qualify, a company must be registered in Hong Kong, pay profits tax, open their offices, and employ at least half of their staff locally. The business they do in the Mainland as a result must be the same as their Hong Kong activity and they should have had substantive business in Hong Kong for at least three years – or five in the case of banks, insurance companies and construction firms.

69. CEPA will also enhance tourism in Hong Kong. From 28 July, the Mainland will allow residents of Dongguan, Zhongshan and Jiangmen to visit Hong Kong individually instead of having to join official tour groups. The arrangement will be extended to the whole of Guangdong Province not later than 1 July 2004.

## **INTERNATIONAL INTEREST IN HONG KONG**

70. The US State Department's 2002 Annual Report on Human Rights issued on 31 March. On Hong Kong, the report said that the Government generally respected the human rights of residents and the law and judiciary generally provided efficient means of dealing with individual instances of abuse.

71. On 14 April the US State Department published its latest report on Hong Kong as required under the US-Hong Kong Policy Act of 1992. It covered the period from 4 January 2002 to 31 March 2003. The report's overall assessment was positive. It said that Hong Kong remained an international city and one of the world's most open and free economies, with a strong respect for the rule of law and civil liberties. The report commended Hong Kong's strong support for the global campaign against terror.

72. On 8 April the EU Parliament passed a Resolution on the Third and Fourth Annual Reports by the European Commission on Hong Kong. The Resolution stated that a "reinterpretation" of the Basic Law should never be sought after the Court of Final Appeal (CFA) had made a judgment; expressed serious concerns about Article 23, "particularly the proposals relating to the proscription of organisations outlawed in mainland China on national security grounds"; and called for the establishment of a Statutory Human Rights Commission.

## **HONG KONG'S WIDER ROLE**

73. In May, China agreed to extend the United Nations Framework Convention on Climate Change and the Kyoto Protocol to the Hong Kong SAR.

## **BILATERAL RELATIONS**

### **Visits**

74. Visits in both directions were badly affected by the SARS crisis during this period with a number of cancellations or postponements. However, Mr Rammell paid his first visit to Hong Kong from 15 – 16 January and Hong Kong Secretary for the Civil Service Joseph Wong visited the UK in June.

### **Education**

75. Education links between Hong Kong and the UK are strong. The UK remains a destination of choice, with approximately 17,000 Hong Kong students studying in the UK. The FCO's Chevening Programme of scholarships for Hong Kong post-graduate students is in its 7th year.

76. The British Council in Hong Kong continues to strengthen educational and cultural links between the UK and Hong Kong. In addition to teaching English to over 30,000 learners each year, the British Council organises a series of events aimed at promoting educational reform and increasing co-operation between Hong Kong and the UK. The UK Education Exhibition in February featured 110 exhibitors and attracted more than 21,000 visitors. As part of the exhibition, the British Council ran a molecule building workshop to mark the fiftieth anniversary of the discovery of DNA. Other British Council activities include a web portal, "Montage", for school curriculum development which has so far attracted interest from over 50 schools; and a school design project involving over 500 Hong Kong students working in collaboration with partner schools in the UK and which will finish with an educational and cultural visit to the UK. This project marks the end of the Hong Kong INTEGER Education Programme which, over eighteen months, has seen over 30,000 students and teachers taking part. (Our previous reports have covered the Hong Kong INTEGER Pavilion project, designed by both Governments and other partners to promote green and intelligent construction.)

## **Trade and Inward Investment**

77. The UK and Hong Kong remain major trading partners. Exports from the UK to Hong Kong for January – April 2003 were £834.2 million, up 11.6% on the same period of 2002. Because of the SARS outbreak, the number of Trade Missions (three) visiting Hong Kong and British Groups exhibiting at Trade Fairs (two) in Hong Kong was lower than usual. With the lifting of the travel advisories, business has started to return to normal.

78. Overall imports for January-April 2003 were £1,640.7 million, down 4% on January to April 2002. During the period of this report, PCCW, the major telecom operator in Hong Kong, won 13 out of 15 fixed wireless licences auctioned by the UK for £6.3 million.

## **Legal**

79. In response to the long standing invitation from the Hong Kong SAR, the Lord Chancellor continues to send senior British judges to sit as non-permanent judges on the Court of Final Appeal (CFA) in Hong Kong. The Lord Chief Justice, The Lord Woolf of Barnes, and The Lord Scott of Foscote were appointed to the CFA in May.

## **BRITISH NATIONALS OVERSEAS**

80. The British Government remains fully committed to providing the highest standard of consular and passport services to the 3.44 million 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. As at 30 June the number of countries granting visa free access to BN(O) passport holders was 99. We continue to work to ensure the widest possible travel convenience for BN(O) passport holders.

## **CONCLUSION**

82. We continue to assess that, generally, “One Country, Two Systems” is working well in practice. However, the final content of Article 23 legislation, and the way it is applied and enforced, will be crucial for people’s future perceptions of how the “One Country, Two Systems” principle works. We shall continue to follow this issue closely.



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