



# Six-monthly report on Hong Kong January-June 1998

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
July 1998*

## **FOREWORD**

This is the third in the series of six monthly reports on the implementation of the Sino-British Joint Declaration on Hong Kong, which the Government has undertaken to present to Parliament during the lifetime of the Sino-British Joint Liaison Group (JLG). It covers the six months up to the first anniversary of the establishment of the Hong Kong Special Administrative Region (HKSAR) on 1 July.

The British Government has continued to take the closest interest in developments in Hong Kong. I visited Hong Kong in January, when I had a good meeting with the Chief Executive. I also met a wide range of people, inside and outside government, and from all walks of life. Other Cabinet colleagues, including the Deputy Prime Minister, the President of the Board of Trade and the Minister of Agriculture, Fisheries and Food, have also visited. This reflects our strong moral and political commitment towards Hong Kong and its people, and our responsibilities as a co-signatory to the Sino-British Joint Declaration.

One year on from the handover, I believe that Britain, China and Hong Kong can be broadly satisfied with what has been achieved. The Asian financial crisis has cast a shadow over the Special Administrative Region's early life. The length and depth of the regional crisis have been greater than originally anticipated. But as far as the autonomy provided for in the Joint Declaration is concerned, the indications are positive. When I visited Beijing in January, senior Chinese leaders, including President Jiang Zemin, personally reassured me of their continuing commitment to the principle of "One Country, Two Systems". The practical evidence is that they are true to their words. The HKSAR Government have reaffirmed their desire for such autonomy. In his public message on the first anniversary of the handover, Chief Executive CH Tung said that "Our national leaders have stressed that under the commitments of One Country, Two Systems and Hong Kong people running Hong Kong with a high degree of autonomy, it is up to us to make our own decisions and chart our own course".

Hong Kong itself is performing well against the expectations of international opinion generally, and against the provisions of the Joint Declaration specifically. Basic rights and freedoms continue to be upheld. Political parties, community groups, the press, churches and non-governmental organisations remain active and outspoken. The Civil Service, led by the Chief Secretary for Administration, Anson Chan, continues to be a model of integrity in public service. It has made full use of its autonomy, including in responding to the effects of the Asian financial crisis. The HKSAR Government's first budget, presented in February, was drawn up independently, without Beijing's involvement. The editorial independence of the government broadcaster, Radio Television Hong Kong, has been strongly defended by HKSAR Government officials, and the Chinese leadership has also distanced itself from those calling for changes. All of this is reassuring.

The purpose of these reports is to give credit where credit is due, but where we have concerns to make these clear. The British Government has never sought to play down its concerns about the establishment and operations of the provisional legislature. We therefore welcome the fact that legislative council elections were held on 24 May, and that from 2 July Hong Kong will have an elected legislature in which all shades of political opinion are again present. In common with the rest of the international community, the British Government took a close interest in these elections, the first to be held since the handover. As a co-signatory to the Joint Declaration, Britain has an added moral and political responsibility to pay close attention to important events in Hong Kong.

We welcome the record turn-out in the elections, which clearly demonstrated the determination of people in Hong Kong to play a full role in the democratic process, and dispelled the myth of Hong Kong's "political apathy". While we retain real concerns about the framework for the elections, particularly the sharp reduction in the franchise for the functional constituencies, we believe that the conduct of the elections reflects well on the HKSAR Government and the Independent Electoral Affairs Commission, which ensured strict adherence to the rules and fair treatment for all candidates.

Despite the inadequacies of the framework adopted, we are clear that these elections are a step forward. The establishment of the new LegCo, which replaces the appointed provisional legislature, marks the end of an unfortunate and unnecessary interlude in Hong Kong's democratic development. It is also a step forward towards a legislature elected entirely through universal suffrage and towards full democracy in Hong Kong. We hope that the HKSAR Government will build on this achievement and work towards early realisation of this goal.

In our previous report, we drew attention to concerns expressed in Hong Kong about a number of issues. Among the issues which have particularly attracted public debate in the past six months are a number relating to the rule of law, including the decision to extend the common law principle of State immunity to Chinese Government bodies in Hong Kong, and decisions not to prosecute in two separate sensitive cases.

The overall assessment of the British Government is that the rule of law remains robust, under-pinned by strong institutions and individuals of high personal integrity. Under the Joint Declaration and Basic Law, decisions on prosecutions are taken independently in Hong Kong, as they are in the United Kingdom. It is not for Her Majesty's Government to say whether decisions taken by the HKSAR Department of Justice or Hong Kong's courts in individual legal cases are right or wrong. And we must leave it to the Hong Kong courts to decide how in practice the law on immunity of State bodies from prosecution is applied to Chinese Government bodies. But we have said publicly that the role of the New China News Agency branch in Hong Kong should be clearly and unambiguously defined, so as to allay the concerns of those who are worried about its functions and its position before the law in Hong Kong. It is crucial to the future interests of Hong Kong not only that the rule of law should function effectively, but that it should be perceived to be functioning effectively, both in the local and international community.

The first anniversary of the handover is an important date in Hong Kong's development. At this point, it might be tempting for some observers to conclude that, because of the sound start made by the HKSAR, we need no longer to take such a close interest in developments there. That is not our view. On the contrary, with its governmental institutions now in place, Hong Kong will face new challenges. As I noted in my foreword to the previous report, a particular challenge for the new Legislative Council will be the requirement to pass legislation on issues such as secession and subversion, under Article 23 of the Basic Law. The HKSAR Government's handling of this sensitive issue will be widely seen by the international community as a benchmark for its wider approach to human rights.

British commitment to Hong Kong will not diminish either. Earlier this month, the Deputy Prime Minister attended the opening of the new Hong Kong International Airport, a project in which Britain has been intimately involved from conception to execution. In October the Prime Minister, Tony Blair, will visit Hong Kong and mainland China. This visit will be a potent symbol of the new relationship which we are developing with China, including with the HKSAR, across the full range of our shared activities and interests. It is evidence of our wish to see our involvement in and relationship with Hong Kong endure and grow.

ROBIN COOK  
Secretary of State for  
Foreign and Commonwealth Affairs

July 1998

# **SIX-MONTHLY REPORT ON THE IMPLEMENTATION OF THE JOINT DECLARATION ON HONG KONG**

**JANUARY-JUNE 1998**

## **Introduction**

The Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong sets out the main commitments made by the British and Chinese Governments with regard to the transfer of sovereignty over Hong Kong. It is in the three annexes that these commitments are set out in detail, and notably in Annex I that the Chinese Government has elaborated its basic policies towards Hong Kong. These annexes are an integral part of the Joint Declaration, and fully binding. It is against these commitments that the implementation of the Joint Declaration is above all to be measured.

In reporting to Parliament, the Government has decided to refer in detail to the provisions of Annex I to the Joint Declaration. The structure and order of this report reflect the organisation of that Annex.

The following principal abbreviations have been used in the text:

CPG	Central People's Government (China)
CPPCC	Chinese People's Political Consultative Conference
FC	Functional constituency (electoral)
GC	Geographical constituency (electoral)
HKSAR	Hong Kong Special Administrative Region
LegCo	Hong Kong Legislative Council
NCNA	New China News Agency
NPC	National People's Congress (China)

## **PROVISIONS OF ANNEX ONE OF THE JOINT DECLARATION**

### **I. CONSTITUTION**

1.1. The Joint Declaration provides as follows:

*The Constitution of the People's Republic of China stipulates in Article 31 that "the state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by laws enacted by the National People's Congress in the light of the specific conditions". In accordance with this Article, the People's Republic of China shall, upon the resumption of the exercise of sovereignty over Hong Kong on 1 July 1997, establish the Hong Kong Special Administrative Region of the People's Republic of China. The National People's Congress of the People's Republic of China shall enact and promulgate a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as the Basic Law) in accordance with the Constitution of the People's Republic of China, stipulating that after the establishment of the Hong Kong Special Administrative Region the socialist system and socialist policies shall not be practised in the Hong Kong Special Administrative Region and that Hong Kong's previous capitalist system and life-style shall remain unchanged for 50 years.*

*The Hong Kong Special Administrative Region shall be directly under the authority of the Central People's Government of the People's Republic of China and shall enjoy a high degree of autonomy. Except for foreign affairs and defence which are the responsibility of the Central People's Government, the Hong Kong Special Administrative Region shall be vested with executive, legislative and independent judicial power, including that of final adjudication. The Central People's Government shall authorise the Hong Kong Special Administrative Region to conduct on its own those external affairs specified in Section XI of this Annex.*

*The government and legislature of the Hong Kong Special Administrative Region shall be composed of local inhabitants. The chief executive of the Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government. Principal officials (equivalent to Secretaries) shall be nominated by the chief executive of the Hong Kong Special Administrative Region and appointed by the Central People's Government. The legislature of the Hong Kong Special Administrative Region shall be constituted by elections. The executive authorities shall abide by the law and shall be accountable to the legislature.*

*In addition to Chinese, English may also be used in organs of government and in the courts in the Hong Kong Special Administrative Region.*

*Apart from displaying the national flag and national emblem of the People's Republic of China, the Hong Kong Special Administrative Region may use a regional flag and emblem of its own.*

### **Assessment**

1.2. During the first half of 1998, the Chinese Government continued its policy of non-interference in Hong Kong's affairs and respect for the HKSAR's high degree of autonomy, as provided for in the Joint Declaration. Chinese leaders reiterated their commitment to this policy to the Foreign Secretary during his visit to Beijing in January. They continued to express full confidence in the HKSAR Government and in the leadership of the Chief Executive, CH Tung.

#### *Legislative Council elections*

1.3. The most important political event during the first six months was the Legislative Council elections held on 24 May. As in previous Legislative Council elections in Hong Kong, there were effectively three elections in one: twenty of the sixty seats were directly elected through proportional representation in geographical constituencies (GCs); thirty were elected through functional constituencies (FCs) representing different trades and professions; and the remaining ten were elected by the Election Committee, an 800-member electoral college which was selected through "sub-sector elections" on 2 April.

1.4. The HKSAR Government made a huge effort in preparation for the elections. It invested heavily in publicity campaigns to encourage people to register to vote, and then subsequently to exercise their right to vote. The voter registration drive, completed in January, resulted in the registration of about 290,000 new voters in the GCs, bringing total registration to about 2.77 million voters, or 70% of those eligible to vote.

1.5. In the FCs, about 25,000 new voters were registered, bringing total registration to about 148,000. This was about 64% of those eligible under the more restrictive franchise introduced for this part of the elections (for further detail on the reduction of the franchise from 1995 please refer to the previous report in this series, Cm 3831). There was criticism of the registration rate in individual FCs, where in some cases only about 30% of eligible voters registered. During his visit to Hong Kong in January, the Foreign Secretary said that the poor registration rate in some of these constituencies reflected the unsatisfactory nature of the arrangements in place for the FCs. He called for the franchise in the FCs to be broadened as an interim step towards universal suffrage.

1.6. Turn-out among the approximately 140,000 voters entitled to participate in the "sub-sector elections" to choose the Election Committee members was also low, at just over 23%. This provoked accusations from pro-democracy politicians that the sub-sector elections were complex and elitist. The HKSAR Government defended them as a step forwards towards the gradual development of democracy in Hong Kong.

1.7. Nominations for the elections closed on 24 April. 166 candidates were nominated, including 81 candidates for the 20 seats in the GCs; 60 for the 30 FC seats; and 25 for the 10 Election Committee seats. Ten FC candidates were returned unopposed, including six members of the Liberal Party and one member of the Democratic Party. Eight candidates withdrew from the elections because they failed to fulfil the Basic Law's requirement that they must be Hong Kong permanent residents with no right of abode elsewhere (under the Legislative Council Ordinance this condition applied to all the GCs and all but twelve of the FCs). The HKSAR Government expressed satisfaction with the large number of nominees.

1.8. The election campaign was generally perceived to be low key. There were few major campaign issues to help the voters distinguish one party from another, and the campaign tended to focus on the personalities and style of individual candidates. All candidates emphasised their concern about livelihood issues such as unemployment and housing. Constitutional issues such as the pace of democracy or relations with China stimulated less discussion than in the 1995 LegCo elections: all the major parties, including those normally identified with Beijing, supported the principle of early elections by universal suffrage.

1.9. The campaign was also clean, not least because of the efficient supervision and promotion of good practice by the Electoral Affairs Commission (EAC), chaired by Mr Justice Woo Kwok-hing. Most complaints related to unauthorised publicity materials and alleged invasions of privacy by candidates and their representatives. Complaints were also made to the EAC about non-declaration of foreign nationality by candidates.

1.10. Concern was expressed about the activities of the New China News Agency (NCNA). Allegations were made that the Agency had tried to influence candidates in the Information Technology FC. NCNA denied this and other accusations of interference.

1.11. Shortly after this, following a complaint by one candidate, the Chinese authorities alleged that the British Consulate-General was interfering in the elections by requesting meetings with candidates. They warned all foreign consulates in Hong Kong not to get involved in any way in matters concerning the elections. The British Consulate-General made clear that routine low-key contacts with members of political parties were part of the normal practice of foreign consulates in Hong Kong and elsewhere and did not constitute interference. No other candidates objected to our requests for meetings and many welcomed the contacts.

1.12. Despite the low-key and relatively uncontroversial campaign and widespread perceptions of voter apathy, voter turn-out reached a record level of 53.3% in the GCs. The Democratic Party won 42.6% of the vote (as against 41.9% in 1995). Together with its allies and likely supporters it took 15 of the 20 geographical seats. The pro-Beijing Democratic Alliance for the Betterment of Hong Kong (DAB) achieved their goal of winning one seat in each of the five GCs, with 25% of the vote (15.4% in 1995).

1.13. Voting in the FCs generally favoured more conservative candidates: the business-oriented Liberal Party took ten seats, and the DAB and the pro-Beijing Hong Kong Progressive Alliance (HKPA) two each. The Democratic Party won four seats. In the Election Committee, the highest number of votes went to provisional legislature president, Rita Fan. The DAB and the HKPA took five of the 10 seats between them. No Democrats stood for election by the Election Committee.

1.14. The combined results from the three different parts of the elections mean that the Democratic Party and its allies hold about one third of the sixty LegCo seats, although they secured about two thirds of the popular vote. The three largest parties are the Democratic Party (13 seats), the Liberal Party (10 seats) and the DAB (10 seats). Full results are

included at annex A. 18 of the new legislators were members of the previous Legislative Council who had not participated in the provisional legislature.

1.15. The HKSAR Government attributed the high turn-out to Hong Kong people exercising their high degree of autonomy under the principle of One Country Two Systems. The Chief Executive said that it demonstrated the public's confidence in this principle and their support for the first LegCo election of the HKSAR. Many local commentators viewed it as a protest against the provisional legislature and as an expression of concern about the economic downturn. Exit polls suggested many people had voted out of a sense of civic duty. Democratic Party Chairman Martin Lee said the high turn-out was evidence of the strength of support for democracy. He reiterated his call for the Basic Law to be amended, saying his party would like to see all sixty LegCo seats elected by universal suffrage in 2000, and the Chief Executive directly elected in 2002.

1.16. Chief Executive C H Tung ruled out an acceleration in the pace of democratic development, reiterating that Hong Kong would "resolutely move forward to a more democratic form of government in accordance with the provisions of the Basic Law". Earlier in the year, he had also publicly ruled out the possibility of adopting a ministerial system of government in Hong Kong, but said his Government would review the relationship between the legislature and the executive.

1.17. The British Government, like all other governments, did not send observers to monitor the elections, because we had full confidence in the ability of the EAC to supervise the elections effectively - a confidence that was borne out by events.

1.18. The British Government welcomes the fact that legislative council elections have been held. We are encouraged that the unelected provisional legislature has been replaced by a body which includes representatives from across the political spectrum, although the composition of the new legislature as a whole does not reflect the proportion of votes cast by universal suffrage in the geographical constituencies. We believe that the high voter turn-out demonstrates the determination of people in Hong Kong to play a full role in the democratic process. The elections have shown that far from being politically apathetic, Hong Kong is a mature and sophisticated society, which is ready for greater democratic participation.

1.19. We retain concerns about the framework for the elections, particularly the sharp reduction in the franchise for the functional constituencies. We have noted further concerns expressed in Hong Kong during the campaign, about the possibility for abuse of corporate voting in the FCs through the registration of "shell companies". But we believe that the conduct of the elections reflects well on the HKSAR Government and in particular the Electoral Affairs Commission. The EAC ensured strict adherence to the rules and fair treatment for all candidates, often in the face of criticism from political figures and the media.

1.20. The Government also believes that after the interruption to Hong Kong's political development caused by the provisional legislature, these elections are a step towards a legislature elected entirely through universal suffrage. We have made clear our hope that the HKSAR Government will build on this achievement and work towards early realisation of this goal. The Government will continue to follow closely the progress of the new LegCo and of constitutional development generally in Hong Kong.

#### *Provisional legislature*

1.21. The provisional legislature held its final session on 7-8 April, having passed 54 Bills during its period of operation. One of its final acts was to pass the Adaptation of Laws Ordinance (see Section II below). However, the provisional legislature was not dissolved until 30 June and its members continued to be paid up to that date. In practice, however, the newly elected legislators were involved in discussion of important issues requiring urgent attention between 24 May and 1 July. All the major parties formed an informal coalition, announced joint proposals for stimulating the economy and entered into discussions with the HKSAR Government about the economy.

1.22. The question of the provisional legislature's legal status arose again. In the context of a ruling by the Court of Appeal on 20 May on right of abode in Hong Kong (see Section XIV below), Mr Justice Chan, Mr Justice Mortimer and Mr Justice Nazareth confirmed their ruling of 29 July 1997 (see the previous report in this series, Cm 3831) that the body had been legally established. But the judges also said that, contrary to their earlier interpretation, "in appropriate cases ..... the SAR courts do have jurisdiction to examine the laws and acts of the National People's Congress which affect the SAR for the purpose of, say, determining whether such laws or acts are contrary or inconsistent with the Basic Law". They also left open the possibility of challenges to those actions of the provisional legislature which appeared to go beyond the powers given it by the Preparatory Committee.

*HKSAR Government Office in Beijing*

1.23. Preparations continued for the establishment of the HKSAR Government's Office in Beijing. In February, Secretary for Constitutional Affairs, Michael Suen, outlined the Office's main functions, including its trade and immigration functions, and responsibilities for liaising with the Chinese Government and representative offices of other provinces and municipalities. He said the Office would work closely with, not under, the State Council Hong Kong and Macao Affairs Office (HKMAO). HKMAO Director Liao Hui gave similar public assurances that his Office would not interfere in the functions and staffing of the HKSAR Government Office.

*Local government*

1.24. On 1 June, the HKSAR Government released a consultation paper on the restructuring of district organisations. The paper offered a number of different options for reorganising the two municipal councils and the 18 district boards. Public consultation will end on 31 July. In unveiling the consultation paper, Secretary for Constitutional Affairs, Michael Suen, said the main aim was to achieve greater efficiency and value for money. The Chief Executive is expected to announce the HKSAR Government's final decision in his 1998 Policy Address (in October), so that the changes can be implemented in time for the district elections, which are scheduled for 1999. Initial public reactions to the proposals were generally positive, but many members of the district organisations reacted defensively.

*Hong Kong membership of Chinese parliamentary bodies*

1.25. At the annual meeting of the Chinese National People's Congress (NPC) in Beijing in March, President Jiang Zemin made clear that the purpose of Hong Kong deputies to the Congress was only to represent Hong Kong people in the running of state affairs in mainland China. Their remit did not extend to the affairs of Hong Kong. These comments were echoed by the then Chairman of the NPC, Qiao Shi.

1.26. In January, the Chinese People's Political Consultative Conference (CPPCC) published its new list of 2196 deputies for all of China. This included 115 Hong Kong people, of which 22 were new appointees, 21 of them from the former Preparatory Committee. The appointments attracted moderate press coverage but were less controversial than the NPC appointments in December (see previous report in this series, Cm 3831).

1.27. In early March, Basic Law Committee members, Ng Hon-man and Maria Tam, were chosen as the chairman and deputy-chairman of the Hong Kong delegation to the NPC. Meanwhile, the NPC ruled out setting up an independent office in Hong Kong, and confirmed that the New China News Agency's Hong Kong branch would provide support services for the Hong Kong delegation.

1.28. The British Government will continue to take the closest interest in the full range of constitutional issues in Hong Kong relevant to the provisions of the Joint Declaration.



## **II. LEGAL SYSTEM**

2.1. The Joint Declaration provides as follows:

*After the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong (ie the common law, rules of equity, ordinances, subordinate legislation and customary law) shall be maintained, save for any that contravene the Basic Law and subject to any amendment by the Hong Kong Special Administrative Region legislature.*

*The legislative power of the Hong Kong Special Administrative Region shall be vested in the legislature of the Hong Kong Special Administrative Region. The legislature may on its own authority enact laws in accordance with the provisions of the Basic Law and legal procedures, and report them to the Standing Committee of the National People's Congress for the record. Laws enacted by the legislature which are in accordance with the Basic Law and legal procedures shall be regarded as valid.*

*The laws of the Hong Kong Special Administrative Region shall be the Basic Law, and the laws previously in force in Hong Kong and laws enacted by the Hong Kong Special Administrative Region legislature as above.*

### **Assessment**

2.2. There was considerable public debate about the rule of law during this period, particularly over prosecutions policy and the principle of immunity of state bodies from prosecution.

#### *Prosecutions*

2.3. The first of two sensitive prosecution cases involved the New China News Agency (NCNA)'s failure to comply with a request from legislator Emily Lau under the Data Protection Ordinance to see files she believed they held on her. NCNA had taken over a year to respond to her request: the Ordinance requires such requests to be processed within 40 days. The Secretary for Justice, Elsie Leung, decided not to prosecute NCNA on the grounds that their non-compliance constituted a "technical" breach of the Ordinance. The decision raised concerns that NCNA had been exempt from prosecution because it was an official Chinese organisation, an accusation denied by the HKSAR Government.

2.4. In May, Ms Lau was given leave to apply for a private summons against NCNA. The Agency's Director, Jiang Enzhu, was issued with a summons to appear in court. However, the Court of First Instance granted Jiang leave for an application for judicial review and ordered that the summons be suspended until the matter of its validity could be resolved. Jiang's Counsel argued that Ms Lau's purpose was to embarrass Jiang in front of the media. Ms Lau said she would continue with the prosecution.

2.5. In a separate case, the Secretary for Justice launched prosecution proceedings against executives of the Sing Tao newspaper group, following investigations by the Independent Commission Against Corruption (ICAC) into the alleged falsification of the circulation figures for the Hong Kong Standard newspaper. Charges were not pressed against the newspaper's Executive Director, Sally Aw, on the grounds of insufficient evidence. Defending her decision before the provisional legislature, the Secretary of Justice declined to go into greater detail about the case itself (which remained sub judice) but emphasised that the HKSAR's judicial system was open and fair and that all prosecutions were brought independently of government. Her action was criticised by pro-democracy politicians, who suspected political motives: Ms Aw is a member of the Chinese People's Political Consultative Conference. The Bar Association called on the Secretary for Justice to explain publicly the reasons for her decision, but the President of the Law Society warned against "opening the floodgates" by asking the Department of Justice to justify every decision.

2.6. It is not for the British Government to take a position on these two cases, which involve the independent prosecuting authority of the HKSAR authorities. But we recognise the level of public concern on these issues in Hong Kong. We note also the announcement in April of a programme of reforms to the Department of Justice Prosecutions Division. These include the publication of new guidelines and manuals, enhanced training, promotion of bilingual skills and strengthening of communication within the department and with outside professional bodies.

#### *Adaptation of laws*

2.7. The publicity created by the cases referred to in the preceding paragraph increased concern in the community about the HKSAR Government's decision to introduce the Adaptation of Laws (Interpretative Provisions) Bill into the provisional legislature. The Bill was intended to change colonial definitions in the laws of Hong Kong, in particular

replacing the term "Crown" with "State". According to the Bill, "State" includes: the Chinese President; the CPG; the HKSAR Government; the Central Authorities of the PRC that exercise functions for which the CPG has responsibility under the Basic Law; and certain subordinate organs of the CPG or central authorities which satisfy three criteria. These are that the relevant body must carry out executive functions on behalf of the CPG; must not engage in commercial functions; and its activities must be within the confines of its own delegated authority. The Ordinance does not spell out who falls into the final category, but the HKSAR Government has said that it considers that the MFA Commission, the Chinese military garrison, the New China News Agency and the Chinese Joint Liaison Group Office satisfy the first two of the three criteria. Whether they also satisfy the third test in any particular situation will depend on the facts of any case brought before the courts.

2.8. The HKSAR Government defended the decision as administrative tidying up to reflect the change of sovereignty. They emphasised that the changes did not place State bodies above the law, and that those laws which had explicitly bound the Crown (including the Bill of Rights Ordinance) would now bind the State. However, considerable public concern was expressed about the implications of the move, and particularly the decision to define NCNA as a State body. Critics argued that such a sensitive decision should have been left until after the LegCo elections. Both the Hong Kong Bar Association and the Democratic Party said the draft amendment violated Article 22 of the Basic Law, which requires offices set up in the HKSAR by departments of the CPG to abide by the laws of Hong Kong. The Bar Association has noted that initial Government proposals had involved replacing the term "Crown" with the word "Government", not "State".

2.9. The HKSAR Government argued that the relevant bodies are bound by Hong Kong laws; but that Article 22 of the Basic Law does not regulate the drafting or interpretation of Hong Kong laws; and that the amendments mean simply that section 66 of chapter 1 of Hong Kong's laws (which provided that laws did not bind the Crown unless otherwise specified) now applies to relevant organs of the PRC. The HKSAR Government also argued that the term "State" reflected more accurately than the term "Government" the concept of sovereignty embodied by the Crown in Hong Kong before 1 July 1997.

2.10. The British Government considers that it would be helpful if the precise status of the NCNA in Hong Kong could be clarified. We also believe that it would have been better to leave such a publicly sensitive issue to be considered by the elected LegCo, not the provisional legislature.

2.11. The Secretary for Justice visited Beijing in March, where she met Vice-Premier Qian Qichen and Hong Kong Macao Affairs Office Director Liao Hui. A number of issues relating to the legal interface between Hong Kong and the mainland were discussed, including a Hong Kong-mainland working group to study the mutual recognition and enforcement of arbitration awards, the servicing of legal documents in civil matters, and mutual legal assistance. Ms Leung said that there was preliminary discussion of the transfer of fugitive offenders and obtaining of evidence in civil matters.

2.12. Notwithstanding the specific concerns expressed on these points in Hong Kong, the British Government believes that, on the whole, the rule of law remains robust. We shall continue to take the closest interest in this most important aspect of Hong Kong's development.

### **III. JUDICIAL SYSTEM**

3.1. The Joint Declaration provides as follows:

*After the establishment of the Hong Kong Special Administrative Region, the judicial system previously practised in Hong Kong shall be maintained except for those changes consequent upon the vesting in the courts of the Hong Kong Special Administrative Region of the power of final adjudication. Judicial power in the Hong Kong Special Administrative Region shall be vested in the courts of the Hong Kong Special Administrative Region. The courts shall exercise judicial power independently and free from any interference. Members of the judiciary shall be immune from legal action in respect of their judicial functions. The courts shall decide cases in accordance with the laws of the Hong Kong Special Administrative Region and may refer to precedents in other common law jurisdictions.*

*Judges of the Hong Kong Special Administrative Region courts shall be appointed by the chief executive of the Hong Kong Special Administrative Region acting in accordance with the recommendation of an independent commission composed of local judges, persons from the legal profession and other eminent persons. Judges shall be chosen by reference to their judicial qualities and may be recruited from other common law jurisdictions. A judge may only be removed for inability to discharge the functions of his office, or for misbehaviour, by the chief executive of the Hong Kong Special Administrative Region acting in accordance with the recommendation of a tribunal appointed by the chief judge of the court of final appeal, consisting of not fewer than three local judges. Additionally, the appointment or removal of principal judges (ie those of the highest rank) shall be made by the chief executive with the endorsement of the Hong Kong Special Administrative Region legislature and reported to the Standing Committee of the National People's Congress for the record. The system of appointment and removal of judicial officers other than judges shall be maintained.*

*The power of final adjudication of the Hong Kong Special Administrative Region shall be vested in the court of final appeal in the Hong Kong Special Administrative Region, which may as required invite judges from other common law jurisdictions to sit on the court of final appeal.*

*A prosecuting authority of the Hong Kong Special Administrative Region shall control criminal prosecutions free from any interference.*

*On the basis of the system previously operating in Hong Kong, the Hong Kong Special Administrative Region Government shall on its own make provision for local lawyers and lawyers from outside the Hong Kong Special Administrative Region to work and practise in the Hong Kong Special Administrative Region.*

*The Central People's Government shall assist or authorise the Hong Kong Special Administrative Region to make appropriate arrangements for reciprocal juridical assistance with foreign states.*

#### **Assessment**

3.2. The HKSAR Legal Year opened on 12 January. In his speech at the opening, Chief Justice Andrew Li emphasised the importance of maintaining an independent judiciary and the rule of law. He said that independence with integrity and professional competence would remain the hallmarks of the HKSAR judiciary. The British Government believes that this assessment is well founded.

3.3. The appointment of British Law Lords Lord Nicholls and Lord Hoffmann as non-permanent judges of the Court of Final Appeal (CFA) was confirmed by the provisional legislature and took effect from 12 January (see previous report in this series, Cm 3831, for details of their selection). The CFA has operated smoothly so far, and the number of cases for it to deal with has gradually risen. Other courts in Hong Kong have continued to operate as in the past. There has been some increase in the use of Cantonese in court cases.

3.4. The HKSAR judiciary continued to develop links with its mainland Chinese counterparts. Chief Justice Andrew Li and Chief Judge Patrick Chan visited Beijing for four days in February at the invitation of the President of the Supreme People's Court.

3.5. There can be no doubt that the independence of Hong Kong's judiciary is crucial to maintaining confidence in Hong Kong's stability and way of life.

#### **IV. PUBLIC SERVICE**

4.1. The Joint Declaration provides as follows:

*After the establishment of the Hong Kong Special Administrative Region, public servants previously serving in Hong Kong in all government departments, including the police department, and members of the judiciary may all remain in employment and continue their service with pay, allowances, benefits and conditions of service no less favourable than before. The Hong Kong Special Administrative Region Government shall pay to such persons who retire or complete their contracts, as well as to those who have retired before 1 July 1997, or to their dependants, all pensions, gratuities, allowances and benefits due to them on terms no less favourable than before, and irrespective of their nationality or place of residence.*

*The Hong Kong Special Administrative Region Government may employ British and other foreign nationals previously serving in the public service in Hong Kong, and may recruit British and other foreign nationals holding permanent identity cards of the Hong Kong Special Administrative Region to serve as public servants at all levels, except as heads of major government departments (corresponding to branches or departments at Secretary level) including the police department, and as deputy heads of some of those departments. The Hong Kong Special Administrative Region Government may also employ British and other foreign nationals as advisers to government departments and, when there is a need, may recruit qualified candidates from outside the Hong Kong Special Administrative Region to professional and technical posts in government departments. The above shall be employed only in their individual capacities and, like other public servants, shall be responsible to the Hong Kong Special Administrative Region Government.*

*The appointment and promotion of public servants shall be on the basis of qualifications, experience and ability. Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service (including special bodies for appointment, pay and conditions of service) shall, save for any provisions providing privileged treatment for foreign nationals, be maintained.*

#### **Assessment**

4.2. The civil service continued to function effectively and responsibly, and the authorities acted decisively against serious breaches of conduct. Four officers of the Independent Commission Against Corruption were suspended from duty on suspicion of having disclosed confidential information about the Commission's work, and a senior customs officer was arrested in connection with the piracy of compact discs. Some concerns were expressed, however, about possible political influence in appointments to statutory advisory bodies such as the Housing Authority. Officials at all levels visited Beijing regularly, but there is no evidence that this was for reasons other than routine contact-building.

4.3. On 1 April, the new Information Technology and Broadcasting Bureau (ITBB) was established and replaced the Broadcasting, Culture and Sport Bureau (responsibility for culture, recreation and sport transferred to the Home Affairs Bureau). ITBB took over responsibility for telecommunications from the Economic Services Bureau. Former Secretary for the Treasury, KC Kwong, was appointed Secretary for Information Technology and Broadcasting, and was replaced by Denise Yue. Miss Yue was replaced as Secretary for Trade and Industry by Chau Tak-hay, who had previously held the post from 1991-1995.

4.4. In April, expatriate civil servants on contract terms were given leave to challenge a government decision requiring them to pass a Chinese-language proficiency test before they could transfer to the permanent establishment. The officials claimed this requirement breached Basic Law Article 100. This followed the Court of Final Appeal's refusal to grant leave for a full hearing on a challenge by expatriate civil servants to the government's policy on senior civil service appointments.

4.5. The British Government continues to have high respect for the Hong Kong civil service. We are anxious that its ideals of integrity and public service should continue to be upheld. We shall continue to follow relevant developments closely, in particular public appointments and personnel changes.

## **V. FINANCE**

5.1. The Joint Declaration provides as follows:

*The Hong Kong Special Administrative Region shall deal on its own with financial matters, including disposing of its financial resources and drawing up its budgets and its final accounts. The Hong Kong Special Administrative Region shall report its budgets and final accounts to the Central People's Government for the record.*

*The Central People's Government shall not levy taxes on the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region shall use its financial revenues exclusively for its own purposes and they shall not be handed over to the Central People's Government. The systems by which taxation and public expenditure must be approved by the legislature, and by which there is accountability to the legislature for all public expenditure, and the system for auditing public accounts shall be maintained.*

### **Assessment**

5.2. The first HKSAR budget was presented by Financial Secretary, Donald Tsang, on 18 February. The Budget was aimed at increasing economic confidence in the wake of the regional financial instability (see Section VI below). It included a 17.8% increase in expenditure to finance the improvements to services and investment in infrastructure outlined in the Chief Executive's 1997 Policy Address. It also included a number of tax cuts and other revenue concessions targeted at both individuals and the corporate sector. In keeping with past budgetary practice in Hong Kong, a surplus was nevertheless projected, of about HK\$ 10.7 billion.

5.3. Reactions to the Budget in Hong Kong were on the whole favourable. However, as the economic outlook began to worsen, the political parties called on the HKSAR Government to revise its spending plans, and the projected surplus was subsequently revised to a deficit of HK\$ 21.4 billion after the announcement on 22 June of a new package of economic measures (see Section VI below). There was no evidence of CPG involvement or influence in the drafting of the Budget.

5.4. The British Government is encouraged by the way that the HKSAR Government is conducting its finances independently of the CPG.

## **VI. ECONOMIC SYSTEM**

6.1. The Joint Declaration provides as follows:

*The Hong Kong Special Administrative Region shall maintain the capitalist economic and trade systems previously practised in Hong Kong. The Hong Kong Special Administrative Region Government shall decide its economic and trade policies on its own. Rights concerning the ownership of property, including those relating to acquisition, use, disposal, inheritance and compensation for lawful deprivation (corresponding to the real value of the property concerned, freely convertible and paid without undue delay) shall continue to be protected by law.*

*The Hong Kong Special Administrative Region shall retain the status of a free port and continue a free trade policy, including the free movement of goods and capital. The Hong Kong Special Administrative Region may on its own maintain and develop economic and trade relations with all states and regions.*

*The Hong Kong Special Administrative Region shall be a separate customs territory. It may participate in relevant international organisations and international trade agreements (including preferential trade arrangements), such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles. Export quotas, tariff preferences and other similar arrangements obtained by the Hong Kong Special Administrative Region shall be enjoyed exclusively by the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region shall have authority to issue its own certificates of origin for products manufactured locally, in accordance with prevailing rules of origin. The Hong Kong Special Administrative Region may, as necessary, establish official and semi-official economic and trade missions in foreign countries, reporting the establishment of such missions to the Central People's Government for the record.*

### **Assessment**

6.2. The effects of the Asian economic crisis were felt with increasing severity in Hong Kong during this period, as interest rates rose to defend the Hong Kong dollar peg to the US dollar. The HKSAR Government's provisional figure for GDP growth in the first quarter was about minus 2% in real terms, the first negative growth figure in thirteen years. Growth in the second quarter was also expected to be negative. In late May, the Financial Secretary said that the government's earlier forecast of 3.5% GDP growth for 1998 was unattainable and would be revised. Unemployment rose to 4.2% (the highest level recorded in Hong Kong for 14 years) but inflation (CPI) moderated slightly to 4.7%. The property market was highly depressed, with prices down 40% from their 1997 peak, and the stock market was down 50% since its August peak.

6.3. The Government faced growing pressure to act to stimulate jobs and increase spending, with the seven main political parties forming a broad coalition after the May elections to press for a more interventionist policy. The Government remained committed to its free-market economic principles and ruled out the introduction of a full-scale unemployment benefit system. On 22 June it announced a new package of measures to stimulate the economy and stabilise the property market. This followed the earlier announcement, in May, of a seven-point plan to stimulate recovery in the property, banking and tourist sectors and create more liquidity in the financial system.

6.4. The 22 June package, which is expected to cost HK\$ 32 billion (£2.4 billion), includes: changes to the profit tax system to improve liquidity; temporary suspension of land auctions; increased government home purchase assistance; assistance to small and medium sized enterprises in securing credit; a rates rebate; and a reduction in diesel duty. A senior civil service pay freeze for this year was also announced. The package, which had not been expected, was generally well received by political parties, business and the financial sector, although some specific measures were criticised as inadequate by individual interest groups.

6.5. Among other measures taken, the Construction Labour Importation Scheme (proposed in December to meet projected labour shortfalls in the construction sector) was put on indefinite hold, and rent freezes were announced in public housing estates. A special task force on unemployment was established and drew up a twelve-point plan to provide 100,000 jobs in the following eighteen months.

6.6. While exercising its autonomy, the HKSAR also continued to develop economic links with the rest of China. In March, the Hong Kong/Guangdong Co-operation Joint Conference held its first meeting, in Guangzhou.

6.7. We note that the Chinese Government has been strongly supportive of the HKSAR authorities, but has not sought to interfere in economic policy-making. None of the measures in either the budget or subsequent policy decisions involved consultation with Beijing. Along with the rest of the region, the immediate outlook remains difficult. The HKSAR Government has not sought to downplay this. But we believe that Hong Kong's fundamental strengths have not been impaired. It remains a well managed, transparent economy with a strong and stable currency.

## **VII. MONETARY SYSTEM**

7.1. The Joint Declaration provides as follows:

*The Hong Kong Special Administrative Region shall retain the status of an international financial centre. The monetary and financial systems previously practised in Hong Kong, including the systems of regulation and supervision of deposit taking institutions and financial markets, shall be maintained.*

*The Hong Kong Special Administrative Region Government may decide its monetary and financial policies on its own. It shall safeguard the free operation of financial business and the free flow of capital within, into and out of the Hong Kong Special Administrative Region. No exchange control policy shall be applied in the Hong Kong Special Administrative Region. Markets for foreign exchange, gold, securities and futures shall continue.*

*The Hong Kong dollar, as the local legal tender, shall continue to circulate and remain freely convertible. The authority to issue Hong Kong currency shall be vested in the Hong Kong Special Administrative Region Government. The Hong Kong Special Administrative Region Government may authorise designated banks to issue or continue to issue Hong Kong currency under statutory authority, after satisfying itself that any issue of currency will be soundly based and that the arrangements for such issue are consistent with the object of maintaining the stability of the currency. Hong Kong currency bearing references inappropriate to the status of Hong Kong as a Special Administrative Region of the People's Republic of China shall be progressively replaced and withdrawn from circulation.*

*The Exchange Fund shall be managed and controlled by the Hong Kong Special Administrative Region Government, primarily for regulating the exchange value of the Hong Kong dollar.*

### **Assessment**

7.2. Despite the regional financial instability during this period, the Hong Kong dollar peg to the US dollar remained firm. Because of the currency board system used to manage the Hong Kong dollar, this was achieved through steeply increased interest rates, with domestic asset prices (particularly property and wages) bearing the burden of adjustment to maintain Hong Kong's competitiveness.

7.3. The banking sector remained in generally good health, with good capital adequacy ratios, though there were liquidity problems, exacerbated by a withdrawal of lines of credit by Japanese banks. Some individual companies experienced problems. The investment bank Peregrine went into liquidation in January, primarily because of over-exposure to bad debts in Indonesia, and a securities company CA Pacific suspended trading because of financial difficulties.

7.4. The Chinese Government have also pledged strong support for Hong Kong's policies, especially the dollar peg and the way it handled the financial crisis. After his appointment as the new Chinese Premier in March Zhu Rongji said that the Central Government would spare no effort or cost to maintain the prosperity and stability of Hong Kong, and to maintain the link system between the US dollar and the Hong Kong dollar.

7.5. In June, it was announced that Andrew Sheng (Deputy Chief Executive of the Hong Kong Monetary Authority) would become head of the Securities and Futures Commission on 1 October.

7.6. The Bank for International Settlements announced that in July it would open a representative office for Asia and Pacific in Hong Kong.

7.7. The British Government is reassured that the HKSAR Government continues to exercise its full autonomy on financial matters.

## **VIII. SHIPPING**

8.1. The Joint Declaration provides as follows:

*The Hong Kong Special Administrative Region shall maintain Hong Kong's previous systems of shipping management and shipping regulation, including the system for regulating conditions of seamen. The specific functions and responsibilities of the Hong Kong Special Administrative Region Government in the field of shipping shall be defined by the Hong Kong Special Administrative Region Government on its own. Private shipping businesses and shipping-related businesses and private container terminals in Hong Kong may continue to operate freely.*

*The Hong Kong Special Administrative Region shall be authorised by the Central People's Government to continue to maintain a shipping register and issue related certificates under its own legislation in the name of "Hong Kong, China".*

*With the exception of foreign warships, access for which requires the permission of the Central People's Government, ships shall enjoy access to the ports of the Hong Kong Special Administrative Region in accordance with the laws of the Hong Kong Special Administrative Region.*

### **Assessment**

8.2. During the first six months of this year, the HKSAR continued to manage its own affairs in the area of merchant shipping. The general perception in Hong Kong was that threats to Hong Kong's position as a world shipping centre were more likely to be determined by market factors (such as competitiveness or the development of direct links between Taiwan and mainland China), than from a weakening of Hong Kong's autonomy. However, we shall continue to look to see that Hong Kong maintains its autonomy in this field.

8.3. Visits to Hong Kong by foreign warships also continued to proceed smoothly, with arrangements for obtaining clearance made through the MFA Commission in Hong Kong. Since the handover, the Commission has granted diplomatic clearance for port calls by 78 warships, including 73 from the USA.



## **IX. CIVIL AVIATION**

9.1. The Joint Declaration provides as follows:

*The Hong Kong Special Administrative Region shall maintain the status of Hong Kong as a centre of international and regional aviation. Airlines incorporated and having their principal place of business in Hong Kong and civil aviation related businesses may continue to operate. The Hong Kong Special Administrative Region shall continue the previous system of civil aviation management in Hong Kong, and keep its own aircraft register in accordance with provisions laid down by the Central People's Government concerning nationality marks and registration marks of aircraft. The Hong Kong Special Administrative Region shall be responsible on its own for matters of routine business and technical management of civil aviation, including the management of airports, the provision of air traffic services within the flight information region of the Hong Kong Special Administrative Region, and the discharge of other responsibilities allocated under the regional air navigation procedures of the International Civil Aviation Organisation.*

*The Central People's Government shall, in consultation with the Hong Kong Special Administrative Region Government, make arrangements providing for air services between the Hong Kong Special Administrative Region and other parts of the People's Republic of China for airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region and other airlines of the People's Republic of China. All Air Service Agreements providing for air services between other parts of the People's Republic of China and other states and regions with stops at the Hong Kong Special Administrative Region and other states and regions with stops at other parts of the People's Republic of China shall be concluded by the Central People's Government. For this purpose, the Central People's Government shall take account of the special conditions and economic interests of the Hong Kong Special Administrative Region and consult the Hong Kong Special Administrative Region Government. Representatives of the Hong Kong Special Administrative Region Government may participate as members of delegations of the Government of the People's Republic of China in air service consultations with foreign governments concerning arrangements for such services.*

*Acting under specific authorisations from the Central People's Government, the Hong Kong Special Administrative Region Government may:*

- renew or amend Air Service Agreements and arrangements previously in force; in principle, all such Agreements and arrangements may be renewed or amended with the rights contained in such previous Agreements and arrangements being as far as possible maintained;*
- negotiate and conclude new Air Service Agreements providing routes for airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region and rights for overflights and technical stops; and*
- negotiate and conclude provisional arrangements where no Air Service Agreement with a foreign state or other region is in force.*

*All scheduled air services to, from or through the Hong Kong Special Administrative Region which do not operate to, from or through the mainland of China shall be regulated by Air Service Agreements or provisional arrangements referred to in this paragraph.*

*The Central People's Government shall give the Hong Kong Special Administrative Region Government the authority to:*

- negotiate and conclude with other authorities all arrangements concerning the implementation of the above Air Service Agreements and provisional arrangements;*
- issue licences to airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region;*
- designate such airlines under the above Air Service Agreements and provisional arrangements; and*
- issue permits to foreign airlines for services other than those to, from or through the mainland of China.*

**Assessment**

9.2. The HKSAR Government continued to manage civil aviation in accordance with the provisions of the Joint Declaration. Air Services Agreements (ASAs) were signed with Pakistan, Bahrain, Israel, the UAE and Luxembourg, bringing the total number of ASAs with other countries to 29, eight of which have been signed since the handover. The British Government is satisfied that the HKSAR Government had adequate freedom to conclude these agreements under specific authorisations from the Chinese Government, in accordance with the Joint Declaration.

9.3. The most important development in the period under consideration was the completion of the new airport and airport railway projects. The HKSAR Government announced that the new Hong Kong International Airport at Chek Lap Kok would open for business on 6 July (later than the previous target of April) and that the official opening ceremony would take place on 2 July in the presence of President Jiang Zemin. The British Government said that it would be represented by the Deputy Prime Minister, Mr John Prescott and by the Minister for Tourism and Film, Mr Tom Clarke. The official opening of the airport railway took place on 21 June.

9.4. Since the handover, the MFA Commission have granted diplomatic clearance to land in Hong Kong for 123 military aircraft, of which 86 were American.

## **X. EDUCATION**

10.1. The Joint Declaration provides as follows:

*The Hong Kong Special Administrative Region shall maintain the educational system previously practised in Hong Kong. The Hong Kong Special Administrative Government shall on its own decide policies in the fields of culture, education, science and technology, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational and technological qualifications. Institutions of all kinds, including those run by religious and community organisations, may retain their autonomy. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region. Students shall enjoy freedom of choice of education and freedom to pursue their education outside the Hong Kong Special Administrative Region.*

### **Assessment**

10.2. Debate about the use of English as the medium of instruction in Hong Kong schools continued. A number of schools whose original applications had been turned down, were given permission on appeal to continue teaching in English after September. The HKSAR Government continued strongly to defend and explain its policy on mother-tongue instruction, but it faced criticism in the press for the public relations handling of the issue. There was also extensive debate on the possibility of extending university education from three to four years. A pledge to examine this as part of a wider review of the educational structure was included in the Chief Executive's 1997 Policy Address.

10.3. It was announced in late May that the Education Department had issued a circular to secondary schools, advising them to hoist the national flag and sing the national anthem on important occasions, such as 1 July and 1 October. The British Government is not aware, however, of any developments which suggest that the provisions of the Joint Declaration are not being upheld in this area.

## **XI. FOREIGN AFFAIRS**

11.1. The Joint Declaration provides as follows:

*Subject to the principle that foreign affairs are the responsibility of the Central People's Government, representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegations of the People's Republic of China, in negotiations at the diplomatic level directly affecting the Hong Kong Special Administrative Region conducted by the Central People's Government. The Hong Kong Special Administrative Region may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with states, regions and relevant international organisations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, touristic, cultural and sporting fields. Representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegations of the Government of the People's Republic of China, in international organisations or conferences in appropriate fields limited to states and affecting the Hong Kong Special Administrative Region, or may attend in such other capacity as may be permitted by the Central People's Government and the organisation or conference concerned, and may express their views in the name of "Hong Kong, China". The Hong Kong Special Administrative Region may, using the name "Hong Kong, China", participate in international organisations and conferences not limited to states.*

*The application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Hong Kong Special Administrative Region, and after seeking the views of the Hong Kong Special Administrative Region Government. International agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may remain implemented in the Hong Kong Special Administrative Region. The Central People's Government shall, as necessary, authorise or assist the Hong Kong Special Administrative Region Government to make appropriate arrangements for the application to the Hong Kong Special Administrative Region of other relevant international agreements. The Central People's Government shall take the necessary steps to ensure that the Hong Kong Special Administrative Region shall continue to retain its status in an appropriate capacity in those international organisations of which the People's Republic of China is a member and in which Hong Kong participates in one capacity or another. The Central People's Government shall, where necessary, facilitate the continued participation of the Hong Kong Special Administrative Region in an appropriate capacity in those international organisations in which Hong Kong is a participant in one capacity or another, but of which the People's Republic of China is not a member.*

*Foreign consular and other official or semi-official missions may be established in the Hong Kong Special Administrative Region with the approval of the Central People's Government. Consular and other official missions established in Hong Kong by states which have established formal diplomatic relations with the People's Republic of China may be maintained. According to the circumstances of each case, consular and other official missions of states having no formal diplomatic relations with the People's Republic of China may either be maintained or changed to semi-official missions. States not recognised by the People's Republic of China can only establish non-governmental institutions.*

*The United Kingdom may establish a Consulate-General in the Hong Kong Special Administrative Region.*

### **Assessment**

11.2. During this period, foreign affairs continued to be handled in accordance with the provisions of the Joint Declaration, with the Chinese Government having overall responsibility, and the HKSAR Government enjoying practical autonomy to handle certain aspects of its external relations. The CPG for example assisted the HKSAR Government in sending officials as members of the Chinese national delegation to various international conferences, and in implementing international sanctions. The HKSAR Government for its part organised overseas visits by its own officials, and managed a range of international economic issues and reciprocal legal assistance with other countries, including extradition arrangements.

11.3. In March, Chief Executive CH Tung visited Germany and France. These visits were dominated by the issue of visa-free access for HKSAR passport holders. Likewise, the Chief Executive visited Australia and New Zealand in June and secured visa-free access for a three-month period for BN(O) and HKSAR passport holders visiting New Zealand. The Chief Secretary, Anson Chan, visited Japan and the US from 3 to 17 June. The Financial Secretary Donald Tsang visited Brazil, Argentina and Chile in May. Trade and Industry Secretary Chau Tak-hay went to Brussels in April. HKSAR Government visitors to the United Kingdom included the Financial Secretary, the Secretary for Health and Welfare and the Solicitor General.

11.4. The HKSAR Government also received many official visitors from overseas, including the United Kingdom and other Member States of the European Union. The Deputy Prime Minister, the Foreign Secretary, the President of the Board of Trade and the Minister for Agriculture, Fisheries and Food all visited Hong Kong, as did the Foreign Affairs Committee and the All Party China Group of the House of Commons. Two groups of MEPs visited in May and June, led by Graham Watson MEP and Per Gahrton MEP respectively. European Commissioner, Sir Leon Brittan, visited Hong Kong in February.

11.5. The HKSAR Government signed a number of bilateral agreements with a wide range of countries, and continued discussions on other draft agreements. Since the handover, the MFA Commission in Hong Kong has passed to the HKSAR Government the CPG instruments authorising Hong Kong to negotiate 71 bilateral agreements with 43 countries in areas including air services, surrender of fugitive offenders and mutual legal assistance. The CPG has authorised the HKSAR Government to sign 14 such agreements with ten countries.

11.6. In April, the first extradition of a UK national to Hong Kong under the UK/HKSAR Surrender of Fugitive Offenders Agreement took place. The individual will be tried in accordance with Hong Kong law, and the Chinese authorities were not in any way involved.

## **XII. DEFENCE**

12.1. The Joint Declaration provides as follows:

*The maintenance of public order in the HKSAR shall be the responsibility of the HKSAR Government. Military forces sent by the CPG to be stationed in the HKSAR for the purpose of defence shall not interfere in the internal affairs of the HKSAR. Expenditure for these military forces shall be borne by the Central People's Government.*

### **Assessment**

12.2. The People's Liberation Army (PLA) Garrison continued to maintain a low profile during the first half of 1998. There have been no uniformed troops on the streets of Hong Kong. In addition, we have no evidence that the size of the Garrison has changed significantly since the handover, and we understand that the PLA are currently using all fourteen military sites transferred to them under the Sino-British Defence Lands Agreement.

12.3. The maintenance of public order continued to be carried out effectively and autonomously by the HKSAR Government. Concern was expressed in many sections of the community about press reports that the Government planned to reestablish the Hong Kong Special Branch or install Chinese security advisers in the Chief Executive's Office. The Government denied these reports.

12.4. The British Government will continue to look closely at developments relevant to Hong Kong's defence and the maintenance of public order.

### **XIII. BASIC RIGHTS AND FREEDOMS**

13.1. The Joint Declaration provides as follows:

*The HKSAR Government shall protect the rights and freedoms of inhabitants and other persons in the HKSAR according to law. The HKSAR Government shall maintain the rights and freedoms as provided for by the laws previously in force in Hong Kong, including freedom of the person, of speech, of the press, of assembly, of association, to form and join trade unions, of correspondence, of travel, of movement, of strike, of demonstration, of choice of occupation, of academic research, of belief, inviolability of the home, the freedom to marry and the right to raise a family freely.*

*Every person shall have the right to confidential legal advice, access to the courts, representation in the courts by lawyers of his choice, and to obtain judicial remedies. Every person shall have the right to challenge the actions of the executive in the courts.*

*Religious organisations and believers may maintain their relations with religious organisations and believers elsewhere, and schools, hospitals and welfare institutions run by religious organisations may be continued. The relationship between religious organisations in the HKSAR and those in other parts of the People's Republic of China shall be based on the principles of non-subordination, non-interference and mutual respect.*

*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.*

#### **Assessment**

13.2. The British Government has followed the human rights situation in Hong Kong with great care. We have noted developments in a wide range of areas as set out below. Our overall assessment is that the situation remains positive, and that rights and freedoms continue to be upheld, but we shall continue to study developments carefully.

#### *Demonstrations and protests*

13.3. Demonstrations and protests took place regularly, including on the occasion of visits by senior Chinese leaders. According to the HKSAR Government over 1,600 demonstrations have been held since 1 July 1997. On 4 June, the annual candlelight vigil to mark the Tiananmen massacre was held in Victoria Park. There was no attempt by the police to prevent or interfere with the vigil. An earlier march to commemorate this anniversary, on 31 May, also passed off peacefully. Many other demonstrations have been held to protest about economic and social welfare matters.

13.4. In February, four members of the militant April 5 Action Group who had disrupted provisional legislature meetings in 1997 were convicted, but given conditional discharges and bound over for HK\$ 250 (about 20) each. The Police decided not to charge six activists who had shouted protests from the public gallery of the provisional legislature meeting on 8 April.

13.5. Concern was expressed at the decision in February to prosecute two men for allegedly displaying defiled national and regional flags during a New Year's Day procession. The men were subsequently convicted and conditionally discharged, but their lawyers said they would appeal. In May, four young people were convicted of charges of obstructing and assaulting police officers at a demonstration at the World Bank conference last September. They were ordered to pay fines ranging from HK\$750 to \$3,000.

13.6. Concerns continued to be expressed about police tactics for handling protests. It was reported in June that the Independent Police Complaints Council (IPCC) had decided it had been inappropriate for the Police to broadcast a Beethoven symphony outside the Hong Kong Convention and Exhibition Centre (HKCEC) to drown out protesters on the night of the handover. However, the controversy abated after a meeting between Democratic Party legislators-elect Albert Ho and James To and Secretary for Security Peter Lai on 16 June, during which Lai said that the IPCC had already completed a review on the investigation and made recommendations regarding the handling of demonstrations in future, which the Commissioner of Police had already accepted.

13.7. Secretary for Justice Elsie Leung said in June that the Police had not objected to the holding of any demonstrations, nor refused any application for the formation of societies, of which 626 had been formed since the handover.

### *Bill of Rights Ordinance*

13.8. In February, the provisional legislature voted by 45 votes to 5 to repeal an amendment to the Bill of Rights Ordinance (BORO) which would have allowed the Ordinance to be invoked in civil disputes between individuals. The amendment, passed immediately before the handover, had been suspended since July. The HKSAR Government defended its decision on the grounds that it was restoring the BORO to its original purpose of covering only legal disputes between the government, public bodies and individuals. Pro-democracy politicians and civil rights campaigners criticised the decision, saying it should have been dealt with after the new LegCo had been elected.

13.9. The British Government considers that the amendment is unlikely to have a significant effect on the human rights position of Hong Kong people, because the original Bill of Rights text remains intact. Article 39 of the Basic Law guarantees that the provisions of the International Covenant on Civil and Political Rights shall be implemented through the laws of Hong Kong. But we recognise that any change in human rights legislation in Hong Kong is a sensitive matter. We think that it would have been preferable for this to have been dealt with by a properly elected legislature after the May elections.

### *UN Covenants: reporting obligations*

13.10. In March, the HKSAR Government began public consultation on the draft outlines for its reports to the United Nations under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Government received seven submissions from various groups during the five-week consultation period. Visiting Germany in March, the Chief Executive said that the CPG would not amend the two reports on Hong Kong. The reports are expected to be submitted to the UN in August.

### *Media freedoms*

13.11. Concerns about media freedoms were heightened during March, when a Hong Kong member of the Chinese People's Political Consultative Conference, Xu Simin, publicly attacked the government-owned, but editorially independent, broadcaster Radio Television Hong Kong (RTHK) as being a "remnant of British rule". Xu accused RTHK of being opposed to the HKSAR Government and the Chief Executive and said that the government broadcaster should be promoting official policy. Xu's comments, made in Beijing, provoked a public outcry in Hong Kong. The Director of Broadcasting, Ms Cheung Man-Yee, rejected the accusations, and the Chief Secretary said it was regrettable that Xu should have commented on the performance of RTHK in Beijing. She said that the HKSAR Government respected and valued freedom of expression and freedom of the press. President Jiang Zemin responded publicly by saying that NPC and CPPCC delegates should not interfere in Hong Kong affairs. The Chief Executive's response was felt by some to be less unequivocal: he said that while freedom of speech was important, it was also important for government policies to be positively presented.

13.12. Following the controversy, the Director of Broadcasting announced that guidelines would be established on RTHK programme standards. The HKSAR Government has proposed that she should draw up production guidelines in order to formalise RTHK's unofficial editorial policies and ensure programme standards and accountability of the station. These guidelines are likely to be based on those observed by the BBC and other international broadcasters.

13.13. The Hong Kong Journalists Association continued to accuse the Government of being too secretive towards the media. In February, the Association launched a campaign calling for more open government, and urged the HKSAR Government to open hearings of five Government committees to the public, including those of the Education Board, and the Transport Advisory Committee. They released a report at that time on a survey they had conducted on the Code on Access to Information. Separately, the Political and Economic Risk Consultancy released a survey in June, which concluded that Hong Kong's press and broadcast media had "weathered the transition to Chinese sovereignty much better than sceptics were anticipating a year ago", and that Hong Kong's media was freer than those of its neighbours, including Taiwan. Businessmen in ten Asian countries and Hong Kong took part in the survey.

13.14. Two publications, the Express Daily News and the current affairs monthly, Nineties Magazine, ceased publication in March. There was no evidence of political factors influencing these decisions. However, concerns were expressed during the six-month period about changes in the ownership of one of the terrestrial TV companies in Hong Kong, Asia Television. Some people felt the station would be subject to greater mainland Chinese influence, but this was strongly denied by the owners. Similar concerns were expressed about possible changes to ownership of the Sing Tao media group.



*Article 23 of the Basic Law*

13.15. Many politicians and NGOs continued to express concern about the requirement for legislation on the offences of treason, secession, sedition and subversion against the CPG under Article 23 of the Basic Law (BL23). During his visit to Germany in March, Chief Executive C H Tung said that the legislation would be drafted after the LegCo elections. But in June, the Department of Justice confirmed that the Government had not started drafting the bill and it would not be introduced into LegCo during its first session. In a speech to an International Bar Association Conference on 13 June, the Secretary of Justice, Elsie Leung, said in preparing the legislation, the HKSAR Government would have full regard to the provisions in the International Covenant on Civil and Political Rights and the Basic Law regarding freedom of speech and assembly. Public opinion would also be taken into account, and the proposals would be fully debated by the Legislative Council, and would need to be acceptable to them. The announcement of a delay was welcomed by human rights groups and members of the legal profession.

13.16. The British Government is also encouraged by these indications that the HKSAR Government intends to proceed cautiously in this area.

*Cultural freedom*

13.17. The Provisional Urban Council decided that a film "History in the Making: Hong Kong 1997" could be included in the 1998 Hong Kong International Film Festival in April. This followed controversy over an earlier decision not to show the film before the LegCo elections on the grounds of political impartiality: one of its directors, Christine Loh, would be standing in the elections. The film "Seven Years in Tibet" was also screened during this period.

*Religious freedom*

13.18. Local religious groups have been reassured by developments so far and they do not believe their freedoms have diminished since the handover. At the Catholic Church's Asia Synod in Rome (held between April and May), Bishop Joseph Zen confirmed that Catholics in Hong Kong were still enjoying religious freedom. In February, a group of visiting American clerics, including the Archbishop of Newark, expressed optimism about the future of religious freedom in Hong Kong.

13.19. The HKSAR's new protocol list, published in January, saw the Anglican and Roman Catholic bishops of Hong Kong demoted to eleventh position in the official rankings, instead of number five before the handover. In contrast to pre-handover practice, there was no religious element to the ceremonies to open the legal year on 12 January.

13.20. The British Government is reassured by the view of local religious groups that their freedoms have not diminished during the last year. Religious freedom is an essential element of Hong Kong's overall freedom.

#### **XIV. RIGHT OF ABODE, TRAVEL, IMMIGRATION**

14.1 The Joint Declaration provides as follows:

*The following categories of persons shall have the right of abode in the Hong Kong Special Administrative Region, and, in accordance with the law of the Hong Kong Special Administrative Region, be qualified to obtain permanent identity cards issued by the Hong Kong Special Administrative Region Government, which state their right of abode:*

*- all Chinese nationals who were born or who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region for a continuous period of 7 years or more, and persons of Chinese nationality born outside Hong Kong of such Chinese nationals;*

*- all other persons who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region for a continuous period of 7 years or more and who have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region, and persons under 21 years of age who were born of such persons in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;*

*- any other persons who had the right of abode only in Hong Kong before the establishment of the Hong Kong Special Administrative Region.*

*The Central People's Government shall authorise the Hong Kong Special Administrative Region Government to issue, in accordance with the law, passports of the Hong Kong Special Administrative Region of the People's Republic of China to all Chinese nationals who hold permanent identity cards of the Hong Kong Special Administrative Region, and travel documents of the Hong Kong Special Administrative Region of the People's Republic of China to all other persons lawfully residing in the Hong Kong Special Administrative Region. The above passports and documents shall be valid for all states and regions and shall record the holder's right to return to the Hong Kong Special Administrative Region.*

*For the purpose of travelling to and from the Hong Kong Special Administrative Region, residents of the Hong Kong Special Administrative Region may use travel documents issued by the Hong Kong Special Administrative Region Government, or by other competent authorities of the People's Republic of China, or of other states. Holders of permanent identity cards of the Hong Kong Special Administrative Region may have this fact stated in their travel documents as evidence that the holders have the right of abode in the Hong Kong Special Administrative Region.*

*Entry into the Hong Kong Special Administrative Region of persons from other parts of China shall continue to be regulated in accordance with the present practice.*

*The Hong Kong Special Administrative Region Government may apply immigration controls on entry, stay in and departure from the Hong Kong Special Administrative Region by persons from foreign states and regions.*

*Unless restrained by law, holders of valid travel documents shall be free to leave the Hong Kong Special Administrative Region without special authorisation.*

*The Central People's Government shall assist or authorise the Hong Kong Special Administrative Region Government to conclude visa abolition agreements with states or regions.*

#### **Assessment**

*Right of abode of mainland Chinese children born to Hong Kong residents*

14.2. On 26 January, the Court of First Instance ruled that right of abode in Hong Kong applied to mainland born children of Hong Kong permanent residents, even if they were born before the parent obtained permanent resident status in Hong Kong. Article 24 of the Basic Law did not specify that a child could only qualify if born after their parents gained permanent resident status in Hong Kong; the Immigration (Amendment) Ordinance No 3 conflicted with the Basic Law on this point. Concerns were expressed that this ruling could open the door to thousands more mainland residents - of any age - claiming right of abode if their parents acquired residency status in Hong Kong, pushing original estimates of applicants up from 66,000 to 300,000. A later ruling rejected the right of mainland born stepchildren to claim right of abode under the Basic Law.

14.3. On 2 April, the Court of Appeal upheld the legality of the Certificate of Entitlement Scheme and its retrospectivity to 1 July 1997. Minors who arrived in Hong Kong, including illegitimate children, before 1 July 1997, had right of abode and would be allowed to stay. Those who arrived after 1 July 1997 would have to return to the mainland and apply to enter Hong Kong under the new rules.

14.4. On 20 May, the Court of Appeal reversed the 26 January ruling, stating that children of Hong Kong permanent residents had no automatic right of abode in Hong Kong. The Court decided that those who claimed right of abode under Article 24 of the Basic Law must have at least one parent who had acquired right of abode at the time of the child's birth, and not at a date after the birth. The Court again upheld the legality of the Certificate of Entitlement Scheme, and a previous ruling that illegitimate children of a father with right of abode could themselves obtain that status.

*Entry to Hong Kong by mainland Chinese residents*

14.5. In February the CPG relaxed their pre-handover restrictions on mainland Chinese visiting Hong Kong in an attempt to boost the flagging tourist industry. The Hong Kong media ran reports of mainland overstayers working illegally in Hong Kong, in particular on the new airport project. From 30 March, new procedures for non-official mainland visitors travelling to Hong Kong on business or for training were brought into operation. Non-official business visitors now apply for an Entry and Exit Permit (EEP) from their local Public Security Bureau (PSB) on the mainland (for travel to Hong Kong and Macao), which allows those on business to travel to Hong Kong for periods of 7 or 14 days and can be for single, double or multiple entry. While EEPs are issued without referral to the Hong Kong Immigration Department (HKID), holders are not guaranteed automatic entry into Hong Kong and are subject to the same HKID controls on the border. Applications for a training endorsement have first to be referred to HKID for local sponsorship checks. The HKSAR Government affirmed that there had been no change to immigration policy since the handover. Hong Kong remains a separate travel area.

*Visa-free travel by HKSAR residents*

14.6. Some 50 countries currently grant visa-free access to HKSAR passport holders. The HKSAR Chief Executive raised this with some European leaders during his recent tour in an attempt to lift the visa requirement which Schengen countries have imposed on this passport. Of EU Member States, only the UK and Ireland grant visa-free access to this passport. In addition, over 80 countries grant visa-free access to the BN(O) passport. The UK lobbied EU partners recently in order to preserve visa-free access where it already exists (Benelux countries, Ireland, Greece, Sweden and Italy) and to encourage other Member States to lift their visa requirement on this passport. In June New Zealand announced that it would grant visa-free access to BN(O) and HKSAR passport holders, and a visa abolition agreement was signed with Mongolia.

14.7. The Government will continue to maintain an interest in the implementation of these provisions of the Joint Declaration.

**ANNEX A**

**LEGISLATIVE COUNCIL ELECTION RESULTS**

	<b><i>GC</i></b>	<b><i>FC</i></b>	<b><i>EC</i></b>	<b>Total</b>
Democratic Party	9	4	-	13
Liberal Party	-	9	1	10
Democratic Alliance for Betterment of Hong Kong (DAB)	5	3	2	10
Hong Kong Progressive Alliance (HKPA)	-	2	3	5
Frontier	3	-	-	3
Citizens' Party	1	-	-	1
Neighbourhood and Workers' Service Centre (NWSC)	1	-	-	1
Independents	1	12	4	17