

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

JANUARY-JUNE 1997

SIX-MONTHLY REPORT TO PARLIAMENT JANUARY-JUNE 1997

FOREWORD BY THE SECRETARY OF STATE FOR FOREIGN AND COMMONWEALTH AFFAIRS

I have reaffirmed the undertaking given by the previous Government to report to Parliament at six-monthly intervals on the implementation of the Sino-British Joint Declaration on Hong Kong. This first report covers the period January-June 1997. The reports will continue at least as long as the Joint Liaison Group, that is until 1 January 2000. Copies will be available to the UN Treaty monitoring bodies in Geneva and other organisations with an interest in these matters.

This report, covering a period during which Hong Kong was still under British administration, is designed to establish a framework for future reports by setting out the commitments made in the Joint Declaration and the situation in Hong Kong on the eve of the handover. The concepts of 'one country, two systems' and 'Hong Kong people running Hong Kong' call for Hong Kong to be given a high degree of autonomy in a wide range of areas. The Joint Declaration sets out in detail how Hong Kong's autonomy is to be applied in each of these areas. Only foreign affairs and defence are specifically reserved to the central government in Peking.

Britain committed itself in the Joint Declaration to administer Hong Kong up to 30 June 'with the object of maintaining and preserving its economic prosperity and social stability.' No-one can doubt that we fulfilled that pledge. Under British administration Hong Kong has become the world's seventh largest trading entity and the fifth largest banking centre, and possesses the world's busiest container port. It is soon to have a new airport with the capacity to be the world's busiest. Its GDP per person is now higher than that of the UK itself. Hong Kong's foreign exchange reserves are worth over GBP40 billion. Britain's most important contribution to this remarkable success has been to endow Hong Kong with the rule of law, a level playing field in commercial matters and the autonomy to take its own economic and commercial decisions. This is a formula which brought spectacularly successful results under British administration. We see no reason why it should not continue to do so in the future.

In the social field, our record has also been creditable. Starting after the war with a massive influx of refugees Hong Kong's government has worked hard to improve housing, education and social welfare. Hong Kong is one of the safest cities in the world with an efficient police force and low crime rates. Its people enjoy a high degree of personal freedom as guaranteed by the International Covenant of Civil and Political Rights. Hong Kong's Civil Service is apolitical, impartial, effective and accountable. The fact that Hong Kong has been able not only to survive but to prosper in spite of uncertainty created by the change of sovereignty is a testimony both to the resilience of its people and the strength of its institutions. Britain owes a considerable debt to successive Governors for these achievements, including Chris Patten, who served Hong Kong through one of the most difficult and challenging periods of its history.

Britain's other main commitment in the Joint Declaration was to restore Hong Kong to the People's Republic of China at midnight on 30 June. This too we have done. We now look to the Chinese Government to implement its undertakings in the Joint Declaration concerning the administration of Hong Kong for the next 50 years. These undertakings are legally binding obligations to which China committed itself in an international treaty registered with the United Nations.

Many welcome steps were taken over the last six months to prepare for the establishment of the Special Administrative Region. These included the announcement by the Chief Executive (Designate) of the retention of Mrs Anson Chan and the other senior civil servants; the appointment of Mr Andrew Li as Chief Justice of the Court of Final Appeal; the establishment of a new Executive Council for the Hong Kong Special Administrative Region (HKSAR), where continuity is provided from 1 July by the presence of the Chief Secretary for Administration and the Financial Secretary, plus two unofficial members of the outgoing ExCo. The announcement by China that it would sign the International Covenant on Economic, Social and Cultural Rights before the end of 1997 was welcomed in Hong Kong. We shall continue to urge China to accede to the International Covenant on Civil and Political Rights, and to explain how reports on the application of these two Covenants to Hong Kong will be made from now on.

In the Joint Liaison Group (JLG), Britain has worked hard with China to reach agreements that will help establish the basis for the HKSAR's autonomy in accordance with the Joint Declaration. As a result of the JLG's work since 1984, Hong Kong's membership of a range of international organisations, including the WTO and some 30 other transnational bodies, will continue after the handover. Such arrangements ensure that, while China will have overall responsibility

for foreign affairs, Hong Kong will maintain its distinct personality in international relations, particularly in economic matters. Discussions between Britain and China in the JLG have led to agreement on the localisation of numerous UK laws, so as to ensure that the relevant legislation will remain in force in Hong Kong after the handover; that bilateral agreements between the UK and third countries which were extended to Hong Kong can be replaced by agreements between Hong Kong and the third countries concerned; and that the international rights and obligations arising from some 200 multilateral agreements extended to Hong Kong by the UK will be transferred from the UK to China. It was at British insistence in the JLG that the Handover Ceremony was witnessed by such a broad range of representatives from third countries and international organisations, their presence being an important demonstration of Hong Kong's international status and their concern that this status should be maintained.

The Joint Declaration stipulates that the JLG will continue its work until 1 January 2000. It also makes clear that the JLG is the forum where Britain and China consult each other about transition issues. It is the natural forum to discuss with Chinese officials how the Joint Declaration is being implemented. The British Government will continue to attach a very high priority to the JLG. The British side of the JLG will continue to be headed by an official of Ambassadorial rank based in Hong Kong. There will be no diminution of our determination to uphold the principles and promises set out in the Joint Declaration.

Other developments in the run up to the handover were matters of concern. The announcement of proposals to amend the Bill of Rights Ordinance, the Societies Ordinance and the Public Order Ordinance generated widespread concern in Hong Kong and around the world. People in one of the most law-abiding and stable communities in Asia were dismayed at proposals which would have restricted freedom of assembly; tightened controls on societies and 'political organisations'; and created a vaguely-defined new concept of 'national security' as grounds for prohibiting societies or demonstrations. The British and Hong Kong Governments took the view that such proposals were unnecessary and unjustified. Following a process of public consultation in Hong Kong, the Chief Executive (Designate) announced revised proposals which partly eased the proposed controls on demonstrations and on political parties, and defined more closely the meaning of 'national security'. They did not, however, fully meet the objections made to the original proposals and still marked a step backwards on the freedoms enjoyed in Hong Kong.

The major problem of the first half of 1997 was the operation of the provisional legislature, which held its first meeting on 25 January. Although it met outside Hong Kong, the provisional legislature considered a range of legislation before 1 July and operated in parallel with the elected Legislative Council. This gave rise to conflicts of loyalty for civil servants and to practical confusion, for example over legislation on right of abode. It is a matter of regret that, despite the Chinese Foreign Minister's clear undertakings to my predecessor in April 1996 that the provisional legislature would not assume its functions until 1 July 1997, that body did indeed carry out a range of legislative acts giving rise to potential legal challenge, in the weeks and months before 30 June.

There is no stipulation in the Joint Declaration providing for the establishment of the provisional legislature, which cannot be called an elected body. Our view remains that the elected Legislative Council should have been allowed to serve its natural four-year term. The result of replacing it has been to leave Hong Kong with a legislature of dubious legality which excludes completely the party which gained the largest share of the vote at the 1991 and 1995 elections. That is why the Prime Minister and I refused to attend the swearing-in of the provisional legislature at the Inaugural Ceremony of the HKSAR in the early hours of 1 July.

We therefore welcome the fact that the HKSAR Government has now announced that elections to a new legislature will be held in May next year. Only by such elections can China return to unambiguous compliance with the Joint Declaration. It is important that they should be free and fair, and acceptable to the people of Hong Kong. We have received widespread international support for this position. It is also important that, while it still exists, the provisional legislature should confine itself to legislating only on what is urgent and necessary, in particular on the arrangements for next year's elections.

The end of British sovereignty and administration in Hong Kong does not mean the end of British commitment to Hong Kong. We retain a strong political and moral responsibility towards its people, as well as an important stake in Hong Kong's continuing success. Our commercial presence is much greater there than in the rest of China. There are countless links of a personal, professional, academic, cultural and scientific nature. Over three million Hong Kong people have British nationality. All of them have a right to expect that the promises in the Joint Declaration will be kept. It is because of those responsibilities and these interests that the Government has a duty to take the closest interest in developments in Hong Kong; and this we are determined to fulfil.

It is on this basis that we aim to develop a new relationship with both Hong Kong and China. We were encouraged by the speech by President Jiang Zemin at the handover ceremony in Hong Kong which provided a full and unqualified

restatement of China's commitments to Hong Kong. Mr Tung has also expressed his commitment to the successful implementation of the Joint Declaration.

On the assumption that these pledges are fulfilled, Hong Kong will become a bridge to a new relationship between Britain and China which is stronger and more constructive than we have enjoyed up to now. Such a relationship would enable Britain and China to hold a constructive dialogue on international security, on global issues such as the environment, on universal standards of human rights and on economic cooperation and trade. Britain and China can both gain from such a relationship. So can Hong Kong. This does not mean shying away from difficult topics like human rights, but it does require a sustained effort by both sides to maximise understanding and cooperation. To take these matters forward, I hope to visit China and Hong Kong soon.

I believe that the people of Hong Kong want us to remain engaged and to retain our close interest in developments there. Britain's commitment to Hong Kong will continue. I hope that this report, and future reports on the implementation of the Joint Declaration in Hong Kong can underpin that commitment.

ROBIN COOK
Secretary of State for Foreign and Commonwealth Affairs

July 1997

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

JANUARY-JUNE 1997

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 future implementation of the Joint Declaration will above all be measured.

In reporting to Parliament, the Government has therefore decided to refer in detail to the provisions of Annex I of 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:

BORO Bill of Rights Ordinance CFA Court of Final Appeal ExCo The Hong Kong Executive Council HKMA Hong Kong Monetary Authority HKSAR Hong Kong Special Administrative Region JLG Joint Liaison Group JORC Judicial Officers Recommendation Commission LegCo Hong Kong Legislative Council NPC National People's Congress (China) PL Provisional legislature

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 six months up to the handover, final preparations were made in the Joint Liaison Group (JLG) to enable a successful transfer of sovereignty over Hong Kong at midnight on 30 June.

1.3. Mr Tung Chee-Hwa had already been appointed Chief Executive (Designate) in December 1996. On 21 February the Chinese Government confirmed that on Mr Tung's nomination, all of the 22 civil servants who held principal official posts on 30 June would continue to hold those posts after 1 July (the 23rd, the Secretary for Justice, was appointed only on 1 July 1997 on the retirement of her expatriate predecessor). This decision was welcomed by the officers themselves, their colleagues in Hong Kong, and the public in general. It provided an important element of stability and continuity at the most senior levels of government through the transition.

1.4. The most contentious constitutional issue concerned the Legislative Council for the Hong Kong Special Administrative Region (HKSAR). The Chinese Government decided in 1995 that, because it had not agreed to the arrangements for the 1995 Legislative Council elections, the 60 members of the Legislative Council could not automatically continue in office after 30 June 1997. Instead, the Legislative Council would be replaced on 1 July 1997 by a 'Provisional Legislature' (PL), pending elections to a new Legislative Council. 60 members for the PL were chosen by a 400-member Selection Committee in December 1996 and sworn in at the HKSAR Inaugural Ceremony on 1 July. During the period before the handover, the PL met in Shenzhen to make preparations for its functioning after 30 June. It discussed and reached agreement on a number of bills which were subsequently adopted on 1 July as part of the Reunification Ordinance. Details of these bills are listed at Annex A. 1.5. The British Government has never agreed that there was a need for a provisional legislature to replace the Legislative Council after the handover. The 1995

LegCo already met the terms of both the Joint Declaration and the Basic Law. It should have been allowed to serve its natural four-year term. Neither do we consider that the method of selection of the PL's members meets the JD requirement that the legislature be constituted by elections. The Chinese Ambassador was summoned to call on the then Foreign Secretary on 19 December 1996 to be told of the Government's views on the establishment of the PL, and on 20 December the Foreign Secretary issued a public statement setting out clearly the Government's position. On 16 April, the Minister at the Chinese Embassy was summoned and told of the Government's deep concern about the PL beginning to operate in parallel with the Legislative Council, by giving the first and second readings to a bill on public holidays.

1.6. The Government has called on the Chinese Government to return to unambiguous compliance with the Joint Declaration by ensuring that the HKSAR Government holds free and fair elections as soon as possible after the handover. The HKSAR authorities have now announced that elections to a new Legislative Council will be held in May 1998.

1.7. The Government will study developments in this area particularly closely, and will want to satisfy itself that the electoral arrangements for the first HKSAR legislature are free and fair and acceptable to the people of Hong Kong.

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. A series of agreements were reached in the JLG to ensure that the UK laws in force in Hong Kong would remain in force after the handover (except for those which could be allowed to lapse because they were obsolete or inappropriate to Hong Kong's future status). About 140 UK enactments were localised to become Hong Kong laws. The key laws localised are listed in Annex B.

2.3. In accordance with the provisions of Article 160 of the Basic Law, on 23 February the Standing Committee of the Chinese National People's Congress (NPC) announced that it regarded all or parts of 25 laws to be inconsistent with the Basic Law. Of these, the Hong Kong Government had planned to let 14 lapse as being inappropriate or unnecessary for the future HKSAR. Of the remaining 11 items, six related to the arrangements for elections in 1994/95 which the Chinese had said they would replace with new arrangements. One related to Data Protection. The remaining three, relating to civil liberties, were the most controversial.

2.4. The NPC decided that sections 2(3), 3 and 4 of the Bill of Rights Ordinance (BORO) should not be adopted. These related to interpretation and the BORO's effect on other laws, reflecting the common law principles that later laws override earlier ones where there is inconsistency, and that laws should where possible be construed in accordance with international obligations (in this case the International Covenant on Civil and Political Rights (ICCPR), which the BORO incorporates into Hong Kong law). The British Government made clear at the time that it saw no reason to change the BORO, which was supported by the local community and consistent with the Basic Law; and that such a change could only spark concern about the intentions behind it.

2.5. The NPC also claimed that liberalising amendments in 1992 and 1995 to Hong Kong's Societies and Public Order Ordinances respectively were not consistent with the Basic Law and should not be adopted as laws of the HKSAR. In our view this decision too was unnecessary and unjustified. During April, the Chief Executive (Designate)'s Office

carried out a public consultation exercise in Hong Kong on a series of proposals to replace the non-adopted sections. The Hong Kong Government submitted its own commentary on these proposals, which had provoked widespread concern in Hong Kong and internationally about the potential curtailment of civil liberties after the handover. They would have restricted freedom of assembly; tightened controls on societies and 'political organisations'; and established a vaguely-defined concept of 'national security' as grounds for prohibiting societies or demonstrations. The proposals were subsequently refined in the light of opinions received. The proposed controls on demonstrations were eased, and the meaning of 'national security' defined more closely. But the proposals retained the requirement for societies to register with the police and the requirement for police permission for demonstrations to take place. The British Government said publicly that while it was pleased that the revised proposals took account of some of the anxieties expressed, it remained concerned that other elements represented a step backwards from the existing arrangements.

2.6. An extra clause was also added to the Societies Ordinance, limiting links with foreign political organisations, as required by Article 23 of the Basic Law. In particular, it aimed to prevent the funding of the political activities of groups in the HKSAR by foreign political organisations or groups. Again, following public consultation by Mr Tung's Office, the eventual amendment was less radical than initially proposed, since the original proposal would have prohibited any overseas funding, including by individuals.

2.7. The new amending laws are among those given three readings by the PL before 30 June and confirmed by the Reunification Ordinance adopted on 1 July.

2.8. We shall wish to see that the continuity of law, including the maintenance of the common law system, is carried out in practice. We will also watch carefully the application of the revised Societies and Public Order Ordinances.

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 Judiciary is a cornerstone of Hong Kong's system. Its independence and impartiality is crucial to the territory's success, particularly as an international business centre. Solid progress has been made to ensure that the impartiality and high international reputation of Hong Kong's judiciary is maintained after the handover. The Government will pay particular attention to this, including to the handling of a series of legal challenges over the validity of legislation passed by the PL. This will be an important and early test for the judicial system.

3.3. The Hong Kong Reunification Ordinance, passed by the provisional legislature on 1 July, provided for Hong Kong's courts to resume their work after the handover as the courts of the HKSAR. All proceedings, including appeals, pending in any court, statutory tribunal or statutory board or before a magistrate at the handover may be continued on and after 1 July and shall be treated as if they had been pending in the corresponding court, tribunal or board or before the corresponding magistrate of the HKSAR. Under the Ordinance, the Supreme Court is replaced by the High Court of the HKSAR, comprising the Court of Appeal of the HKSAR and the Court of First Instance.

3.4. The main change to the Judicial System consequent on the handover is the abolition of the system of appeal to the Privy Council in London and its replacement by a Court of Final Appeal (CFA) located in Hong Kong. The CFA Ordinance came into effect on 1 July and provides the supporting legislation. Although it provides for the transfer of ongoing appeals from the Privy Council to the CFA, all Hong Kong business in the Privy Council was completed before the handover. The Court of Final Appeal Rules are currently with the Court of Final Appeal Committee which was established on 1 July. Once the Committee has formally endorsed the Rules they will be gazetted and brought into force.

3.5. On 1 July the Hong Kong Judicial Services Commission became the Judicial Officers Recommendation Commission (JORC). It met immediately to recommend that all serving judges be reappointed as judges of the HKSAR (the preparatory work having been carried out by the JORC (Designate)). The Chief Executive duly appointed them.

3.6. Mr Andrew Li was appointed Chief Justice of the CFA on 1 July, following the recommendation of the JORC (Designate) on 20 May. The Hon Mr Justice Litton, The Hon Mr Justice Ching and the Hon Mr Justice Bokhary were appointed as permanent judges of the CFA. All four appointments were well-received by the legal profession, legislators and the media. The JORC and the Chief Justice are still identifying suitable candidates for the panel of non-permanent Hong Kong CFA judges and judges from other common law jurisdictions.

3.7. Up to 30 June 1997, the decision whether to prosecute in any particular case was the responsibility of the Attorney General. That responsibility was exercised independently, free from government interference. As of 1 July this responsibility has been transferred to the HKSAR Department of Justice, under Article 63 of the Basic Law.

3.8. The Reunification Ordinance provides that every person admitted as a barrister or solicitor of the Supreme Court of Hong Kong shall from 1 July 1997 be deemed to have been admitted as a barrister or solicitor respectively of the High Court of the HKSAR.

3.9. The Government will pay particularly close attention to the continuing independence of the judiciary, procedures for the appointment and removal of judges and the operation of the Court of Final Appeal.

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 Joint Declaration recognises that Hong Kong relies on a professional, well-motivated, impartial, and stable public service. Its provisions were intended to provide for continuity in the civil service, and to reassure Hong Kong civil servants that the change in sovereignty would have the minimum possible impact on the nature of their work, their careers and their conditions of service. By providing these assurances, the British and Chinese sides hoped to ensure that Hong Kong would be able to continue to benefit from a dedicated and committed civil service.

4.3. The Chinese Government has stated on a number of occasions that it is committed to an impartial civil service in Hong Kong; that it favours maximum continuity; and that officials from Peking will not be given posts in the HKSAR Government. These statements have been welcomed in Hong Kong, although some sections of the Civil service remain anxious. Concern has been voiced by some that after the handover, ExCo could develop a more ministerial role which would impinge on the lead role of policy secretaries in their areas of responsibility.

4.4. Nevertheless, the evidence so far suggests that, overall, morale among public servants has held up well, as reflected in a gradual decline in recent years in the civil service wastage rate. The rate over the past twelve months stands at 4.0%, the lowest for eight years. There was no increase in resignations in the period running up to the handover. Appointments and promotion in the Civil Service continue to be on merit and the Service enjoys high prestige and confidence in the community.

4.5. Because the Basic Law provides for certain 'principal official' posts in the HKSAR to be filled only by Chinese nationals who are residents of the HKSAR with no right of abode in any foreign country, the HKG has in recent years increased the momentum of localisation to ensure that by 1 July 1997 all 23 of the available posts were filled with qualified officers. Officers whom the Public Services Commission had recommended for promotion to the most senior ranks, but who could not be promoted because they could not meet the requirements in the Basic Law, received compensation under the Hong Kong Government's Limited Compensation Scheme. Expatriates who were members of Her Majesty's Overseas Civil Service (HMOCS) received compensation from the British Government in recognition of the reduced opportunities for promotion and were allowed to take early retirement. Of the 500 or so HMOCS officers in Hong Kong, over half have decided to continue in the service of the HKSAR Government.

4.6. The Government will examine whether assurances by the Chinese about the independence and integrity of the Civil Service are fulfilled, and whether the present clear separation of the Civil Service and outside interests is maintained.

4.6 (Mr Fatchett): The Government will expect the independence and integrity of the Civil Service, and the present clear separation of the Civil Service and outside interests, to be maintained.

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. In the period up to 26 March the Hong Kong Government drew up its own budget and financial accounts for the 1997-98 financial year. The 1997/98 Budget was presented to LegCo on 12 March and approved on 26 March. This budget was not subject to any approval by the UK Government. No taxes were levied on Hong Kong by the UK Government and no financial revenues were handed over by the Hong Kong Government to the UK Government. The system for auditing public accounts remain unchanged.

5.3. On the grounds that the budget year in question ran beyond the date of the transfer of sovereignty, the Hong Kong Government consulted Chinese officials on the main expenditure and revenue proposals of the 1997/98 Budget before the Budget was approved by LegCo. These talks helped clarify for the Chinese the operation of the budget process in Hong Kong. Chinese officials did not take issue with any of the main proposals. They did, however, insist that the Budget should also be 'examined' by the provisional legislature. Despite the view of the British and Hong Kong Governments that the Legislative Council had full authority to approve the Budget, the Chinese nonetheless submitted it to the provisional legislature on 3 May. On 7 June, the provisional legislature passed a motion supporting the Budget.

5.4. On 28 June, Britain and China signed an agreed minute confirming that all assets of the Hong Kong Government would be transferred to the HKSAR Government and that the HKSAR Government would manage these on its own.

5.5. The Joint Declaration required premium income from land transactions to be shared equally, after the deduction of the average cost of land production for the relevant year, between the Hong Kong Government and the future HKSAR Government. The Sino-British Land Commission held its final meeting on 23 June. Upon the transfer of sovereignty, the Land Fund was transferred to the Hong Kong Monetary Authority (HKMA) to be managed by the Authority as a separate fund under the direction of the Chief Executive of the HKMA and the Financial Secretary.

5.6: The Government will look to see that Hong Kong's autonomy in this area is maintained, and will expect the authorities there to continue to draw up the Budget without outside involvement.

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 Hong Kong economy enters the post-handover period in good shape and with excellent prospects. Hong Kong is the world's seventh largest trading entity, the fifth largest banking centre, and it has the seventh largest stock market

and the busiest container port. Hong Kong continues to be highly attractive to foreign investment, with outstanding infrastructure and telecommunications. In early 1997 Hong Kong was for the third year in succession rated the freest economy in the world by the Heritage Foundation.

6.3. During the period, Hong Kong sent representatives to meetings of the International Monetary Fund, where it has become a member of the New Arrangements to Borrow (NAB). Hong Kong continues to participate in 31 international organisations in various capacities, a number of which are in the trade and economic sphere. These include the IMF/IBRD, the World Trade Organisation, the Asian Development Bank, the Customs Cooperation Council, the Asia Pacific Economic Forum and the Pacific Economic Cooperation Council. Hong Kong has established economic and trade offices in London, Geneva, Brussels, Washington, New York, San Francisco, Toronto, Sydney and Tokyo.

6.4. Hong Kong's continuing prosperity and economic success will depend to a significant degree on the maintenance of a level playing field for business and the prevention of corruption. Otherwise, business confidence will be damaged. An encouraging indication in this respect was the Chinese side's confirmation, at JLG XL, that the HKSAR Government would have autonomy in the awarding of contracts and franchises and that the Chinese Government would not interfere in the HKSAR Government's economic policy.

6.5. The Government will wish to be satisfied that the autonomy promised to Hong Kong in economic and trade matters is fully observed. Important issues will include the continuation of the level playing field for all companies and complete objectivity and impartiality in the awarding of contracts and franchises.

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. Hong Kong continues to develop its role as major international financial centre. It is the world's fifth largest banking centre for external financial transactions (Asia's second largest), the seventh largest stock market (Asia's second largest), and has the seventh largest foreign exchange reserves (worth over 40 billion).

7.3. During the period of the report, Hong Kong exercised its monetary policy independently, and its markets continued to operate freely. There were no exchange controls. The Hong Kong dollar/US dollar link which was established in 1983 at a rate of US\$1:HK\$7.8 remained in place. The Hong Kong authorities are committed to the linked rate, and the Chinese Government has also said that it supports the link. The Chinese currency, the Renminbi, is not legal tender in Hong Kong.

7.4. The Hong Kong Monetary Authority (HKMA), which operates as Hong Kong's central bank, manages Hong Kong's Exchange Fund as well as advising the Financial Secretary on monetary policy. It is also responsible for

regulating the operation of financial institutions in Hong Kong. The HKMA was wholly independent from, and not subject to any form of influence from, the UK Government.

7.5. An agreed minute was signed by Britain and China on 13 November 1996, making clear that the Exchange Fund would pass in its entirety to the HKSAR on 1 July.

7.6. We will wish to follow closely the independence of the HKMA and the autonomous operation of the Exchange Fund.

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. Hong Kong has the world's busiest container port, handling some 13.3 million TEU (20-foot equivalent units) in 1996. Hong Kong's role as a container port is to be further developed with the construction of a new container terminal at Tsing Yi. Arrangements for Hong Kong to maintain its own shipping register and to have full control over shipping policy and administration have been put in place through negotiations with the Chinese in the JLG which have led to the localisation of UK merchant shipping legislation.

8.3. Visits by foreign warships to the HKSAR will require the permission of the Chinese authorities. Formal regulations have not been published on procedures to be observed, but the United States has reached agreement that clearances for US naval vessels visiting Hong Kong will be issued locally by the Ministry of Foreign Affairs Office in Hong Kong.

8.4. We will pay particular attention to developments in Hong Kong's shipping and container ports industries, in order to satisfy ourselves that they continue to be managed in a highly autonomous manner, as promised in the Joint Declaration.

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 British, Chinese and Hong Kong governments have taken steps to ensure that Hong Kong has the necessary arrangements in place to continue to administer effectively its airport and aviation policies from 1 July 1997. The Chinese Government has confirmed to us that Hong Kong will have a high degree of autonomy in conducting its civil aviation affairs. The legal framework has been provided through the localisation of UK civil aviation legislation. Following lengthy negotiations in the JLG, Hong Kong has been taken out of UK air services agreements and a set of bilateral agreements between Hong Kong and third countries has been put in place. Hong Kong has also negotiated a network of agreements with new aviation partners, and is negotiating overflight agreements. Where there has not been time to sign agreements, services can continue through temporary arrangements.

9.3. The JLG Airport Committee, which was set up in 1991 under a Memorandum of Understanding Concerning the Construction of the New Airport in Hong Kong and Related Questions, completed its work and was officially wound up on 16 June. From 1 July construction and running of the new Airport at Chek Lap Kok will fall within the autonomy of the HKSAR Government. Chek Lap Kok is due to open in April 1998.

9.4 The Government will expect Hong Kong's autonomy in this area to be maintained, and the expansion of its network of Air Service Agreements to continue.

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. During the period of the report, the Hong Kong Government continued to decide on its own policies in the fields of culture, education, science and technology, and institutions of all kinds retained their autonomy. No restrictions were placed on the recruitment of staff from outside Hong Kong or on the use of teaching materials.

10.3. We have noted the concerns expressed in the educational sector about the potential for politically motivated changes after the handover. One example would be if textbooks, particularly on history, were rewritten with a political slant, or if there was evidence of political interference in Hong Kong's universities.

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 the first six months of 1997, progress was made to ensure the continuity of Hong Kong's external relations and membership of international organisations after the handover, subject to the overall principle that China would have ultimate responsibility for the HKSAR's foreign relations.

11.3. Bilateral agreements between the UK and third countries which were extended to Hong Kong ceased to apply to Hong Kong on 1 July 1997 because of the transfer of sovereignty. In the period before the handover, the Hong Kong Government was authorised by the British Government to replace such agreements before 1 July 1997 by a Hong Kong/third country bilateral agreement, under a process agreed with the Chinese Government. In addition, the UK authorised Hong Kong to enter into certain new bilateral agreements with third countries. The agreements covered: Investment Promotion and Protection; Surrender of Fugitive Offenders; Air Services Agreements; Overflight Agreements; Mutual Legal Assistance in Criminal Matters; and Transfer of Sentenced Prisoners. Full details are listed at Annex C. The Chinese Government has confirmed to the third countries concerned that the agreements will continue to apply to the HKSAR from 1 July 1997 and shall be regarded from then as agreements signed by the HKSAR Government under authority of the Chinese Government. It was not possible before the handover to reach agreements on the Reciprocal Enforcement of Judgments. The HKSAR Government will take this forward with those countries where it considers such an agreement necessary.

11.4. We have been assured by the Chinese Government, for example at JLG XL, that after the handover the HKSAR Government will be able to conduct and conclude negotiations of bilateral agreements on its own.

11.5. Multilateral agreements between the UK and third countries which were extended to Hong Kong would have ceased to apply to Hong Kong on 1 July 1997 because of the transfer of sovereignty. A mechanism to ensure their continued application was agreed in the JLG: it applies whether or not China is also a party to these agreements. The mechanism consisted of the Chinese Government notifying the UN Secretary-General and the treaty depositories that from 1 July 1997 China would assume the international rights and obligations associated with those treaties which it had been agreed in the JLG should apply to the Hong Kong Special Administrative Region. The British Government would notify the same parties that British responsibility for the international rights and obligations associated with those treaties as regards Hong Kong would end on 30 June 1997. In each case, lists of treaties, along with lists of relevant reservations, declarations and protocols were agreed in the JLG. The international conventions that will apply in the HKSAR are listed at Annex D. Similar action has been taken to facilitate the HKSAR's continued participation in international organisations.

11.6. The Chinese Government has accepted that all countries with which China has diplomatic relations may continue to have consulates in the HKSAR. In most cases, China has signed agreements or exchanged notes with the countries concerned confirming the arrangements set out in the Joint Declaration. The Consular Relations Ordinance, which implements the Vienna Convention on Consular Relations through local legislation, will continue in force after 30 June.

11.7. The United Kingdom established a Consulate-General in Hong Kong on 1 July.

11.8. We shall wish to see that a clear and proper line is drawn between the foreign affairs responsibilities of the Chinese Government and those matters which fall within the autonomy of the HKSAR Government.

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. This provision is reflected in China's Garrison Law for the HKSAR. The crucial point is that while the People's Liberation Army is responsible for Hong Kong's external defence, the maintenance of public order in Hong Kong is for the Police. The Chinese Foreign Minister, Qian Qichen, confirmed this point to the Foreign Secretary when they met in Hong Kong on 30 June.

12.3. Deployment of the Chinese garrison was nevertheless a sensitive matter in the period immediately before the handover. Britain remained responsible for the defence of Hong Kong up to midnight on 30 June. However, the Government agreed in the JLG that the Chinese garrison could station a number of unarmed military personnel in Hong Kong before 30 June, under strict conditions, to prepare for the orderly deployment of the Chinese garrison on and after 1 July. The Chinese sent to Hong Kong three parties on 21 April, 19 May and 30 May, totalling 196 men.

12.4. In response to a subsequent Chinese request for assistance to enable the Chinese garrison to perform its defence duties from zero hours on 1 July, the British Government, after careful negotiation, agreed that a further party could enter the territory at 2100 on 30 June. 509 troops, with 39 vehicles, were allowed to bring in light weapons which had to remain unissued until after midnight. At the same time, the British Government made clear to the Chinese Government its concern about the planned manner of deployment for the rest of the garrison, particularly the intention to bring in 4000 troops and 21 Armoured Personnel Carriers at first light on 1 July.

12.5. Attention in Hong Kong will now focus on the conduct of the Chinese Garrison and its precise relationship to the HKSAR authorities. We will wish to observe carefully the activities of the People's Liberation Army to ensure full conformity with the Joint Declaration and with the provisions of the 1994 Defence Lands Agreement. We will take a close interest in the implementation of the Garrison Law and its interface with existing Hong Kong law.

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 Cultural and Social Rights as applied to Hong Kong shall remain in force.

Assessment

13.2. The Joint Declaration's provisions are intended to ensure that Hong Kong's people continue to enjoy the same protection of their basic rights and freedoms after the handover as before.

13.3. Under British administration, Hong Kong residents have enjoyed full protection of their rights and freedoms. The British Government has scrupulously fulfilled the obligations arising out of the application of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Cultural and Social Rights (ICECSR) to Hong Kong. In their concluding observations after the hearing in October 1996 on the UK's Special Report on Hong Kong under the ICCPR, the UN Human Rights Committee asked the British Government to prepare a further report on the human rights situation in the territory up to 30 June 1997. That report

was submitted to the Committee in Geneva on 30 June, fulfilling the United Kingdom's final obligation in respect of Hong Kong under the Covenant. We have made the report available in the HKSAR through the British Consulate-General.

13.4. Monitoring the human rights situation in Hong Kong after the handover will be a high priority for the Government. Many groups, including for example religious organisations and democratic political groups, have expressed concern that freedoms may gradually be eroded. If the provisions of the Joint Declaration are properly applied, this should not happen.

13.5. A touchstone for the development of Hong Kong's rights and freedoms will be the situation of the media. Hong Kong's press is among the freest in the world. There are, however, indications of a growing tendency towards self-censorship. It will not be in Hong Kong's interest if the media becomes less open in its coverage of events, simply out of fear that the rights set out in law will not be upheld.

13.6. As noted above, the arrangements for next year's elections will be an important indicator of the HKSAR Government's attitude to democratic politicians. We shall observe closely what happens. We believe the elections should be free and fair to all parties.

13.7. We shall look closely at the HKSAR Government's attitude to demonstrations and protests. As noted above, the Government believes that amendments to the Societies and Public Order Ordinances were unnecessary and unjustified. We shall pay particular attention to the banning of any demonstrations on the grounds of 'national security'. In this respect the Government notes that on 3 July, in response to press reports that protests in favour of independence for Taiwan or Tibet would be banned on public security grounds, the HKSAR Government announced that all notifications to hold demonstrations would continue to be treated on their individual merits; and that the primary concern of the police would be the threat, if any, to public safety and public order.

13.8. The Government firmly believes that the continued application of the provisions of the two Covenants includes the submission of reports to the UN Human Rights Committee and the Committee on Economic, Social and Cultural Rights. The Government considers that it is for China, as the state with international responsibility for the HKSAR, to ensure that these reports are submitted after the Handover, even though China itself is not yet party to either Covenant. We have made clear that we would not object to the Government of the HKSAR itself submitting reports directly. We shall continue to press China to make clear as soon as possible how it will fulfil this obligation. In this context, the Government welcomes reports that China will itself sign the International Covenant on Economic, Social and Cultural Rights before the end of 1997. We hope that China will proceed quickly to ratification of this Covenant and will also sign and ratify the International Covenant on Civil and Political Rights.

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

14.2. The Hong Kong and Chinese Governments announced in April detailed agreement on the implementation of the new rules on right of abode. They allow Chinese nationals who hold foreign passports to choose whether they wish to be treated for residence and other purposes in the HKSAR as Chinese nationals, in which case they will retain the right of abode indefinitely; or whether to declare a 'change of nationality' to the HKSAR authorities, in which case they will be treated as foreign nationals. Anyone who previously had the right of abode, but who loses it through absence, will retain indefinitely a legal right to re-admission to Hong Kong for any purpose without a visa. The period of absence after which right of abode will be lost by foreign nationals is 3 years and there will be an additional grace period of 18 months after 30 June during which foreign nationals with the right of abode, including returning emigrants, can return to settle in the HKSAR and retain the right of abode.

14.3. The British and Chinese Governments did not reach agreement on the legislative procedures to implement these provisions. The office of the Chief Executive (Designate) introduced draft legislation into the provisional legislature in early June. This was passed into law by the HKSAR Reunification Ordinance adopted by the provisional legislature on 1 July. This legislation did not conflict in substance with the details agreed between the British and Chinese Governments.

14.4. The HKSAR Immigration Department is the sole issuing authority for the HKSAR passport. Although overseas Chinese consular posts will accept applications for the passport, they will be forwarded to the HKSAR Immigration Department, which is the only authority able to order blank passports and to enter personal details in them. The passport is a high quality document with modern security features.

14.5. A Chinese Government statement on 16 May confirmed that those nationals currently enjoying visa-free access to Hong Kong would continue to enjoy visa-free access after the handover, and that such questions would be a matter for the HKSAR Government. The British, Chinese and Hong Kong Governments continued to work for the acceptance by third countries of the HKSAR passport and for visa-free access for its holders. As a result, some 35 countries had agreed by 30 June to visa-free access.

14.6. We will wish to follow closely the preservation of Hong Kong's autonomous immigration and visa regime. In view of our responsibility for more than 3 million BN(O) passport holders, we will take a particular interest in the implementation of right of abode legislation in the HKSAR.

ANNEX A: ORDINANCES ADOPTED ON 1 JULY UNDER THE REUNIFICATION ORDINANCE

- Holidays (1997 and 1998)
- Ordinance Urban Council (Amendment) Ordinance 1997
- Regional Council (Amendment) Ordinance 1997
- The Legislative Council Commission (Amendment) Ordinance 1997
- National Flag and National Emblem Ordinance Regional Flag and Regional Emblem Ordinance Public Order (Amendment) Ordinance 1997
- Societies (Amendment) Ordinance 1997
- Court of Final Appeal (Amendment) Ordinance 1997
- Judicial Service Commission (Amendment) Ordinance 1997
- Immigration (Amendment) (No 3) Ordinance 1997
- Oaths and Declaration (Amendment) Ordinance 1997

ANNEX B: LOCALISATION OF LAWS

About 140 UK enactments in the following areas of law were localised (ie became independent Hong Kong laws), with Chinese agreement before the handover:

Merchant Shipping (Registration) (1986)
Admiralty Jurisdiction (Civil) (1988)
Merchant Shipping (Prevention and Control of Pollution) (1989)
Admiralty Jurisdiction (Criminal) (1990)
Merchant Shipping (Limitation of Shipowners' Liability) (1991)
Civil Aviation (First Stage) (1993)
Internationally Protected Persons and Taking of Hostages (1994)
Merchant Shipping (Seafarers) (1994)
Merchant Shipping (Carriage of Goods by Sea) (1994)
Dumping at Sea (1994)
Merchant Shipping (Liner Conferences) (1994)
Nuclear Material (Liability for Carriage) (1994)
Coinage (1994)
Biological Weapons (1995)
Aviation Security (1995)
Patent System (1995)
Protection of Industrial Designs (1995)
Copyright (1995)
Whale Fisheries (1995)
Submarine Telegraph (1996)
Surrender of Fugitive Offenders (1996)
Carriage by Air (1996)
Official Secrets (1996)
Maritime Conventions (1997)
Transfer of Sentenced Persons (1997)
Outer Space (1997)
Civil Aviation (Second Stage)(1997)

ANNEX C: BILATERAL AGREEMENTS

Bilateral agreements between Hong Kong and third countries, agreed in the JLG, which continued in force after 30 June 1997:

(a) Investment Promotion and Protection Agreements

- The Netherlands (agreed in the JLG Mar 1992, signed Nov 1992)
- Canada (June 1992, June 1992)
- Sweden (June 1993, May 1994)
- Denmark (September 1993, February 1994)
- Switzerland (September 1993, September 1994)
- Australia (June 1993, September 1993)
- New Zealand (April 1995, July 1995)
- Germany (December 1993, January 1996)
- Italy (June 1994, November 1995)
- France (September 1994, November 1995)
- Belgium (July 1995, October 1996)
- Austria (February 1996, October 1996)
- Japan (May 1997, May 1997)
- Korea (May 1997, May 1997)

(b) Surrender of Fugitive Offenders Agreements

- The Netherlands (agreed in the JLG Aug 1992, signed Nov 1992)
- Canada (May 1993, September 1993)
- Australia (September 1993, November 1993)
- Malaysia (June 1994, January 1995)
- The Philippines (September 1994, January 1995)
- US (September 1996, December 1996)
- India (December 1994, December 1994)
- Indonesia (October 1996, October 1996)

(c) Air Services Agreements

- The Netherlands (agreed in the JLG Jul 1986, signed Sep 1986)
- Switzerland (November 1987, January 1988)
- Canada (March 1988, June 1988)
- Brunei (November 1988, January 1989)
- France (December 1988, August 1990)
- New Zealand (December 1990, February 1991)
- Malaysia (December 1990, March 1991)
- Brazil (June 1991, September 1991)
- Sri Lanka (September 1992, February 1993)
- Australia (June 1993, September 1993)
- Germany (December 1994, May 1995)
- India (September 1993, October 1996)
- Singapore (February 1996, April 1996)
- South Korea (February 1996, March 1996)
- Italy (June 1996, October 1996)
- Myanmar (September 1996, March 1997)
- Thailand (September 1996, March 1997)
- Japan (November 1996, February 1997)
- US (March 1997, April 1997)
- Indonesia (March 1997, May 1997)
- The Philippines (April 1997, May 1997)

(d) Overflight Agreements

- Lithuania (May 1997)
- Tajikistan (May 1997)

(e) Mutual Legal Assistance in Criminal Matters

- Australia (agreed in the JLG Feb 1996, signed Sep 1996)
- US (March 1997, April 1997)
- France (March 1997, March 1997)
- Switzerland (May 1997, May 1997)

(f) Transfer of Sentenced Persons Agreement

- US (agreed in the JLG and signed, April 1997)

ANNEX D: INTERNATIONAL AGREEMENTS WHICH WILL APPLY IN/TO THE HKSAR

Constitution of the Universal Postal Union, Vienna, 1964 (as amended by the 1969 Tokyo, 1974 Lausanne, 1984 Hamburg, 1989 Washington, 1994 Seoul Additional Protocols)

Convention establishing a Customs Cooperation Council, 1950

Statute of the International Atomic Energy Agency, 1956

Articles of Agreement of the International Monetary Fund, 1944

Articles of Agreement of the International Bank for Reconstruction and Development, 1944

Articles of Agreement of the International Development Association, 1960

Articles of Agreement of the International Finance Corporation, 1955

Convention on the International Hydrographic Organisation, 1967

Constitution of the International Labour Organisation, 1919

Convention on the International Maritime Organisation, 1948

Convention on the International Mobile Satellite Organisation, 1976

Agreement relating to the International Telecommunications Satellite Organisation, 1971

Constitution of the World Meteorological Organisation, 1947

Constitution of the World Health Organisation, 1946

Convention establishing the World Intellectual Property Organisation, 1967, as amended in 1979

Constitution and General Regulations of the International Criminal Police Organisation, 1956

Constitution of the Food and Agriculture Organisation of the United Nations, 1945

Agreement on the Network of Aquaculture Center in Asia and the Pacific, 1988

Agreement on the Establishment of the Asia Pacific Fishery Commission, 1994

Agreement establishing the Asian Development Bank, 1965

Constitution of the Asian-Pacific Postal Union and Final Protocol of the Union, 1987

Constitution of the Asia-Pacific Telecommunity, 1976

Charter of the Asian and Pacific Development Centers, 1982

Statute and Rules of Procedure of the Typhoon Committee, 1968

Statute of the Statistical Institute for Asia and the Pacific, 1995

Arrangement establishing the International Textiles and Clothing Bureau, 1984

Constitution and Convention of the International Telecommunications Union, 1992

Final Acts of the Additional Plenipotentiary Conference of the International Telecommunication Union, Geneva, 1992

Final Acts of the Plenipotentiary Conference of the International Telecommunication Union, Kyoto, 1994

Agreement for the Establishment of a Regional Animal Production and Health Commission for Asia, the Far East and the South-West Pacific, 1975

Agreement establishing the World Trade Organisation, 1994