

SINO-BRITISH JOINT DECLARATION SIX-MONTHLY REPORT TO PARLIAMENT

JULY-DECEMBER 1997

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FOREWORD

This is the second 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).

Following the handover of Hong Kong on 1 July 1997, the British Government has followed developments in the Hong Kong Special Administrative Region (HKSAR) closely. This has been the main task of the Office of the Senior British Representative to the JLG, and a key responsibility of the British Consulate-General in Hong Kong, the British Embassy in Peking, and the Foreign and Commonwealth Office. We have followed developments across the full range of issues covered in the Joint Declaration, and in particular those relating to the preservation of civil liberties and human rights in Hong Kong. I personally have had the opportunity to raise and explore such issues at the highest levels of both the HKSAR and Chinese Governments, including with Chinese Vice-Premier Qian Qichen in New York in September, and when HKSAR Chief Executive C H Tung visited London in October. I look forward to discussing these issues again when I visit Peking and Hong Kong this month.

The British Government worked intensively with the Chinese and Hong Kong Governments in the years preceding the handover to ensure a successful transfer of sovereignty at midnight on 30 June last year. Despite doubts and anxiety in some quarters during that period, the HKSAR has successfully built on this foundation to make an excellent start in life. The Hong Kong people are making a reality of the concepts promised to them by China of "one country, two systems" and "Hong Kong people running Hong Kong".

Hong Kong retains a free and dynamic press. Political parties remain active, and continue to play an essential role in leading and informing popular debate. Demonstrations and public protests have continued on a regular basis, with the police acting generally with restraint, and without recourse to the controversial provisions on national security in the amended Public Order Ordinance. NGOs, including those opposed to the Chinese Communist Party and present Chinese Government, continue to operate freely.

Full continuity has been achieved in the legal system. The rule of law, essential to Hong Kong's continued prosperity and stability, remains strong and durable. I am delighted that Britain has been able to contribute to this process, by making available to the Court of Final Appeal two of our leading Law Lords, Lord Hoffmann and Lord Nicholls, as members of the Court's panel of non-permanent judges. Our bilateral legal relations with Hong Kong have further been strengthened by the signature of two agreements on 5 November, on the Surrender of Fugitive Offenders and the Transfer of Sentenced Persons.

The prospects for Hong Kong's economy are good, despite the financial turbulence in the region during recent months. The Hong Kong authorities are exercising the full autonomy afforded to them under the Joint Declaration in respect of economic, financial and monetary affairs, and have dealt effectively with speculation against the Hong Kong dollar without recourse to assistance from Peking. Hong Kong also continues to participate in a wide range of international organisations and fora, mainly in the economic field. This ensures that the HKSAR retains a distinct international personality.

For its part, the Chinese Government has so far been careful to uphold the Joint Declaration. The most senior Chinese leaders, including President Jiang Zemin, Premier Li Peng and Vice Premier Zhu Rongji, and China's senior representatives in Hong Kong have repeatedly emphasised their commitment to uphold the Joint Declaration and the Basic Law, and to respect Hong Kong's high degree of autonomy. These assurances have been supported by practical actions. In particular, we welcome China's statement made in November that it will comply with its obligations under the Joint Declaration to continue to apply the two international covenants on human rights to Hong Kong, including through the submission of reports to the United Nations treaty monitoring bodies. This resolves one of the principal uncertainties remaining at the handover about the implementation of the Joint Declaration. We are also encouraged by the restrained and low-key manner in which the Chinese military garrison in Hong Kong has conducted itself since its arrival, and by the way in which China has avoided comment on internal matters in Hong Kong.

It is nevertheless a healthy indication of Hong Kong's maturity as a political society, and evidence of the continuity in its way of life since the handover, that some sections of Hong Kong opinion have expressed misgivings about some recent developments. Issues on which concerns have been expressed include legal cases involving children born in mainland China, Vietnamese migrants and the continuity of the common law; police tactics; display of the Taiwanese flag; and self-censorship in the press. It is important that open debate on such matters should continue. We hope too that the HKSAR Government will continue to listen to these concerns in an open-minded way, and to handle these matters with prudence and sensitivity. This is essential if Hong Kong is to remain confident about its future rights and freedoms, particularly as the Government comes to legislate on controversial issues such as secession and subversion.

One area where the British Government retains particular concerns is in respect of Hong Kong's legislature. In the first report in this series (Cm 3719) I repeated our concerns about the establishment of the provisional legislature. Our position on this is well known. This was why we welcomed the early preparations for elections to a new legislature, which are scheduled for 24 May. We nevertheless expressed our regret at some aspects of the arrangements, particularly the return to corporate voting in the functional constituencies, and the decision severely to restrict the size of the franchise in those constituencies. We welcome the HKSAR Government's commitments to the ultimate goal of universal suffrage, for which the Basic Law provides after 2007. In the meantime we shall continue to follow these elections carefully, in order to satisfy ourselves that they are conducted as freely and fairly as the present arrangements will allow. I intend to report further on this in the next report in this series.

Following the handover, the principal obligations under the Joint Declaration fall primarily to the Chinese side. But Britain also retains specific obligations, notably in respect of participation in the Joint Liaison Group until 1 January 2000. Since the handover, our JLG team in Hong Kong, headed by a representative of Ambassadorial rank, has continued to follow developments in respect of the Joint Declaration, and to raise matters of mutual interest and concern with the Chinese side. This work prepared the ground for the 41st Plenary of the JLG, the first since the handover, which was held in Peking on 2-3 December. The talks were conducted in a constructive manner and were detailed and wide-ranging, covering all the key issues relevant to the implementation of the Joint Declaration, including democracy and human rights. The British Government was, therefore, satisfied with the outcome of the Plenary, which underlined the continuing valuable role the JLG has to play. The importance which Hong Kong people attach to the body was demonstrated by the interest the meeting attracted in the SAR's media.

We have therefore been reassured and encouraged by developments since last July. But we are aware that the HKSAR is only in its infancy and that further challenges will lie ahead. I want Britain to continue to play a constructive part in helping the HKSAR to evolve. That is why our Consulate-General in Hong Kong is our largest in the world, and headed by one of our most senior diplomats. We aim to develop a closer relationship with China; not only for its own sake, but because we believe that good Sino-British relations are in the best interests of Hong Kong. We will work for still closer relations with Hong Kong by strengthening our contacts and co-operation across the full range of political, economic and social issues. We will continue to watch developments in Hong Kong closely, as a friend and because it is our duty.

ROBIN COOK
Secretary of State for Foreign and Commonwealth Affairs
January 1998

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

JULY-DECEMBER 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 is above all to be measured.

As explained in Cm 3719, in reporting to Parliament, the Government has therefore 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:

ExCo	The Hong Kong Executive Council
HKSAR	The Hong Kong Special Administrative Region
JLG	The Joint Liaison Group
JLG XLI	The 41st Plenary Meeting of the JLG (2-3 December 1997)
LegCo	The Hong Kong Legislative Council

PROVISIONS OF ANNEX I TO 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

HKSAR's autonomy from the Central People's Government

1.2 There has been no evidence of the Chinese Government trying to restrict the HKSAR's high degree of autonomy or to impose its own officials on the HKSAR Government. We saw no sign of Chinese involvement in the formulation of CH Tung's first annual policy address as Chief Executive, delivered in October. Chinese leaders have repeatedly stressed their commitment to the Joint Declaration and the HKSAR's autonomy. This was stated by President Jiang Zemin in his speech in Hong Kong on 1 July, and again by Premier Li Peng and Vice Premier Zhu Rongji when they visited Hong Kong for the annual meetings of the IMF and World Bank in September. The Chinese Foreign Affairs Commissioner in Hong Kong, Ma Yuzhen, has made similar statements.

1.3 At the forty-first Plenary Meeting of the Joint Liaison Group (JLG XLI) in Peking from 2-3 December, the British Government gave a positive assessment of developments in Hong Kong since the handover. In particular, we welcomed the Chinese Government's adherence to the concept of 'one country, two systems' and its respect for Hong Kong's autonomy in the areas specified in the Joint Declaration.

1.4 The New China News Agency, long regarded before the handover as Peking's de-facto Embassy in Hong Kong, has publicly redefined its role to concentrate on liaison with Chinese-owned companies in Hong Kong. Its new Director, Jiang Enzhu, said on arrival in Hong Kong in August that the agency would not interfere with the HKSAR Government's work. Senior Chinese officials in Hong Kong do not enjoy special privileges. Other Chinese officials on overseas visits need permission from the Chinese Foreign Ministry before stopping over in Hong Kong.

1.5 Contacts between the HKSAR and Chinese Governments are conducted mainly through the Chinese Foreign Ministry Commission in Hong Kong or by direct contact with the State Council Hong Kong and Macao Affairs Office in Peking. Other Chinese Government Departments have only limited direct contact. The HKSAR Government announced in December that it would open an office in Peking, but has so far ruled out establishing direct links with individual provinces or cities in China. In mid-December, CH Tung made his first visit to Peking in his capacity as Chief Executive, having visited in July in his capacity as a Vice-Chairman of the Preparatory Committee. He said he planned to visit Peking to report on his work every year, but not at a fixed time.

The provisional legislature

1.6 As expected, the most difficult constitutional issue in this period was the replacement of the elected Legislative Council with the unelected provisional legislature, sworn in on 1 July pending legislative elections. The British Government's opposition to the establishment of the provisional legislature was explained in the previous six-monthly report (Cm 3719). We repeated these views at JLG XLI.

1.7 The status of the provisional legislature continued to create uncertainty, and gave rise to legal challenge. On 29 July, the Court of Appeal judged (in the context of a challenge to the validity of laws passed by the provisional legislature) that it was not competent to rule on the legality of the provisional legislature, as this had been established under the authority of the Chinese National People's Congress. The British Government's view remains that the method of selection of the provisional legislature does not conform with the requirement in the Joint Declaration that the legislature be constituted by elections.

1.8 Concerns were expressed in Hong Kong about the provisional legislature exceeding its powers by dealing with issues which were neither urgent nor 'indispensable' to running the HKSAR. In August, the HKSAR Government released a list of about 20 bills on which the provisional legislature would legislate before the end of its term. These included Bills on the Court of Final Appeal, urban renewal, fund allocation and housing.

Arrangements for legislative elections in 1998

1.9 Following the handover the HKSAR Government moved quickly to prepare for elections to a new legislature. On 8 July ExCo announced that elections would be held in May 1998. A consultation paper was issued on 23 July, and consultation concluded on 1 August. The short length of the consultation period, which reflected the tight timetable for the electoral process, was criticised by pro-democracy politicians. The Legislative Council Bill was gazetted on 15 August and passed on 28 September by the provisional legislature. Voting was 29 in favour with 9 against and 11 abstentions. The elections are scheduled for 24 May.

1.10 The arrangements reflect the framework established by the decision of the National People's Congress of 4 April 1990 and decisions taken by China's Preparatory Committee before the handover. They provide for a much more restrictive franchise in the functional constituencies than in 1995 (about 180,000 voters against 2.7 million); corporate voting in the functional constituencies; and the use of proportional representation in multi-seat constituencies for the geographically elected seats. Foreign passport-holders may stand in only 12 specified functional constituencies (reflecting the stipulation in Article 67 of the Basic Law that no more than 20% of LegCo members may be non-Chinese nationals or hold the right of abode abroad). The Bill also incorporates a number of amendments by the provisional legislature, passed despite opposition from the HKSAR Government, and involving changes to the composition of certain functional constituencies. A number of other amendments were rejected by the President of the provisional legislature on the grounds that they were incompatible with the Preparatory Committee's guidelines.

1.11 Reactions to the arrangements in Hong Kong were mixed, with some parties, such as the Democratic Party, Citizens Party and the Frontier, critical; and others, such as the Democratic Alliance for the Betterment of Hong Kong (DAB) and the Liberal Party generally supportive. The amendments to the LegCo Bill introduced by the DAB attracted criticism from most other parties as an attempt to gain electoral advantage. There was a mixed reaction to the use of proportional representation in the geographical seats, and criticism of the ceilings on electoral expenses as being too high.

1.12 The British Government welcomed the decision to move as quickly as possible to elections, but expressed disappointment at some aspects of the arrangements. We expressed particular regret at the reduction in the number of people who could vote for functional constituency seats and the return to corporate voting. This seemed to us a significant step backwards for the development of representative government in Hong Kong. It was clear, however, that the HKSAR Government's autonomy in deciding the arrangements had been circumscribed by the Preparatory Committee's earlier decisions.

1.13 The HKSAR Government vigorously defended the arrangements, saying that they were an interim step on the road to the longer-term goal of universal suffrage, as provided for in the Basic Law. Chief Secretary Anson Chan said the polls would be "free, fair, open and governed by rules that are transparent".

1.14 An Electoral Affairs Commission (EAC) was established, chaired by a respected judge, the Hon Justice Woo Kwok-hing. The body is independent and has responsibility for overseeing the conduct of the electoral process. On 13 October, the EAC announced proposals for boundaries for the 5 multi-seat geographical constituencies. The proposals, which were based on population distribution and existing boundaries of district boards, were the subject of intense debate and accusations by some of party-political bias in favour of the Democratic Party. But the boundaries were, with one technical amendment, accepted by ExCo. In mid-December, voter registration began, and the EAC announced a two-week consultation period on the practical arrangements for casting votes in the different types of constituencies.

1.15 The British Government is naturally keen to see that, within the constraints of the arrangements adopted, the conduct of the elections is free, fair and above suspicion. Given the status and role of the Electoral Affairs Commission, we do not consider it necessary to try to organise election monitors, but the electoral process will be carefully followed by our Consulate-General and JLG team. We shall also continue to look closely at the broader evolution of Hong Kong's political landscape and culture, which in the absence of a properly constituted legislature, is still in a state of transition.

Local government

1.16 In October, Secretary for Constitutional Affairs Michael Suen indicated that a green paper on the restructuring of district boards and municipal councils would be issued in 1998. Although not covered by the Joint Declaration, local government is a matter of interest to the British Government because of its role in the wider process of representative government in Hong Kong. We shall follow developments in this area.

Election of Hong Kong delegates to the National People's Congress

1.17 Elections were held by a 424-member Committee in December to choose 36 Hong Kong delegates to the Chinese Parliament, the National People's Congress. The poll was topped by the New China News Agency's Hong Kong Director Jiang Enzhu. His decision to stand was criticised in some quarters as undermining the concept of "Hong Kong people running Hong Kong", particularly as Hong Kong's NPC deputies are members of the Election Committee for the 1998 legislative elections. Later in December, however, the Hong Kong Registration and Electoral Office ruled that Mr Jiang could not vote in the legislative elections because he was not a permanent resident of Hong Kong. The Democratic Party withdrew its candidates after they failed to secure the necessary 10 nominations to go through to the election, complaining that an 'invisible hand' had waged a campaign to ensure that they were unsuccessful.

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 The rule of law is one of the most precious assets bequeathed by the UK to Hong Kong. The Government's view is that it remains robust. We note that a number of difficult legal issues attracted attention during this period, including the question of whether the common law had survived the handover; the related question of the provisional legislature's legality; the suspension of certain labour laws; the legality of legislation on the right of abode of children from mainland China; and the HKSAR Government's handling of a habeas corpus case involving Vietnamese Migrants. Law Society President Anthony Chow warned in October that it would be wrong to be complacent on the prospects for the rule of law. Our view, however, is that the picture so far is reassuring.

Continuity of the common law

2.3 On 29 July, the Court of Appeal ruled on the legality of acts passed by the provisional legislature. The main issue was whether the Reunification Ordinance provided for the continuity of the common law after the handover. The Court took the view that the common law was still effective, because of the provisions in the Joint Declaration and Basic Law. The Court also addressed the legality of the provisional legislature itself (see above).

2.4 Concerns were also expressed about the interface between the Basic Law and common law. The HKSAR Government took steps to address this. The Department of Justice established a Basic Law litigation committee to address such questions. A Basic Law Steering Committee was set up, chaired by Chief Secretary Anson Chan, to promote the Basic Law to the public and Government Departments. The Solicitor General, Daniel Fung, also sought to reassure local and overseas opinion, including during his visit to London in November. The Committee for the Basic Law, which has six members from Hong Kong and six from the mainland, met twice during the six-month period, but its role in interpreting the Basic Law remained unclear.

Suspension of labour laws

2.5 On 2 July, the Chief Executive pledged to suspend a number of private members' bills passed shortly before the handover, on the grounds that these had been rushed through without adequate consultation. On 16 July, the provisional legislature suspended four of the laws, three on labour rights and one amending the Bill of Rights Ordinance. Following review, on 29 October, the provisional legislature passed a bill abolishing two of the labour laws, and amending the third (the amendment to the Bill of Rights Ordinance was still under review). Although the right to amend laws is within the autonomy of the HKSAR Government, and the changes do not appear to remove rights guaranteed under the International Labour Organisation Conventions, the British Government has taken a close interest in this case, which raises questions about the extent of the provisional legislature's powers.

Vietnamese migrants' habeas corpus case

2.6 About 300 illegal immigrants who arrived in Hong Kong after spending some time in China as refugees from Vietnam are still in Hong Kong. Before the handover they were deemed by the Director of Immigration to be "refugees recognised in China" who should be returned there. But the individuals appealed against the decision.

2.7 On 9 October the Court of First Instance found that they were illegally detained, and ruled that the group should be released from detention. The HKSAR Government contested the decision on the grounds that the interests of good administration demanded their continued detention. This was dismissed by Chief Judge Patrick Chan on 14 October, and the group were transferred from a detention centre to an open refugee centre. The HKSAR Government has appealed against the ruling and is considering a review of the relevant legislation. This led to comment in some quarters that the HKSAR Government was attempting to change the law to suit its purpose, a charge firmly rejected by both the HKSAR Government and the Chief Justice.

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

2.8 This is discussed in more detail under Section XIV below. The case is of particular interest in the legal context, however, because it gave rise to the question of whether one article of the Basic Law could take precedence over another.

Legal aid

2.9 Changes to the procedures for determining legal aid were made in July, as a result of which lawyers with obvious political affiliations will not be consulted on politically sensitive cases. These rules are apparently intended to avoid conflicts of interest, although they drew some adverse comment.

2.10 The British Government will continue to pay close attention to developments in the legal field and will look particularly carefully at the interface between the common law and the Basic Law.

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 judicial system enjoyed a smooth and successful transition during the six months after the handover. Although the courts have had to handle some sensitive and controversial cases, there is no evidence of political interference.

Court of Final Appeal

3.3 As provided for in the Joint Declaration, the Court of Final Appeal became operational. On 24 September leave was granted for the first full hearing on a criminal case. On 17 October, Chief Justice Andrew Li issued guidelines on lodging appeals with the Court of Final Appeal, with applications to be based on 'legal points' or 'serious injustice'. The first hearing began on 18 December.

3.4 Early steps were taken to appoint non-permanent judges for the Court of Final Appeal, as provided for in the Basic Law. A list of 15 judges was approved by the provisional legislature in July for a term of three years, including two Privy Council members : Lord Cooke of Thorndon and Sir Edward Somers. In September the Lord Chancellor offered to provide two serving Law Lords to join the Court. This decision was welcomed by Chief Justice Andrew Li, and Lord Hoffmann and Lord Nicholls's appointment was announced in November (subject to confirmation by the provisional legislature). Their appointment leaves vacancies for up to 13 more non-permanent judges.

3.5 The Government is encouraged by the effective functioning of the judiciary since the handover, and will continue to follow closely developments in this area.

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 There has been no evidence of interference in the civil service since 1 July. On the contrary, senior officials appear pleased with the degree of autonomy that they enjoy in their work. Officials have responded with characteristic professionalism to the challenges of the transition and change of sovereignty, and have ensured that the 'can-do' spirit and integrity of Hong Kong's administration remains very much alive.

4.3 Concerns were expressed by some people in Hong Kong about the potential for ExCo to develop its role as a full Cabinet, leading to a ministerial system in Hong Kong and reducing the autonomy of the Principal Officials in the civil service. In November, the Court of First Instance ordered a judicial review of the Chief Executive's order enshrining his powers of appointment, discipline and removal of public servants. This followed a challenge by an expatriate civil service union who said that legislation, not an executive order, should have been used.

Senior reshuffle

4.4 On 28 July the Chief Executive announced a reshuffle of senior civil servants, prompted by the appointment of Mr Gordon Siu as head of the Central Policy Unit. The changes had been expected, and were of a generally routine nature. The key changes were the move of Mr Michael Suen from Home Affairs to Constitutional Affairs; of Mr Nicholas Ng from Constitutional Affairs to Transport; and the appointment of Mr David Lan as Secretary for Home Affairs.

Foreign nationals in public service

4.5 1 July saw the departure of many expatriate civil servants and police officers who would no longer be able to reach the highest offices of government, or who were unwilling to continue to serve. However, about 760 expatriates remain in the civil service and about 450 in the police. Although all Principal Officials are Chinese nationals, a number of expatriates also hold senior positions, among them the Director of Housing, the Director of Intellectual Property, the Director of Lands, and the Postmaster-General. An expatriate was appointed as Director of Public Prosecutions in November. The Chinese Government has allowed expatriate officials to join the Chinese delegations at some international conferences, including the World Intellectual Property Organisation in September and the Universal Postal Union conference in October.

4.6 The Government is encouraged that the independence and integrity of the civil service is so far being upheld. We will continue to watch developments in this sensitive area.

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 HKSAR Government exercised autonomous control over this important area of policy throughout the period in question. In September it contributed to the package put together by the International Monetary Fund to rescue the Thai baht. The HKSAR Government loaned HK\$7.8 billion (approx 600 million) on its own authority, in advance of the Chinese Government's decision to make its own contribution to Thailand. The Financial Secretary told the provisional legislature that the Chinese Government had not been consulted about this decision.

5.3 Chinese leaders have consistently emphasised Hong Kong's financial autonomy. In late September Hong Kong hosted the annual meetings of the IMF and the World Bank (itself evidence of Hong Kong's position as a major international financial centre). In his speech to the IMF, Chinese Vice Premier Zhu Rongji stressed that China would not use Hong Kong's financial reserves to maintain its own financial stability.

5.4 The Government will continue to follow developments in this area closely. The HKSAR Government's first budget on 18 February will be an important milestone and the Government will wish to be satisfied that it is formulated and presented 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 entered the post- handover period in sound health and with good prospects for the future. Recent surveys have judged Hong Kong to be the world's freest and most service-oriented economy.

6.3 In the immediate post- handover period, economic confidence in Hong Kong was strong and the Hang Seng Index reached record highs in August. But the Hong Kong economy had to withstand a severe buffeting in October and November as it was sucked into the financial instability in the region. By year-end the Hang Seng Index had fallen to 10,722.76 and the property market was in decline. The HKSAR Government, however, maintained that economic fundamentals remained sound.

6.4 Throughout this period, the Chinese Government avoided involvement in Hong Kong economic affairs. Chinese leaders offered consistent support for HKSAR Government economic policies but implied that China would only become involved if required, for instance by using Chinese foreign exchange reserves to help support the Hong Kong dollar. The Financial Secretary publicly expressed his satisfaction with Chinese behaviour in this regard.

6.5 Hong Kong continued to play a full and active role in the 31 international organisations to which it belongs, many of which are in the economic and trade field. The HKSAR Chief Executive attended the summit of the Asia Pacific Economic Cooperation (APEC) countries in Vancouver in late November; Hong Kong is a full member of APEC.

6.6 The HKSAR authorities demonstrated their determination to uphold the integrity of Hong Kong as a separate customs territory by taking action against companies which infringed the HKSAR's tight export controls, even where mainland interests were involved. In October, Trade and Industry Secretary Denise Yue signed an Agreed Minute with US Commerce Secretary William Daley on strategic commodities trade controls, providing for closer co-operation between the two sides in this area.

6.7 The Government is encouraged by developments in this area. We will continue to pay close attention to see that Hong Kong enjoys full autonomy in its economic and trading affairs. Important issues to watch are the continuation of the level playing field for all companies and complete objectivity and impartiality in the awarding of contracts and franchises ; and the rigorous enforcement of Hong Kong's import and export controls.

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 economic and financial turmoil in East Asia, Hong Kong continued to advance its claims as a major financial centre. During this period the Hong Kong Stock Exchange remained one of the world's largest stock markets.

7.3 As part of the wave of currency instability in the region, the Hong Kong dollar came under strong speculative pressure during the autumn. But the HKSAR Government successfully maintained the peg between the Hong Kong dollar and the US dollar, the bulwark of Hong Kong financial policy since 1983. The Financial Secretary publicly confirmed that, during this turbulent period, he had acted without reference to the Chinese Government.

7.4 Since 1 July the Hong Kong authorities have been able to exercise monetary policy freely without reference to the Chinese authorities. The latter consistently gave their support to the HKSAR Government's policy, whilst maintaining that it was Hong Kong's business and not China's. Both the Financial Secretary and the Hong Kong Monetary Authority, which operates as Hong Kong's central bank, expressed their satisfaction with Hong Kong's autonomy in this area so far.

7.5 On 1 July the Exchange Fund passed to the HKSAR, as set out in the agreed minute signed by Britain and China in November 1996. The Land Fund was formally wound up on 29 September, with assets worth HK\$ 197.1 billion (about 15.3 billion), and was absorbed into the Exchange Fund. The HKSAR authorities have been satisfied with the autonomous operation of the Exchange Fund since the handover.

7.6 The Government will continue to watch developments in this area closely, to see that Hong Kong's autonomy is maintained.

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 was left to manage its own affairs in the area of merchant shipping.

Naval visits

8.3 Visits by foreign naval vessels have continued. In August, USS Blue Ridge became the first foreign warship to visit the HKSAR, followed later in the month by the American aircraft carrier USS Constellation. On 15-18 December, HMS Nottingham became the first Royal Navy ship to visit Hong Kong since 1 July. Clearance was obtained from the Chinese authorities, but thereafter the HKSAR Government was responsible for the arrangements, leading to a successful visit.

8.4 The Government will continue to look to see that Hong Kong maintains its autonomy in the shipping sector.

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 UK-HKSAR Air Services Agreement was signed on 25 July, and added to the HKSAR Government's existing series of Air Services Agreements with other countries. Further agreements are under negotiation. We have been closely examining this area in order to satisfy ourselves that the Chinese Government is allowing the HKSAR Government adequate freedom to conclude agreements and to implement arrangements. Approval to negotiate and conclude Air Services Agreements remains under Chinese Government control, but the HKSAR Government so far appears to continue to enjoy day-to-day autonomy in negotiations, in line with the Joint Declaration.

9.3 Management of civil aviation, except for visits by state aircraft (which require Chinese Government clearance), continued as before. Work continued apace to try and meet the April deadline for opening Chek Lap Kok Airport. The HKSAR Government announced arrangements for handling security there, which will fall to a new, government-controlled company. Discussions in early September between the HKSAR, Chinese and Macao authorities resolved air traffic problems in the Pearl River Delta region, and Hong Kong is expected to become the air traffic control centre for the region from May 1998. Hong Kong airlines were in the process of changing their nationality and registration marks to match the Chinese system, as previously agreed in the Joint Liaison Group. The Government will expect Hong Kong's autonomy in this area to be maintained, and the expansion of its network of Air Services 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

Universities

10.2 Before the handover, concerns were expressed in some quarters about academic freedom once Hong Kong reverted to Chinese sovereignty. This reflected misgivings about self-censorship and the doubts of some about the impartiality of those in leading positions in the universities. In the period following the handover, there were some media reports of minor academic disputes, for example over the need for 'patriotic education' and about the use of the term 'mainland China'. But there was no evidence in this area of any developments contrary to the provisions of the Joint Declaration. The Government will continue to watch developments in this area.

Schools

10.3 In mid-August some new history textbooks for secondary school students were published. The books contained revisions to the treatment of Taiwan, the Opium War and certain events in the history of the People's Republic of China. The changes were criticised by some, including a teaching union, as politically motivated. However, there is no evidence that these changes reflect pressure from the Hong Kong or Chinese authorities. The Education and Manpower Bureau of the HKSAR Government issued advice to publishers noting that following the transfer to Chinese sovereignty, certain terminology, such as the 'Republic of China' or 'National Government' was best avoided when referring to post-1949 Taiwan. It was, however, up to the individual publishers whether they followed this advice. The HKSAR Government did not dictate to schools which textbooks they must use.

10.4 This is an area in which the British Government will continue to take an interest. While we do not welcome self-censorship, we are not aware that the depiction of Chinese history in school textbooks is being deliberately distorted.

10.5 There have been other symbolic signs of Chinese patriotism in the schools, such as the flying of the Chinese flag and the singing of the Chinese national anthem. However, there is no evidence of political interference in the class-room. A more controversial issue was the decision to make Cantonese the normal medium of instruction in schools, in place of English, from September 1998. This does not prejudice the provisions in the Joint Declaration for the continued use of English as an official language in the HKSAR. Rather, it reflects a long-standing debate in Hong Kong about the advantages and disadvantages of learning in one's mother tongue. Suitably qualified schools may obtain exemptions to continue using English (a list of 100 authorised schools was published in December), and English will continue to be taught as a subject in its own right. The HKSAR Government has also made clear its wish to reverse the decline in English language standards in Hong Kong schools. In his first annual policy address in October, the Chief Executive announced a scheme to recruit 700 native-speakers as English teachers.

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 Although the Joint Declaration provides for foreign affairs to be handled by the Chinese Government, it also allows the HKSAR practical autonomy to handle certain aspects of these matters, particularly in the field of international economic relations. Senior HKSAR Government officials have undertaken foreign visits. For example, the Chief Executive visited the US in September, where he met President Clinton, and the UK from 21 to 22 October, where he met the Prime Minister, Foreign Secretary and President of the Board of Trade. Chinese Ambassadors did not attend these meetings.

International organisations

11.3 The HKSAR Government has maintained its participation in a wide range of international organisations in which Hong Kong previously participated. The main exception was the Asian Productivity Organisation (APO), from which it suspended its membership in July, because of Chinese concerns about Taiwan's participation in the organisation under the name "Republic of China". The British Government recognises that APO membership was never considered by the Hong Kong authorities to be of particular significance to Hong Kong's interests. But we will look carefully at any similar cases which may arise in future.

Bilateral agreements

11.4 Various different provisions of the Joint Declaration deal with the conclusion of bilateral agreements by Hong Kong. The Chinese Government confirmed in July that it had authorised the HKSAR Government to conclude a variety of specific bilateral agreements (including agreements on Investment Promotion & Protection, Air Services, Surrender of Fugitive Offenders, Transfer of Sentenced Persons, Mutual Legal Assistance and Visa Abolition). The practice of issuing case-by-case authorisations, rather than a general authority to conclude such agreements, is more restrictive than the HKSAR Government had originally expected, but appears not to be inconsistent with the Joint Declaration. We raised the matter at JLG XLI in December and agreed that experts from both sides would continue discussions. Surrender of Fugitive Offenders and Transfer of Sentenced Persons Agreements between the UK and HKSAR were signed on 5 November. The British Government remains keen to conclude an Investment Promotion & Protection Agreement and Mutual Legal Assistance Agreement with the HKSAR, the texts of which have been passed by the HKSAR Government to the Chinese Foreign Ministry for approval.

International rights and obligations (IROs)

11.5 The mechanism for ensuring the continued application of Hong Kong's IROs (described in Cm 3719) has been implemented with general success. During the six-month period, a number of organisations sought clarifications, reflecting the unique nature of the mechanism in international law. The most significant issues were raised by the IMO in connection with the International Oil Pollution Compensation Fund and by the OECD in connection with the Paris Convention on Nuclear Third Party Liability. The UK and Chinese Governments have cooperated in the Joint Liaison Group to try to respond to the IMO's and OECD's questions and concerns. IRO issues were discussed at JLG XLI in December.

Consular affairs

11.6 Consular missions in Hong Kong continued to operate normally and satisfactorily. Foreign Ministry Commissioner Ma Yuzhen said during August that his office would be responsible for the establishment or closure of foreign consulates in the HKSAR and the appointment of Consuls-General in Hong Kong. His office would also deal with 'major consular matters relating to sovereignty, diplomacy and security'. But he said that the HKSAR Government would be responsible for the management of routine consular affairs.

11.7 In interviews during August both Ma Yuzhen and Chief Secretary Anson Chan admitted there were grey areas in the relationship between the HKSAR and Chinese Government on foreign affairs, but said these could be worked out. The British Government will look carefully to see how these uncertainties are clarified, and hope that the Chinese Government will exercise due flexibility within the terms of the Joint Declaration, in order to ensure that Hong Kong maintains its distinct international personality.

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 Central People's Government 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 Public and press interest in the Chinese military garrison has waned since the handover. This partly reflects the fact that the garrison has been largely invisible, with soldiers rarely leaving barracks and the Chinese Air Force remaining on the ground. The garrison has generally shunned media contact, although it opened its doors to visitors on Chinese National Day on 1 October. It has sought to avoid controversy, though concerns were expressed by New Territories residents at the end of October that live firing practices had begun without due warning. It was subsequently reported that the garrison had amended and clarified its procedures. In December, the garrison was inspected by a working group from China's Central Military Commission, led by the General Chief of Staff, General Fu Quanyou.

12.3 In July, the HKSAR Government Commissioner of Customs confirmed that no checks were being carried out at the border on Chinese military personnel and vehicles, but said that arrangements existed to allow investigation if any irregularities were suspected. Customs and Immigration Officers have the right to search soldiers who cannot provide written proof that they are on duty ; and the garrison provides details of vehicles and personnel entering and exiting the HKSAR. The Chinese army has set up its own customs checks on personnel entering and leaving Hong Kong, at its barracks in Shenzhen (mainland China) and Cassino Lines (in the New Territories).

12.4 As required by the Joint Declaration, the garrison has played no role in Hong Kong's internal security. In August Chinese Assistant Public Security Minister Zhu Entao confirmed that the his Ministry would not interfere in Hong Kong's policing, but expressed a hope for increased information exchange and anti-crime co-operation.

12.5 The Government is encouraged by the sound start in this very sensitive area, and will continue to follow developments carefully.

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 Before the handover, there was concern about how the Joint Declaration's provisions on human rights would be implemented. Subsequent developments in the six month period were generally encouraging, but the Government will continue to pay the closest attention to all aspects of this most important area.

UN human rights covenants and conventions

13.3 During the period following the handover, the British Government continued to press the Chinese Government to explain what arrangements would be made for the continuing submission of reports on human rights in Hong Kong to the United Nations treaty monitoring bodies, as required under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). We raised the issue with Vice-Premier Qian Qichen in September, and with Vice-Minister for Foreign Affairs Wang Yingfan, during his visit to Britain in November. We also raised the matter with Chief Executive CH Tung during his visit to the UK.

13.4 In November, the Chinese Foreign Ministry announced that it would present reports to the UN. We understand that these will be prepared by the HKSAR Government and transmitted to the UN by the Chinese Government. We told the Chinese side at JLG XLI in December that we hoped the reports would be prepared in Hong Kong and transmitted to the UN without substantive amendment, as was the practice when the UK was responsible for reporting on Hong Kong. The British Government also welcomed the decision of China to sign the ICESCR in October, and to study the ICCPR. This should provide additional encouragement in Hong Kong over China's long-term approach on human rights.

13.5 Arrangements are being implemented to allow submission of reports on Hong Kong under four other human rights conventions to which China is already a party: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT); the UN Convention on the Rights of the Child (UNCRC); and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). We understand that the reports on the HKSAR will be drafted by the Hong Kong authorities, incorporated in China's national reports, and submitted by the Chinese Government to the UN treaty monitoring bodies.

Demonstrations and protests

13.6 Before the handover, particular concerns were voiced about the scope for protests and demonstrations after 30 June. These concerns had been strengthened by the amendments made to the Public Order Ordinance and Societies Ordinance by the provisional legislature, and confirmed under the Reunification Ordinance on 1 July (for background see Cm 3719).

13.7 So far, the situation has been encouraging. Demonstrations and public protests continued to take place regularly after the handover. The HKSAR Government say that some twenty such protests a week take place, about the same as before the handover. Those involved included pro-democracy campaigners, trade unions, pro-China groups and politically non-affiliated organisations. For the most part, demonstrations passed off without incident, although there were some accusations of police heavy-handedness. Demonstrations in the provisional legislature building against the suspension of labour laws led to restrictions on attendance at sittings of the provisional legislature by members of the radical political body, April 5 Action Group.

13.8 The handling of the World Bank demonstrations was one of a number of incidents which prompted the local NGO, Hong Kong Human Rights Monitor, to raise with Chief Executive CH Tung at a meeting in November what it considered to be a lack of safeguards on the exercise of police powers. The body accused the police of vetting political slogans when vetting applications for demonstrations, a concern echoed by others, including the Democratic Party. The HKSAR Security Bureau denied that policing tactics had changed since the handover and said that the national security criterion in the Public Order Ordinance had not been used to prevent demonstrations.

13.9 The authorities acted pragmatically over the flying of Chinese Nationalist flags on 10 October (Taiwan's 'national day'). An informal understanding was reached between the HKSAR authorities and Taiwan's unofficial representatives in the HKSAR that pro-Taiwan groups could fly Nationalist flags on private premises, but not on the streets. The day passed off without serious incident, but the removal by the police of some flags and banners from roads and flyovers attracted some criticism, as the legal basis for this action was unclear (both the Crown Lands Ordinance and Public Order Ordinance were cited). The Chief Executive defended the action as necessary under the "one country" principle. The authorities also acted with restraint over incidents during the Chinese National Day holiday on 1 October, when a number of Chinese flags were damaged.

National security issues

13.10 In July, the HKSAR Government published guidelines on the application of the national security criterion in the Public Order Ordinance. Officials confirmed that the peaceful expression of support for Tibetan or Taiwanese independence or criticism of Chinese leaders would not in itself lead to a demonstration being banned. There would also have to be a threat to public order. The guidelines would not prevent academic seminars being organised on these subjects.

13.11 Although the criterion has not been applied yet, the fear remains that it could be in future. The British Government's position remains that it was unnecessary to introduce this provision. We shall continue to look carefully at this matter. We shall also take the closest interest in the preparation of legislation under Article 23 of the Basic Law to cover the offences of treason, secession, sedition and subversion against the Central People's Government. Legislation is not planned until after the election of the new legislature. Given the sensitivity of these matters in Hong Kong, the British Government hopes that the HKSAR Government will proceed with caution and seek to form a public consensus on the best way forward through full public consultation. We shall watch carefully to see that the legislation is not used to restrict the provisions on rights and freedoms in the Joint Declaration.

The media

13.12 Before the handover, many people expected press freedom in Hong Kong to be curtailed after 30 June, if not through direct intervention by the authorities, then by increasing self-censorship. Developments in the period July-December were relatively encouraging. There was no evidence of Chinese interference in Hong Kong's press freedoms, despite the fact that Hong Kong continued to play host to a variety of anti-Communist and Chinese dissident publications. In September, Foreign Ministry Commissioner Ma Yuzhen's spokesman said that China was pledged to protect the freedom of the press in Hong Kong. Chief Secretary Anson Chan similarly expressed the HKSAR Government's commitment to press freedom at a seminar in December.

13.13 Debate about self-censorship continued, but the signals were mixed. It is doubtful whether the practice increased after the handover. Controversial issues still received wide coverage, with editorials and commentaries being written on subjects such as the release of Chinese dissident Wei Jingsheng or Tibet, which would not be possible elsewhere in China. The highest-circulation newspaper, Apple Daily, was consistently critical of the authorities. The only daily paper to close was a Communist mouthpiece, New Evening News, which succumbed to market forces. In November, the HKSAR Government confirmed that there would be no change to the editorial independence of the Government-owned broadcaster, Radio Television Hong Kong (RTHK). Radio phone-ins were a popular means of airing grievances against the government.

13.14 Against this, some observers in Hong Kong saw a tendency for the newspapers to concentrate on 'human interest' stories rather than politically controversial stories, and argued that the tone of reporting on Mainland Chinese leaders had become more deferential. The Hong Kong Journalists' Association criticised what it regarded as the use of ostensibly legitimate excuses to disguise self-censorship : for example, refusing to publish stories which the Chinese authorities would not confirm. Some leading pro-democracy politicians complained that the press did not give them adequate coverage. It is, however, difficult to judge whether this was deliberate.

13.15 The HKSAR Government rejected claims that freedom of the press had been affected, or that the HKSAR Government was less open towards the press. On the wider issue of freedom of information, a code of practice for the Internet was issued in October, but the government did not legislate in this area in order not to hamper the free flow of information.

Cultural freedoms

13.16 In October the Hong Kong and Macao Affairs Office of the Chinese State Council confirmed that planned arrangements for playing the Chinese national anthem before films (if adopted) would only apply to mainland China and not Hong Kong. Concerns were expressed about the initial decision of Hong Kong film distributors not to show two Hollywood films on Tibet and another on the mainland Chinese legal system on the grounds that there was insufficient local interest. In December, however, the press reported that the films would be screened in 1998.

Religious freedoms

13.17 Addressing the World Lutheran Conference in Hong Kong in July, the Chief Executive offered assurances that religious freedom would be upheld in the HKSAR. So far the British Government is not aware of any evidence to the contrary.

Non-governmental organisations

13.18 Human rights NGOs such as Amnesty International and Hong Kong Human Rights Monitor continue to operate freely in Hong Kong. However, Human Rights Monitor was concerned by its failure to obtain accreditation to the IMF and World Bank meetings in Hong Kong in September, despite having been involved in relevant work for the World Bank. This incident appears to have arisen as a result of the World Bank's internal procedures. We understand that the decision was in no way prompted by the HKSAR authorities, who supported the application. We also note that the World Bank is reviewing its procedures for accreditation of NGOs.

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

Entry to Hong Kong by mainland Chinese residents

14.2 In July the State Council announced new arrangements for mainland Chinese travelling to Hong Kong on business, requiring them to obtain a travel permit issued by the Hong Kong and Macao Affairs Office (HKMAO) of the State Council, or one of the 56 local Chinese Foreign Affairs Offices in China. We sought a briefing in the Joint Liaison Group to confirm that the new procedures were consistent with the Joint Declaration. In September the Chinese explained to us that the permit would replace the former system of Ministry of Foreign Affairs diplomatic, official and semi-official passports, whose holders previously applied for a visa to visit Hong Kong from the British Embassy in Peking or from Hong Kong Immigration Dept, via the Visa Section of the Chinese Foreign Ministry office in Hong Kong. The main change affected short term visitors (visits of less than one month) who would no longer need approval for their visit from the HKMAO or the HKSAR immigration authorities. Their travel permits could be issued by Chinese local Foreign Affairs Offices from their allocated annual quotas.

14.3 The British Government believes it is important that these arrangements should not impinge on the HKSAR Government's power to regulate entry by Chinese residents into Hong Kong. At JLG XLI in December the British side requested an informal briefing to clarify further the new arrangements for all categories of visitors.

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

14.4 On 9 July the provisional legislature passed the Immigration (Amendment) Ordinance No.3 (with retrospective effect from 1 July) requiring mainland immigrant children to obtain a Certificate of Entitlement confirming their right of abode before entering Hong Kong; and empowering the HKSAR Immigration Department to remove such children from the HKSAR if they had no such certificate, even if they could prove their right of abode. Legal appeals followed on the grounds that the legislation violated the Basic Law. Five test cases were heard by the Court of First Instance between 18-23 September ; but their applications for judicial review were rejected. The Judgment declared that Basic Law Articles 22 and 24 should be read in conjunction when determining right of abode eligibility ; that the request for applicants to establish their right of abode before entering Hong Kong did not contravene the Basic Law or the Bill of Rights Ordinance, and that its retrospective effect did not render it unconstitutional. Four cases have been lodged with the Court of Appeal. Action against the Government on behalf of four other children was dropped on 12 November after the Director of Immigration gave them permission to stay indefinitely. Writs in these cases were filed before the 9 July Amendment to the Immigration Ordinance took effect. Estimates in Hong Kong suggest that around 66,000 children from mainland China could qualify for right of abode in Hong Kong.

Visa-free travel by HKSAR residents

14.5 In his first interview with the Hong Kong media in late July, Chinese Foreign Ministry Commissioner Ma Yuzhen said that the Chinese Government had authorised the HKSAR Government to hold talks with other countries on visa-free access arrangements. Commissioner Ma also confirmed in early August that the HKSAR Government would have responsibility for the management of routine consular affairs ; the issuing of HKSAR passports; and administrative control over immigration into and out of the HKSAR.

14.6 Before the handover, the Chinese Government negotiated a number of Visa Abolition Agreements (VAAs) on behalf of the future Special Administrative Region Government. Under the provisions of the Joint Declaration, it is now for the Chinese Government to assist or authorise the HKSAR to undertake this task. We understand that a VAA has been signed between the HKSAR and Thailand.

14.7 The Government will wish to continue to follow these developments and in particular to monitor the preservation of Hong Kong's autonomous immigration and visa regime, and any right of abode legislation which might affect BN(O) passport holders.